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RAPID ASSESSMENT OF THE POLITICAL, LEGAL AND INSTITUTIONAL SETTING

LAO PDR



Lowering Emissions in Asia's Forests (LEAF)

Cooperative Agreement Number: AID-486-A-11-00005

RAPID ASSESSMENT OF THE POLITICAL, LEGAL AND INSTITUTIONAL SETTING

LAO PDR

Submitted to
United States Agency for International Development
Regional Development Mission for Asia (RDMA), Bangkok, Thailand

Submitted by
Winrock International

Submitted on
October 31, 2011

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Acronyms

ADB	Asian Development Bank
ALOS	Advanced Land Observation Satellite
AR	Afforestation and Reforestation
ASEAN	Association of South-East Asian Nations
AWG-LCA	Ad-hoc Working Group on Long Term Cooperative Action
CDM	Clean Development Mechanism
CER	Certified Emission Reduction
DAA	District Administration Authority
DAFO	District Agriculture and Forestry Office
DFID	UK Department for International Development
DLMA	District Land Management Authority
DOF	Department of Forestry
DOFI	Department of Forest Inspection
EIA	Environmental Impact Assessment
FAO	United Nations Food and Agriculture Organization
FCPF	Forest Carbon Partnership Facility
FDI	Foreign Direct Investment
FIMP	Forest Information Management Program
FIP	Forest Investment Program
FLEGT	Forest Law Enforcement, Governance and Trade
FRA	Forest Resources Assessment
FSC	Forest Stewardship Council
FSCAP	Forestry Sector Capacity Development Program
FSIP	Forestry Strategy Implementation Program
FS 2020	Forestry Strategy 2020
G77/China	Group of 77 plus China
GOL	Government of Lao PDR
GIZ	(Deutsche) Gesellschaft für Internationale Zusammenarbeit
LFAP	Land and Forest Allocation Program
KBO	Kumban Organization
JICA	Japan International Cooperation Agency
LMRP	Land Management and Registration Project
LDC	Least Developed Country
LUC	Land Use Change
LULUCF	Land Use, Land Use Change and Forestry
(P)LUP-LA	(Participatory) Land-Use Planning and Land Allocation

MAF	Ministry of Agriculture and Forestry
MNRE	Ministry of Natural Resources and Environment
MODIS	Moderate Resolution Imaging Spectroradiometer
MRV	Monitoring Reporting and Verification
NA	National Assembly
NAMA	Nationally Appropriate Mitigation Action
NAPA	National Adaptation Program of Action
NEC	National Environment Committee
NLMA	National Land Management Authority
NTFP	Non-Timber Forest Products
PAA	Provincial Administration Authority
PAFO	Provincial Agriculture and Forestry Office
PES	Payment for Environmental Services
PLMA	Provincial Land Management Authority
REDD+	Reducing Emissions from Deforestation and Forest Degradation (and the role of the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries).
REL	Reference Emission Level
RL	Reference Level
R-PIN	Readiness Project Idea Note
R-PP	Readiness Preparation Proposal
SBSTA	Subsidiary Body on Scientific and Technical Advice
SNRMPEP	Sustainable Natural Resources Management and Productivity Enhancement Project
SUFORD	Sustainable Forestry and Rural Development Project
ToRs	Terms of Reference
UNDP	United Nations Development Program
UNFCCC	United Nations Framework Convention on Climate Change
VAA	Village Administration Authority
VCF	Vegetation Continuous Fields
VFU	Village Forest Unit
VLU	Village Land Unit
WREA	Water Resources and Environment Administration

Political, Institutional, and Legal Setting for REDD+ in Lao PDR

This report provides an assessment of the national, institutional, political and legal circumstances relevant to forest and land use in Lao PDR; and, more importantly to identify areas of opportunity for increased support from institutional donors.

The assessment provides an overview of national context, including the country's status of REDD+ readiness, involvement in multilateral REDD+ processes and other international forest sector reform initiatives, a discussion of the current forest cover and trend of deforestation, as well as Lao PDR's experience in other carbon market mechanisms. This chapter is followed by an analysis of the main drivers of deforestation and forest degradation as identified by the country and described in existing literature, as well as by an analysis of the main institutions in the country in charge of land use matters including forestry, agricultural and REDD+. The fourth chapter provides an overview of the legal framework regarding land use, including national definitions (or lack thereof) for key issues such as forest types, forest degradation and different types of land tenure arrangements. This is followed by an overview of government efforts to address drivers through policies, programs and other legal provisions.

The basis for the assessment was an initial literature review to examine the political, institutional and legal challenges for REDD+ implementation in Lao PDR. In a second step, twelve semi-structured interviews with experts in financial mechanisms, conservation and development initiatives and with a specific target audience, REDD+ practitioners and project implementers for national or jurisdictional REDD+ programs. The literature review together with these interviews helped to identify the opportunities and interventions most relevant to the provision of additional support from institutional donors.

Executive Summary

Lao PDR is comparatively well on track in the REDD+ readiness process. The country has gained access to all major funding sources and is one of the eight countries globally that is included in the Forest Investment Program of the World Bank's Strategic Climate Fund. According to Government estimates, a total of USD 150 million is needed to implement all activities under the FIP. The 2nd draft of the FIP investment plan shows how this volume would be sourced and assumes that activities to strengthen the legal and regulatory framework for REDD+ will be funded by the Government exclusively. However, as will be shown in the chapters on the assessment of institutional and legal matters, capacities in the Government are lower than necessary and support is needed to address reform and implementation needs in a timely manner.

A national REDD+ strategy is in the process of being developed and strategic REDD+ opportunities are already being spelled out in the R-PP. The Main Government priorities identified are: i) developing a regulatory framework for carbon-sensitive mining and hydropower development; (ii) incorporating the GHG value of carbon stocks into an assessment of land values; (iii) supporting forest protection by smallholders; (iv) sustainable forest management in production forests; and, (v) law enforcement with respect to logging operations.

In its R-PP, Lao PDR supports the implementation of forest carbon pilot projects that can be nested in national level strategy; and, regulation, as well as national reference levels and MRV (monitoring, reporting and verification) systems once developed. It is understood that the

Government would welcome pilot project activities and technical assistance within all above mentioned priority areas. Lao PDR's experience with carbon accounting so far is limited. Hence, significant knowledge and understanding with regard to identification and development of forest carbon projects (e.g. assessments of additionality, baselines, methodologies, and knowledge of project development cycles) will need to be developed if the country aims to access funding sources under a future REDD+ mechanism or the voluntary carbon market. Current forest cover in Lao PDR, as of 2011, is estimated at 16-18 million ha with an approximate annual deforestation rate of 0.5-0.6%.

Drivers of deforestation

- The pattern of drivers of deforestation and degradation in Lao PDR is undergoing a period of change due to a shift towards investments in extracting industries and hydropower. While historically swidden agriculture/ shifting cultivation, forest fires and harvesting by smallholders were the main forces, recent years have seen an increase in the issuance of concessions for large-scale agricultural, mining, hydropower and other infrastructure development. This shift requires a new approach to addressing forest loss than has been engaged in previous years.
- Large-scale agricultural expansion has increased dramatically in recent years, with most concessions being granted to foreign companies. Over 1,000 concession applications are now pending approval. Due to inadequate implementation of laws, incomplete or inadequate land-use planning, and an unclear definition of what is being considered as degraded forest (and hence can legally be converted under concessions), the country has experienced extensive deforestation.
- Unclear laws, weak governance and an absence of clear demarcation of production versus conversion forests on the ground often make it difficult to discern legal from illegal logging. Current extraction levels are highly unsustainable, despite reductions in the annual allowable cut.
- The current and projected impact of mining, infrastructure and hydropower projects on emission levels is unclear. Projected figures provided by the Government are relatively low, but these do not take into account secondary effects, and others have highlighted these drivers as among the most important. Many current concessions are issued in high biodiversity primary forest.

Institutional Framework

- At the time of writing, the institutional structure with respect to forestry and land-use in Lao PDR is undergoing the most significant restructuring of recent times. The new Ministry of Natural Resources and Environment (MNRE) is expected to contain some 18 departments with broad responsibilities over environmental issues, including forest protection, land management, mining and water resources. The success of the new ministry in improving the coordination and effectiveness of forest protection will be of vital importance to the implementation of REDD+ in Lao PDR.
- Institutional capacity within Lao PDR is somewhat weak, as there are a limited number of personnel in the Department of Forestry (DOF) with an adequate knowledge of REDD+ issues. This presents a challenge to effective implementation of REDD+ at the national scale and merits support for increasing capacity.
- The lack of coordination between relevant agencies at both the national and lower levels of government (both inter and intra departmental) presents a clear challenge to addressing drivers of deforestation and degradation. This appears to be one of the

central issues underlying inadequacy of land-use planning and the unsustainable issuance of land concessions, and it is likely a key factor underlying inability to control unsustainable logging.

- The Government of Lao PDR (GOL) is pursuing an active policy of decentralization, designed to empower local governments to achieve national policy goals. Further research is needed to assess what would be an optimal division of power and responsibilities between the levels.
- A Participatory Land-use Planning (PLUP) process has been published and appears to be progressing steadily. This brings Lao PDR substantially ahead of many other countries in the region in addressing land-use planning in a participatory and methodical manner.
- New REDD+ institutions have been established, though the structure has yet to be fully operationalized and harmonized with the new ministerial structure. The REDD+ Task Force though re-established in 2011 has not met since its original meeting and the REDD+ Office has not yet been established. The existence of two high-level coordinating bodies overseeing the institution of REDD+ activities is promising, though lower capacities within key institutions presents a challenge for REDD+ implementation.

Legal Framework

- All land, including forest land, in Lao PDR belongs to the State and is centrally managed by GOL. Trees planted with private labor and capital may be privately owned, though naturally growing trees may not. The government can issue temporary and long-term use rights, with the latter containing many of the incidences of ownership, including the right to sell or mortgage rights. Leases or concession may also be granted.
- A major reform of the Forestry Law and related laws is currently proposed in order to integrate REDD+, including clarification of carbon rights issues. This is currently in the early stages. The National Assembly had called for drafting to be completed by the end of 2011, though July 2012 is the earliest this can be expected.
- The Forestry Strategy 2020 provides the overarching policy framework for management and development of the forestry sector through 2020. It contains both broad policy goals and numerous specific actions to be achieved.
- The GOL has expressed its intent to pursue the “nested approach” to REDD+, in which project level activities are integrated within a national and sub-national framework.
- A moratorium on the issuance of large-scale concessions is in place, and a major reform of the regime governing their issuance is currently underway. The Policy on Land and Natural Resources has recently been published, and a Law on the Management of Land and Natural Resources, and a spatially-explicit Land Master Plan are expected to be developed in the near future.
- The land allocation process was the government’s top priority for land-use in the 1990s and 2000s. This process was subject to extensive criticism, and has recently been reformed. Implementation of the new PLUP-LA (Participatory Land-use Planning - Land Allocation) process is underway.

