

# CHAPTER I

## INTRODUCTION

The Lao People's Democratic Republic (hereafter referred to as Laos) is a socialist country whose government has recently promoted the market economy as the mainstream path to development. Consequently, this has caused advantages and disadvantages to different groups of people. This study focuses on changing resource tenure from relatively open access resources used for the consumption of many communities in the area, to one of strict common property serving a single community which aims to use the resources for capital gain. This change is represented by a case of enclosure in a community backswamp. The tenure of the backswamp has transformed as a result of outside intervention in the form of development. The enclosure in this case represents a microcosm, and it does not cause direct contestation as expected. Economic, political, and social factors contribute to changes of resource tenure and help to legitimise the claim. The research site is in Sanasomboun District, Champassak Province (Figure 1.1).

### 1.1 Background and Rationale of the Study

Laos has been governed by the Socialist State since 1975 after the liberation from long term colonisation. Recently, the Lao government has altered the country's development strategies from a centralised collective economy to a market-oriented economy. The New Economic Mechanism was declared in 1986 in order to facilitate this transformation. A new system of resource tenure has also been designed to facilitate this mainstream policy heading toward clearly defined property rights system and formalised institutions. In addition, this policy gives incentive to local villages to co-operate by enclosing their resources and claiming ownership. From the latest national assembly in mid 2001, the Lao Peoples' Revolutionary Party (LPRP) has declared one of the country's development goals is to get away from the rank of least developed countries by the year 2020 (The World Bank 2000).

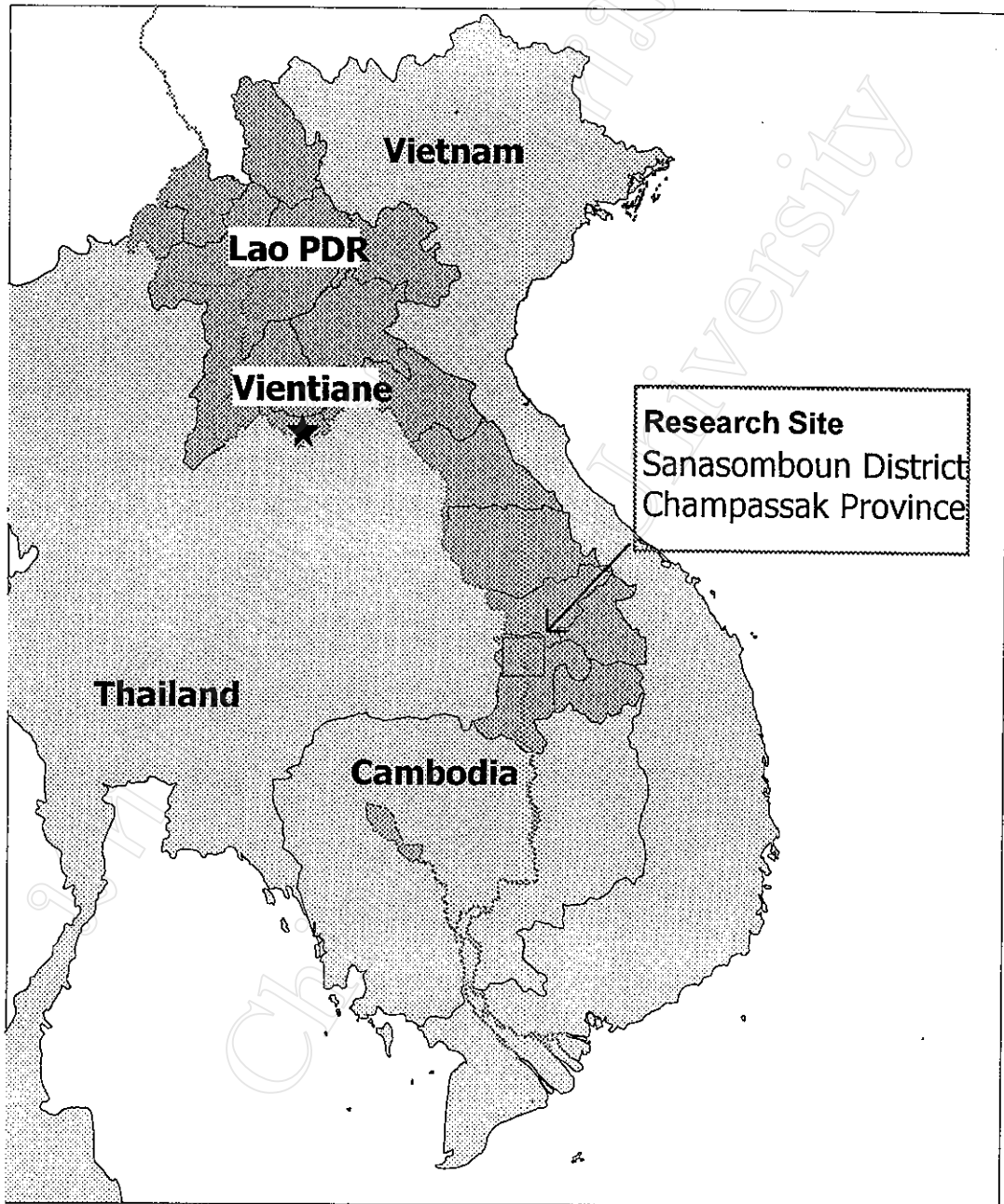


Figure 1-1 Location of Laos and the research site.

To support the country's aim toward market economy development, Laos has implemented a land titling policy since late 1993 called Land and Forestland Allocation Program (LFAP). In this policy, all resources are defined by categories and property regimes are formalised. The state claims this program is aimed to decentralise, to empower local people, and also to secure people's property rights, which is the objective of sustainable development. These policies are quite mainstream and are promoted and supported by various international financial organisations. They are utilised widely by government officials and development projects at the local level. The implementation of this policy does not guarantee perfect results in every case. Rather, it causes simplification that adds both positive and negative results to different groups in the process. In addition, in the case of Laos, customary rights of local people are recognised by law and community-based natural resources management are encouraged. However, the actual practices are still ambiguous.

People in the study area dwell on a subsistence basis, which inland fishery is very crucial to people's livelihood as the main accessible source of a protein diet. Inland fishery is complex in its ecology and management systems. The ecological context of fisheries in Laos is diverse and is categorised into five types of water bodies: the Mekong River, tributaries, streams, backswamps, and rice fields. Fish themselves are not confined to fixed boundaries. Fishing activities also are not fixed according to the territory. Instead, they depend on the ecological conditions in the area, fishers' skill, and the social relations among communities. These factors, in turn, affect the management system. As for the big rivers, the management is loose as rivers are shared by several different communities and different administrative sectors from village to country level. The small water bodies are managed closely by communities, especially backswamps that involve collective action with traditional practices and in some places spiritual beliefs. Thus, access to fishing in these water bodies is different depending on the management of each community, the ecological context, and also the social relations among communities.

In 1997, the Provincial Livestock and Fisheries Office (PLFO) and the District Agriculture and Forestry Office (DAFO) co-operated with the Indigenous Fisheries Development and Management Project (IFDMP), which has been extended and renamed the Small-scaled Wetland Indigenous Fisheries Management (SWIM). SWIM will be completed in mid 2002. It has implemented an indigenous fish stocking trial. The project subsidised the stocking of indigenous fingerlings species in four natural backswamps in the Sanasomboun District. The new management arrangements of backswamp were initiated and enforced by the local community in a way that follows the market economy development. The new rules for a 28-hectare backswamp, Nong Bua, Kaengpho Village, were established to provide exclusive rights over the backswamp that was formerly utilised by several neighbouring villages for generations. This new institution demonstrates enclosure. Kaengpho legitimises its claims over Nong Bua through the “common good” and through “development” which is fully authorised by the local government.

Enclosure is the term normally used when large-scale policy is imposed on an individual or communal resource to alter the tenure to private property holdings. But the case of Nong Bua is one of small scale enclosure where the property rights still belong to the community as a common property resource. This kind of situation is happening more and more in societies under the transition to market economy development. However, scholars have not paid enough attention to this recurring situation.

