INTRODUCTION
In 2018, the Land Information Working Group (LIWG), supported by the Mekong Region Land Governance Project (MRLG), commissioned the report An Assessment of the New Land Law and Forest Law in the Lao People’s Democratic Republic: Focusing on Customary Rights. This policy brief highlights key findings of that report. It focuses on progress made in the revised Land and Forest Laws from 2019, summarises a selection of topics to be further clarified within and between the Laws, and proposes next actions for achieving statutory recognition of customary land tenure systems in Lao PDR.

Key Findings
• The revision of both Land and Forest Laws resulted in changes that are generally a step forward for improving implementation and the protection of customary land and forest tenure in Lao PDR.

Box 1: Definitions related to customary tenure

What is land tenure?
Tenure systems regulate how people, communities and others gain access to natural resources, whether through formal laws or informal arrangements. The rules of tenure determine who can use which resources, for how long, and under what conditions. They may be based on written policies and laws, as well as on unwritten customs and practices (FAO, 2012).

What is customary tenure?
Customary tenure may be defined as the local rules, institutions and practices governing land, fisheries and forests that have, over time and use, gained social legitimacy and become embedded in the fabric of a society. Although customary rules are not often written down, they may enjoy widespread social sanction and may be generally adhered to by members of a local population (FAO, 2016).

1 This brief was intended to be published in 2022, there may be more recent updates and policy developments.
A more comprehensive legal framework for customary tenure is still needed to address areas of ambiguity in both Laws, ensure implementation in a nationally consistent manner, and foster a more inclusive approach to the recognition of customary tenure.

The Laws focus on recognising and providing rights that meet government-determined criteria and the process of customary land, rather than on culturally-specific customary tenure systems themselves. To provide greater protection for the customs of ethnic groups in Lao PDR, the Laws should acknowledge and protect existing customary systems.

The Land Law includes the statutory recognition of customary land rights, including those relating to forestland, and criteria for the acquisition of these rights. The Forest Law includes customary ‘utilisation’ of forest resources (not forestland as such) without specifying a process for obtaining rights. However, neither of the Laws specify whether rights over forestlands in the Forest Law are the same as those recognised in the Land Law.

Gender and women’s land rights are not explicitly addressed in either Law. This creates challenges for women, especially those from some ethnic groups, in benefiting from the recognition of customary land rights.

Both Laws omit clear provisions for the recognition of customary land rights of individuals, collectives or villages to practise sustainable rotational agroforestry (shifting agriculture or rotational agroforestry) and to manage grazing land.

The Laws aim to promote sedentary agricultural livelihoods. The Forest Law allows for ‘controlled’ shifting cultivation (traditional rotational agroforestry) while at the same time restricting ‘uncontrolled shifting cultivation’. The protection of traditional rotational agroforestry systems and their associated land and forest areas is crucial and requires protection. In particular, the subtle but important distinction between ‘uncontrolled’ and ‘controlled’ shifting cultivation needs to be clarified. Community-led processes for documenting and conferring rights to traditional rotational agroforestry areas and protected forest areas should be established under the law.

In areas where customary tenure is practised and that are eligible for statutory recognition, no clear safeguards or grievance mechanisms were established by these Laws for the formalisation process. Furthermore, where customary tenure is practised but is not eligible for statutory recognition, there are no protections, creating substantial tenure security risks.

Customary tenure systems are diverse and complex. The recognition and protection of these systems will require a number of different pathways promoted through the combined effort of multiple stakeholders, from local to national levels.

Statutory recognition of customary collective forest rights could be provided through land allocation and planning, Village Forest Management Planning (VFMP), and the issuance of Village Forest Management and Conservation Contracts (VFMCC). Other means may include the issuance of State titles to villages, or collective land use certificates. For all of these, implementation guidance is needed.
BACKGROUND

The present era of advanced globalisation includes rapid transformations, involving the movement of capital, information and people. This has resulted in substantial economic and social changes in rural areas. In an effort to stimulate economic growth in Lao PDR, policies related to ‘Turning Land into Capital’ have played a key role in these transformations (Kenney-Lazar et al., 2018). However, formal recognition of citizens’ land rights through the issuance of land titles in Lao PDR has reached only a limited proportion of the rural population (Ingalls et al., 2018). This is especially true in rural areas where households rely on customary tenure for access to natural resources for food collection and many other land-based livelihood activities. Insufficient understanding of customary tenure systems and their lack of statutory recognition has led to adverse impacts on the livelihoods and economic development of rural households. While the expansion of the national forest estate in recent decades, together with the strengthening of forest protection measures, have produced positive environmental outcomes, these have increased some risks to the tenure security of communities and households within these forest areas. At present, State forest areas constitute approximately 70 percent of the national territory. Approximately 3,000 villages in Lao PDR are located within the country’s three official forest categories ² (3FCs) (see Box 2 regarding Forest Law terminology).

To better govern land and forests in the current socio-economic situation, the Government of Lao PDR (GoL) revised the Land and Forest Laws, approved by the National Assembly in 2019. The revision of both Laws included a consultation process involving relevant government agencies, and local and international development partners. The revised Laws have generally been a step forward in the statutory recognition, implementation and protection of customary land rights. These changes have also created opportunities to refine and strengthen the legal framework for the recognition of customary tenure. Box 3 below includes options for statutory recognition and accompanying rights. Annexed to this brief is a review of all Articles in the Land and Forest Law relevant to the protection of customary tenure rights.

