

## CHAPTER V

### LEGITIMISING THE ENCLOSURE

This chapter discusses how the enclosure of common property is legitimised and accepted at the local level. In particular, it looks at how the agendas of different actors have been articulated, using the key concept of legitimacy. It investigates these agendas through local discourses by focussing on events, process, and what people talk about during the changing of property rights system. These factors are to understand the mechanism of legitimising the enclosure. In addition, as this is a case of changing property relations, it affects the relationship among communities for whom cultural norms affect everyday relations, with a focus on the interaction of various groups who claim and counter-claim exclusive rights over Nong Bua.

Legitimacy is defined as principles that people likely to feel a moral obligation to accept and respect. It is usually considered along the axis of conflicting relations between groups. Thus, it is a crucial notion for each agent to entitle its right. Various strategies are used by each group to persuade the others to accept the change so that people can maintain good social relations. Story telling is often employed and the researcher is one of the main audiences.

This chapter aims to question the rigid view and assumptions of community-based management of common property as necessarily leading to more equitable outcomes in the absence of contestation. It also aims to challenge the notion that territorialisation is only a state agenda, showing the complicity of local non-state actors in formalising boundaries. In addition, it challenges the idea that enclosure is necessarily, or mainly, an individualising process, showing the role of common property as legitimising concept.

The chapter discusses the interaction of three groups: the local government, the excluding group, and excluded groups. Section 5.1 shows the reactions of the

excluded groups. Section 5.2 discusses the local process of formalising the new regime. Section 5.3 demonstrates how actors employ the development as a discourse to legitimise the exclusive property regime of the backswamp. Section 5.4 summarises complexity of common property regime and the dynamism of local context that facilitate the legitimised enclosure.

### **5.1 Explicit and Implicit Challenges to the Enclosure**

One might expect apparent contestation as a consequence of enclosure, however, the case of Nong Bua demonstrates the non-confrontational responses from the excluded groups. The exception is various subtle reactions showing that not everyone is satisfied with the new property relation. Among the groups that counter-claim the new property rights system of Nong Bua, there are village committees and ordinary local villagers who are scattered in both resource users and non-users of Nong Bua. These groups respond to the enclosure differently, with both explicit and implicit reactions.

The explicit opposing reactions were expressed by a small group of Saelabam residents, especially some elders and members in the village committee. The only one confrontation between the two communities was the case when one in Kaengpho village committee fired a gun to chase away the Saelabam fishers who infringed the new rules of Nong Bua in 1998 (the first year). Saelabam elders reported this event to the district but the officials ignored this protest. No infringements occurred afterward.

The reactions from this group are not static but have altered according to the changed situations. In late 1999, I had a chance to interview one female of the Saelabam fishers who was in that situation. She said, with some emotion, "Kaengpho should not have fired the gun, they could tell us politely. We are not children, using a gun is like we are during the war time". This woman is an elder's wife who reported to the district officials. The village committee also explains the problem that Kaengpho, and also district officials, did not inform them about the

new regime properly, otherwise they would have not intruded. This indicates that the counter-claims of this group of Saelabam fishers are not arguing the enclosure, but rather the manners of Kaengpho people.

Later, I went to interview the same elder and his wife, they reported that there were some released fish found in his son's rice field. This rice field is located near Nong Bua Noi, a backswamp next to Nong Bua. Fish migrate during the flooding period. He realises that those fish come from Nong Bua because they differ to wild fish. His attitude toward the enclosure has softened. He even says, "If we (Saelabam) had known that the outcome from fish stocking would be like this (provides some contribution to other communities), we would support them (Kaengpho)".

This elder then clarified himself about the infringement in 1998 that:

"I am the one who calmed down the people not to continue or take Kaengpho's manner too serious. There are also our relatives in Kaengpho and we have sympathy for them so we should not create conflict. We have many water bodies and they are better than Kaengpho. Enclosure of Nong Bua does not make much difference to us. They have relied on us more than we do (such as transportation, school, market and clinic). If it becomes a real dispute, it is them that would have problem, not us."

Since then there is no apparent complaint from this group anymore. People have modified their reactions and explanations according to the changing situations. In addition, by doing this, Saelabam can also manage social relations with Kaengpho residents.

There were other explicit disagreements, but no confrontation cases between the two communities. There are two stories I heard from Kaengpho people. At a

school in Saelabam<sup>1</sup> where Kaengpho children study, a Saelabam boy teased Kaengpho children, “If you do not let us (Saelabam people) fish in Nong Bua, you should not come to study at ‘our village’ too”. The other case was a young man who said that, “Kaengpho village committee overextends the action (firing gun to chase away Saelabam people), I will not turn my face to Kaengpho when I shit”. People who counter-claim tend to select certain points of the story in order to build up more members and create stronger debate.

However, Saelabam people do not insist their counter-claim after the district ignored their report. They know that the district supports Kaengpho and it is also a political culture of socialist state not to demonstrate or protest the government publicly. As for the District Agriculture and Forestry Office (DAFO), the director explains this situation that normally in the first year of new rules, new practices may have some difficulties, but later people will “understand” more. “Understand” in this case means “agree” and “realise” that the new formalised institution is rational and good so they should “accept” it.

As for Kaengpho residents, they do not bother much to the reaction of Saelabam residents. Many Kaengpho people tell me that a majority in Saelabam does not have a problem except a few elders who have the character to always exaggerate the situation. I also heard something similar from a district financial officer. He said that the two elders do not want to pay tax. This creates difficulty for the staff to collect tax from some other villagers. These elders characteristically exaggerate so that others may judge the way they counter-claim.

As for the outsiders, such as the researcher, voices of Saelabam people seemed to be loud at first, especially when the village leaders speak out in the name

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<sup>1</sup> The Kaengpho Village’s primary school has only grade one to grade three. Students have to continue their study at the school in Saelabam Village.

of the “village”. Meanwhile, the local residents and authorities who know the situation well do not get excited to these reactions of Saelabam residents. This is very important for the researchers who may have had some presumptions before the study.

Apart from the explicit responses, there are some hidden transcripts from the excluded communities. Hidden transcript is defined by Scott (1990) as a discourse that happens informally without observation from the power holders. The hidden transcript is created for certain groups of audiences under the unconstrained situation or in a low-key kind of way. Hidden transcript can be shown with complaining, jokes and gossip which are the everyday forms of peasant resistance (Scott 1985). These transcripts reflect people’s consciousness of a sense of injustice or illegitimacy in the new arrangements. Some are continued by the accommodation of bigger groups and some disappear as there is no response from the others or when time passes.

Since the enclosure has been implemented, there has been talk from both the excluded fishers and non-fishers. Most of fishers from Naa, Naanai and Nongphai respectfully follow the new rules. However, they explained to me that they feel unfortunate of losing one good source of fishing and do not have as good a water body as Kaengpho does. Later on when I visit them again, the village communities expressed their thoughts more than before. One member of Naanai’s village committee said that when Kaengpho first enclosed Nong Bua, many Naanai’s fishers, mostly are women who used to fish in Nong Bua, complained a lot. However, the committee did not respond so the complaints gradually disappeared. He explains, “We are village leader, we cannot follow or support everything people say. We have to assess what is right and what is wrong”. The disagreement was not authorised and acted in the name of village as a collective act. This shows that positions of the actors influence their decisions. It also means that field information has changed perhaps due to familiarity between researcher and respondents. The

researcher should be aware that the collected data does not necessarily represent fact to be taken at face value, but rather what people select to tell at the time.