The foregoing explanation has set the background and the justification for the research. Key research questions were originally derived from the context of community-based fisheries management and the rearrangement of property relations in southern Laos. The following are the original questions that were set out with a presumption that the enclosure would lead to contestation as a consequence. This was because the research questions were defined under a framework using concepts of territorialisation and contested rights. However, direct contestation was not

observed during the study as expected. Instead, the claims were gradually legitimised by the excluded communities. These assumptions and unexpected findings will be explained and clarified within the thesis discussion.

## 1.2 Research Questions and Objectives

Research questions:

1. What are the combined effects of the Land and Forest Allocation program and support for community-based fisheries development on an existing common property regime?
2. What are the implications for the equity of resource tenure and the sustainability of resource management at the local level?
3. How have different actors aligned their interests in response to the external interventions and legitimised the rights under the new property regime arrangement?
4. What are the principles behind the rearrangement of property relations?

The objectives of the study, presented next, overlap with the research questions. They are distinguished as objectives to express the focus of the study.

1. To investigate the positive and negative impact of policy, program and project on resource tenure and the external interventions that affect property relations at the local level, using a community backswamp as a case study.
2. To understand the circumstance and the complexity of interactions among communities related to the change of property regimes.
3. To analyse the complexity of formalised common property arrangements and community-based management in practice.

### 1.3 Literature Review

The literature review is composed of five subsections- resources tenure development in Laos, inland fisheries management in Laos, community-based management of common property, market economy development and enclosure, and contested rights. The first three topics are related to the Lao context. They are selected to provide context for later analysis. The other three topics are the main concepts used to frame the analysis in this thesis. Concepts on common property and community-based management approaches are getting popular among NGOs and development organisations. Recently, there have been cases from the developing countries that the international donors and even state promote these concepts. This demonstrates through policies, agencies, and programs. A case study on a land tenure development in Laos by Kirk (1996) is a good example. However, it is often that these concepts are over-simplified and formalised through the interests and purposes of each agency. Thus, it may lead to rigidity and problems in practice. The circumstances of resource tenure development and fisheries management in Laos provide the set context of this study. Meanwhile, the theoretical discussion and literature review of two main concepts, community-based management of common property, and contested rights comprise the core discussion of the thesis.

#### 1.3.1 Resource Tenure Development in Laos

The main study of resource tenure development in Laos comes from the work of Michael Kirk (1996) in *Land Tenure Development and Divestiture in Lao PDR*. Kirk reviews the transformation of policy on resource tenure in Laos from 1986, after the announcement of the “New Economic Mechanism” or when the country changed from a centralised collectivisation system under a closed economy, to the decentralisation and market economy orientation. This current policy supports commoditisation, especially encouraging the local level to sell agricultural products. Kirk shows that during 1990 to 1996, Laos completed the process by declaring various Decrees and Laws on resource tenure management. There are

three influential decrees- Decree 99 on the Land Decree announcing “the State owns the resources on behalf of Lao nationals who are granted rights of land use” (Kirk 1996: p. 17). Decree 102 on Organisation and Administration of Villages that assigns tasks and responsibilities to the village committees. Lastly, Decree 169 on the Use of Forests and Forestlands issued in 1993 provides village communities with written, long-term rights of access and use, including communal property and customary rights.

The state claims that Decree 169 and 102 are significant for decentralisation. Vandergeest (2000) challenges this declaration and assesses it as “centralisation” instead. This is because the state still holds decision making over resources while communities have been vested only with responsibilities to take care of resources in their area. Besides, it is the state that organises and commands people’s participation and collective institutions to manage resources in a way that is planned by state authorities. In the Lao case, Vandergeest (2000) prefers to use the terms “formalisation”, “rationalisation”, “containment” than “centralisation” or “decentralisation”. The reason is, all community activities are expected to be mobilised under the restriction, be justified, and be approved by state agencies. The state claims that if households have secure property rights, they will improve their production and alter the subsistence economy to a market economy. Customary rights or indigenous practices are recognised in the laws but it is contradictory in some cases and remains unclear how to implement them.

In the past, during socialism, when the central state could not exercise its power, local authorities were crucial institutions to acknowledge the local systems and also to mediate the conflict in the area effectively (Ryder 1996). Even though customary practices were not officially recognised or documented for centuries, they were flexible and appropriate to each particular case. Hirsch et al. (1994) indicate that regarding roles of local authorities, especially at the district level, unlike its neighbours, Lao local officials have a close relationship with local communities as they live and practice as other farmers in the area. Thus, resource use was flexible

in negotiation in specific cases. This helped to avoid conflict, and the open access or the non-management of resources. Today, after the formalisation, district officials tend to follow the written rules more, so their roles in mediating conflict in each specific case may have been lessened.

The current set of decrees and laws is likely to have been introduced as a package based on foreign concepts. All resources are defined by clear boundaries, clear membership, and emphasise titling individual private ownership. Riddell (1998) complements Kirk by showing that in developing countries, the private ownership is a foundation of liberal economies. The country's development depends very much on good property institutions applied to good macro-economic policy. He also points out clearly that the policy on resource tenure development has been a condition introduced by international donors, the World Bank in particular, linked to grant funding for country development. Jerndall and Rigg (1999) observe that in the case of Laos this may give more benefit to the business sector that need to be secured in their investment, not to local people. As Bryant (1992) notes, the state in general is always influenced by dominant international donors in its policies.

To sum up, the top-down approach and vague decentralisation policies of Laos relating to resources results in over-simplified property tenure and rights. This particularly affects the complex, traditional communal property rights and rules that are flexible to change and negotiation according to the context. Therefore, a standardisation of property regimes may lead to a number of potential conflicts, especially between who gains and loses from the process.

### **1.3.2 Inland Fisheries Management in Laos**

In Laos, with a limited geography and no access to the sea, riverine fisheries are a very crucial source of accessible protein for most of the Lao population. All activities in the fisheries sector are implemented by the state, which now prioritises ways to improve the food security of people (DLF 1999). The research is very



limited and most funding comes through the Mekong River Commission, which targets biological and some socio-economic census information. Some literature concerning social and management activities related to fisheries, more specifically in the south, are reviewed below.

Some general information about fishing in Laos is explained by Ryder (1996), who discusses small water bodies, people who regulate them, and when and how to access fish. Backswamps in particular are generally used by one single community but some are shared by many villages. In many cases, legends and beliefs rule the actions of resource users. For example, people are prohibited from using specific fishing gear or fishing at certain times. Fish are a fugitive resource moving across administrative boundaries, and fishers follow as travellers. Local knowledge and fishers' skills are crucial in utilising this kind of resource. Therefore, control and monitoring by authorities for administration or management purposes is difficult.

Regarding legislation for fisheries resources, Kirk (1996) shows that Laos does not have clearly specified legalised control of fisheries management but it is mentioned under the Water Law. The state claims its status as owner of all resources and allocates usufruct rights to interest groups. However, regarding the Water Law, the state intends to prepare this for the purpose of large-scale modification of natural resources such as big reservoirs for hydropower and irrigation. There is no regulation for wetlands even though wetlands contribute to the food security of the people. The Water Law mentions compensation in cases of the state's appropriation but does not acknowledge the disposal rights by other interest groups like the community. In addition, as the Water Law is also under the authorisation of the Department of Forestry (Claridge 1996) the administration may block co-ordination with other resource legislation.

Fishing in Laos is still very much a traditional practice based on subsistence with little trading locally. According to the national policy framework concerning

the development of fisheries at the local level, the priorities of fisheries development are to: improve food security by encouraging productive management such as stocking indigenous fish species in natural water bodies (Singkham 1994, DLF 1999, Garaway 1999). This is to encourage the success and sustainability of fishery development. This kind of management intervention has also been implemented in other regions, such as in Africa (Marshall and Mae 1994).