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Box 2: Key forest terminology (Article 3, 2019 Forest Law)

**What is land tenure?**

**Forest resources** are various resources, both living and non-living, consisting of soil, plants, trees, water, aquatic life, wildlife and other things existing in the forest areas. Forest resources are found both within and outside of areas designated as forestlands.

**Forestlands** are all land plots, with or without forest cover, that are designated as forestlands by the State.

**Degraded Forestland** relates to the forestland areas where forests have been heavily and continually damaged for many decades and take many years to regenerate unaided. This description applies to areas that have crown cover of not more than 10 percent, and the volume of standing trees with more than 10cm diameter covering no more than 20m²/ha.

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Box 3: Land Titles, VFMCC and Land Use Certificates, and accompanying rights

Land rights in Lao PDR are formally documented by titles, contracts and certificates:

A **Land Title** is the primary document used as evidence of land use rights. These rights include: i) The right to protect land; ii) The right to make use of the land; iii) The right to gain benefits from the land; iv) The right to transfer land use rights; and v) The right to inherit land use rights.

The **Village Forest Management and Conservation Contract (VFMCC)** is the document that certifies the rights of village authorities over community forests. The decision to grant such rights through the VFMCC is made by the district authorities. The rights conferred by the VFMCC have not yet been specified, but a draft is underway.

A **Land Use Certificate (LUC)** is intended to confer some rights, but these are not specified in the Land Law. Sub-legislation is currently being drafted to clarify what rights are conferred via the LUC. These are expected to be more limited than a land title.

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2 The three forest categories 3FCs (production, protection and conservation) at the national, provincial and district levels cover approximately 69 percent of the total national territory.
CUSTOMARY RIGHTS RECOGNISED BY THE LAND AND FOREST LAWS

Revising the Land and Forest Laws provided an important opportunity to clearly define customary land and forest tenure, recognise it, and provide adequate protections. This would benefit thousands of households across Lao PDR. However, although customary tenure is addressed in both Laws, it is not treated equally in each, and important aspects pertaining to the process of statutory recognition are not specified. Clarity is needed with regard to the interpretation and application of the Laws, while sub-legislation is needed to create a more robust legal framework, addressing gaps and inconsistencies.

The treatment of customary tenure in the revised Laws does not sufficiently take into account the cultural and geographical diversity of tenure systems in Lao PDR. In particular, the Laws focus on the recognition and promotion of sedentary customary uses, without adequate protections for intermittent, rotational and other forms of extensive (versus intensive) land and forest use. Statutory recognition of customary tenure that is inclusive of the diversity found in customary tenure systems requires a combination of robust rights, often referred to as a bundle of rights, including various rights such as management, access, duration, withdrawal, exclusion, alienation and the rights to due process and compensation. State recognition of customary rights that is limited to sedentary (or ‘continuous’) land and forests uses risks marginalising other kinds of uses (e.g., shifting cultivation, or rotational agroforestry, grazing lands, etc.) and the livelihoods of people that depend on them.

The Laws provide narrowly-defined acquisition criteria and emphasise government-led processes (such as land titling, land use planning and forest management planning) for allocating rights, rather than the automatic recognition of existing customary rights. The Land Law stipulates that customary rights in land and forest areas will be granted upon proof of more than 20 years of ‘regular use’. The ‘regular use’ criterion appears to exclude areas of intermittent land and forest uses (such as rotational agroforestry) central to many customary tenure systems and crucial for local livelihoods.

3 The bundle of rights refers to distinct rights that are granted to individuals, communities and collectives. These are the rights to: access; withdrawal; management; duration; exclusion; and alienation. The rights to due process and compensation are also included. Where all of these rights are clarified and granted, rights holders – communities or individuals – have secure ownership over their lands. For more information on the bundle of rights, see: https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember3final.pdf

Land Law
- **Article 44: Use of Forestland:** Forestlands can be used for public purposes, family and businesses without causing adverse impacts on forest, soil quality, environment, or society. The State acknowledges the use of land by people who have been living and earning their living in forest lands before the area is classified as forestlands. The Ministry of Agriculture and Forestry is mandated to coordinate with the Ministry of Natural Resources and Environment, other line ministries and local administrative authorities, to conduct surveys and data collection, and re-allocate forestlands. This agency will then issue land use certificates in accordance with the Law to individuals or families and encourage them to contribute to the protection of forests in accordance with Forest Law and other relevant legislation.

- **Article 130: Acquisition of the Right to Use Customary Land:** The acquisition of customary lands refers to land acquisition and use by Lao citizens through exploration, development, protection and regular land use for more than 20 years before this Law becomes effective. Customary rights do not require documentation certifying the acquisition of the land, but only a certificate from Village administrative authorities and the owners of adjacent land parcels regarding the continuous land occupation and use without any disputes or with disputes having been already settled. Pending the issuance of land titles, the State acknowledges and protects customary land use rights and proceeds with the registration of land titles in accordance with the Laws and Regulations.