Opportunities for policy assistance

In Lao PDR ambitious reforms are under way in the forest and land-use sector, including reforms at the institutional level through the creation of a new Ministry of Natural Resources and Environment as well as an overall reform of the forestry law to improve forest and land

management and include REDD+. Much of this has been stimulated over the past couple of years by various internationally-supported initiatives, e.g. through engagement with the FCPF and the World Bank in preparation of implementing the FIP. While high level of support is being noticed within the GOL for these reforms, there is limited capacity within the government to develop and implement corresponding work plans. Donors in the country are aware of this and are striving towards improved donor coordination to assure efforts are complementarity. Hence, finding the right niche for subject matter experts to complement existing expertise and initiatives in the country is crucial.

Implementation of the FIP and related leveraged investments is going to be a major focus for the Government in the coming years. The investment plan shows that the work needed to develop and strengthen the legal, incentive and governance framework for REDD+ is to be mainly funded by the GOL. On the basis of the foregoing analysis, the following areas have been identified as presenting potential opportunities for assistance by outside experts.

1. Work with GOL and other donor projects to successfully integrate forest carbon rights and other key REDD+ issues into the current revision of the Forestry Law. This could also be expanded to include PES systems in general and would address the underlying requirement to recognize the management and protection functions of communities and design an appropriate payment structure for service provision.
2. In coordination with other donor projects, assist GOL in developing policy to accommodate REDD+ pilot projects under a “nested approach”, in which project level activities are integrated within national and sub-national reference levels. This could include piloting a regulatory and carbon accounting structure at sub-national level, on the basis of which lessons could be learnt for national level implementation.
3. Assist GOL to improve its ability to distinguish legal and illegal logging to allow improved enforcement of the allowable cut and enhance the regulatory framework for sustainable forest management.
4. Assist GOL to refine its definition for degradation and implementation thereof at local level to avoid issuance of concessions on non-degraded forests or forests with good potential for natural regeneration. Such definition would need to be consistent with monitoring requirements of a potential REDD+ scheme.
5. Assist GOL in revising its processes for granting concessions. This may include adopting social and environmental criteria and requiring consent from landowners/users before concessions are granted. This work could be integrated into the ongoing process to develop a policy on land and natural resources.

1. National Context

Key Findings

- Lao PDR is comparatively well on track in the REDD+ readiness process. The country has gained access to all major funding sources and is one of the eight countries globally that is included in the Forest Investment Program of the World Bank's Strategic Climate Fund.
- According to Government estimates, a total of USD 150 million is needed to implement all activities under the FIP. The 2nd draft of the FIP investment plan shows how this volume would be sourced and assumes that activities to strengthen the legal and regulatory framework for REDD+ to be funded by the Government own means exclusively. However, as will be shown in the chapters on the assessment of institutional and legal matters, capacities in the Government are low and support much needed to address reform and implementation needs in a timely manner.
- A national REDD+ strategy is in the process of being developed and strategic REDD+ opportunities are already being spelled out in the R-PP. Main Government priorities identified are: i) Developing a regulatory framework for carbon-sensitive mining and hydropower development; (ii) incorporating GHG value of carbon stocks into assessment of land values; (iii) supporting forest protection by smallholders (iv) sustainable forest management in production forests; and (v) law enforcement with respect to logging operations.
- In its R-PP, the country supports implementation of forest carbon pilot projects that can be nested in national level strategy, regulation, as well as national reference levels and MRV systems once developed. It is understood that the Government would welcome pilot project activities and technical assistance within all above mentioned priority areas.
- Lao PDR's experience with carbon accounting so far is limited. Hence, significant knowledge and understanding with regard to identification and development of forest carbon projects (e.g. assessment of additionality, baselines, methodologies, and knowledge of project development cycles) will need to be developed if the country aims to access funding sources under a future REDD+ mechanism or the voluntary carbon market.
- Current forest cover as of 2011 is estimated at 16-18 million ha with an approximate annual deforestation rate of 0.5-0.6%%.

1.1 Engagement with REDD+ and other forest sector cooperation

Lao PDR has a long history of donor supported cooperation in the forest and land-use sector. While engagement in multilateral REDD+ processes is relatively recent, Lao PDR has become comparatively active in several of them, and is currently either considering or negotiating its participation in others. The Government has stated it supports a hybrid approach to funding REDD+ readiness arrangements and forest sector reform measures, including public as well as private sources, and bilateral as well as multilateral sources.¹ The coordination of REDD+ activities under the respective processes shall be undertaken by the newly established REDD+

¹ GOL, Readiness Preparation Proposal (R-PP), Submitted to FCPF on 11 October 2010 [*hereinafter* Lao PDR R-PP], at 54.

Office, which yet to become fully operational.² According to Government estimates, USD 150 million is needed to implement the Forest Investment Plan and has requested a total of USD 3.4 million for REDD+ readiness support. Both funding requests are being addressed by the initiatives described below.

Forest Carbon Partnership Facility (FCPF)

Lao PDR is a REDD+ partner country under the FCPF. It submitted its R-PIN in June 2008 and its R-PP in October 2010. The latter was reviewed in November 2010 and a revised version was submitted in February 2011. Most of the USD 200,000 FCPF formulation grant requested by the government has now been dispersed.³

Largely as a result of its involvement in the FCPF process, Lao PDR is developing an extensive REDD+ institutional structure. This includes new high-level bodies for cross-sectoral coordination between ministries and other government departments, and is in the process of making necessary decisions considered key to implementation of the REDD+ Strategy.⁴ This new arrangements will be tested in the coming years and revised toward the end of the readiness phase.⁵ This new architecture is outlined in Section 4.3.3, below. The GOL in its R-PP stated its intention to develop a special **“REDD+ Regulation”** during R-PP implementation, including clarifying ownership of carbon rights, benefit sharing and financial distribution mechanisms, and processes and eligibility for participation in REDD+ activities.⁶ It is now expected that these issues will be provided through a revision of the forestry law, which would open up several opportunities for collaboration with outside experts (see chapter 4.5).

Lao PDR has requested USD 3.4 million from the FCPF for **readiness implementation**⁷. The organization has committed to finance the full amount of USD 3.4 million for undertaking priority readiness activities. These include setting up the new REDD+ Office, building the capacity of government staff on MRV, exploring REDD+ benefit sharing mechanisms, and preparing the social and environmental impact assessment.⁸

Forest Investment Program (FIP)

Lao PDR is one of eight pilot countries under the FIP, a program under the World Bank's Strategic Climate Fund to provide scaled-up financing to developing countries for readiness reforms and public and private investments. The reforms and investments are identified through national REDD+ readiness or equivalent strategies. The first scoping mission took place in January 2011, and a preparation grant of USD 228,000 was approved by the Multilateral Development Bank Committee on Jan 20, 2011.⁹ Its terms of reference were adopted in May 2011, and the first joint mission took place in June 2011. A stakeholder consultation workshop, with broad participation from government, donors and NGOs, took place on 9 September 2011,¹⁰ and the 2nd draft of the FIP Investment Plan was released on 19 September 2011.¹¹

² GOL (DOF), —“Forest Investment Program: Lao Investment Plan” Master Draft: 19 September 2011, Vientiane [*hereinafter* Lao PDR FIP Investment Plan], summary.

³ FCPF, —“REDD+ Readiness Progress Fact Sheet, Lao PDR”, February 2011.

⁴ Lao PDR R-PP, at 53.

⁵ *Ibid*, at 53.

⁶ *Ibid*, at 53.

⁷ *Ibid*, at 88.

⁸ Lao PDR Forest Investment Program (FIP), First Joint Mission, Terms of Reference for the Preparation of the FIP Investment Plan, June 6-10, 2011 [*hereinafter* FIP ToRs], para 7.

⁹ FIP ToRs, paras 6-8.

¹⁰ See <http://www.vientianemai.net/teen/khao/1/4372> (in Lao).

The DOF acts as the focal point for FIP activities. According to Lao PDR's FIP Investment Plan, the country will receive a total of USD 30 million from the program. As shown in Table 1 below, the FIP Investment Plan also expects to leverage upwards of USD 128 million in co-financing from other donor institutions. The combined figure would already exceed the announced funding need of USD 150 million. However, leveraged funding stated in the table mainly includes investments from ongoing projects/programs. It is not clear yet, to what degree these funds could be considered a source for scaling up activities beyond project outreach. Table 1 also shows that activities to strengthen the legal and regulatory framework for REDD+ are expected to be funded by the GOL exclusively. However, as will be shown in the subsequent chapters on the assessment of institutional and legal matters, capacities in the Government are lower than necessary and support is greatly needed to address reform and implementation needs in a timely manner. Policy assistance from outside experts could be helpful in these areas and several of these areas are highlighted in the concluding chapter.

Table 1: Estimate of expected financing of the FIP Lao Investment Plan in million USD (Source: Lao PDR FIP Investment Plan)

Project & Component	MDB/ Source	FIP Grant	Leverage Funding	
			Amount	Type
1. Scaling up PSFM –PFA/WPFA > PSFM-PFA, managed PFAs + up-scaling > PSFM-CFA > Village land and forest management > Smallholder forestry and village development > Strengthening the legal, governance, incentives, and REDD+ framework	WB-IDA	13.33	5.11 + 15 (TBD)	Grant
	MFAF		4.01 + 6.3	Grant
	WB-IDA/GEF		12 + 7.4	Grant
	MFAF		4.2	Grant
	MFAF		4.2	Grant
	MFAF GOL		3.5 0.9	Grant In kind
2. Protecting Forests for Sustainable Ecosystem Services > Piloting PSFM-CFA > Piloting village and smallholder forestry > Strengthening the legal, governance, incentives, and REDD+ framework	ADB	13.344	40.05	Grant
	GIZ		2.81+ TBD	Grant
	KfW		12.01+ TBD	Grant
	GOL		0.9	In kind
3. Smallholders and Private Enterprise Partnership Project > ITP development > Smallholder woodlot > Strengthening the legal, governance, incentives, and REDD+ framework	MDB	3.334	TBD	Grant/Loan
	Private enterprises		9.6	Private investment
	GOL		0.4	In kind
	Villagers		TBD	In kind (labor)
TOTAL		30.0	128.41 + TBD	

REDD+ Partnership

Lao PDR is a member of the REDD+ Partnership, however, the country is not actively engaged in negotiations .