Another case of subtle transcript was found when I went to interview some key informants in Nongphai. At a coffee shop in the village, I met two Kaengpho women, whom I knew before, bringing fish and cucumbers to sell. The owner of the coffee shop bought some fish and cucumbers from them. At the time there were a few men who are fishers who used to fish in Nong Bua teased them that “Oh! Now we have to buy fish from you. It differs to the past that we caught a lot of fish from Nong Bua and sell some to you”. This demonstrates that even though there is no apparent contestation to the enclosure, there is some hidden transcripts showing that not everybody is happy with the change.

There was also a complaint from some Saelabam people that “Nong Bua was not dug by anybody. It is a natural backswamp that belongs to everyone and people in this area used to fish for generations”. This means the their usufruct rights should remain. However, the usufruct right over Nong Bua by the other communities has not been shown publicly, even though there is a customary right in the Laos’ law. Therefore, the meaning of customary right may differ in the perceptions of the state, local people and also scholars. The scholars often show in their studies the equal rights of indigenous people in resource use. The Lao officials rather see that customary rights have to be approved and formalised. As for local people in this case, when it comes to formalisation of the regime that will be discussed in next section, they know that their claim on usufruct right does not mean much. This reflects that there are levels of customary rights that are perceived differently by various groups. Therefore, the context and specific detail of the case are very important in the study of shifting property relations.

Many fishers bought the fishing rights from Kaengpho even though they are not satisfied with the change. Also, some people did not bother to contest, but went to other places for fishing instead. This is because the new construct sluice gate at

Nong Bua has blocked the water from drying up spit so it is difficult for fishers to catch fish by bare hands. A group of Nongphai fishers who were the second most dependent on Nong Bua after Kaengpho mentions that: "If they open the backswamp today, it might be better to go somewhere (backswamps in other communities) or get something else (such as catching frogs, selling their labour) instead".

In brief, the complaints, gossip, and teasing are common expression in Lao culture showing how people feel. They are also kinds of social sanction (Ireson 1996). From the above cases, it shows clearly that the excluded communities are not really pleased with the new regime of Nong Bua. However, these dissatisfactions are confined informally only in their small groups. When they are not supported and organised by the authorities they faded away or altered to something else. The excluded group perhaps complains at home but as individuals and it is a small group that opposes the change publicly, their voices were so small and were perhaps not be heard. This is one of the reasons why disputes have not expanded to conflict between communities. In addition, the counter-claims are more at the moral issue directing horizontally to Kaengpho rather than the legal level directing vertically to the government authority. This reflects minimal power of the excluded communities in competing with the formalising enclosure and development discourses claimed by Kaengpho people and local government that will be discussed in the next section.

## **5.2 Legitimation through Formalisation of Customary Practices**

In comparison to the case of property rights system in Thailand, where the Thai State only legalises state and individuals as units in managing the property, the Lao State additionally also recognises community. The shifting common property regime of Nong Bua from relatively open for many communities to exclusive management by a single community is an example of the government initiated property regime. This section discusses how the local government and Kaengpho residents legitimise the exclusive property regime through the formalisation of

customary practices on traditional rituals and ritualised activities. It also presents how the excluded people conceive and explain this formalisation.

The formalisation is not only based only on legal claim but also on rituals and social norms. Kaengpho people have raised various explanations and performed several actions to accommodate and formalise the new regime. The village committee is the very crucial group who plays a key role in formalising the claim. In addition, the activities discussed in this section can be conscious and unconscious, but it is important that they are selected and interpreted as discursive strategies to formalise the new regime of Nong Bua. Moreover, Kaengpho people do not only lay claim directing to the other communities but they create unity the village that they are doing the right thing. This is because the new regime affects to the spiritual belief, relationship with the neighbouring excluded communities, and collective action needed for new management.

The territory of Kaengpho is clearly visible in the oral history. Kaengpho village leaders use narratives of the history of territory-base resource use to announce this to other villagers, and to re-iterate among Kaengpho villagers. They said that during the liberation around 1976, Kaengpho had allowed Saelabam people to dwell and open the rice fields<sup>2</sup> in the Kaengpho village's territory. The area is near the Saelabam Dam site where Saelabam people have resided until the present and it was officially given to Saelabam. At first, it was only elders and village committee who knew about this. When there are opposing reactions arose from Saelabam people, this history was retold again to the wider group. More Kaengpho people know about this and they share the same feeling that Saelabam people instead should feel gratitude to Kaengpho village. Kaengpho people state, "Saelabam had received enough from Kaengpho so they have no right to complain



about anything". By using a common memory of history, it makes this memory to become real again and Kaengpho people feel they have the right to claim the exclusive property right of Nong Bua.

In addition to the oral history of territory, ritual is another discourse that Kaengpho have performed to convince and reinforce the formalisation of the state. The village committee directs communication to the Kaengpho people and indirectly to the other communities. There are two kinds of ritual in this case, one is a traditional ritual based on super natural power and the other one is formal activity that is ritualised based on the power of state authorities. Both are shown in processes and events of the formalisation of the enclosure of Nong Bua.

The first form of ritual is based on local tradition. When fish stocking was implemented, some Kaengpho elders were afraid of breaking the taboos that people might get harmed. This shows that there are ambiguous thoughts about the DAFO, Khuba<sup>3</sup> Khoun (a monk in the village), and the village committee are the active group who perform ritual ceremonies. They have to pay respect and to create unity among the people of doing the right thing. If the village committee cannot make legitimate claims among themselves, the required solidarity and collective actions to operate the new regime of Nong Bua would not be possible.

There are three traditional rituals arranged by Kaengpho villagers in order to communicate with the guardian spirits regarding the intervening of fish-stocking scheme. The first ceremony was arranged on the fish releasing day in 1997. The

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<sup>2</sup> After the country received liberation, the new government encouraged people to produce as much as they could. All potential land for farming was opened and Kaengpho could not refuse.

<sup>3</sup> Khuba is a title to call a monk in Lao.

village invited representatives from Provincial Agriculture and Forestry Office (PAFO), Provincial Livestock and Fisheries Office (PLFO), DAFO, and neighbouring communities. The monks were also invited for chanting. This kind of ritual and claim is similar to what Solonoi does. Solonoi is another village that received the subsidised fingerlings from the SWIM project, located along the Sedone to the south of Kaengpho below the Saelabam Dam. On the fish releasing day, after the monk finished chanting, a Solonoi's *kwuan khao jum* (shaman) said (to the spirits) that these fish are belonged to Kaysone (the first country's president since the new political regime) so the spirits should understand and help take care of the fish and people in the village.

In the case of Nong Bua, Kaengpho village committee and *kwuan khao jum* gave a reason that the village had to communicate with the guardian spirits that the fish-stocking scheme and changing Nong Bua's property regime are initiated by *phak lat* (the Party and government's policy). The chanting was to cheer up the people and to calm down the power of the spirits with an objective that spirits would understand and help this new regime to succeed. Also, it shows significance of the state taking responsibility if there is a problem from breaking the taboos. This shows that people mixed discourses on ritual and the state, which are respected by people to endorse the new property regime.