Forest Law
- **Article 39: Village Forest Management Planning:** Village forest management planning is the management of forest and forestland within the management area of the village, which is operated both within and outside Protection Forests, Conservation Forests and Production Forests. The village will take the lead in the management and protection of forests and plants, and will rehabilitate degraded forest, resist or prevent forest fire and encroachment of forest and forestland, aiming to make forest within the management area of the village abundant, and turning it into a forest development village.
Village authorities and adjoining landowners are required to certify the 20-year time criterion, but these people may have changed over time, posing challenges for validation. The application of this and other criteria at the sub-national level is left largely to the discretion of local authorities, whose interpretation and practices may vary according to context, capacity, inclination, and motivation.

LAND AND FOREST LAWS: CHALLENGES AND OPPORTUNITIES

The Laws are written such that they govern two different types of natural resources (i.e., the land itself and the forests and forest resources on the land), given differential institutional mandates pertaining to the governance of land and forests under different ministries (the Ministry of Natural Resources and Environment (MoNRE) and the Ministry of Agriculture and Forestry, (MAF), respectively). The lack of coherence and clarity between the Laws poses a challenge for the statutory recognition of customary tenure given the inherent relationship between land and forests. Differing interpretations of the Laws, taken individually and together, reveal the need for dialogue, negotiation and resolution (such as through sub-legislation) to elaborate and strengthen the legal framework overall.

The bundle of rights provided in the Forest Law (Articles 123 to 126) includes five rights over forest resources: i) to manage and preserve; ii) to utilise; iii) to obtain usufruct; iv) to transfer user rights; and v) to inherit. The first three rights apply to collectively-managed natural forest. Though not included in the Forest Law, the right to access, exclude and transfer (via community membership) is implicit through the establishment of the Village Forest Management Plans. All five rights apply to privately-owned planted forest (in the Forest Law) and individually-owned (non-forest) land (in the Land Law). Collective land use rights include the right of a village or villages, or a subset of these, to protect and utilise the land.

Land rights and forest rights are treated as different rights. The Land Law refers specifically to individual (e.g., rice paddy, perennial cropland, housing) and customary land use rights (see the Annex, Article 130). It provides criteria for the acquisition of the rights, and is clear that the State protects the customary rights of people without land titles. The Forest Law lacks specific mention of forestland customary rights and land use, and refers only to customary utilisation of forest, timber and NTFPs (i.e., forest resources).

As noted above, customary rights over forestlands are limited via criteria that either exclude or do not explicitly include some forms of customary rights. While the term ‘customary’ is not explicitly used in Article 44 of the Land Law, it does imply recognition of customary land rights in forestland, based on the included criteria (e.g., occupation prior to the establishment of forestland) and the issuance of land use certificates. The Law (Article 130) addresses customary use but not expressly in forestlands. Additional legal provisions could combine these Articles to address customary tenure rights in forestland. Further, the Land Law does not stipulate what types of land (residential or agriculture) in forestland may be eligible for land use certificates (LUCs) and whether these are for individuals or groups, or if they are transferable. Additional legal synergy could be created through the inclusion of the recognition of people’s customary claims as stipulated in Article 44 of the Land Law. However, given that local consultations and physical demarcation of most State forest areas has not been conducted on the ground, implementation of these provisions in practice will almost certainly face challenges.

The concept of collective use rights is included in the Land Law (Article 81) and the Forest Law (Articles 31, 39 and 120). The Land Law explicitly includes only sacred forests, and other forest types (use, conservation, protection). Collective agriculture is not mentioned. However, the Land Law lacks criteria for how collective groups can be defined, or procedures for granting collective use rights to State land and certifying these through specific documentation. While the Forest Law indicates that Village Forest Management and Conservation Contracts (VFMCCs) will be used to certify community forest rights, detailed clarification on the VFMCC process, and the rights it confers, are currently lacking.

The Forest Law directly addresses shifting cultivation by allowing for controlled shifting cultivation (traditional rotational agroforestry). While the Land Law does not specifically mention shifting cultivation, provisions in Articles 130 and 144 may create practical challenges for recognising rights over these areas. Recognition of controlled rotation shifting cultivation in forestland should be built around the Forest Law’s acceptance, and integrated with provisions in the Land Law that acknowledge land use planning and management.

4 Land Law Article 133: i) the right to protect land; ii) the right to make use of the land; iii) the right to gain benefits from the land; iv) the right to transfer land use rights; and v) the right to inherit land use rights.
A key point is that the inclusion of controlled shifting cultivation in the Forest Law acknowledges it as a legitimate land and forest use practice, with the provision that it should be controlled. However, it is not yet clear how ‘controlled’ versus ‘uncontrolled’ shifting cultivation is defined. The likely interpretation can be found in existing practice at the subnational level. In many provinces and districts, rotational agroforestry has been recognised through community-led land use planning processes that define customary rotational agriculture zones, while ensuring mature and high-value forest areas are maintained (NAFRI, 2019). Agricultural land use in the Controlled Use Zones of Conservation, Protection and Production Forests is also recognised in Article 71 of the Forest Law. In addition, the Land Law contains many articles under which rotational agroforestry could be recognised through land allocation and titling. However, it is unclear whether, and how, these might be protected through land registration or titling.