Forest Law Enforcement, Governance and Trade (FLEGT) Program

¹¹ Lao PDR FIP Investment Plan.

Lao PDR is currently in the pre-Voluntary Partnership Agreement (VPA) negotiation phase of the EU's FLEGT program, which aims to provide for the full licensing of timber exports by building the required governance and monitoring frameworks and instituting a strict licensing system. The GOL expects to begin negotiations of its VPA by end 2012. It is expected that FLEGT activities will fall under the authority of the National Steering Committee.¹² A baseline study for the FLEGT program was recently carried out by the European Forest Institute.¹³

Environmental Protection Fund

From 2006-2010, the Environment Protection Fund (EPF) of the Ministry of Natural Resources and Environment in Lao PDR, has been supporting the implementation of Provincial Protected Area (PPA) management plans. EPF has granted funding for six PPA management projects in the central part of the country (Bolikhamxay, Phammuan and Savannakhet provinces). Up to now, these projects have created PPA management plans¹⁴. However, due to the lack of budget within EPF, it is expected that the provinces will not be able to continue their workplan from 2012-2015.

1.2 State of REDD+ Readiness

REDD+ readiness, as outlined in the Cancun Agreements,¹⁵ is still at a relatively early stage in Lao PDR. The capacity levels in the country are quite low, though several donor-funded projects in the past decades have invested substantially in building up capacity in forestry and land-use-related matters. Participation in the FCPF, completion of the R-PP, and the expected full funding of readiness requirements as identified in the R-PP, show that the REDD+ readiness process is firmly underway, with some important elements already in place and others defined and planned under a clear timetable. The following outlines the current status of progress towards the discrete elements of the Cancun Agreements.

National REDD+ strategy

The GOL intends to develop a detailed national strategy for REDD+ during readiness implementation. It aims to address the various drivers outlined below and put in place the institutional, regulatory, as well as financial instruments necessary to achieve this.¹⁶ The REDD+ Office will be responsible for finalizing the strategy, with guidance from the REDD+ Task Force and subject to the approval by the National Environment Committee (NEC).¹⁷ A progress report in February 2011 indicated that there had been no progress on developing the strategy,¹⁸ though the FIP joint mission in June 2011 referred to a "proposed strategy".¹⁹ Despite these indications, as of September 2011 the national strategy development is still clearly working through a slow process.

¹² Lao PDR Delegation, Sub-Regional Training Workshop on Timber Legality Assurance 24-26 Nov, 2010 Hanoi, Vietnam, available at http://www.euflegt.efi.int/files/attachments/euflegt/workgroup_lao.pdf.

¹³ Keith Barney and Kerstin Canby, "Baseline Study 2: Lao PDR: Overview of Forest Governance, Markets and Trade", Forest Trends for FLEGT Asia Regional Programme, July 2011, available at http://www.forest-trends.org/documents/files/doc_2920.pdf [hereinafter Barney and Canby (2011)].

¹⁴ www.laoepf.org.la

¹⁵ UNFCCC, Decision 1/CMP.6, para 71.

¹⁶ Lao PDR R-PP, at 37.

¹⁷ Ibid.

¹⁸ FCPF, REDD Readiness Progress Fact Sheet: Lao PDR February, 2011.

¹⁹ FIP ToRs, para 7.

REDD+ strategy options identified in Lao PDR's R-PP focus, *inter alia*, on:²⁰

- Developing a regulatory framework for **carbon-sensitive mining and hydropower development**, by incorporating carbon stock assessments into planning processes and enforcing the implementation of obligatory Biomass Removal Plans, which are designed to minimize emissions during biomass clearance.
- Improving land-use planning and **incorporating carbon stocks into an assessment of land values**. This will build upon developments made under donor projects, including GIZ's Land Management and Registration Project (LMRP) and ADB's Sustainable Natural Resources Management and Productivity Enhancement project (SRNMPEP), and will focus on district-level planning.
- Promoting **forest protection by smallholders** through the PLUP process and assessing the scope for community-based forest protection. This process builds upon current pilot projects and will include assessing baselines and carbon stocks, planning carbon emission avoidance and developing benefit sharing arrangements at village level.
- Expanding **Sustainable Forest Management in Production Forests**, building on the Sustainable Forest and Rural Development (SUFORD) project, and in line with the recently issued harvesting codes of practice.
- Improving **enforcement of logging laws** to reduce illegal logging, in line with the Department of Forest Inspection (DOFI)'s five-year plan (*inter alia* through establishing logging units, restricting logging activities in these units, and registering equipment with these units)
- Analyzing and monitoring wood consumption.
- Increased surveillance of forest areas.
- Introducing **agroforestry** to communities in order to diversify farming from shifting cultivation. This is to be done through a system similar to the *Community Based Rural Development Project* which, *inter alia*, provided occupational training, developed sustainable farming systems, provided better village social and health facilities, and strengthened capacities of village institutions.
- Development of improved livelihood systems as an alternative to shifting cultivation.
- Carbon sequestration through **forest regeneration and reforestation**, building on current work funded by the GOL's Forest Development Fund, and various donor projects.

During the readiness phase the above activities will be implemented at both pilot and demonstration scale, focusing on high priority locations.²¹

National forest reference (emission) level

As part of its R-PP, Lao PDR states that it has developed an emission reference scenario, including a Reference Emission Level (REL).²² However, this information could not be confirmed during the site visit, instead it has been reiterated that DOF is awaiting issuance of

²⁰ Lao PDR R-PP, at 37-49.

²¹ Lao PDR R-PP, at 49-50.

²² Ibid, at 63-68.

guidance for REL/RL development by the UNFCCC's SBSTA (Subsidiary Body on Scientific and Technical Advice).²³

The JICA-supported Program for Forest Information Management (FIMP) will prepare a nationwide forest base-map for 2010 using ALOS (Advanced Land Observation Satellite), SPOT-5 and Rapideye imagery. It is not clear yet whether this will lead to the development of a forest cover change assessment which could be used to establish a forest reference scenario. Extensive aerial mapping has also started²⁴ and negotiations with Japan have started for the provision of an integrated, multi-purpose, GIS-based information system for forests.²⁵

National monitoring and reporting system

Lao PDR supports the “nested approach” that involves starting with sub-national activities that are integrated into a national accounting framework. It favors project-related REDD+ activities as well as national level strategies, programs and action plans. It intends to establish a sub-national and project-level monitoring system but it is not currently clear how this will fit in with the national system.²⁶ It is being stated that the nested approach will include the development of a carbon registry. Implementation is currently at an early stage, though various needs and actions have been identified.²⁷ Projects under the DOF are currently seeking validation under the Verified Carbon Standard (VCS).²⁸ There is also some interest in the VCS's new standard for “jurisdictional and nested REDD” that is currently under development and is expected to be released in 2012.

Forest cover in Lao PDR has been assessed in 1982, 1992 and 2002, and a National Forest Inventory was carried out in the 1990s. SUFORD funded a study for a new forest cover assessment in 2009, but that the project did not have the funds to implement the inventory. The country currently uses primarily Tier 1 IPCC methodologies, but is already using some Tier 2 methodologies, and has proposed a priority study to develop country-specific emission factors, with the intention of progressing to Tier 3 methodologies in the next 3-5 years.²⁹ It is currently in the process of preparing the 2nd National Communication on Climate Change to the UNFCCC, which is expected in early 2012.³⁰ Some training has been provided for accounting and reporting on LULUCF (Land Use, Land Use Change and Forestry), but the GOL considers this insufficient to meet its needs.³¹

The information base for conducting **Carbon Stock Change Assessments** is much better in production forests than in other categories, though DOF intends to carry these out in protection and conservation forests in the near future. There is, however, a lack of capacity and experience with carbon monitoring and other related skills necessary for such assessments.³² In addition, many pilot studies have been carried out focusing on methodologies for monitoring

²³ Personal communication during visit in Vientiane, Sep 8.

²⁴ Lao PDR R-PP, at 71.

²⁵ Ibid, at 73.

²⁶ Ibid, at 76.

²⁷ Ibid, at 76.

²⁸ Vinh Phengdouang, “Lao PDR REDD+ status and national circumstances”, Presentation at workshop ‘Road to REDDiness – Making RELs Work’, Bangkok 23-25 August 2011, Slide 29.

²⁹ Lao PDR R-PP, at 69-70.

³⁰ Ibid, at 70.

³¹ Ibid, at 70.

³² Ibid, at 74-75.

deforestation and forest degradation using remote sensing technology, and more may be planned.³³

Though reporting practices are currently lacking, the Government has proposed to conduct training for forestry staff in reporting in line with UNFCCC, FAO, FCPF and other requirements.³⁴ Verification standards for REDD+ are currently lacking, and it is proposed that national standards and guidelines for verification be developed to address this. This will involve encouraging the private sector to offer independent verification and certification services.³⁵

Implementation and monitoring of safeguards

Lao PDR intends to combine the draft framework for core governance parameters for REDD+ developed by the May 2010 Chatham House workshop on monitoring and assessing governance for REDD+, organized by the UN REDD Program and DFID in order to implement the safeguards agreed in Copenhagen and adopted in Cancun.³⁶ GIZ has been commissioned by GOL to develop national guidelines on Free, Prior and Informed Consent (FPIC). The guidelines are currently in the final testing phase and it is expected that they will become compulsory for project developers and others implementing REDD+ activities, upon final adoption.

Different options are under consideration for monitoring and reporting of safeguards. It is expected that this will be based on the social and environmental safeguards for jurisdiction wide REDD+ established by CCBA (Climate Community and Biodiversity Alliance) and CARE (REDD+ SES). The current suggested procedure involves the REDD+ Office carrying out the assessment in close consultation with stakeholders, making its report publicly available as well as inviting comment, responding to comments, submitting national reports, and eventually bringing in third party verification.³⁷

1.3 Other UNFCCC engagement

Lao PDR is a party to the UNFCCC and the Kyoto Protocol. It is affiliated with the G77/China, and is also classified as a Least Developed Country (LDC). Lao PDR's contribution to the REDD+ negotiations has come through two joint submissions submitted in 2008 and 2010 respectively on behalf of ASEAN countries (of which Lao PDR is a member). The submissions supported the use of both market and fund-based finance for REDD+ (with flexibility for developing countries to choose which sources to receive based on circumstances and priorities), a flexible scope (to include forest management and enhancement of forest carbon stocks), a phased approach, including providing flexibility with respect to national accounting and sub-national implementation, and the ability for countries to set reference levels based on national circumstances and not just historic emissions.³⁸

³³ Ibid, at 76.