There are two studies on fisheries in the south of Laos, Lorenzen (1998) and Garaway, et al. (1997) focus their studies on reservoir and small water bodies fisheries management in Savannakhet Province, a neighbour of Champassak Province, Lao PDR. The studies aim to evaluate the effects of active management through a stocking program that the project has supported. They also examine community regulation of exploitation on fish stock, yields and benefits from the fisheries. The findings show that access restrictions give strong positive results and help increase fish stock, while the natural stock is decreasing. Although yields from community fisheries are lower than in open water bodies, people have agreed to restrict their access because they gain the community fund from selling fish that they have stocked. Lorenzen (1998) shows there is a pattern of interaction between physical fish yields from the stocking and conditions in which community in decision-making on setting rules and labour take place. These two factors have led to the new management arrangement of the backswamps. The investment in stocking also has changed people's perception on resources management.

In addition, Garaway (1999) did her dissertation on small waterbody fisheries and the potential for community-led enhancement using the case in Savannakhet Province. She investigated the kinds of new property relations that support enhancement of the backswamp. In addition, Garaway's study cases are all backswamps governed by single communities. This is opposite to this thesis, which examines a backswamp accessed by several communities and also focuses on the effect of backswamp enhancement on property relations.

Other research reports about southern Laos' focus on co-management. One such study, by Baird (1999), locates the research near the border of Cambodia. He concentrates his researches on fish conservation zones in the south of Laos where local communities are encouraged to set up rules to conserve fisheries resources, specifically, spawning grounds. The study found that people are very knowledgeable about fishing grounds. Communities are enthusiastic in fisheries conservation when they see the long-term benefits. Another study describes the Small-scale Wetland Indigenous Fisheries Management (1999), a collaboration between local communities and the district and provincial Livestock and Fisheries Office experimenting with fish stocking in the backswamp. It turns out that every village aims to gain a cash return before increasing food security in the community.

Applied studies related to resource tenure include Indigenous Fisheries Development and Management Project (IFDMP) (1999a, b) and Small-scale Wetland Indigenous Fisheries Management (SWIM). These are action research projects aimed to investigate the common pool resources of fisheries in Laos. They have found the regime and management of one type of water body differs to the others or even in the same type. They are complex and depend on size, location, ecological conditions, fishers' skill, and the traditional practices. Access to backswamps show clearer management and control over territory than other types of water bodies.

To sum up, studies about inland fisheries in Laos are limited, all of which are applied studies as the government prioritises its work on development projects. In the case of Laos, so far, there is no study about the significant aspect of water and fisheries tenure like in the cases of research in Africa (Thomas 1996) and the Amazon (McGrath et al. 1993). Complexity of fisheries resources is in contradiction with the new resource tenure policy that are based on clear territory and membership. There is no study on the reaction and actual practices of fishers, especially in terms of the affect of resource tenure changes. Additionally, rapid change following the policy to stimulate commoditisation has influenced the

competition in fishing, particularly when fish are a valuable commodity. Consequently, these factors tend to bring potential conflicts to the area. As Jentoft (1997) notes, problems of fisheries management are basically a puzzle of social and institutional issues, not so much technical or biological difficulties. However, no researcher has ever touched upon the issue of contested rights and claims for the exclusive rights over the new management arrangement of small water bodies and fish in the areas. Today, Laos is experiencing rapid changes resulting from various factors that bring a number of inharmonious case of resource management as a consequence. The issue of conflicting claims always exists but, up until now, has not been fully explicated and tends not to be raised openly.

### **1.3.3 Community-based Management of Common Property**

Common property and community based natural resource management can be view as a combination of concepts that have been developed and shaped by research and development projects. Some narratives of common property and community-based natural resource management, together with mainstream territorial control over all resources, are presented here. These narratives illustrate some of the conceptual simplifications and fallacies that may lead to the redefinition of property relations, which occur in response to enclosure and contestation. Two main points are discussed: the over-simplification of common property and the notion of the community-based approach for sustainable natural resource management.

The first narrative is the notion of common property. The first point is the simplification of the trinity of properties (Vandergeest 1997), which are state, private, and common properties. Common property, in particular, is portrayed to represent inclusiveness that provides a better option compared to private and state property regimes for sustainable management of natural resources. The majority of literature clearly distinguishes the trinity of property regimes from each other, state, private and common properties, with static attributes and the bundle of rights and duties of each system (Bromley and Cernea 1989; Berkes 1986; Bromley 1991;

Ostrom 1992; Runge 1986; Macpherson 1978). This notion has become formalised and is strengthened widely.

In the real world, however, there is no such clear-cut distinction between the systems or the resource users. This is because most of the time we find that all the property regimes are overlapping, complex and contested (Vandergeest 1997, Fortmann 1995, Cleaver 2000, Leach et al. 1997). Vandergeest (1997) states that the presentation of clearly different attributes of the three property regimes is not reliable in the real world. Rocheleau et al. (1997), Peluso (1996) shows there are many layers of rights and claims over various resources in the same unit. For example, on a single piece of land, the state, community, and individuals more specifically men and women may gain access, use, and claim differently each resource such as forest, trees, fruits, grass, and fodder. Therefore, common property in particular is complex, dynamic and has various patterns. In addition, there is no interest on the exclusionary side of common property and collective action even though it is accepted that property right is an enforceable claim to exclude others (Bromley et al. 1989, Berkes 1996).

In the dominant Western paradigm, these three systems are formalised and made explicit (Hann 1998). However, in pre-capitalist societies like in the Third World countries, this style may be not applicable to the different contexts of culture, politics, and economy. Therefore, to place a rigid border on each regime, common property in particular, is unrealistic and can freeze the flexibility of property regimes that tends to change continuously. Peluso (1996) suggests looking at the dynamics of property relations and negotiation by focusing on the “process”, rather than the static institutions, or simply at the bundle of rights and duties. Besides, access to resources should be considered an “ethic of access” (Peluso 1992) emphasising the dynamic manner of processes that are influenced by the characteristics of property and the changes of social, political, economic and environmental factors that affect the resources.

The second point about common property is its positive attributes. These are said to bring better social and environmental outcomes than state and private property can provide. In the case of social outcomes, common property narratives have emphasised inclusive rights. Macpherson states “common property is created by the guarantee to each individual that he/she will not be excluded from the use or benefit of some thing”. While “private property is created by the guarantee that an individual can exclude others from the use or benefit of something”(1978: p. 5). A unit of common property is managed by the community so it implies an inclusive right, which should bring more benefit to the public good than a private property regime. In addition, as common property systems are based on collective action, so, it is assumed they are more equitable than other regimes (Bromley and Cernea 1989). Jodha argues against the notion of inherent benefits brought by exclusive rights of private property as promoted by conventional theorists. In fact, private property can lead to destruction of resources (1986). In addition, cases show that state property can become open access, as the state does not always have the capacity and knowledge of the area to control and monitor all resources (Bromley et al. 1989; and Berkes et al. 1989).

In cases of common property regimes, the institutional economic school identifies a set of principles that may allow for long-enduring communal resource institutions (Ostrom 1990). Some important elements of these institutions include, clear boundaries which include clear ownership and users; clear rules; and recognition by the authorities. These are similar to the characteristics of the private property regime in which scholars may be seeking to find criteria to prevent recurrence of “The Tragedy of the Commons” (Hardin 1986). There is nothing wrong with the institutional school framework, but there will be problems when the criteria are utilised as a checklist for changing property regimes. Government agencies, with the support of international financial organisations seem to apply this framework in a linear and routine manner. This may affect some user groups, even though the resources are managed as a communal property regime.

A lot of common-pool resources function under informal institutional guidelines with unclear boundaries and ownership such as those associated with traditional beliefs. Poor people may be better positioned to access resources under this informal system. This kind of communal resource is more inclusive than the resources that have strict rules and boundaries. Communal resources with institutional regulations tend to become more and more formalised. As a result, resources can be exclusively claimed by certain groups and some people are marginalised as a consequence.