Customary rotational agroforestry systems include fallows or areas that are left to naturally regenerate between harvesting periods. Such fallows are an integral part of the agroforestry cycle and should not be classified as degraded forests. The agricultural land management practice of fallowing land is a fundamental part of rotational shifting cultivation that enables sustainable soil and nutrient management and weed suppression. Despite this, historical precedent within forestry agencies is to misinterpret these areas as ‘degraded forest’ (which is thus available for expropriation for investment) or ‘potential forest’ (and thus becomes a target for climate change-related protections and projects). The former interpretation (‘degraded forest’) should be excluded, while the latter (‘potential forest’) should be approached with caution and safeguarded through Free, Prior and Informed Consent (FPIC) processes. Any outside initiative (government, project, or donor) that involves land management or planning should include the participation of farmers to identify and demarcate areas of rotational agroforestry, including fallows, sufficient to support household and village food security. Transition away from rotational agroforestry, such as toward sedentary agriculture, should be fully voluntary, promoted through incentives, and not the result of coercion or enforcement measures. The classifier ‘degraded forest’ should be applied only to forest areas that are proven to be outside of these rotational fallows. Future sub-legislation that supports the recognition of customary land tenure used for rotational agroforestry must document and protect rights over fallow areas.

5 Rotational agroforestry, sometimes referred to as shifting cultivation, involves farmers using the same parcels of land on a rotational basis, usually one piece of land per year, while other parcels are fallowed to allow soil nutrients to re-accumulate and weeds to be reduced. Pioneer shifting cultivation (not common in Lao PDR) involves farmers clearing old growth/primary forest, cultivating it and moving on to clear more old growth forest and not returning to previously cultivated areas.

6 Land Law (Articles: 130 and 144) and Forest Law (Articles: 53, 46.7 and 118).

The recognition of rotational agroforestry depends on the interpretation of legal terms in the Land Law. The Land Law (Article 130) states that customary land rights can be acquired through 'exploration, development, protection and regular land-use for more than 20 years'. In the case of rotational agroforestry, it is not yet clear whether fallowing constitutes a 'regular use' under the law, possibly making rotational agroforestry areas ineligible for statutory recognition. However, a reasonable interpretation that should be promoted and established under the law is that 'regular use' and 'development' occur throughout the fallow period because these are actively managed by communities and households. Farmers plant and/or manage various tree species and non-timber forest products/NTFPs for consumption by humans and animals, for sale and to regenerate soil more quickly. They regularly collect naturally regenerating products from these areas including firewood, as well as animal fodder, and they are important areas for livestock and wildlife grazing. Such active management of fallows by households and villages should thus constitute 'regular use' as a sustainable agroforestry system that meets the criteria for customary recognition as shown in the Land Law. Taking a broader view, the rotational agroforestry system as a whole is a continuous use process: thus, all parts of this cycle (including fallows) should be included. The Land Law (Article 8: Use of State Land for Collective Purposes) also creates space for the acceptance of rotational agroforestry when it is included in village land use plans that then may be eligible for State land titles at the village level.

WOMEN’S LAND RIGHTS

The 2003 Land Law included the option of private land registration in the names of both husbands and wives if property was matrimonial (Article 43). This was removed from the provisions of the 2019 Land Law. The revised Forest Law does not include any Articles specific to women or gender. In the 2019 Land Law, joint registration or titling is included only in the definitions section (Article 4.11). It is critical that adjudication and registration processes ensure that women are recognised and, if desired, their names included in documentation to support their social status and ensure they receive fair economic benefits in the event of divorce or land sale. Especially vulnerable are women from matrilineal ethnic groups that could lose their customary land rights if land they acquired from their family is titled only in the name of their husband. To avoid situations where acquisition of customary land results in a loss of women’s land rights, safeguards need to be established through regulations relating to gender and ethnically sensitive land titling. The collective rights of women, especially including rights of recognition and protection, to communal land areas also require attention (LIWG, 2020).

Collective land rights include: 'rights to protect, utilize the land for collective interests of villagers of one village or many villages with no possibility of transferring, selling, exchanging, leasing land use rights, granting those rights in the form of concession, or using them as shares or as collateral'.
CUSTOMARY TENURE RIGHTS UNDER THE LAND AND FOREST LAWS IN LAO PDR

EXPROPRIATION OF CUSTOMARY LAND, COMPENSATION, FPIC AND GRIEVANCE MECHANISMS

Clear, equitable and robust regulations relating to land expropriation, compensation, FPIC principles and transparent grievance mechanisms are all essential components of a just and effective land administrative system. Currently, in the rapidly developing context of Lao PDR, these must be enshrined in law to help Lao citizens understand changes to their land rights, ensure that their rights are protected despite changing circumstances, and to also give them the legal backing to contest changes to those rights and to receive fair treatment when land claims are challenged.

As in most countries, land can be expropriated for public and State purposes. Based on the Land Law (Article 130) if untitled, privately-owned land meets the legal criteria of customary land and is expropriated, compensation for loss of land rights would follow existing legal processes. Article 130 states that, ‘pending the issuance of land titles to individuals, the State acknowledges and protects customary land use rights’. In addition, the Prime Minister’s Decree 084 (Article 8.3) also states that holders of customary land rights without documentation will receive the same protection and compensation benefits as those with documentation. To further guarantee these rights and clarify the process through which customary claims will be determined, additional sub-legislation is currently being drafted.