The second ceremony was arranged in late 1998 when a sluice gate (see Appendix E) was about to be constructed. This time, Kaengpho village committee sent a letter to the SWIM project asking for a set of worships (two pigs, black and white ones and a piece of cloth) in case this action broke the taboos and upset the spirits. This was because the village could hardly afford the items. Also, one person in the committee explained another more important reason that if this had failed, it was risky for the committee to retrieve this amount from a small communal fund. It also might reduce trust and confidence from the villagers. This implies that if the project took responsibility for this failure, the village committee did not have to explain to the villagers about both loosing cost and breaking the taboo. This reflects

some sensitive issues and difficulty of the community to gain unity. Fortunately, the sluice gate was completed safely in a few weeks. The third ceremony was in 2000 when Kaengpho sold fishing rights to outsiders. The performance was arranged almost like a village *boun* (ceremony) with music, Lao dancing, and *bact*<sup>4</sup>.

Kaengpho villagers gained more confidence of the new property regime when there was a case of spirit possession in 2000. This case took place on the day after the selling of tickets ended. In the late afternoon, after all activities finished and people were packing their stuff back home, a woman was possessed by a spirit while she was at her house. That woman did something that she had never done in her normal life. She smoked a big cigarette and drank big glass of Lao whisky. She said that she was *Maethao Kammai*, one of two guardian spirits of Nong Bua. She expressed her feeling that she enjoyed the ceremony with drink and music. People asked the spirit through the woman about the loss of fish in the net cage that the committee had caught to prepare for guests. She replied, "I released the fish out of the net. I did not know that it would be this fun. It is alright that the 'others' could not fish, fish are still in 'our' backswamp anyway".

This event was seen by many people. It was clarified and explained by the elders and the committee that the fierce spirits in fact agreed with the new institution of Nong Bua. It is a strong confirmation for Kaengpho people that what Kaengpho is doing is the right thing and Nong Bua belonged to them. *Kwuan khao jum* and village elders employed this situation and emphasised that "if people are united and do it for common good, the spirits will support us". On the other hand, "if there is just one person who does not agree or just does it for personal benefit, the spirits will get angry". Some people joke that "spirits also understand and are trained about the new development direction". Hence all people seemed to be relieved and felt

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<sup>4</sup> A spirit ceremony to symbolise unity, involving the tying of wrists with strings (Seri and Hewison 1990).

enthusiastic about the “development of Nong Bua”. So, the spirit is a kind of traditional practice that tends to stand on the other side of new invention and does not only embrace the change, but also strengthens collective action in the community.

As discussed in the previous chapter about the complexity of traditional rules of Nong Bua before fish were stocked, it was only Kaengpho that managed the worship to the guardian spirits each year, when Nong Bua was open for anyone to fish. This shows the ambiguous sense of entitlement right of Kaengpho over Nong Bua. When formalised, the spirits worship that Kaengpho has taken responsibility is reproduced and interpreted under the new rules of exclusive property right to Kaengpho Village. Therefore, Kaengpho people express that “Nong Bua always belonged to our village”. This is perhaps a claim for the past that people state as part of legitimation, especially when the state authority has come into the process of formalisation and when Kaengpho residents have gained confidence of their right over the new property right system.

These traditional rituals are perhaps conscious or unconscious performances, however they are selected and interpreted by Kaengpho village committee as discursive strategies for the village to gradually endorse the enclosure. They not only present the claim in public, but they also subtly communicate to the people (both inside and outside the community) at the ideological level showing that Kaengpho exclusively has entitlement right over Nong Bua. These ritual ceremonies help reduce the fears of Kaengpho residents. In addition, it helps the village committee to mobilise collective actions in the village that both relate to the management of Nong Bua and to other communal activities. The other communities did not like to offend these rituals as they have the same value and belief with Kaengpho residents. These ceremonies were arranged only at the first introduction event. People said, “the first time is the most important. If there are no problems, it means we can continue the activities”. This indicates that there may be some changes in the future.

Here we can say that rituals still play an important part in people's culture, especially at the local level. However, scholars often analyse it on a functional basis seeing a particular ritual as fulfilling a particular social or culture function. In fact, local belief systems do not develop in such a direct way. People believe in what they have seen and experienced including spirits and rituals. This is shared by people in the area who have same values. It also affects people's actions and property rights.

The government on the other hand, does not share this value with the local people. In the Socialist ideology, the state perceives animism as backward and superstitious and an obstruction to the progress and development of the society (Evans 1995). The director of DAFO thinks that if there were no guardian spirits in Nong Bua, Kaengpho might be able to develop better. They could expand the rice fields or block some areas in the backswamp in order to raise and catch fish easier. In addition, if these kinds of belief are gone, people can "move faster" (develop faster). However, the district has not intervened in the ritual performances of Kaengpho people and shows its presence in these ceremonies. The director of DAFO told me that "this kind of belief is deeply in people's lives so we try to change this little by little when there are appropriate opportunities. Now Nong Bua has a new management and the beliefs will change gradually". This reflects that both parties share the same agendas of having these rituals to help formalise the new institution of Nong Bua.

As for Kaengpho people, the group of elders still believes in the guardian spirits of Nong Bua while young people are not paying much attention. In fact, Kaengpho people do not think of the spirits only as an obstacle in the same way as the government. Some elders say, "because of the spirits, the other communities do know that Nong Bua belonged to us". However, after a few years of a new management, people start to think of modifying some taboos. I agree with the district that predicts the belief will be gradually lessened and replaced by the

formalised institution especially when that resource is managed to gain economic benefit. Many people say, “where *khwuam chaloen* (civilisation such as road and electricity) accesses, the spirits seem to escape away”. This shows the transformation of ideology and economic development in rural Laos. However, when belief in spirit is still effective, people often use it as a discourse to legitimise the claim.

Even though the government tends to believe that property regimes require rules, not just the belief in spirits, there are very few district officers who have confidence to criticise such belief openly. Junior officials at the district level get caught in the middle between government policies, socialist ideologies and their lives in reality. These junior officials are villagers who dwell in the communities so to change people’s belief is also to change the reality in their residences. The officials at provincial levels do not live in the rural villages so they do not have to face the practices that are performed in the community.

The other kind of ritual involves formality and state authorities. We can call them the ritualised activities. People may not believe these new kinds of rituals by their rationale but by its formality. The examples can be seen in all meetings that involved senior authorities. This kind of ritual is rather formal and it is expected to bring out only the positive aspect while the other junior officers and villagers tend not to question. The performances combined the higher authorities that Kaengpho has made are overlapped between spiritual and moral legitimacy in a new kind of ritual. By involving the state power into several activities, it presents a new meaning for rituals.

The performance of the fish releasing at the start of the year is a good example. The invited guests are officials from province, district, project, and representatives from surrounding communities. Monks are also involved. The local Lao television and newspapers were assigned to tape the event (see Appendix F). Kaengpho villagers decorated the place and set up who will sit where. The speeches

of several parties were put in order. First, Kaengpho village head invited the monk to chant then to have a meal. Second, a village party member representing Kaengpho read out the objectives of the event emphasising policy of *phak lat* and objectives of the fish-stocking scheme to implement government policy and to decentralise development to the rural areas. The new regulations of Nong Bua were read out by the village head. Third, the district head of Sanasomboun gave a speech. He presented good will of this development activity (fish stocking) and said “the government gave the ‘start’ (fingerlings) for Kaengpho people so from now on the village had to try for itself to improve it more and make it ‘*yeunyong*’ (sustainable)”. Lastly, the district head led the group to release fingerlings then followed by people from every organisation, and representatives from other villages (see Appendix G). The ceremony ended after the feast hosted by Kaengpho.