As for environmental outcomes, common property studies of cases from around the world show results of sustainable natural resource management. Berkes et al. (1989) and Acheson (1989) present cases demonstrating that private and state properties do not necessarily conserve resources as Hardin (1968) claims. On the other hand, in some cases, private property owners tend to exploit resources more than communally owned property. Acheson (1989) explains this by saying that under certain conditions, resource owners prefer to use up their resources, especially when the growth rate of resources is less than its interest rate. Carrier (1987) studies one tribal group in the Ponam area of New Guinea and shows that exclusive property rights have not been valued and have even sped up resource destruction.

From the literature mentioned above, dichotomies between common property and the state, and private property regimes are shown. This notion of common property should be questioned. It is clear in theoretical discussions that common property and other regimes of property rights have a principle of "exclusion" of non-members, yet this is ignored in the studies of most researchers. Scholars seem to overlook the complexity of property relations, which has resulted in simplistic and unrealistic models. They often assume that common property prioritises subsistence needs, but not market production. This type of analysis ignores the way common property can be materialised to promote market integration (McKean 1997) and enclosure. Many studies depicting successful common property regimes are from specific tribal groups. In addition, within the framework of theoretical

discussions, scholars provide explanation without context. Therefore, the study of common property regimes has become romanticised, optimistic, and also static.

The second narrative is the notion of the community-based approach in natural resource management. The first focus is on the image of community and the second is its potential for co-operation. Homogeneity of community and knowledgeable people are often presented together to show the outcomes of public good. Bromley and Cernea (1989) explain that “community” is composed of social units with a definite membership and boundary, in which members share cultural norms, and interests in the group. Olson (1965) elaborates that people have good knowledge of their area so they can generate institutions to create a “public or collective good” that helps the group or community to reach a goal. Korten (1986) adds that community has the ability to co-operate and mobilise its resources and use them wisely and productively with equity and sustainability. Cases of common property and community-based management that provide a common good resulting from strong customary rights in tribal groups are presented. These include community fisheries management by Cree Amerindian fishers in the United States (Berkes et al. 1989); and community forestry in Thailand (Somchai 1999). Bromley plays on a phrase from Hardin to explain the combination of common property and community-based control by stating that “the real ‘tragedy of the commons’ is the process whereby indigenous property rights structures have been undermined and delegitimised” (1991: p. 104). Scholars like Berkes, Feeny, McCay and Acheson (1989), Bromley and Cernea (1989), and NGOs working at the local level have encouraged the notion of community as an institution to manage natural resources (Agrawal 1999).

The second point about the community-based approach is its potential for co-operation. It is emphasised the interdependent nature of people’s lives and notion of community as a social unit (Cleaver 2000). A group of institutional economists or rational choice advocates, such as Ireson (1995), explain aspects of co-operation from the perspective of cost and benefit calculation of individuals. Also, people will



co-operate if they are confident that the other will work too. In the case of village irrigation in Laos, Ireson (1995) points out that it is too costly for individuals to work at huge activities alone, so they need co-operation. However, in the case of a village under market influence, the co-operation seems to fail. Another group of scholars emphasises tradition and values or a moral economy as the reason for community resource management. Mosse (1997) criticises that this group arises from a small community that seeks co-operation to cope with risks that they may face.

“Community” in these senses has been selected to represent the unity and solidarity among local people who share norms and interests in their livelihoods, including collective action in resource management. This community narrative is argued by many scholars. Regarding image of community, Li (1996) notes that images of community-based management sometimes create an assumption of a consensual unit of community. Enters and Anderson (1999) elaborate that communities may present a unified front in response to threat, but can also be divided and redivided by internal struggles over resources or things related to their lives. Studies from Hirsch (1993), Utong (1993), Mosse (1997), Leach et al. (1999), Cleaver (2000), Agrawal (1999), and Vandergeest (1997) emphasise the differences in status, class, and interests among groups that dwell in the same community and point out that community is constructed by various groups of outsiders. Besides, collective action can bring benefits for one group but can also give negative impact to other groups. Quiggin (1993), Blair (1996), and Baland and Jean Philippe (1999), all economists, also warn us to be aware of the assumption of equality among groups who share common property and recommend this issue may need further investigation.

Regarding the potential of community to work in collaboration, Brosius et al. (1998) traces back the history and assumption of community-based natural resource management. He shows most of the community-based approach projects overemphasise community interest and capacity to come together and collaborate to manage the resources sustainably. Mosse (1997) and also Leach et al. (1999) argue

with both rational choice and the moral economy models challenging that these models stress that community comprises characteristic of autonomy, equilibrium, timelessness, ahistory and apolitical locality. In a way, they claim, this is a construction of “community” and this notion is misunderstood by the state and development projects, which bring about fallacies in practices.

The market economy can both destroy co-operation and strongly attracts people to co-operate at different context. Shigetomi (1992) presents a case from the study of a community fishpond in northeast Thailand. One village committee has to give a concession to an interest group to gain benefit from the village pond for a few years in exchange for a clean pond afterward. This is because since people are busy with commoditisation, no one volunteers for the annual cleaning. Consequently, the pond was getting shallower and had no fish. In this case, villagers created new forms of co-operation to suit their changed conditions. They shifted from volunteer co-operation to new patterns of co-operative activities. Today, in the new pattern, beneficiaries are defined clearly within agreed regulations and most activities relate to economic gain. Villagers tend to organise newly co-operative activities using communal resources more when they see the economic incentive. This case shows that market economy can persuade individuals to co-operate. A united society and the “obligatory voluntarism” may be found only in the past or in societies for which resources are still abundant. Today, there are few such isolated communities, particularly when resources become attractive for commercialisation.

The example above demonstrates the context of the situation is crucial, as it is specific to each case. For example, regarding people’s incentives, dominant models tend to detach individuals from their life world and explain people’s behaviour using a functional approach of looking only at the motivation to co-operate in the management of a particular resource (Clever 2000). Long (1992) shows that, in fact, we can understand actors or people in relation to resources or activities that we are studying, but cannot generalise. Rather, we see the complexity of individuals linking with others.

“Community” is often used interchangeably with “village”, which provides crucial implications for territorial-based natural resource management. In fact, community has a wider meaning. Townsley (1998) explains that community can mean people whom engage in the same occupation and have a common socio-economic status, kinship, gender, class, or caste. A real sense of community is not necessarily defined by a residential notion, but today, community tends to function more as a village that excludes others from their territory (Mosse 1997).

In addition, similar to common property, Agrawal et al. (1999) observes that it is a drastic change that international agencies, including the World Bank, have “found community” after the notion of Hardin that people are exploiters. Brosius (1998) argues this kind of simplification has been promoted by local, national, and even transnational organisations probably with various objectives. For instance, donors may aim to reduce the cost of implementation and stewardship (Rondinelli et al. 1989), while local communities may want to make legitimate claims over certain resources. This notion becomes a discourse in natural resource development programs. Various groups try to employ the concept to gain benefits, thus, power relations must be observed.

Lastly, in order to understand property relations better, Vandergeest (1997) proposes a middle way to look at property as an everyday practice or what people actually do, not only what the rules say they should do. Hann (1997) uses the term “property relations” to see the web of relationships between people related to resources. This is because property implies social relations of parties who have rights and duties. Vandergeest prefers to use the term “local property”, referring to the traditional practice of resource management and to contrast this with state-administered property (1997). He shows that property relations are complex, ambiguous and steadily changed and renegotiated. Social aspects like gender, kin, class, politics, law, and economy make property relations fluid and dynamic, thus they are not confined by state, common or private property. They all are

overlapping each other. So, to understand property relations requires the observation of everyday practice in the real situation.