When land under collective use rights is lost to private or State investments, the Land Law (Article 122) mentions that the concessionaire must compensate those affected and not violate the rights of other persons. However, this does not specify groups or villages and, given the lack of clarity in terms relating to formalised customary tenure rights under Article 130, it is unclear whether the holders of LUCs over customary forest areas would receive compensation. This may depend on whether the rights holders, as a group, are considered a legal entity eligible for compensation. The Civil Code helps to clarify this, indicating that villages are able to sign legal contracts with other government entities. Therefore, if village forest areas, covered under VFMCCs (Forest Law, Article 39), are lost to investments, compensation should be paid. The Forest Law acknowledges compensation (Article 129.4 and Article 82, paragraph 3) for forestland allotted to an individual or organisation, but not explicitly to other legal entities. If individual customary rights inside the 3FCs have not been formalised (Land Law, Article 44) it is unclear whether or not they would be compensated.

Although village and individual participation is included in forest and land management, neither the Land Law nor the Forest Law specifically include FPIC or consultation with villages regarding activities that could impact land within a village’s administrative boundary: this could leave non-eligible customary land vulnerable to land leases and concessions. Although not a legal requirement, a small number of private sector investors and international donor-supported land and forest projects require FPIC.

The Forest and Land Laws do not include grievance or conflict resolution mechanisms related to land use or land expropriation. Nor do they provide clear guidance on mechanisms for the protection of land rights. Furthermore, the Laws do not mention the ‘Village Mediation Units’ that have been established by the government in most villages. Additional sub-legislation focused on land grievance mechanisms is needed, particularly for the land adjudication process.

10 GoL. 2016. Decree on Compensation and Resettlement Management in Development Projects. Lao PDR.
11 Projects involving the World Bank, IFC (International Finance Corporation) and the German KfW bank require the FPIC of indigenous peoples or local communities.
12 For example, there is a well-drafted Law on Economic Dispute Resolution that covers the range of trade disputes that could serve as a model.
CONSIDERATIONS FOR INCREASED RECOGNITION OF CUSTOMARY TENURE

The recognition of customary tenure in the revised Land Law is an important safeguard for protecting some types of customary land. However, as stated above, the legal provisions in both the Land and Forest Laws do not provide clear and inclusive protection of customary rotational agroforestry, communal pastures, or other customary uses. Establishing inclusive statutory recognition of customary tenure should, therefore, address gaps in legislation through sub-legislation and/or implementation guidelines, and establish pragmatic pathways to recognition. Below are some suggested next steps to strengthen recognition. Several of these recommendations are currently being implemented by the GoL and are supported by development partners.

Inter-Ministerial Committee for Coordination: Given the overlapping mandates for the implementation of the Land and Forest Laws between the MoNRE and MAF, an inter-ministerial committee, or a formal action plan for inter-ministerial collaboration on the recognition of customary forest tenure rights, is a possible approach. If such a committee or action plan were to be established, its role could be to: clarify the concept of customary tenure in the Lao context; define ministerial roles and responsibilities; identify areas of joint interest at the land-forest interface and suggest sub-legislation to bring coherence between the Laws; and identify clear pathways and procedures for implementation.

Policy and Legislative Drafting Dialogue: Sub-legislation is currently being drafted to address inconsistencies and gaps in and between the Laws. Formal platforms to identify and develop sub-legislation already exist within the Land Sub-sector Working Group under the Natural Resources and Environment Sector Working Group, and the Forest Sub-sector Working Group under the Agriculture and Rural Development Sector Working Group. Both Sub-sector Working Groups also have relevant focal groups. Under the Land Sub-sector Working Group, there are focal groups on the ‘Sub-legislation of the Land Law’ and the ‘Recognition of customary land rights in forest areas’. Under the Forest Sub-sector Working Group there is a focal group on ‘Village Forestry’. Advancing new legislation will require coordination between the land and forestry sectors.

Legal Status of Land Use Planning and Land Information Systems: Land Use Planning (LUP) in Lao PDR has a long and diverse history and continues to be the principal approach to organise and manage land at the village level. In the Land and Forest Laws, as well as in other government land-related documents (e.g., the National Land Allocation Master Plan), LUP is foundational to land and forest management, and a precondition for both a land survey and registration, and for Village Forest Management Planning (Forest Law, Article 120). Such wide recognition of LUP suggests that the legal status of the plans themselves needs to be clarified, and these LUPs should be promoted as sufficient instruments to document and protect land claims, pending the issuance of land titles, VFMCCs, LUCs, etc. New legislation could recognise the approved LUP as legal evidence of tenure for the statutory recognition of customary tenure under the present legal framework. Accordingly, proposed changes to the LUP should require an inclusive process involving all stakeholders.

Box 4: Village Forest Management and Conservation and Contracts (VFMCCs)