There are other formal events such as meetings hosted by the district and by the project. The news of Nong Bua’s new property regime is circulated to other communities in the meeting hosted by *kum*<sup>5</sup>. As the meeting of *kum* is a formalised meeting mainly aimed at official announcement therefore there is no exchange of ideas. Therefore, it is taken as official. The SWIM project also regularly arranges the meetings and workshops inviting related government officials from central and local government offices, and the villages. Most of these kinds of meeting villagers are quiet while the senior authorities explain about government development policy. Some in the committee explain that they are afraid of saying the wrong thing. This is a situation in Laos that respects seniority, especially the higher authorities. The participation of Kaengpho village committee gives Kaengpho villagers confidence that this change is approved. In addition, as the meetings are formal, they increase formalisation and show legitimacy perceived by the other communities.

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<sup>5</sup> *Kum* is a part of district. The meeting is arranged regularly monthly or bi-monthly, attended by all communities in the group (about ten). The meeting aims to exchange information between the state and the village such as official event, policy, and problems or concerns from the villagers.

Some rituals are performed during these public events attended by outsiders (both authorities and other communities). They create the formality with the expected outcomes lead by the host of that ceremony and the senior authorities. Therefore, the other fact and counter-claims are kept to be exercised in the informal sphere. The ritualising of a certain development activity constructs the formality and assumes the acceptance of the participants who attend the event. These two kinds of ritual are common in Laos. They are conscious actions as they are carefully arranged. At the same time, it is also unconscious because the rituals have other roles than to legitimise the claim; legitimation is sometimes direct and sometimes can be indirect. These rituals help communicate new property relations and, when these rituals are reproduced they reinforce the legitimacy of the claims.

The second strategy that Kaengpho people often use to formalise the new regime of Nong Bua is by referring to the higher authorities and development agencies. These parties are used as *bon-ing* (reference) or the back up of the claims. Many Kaengpho residents say that “we are not afraid of the other communities as the plan comes from *khan thoeng* (similar to *phak lat* implies to higher authorities) so we ‘*lhang ing laan*’ (lean the back against the rock or having a strong back up)”. Therefore, they are confident to explain to the others that the authority supports them and takes responsibility for the change.

Another example is seen in a saying by a man who plants cucumber. He said “I am not originally from Kaengpho. I am only a son-in-law. So everything depends on ‘*phoen*’ (village committee)”. Another claim is made by two women who buy fish, frog, and cucumber from Kaengpho to sell in other villages. They are often asked from customers (who are excluded people) about the enclosure, they respond that “It is up to ‘*phoen*’, I am just a village member”. However, when they are in the village, these people are happy with the enclosure as it reduces trading competitors and allows them to sell their products easier.



There are some similarities to the claim on the development projects. The project in Lao is called “*khongkaan*”. It is most of the time assumed as a means that the government expects to promote development in the rural areas. It is partly because of the project that more government budget is available for development activities at the local level. One elder even refers to the United Nations (because the SWIM project has foreign project advisors<sup>6</sup>) that brings this development scheme so that the village cannot deny intervention. Therefore, the others should understand this action. In fact, the SWIM project has nothing related to the United Nations. However, as the United Nations has been active in Laos for a long time and it is more familiar to local people so its name is used. This strategy works well, as the other excluded people seem to “*kengjai*”<sup>7</sup> to debate publicly.

I asked many people, especially the village committee and elders, whether Kaengpho could release fish and claim the entire right over Nong Bua in the case that there was no SWIM project and the local government. They replied that “this is new, it has not been ‘*paphenii*’ yet. So, the other communities would challenge us a lot”. Rituals (both traditional and new) and ritualised activities help make practices into established norms or *paphenii* and hence legitimise them. Kaengpho village committee expresses a confident feeling when there is the presence of higher authority, the project, and foreign visitors (including me) as these are an umbrella and means for the committee to formalise the regime and build up acceptance from the other communities. People normally feel *kengjai* at first then eventually accept it as another *paphenii* or another common thing.

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<sup>6</sup> Foreigners, in local perception, mean westerners. In the SWIM project, there are three external advisors, one is Thai (myself), one British and one Australian.

<sup>7</sup> Does not want to bother the others .

<sup>8</sup> The term “*paphenii*” in Lao is close to “norms” in English, but it is not exactly the same. *Paphenii* is the word that Lao people use to mean what people internalise as an

In brief, it can be seen that to change property regime at the local is not simple as following the policy. People attach their lives and values with customary practices in relations with their neighbours. Rituals are customary practices that local people respect. While *phak lat* and projects are regarded as organisations that lead the development so they are powerful and partly legitimate. Therefore, when traditional rituals and ritualised activities are combined and reproduced as part of the formalisation process, it endorses ownership of Kaengpho over the backswamp. In addition, rituals and higher authorities protect Kaengpho people from any conflict with the other communities. This perhaps still leaves open the question of whether rituals and authority count because people are scared of them, or whether they count because people respect them. It is probably a mixture of both. More importantly, this presents the articulation of complex level of power relations in association with the local people.

### 5.3 Discourses of Development as Legitimacy

This section discusses the officials and villagers' views of development under the national policy of promoting market-led economy. The case of Nong Bua highlights discourses of development in the sense that the local government, together with Kaengpho residents tried to emphasise the exclusive property regime as a prerequisite of development. Both the local government and Kaengpho people agree on such agenda of enclosure but different sets of priorities. The officials' views of development are based on improvement of natural resources, and efficient resource management for self-support of the local communities. Meanwhile, Kaengpho people base their claims on maintaining an equitable distribution of benefits within the community and also using the advantage gained to catch up

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accepted practice. It can be old customs or new practices. Gaining communal benefit from the stocked fish in the backswamp is an example of new *paphenii* in this meaning.

development with the other villages. The following discussion demonstrates how the different discourses are explained and justified through the articulation of development intervention by the local government, Kaengpho people, and the excluded groups.

The State development discourse first focuses on the improvement of productivity of natural resources and the management. In general, local people often seen by the state as too dependent on nature related like the Lao saying “*haa taam mii taam keaud*”. The officials’ perception of local villagers who rely on Nong Bua for their living is rather negative as in the case of the director of DAFO, he perceives that people just take from nature without seriously improving it. The officials justified this from their difficult experience in convincing people to shift to double rice cropping after it was introduced into the area a few years ago. These officials’ views seem to overlook local people’s experience and knowledge in resource management and livelihoods. In contrast, Kaengpho village committee argues that they have been thinking frequently about developing their village but they blame a lack of resource and input from development project.