³⁴ Ibid, at 78.

³⁵ Ibid, at 78.

³⁶ Ibid, at 80-81.

³⁷ Ibid, at 81-82.

³⁸ —ASEAN Common Position Paper On Reducing Emission from Deforestation and Forest Degradation (REDD) in Developing Countries”, included in UNFCCC, AWG-LCA, Fourth Session, Poznan, 1-10 December 2008, —~~leda~~ and proposals on the elements contained in paragraph 1 of the Bali Action Plan Submissions from Parties: Addendum, Part II”, FCCC/AWGLCA/2008/MISC.5/Add.2 (Part II); —ASEAN Common Position Paper On Reducing Emission from Deforestation and Forest Degradation (REDD+) in Developing Countries”, Concluded at ASOF High Level Executive Seminar on ASEAN Common Position for UNFCCC COP 16, 20 November 2010, Bogor, Indonesia.

Lao PDR completed its first GHG inventory as part of its first national communication to the UNFCCC in 2000. The inventory covered emissions from the LULUCF sector, as well as those from energy, waste and agriculture. The inventory concluded that the LULUCF sector was the largest emitter of CO₂ in the country accounting for 72% of emissions.

As noted below, Lao PDR has limited participation so far in the CDM. It has also yet to submit any proposed Nationally Appropriate Mitigation Actions (NAMAs); although it has submitted a National Adaptation Program of Action (NAPA) under the UNFCCC.³⁹ The NAPA identifies forestry as one of four urgent priority needs for adaptation, and identifies several key priorities within the sector, including (i) the eradication of slash and burn; (ii) public awareness campaigns; (iii) controlling forest fires through bush fire barriers and strengthening capacities of forest fire management teams; (iv) promoting seed production and nurseries; and (v) strengthening implementation of laws.⁴⁰ The priorities for the forestry sector are the shifting cultivation eradication program (aiming to switch to “appropriate” land-use systems) and strengthening capacities of village forest volunteers in planting, caring and management techniques.

Carbon market experience

Lao PDR has 7 projects in the CDM pipeline, one of which is registered.⁴¹ There is one AR (afforestation/reforestation) project at the validation stage, developing a rubber-based agro-forestry system for sustainable development and poverty reduction in Pakkading, Bolikhamsay Province.⁴² At the time of writing, Lao PDR has no projects under the Verified Carbon Standard or the American Carbon Registry.

1.4 Forest cover, deforestation and forest degradation trends

Lao PDR has the largest forest cover among the Mekong countries; however, data on forest cover is difficult to obtain. The FAO did not receive a report from Lao PDR for the 2010 Forest Resource Assessment (FRA). Therefore, the FRA 2010 is the result of a desk study prepared by the FRA secretariat in Rome, which summarized available information. Lao’s National Forest Inventory started in 1991 and provided province-level area statistics derived from satellite images of different provinces in different years spanning 1986-1994. The type of satellite image used for the inventory is not specified. The most recent data on forest cover is from Lao’s Forest Cover Assessment in 2002, presented by the country at the National Correspondent meeting in Bangkok in November 2004.

The breakdown of information was into broad FAO land cover classes (forest, other wooded lands, etc.) and did not subdivide the forest land into national land-use classes as was done for the National Forest Inventory (natural high forest, dry dipterocarp forest, and potential forest). Notably, forests in the 2002 assessment are not broken down into national land-use classes, and forest as defined under FRA includes “potential forest” areas, which are not included in national statistics.

³⁹ GOL, “National Adaptation Program of Action to Climate Change”, April 2009.

⁴⁰ Ibid.

⁴¹ Project 0930 : Energy Efficiency Improvement Project At A Beer Brewery In Lao PDR.

⁴² Source: UNEP Risoe CDM/JI Pipeline Analysis and Database, August 1st 2011.

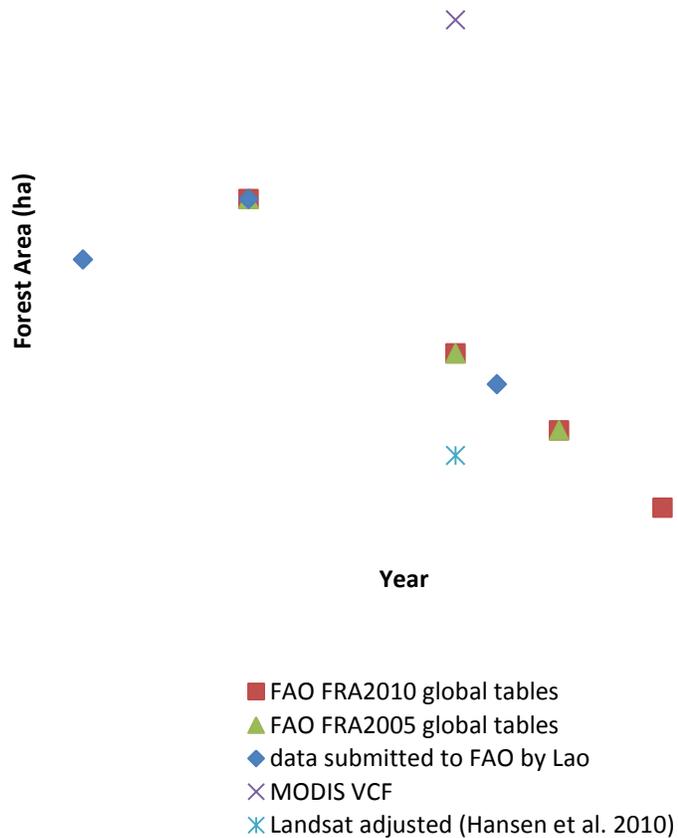


Figure 1: Trends in forest area over time in Lao PDR according to multiple data sources

Table 2 shows that global datasets (MODIS VCF and Hansen et al. 2010) differ from FAO assessments, with MODIS VCF data estimating larger forest extent (app. 18.6 million ha) and Landsat adjusted data estimating less forest extent (app. 16.2 million ha) as of the year 2000 in Lao PDR. It should be noted that the FAO estimates of forest cover for the years 2000, 2005 and 2010 are estimates only and are not actual data points.

Table2: Forest area change estimates in Lao PDR for different time periods according to different data sources. FAO estimates represent net loss while MODIS VCF and Hansen et al. estimates represent gross loss.

Time Period	Forest Area Change							
	<i>ha yr⁻¹</i>				<i>% yr⁻¹</i>			
	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)
1990-2000	-78,000	-78,000			-0.46	-0.50		
2000-2005	-78,000	-78,000	-44,129	-85,173	-0.48	-0.50	-0.24	-0.47
2005-2010	-78,000				-0.49			

The rate of deforestation in Lao PDR according to several different data sources is approximately 80,000 ha yr⁻¹, or 0.5 % yr⁻¹.

2. Drivers of Deforestation

Key Findings

- The pattern of drivers of deforestation and degradation in Lao PDR is undergoing a period of change due to a shift towards investments in extracting industries and hydropower. While historically swidden agriculture/ shifting cultivation, forest fires and harvesting by smallholders were the main forces, recent years have seen an increase in the issuance of concessions for large-scale agricultural, mining, hydropower and other infrastructure development. This shift requires a new approach to addressing forest loss.
- Large-scale agricultural expansion has increased dramatically in recent years, with most concessions being granted to foreign companies. Over 1,000 concession applications are now pending approval. Due to inadequate implementation of laws, incomplete or inadequate land-use planning, and an unclear definition of what is being considered as degraded forest (and hence can legally be converted under concessions), the country has experienced extensive deforestation.
- Unclear laws, weak governance and an absence of clear demarcation of production versus conversion forest on the ground often make it difficult to discern legal from illegal logging. Current extraction levels are highly unsustainable, despite reductions in the annual allowable cut.
- The current and projected impact of mining, infrastructure and hydropower projects on emission levels is unclear. Projected figures provided by the Government are relatively low, but these do not take into account secondary effects, and others have highlighted these drivers as among the most important. Many current concessions are issued in high biodiversity primary forest.
- Drivers of deforestation and forest degradation in Lao PDR are multi-faceted. The most commonly cited sources are shifting cultivation, unsustainable logging practices, agricultural expansion, forest fires, mining and infrastructure development. Sources often differ as to their relative impacts and importance. Even so, a number of notable trends

are evident, often reflecting Lao PDR's growing and increasingly open and market-based economy.

Shifting cultivation

Shifting (or ~~swidden~~) cultivation is often cited as a primary cause of degradation and, in some cases, deforestation. In 2005 GOL identified shifting cultivation as the joint largest cause of forest degradation, particularly in the north of the country.⁴³ An important distinction is made between ~~pioneering~~ shifting cultivation, where virgin land is cleared for cultivation, and rotational cultivation, where secondary forest that has regenerated after a fallow period is cleared. Rotational cultivation has been practiced sustainably for many years in Lao PDR, and is considered to have been historically the most suitable farming practice in the country's mountainous areas.⁴⁴ However, population pressure⁴⁵ and the effects of the Land and Forest Allocation Program (LFAP)⁴⁶ have in recent decades led to a scarcity of land available for swidden farming, and consequently to increasing encroachment on virgin forests and land degradation due to the shortening of fallow periods.

A recent study has suggested that the damaging effects of shifting cultivation have been overstated due to a tendency to study such systems in the locations where they are most damaging.⁴⁷ Moreover, recent reports suggest that its impacts have been gradually declining for the past two decades,⁴⁸ and the GOL reported that areas under shifting cultivation decreased from 249,000 ha in 1990 to 29,400 ha in 2005.⁴⁹ Nonetheless, in the R-PP it was stated that 57,300 ha will be affected annually from 2012-2015, resulting in some 10 mtCO₂eq of emission annually.⁵⁰ However, less land available for shifting cultivation may have the adverse effect of shortening fallow periods, particularly where alternative systems are not suitable or accepted by local communities, thus leading to land degradation and associated emissions.

Agricultural expansion

Both industrial-scale agricultural concessions and smallholder expansion have been identified as significant drivers of deforestation in Lao PDR. Together, they are estimated to result in some 15% of Lao PDR's annual GHG emissions from land-use change from 2012-2015, with industrial expansion counting for over two-thirds of this figure. Concessions granted to outside investors have also been identified as the biggest threat to communal land management systems in Lao PDR.⁵¹ The recent influx of foreign direct investment (FDI)⁵² into the agricultural

⁴³ GOL, "Forestry Strategy to the Year 2020 of the Lao PDR", Endorsed by PM Decree 229/2005 [*hereinafter* FS 2020], at 13.