To sum up, common property has not existed and been promoted by its own character. Most of the literature concerning common property has been produced after the well-known article, "The Tragedy of the Commons" (Hardin 1968). To follow these narratives requires caution. The same goes for notions of community-based approaches. Scholars tend to present only the positive aspects, probably to argue against the idea and the policies of necessary privatisation and state appropriation in resource management. Community is not passive and does not always act as a positive party. In some cases, the community will take advantage of interventions. In addition, community has no static boundary, but when it is formalised into an administrative system, it also can bring enclosure. Using the term "community" perhaps should be clarified in each specific case. Therefore, these narratives should be taken with caution and the study of everyday practice within its context may help to make explicit the complexity of property relations.

#### **1.3.4 Market Economy Development and Enclosure**

The international financial organisations, like the World Bank, states clearly in its policy that the market is a good mechanism for facilitating development in a liberal economy (Brandao and Feder 1995). In consequence, this requires clarified property right systems and good property institutions. This is so resources, especially land, are transferable, inheritable, and have enforceable regulations. Also, it is for the rights holders to have secure tenure and incentives to invest in the resources. Then, it leads to increasing productivity and efficient resources management, which means economic growth and development. The socialist states, which were formerly restricted to social property, after the collapse of socialist economies now, have transformed their development direction to a market-based economy (Riddell 2000). Under the financial support from international organisations, the government supports privatisation, decentralisation, and clarification of property rights. They are to facilitate the process of liberal economic

development. Property rights, either state property, private property, or common property, define the legitimate exclusive authorities of resources uses (Brandao and Feder, 1995). This allows for the exclusion of non-users. The promotion of a market economy can cause enclosure to various types of property regime.

Historically, enclosure was a process in England started in the twelfth century when the feudal lords gradually claimed private property over the communal land used by tenants. At that time the land tenure systems overlapped. Arable land was left open but villagers had strips of land for household cultivation. When they harvested, the land became communal pasture. An obvious illustration of enclosure in England was during the seventeenth and eighteenth centuries when the rights of farmers were ignored and thousands of them were expelled from their lands. The physical enclosing of resources occurred when the lords fenced off the land for sheep raising (Fairlie 1993). Marx, in *Capital*, explains that enclosure played a supporting role in the transition from the feudal mode of production to the capitalist mode as it produced a landless population forced into industrial labour for livelihood (Lazonick 1974).

The term enclosure is also used by some economists who see that environment, in terms of the global commons, is endangered because of the absence of property rights, therefore, enclosure may be required (Watt 2000). Enclosure in Thailand features something similar. Yos (1996) demonstrates how the government's development policies cause enclosure. The Thai government centralises its development efforts and imposes development plans that enable the industrial sector to absorb cheap resources and labour from the agricultural sector in flagging rural areas. Lohmann (1990) demonstrates another case of enclosure in eucalyptus plantations. The Thai government gives concessions to companies, then declares large areas currently used for farming by many households, as now designated for eucalyptus plantations. This causes local people to suddenly become landless and have little choice than to enter the industrial sector as cheap labour.

Regarding resource tenure, enclosure in the economic sense, is the conversion of primary, communally regulated resources or individual property operated in a communal system into private property (Cohen and Weitzman 1975; Lazonick 1974). Enclosure leads to new social orders in two ways. First, by enclosing, it redefines “resources” as “properties”. In other words, resources are given an economic value and become commodities. Second, the reasoning for enclosure is claimed to be a need for “improvement”. This is to guarantee productive resource use. It also implies a notion of economic growth or development under the current term. Thus, enclosure for the sake of development is offered as legitimacy for change (Fairlie 1993).

In brief, enclosure presents a legitimate changing tenure system from a communal regime to private property. Enclosure requires clear boundaries, ownership, and formalised status. This is similar to the enduring common property presented by the institutional economic school (Ostrom 1990). The enclosure occurs under the claim of development, which is clearly driven by the market economy. Even though there are many studies on various aspects of enclosure, there remains a lack of attention to enclosure aspects of common property. In addition, studies tend to comprise cases of enclosure between state or individuals and communities or individuals but not the study of enclosure between a single community and several communities.

### **1.3.5 Contested Rights**

Contested rights present themselves in many forms, for many reasons, and at different levels of property claims. Following here is a discussion about the importance of property rights, the five levels of bundles of rights, some forms of contestation in property rights focusing on the law and customary rights, the legitimate claims made in contestation, and a range of cases on the land titling programs in the region.

Definition of rights, Schlager and Ostrom (1992) define the term “rights” to refer to specific actions that are authorised. Rules refer to the prescriptions that create authorisations, so rules define the rights and also duties. Rights are the products of “rules”. Property rights are specific actions allowed to a certain domain (cited from Commons 1968). Vandergeest (1997) emphasises that the claim to property rights will only be completed when four aspects are clarified and accepted. Firstly, to claim property, communication to others is needed (Rose 1991). Second, people have to be convinced that the claim is accepted and legitimate. Third, the claim has to be remembered. The last is that the claim requires enforcement.

As rights are complex, the institutional economic school (Ostrom 1990, Ostrom and Schlager 1996) differentiates property rights into five different bundles of rights from alienation, exclusion, management, withdrawal, and access rights. They are categorised in three hierarchical levels: the constitutional level, the collective-choice level, and the operational level. Each level has specific rights and duties in property regimes from the most to the least. The constitutional level refers to principles that determine the setting of rules and rights. The collective-choice level has rights governing in a) alienation; b) exclusion of the non-owner; and c) management. The operational level has rights to d) withdraw; and e) access to the resource. The operations or the users do not have the right to manage the resources or exclude others. In addition, they have a duty to respect the rules designated by the collective-choice level. Contestation over property is the challenging of rights that are claimed by others. Claims are not necessarily for ownership, but could be for resource use. The clarification of rights presented in this way can help us to distinguish levels of right but it cannot be generalised in all situations.

Regarding, the contested rights between *de jure rights* and *de facto rights*, Schlager and Ostrom (1992) clarify further that the sources of these rights are varied. They may come from the government, which authorises the rights to resource users, called *de jure rights*, as they are given legal recognition. Rights may also originate from resource users who design and enforce the rules among

themselves without the recognition from formal law. These are called *de facto rights*, or informal rights. However, these two types of rights may complement, overlap, or contest each other. *De facto rights* may be known and work well in a given area, but if they contest with *de jure rights* or other rights that receive legal recognition, *de facto rights* are at a disadvantage. *De facto rights* may be acknowledged and legitimised to become *de jure rights* in some cases, but many are ignored and degraded as there is less sanctioned power when there is high competition or conflicts from the outside.

The case of land titling gives a clear illustration of the contested rights between *de jure* rights of state and *de facto rights* of local people. Vandergeest (1996) explains the territorialisation as a process that the state uses to monopolise the administration of resource tenure through clear zoning and mapping. Anan (1994) complements Vandergeest that by pointing out a clear boundary, members within the boundary also become defined. Land-titling program is a form of territorialisation. It simplifies all the complexity of people's livelihoods and their customary rights on resources, in particular land and forest. This problem has led to the eviction of a number of people and the resulting resistance continues today. Peluso (1995) adds that land titling is a way that states use as a mechanism of control or to make legibility to replace the customary rights. Scott (1998) points out, that the state aims to simplify and standardise resource tenure so that it is possible for the state's administration to control the resources. Fox (1998, 2000) shows that mapping creates conflicts between the state and the community; between neighbouring communities; or between villagers in the same village because the imagined boundaries have been removed and replaced by a physical map. However, mapping is necessary, especially in a society of commercial development. Fox (1998) points out those who control or own the mapping are very powerful players as they can tell the story about rights in the territory. This is a trade off for local people: in gaining legal security, customary rights are eliminated.



Regarding customary law and contestation, even though many states in the Third World accept customary rights as part of their national laws, contestation among groups in the community still exist. Doolittle (1998) offers a case from Sabah, Malaysia and Peluso (1998) a case from Indonesian and Malaysian Borneo. Both scholars caution us that state recognition of customary rights is, in fact, a way to codify and eliminate the native resource rights by absorbing them into the formal forms of laws. At the same time, few states provide adequate institutions to regulate resource use. In the case of Indonesia, the state's recognition of customary land was assumed to be confined under village territorial control and also under permanent cultivation. These definitions simplified the existing complexity of customary rights and limited the authority of local leaders in mediating disputes. This also creates inequity and contestation in the community between a group who benefits and a group who is marginalised from the legalisation process. However, Peluso (1995) presents a case of counter-mapping in Indonesia in which even though local people cannot change the policy, they can bend and modify it.