Based on the discussion with one of my colleague at DAFO, he shares his view that villagers may not have prior experience with development. He compares Laos with Thailand that: “Thailand is more ‘developed’ than Laos. When villagers see the others are more developed, people will have a model and want to improve themselves. Meanwhile, Lao local people do not have chances to see how much progress the others are (progress and development) so they continue to do the same things”. This is true that there is much talk and activities about “development” in Thailand, which differs to Laos. It is also perhaps there is more complete market penetration in Thailand while it has just started in Laos. This official’s opinion reflects the need of development for the local communities of Laos.

Views of local officials and villagers see the problem of development as a lack of resources and technology. They have different experiences at the local that

give them a different perspective than outsiders. Market development and wealth accumulation from resources are prioritised as ways to improve the poor. They fail to see problems of development as more complex and linked to the wider context at the structural level.

The state views local traditional resource use and management, as unsustainable leading to degradation. Therefore, the officials see that new management is required so that resources can be improved and sustained. The district views fishing prohibition in the backswamp during a certain period, such as *phaa paa*, as good, but stocking fish<sup>9</sup> into the backswamp as more productive. Garaway's (1999), study shows the basic fact that some prohibition of gear and contemporary closure of the water body contribute to increasing amount of fish. In the Nong Bua case, Kaengpho people observe more fish in the backswamp than before. Also, there is a report from Saelabam that released fish from Nong Bua that may go out during the flooding and are caught in the village rice fields. The official's view is that if resources in the community are abundant, it will secure people's livelihoods and contribute to conservation, because people have more productive resources nearby so that it reduces pressure on the natural stock that has due to over use and population pressure. Fish stocking helps alleviate this decline.

In addition, the government expects to see the local communities to have self-support from the organised institution. If natural resources in the area are improved and maintained well, people will have resource for their livelihoods and also for income generation to develop their communities. This is a market mechanism used by the government to motivate local communities to manage

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<sup>9</sup> From discussion with the project team (including the vice director of PAFO), we found that in some cases, fish stocking does not work in every situations especially releasing fish in the open water bodies or even in the backswamp. This is because released fingerlings may die in a few days from environmental shock and predators. In addition, the cost and benefit return may be not balance. However, the idea of fish stocking brings positive psychological effect and motivation for people.

resource in a more productive way. With the fact that the government has limited budget for development at the local level, encouraging the community to manage the resources for their self-support seems to reduce dependence of the communities on the government. This is partly an objective of the decentralisation policy.

There is one case that shows how the local government facilitates communities to gain benefit from resource for community development. Recently, the DAFO allowed Naa Nai to block a stream shared with Nongphai for one year. It was to gain money for improving road in the village. This is one instance that the local government permits the community to generate income from the natural resource. However, this kind of activity is only contemporary and needs to be under the consultation with related government offices as it may affect the natural resources, property regimes, or the livelihoods of the other communities.

In the case of Nong Bua, Kaengpho has used the money gained from the new management of the backswamp to build a new school. Apart from facilitating the new regime of Nong Bua, the related district offices also pool some resources to support Kaengpho Village. For example, the District Education Office supported school construction and PAFO selected Nong Bua, as a place for fish release on the National Wild Life Day<sup>10</sup> in 2000". I interviewed a District Education official about how they recruit the villagers. He replied that "the village has to contribute partly<sup>11</sup> and it must have potential and strength in the village. This is to make sure that the project will not fail". This indicates that the government has tried to put some

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<sup>10</sup> The National Wild Life Day is on 13<sup>th</sup> June. Each province and district arranges activities such as releasing fish in the natural water bodies a wild animal into the forest.

<sup>11</sup> The local government now hardly gives full support to the communities. The government offices also consider the necessity and possibility of the scheme and would give only some support in kinds. In the case of Kaengpho, it has proposed the plan to build school for several years before they received the support.

responsibility of development to the local community and it reflects the state's limitation to support local development.

In addition, it implies that the state cannot help every community at the same time. The director of PLFO expresses that "we should support the villages that work well so they have enthusiasm to work further. Then other villages will want to develop themselves as well". The challenges to development may be uneven between communities that have resources with strong institution and those communities that do not. However, some members in the village committee of the excluded communities seem to understand the necessity of the government in concentrating resources to a certain village potential for development. They said, "the government knows how each village is (solidarity and strong institution in the community) and which village should receive support".

The local government expects further that in the near future Kaengpho could be a small centre of fingerling supply in the area. Recently, the small ponds have increased<sup>12</sup> so does the demand for fingerlings. Generally, people are eager to do aquaculture but the supply of fingerlings is limited and some are imported from Thailand due to the capacity of the provincial fishery station. Therefore, if Kaengpho can improve its capacity to be able to supply fingerlings to other communities, this achievement builds up the state's promotion of local self-support.

The district officials appreciate, with the new institution of Nong Bua, that apart from the improvement of resource productivity, the new management tends to be an efficient pattern. The director of DAFO explains that fish stocking and breeding schemes are suitable for the ability of local people to control and maintain the activities. Several officials complain about many failed development projects

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<sup>12</sup> Originally, there were not many family ponds in this area. Since Road No. 13 is constructed, individuals in villages located along the road or ask tractor to dug many ponds.

that did not involve local people through the process of project implementation. The consequence is that people are not able to maintain the project schemes or improve themselves when the projects end. Fish stocking thus tends to be a simple development activity that local communities can manage.

I raised a question to the local government and people whether it is possible to involve another sixteen communities in the new management of Nong Bua. Both the local government and Kaengpho villagers state the same, that it is not realistic. The director of DAFO foresees "If we let many communities manage, there is a high possibility that they would divide Nong Bua into pieces and claim exclusive ownership to each community". They give the reasons that one community is not united so many communities would have more problems in management. Both parties clarify that:

"It is impossible to monitor everyone. If Nong Bua is partly opened for the others, they may cheat and this might lead to conflict within and between the communities more often. Therefore, it was better to dissatisfy the others once rather than feeling paranoid and distrust each other forever".

As for the excluded communities, every village I interview also prefers to have a shared benefit but they are unconfident to be able to manage Nong Bua with equal responsibility and fair distribution. They agree that governing resource by one village is easier because people are under the same authority so it reduces the cost of management and administration. Therefore, it is more effective to manage resources among people who have close relationship and same administrative authority, which is also the officials' agenda. There is a case in Phonethong District that two villages own one backswamp, but give up collaboration after one year of trial with the SWIM project. Recently, they decide to give concession to one household in the village. A village head explains that two villages can get more money from the concession and they do not have to bother mobilising people for the collaboration.

The director of DAFO raised a condition of local institution and solidarity in the community that determines possibility of improving productivity of resources. He explains that local communities do not have different resources, but they have different *khwuam samakki* (solidarity). They compare the differences between Kaengpho and Saelabam communities that:

“In fact, Saelabam has better resources but people are quite individualistic so that there is no initiated community-based management. While in case of Nong Bua where the village has strong institution and it pools resources from various agencies”.

This information shows that the local communities and the government agree on the limitation of participation in resource management. It also indicates that the state and local communities do not have different sets of perception in all things. One Kaengpho elder compares the situation during the collectivisation period that people did not participate equally in work, but they received equal distribution. So, their real experience urges the exclusive property regime.

Both officials and villagers agree on direction of development that communities need to improve resource management and its productivity of local resources. Hence, these resources can be used to sustain people livelihoods and be a source of community development. The process of community development in this way will be possible only when property regimes are clarified and authorised to be managed exclusively. As it is shown in the case of Nong Bua that when resources have clear ownership, it strengthens the rights of the village to be able to generate income from the resource and to use money for community development.