The VFMCCs can provide an excellent opportunity to legally recognise customary forest tenure. Villages, as a legal entity, collective organisations or producer groups, can enter into contracts with other levels of government including VFMCCs. Contracts come under the governance of the 2018 Civil Code and are business-style contracts with districts, which enable villages to manage and benefit from village forests (conservation, protection and use forests). The benefits for villages would be that the rights included in the Contract that overlap with customary rights, are enshrined, and that they would have access to all the legal actions provided in the Civil Code such as performance, nullification and settlements. The contract may not grant additional forest or land rights but would help to protect the ones included in the Forest Law and VFMP. As contracts, these could then possibly be entered into the existing LUIS or LaoLandReg system under MoNRE.
Utilisation of Centralised Information Systems:
Closely linked to the LUP legal status is the storage of LUPs and other spatial data on land claims. A centrally-managed Land Use Information System (LUIS) has been established to safely store, manage and share LUPs. This has been a collaborative effort between the Department of Land, the Natural Resources and Environmental Statistics and Research Institute (NRESRI) of MoNRE, and the Department of Agricultural Land Management (DALaM) of MAF. The Natural Resources and Environmental Information Center (NREIC) has the major responsibility for developing and maintaining the LUIS platform. Support for land information systems is coordinated by the Land Sub-Sector Working Group (LSSWG) under the Land Information System Focal Group. The LUIS could also become the repository system for approved VFMP, VFMCCs and Agriculture Land Management Plans (ALMP), etc. With support from the government departments involved and development partners, LUIS or a multi-purpose (cadastre, registry, planning) platform, could form the basis for a more formal, expansive digital land use database similar to the digital cadastral database LaoLandReg. Such land use information systems should be transparently managed and publicly accessible, while acknowledging legitimate confidentiality concerns.

Village Forest Management Planning and Conservation Contracts:
The Forest Law only grants the rights for customary utilisation of forest resources and not customary land rights in forests, as such. However, the Law does include VFMP and the accompanying VFMCCs as the legal approach to documenting forest tenure claims at the village level. VFMP normally occurs only after land use planning, during which village forest areas are identified and demarcated. The Department of Forestry under MAF, with donor support, has already created a framework for VFMP and introduced the approach to villages. The processes used to create VFMP and related rights under the Law should include existing customary tenure systems. These could then be formalised as contracts (Article 120, Forest Law) for villages both within and outside of the 3FCs. The duration of the VFMCCs has not yet been specified, nor has the process through which these will be established. In order to adequately protect the rights of communities and to incentivise long-term sustainable forest management and investment, VFMCCs should be of sufficiently long duration (30 years or more). Standard templates and technical guidelines are currently under development. Box 4 provides the legal context of contracts.

Minimum Standards Procedural Guidelines:
Sub-legislation should support the establishment of minimum standards for LUPs and VFMPs, as well as for cadastral surveying and mapping and the registration of land use certificates, titles and contracts. There are currently on-going efforts to support the creation of these minimum standards that aim to address limitations previously hindering customary tenure recognition in forest areas.

Inclusive Zoning Guidelines:
Given the GoL’s priority to establish various forms of Protected Areas (PAs), it will be critical to ensure participatory and inclusive processes for zoning that document and protect customary tenure. It will also be necessary to clarify tenure options for villages that are located inside the PAs, particularly those that practise rotational agroforestry, as well as rights within the Totally Protected Zone. Upcoming forest, conservation and Protected Areas legislation should clearly address tenure rights over these areas, and guarantee community rights, to avoid overlapping claims.

De facto recognition of customary tenure at the village level:
Recognising customary tenure systems as the de facto, or standard, tenure system in Lao PDR would streamline any process or legislation. This means that instead of communities having to prove that they have resided in forests areas for 20 years, or before the forests were designated under the three categories, and then to have such rights certified through the formalisation processes outlined above, they would automatically be recognised by the government as bearers of customary land rights. Village-level formal recognition of customary tenure would grant administrative authority of these areas to the village, thus allocating decision-making to local communities, including the allocation of land to individuals within those areas in accordance with customary norms. The government would, therefore, be able to grant LUPs, VFMPs and, eventually, titles, LUCs and VFMCCs directly to villages. This would significantly increase tenure security. This model—an evolved land rights model—would need minimal external intervention and put customary communal systems before individualisation. State intervention would be provided as needed or requested to match human needs and development changes.

13 LaoLandReg is the government-approved cadastral database.
14 See, for example: the definition in Article 3.9 of ‘land and forest land allocation at the village level’ and Article 3.41 of ‘forest development village’; the mention of village protection and village conservations forests in Articles 15 and 16, respectively, as well as village use forests allocated by the State, as mentioned in Articles 31, 64 and 65. There is also ‘village forest management planning’ in Article 39, land allocated to villages in buffer zones in Article 71, forest and forestland protected and developed by villages in Articles 114 and 120, and rights and duties of the Agriculture and Forest Sub-Unit under the Village Economic and Financial Unit, in Article 152.
CONCLUSION

Customary tenure systems are the most common tenure regime in Lao PDR. They are diverse and intimately related to cultural and ecological landscapes. Intact and functioning customary tenure systems are vital to ensure that rural people have access to natural resources, are able to benefit from them, and can defend their rights. Such systems are also changing or being replaced as modernisation, State policies and economic growth affects people’s values and perspectives on land. However, when designed well, legal interventions to give statutory recognition to customary land tenure can help to protect village land from both external and internal threats.