⁴⁴ Gopal B. Thapa, "Issues in the Conservation and Management of Forests in Lao PDR: the Case of Sangthong District", 19 *Singapore Journal of Tropical Geography* 71 (1998), at 72 [*hereinafter* Thapa (1998)].

⁴⁵ Thapa (1998), at 72.

⁴⁶ Yayoi Fujita and Kaisone Phengsopha, "The Gap between Policy and Practice in Lao PDR", in Carol J. Pierce Colfer, Ganga Ram Dahal and Doris Capistrano, *Lessons from Forest Decentralization: Money, Justice and the Quest for Good* (2008) [*hereinafter* Fujita and Phengsopha (2008)], at 119.

⁴⁷ William G. Robichaud et al., "Stable Forest Cover under Increasing Populations of Swidden Cultivators in Central Lao PDR: the Roles of Intrinsic Culture and Extrinsic Wildlife Trade", 14(1) *Ecology and Society* 33 (2009) [*hereinafter* Robichaud et al. (2009)], at 2.

⁴⁸ Lao PDR R-PP, at 31.

⁴⁹ FS 2020, at 39.

⁵⁰ Lao PDR R-PP, at 33.

⁵¹ Katrin Seidel et al., "Study on Communal Land Registration in Lao PDR", Land Policy Study No. 6 under LLTP II, February 2007 [*hereinafter* Seidel et al. (2007)], at 21-22.

⁵² FDI in agriculture increased by some 2,500% from 2001-2006 (Figures from Committee for Planning and Investment, 2007).

sector has led to large tracts of forest being converted for agricultural purposes under concessions to foreign companies, notably rubber and timber plantations.⁵³ At the same time, population increase and consequent land scarcity has led to smallholders converting forests to cropland, paddy fields or pasture land.⁵⁴ At present 1,000 concession applications are pending approval.⁵⁵

A common factor underlying both industrial-scale agricultural concessions and smallholder expansion is the inappropriate classification of forest as “degraded”, and thus suitable for conversion to agriculture. The Forestry Law 2007 allows specified government bodies to authorize large scale conversion of degraded forest.⁵⁶ Yet an unclear definition of “degraded” forest, the use of inadequate maps, and lack of local participation and verification of the land’s actual status has frequently led to the conversion of forests which are not in fact degraded.⁵⁷ There are reports of companies acquiring agricultural concessions with the intention of merely logging the forest and selling the land rights.⁵⁸ With respect to the latter, it is worth noting that under the Forestry Law, timber removed from forests under concessions for conversion to non-forest uses is officially the property of the State,⁵⁹ indicating that this practice is a result of inadequate enforcement of legal provisions.

Further causes underlying conversion of forest land to agriculture are weak enforcement of laws, regulations and concession agreements by local authorities (often due to capacity issues), inadequate demarcation of boundaries, inappropriate or absent implementation of land-use planning, and abuse of power by authorities.⁶⁰

Forest fires

Forest fires were identified by the GOL in 2005 as the largest cause of deforestation in the country, along with shifting cultivation.⁶¹ Fires are regularly used by farmers to clear land for cultivation, and the escape of fires into unintended areas has been known to cause significant damage.⁶² However, figures were not available to reflect the stated significance of forest fires as most importance driver.

Unsustainable and illegal logging

Weak governance systems and extensive loopholes and ambiguities in the legal logging industry often make it difficult to discern legal from illegal activities in Lao PDR.⁶³ Despite forest

⁵³ Lao PDR R-PP, at 32. See also Unna Chokkalingam, —Design Options for a Forest Carbon Legal Framework for Lao PDR: Drawing lessons from Across the Globe”, CLIPAD (2010) [*hereinafter* Chokkalingam (2009)], at 32.

⁵⁴ FS 2020, at 46.

⁵⁵ Chokkalingam (2009), at 32.

⁵⁶ Forestry Law 2007, Article 72.

⁵⁷ Lao PDR R-PP, at 32. See also Chokkalingam (2009), at 27.

⁵⁸ Keith Barney and Kerstin Canby, —Baseline Study 2: Lao PDR: Overview of Forest Governance, Markets and Trade”, Forest Trends for FLEGT Asia Regional Programme, July 2011, at 7, available at: http://www.forest-trends.org/documents/files/doc_2920.pdf, .

⁵⁹ Forestry Law 2007, Article 71.

⁶⁰ Lao PDR R-PP, at 32.

⁶¹ FS 2020, at 13.

⁶² Chokkalingam (2009), at 81.

⁶³ Forest Trends, —Timber markets and trade between Lao PDR and Vietnam: a commodity chain analysis of Vietnamese timber flows” (2010), available at http://www.forest-trends.org/documents/files/doc_2365.pdf [*hereinafter* Forest Trends (2010)], at 3. Extensive loopholes include numerous clauses qualifying restrictions with —unless authorized by government” or —in special cases beneficial to the national community”, which allow for selective interpretation. See Barney and Canby (2011), at 9-10.

management systems being in place, the GOL reported in 2005 that most Production Forests were not under systematic management,⁶⁴ and in those that were, management plans were often not implemented. Government authorities frequently grant logging plans not compatible with available resources, quotas are regularly exceeded, and local authorities have a history of granting concessions in exchange for infrastructure projects.⁶⁵ In addition a lack of clear demarcation of forest boundaries often makes it unclear where extraction rights end.

Though the precise scale of illegal logging is difficult to discern, the GOL estimates that 8 million m³ of the 18 million m³ forest stocks lost every year are unaccounted for,⁶⁶ though EIA/Telepak have put the illegal logging figure much lower, at 600,000 m³ annually.⁶⁷ Others have described “rampant” illegal logging activities.⁶⁸ Agents involved include domestic and foreign businesspeople, the military, local residents, and government officials,⁶⁹ with the primary markets for timber being Vietnam and Thailand.⁷⁰ Vietnamese firms are reported to play an important role in the logging, timber processing and wood export sectors.⁷¹ The regions most affected are the central and southern regions and areas near the country’s borders.⁷²

The substantial reduction of the logging quota since 2001 does not appear to have had much effect, but rather resulted in an increase in illegal activities.⁷³ This appears partially related to significant demand arising from logging bans in neighboring countries such as Thailand,⁷⁴ as well as over-capacity in domestic wood processing.⁷⁵ Further underlying factors that have been identified include; (i) inadequate resources for effective preparation and monitoring of management plans; (ii) inadequate regulations; (iii) weak law enforcement; (iv) corruption; (v) inadequate governance capacities at the local level due to lack of sufficient budget allocation, insufficient availability of information and appropriate technologies *inter alia*;⁷⁶ (vi) and insufficient benefit sharing, participation in decision-making and awareness of forest legislation at the local level.⁷⁷

Mining, hydropower generation and infrastructure

Estimated average annual CO₂e emissions from mining, hydropower and infrastructure development from 2012-2020 are expected to be 0.7, 1.8 and 0.02 million tons per year, respectively, or 5.4% of total emissions from the land-use change sector.⁷⁸ However, these figures are reported not to take into account secondary effects of such projects, such as encroachment from worker settlements, immigration along the roads that will be built as well as the agreed depth of the logging belt along the roads.⁷⁹ Other sources have identified mining,

⁶⁴ FS 2020, at 16.

⁶⁵ *Ibid*, at 14.

⁶⁶ Lao PDR R-PP, at 44.

⁶⁷ Environmental Investigation Agency and Telepak, —“Borderlines: Vietnam’s Booming Furniture Industry and Timber Smuggling in the Mekong Region”, March 2008, at 5.

⁶⁸ William D. Sunderlin, —“Poverty alleviation through community forestry in Cambodia, Lao PDR, and Vietnam: An assessment of the potential”, 8 *Forest Policy and Economics* (2006) 386, at 391.

⁶⁹ Lao PDR R-PP, at 31.

⁷⁰ Barney and Canby (2011), at 7.

⁷¹ *Ibid*, at 7.

⁷² Lao PDR R-PP, at 31.

⁷³ Lao PDR R-PP, at 30.

⁷⁴ Thapa, at 72.

⁷⁵ FS 2020, at 14.

⁷⁶ Lao PDR R-PP, at 31.

⁷⁷ Forest Trends (2011), at 3.

⁷⁸ Lao PDR R-PP, at 33.

⁷⁹ Information obtained during visit to Vientiane, September 2011.

hydropower and infrastructure as among the most significant deforestation threats in Lao PDR.⁸⁰ Lao PDR's R-PP has highlighted these drivers as possible areas for emission reductions through REDD, but has also noted that influencing policy in this area may be difficult, due to the high priority placed on exploiting the country's mineral and hydropower resources by the government.⁸¹

3. Institutional Framework

Key Findings

- At the time of writing, the institutional structure with respect to forestry and land-use in Lao PDR is undergoing the most significant restructuring of recent times. The new Ministry of Natural Resources and Environment (MNRE) is expected to contain some 18 departments with broad responsibilities over environmental issues, including forest protection, land management, mining and water resources. The success of the new ministry in improving the coordination and effectiveness of forest protection will be of vital importance to the implementation of REDD+ in Lao PDR.
- Institutional capacity within Lao PDR is relatively weak generally, and there are a limited number of personnel in the Department of Forestry (DOF) with an adequate knowledge of REDD+ issues whereas this knowledge in other departments is virtually absent. This presents a challenge to effective implementation of REDD+ at the national scale and merits aid for increasing capacity.
- The lack of coordination between relevant agencies at both the national and lower levels of government (both inter and intra departmental) presents a clear challenge to addressing drivers of deforestation and degradation. This appears to be one of the central issues underlying inadequacy of land-use planning and the unsustainable issuance of land concessions, and it is likely a key factor underlying inability to control unsustainable logging.
- The Government of Lao PDR (GOL) is pursuing an active policy of decentralization, designed to empower local governments to achieve national policy goals. Further research is needed to assess what would be an optimal division of power and responsibilities between the levels.
- A Participatory Land-use Planning (PLUP) process has been published and appears to be progressing steadily. This brings Lao PDR substantially ahead of many other countries in the region in addressing land-use planning in a participatory and methodical manner, despite its progress being reported to be slow and imperfect and mainly functioning under the flag of donor-assisted projects.
- New REDD+ institutions have been established, though the structure has yet to be fully operationalized and harmonized with the new ministerial structure. Though, the REDD+ Task Force was re-established in 2011, it has not met since and the REDD+ Office has not yet been established. The existence of two high-level coordinating bodies overseeing the institution of REDD+ activities is promising, though low capacities within key institutions presents a serious challenge for REDD+ implementation.