This leads to the next government development discourse on clearly defined property rights system. The exclusive regime helps encourage communities to manage resource productively with sustainable manner. Defining clear property regimes for the resources is one of the mechanisms to facilitate this process. This is territorialisation in the sense that the state extends its power to integrate or replace



the local control of resources by defining certain resource institutions under the set geographical boundaries. The significance is that this is part of development philosophy promoting market-based land reform and domestic resource mobilisation supported by the World Bank in Laos (World Bank 1996).

The Lao government, unlike Thailand, recognises common property but the common property that has *kaan jad kaan* (authoritative management) and *rabiab* (rules) with clear organised institution, not the regime that relies on superstition. With organised institution, it is expected that resources are managed more productively and efficiently and can facilitate development of market economy. At the same time, it allows the state to intervene, influence and monitor the direction at the local level, which is difficult in the traditional regime. The organised institution becomes a standard of the new resource management system that the government approves. These are what Scott calls “seeing like a state” (1998) that state can modify and standardise the local practices into the state format.

The Land and Forestland Allocation Program (LFAP) is one of the interventions that the Lao government designates as the nation-wide program to promote investment and market economy development. In this case study, LFAP was implemented after the enclosure of Nong Bua. Kaengpho village committee sees that LFAP does not make any change as it just gives them a map on what they have. This is because boundaries between villages in the area are clear and Nong Bua’s located in Kaengpho village territory. Also, the excluded people, such as the Saelabam village committee, who complain about the enclosure respect that Kaengpho has more right over Nong Bua. They say that they are never able to release fish in Nong Bua and declare the authoritative management the way Kaengpho has done. Therefore, the LFAP just merely legalises the same territories of communities. In fact, the difference is that with the fish-stocking scheme, LFAP simplifies this complex right and legalises Kaengpho to have actual power over the new exclusive institution of Nong Bua. In consequence, it confirms the formalisation of the claim.

Land titling may not be enough for the local communities to modify the property regime of Nong Bua. I asked Kaengpho village committee members whether the village would shift the regime of Nong Bua when LFAP was implemented in the village before the SWIM project supported the fish stocking. One of the village elders said “it is the custom, no one ever suggested us to do something else”. In addition, the committee stated, “we are afraid of intruding upon the government direction”. This is understandable that there was no point for Kaengpho to claim the sole right over Nong Bua at that time. It is perhaps also an excuse of villagers showing a tension of local people in modifying the traditional regime to the exclusive property right system. As for villagers, as well as being under the state regulations, they are also under the customary rules that relate to wider social relations beyond the territory and authority of a single village. This indicates that even though Kaengpho people agree with the officials in shifting property regime for benefit gained, they cannot over extend the local rules without the intervention from the state. Kaengpho villagers thus require the state authority to manage this tension by endorsing the entitlement right for Kaengpho Village. Territorialisation is then activated.

This also indicates that even though there are supportive policies on promoting market economy and defining property rights for local communities to take action, the policy on territorialisation is not activated throughout the country, and the customary practices are still active. There are several other small and subsistent resources, such as bamboo shoot, mushroom, firewood, and grazing land, that people do not claim exclusively but are still utilised by users from various villages. The examples from the study area show that there is another condition on enforcement of the new institution to determine the shift of property regime.

When posed with the question, why Kaengpho does not enclose various non-timber forest products as it does for the backswamp, Kaengpho village elders explain that “If we deny others access, it will show selfishness”. This is perhaps

true that the social context of rural determines the use of resources, but the value of resource and possibility of enforcement are other controlling reasons. These are important attributes of the common pool resource that shapes the property regime. Therefore, territory is not the only attribute that defines rights of users, rather it is one of several factors.

There is another example of resource, cattle dung, which people enclose and claim exclusive rights to. Very recent an organic fertiliser company from Pakse began to come to buy dung in the area. Many poor people, mostly from villages located along the Road No. 13, participate in this new income generating activity, especially Nongphai, where collecting dung is the main income for many families. The problem began when dung was scarce so people went across the village border to collect dung. People who do not collect the dung complain that the others have taken their manure in their rice fields. So, every village, except Nongphai completely encloses the dung in their boundaries. There is a debate from Nongphai villagers that this is not really right as cattle go across the village boundaries so dung in the rice fields of one village is perhaps from cattle of the others. The other side gives a reason in linking the dung with the benefit to rice fields of individuals in their villages. In this case, it is not important who owns the particular resource but what principles and who can justify the rights over the resources.

This case study highlights two important conditions that determine the success of territorialisation. First, it is authority, which may come from policy and outside interventions. Second, the possibility of rules enforcement, whether it is worth to modify exclusive property regime or to leave it to be managed under customary practices. In the case of communal resource, it also requires strong institution in the community as the third condition to manage the new institution, such as the case of Nong Bua. In addition, it illustrates that territorialisation is not necessary the state agenda, it can be the local agenda in legalising its territory when clear territory brings benefit for that village.

The above positive aspects of development discourses resulting from the new regime of Nong Bua, has encouraged, the local government to use Nong Bua as an unofficial *ban tua baeb* (model village) to promote to other communities. The concept of *ban tua baeb* perhaps comes from learning culture of rural Laos that people would rather gain new knowledge from their visual experiences, and what they hear from those they believe. DAFO expects the successful resource management of Kaengpho to inspire the other communities to follow. The concept of *ban tua baeb* in Laos is the model in economic development. This differs to the case of Thailand during Hirsch's research in 1980s, the term was used in the political purposes to control the communist (1986). At present, Thailand does not use this term for economic aims, but rather for social purposes such as a model drug free village. So, this concept has been used in different purposes and contexts according to the application.

In contrast to the government focus on development, Kaengpho villagers build another discourse from its experience on common good and equity in development in order to justify the exclusive ownership over Nong Bua to the excluded communities. Kaengpho villagers claim that outcomes from the new regime are benefit accumulated for common good, in Lao "*suan ruam*".

The claim for *suan ruam* was not shown only by direct explanation but also through rituals. In the ceremonies on releasing fish and selling fishing rights, Kaengpho heads stated clearly in the speech that:

"All the donations and money gained from this event will be used for building new school for *suan ruam*, for our children (claimed to everyone) not only for individuals of Kaengpho Village. To help children is like making great merit together".

This reason is also claimed by various groups of Kaengpho people as a strategy to explain to the others both excluded fishers and the researcher.

The ideal of *suan ruam* in the socialist ideology of Laos influenced people's perception during the collectivisation period when the government campaigned people to devote their work for the common good. However, the scope of the common differs from the past. A Kaengpho elder explained that during the collectivisation period, people devoted their labour to work in communal land, but the benefit was divided and distributed by the others (co-operative), which was rather unfair. He further clarified, "Kaengpho people are very enthusiastic to work for *suan ruam*, both for Nong Bua and other communal activities, because we devote our labours, working in our communal property, and we distribute the benefit by and for ourselves". Many in the committee told me that "they do not mind to reduce the individual benefit they used to gain from Nong Bua for *suan ruam* as they know that most of benefit are still in the village".