Rights over property often overlap, are negotiated and renegotiated and are contested. Involved in these processes are groups that agree and do not agree on the existing rules. Thus, each group tries to gain rights by communicating or convincing others that their claim is the most legitimate. Story telling is a basic and important tool for people in the local sphere. Fortmann (1995) explains that stories are part of local discourses and are a strategy in negotiation. Stories function to create meaning out of action by organising the experience and by mobilising action. Stories can provide a space to create metaphors that provide simple discursive strategies and to define alternatives or new acceptable rules. Stories are often used to connect with the common good, in order to gain allies. Stories have to be told and retold, not only to other audiences but also among the cohort group in to order to maintain strength among members. Stories can be selected and told differently to different audience such as to the poor or the rich. All of these strategies can be used to legitimise property rights at different levels.

Johnson (no date) defines legitimacy as the principle indicating acceptance of the decisions of authority. People are likely to feel a moral obligation to accept and respect these principles. People who want to compete with other groups when the rights are ambiguous, need to work at creating ways of endowing themselves with legitimacy. Leach et al. (1999) shows, in a study on environmental entitlements, that legitimacy refers not only to the law but also to regulations approved by customary rights, and also to other social norms. Legitimacy is very crucial and usually considered along an axis of conflicting relations between the state and community; and between clearly delineated state/private/common property categories. Thus, legitimacy is a crucial notion for each group to fully gain entitlement to its rights.

Some examples are provided here of various bases of legitimacy that may be relevant to this study.

- a) State authorities reserve the right to design the laws to legitimate the decision making of who should be included or excluded from particular rights. Local people tend to refer to customary rights more in cases where the law is insufficient to address the issue or certain conflict is unclear (Fortmann 1995).
- b) Claims are made on the ancestor domain (Howitt et al. 1996) or legitimacy is linked to spiritual beliefs. These are common in communities that have traditional customs.
- c) Legitimate claims are made on the investment of capital into resource improvement, followed by the investor claiming exclusive property rights (Lock 1956).
- d) Claim is made for stewardship. This can be seen in cases where common property is at stake or as in the case of Thailand, where according to the community forestry bill, local people show that they are able to manage forests sustainably.

- e) The explicit property rights in the territory made by the state and international monetary organisations such as World Bank (Scott 1998). They argue that the clear-defined property right system will give security and motivation for people to manage their resources more productive. Then this will lead to overall improvement in human welfare.
- f) Claims are made in the name of “development” and often refer to modernisation. Such claims are common among development planners.

In conclusion, contested rights are complex and constantly being renegotiated by related groups of people. Communities are dynamic and villagers are not passive actors. In certain situations, people show homogeneity and we may find conflict in the communities in other situations. People compete and try many ways to legitimise their claims over property rights at various levels. Often claims are directed toward the state. Yet, the state and community are not always in opposition. They can also be aligned against a particular group in claiming rights. The contested rights, especially at the local level can be seen as formal and informal claims, implicit and explicit conflicts, individual and collective levels, and different layers of rights. Thus, local discursive practices and other strategies used, as legitimising tools in the contestation over property rights should be paid close attention to.

#### **1.4 Research Designs and Methods**

This study focuses on changing property relations from relatively open access to exclusive common property in a single community. It pays attention to the interaction between related parties in response to the new rearrangement. This section is organised into two parts- a description of the conceptual framework and the methods of the study.

### 1.4.1 Conceptual Framework

This framework is used to understand a case study of the changing property regime of a backswamp. Nong Bua has been modified from a relatively open common property regime with traditional management to exclusive common property of a single community with a formalised institution. Both Kaengpho Village and the excluded communities have based their claims on different principles. The benefit for common good from community-based management of common property is one of the claims. Moreover, this change receives strong support from the local authorities. The enclosure in this case does not produce a direct contestation among parties. This is quite a distinctive case that requires an investigation of the external interventions that influence the enclosure, and the contexts of ecological conditions, the politics and administration, the development policy, and the social relations that legitimise the change without conflict.

The direction of the study has been refined to adjust to the findings of the field research. Before the field research started, the research design proposed to investigate the impact from the land titling program and effect of market forces on productive management that result in enclosure. The research questions (section 1.2) were framed by theories, concepts and studies of territorialisation and contested rights. Hence, with presumption based on background knowledge and concepts in the literature, the research design tended to follow specific directions, especially to look for one or two causes at a time. However, it was found during fieldwork that these concepts were too narrow and not relevant to this case. At the same time, the interaction at the local level was observed to be significant. Therefore, the focus of the study was altered to address the phenomena and process of a changing regime. By following this direction, the research has been redirected to analyse various debates in the field of natural resources management.

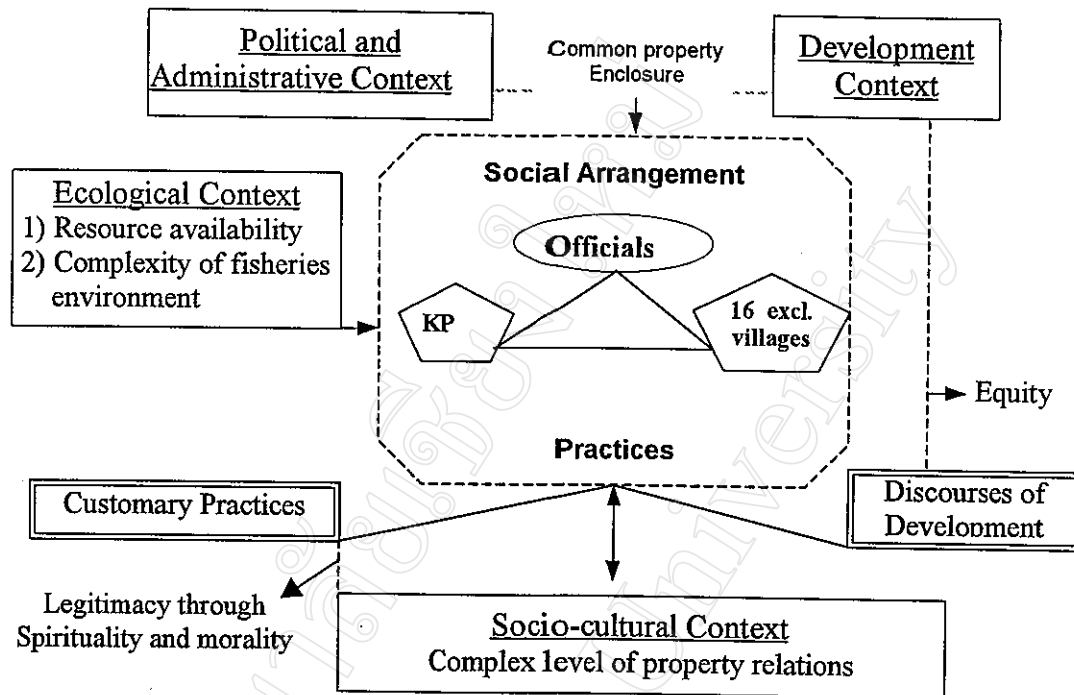


Figure 1.2 Conceptual framework

To understand the case, the framework is organised to explain the factors that affect the changing property regime of the backswamp. These factors are at the level of negotiation and contestation to claim exclusive property right over the backswamp under the context of market-led economy development. There are three main actors involved- Kaengpho people, the excluded communities, and the officials. The factors are divided into external interventions and internal contexts. The external interventions are derived from the political and administrative context that formalises boundaries and property regimes; and the development context of commoditisation. These factors blend well to provide an opportunity for a certain group to take advantage of the process. Meanwhile, the local contextual factors of ecological and socio-cultural context illustrate and justify forms of contested rights between groups. The focus is at the practices of contestation at the local level using customary practices, spiritual belief and morality as legitimation, and making discourses of development, in particular on equity, to modify the new property relation. All the contexts indicate complex level of property relations that contribute to the new social arrangement of exclusive common property as a result.