⁸⁰ Chokkalingam (2009), at 27.

⁸¹ Lao PDR R-PP, at 38.

3.1 Overview

Lao PDR is a single-party socialist democratic republic. The National Assembly (NA) is responsible for adopting legislation, ratifying treaties, electing and removing the President, electing and removing the Prime Minister based on the recommendation of the President, and approving the membership and organizational structure of the government based on the recommendation of the Prime Minister.⁸² The President is the head of state. He or she issues decrees and edicts and appoints or removes members of the government (with the approval of the NA) and/or provincial governors on the advice of the Prime Minister.⁸³ The government is responsible for the general implementation of laws and policies,⁸⁴ and is empowered to submit draft laws, decrees and strategic policies to the NA (or the President, as the case may be) for approval, and issue certain decrees and resolutions itself. The Prime Minister is the head of government.⁸⁵

Lao PDR is divided into four levels of administration: central, provincial, district and village.⁸⁶ **Provincial, District and Village Administration Authorities** (PAAs, DAAs, and VAAs) are charged with implementing decisions and laws at their respective levels, and are generally structured in a similar way to the central government, with specific offices or authorities in charge of overseeing respective policy areas.

⁸² Constitution of the Lao People's Democratic Republic 2003, No. 25/NA, 6 May 2003, Article 53.

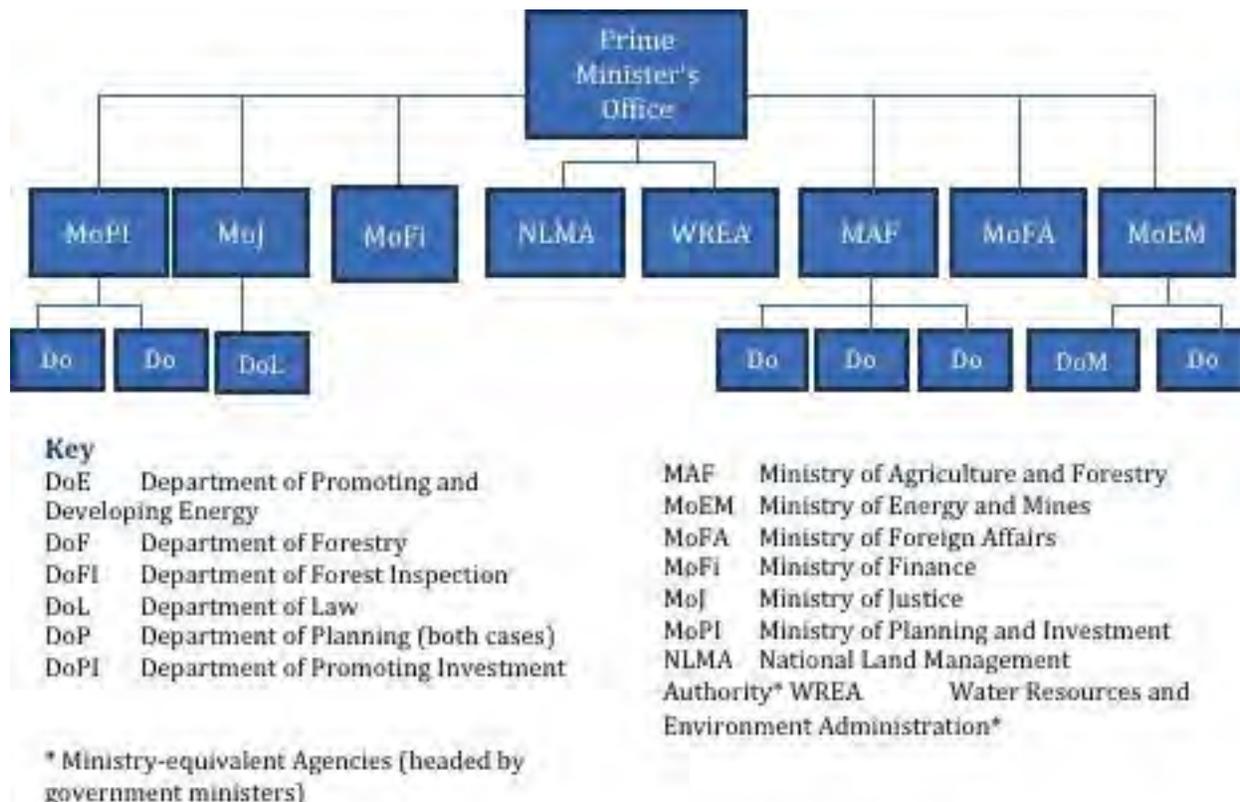
⁸³ Ibid, Article 67.

⁸⁴ Ibid, Article 70.

⁸⁵ Ibid, Article 73.

⁸⁶ Ibid, Articles 69 and 75.

Figure 2: Institutions involved in national land-use management before restructuring



The above diagram presents the overall structure of the GOL as it stood before the beginning of the current restructuring process with a focus on the institutions with responsibilities for land management decisions. The most important ministries and agencies for the purposes of REDD+ are as follows:

3.2 Institutions involved in land and forest management

The **National Land Management Authority (NLMA)** is primarily responsible for land management. It originally sat under the Prime Minister's office, but is now under the newly created MNRE. It is charged with, *inter alia*; (i) land zoning, classification and land-use planning at local and provincial levels; (ii) allocating and registering land-use rights; (iii) granting land leases and concessions; and, (iv) developing laws and policies relating to land.⁸⁷

However, specific responsibility for the management of specific types of land is assigned to specific Ministries. In the case of both agricultural and forest land this is the **Ministry of Agriculture and Forestry (MAF)**.⁸⁸ The NLMA is represented at lower levels by **Provincial Land Management Authorities (PLMAs)**, **District Land Management Authorities (DLMAs)** and **Village Land Units (VLUs)**.⁸⁹ MAF is represented by **Provincial Agriculture and Forestry**

⁸⁷ Land Law 2003, Article 10.

⁸⁸ Ibid, Articles 16 and 20.

⁸⁹ Ibid, Article 8.

Offices (PAFOs), District Agriculture and Forestry Offices (DAFOs) and Village Forest Units (VFUs).⁹⁰ VFUs are important institutions at the local level, possessing the mandate to propose regulations on the customary use of Village Use Forest, which may then be issued by VAAs. Direct responsibility for forest management at the national level has until recently been with MAF's **Department of Forestry (DOF)**,⁹¹ though as explained below this will now be shared with new departments of forest protection and conservation.

Villages with production forest areas also have **Village Development Funds**, into which is deposited 17.5% of timber revenue over the floor price. This is then allocated to village members by Village Management Committees with the approval of the District Governors.⁹²

3.3 Roles of institutions in key land management decisions

The following describes the roles of the foregoing institutions in three key land and forest management decisions to date. It is expected that these roles will remain under the authority of respective departments at district/ village level and will not be affected by the restructuring at central level on the short to medium-term.

(i) Allocating land-use rights to smallholders

- a. General Process: Until recently, the allocation of land rights to smallholders took place under the **Land-Use Planning and Land Allocation (LUP-LA) Program**, under which DAFOs were responsible for drawing up village boundaries and VAAs then allocated land based on customary rights and local power relations (see further below). This process has now been replaced by the **Participatory Land-Use Planning and Land Allocation (PLUP-LA) Process**, a nine stage process through which land is allocated according to villages and village-clusters (Kumbans), land zoning and management plans are conducted, and land is allocated and registered according to a participatory process. The maximum land allocation is 3 ha per household. These stages are implemented jointly by DLMAs, DFOs, VAAs and Kumban Organizations (KBOs), with clearly differentiated roles and responsibilities defined for each body. DLMAs are responsible for land registration under the process.⁹³ A table describing the various stages and the institutions responsible is included as Annex 1. In addition, it is understood that GIZ is currently testing the addition of a carbon component to the PLUP-LA process in its REDD+ pilot sites.
- b. Process for forest areas: The PLUP-LA manual provides for adapted planning and allocation processes for forest areas in order to account for forest protection and management objectives. Three processes are provided for, Production Forest Areas, National Protected Areas and National Protected Forest. While elements of the process are broadly similar to the general process, land-use planning and zoning is adapted to take into account the category of forest and the discrete characteristics of protection, management and land-use needs. **Land rights short of formal registration are provided** for national protected

⁹⁰ Forestry Law 2007, Article 102.

⁹¹ FS 2020, at 33.

⁹² Chokkalingam (2009), at 27.

⁹³ GOL (MAF & NLMA), "Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level" [*hereinafter* PLUP-LA Manual], Vientiane, March 2010.

areas due to the desire to avoid sales and thus protect Community agreements on use and management. Communal title, which is not transferrable, is being considered as an option.⁹⁴

(ii) Large-scale concessions

Under the Forestry Law, large-scale concessions on forested land for plantations, agriculture, mining or other non-forest purposes **may only occur on degraded or barren land**. Table 3, depicts official authorization requirements for forest conversion to other uses.

Table 3: Approval procedures for conversion of land to other forest uses (Source: Unna Chokkalingam, “Design Options for a Forest Carbon Legal Framework for Lao PDR: Drawing lessons from Across the Globe”, CLiPAD (2010), at 27.

Permitting Institution/ Process	Conversion of degraded land	Conversion of barren land
PLMA proposes, PAFO agrees, Provincial Administrative office approves	≤ 100 ha	≤ 200 ha
NLMA proposes, MAF agrees, National Government approves	100-1,000 ha	200-10,000 ha
National Government proposes, National Assembly approves	> 1000 ha	> 10,000 ha

(iii) Setting, distributing and enforcing the logging plan under the annual allowable cut

MAF, acting through DOF, is responsible for preparing the **national logging plan**, which must be approved by the National Assembly. This divides quotas amongst the provinces, whose PAFOs distribute provincial logging plans amongst the districts and, together with DAFO officers, to individual production forests, based on the approval of the government.⁹⁵ Conversion of natural or conservation forest into production forest requires the approval of the National Assembly’s Standing Committee based on proposals made by the government.⁹⁶ The central government is the only body able to authorize the export of natural logs.⁹⁷ The **Department of Forest Inspection (DOFI)** was operationalized in 2008 to enforce forest laws, and in particular to control illegal logging.⁹⁸

⁹⁴ See PLUP-LA Manual, at 76-98.

⁹⁵ FS 2020, at 25; Forestry Law 2007, Article 106 (5).