As for the excluded communities, many people seemed to acknowledge the benefit gained from the new management of Nong Bua. They explained that:

"They accept the new regime of Nong Bua because Kaengpho uses the money to build a school. On the other hand, if Kaengpho just encloses and allows only its people to fish in Nong Bua or if they use money for individuals, no one would be pleased and things would not be this easy".

The idea of *suan ruam* is often combined with collective action in the communal property. The village committees of the excluded communities seemed pleased with the good collective action of Kaengpho villagers in productively managing the communal resource. Two committees told me that "Kaengpho leaders can mobilise the collective action in the village well so they should gain the benefit from their work". They gave other reasons that the Lao State has a limited budget, therefore, the villages that are unified with the strong committee members and can mobilise the collective action should get support. One of the Naanai's village committee compared Kaengpho with his village and said, "it would be very hard for

our village to do as Kaengpho does even if we have had a backswamp". This implies difficulty of mobilising collective action and building the united community.

I observed that people did not block the streams during fish breeding which is evidence of the solidarity of Kaengpho people as an outcome of the new regime. In early rainy season, fish migrate from the mainstream to small water bodies to lay eggs. Prohibition of stream blockage has been announced by the DAFO every year but it has been seriously practised in Kaengpho just after the enclosure of Nong Bua. People explain that in the past if they did not catch these fish, fish going to Nong Bua would be caught by fishers from other communities. Since Nong Bua is exclusively fished by Kaengpho, all fish that they let go during the migration still belong to the village so that people discuss and agree to this rule.

The common good in this sense is only for a single community even though the benefit from the new regime for the common is emphasised. Kaengpho people explain when questioned if the poor from excluded villages will gain from the common benefit that:

"We do not marginalise the others. As for the poor, this should be a task of the government to help the other communities. This is because it is not in our responsibility and capacity to help the others. It is like we have little rice in the barn so to help everyone is impossible".

This reflects that *suan ruam* is confined exclusively for a single village and shows community interest. It also illustrates the social relations between communities in the area that the long established communities where people have known each other well does not mean there is a strong institution in resource management. However, this exclusive management and benefit gained seemed to be accepted by the excluded communities.

The director of DAFO explains in the same way to Kaengpho villagers that it is impossible to help every village at the same time. They illustrate further that to

ask Kaengpho to accommodate all poor people, is like a metaphor saying “*Tia outh khom*” or a short person carries a hunchback. This refers to a person that is in a bad condition (Kaengpho) but has to help the other (communities) who are no better than the helper so it will not bring any progress for either one, rather failure. This officials’ view coincides with the philosophy of development that to be able to accumulate wealth, it has to have a clear territorial unit with ownership, which is a single village in the case of Nong Bua.

As for the excluded communities, most of people seem to see why Kaengpho has to exclude them. I asked the same question to Kaengpho village committee and some village committees of the excluded communities whether it is better to release fish only for subsistence basis. Both parties say, “Kaengpho people have to harvest the fish that they released otherwise it is a waste (for the income gained)”. This means the excluded communities share the same agenda of development with Kaengpho Village. They see fish stocking as an opportunity for the village to gain wealth for community development. Therefore, the justification of community development or *suan ruam* is accepted by all parties. This consequentially affects the agreement of exclusive property regime.

New management of Nong Bua, in fact, seems to provide extensive benefit for individuals but there is no report on this. The community fund gained from the new regime of Nong Bua that Kaengpho claimed is not much. The study by Garaway (1999) about fish-stocking enhancement in Savannakhet Province shows similar findings to the case of Nong Bua that the money contribution from households is more than the community fund generated from the new management. Therefore, when the village committee limits requests for contribution from households, the community fund is lessened. The new regime of Nong Bua also benefits the poor of Kaengpho as they have fewer competitors selling fish. This means money gained from the new management provides benefit to individuals.

Kaengpho residents do not clarify this individual benefit as legitimacy. Rather, a “community” is used as a social unit to make a claim. This is perhaps because claiming for *suan ruam* is bigger than individuals and it detaches personal gain. Therefore, *suan ruam* is claimed instead of individuals even though the social unit is narrowed to a single community. Wealth accumulation for a single community was impossible during the strong socialist ideology. This shows a changing implication of socialist ideologies on *suan ruam* and wealth accumulation under the influence of the present market-led economy. It is also a changing pattern of resource uses at the local level from network of relationship to territorial unit of resource ownership.

There is a tension between maximisation of the benefit from the new management and building unity of the community. I put the same question to the directors of DAFO, PAFO, and Kaengpho village committee what they would think if Kaengpho wanted to give concession of Nong Bua to the outsiders to gain more income for the village. The directors of DAFO and PAFO replied, “the concession is the last option that we allow them to proceed”. The explanation was:

“It is true that they may gain more money in all easy way and it is even used for the common, but by doing it this way, more and more will make people, especially the village committee, not want to work (for the community). Then people tend to live individually”.

The local government stressed that at this starting stage, they focus on the village unity more than the amount of money the village can gain. This may represent the ideology of the socialist society. However, it is not clear whether this is a general picture or it is the opinion of the two directors of DAFO and PAFO who are active and work closely with the communities.

As for Kaengpho village committee, it also responds to giving concession of Nong Bua in the same direction to the local government, but with different reason. They say:



“Money is good but if there is no *khwuam samakkhi* (unity and solidarity) in the village, it will bring conflict. If our people are united, it means we have ‘*kam lang*’ (strength and power) to do many things else beside the management of Nong Bua”.

However, it cannot be generalised that people are so community based. There are perhaps other reasons, such as it may not be worth giving a concession to gain a bit more money than the current management but limit the resource for the poor. In addition, Kaengpho village committee has another agenda to take this opportunity to mobilise its people for other collective actions.

It can be seen from the views of the officials and Kaengpho villagers that resources at the local level are limited for development that can lead to problems of resource sharing between communities. This probably is not a real source of the problem as there are factors at the structural level such as government policy and markets that control local people in managing and using resources. Therefore, villagers have to rely on the limited resource and always have to require the outside capital from government and development projects for community development.

Such views on development of Kaengpho villagers are shown clearly in another discourse on equity of development. Kaengpho people linked their justification of the claim of ownership over Nong Bua to their inequity, or lack of access, to development when compared to other communities in the area. In Kaengpho, people’s perception is that the enclosure is appropriate because Kaengpho is less developed than their neighbours from the fact that most of communities have electricity, Saelabam has clinic, schools, and road, and Nongphai has a school and temple in good condition. While Kaengpho has poor development of infrastructure, therefore, the village only has Nong Bua as a source of community to gain development funding.

Furthermore, Kaengpho village committee compares the management of Nong Bua with the other excluded villages' backswamps. They show that Khamyaad, Naa, and Saelabam, in particular, have *pen chao kaan* (manager with authority or have full entitlement) over their backswamps. These communities can design when to open, to close, who can access, and to gain benefit from the backswamps while Kaengpho lacked this right. These are the reasons Kaengpho village committee expects the other communities to understand this change.

The development and village authority over the territory claimed by Kaengpho are regarded as important and necessary for every community. Therefore, these values are shared by all communities as they are in similar situations. This claim also responds to the government policy on promoting market economy in order to develop the village. In addition, by raising legitimacy based on fairness on the modest development and requesting for sympathy from the others, it hits the moral value of people who dwell in the moral society in rural Laos. These claims are hard to argue. It also would look bad if anyone opposes improvement and development.