Legitimising the changing property regime, rights and management systems of Nong Bua is the centre of this study. The changes have been supported according to the function of the resources, that is from subsistence to commercial purposes. The new arrangement of Nong Bua results in a changing property right system, in other words, the authority has been transferred from a collective belief system to the regulations of one specific community. The previous regime of Nong Bua was complex and informal. Fishers from Kaengpho and the other communities seemed to have equal *de facto* rights of access. However, this varied according to the seasons, distance, and the skill of fishers. Management was governed by customary rules.

Then, when fish had been stocked and the backswamp became enclosed, the regime changed. The property rights over Nong Bua became clearly defined as Kaengpho Village having *de jure* rights of ownership. Many new rules have been added into the existing management. These rules are formalised with support from the local government. The purposes of fishing now focus on commercialisation for the economic gains of a single community instead of subsistence for all users. This new arrangement has resulted in enclosure, which is becoming common, especially when the commoditisation of resources is encouraged. Different parties have legitimised their claims to the new property regime based on various principles.

The external interventions in political and administrative context in Laos have been a main source of influence on resource tenure patterns and the land titling policy, in particular. The land titling policy was put in place nationally in 1993 and began to be implemented at the study site in 1998. The tasks of the program are to clarify and record the boundaries of land use, and also communal property. The permanent farming land and communal resources such as temples and public land have clearly defined boundaries and membership, except the common pool resources that may have boundaries but several villages share the usufruct.

As for the state and its administrative work, in order to formalise the property regimes, they standardise, map, record, and simplify all the complex resource tenure to fit into the same administrative unit. Even though the Lao government recognises the indigenous practice of resource management, to formalise common property may cause rigid resource management in terms of rules and practices by various user groups and perhaps even conflict as a consequence. In addition, the top-down and imposing style of the central government may cause problem during implementation at the village level because it lacks of clear understanding, budget, and capacity. Local authorities play an important role in directing the policy or idea they see as suitable within a particular situation, also their understanding and capacity.

Another influential external intervention is the development policy. The Lao government now strongly emphasises its policy in directing towards the market economy. At a local level, people are encouraged to upgrade their subsistence agricultural production to produce for surplus and trade. Local authorities at the provincial and district levels are assigned to initiate local people to increase their agricultural productivity and also incomes. International donors and NGOs have joined with local authorities to carry out many development activities in the form of projects and they have been asked to implement some national development policies such as increasing food security, income generation, and natural resource management at the community level. The Lao government is quite reluctant to welcome pure research projects, thus, each project will have to contribute something to improve Lao development, such as, construction, subsidies, or improving management that people can gain some direct benefits from the projects. These projects are inclined to initiate the community-based approach in resource management, so they stress the strengthening of community co-operation aiming for sustainability in such development activities. The atmosphere of development in term of economic gain becomes a significant incentive for people.

Both the political and administrative context and the development context of Laos have combined well in strengthening and creating a community-based management of common property model. This combination will function successfully if no one is excluded from the process. However, with the formalised rigid territory of property regimes and the subsidies to initiate the activities, opportunities and incentives are provided for people to co-operate within the territorial administration. This administration is a village unit seeking benefits from the common property formerly serving subsistence needs and now oriented to marketisation. Yet, the changes and its effects still partly depend on local authorities and communities that are in a better position in the property regime arrangements and the relationship between communities.

Beside from the external interventions, the local context on ecology is a very important factor that allows or limits the change of resource tenure arrangement. This may lessen or create conflicts among groups. In this section, the resource availability and the complexity of the fisheries environment will be focused on. Second focus is the complexity of fisheries environment as a way to understand where and how people fish when a water body is enclosed. In the open water like the Mekong River and Sedone, or streams and backswamps in wet season, it is impossible to exclude people from gaining access so they are available for all fishers who have the fishing skill and the knowledge of the area. These large water bodies have only some common rules of prohibition set by the government, which are explosives and poisons. This is except in the case of fish conservation zones in the Mekong in Khong District where villages define some deep pools as conservation zones during the dry season. People can fish in these areas only in the wet season.

The backswamps, however, are different. As the body of water is small enough to manage and it has clear boundary when the water decreases, it is easier to control. At the end of the rainy season, when it is difficult to catch fish from the other types of water body, but in the backswamp, fishes are confined. This characteristic provides an economic incentive and allows for the enclosing.



Therefore, if the enclosed water body is so important and other resources in the area are very limited, a large number of people are remarkably affected. The contestation, therefore, may be tense and can lead to many forms of resistance. In contrast, if people can access or have other sources of food and income from various activities for their livelihood such as fishing, farming, collecting food from the nature, and trading, the problem may be mild. Besides, if the number of fish they catch from this backswamp is small and available only at certain times, the rate of dependency will probably be insignificant, and so, conflicts may not occur. Thus, resource availability in the area, the complexity of fisheries environment and the dependency of Nong Bua are crucial to understand the degree of problem in this case study.

Another important local context is on social relations. In this study, the focus is on three groups: within a village, between villages and between village and the state. The relationship between people in the same village and between villages is not homogenous and does not share the interest in everything. There is diverse differentiation in age, gender, and social, economic, and political status. However, relationship between people and between villages, in rural Laos, where society is quite small, are remarkably good in many ways because of the kinship, participatory in trading, schooling of children, farming, and other livelihood practices. In the Lao context, local authorities, especially at the district level, may have a close relationship, share similar livelihood, and do not have so much different status with people. Therefore, district officials tend to have an awareness of implementing policy that may affect community and also themselves. At the same time, the community is not a passive unit, people often select, modify, and accommodate policy or programs to benefit their own interest. However, it should not end in conflict within and between communities. Communities can continue to engage in reciprocal activities. When property regimes change rights and duties, the social relations among groups are also adjusted accordingly.

The contestation for rights may happen in different forms, explicitly and implicitly and for different levels of rights. Principles of the local people in making decisions about changing the property regimes, and local culture in dealing with problem are crucial to clarify the circumstance in this case study. The new arrangements of intra-village and inter-villages are also important to understand the social arrangement that facilitate the existing management system. This shows the complexity of property regimes and social relations among groups in case of Laos.

Lastly, the equity and sustainability are often referred to justify the legitimacy of the action and the resources management patterns. Yet, there is no standard or formula to measure equity or sustainability. Therefore, in this conceptual framework, they are put in questions whether the outcome of new arrangement of Nong Bua's property regime results in equity and sustainability. They are not justified by the researcher. Rather, they are presented as part of legitimate claims to show whose perceptions and agendas of these claims are made.

#### **1.4.2 Methods of the Study**

The enclosure of a community backswamp in southern Laos has been selected to assess the external interventions as part of market-oriented development that affect the local resource tenure. In addition, it also aims to understand the mechanism at the local that allows the enclosure becomes legitimised.

The study focuses the data and analysis at the multi-level social relations. It pays more attention to the process and event of the enclosure than the structure of the system. This is to show clearly how the discourses are made and how the new property rights system modifies new social relations among groups. Therefore, interactions with response to three different levels are discussed in length. The first level is social relation between local and the state including outside development project. At this level, the view of two-way interactions between the local state and communities are focussed on. This means it is not only the state that plays influential top down role, the local community also can use the state's discourses in

making claims against the other communities. This leads to the second level of investigation on the relation between Kaengpho Village and the excluded communities. They interact, claim and counterclaim to the new property relations. The third level is the relation within Kaengpho Village. This is because Kaengpho village committee has to form an organisation and mobilise collective action among villagers to manage the new arrangement of exclusive common property of the backswamp. Thus, the process and people's opinions are analysed.