⁹⁶ Forestry Law 2007, Article 44.

⁹⁷ Ibid, Article 52.

⁹⁸ Lao PDR R-PP, at 29.

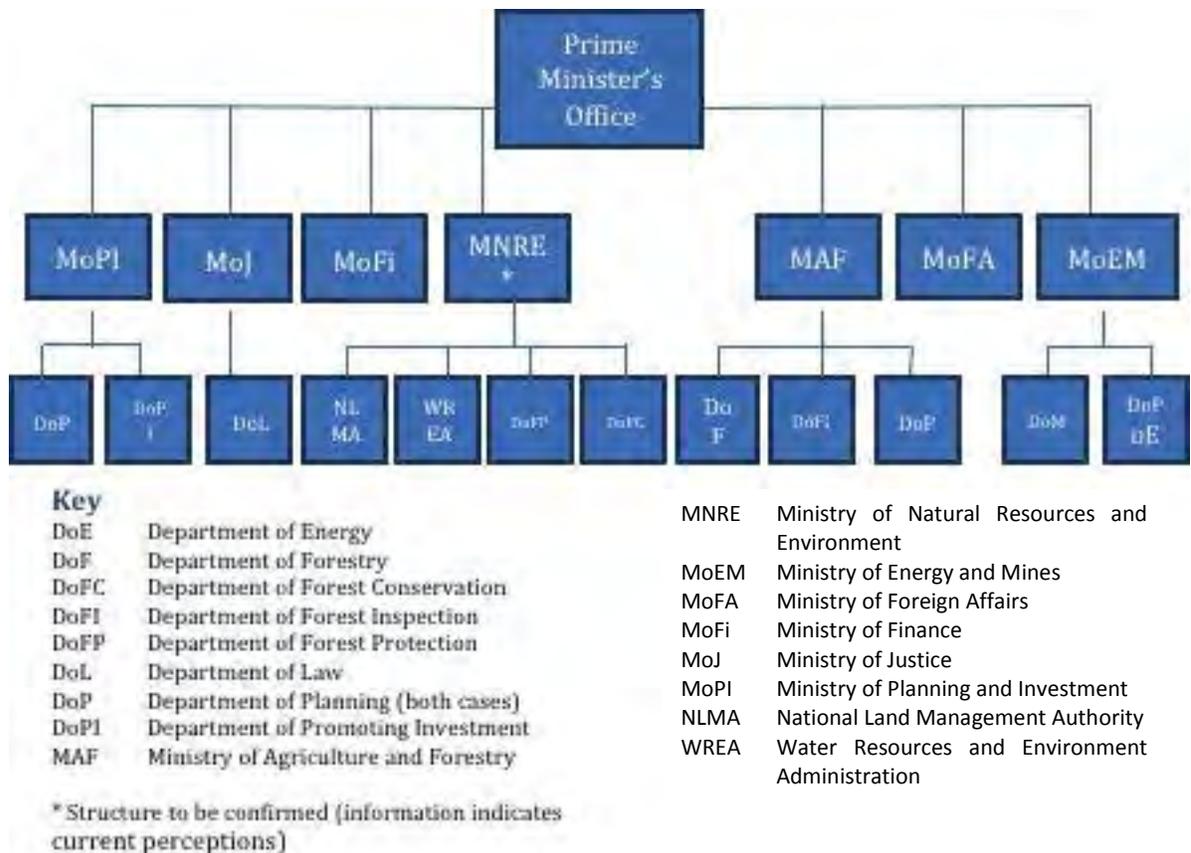


Figure 3: Expected institutional arrangements with respect to land management after restructure

3.4 Restructuring

The institutional structure with respect to forest and land management is currently undergoing **substantial restructuring**. In June 2011, the National Assembly approved the creation of a new **Ministry of Environment and Natural Resources (MNRE)**. The new ministry is to have an overall mandate for environmental protection, and is expected to include 18 departments, including several departments and agencies currently existing under other ministries. These include the National Land Management Authority (NLMA), and the Water Resources and Environment Administration. The ministry is also expected to include departments of forest protection and conservation, though the Department of Forestry (DOF) will most likely retain control over production forests and will remain within the Ministry of Agriculture and Forestry (MAF), and is also expected to include a department with responsibility for mining. Further decrees will be required to fully define the roles of the various departments of the new ministry. It will be represented at provincial and district levels by **Departments of Natural Resources and Environment (DNRE)**.

It is as yet unclear what role the various departments under the new ministry will play with respect to tasks formerly within MAF, such as its role in land-use planning and authorizing the conversion of forest land.

Despite detailed provisions in the legislation, there is a **lack of clarity concerning the division of legislated responsibilities** between NLMA, MAF and others concerning land management. NLMA was established in 2006/7, and it was not immediately clear how responsibilities were to be shared with other agencies with responsibility for land management, particularly MAF.⁹⁹ Various sources have written of unclear division of responsibilities, poor cross-sectoral coordination and duplication of efforts.¹⁰⁰ The DOF is reported to receive minimal support from other government agencies with impacts on forestry.¹⁰¹ An unclear division of responsibilities between the executive and judicial branches has also been identified as a key barrier to effective enforcement of existing laws,¹⁰² and the judiciary retains little independence from the Party.¹⁰³ The **military** also wields significant power with respect to logging activities, particularly in border regions, though its influence appears to have waned since the 1990s, and it is more under the control of the central government compared to other countries in the region.¹⁰⁴

Compounding this lack of clarity between national agencies, coordination amongst different levels of government is also an issue. Since 2000, the GOL has pursued an active **policy of decentralization** designed to empower lower levels of government to achieve national policy goals.¹⁰⁵ Under this policy, provinces are classified as strategic units, districts as planning and financial units, and villages as implementing units.¹⁰⁶ Though positive from the point of view of local ownership of policy, decentralization comes with its own set of problems. MAF has noted that provinces, who have traditionally wielded a substantial level of autonomy and political power, have **authority without accountability**, with many granting land concessions despite the current moratorium.¹⁰⁷ This claim has been repeated elsewhere.¹⁰⁸ There have also been reports of Provincial authorities directly signing large investment and logging agreements with external actors.¹⁰⁹ Others have noted a lack of transparency in decision-making,¹¹⁰ an absence of coordination between agencies¹¹¹ and a general lack of understanding of mandates and legal issues¹¹² at provincial and district levels.

⁹⁹ Cor. H. Hanssen, —**Land concession: development for the people?**”, Paper Presented at International Conference on Poverty Reduction and Forests: Tenure, Market and Policy Reforms Bangkok, 3-7 September 2007 [*hereinafter* Hanssen (2007)], at 6.

¹⁰⁰ C.f. GOL (Ministry of Agriculture and Forestry), —**Strategy for Agricultural Development 2011 to 2020**”, Vientiane, 15 September 2010 [*hereinafter* Strategy for Agricultural Development], at 11; S. Phimmavong et al., —**Forest and plantation development in Lao PDR: history, development and impact for rural communities**”, 11(4) *International Forestry Review* 501 (2009) [*hereinafter* Phimmavong et al. (2009)], at 509; Pei Sin Tong, —**Lao People’s Democratic Republic Forestry Outlook Study**”, FAO Working Paper No. APFSOS II/WP/2009/17 [*hereinafter* Tong (2009)], at 21.

¹⁰¹ Tong (2009), at 53.

¹⁰² Strategy for Agricultural Development, at 20.

¹⁰³ Barney and Canby (2011), at 51.

¹⁰⁴ Barney and Canby (2011), at 50.

¹⁰⁵ Tong (2009), at 28.

¹⁰⁶ *Ibid*; GOL, —**National Adaptation Programme of Action to Climate Change**”, Vientiane, April 2009, at 13.

¹⁰⁷ Strategy for Agricultural Development, at 17.

¹⁰⁸ Tong (2009), at 23.

¹⁰⁹ Barney and Canby (2011), at 10.

¹¹⁰ Yayoi Fujita and Khamla Phanvilay, —**Land and Forest Allocation in Lao People’s Democratic Republic: Comparison of Case Studies from Community-Based Natural Resource Management Research**” 21 *Society and Natural Resources* 120 (2008), [*hereinafter* Fujita and Phanvilay (2008)] at 129.

¹¹¹ Phimmavong et al. (2009), at 508.

¹¹² Fujita and Phengsopha (2008), at 124.

It is hoped that the current institutional restructuring, along with the establishment in 2009 of the **National Environment Committee (NEC)**, will improve coordination and the overall effectiveness of forest and land management. The NEC is chaired by the Deputy Prime Minister and comprises ministerial or vice-ministerial level representatives of various ministries with interests relating to the environment as well as civil society and private sector representatives. It has been granted extensive responsibilities concerning the approval and implementation of policies, strategies and legal acts relating to the environment,¹¹³ with the aim of ensuring unity of action across ministries. Moreover, it is perceived that the existence of a single ministry with responsibility for land management and forest protection along with a broad mandate for environmental protection will help to consolidate and coordinate efforts in this field. Ensuring that the reforms achieve this outcome will require careful consideration of how activities will be coordinated both within the new ministry and between it and other important ministries, notably MAF.

REDD+ Institutions

The existing institutional framework relating to forestry and land-use is in the process of being supplemented by the **emerging REDD+ framework** being established in the context of Lao PDR's REDD+ Readiness preparations. The **REDD+ Task Force**, originally established in 2008 and reinstated by MAF 04/01/2011 is comprised of 15 members coming from MAF, NLMA, the Ministries of Commerce, Finance, Planning and Investment, Justice, Mining & Electricity, the Lao Women's Union,, WREA and the National University, and the Front of Construction¹¹⁴. The Task Force is responsible for the coordination and facilitation of all REDD+ activities.¹¹⁵ However, its meeting cycles are irregular with no meeting having taken place since re-establishment. High-level coordination and policy guidance is to be provided by the NEC.¹¹⁶ A **REDD+ Office** is to be established with direct responsibility for implementing REDD+ activities, including project management, stakeholder consultation and preparing draft regulations. This will be replicated at the provincial level.¹¹⁷

As this new REDD+ framework has yet to be fully operationalized, it remains to be seen how it will interact with the existing legislation governing forestry and land-use. The involvement of two coordinating cross-sectoral bodies comprising broad representation may be able to overcome some of the coordination difficulties noted above. However, this will require sufficient political support and knowledge of REDD+ by the members. At present there is a limited number of persons in the GOL with an adequate understanding of REDD+,¹¹⁸ making implementation a serious challenge.

¹¹³ PM decree No. 162/PM, dated 21 March 2009 on the Organization and Operation of the National Environment Committee, Article 3.