The other excluded communities, especially the committees, share similar perception of development for Kaengpho residents. One of the Naanai village committee states that "this is the time for development. If we have had the same opportunity, we would do the same as Kaengpho does". This implies that villages should be "developed" by changing property regime as a means in this case. There are several opinions in the village, but as for the village committee, they seem to share agendas on development with the government. This is because the policy activates equally for every community so an opportunity for development (such as intervention from development project) may come to their villages in the future. If they contest, it may cause conflict themselves. So, the development discourse in this case seems to be legitimised by itself. I also see that the policy definitely creates effect but it has happened gradually and it not only affects to their own but also to other surrounding communities. This makes people not perceive it as big event.

Similar to the claim for the common good that the debate between Kaengpho and other communities might be more complicated if Kaengpho used this benefit for other luxurious benefits such as buying a modern tractor. This action would challenge the social norms and cause pressure from the others. Therefore, claiming for the common good allows the continuation of good relationship among communities. That Kaengpho has disadvantages in development has become a strong point to make an effective claim to the other communities.

The meaning of “equity” perceived by Kaengpho residents in this way is different to the perception of outsiders. The outsiders may think that enclosure of Nong Bua has created inequity of resource sharing. While Kaengpho villagers look at equity at the different scale. For Kaengpho Village, people see that this enclosure is a way for the village to access more equitable development when it is compared to its neighbouring communities. I do not wish to judge which opinion on equity is right but to show that the same claim is diverse and cannot be judged by either one party. Rather, it has to be considered who makes the claim and what is the background, experience and objective.

Kaengpho regard the outcome of their village as *ban tua baeb* differently than the government. Their aim is to catch up with the development of the other communities rather than to become a model community for the others to follow. When they are asked by other communities how much the village gained from the new management, Kaengpho villagers reply that “we gain very little”. This is true that the fund is small but it is still an extra amount that Kaengpho has gained while the other communities have not. The village committee clarifies this answer that “people do not want the others to feel humble or averse as we are living near each other”. In other words, they do not want to stand out of the crowd. This shows that maintaining good relationship with the neighbouring communities is very important for local people even though Kaengpho has the local government as back up for the

new arrangement of Nong Bua. This reflects that both Kaengpho and the local government share the same agenda in development with different priorities.

Apart from the justification and explanation of Kaengpho people toward the new regime, Kaengpho people also raise various points, aiming to change the attention from the impact of the enclosure. Kaengpho elders said to me that “we do not fish in an exploitative way by individuals and we do not damage the environment. There are a lot of fish remaining and fish still go out to the other water bodies (including rice fields of some people) in the flooding season”. It is true that the ecological function of the backswamp still remains. However, this does not reduce the problem of exclusion. Rather, this explanation refers to something bigger than the village sphere so that it may sound important to the outsider.

Some Kaengpho villagers explain to the other communities and me that the new rules are enforced equally towards Kaengpho resident and outsiders. Many Kaengpho women tell the excluded people that “we also cannot fish when we want as before”. These explanations are described to make a picture that new regulations treat the fishers equally, either from Kaengpho or other communities. Moreover, Kaengpho villagers claim that since the second year of fish stocking (in 1999), they allowed others to fish the same as Kaengpho people by using hook and scoop net. Kaengpho village head suggested that the community can make a request letter for Kaengpho to consider during the New Year event.

These explanations of Kaengpho people are neither true nor practical. Rules are different between Kaengpho and the other villages. In addition, fishers from other communities do not use hook and there are fewer fishers who want to come only to catch shrimp (using scoop net). Moreover, people do not come to Nong Bua on the New Year only for making merit, they more prefer the ceremony that involves many people. Therefore, these are excuses made by Kaengpho villagers. In fact, Kaengpho villagers are conscious about the excuses they make. They confess that all Kaengpho people know this but they have to elucidate as above so

that others will not ask further. I think they may partly want to please me as I ask them often how Kaengpho villagers think about the excluded group. As for the other communities, they also realise about this but they seem to leave some spaces and do not want to bother checking for the real reason. This kind of indirect explanation is the local mechanism to maintain good relationship between groups.

In brief, both local government and Kaengpho villagers have justified the exclusive right over property through different set of aspects of development. These are from their understandings about the benefit from the new exclusive property regime. These discourses are both from external and internal elements of the community. While, the officials tend to focus the claim at the efficiency aiming for economic benefit and development from the new regime, Kaengpho villagers, apart from the economic aim, they also want to maintain morality within and between communities. Therefore, local people have their own principles involving values and norms in the justification. However, Kaengpho people and the local government share the same agenda of formalising the exclusive property regime of Nong Bua, but they have different objectives on some principles. Meanwhile, most village committees of excluded communities share the same agendas in development with Kaengpho people and the officials. They agree that in order for wealth accumulation, the other communities also see the need for Kaengpho to have exclusive property right system over the resource. Therefore, the justification of new property regime in Nong Bua is not only explained by the side of the state and Kaengpho people but also the acceptance of the excluded communities.

#### **5.4 Summary**

This chapter demonstrates a microcosm case of shifting common property regime to the exclusive property right system by the initiative of the state. The enclosure in this case is formalised under the context of post-socialist market-led economy development and the local situation that requires development. The legitimation process is modest and based on the existing customary practices.

Therefore, the result occurred without organised contestation nor the major disruption. Rather, the shift of property relation in this case is an incremental process and the justification of the new institution is gradually made through various discourses of development. In particular, exclusive property right system is a means for development.

Under the dynamic context of the state power, market incentive, and social relations with neighbours, people of excluding and excluded groups base their explanations on a mixture of many principles. The context of the local indicates the complex level of property relations that people have involved various principles of claim from law, higher authority, economical, norms, spirituals, and moral aspects into the claim of new property regime. Policies, rituals, social norms are interpreted and used as discourses by both groups and the local government to persuade the others for agreement and to internalise new power relations between communities in a modest but effective way. This legitimating process is not significant to the public but it is subtly meaningful at the moral level and becomes a forceful means in changing property relations with non-confrontation.

Kaengpho and the local government have their own priorities and values in making discourse to claim the exclusive right over the resource, however, they have the same agenda in changing the regime. While, the excluded communities have different interests in Nong Bua but under the same policy and same values in development. Therefore, these help legitimise the new exclusive regime with acceptance and so that social relation between communities is still maintained.

The community-based management of common property therefore does not always lead to more equitable outcome and sustainable development but in this case it led to enclosure. Shifting property relations is part of the territorialisation process that can be activated from the authority such as policy, and from increasing value of the resources that come with market intervention.

In addition, from this case study, there are some implications of legitimacy. Legitimacy is made at several levels from legitimising for oneself to legitimising against the others and for the third parties such as the researcher. It covers a wide range of law, custom and social norms. One single explanation does not stand alone, they all relate to each other. Legitimacy does not need to have formal form or conscious process. Many are incidental, such as rituals. Moreover, the acceptance to the legitimacy does not have only one level and they are dynamic. Each group may respect to different legitimate reasons and at different levels. Various legitimacy and reactions from the others have gradually affected their thought or reinforce the dominant claim and eventually they are accepted at a later time.