Securing diverse customary land and forest tenure in Lao PDR will require the government to recognise the value of all types of ownership rights (individual, collectives, organisations, village) and livelihood systems (sedentary and rotational agroforestry, grazing, and collecting and gathering in forests and water). Doing so will ensure that communities and households are incentivised to invest in their land and forest areas. Thus, recognition of customary tenure provides the best option to reach national development goals. The government can take the role of assisting villages to voluntarily transition to other formal tenure systems as needed, in response to changing socio-economic conditions in Lao PDR.
REFERENCES


Land Information Working Group, Briefing Note: Women’s Land Rights Study in Laos, December 2020


### ANNEX 1: LAND AND FOREST LAW ARTICLES RELATED TO CUSTOMARY TENURE WITH EXPLANATORY COMMENTS

<table>
<thead>
<tr>
<th>LAND LAW</th>
<th>FOREST LAW</th>
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<tr>
<td><strong>Article 39: Village Forest Management Planning</strong>&lt;br&gt;‘Village forest management planning is the management of forest and forestland within the management area of the village, which is operated both within and outside Protection Forests, Conservation Forests and Production Forests for the village to take leadership in management and protection of forest, plant and forestland rehabilitation, resist or prevent forest fire and encroachment of forest and forestland, aiming at making forest within the management area of the village to be abundance and become forest development village.’&lt;br&gt;<strong>Comment:</strong> The management planning included in this Article could encompass recognition of customary practices, but the process must be open to accepting these.</td>
<td><strong>Article 61: Utilisation of Forest, Timber and NTFPs</strong>&lt;br&gt;1. Utilisation of forest, timber, and NTFPs for public benefits&lt;br&gt;2. Utilisation of forest, timber, and NTFPs for households&lt;br&gt;3. Customary utilisation of forest, timber, and NTFPs&lt;br&gt;4. Utilisation of forest, timber, and NTFPs for business operations.</td>
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<td><strong>Article 44: Use of Forestland</strong>&lt;br&gt;‘Forest lands can be used for public purpose, family and businesses without causing adverse impacts on forest, soil quality, environment and society.’&lt;br&gt;‘The State acknowledges the use of land by people who have been living and earning for their living in forest lands before the area is classified as forest lands by tasking the Ministry of Agriculture and Forestry to coordinate with the Ministry of Natural Resources and Environment, other line Ministries and local administrative authorities to conduct surveys, data collection and re-allocate the forest lands and then issue land use certificates in accordance with the Law to individuals or families and encourage them to contribute to the protection of forests in accordance with Forest Law and other relevant Laws.’&lt;br&gt;<strong>Comment:</strong> This Article provides recognition that people residing in the three forest categories have land rights.</td>
<td><strong>Article 60: Promotion of Tree and NTFP Plantation</strong>&lt;br&gt;‘Plantation of trees for the purpose of environment, water sources and biodiversity preservation, public benefits in urban areas and communities, and promoting forest ecosystem services, can be carried out in degraded forest area and barren forestland in Protection Forests, Conservation Forests and Production Forests allocated by the state; however, the forest areas cannot be harvested and utilized for commercial purpose, except for customary use in the controlled use zones. The policy, rights and benefits of the planters are provided in separate regulations.’&lt;br&gt;<strong>Comment:</strong> This Article grants people the right of customary utilisation of planted trees (i.e., non-commercial).</td>
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<td><strong>Article 38: Defining the areas for Agricultural Land Use</strong>&lt;br&gt;‘The Provincial administrative authorities define the area for agricultural lands use within their respective locality in line with Land Allocation Master Plan, Strategic Plans and Agricultural and Forest Land Use Plans, geographical specificities, socio-economic growth and population density of each locality and propose it to the Provincial People’s Assembly for approval.’&lt;br&gt;‘The authorisation for individuals, legal entities or organisations to use agricultural land shall be based on actual capacity and relevant Laws. The State acknowledges the right of Lao citizens on long term use of agricultural land by issuing the land titles with the respective local Office of Natural Resources and Environment as prescribed in Article 101 of this Law.’&lt;br&gt;<strong>Comment:</strong> This Article shows that the government acknowledges the long-term use of agricultural land through land titles.</td>
<td><strong>Article 64: Customary Utilisation of Forest, Timber and NTFPs</strong>&lt;br&gt;‘Customary utilisation of forest, timber and NTFPs is the use of forest, timber and NTFPs that have been practiced for a long time within village forest areas such as the uses for traditional festivals and religious ceremonies, in accordance to allocation plans and laws.' process must be open to accepting these.</td>
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<td><strong>Article 127: Land Transfer by the State</strong>&lt;br&gt;Land transfer by the State is the transfer of land by the State to Lao citizens, including Lao legal entities and organisations, to use the land for a specific purpose in accordance with the Land Allocation Master Plan and the Plan for State Land Use as prescribed by the Laws including the customary land use rights.&lt;br&gt;There are two types of allocations by the State:&lt;br&gt;1. Total transfer which is the transfer of land use rights in the case of compensation from the re-transfer of land use rights, the acknowledgement of customary land use rights, the implementation of policy on Conversion of State Land Use Rights, etc. Those who are granted the land use rights have the rights to preserve the land, to make use of the land, to make benefits from the land, to transfer the land use rights and inherit the land use rights;</td>
<td><strong>Article 69: Village Forest Management Planning</strong>&lt;br&gt;‘Village forest management planning is the management of forest and forestland within the management area of the village, which is operated both within and outside Protection Forests, Conservation Forests and Production Forests for the village to take leadership in management and protection of forest, plant and forestland rehabilitation, resist or prevent forest fire and encroachment of forest and forestland, aiming at making forest within the management area of the village to be abundance and become forest development village.’&lt;br&gt;<strong>Comment:</strong> The management planning included in this Article could encompass recognition of customary practices, but the process must be open to accepting these.</td>
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<td>2. The partial transfer is the transfer of land use rights in the case of allocation of place of living, the implementation of the Policy on the Use of State Land, etc. Those who are granted the land use rights have the same rights as indicated in point 1 of this Article except for the transfer of land use rights and the right to make benefits in some cases such as lease, guarantee. The State acknowledges the transfer of the right to use State land to individuals with outstanding merits for the cause of revolution and great contribution to the nation to use the land as a place of residence and to convert the land use rights to individual land use rights in accordance with the Law. <strong>Comment:</strong> This Article includes the transfer of rights for the acknowledgement of customary land rights.</td>
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**Article 123: Rights of Planted Forest and Forest Plantation Area Users.**

> Individuals, legal entities or organisations utilising planted forest and forest plantation areas have the following rights:
> 1. To manage and preserve;
> 2. To utilise;
> 3. To obtain usufruct;
> 4. To transfer user rights;
> 5. To inherit user rights.