I have been working in rural Laos since 1992 till the present. During this study, I worked as a field research advisor of the IFDMP/SWIM project and have been working at the research site since the project started in 1997. Therefore, I am not only an outside researcher but also an actor as a development worker in the case. During my study in this program from 1999 to 2001, I have made several visits to work with the project and also visit the study site. They are full time on the term vacations and short visit once on each semester. Therefore, I have chances to observe the situation from start till the present. I made one main long visit at the field site for one month from December 2000 to January 2001. I made additional several short visits from mid 1999 to September 2001 when I went to work for the project. On that ground, I have been able to observe situation and interactions between parties for all along my work there. Also, my longitudinal experience in Laos helps me absorb the nuances of the case.

The relationship between me and the respondents is different according to familiarity. I have very good relationship with Provincial Agriculture and Forestry Office (PAFO), District Agriculture and Forestry Office (DAFO) officials and Kaengpho villagers. People respond to my questions quite neutrally. I can go and stay at Kaengpho Village alone. I have stayed over night with different families every time I go to collect the data there. Therefore, I built up a good relationship with Kaengpho people and this affects the information I have gained. Some respondents have changed or clarified their answers through the degree of familiarity between researcher and some respondents.

As for the other four excluded communities, the relationship between researcher and villagers are rather formal. This is because I often had to be accompanied by my colleague from DAFO, Serd, when I visited them. They all know me as a *siew saan* (expert!) of the SWIM project so this may affect the answers. I also spend shorter time there and every time I had to stay at families of village heads only. However, this does not mean I got the truth from every Kaengpho respondent and a lie from other communities. Also, it does not mean people intend to tell me a lie. Rather, it is possible that people reply to please me, things they think I want to hear, or things they think it is proper for an outsider to perceive. I am aware of this fact and take it into account, especially concerning the contestation and legitimising the claims to the point that my research has become a stage for explanation for the various groups.

Moreover, the situation and who participates in the interview and discussion is very important. For example, in the formal meeting or with many people discuss together, personal opinions are expressed very little. On the other hand, when the discussion is between respondents and researcher, especially when there are no persons in higher positions participating, people are more relaxed to explain. This includes the things they want me to hear. In addition, my questions perhaps affect or formulate people's thought or explanations. For example, when I ask about conflict and territory, people may sense what I have in my mind. In this situation, I try to put myself in each respondent's shoe what he or she thinks.

In this study, I am both insider and outsider at different situations. I reflex my relationship with the informants in the required situations so that readers can justify the information. I take this as an advantage. First, it is not common for an outside person or independent researcher to do research in the country. Second, I am able to observe the whole range of changing situation. Third, with my position as *siew saan* and good relationship with Kaengpho people and the local government, they have trust in me as we are allied who initiate the intervention. I can discuss or

criticise the outcome of the project (enclosure) with them without vulnerable feeling. Therefore, information from the local government is not only the static policy but also their opinions. This would not happen if I were just an outside researcher.

Various methods of data collection are employed in this study. Field research is the main source of data using phenomena to lead to various questions and observations. The document search in Laos is limited. There are some local, official statistics but they are not up to date. Information is limited only to decrees related to resource tenure, and the relevant research about the south. These documents help to clarify the background and context of policy and development direction concerning resource tenure arrangements. The projects' reports of Indigenous Fisheries Development and Management and Small-scale Wetland Indigenous fisheries Management are other main sources of second hand data.

A simple survey with open-ended questions was conducted to determine resource availability, the complexity of fishing in the area, and people's attitudes on property regime change. The survey was used to investigate of sources of food and income of households in the study area; fishing activities in other water bodies showing in the seasonal variation and closely look at the dependence on the enclosed backswamp and also the opinion of the new arrangement. They are to clarify the degree of problem and the dependence on this backswamp. The relationships of intra and inter-villages such as kinship, school, trading, and other activities related to livelihoods are investigated. From 17 villages, Kaengpho and the other four excluded villages that used to fish in Nong Bua consistency are selected. About ten percent of households in these five villages were interviewed. The data were analysed and shown in simple tables, a monthly calendar of fishing activities, and the social arrangements in comparison before and after the enclosure.

The semi-structured interview was applied to use with local authorities on the issue of policy influences and the implementing process of land titling. The livestock and fisheries, and the forestry officials at district and provincial levels were the targets as they directly implement the policy at the village level. The

backswamp management committee and the village committee of Kaengpho Village were interviewed to investigate the function and benefit of distribution. In addition, the data on ecological context of Nong Bua were collected from the Kaengpho village committee, many of whom usually fish there.

In addition, the focus group discussion technique was used to record the transformation of resource tenure from the past until the time of land titling and the impact to their livelihood at the present. The target groups are fishers, village committee, women group, and elder people. This was used to see the different views of various groups that experienced an impact from the new arrangement. This method was used more in Kaengpho Village in an informal pattern. It was also employed several times in other villages when the opportunity was allowed. The group discussions about history and transformation of resources tenure were held formally and informally. As for Kaengpho Village, the discussion in groups were held according to various occasions such as after merit making at the temple when the elders there were the target group. The group of women were interviewed during the night time when they watched television and during *yuufai* (confinement or lying near a fire after giving birth) of few women. The village committee as a group is interviewed after they finish village meetings on other works and also on the SWIM project.

Informal discussion and participant observation were used as the main techniques in parallel with other methods. They were used to study and observe the practices of property regimes, the social relations among groups within the excluding village, between excluding and excluded communities, and between state and both groups. In addition, concerning the contested rights and legitimate claims, the groups were differentiated by gender, age, and social, economic and political status in order to have different views from various groups. This is to understand the linkage of social relations and degree of problem between groups and conflict management that occurs from the enclosure.

## 1.5 Organisation of the Thesis

The thesis is divided into six chapters. It starts from wider context then narrow down to specific situations of people's lives, inland fisheries, relations with the state, and the case of enclosure. The Legitimacy made by various actors to the enclosure is the analysis chapter then it is concluded by raising major findings from the study and its significance. Each one has the contents as follows:

Chapter 1. Gives introduction of the study. It includes research background, its questions and objectives, research design, and its organisation. The five topics of literature review are presented in this chapter focus on resources tenure development and development policy in Laos, and the debate within the concepts of community-based natural resource management of common property as a core of the study.

Chapter 2. Provides background of natural resources management policies in the context of Lao development. It is divided into three periods, colonial, socialist, and post socialist economic development periods. This chapter presents policy transformation related to natural resources management and roles of the state.

Chapter 3. Presents the internal context and includes village society and fisheries environment in the area. It shows complexity of people's lives in relation to the agroecosystem and inland fisheries, and changes. The property relations of fishing resources are illustrated. In particular, it illustrates complexity of characteristics and access to Nong Bua. Also, it explains relations among communities that have access to the backswamp, and the village in relation with the local government.

Chapter 4. Demonstrates another form of enclosure and how it has happened. It introduces the external context of political and development factors as the interventions that create the enclosure. They are the LFAP, encouragement of producing for sale, and the fish stocking enhancement scheme. It differentiates three related groups according to their positions and roles that affect and are affected by

the new regime: the local government, the local decision-makers, and the villagers. Lastly, it explains the changing of property relation toward enclosure, establishment of formalised institution, its performance and results. The responses and adaptations from the excluded group are also explained.

Chapter 5. This is a heart of the thesis. It illustrates how the enclosure had been made and why the enclosure in this case study is legitimised through the perceptions of Kaengpho people, the local authorities, and the excluded communities. In consequence, the social relations are still maintained in the context of Laos. The process and events of the claims are detailed. The claims on sustainability and equity are explained by different groups under the discourse of development.

Chapter 6. Presents thesis conclusion with major findings and contribution of the study to theoretical, sustainable development, and project and policy implications. The thesis ultimately challenges cases of enclosure that result in conflict and contestation as the inevitable consequence. It argues the dichotomous notions of inclusion versus exclusion and private property versus common property. Also, it debates the rigid concepts of common property regimes and the community-based management approach.