The rights to transfer and inherit are covered in Articles 121 and 122 of this Law. The rights to customary use must be practised as described in Article 64 of this Law. **Comment:** 123 is the final reference to ‘customary’ and refers back to Article 64 non-commercial). |

**Article 130: ‘Acquisition of the Right to Use Customary Land’**

> ‘The acquisition of customary lands refers to land acquisition and use by Lao citizens through exploration, development, protection and regular land use for more than 20 years before this Law becomes effective and without the need to provide document certifying the acquisition of the land but only a certification from Village administrative authorities and of the owners of adjacent land parcels regarding the continuous land occupation and use without any disputes or with disputes having been already settled.’

> ‘While pending the issuance of land title to individuals, the State acknowledges and protects the customary land use rights of the person and proceeds with the registrations of land titles in accordance with the Laws and Regulations.’ **Comment:** The Article sets out the criteria for legal recognition of the act of acquiring land use rights by custom. |

**Article 70: Preservation of Protection Forestland**

> ‘Preservation of Protection Forestland is to demarcate Protection Forestland into total protected zones and controlled use zones as well as formulating plans and management measures to prevent any causes that could happen or is happening which result in soil erosion, degradation of soil quality, change of the watershed ecosystem, deterioration of water sources, impacts on strategic areas for national defense and security, and the environment.’

> ‘The preservation of total protected zone and controlled use zone in Protection Forests is the same with the preservation of total protected zone and controlled use zone in Conservation Forests as defined in Article 71 (paragraph 2 and 3) of this Law.’

> ‘Total protected zone is the forest area with rich biodiversity, main areas of habitats and for reproduction of various aquatic and wild animal species, areas of river source, riparian forest and other areas that are significant for environmental protection. This area is prohibited to conduct any activities except for scientific researches, and walking trails for ecotourism.’

> ‘Controlled use zone is the forestland area which the state allocates for villages inside and adjacent to Conservation Forests to manage and protect forest and biodiversity sustainably and receive appropriate benefits. The area can be operated for eco-tourism, for NTFPs harvesting from natural forest, for agriculture production, for tree and NTFPs plantation as allocated by the state in order to create household economy, but felling of natural grown trees for commercial purpose is not allowed.’

**Article 71: Preservation of Conservation Forestland**

> ‘Preservation of Conservation Forestland is to demarcate Conservation Forestland into total protected zones, controlled use zones, and buffer zones, as well as formulating plans and management measures to prevent all encroachments and destructive actions and events that may adversely affect the forest ecosystem and cause damage to flora and fauna, biodiversity, cultural values, historical, natural heritage and other values in the Conservation Forestland.’

> ‘Total protected zone is the forest area with rich biodiversity, main areas of habitats and for reproduction of various aquatic and wild animal species, areas of river source, riparian forest and other areas that are significant for environmental protection. This area is prohibited to conduct any activities except for scientific researches, and walking trails for ecotourism.’

> ‘Controlled use zone is the forestland area which the state allocates for villages inside and adjacent to Conservation Forests to manage and protect forest and biodiversity sustainably and receive appropriate benefits. The area can be operated for eco-tourism, for NTFPs harvesting from natural forest, for agriculture production, for tree and NTFPs plantation as allocated by the state in order to create household economy, but felling of natural grown trees for commercial purpose is not allowed.’
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<td>‘Buffer zone means the area with or without forest, which is part of Conservation Forests area and surrounding areas which the state allocates for the village to use and to prevent the encroachment in and surrounding of Conservation Forests, ensuring prevention of negative impacts to forest ecosystem in Conservation Forests area.’</td>
<td><strong>Comment:</strong> Both Articles 70 and 71 provide recognition of villages in Controlled Use Zones and their livelihood activities.</td>
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<td><strong>Article 120: Allocation of Rights to Use Forest and Forestland of the State</strong></td>
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<td>The allocation of rights to use State forest and forestland is the decision of the district administration authority to allocate forest and forestland to village administration authorities for long term sustainable use and in peacefulness according to the village forest management plan, the forest management and preservation contracts and relevant laws.</td>
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<td><strong>Comment:</strong> This Article formalises forest user rights through legally binding contracts.</td>
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This brief has been written by Richard Hackman with editorial reviews and additions by Natalie Y. Campbell and Micah Ingalls (MRLG). This brief is based on the findings of the ‘Assessment of the new Land Law and Forest Law in Lao People’s Democratic Republic: Focusing on Customary Rights’ by MRLG and LIWG, published in 2020. This brief has been reviewed by the Advisory Group on Land in Lao PDR.

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