¹¹⁴ Membership is to be expanded to include members of other ministries in the near future.

¹¹⁵ Lao PDR R-PP, at 12.

¹¹⁶ *Ibid*, at 13.

¹¹⁷ *Ibid*, at 13.

¹¹⁸ Information obtained during visit to Vientiane, September 2011.

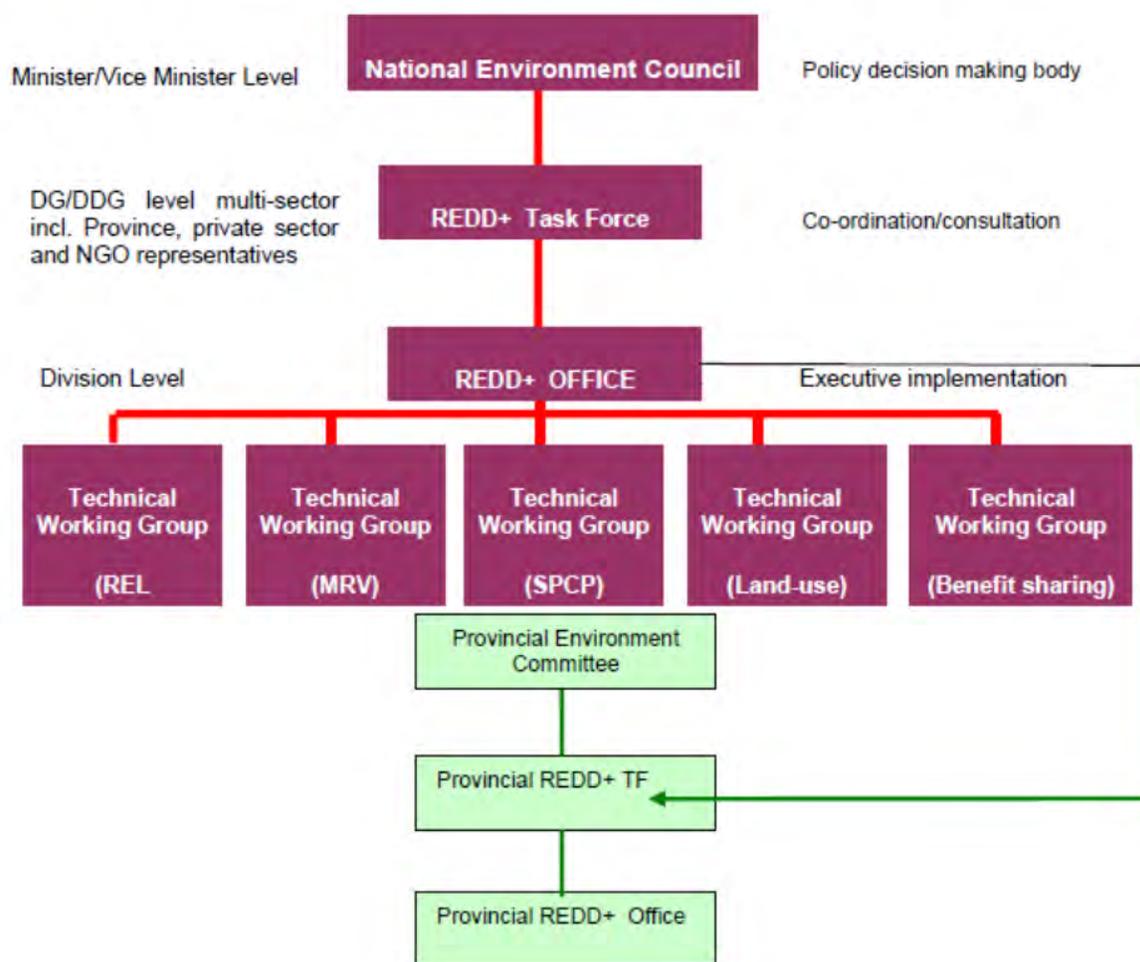


Figure 4: REDD+ Institutional Arrangements¹¹⁹

4. Domestic Policies and Legislation

Key Findings

- All land, including forest land, in Lao PDR belongs to the State and is centrally managed by GOL. Trees planted with private labor and capital may be privately owned, though naturally growing trees may not. The government can issue temporary and long-term use rights, with the latter containing many of the incidences of ownership, including the right to sell or mortgage rights. Leases or concession may also be granted.
- A major reform of the Forestry Law and related laws is currently proposed in order to integrate REDD+, including clarification of carbon rights issues. This is currently in the

¹¹⁹ Source: Lao PDR R-PP, at 14.

early stages. The National Assembly had called for drafting to be completed by the end of 2011, though it is suggested that July 2012 is the earliest this can be expected.

- The Forestry Strategy 2020 provides the overarching policy framework for management and development of the forestry sector to 2020. It contains both broad policy goals and numerous specific actions to be achieved.
- The GOL has expressed in several places its intent to pursue the “nested approach” to REDD+, in which project level activities are integrated within a national and sub-national framework.
- A moratorium on the issuance of large-scale concessions is in place, and a major reform of the regime governing their issuance is currently underway. The Policy on Land and Natural Resources has recently been published, a Law on the Management of Land and Natural Resources, and a spatially-explicit Land Master Plan are expected to be developed in the near future.
- The land allocation process was the government’s top priority for land-use in the 1990s and 2000s. This process was subject to extensive criticism, and has recently been reformed. Implementation of the new PLUP-LA (Participatory Land Use Planning - Land Allocation) process is underway, though it is reported that Government is slow in moving to the stage of issuing official land-use certificates.

4.1 Legal framework

Land Ownership and rights

All land, including forest land, in the Lao PDR belongs to the “national community” and is **centrally managed** by the State, which may allocate parcels to, *inter alia*, individuals, families and economic organizations for use, lease or concession.¹²⁰

Use rights include the right to protect, use, take income from (including through leasing), transfer and bequeath the land,¹²¹ and generally continue to hold it until terminated for violation of terms of use or requisition by the State for public purposes.¹²² Officially recognized use rights can be registered in the official land parcel registration system, which results in the user being granted title.¹²³ This is the strongest form of right, and in many ways is akin to ownership, though the land can be forfeited for misuse or failure to pay taxes.¹²⁴ It also generally entitles the holder to compensation if the right is taken away.¹²⁵ Temporary use rights are usually granted first for a period of three years, with permanent land titles generally being issued thereafter on the basis of successful implementation of agreed objectives.

Leases and concessions similarly grant broad rights, but must be used in accordance with their conditions and objectives.¹²⁶ Maximum terms for leases and concessions are 30 years (except with special permission of the government), and those with an area over 10,000 ha must be approved by the National Assembly.¹²⁷ Trees planted by people or organizations with

¹²⁰ Land Law 2003, Article 3; Forestry Law 2007, Article 4.

¹²¹ *Ibid*, Articles 53-58.

¹²² *Ibid*, Articles 62-63.

¹²³ *Ibid*, Article 49; Seidel et al. (2007), at 37.

¹²⁴ *Ibid*, Article 62.

¹²⁵ Seidel et al. (2007), at 38.

¹²⁶ Land Law 2003, Articles 66-67.

¹²⁷ *Ibid*, Articles 13, 65.

the recognition of the relevant authorities may become their property, but not the land on which they grow.¹²⁸

Land and forest categories

Land is classified into eight categories, of which forest land is one.¹²⁹ Forests are categorized into **Protection Forests, Conservation Forests and Production Forests**,¹³⁰ with different rules for preservation, development and utilization applying to each.¹³¹ An estimated 30% of the forests have not been further categorized and are commonly referred to as Village Forest Areas.

Forest ownership and rights

The State may grant **use rights to forest land to individuals or families** in amounts of up to three hectares per labor force.¹³² Use rights are originally granted for three years, and long term titles may be granted where the land has been used in conformity with objectives and regulations after this period.¹³³ The incidences of use rights are broadly the same as for land generally (right to protect, use, take income from, transfer and bequeath), though rights to natural forest may not be inherited.¹³⁴ Trees planted with private labor and capital may be privately owned, though the land on which they lie may not.¹³⁵

Businesses may be granted leases or concessions for **harvesting timber or non-timber forest products (NTFPs)**, though not in natural forests.¹³⁶ Where forestland is classified as degraded or barren, the competent authorities may authorize its conversion to other land-uses or issue leases and/or concessions for industrial plantations.¹³⁷ As noted above, the definition of degraded forest, in particular, is substantially vague,¹³⁸ often leading to the conversion of lands which are not in fact degraded.¹³⁹ Though more precise definitions have been endorsed by the government in the context of specific forest management programs, these are not currently used in granting agricultural concessions.¹⁴⁰

Certain forest land is also under village management. **Village Use Forests** are allocated to village administration authorities under relevant land and forest allocation plans, and are then responsible for management, preservation, development, use and strictly monitoring in accordance with laws and regulations.¹⁴¹ Local residents are permitted to use non-prohibited timber species from the Village Use Forest for constructing and repairing houses with approval

¹²⁸ Forestry Law 2007, Article 4.

¹²⁹ Land Law 2003, Article 11 (2).

¹³⁰ Forestry Law 2007, Article 9.

¹³¹ *Ibid*, Chapter IV.

¹³² Land Law 2003, Article 21.

¹³³ *Ibid*, Article 22.

¹³⁴ Forestry Law 2007, Articles 89-99.

¹³⁵ *Ibid*, Article 4.

¹³⁶ *Ibid*, Article 43.

¹³⁷ *Ibid*, Articles 71-76.

¹³⁸ Article 3 (11) of the Forestry Law classifies degraded forestland as ~~the~~ forestland areas where forests have been heavily and continually damaged and degraded causing the loss of balance in organic matter, which *may* not be able to regenerate naturally or become a rich forest again" [emphasis added].

¹³⁹ Lao PDR R-PP, at 32.

¹⁴⁰ Information obtained during visit to Vientiane, September 2011.

¹⁴¹ Forestry Law 2007, Articles 3 (13) and 79.

from the village administration authority and local DAFO.¹⁴² Village use forests remain state property.¹⁴³

Customary rights

The State has historically not recognized customary rights to most categories of land, with the exception of forest land where long-term forest use that is in accordance with the law entitles the communities to harvest timber and NTFPs in particular categories of forest for household use, as long as such use does not adversely impact the forest resources, environment, or the rights of others.¹⁴⁴ About 1.3% of forests in Lao PDR are **communally-used forest**.¹⁴⁵ Even here, however, there has not historically existed the possibility to register such lands,¹⁴⁶ often giving rise to conflicts between communities and the State, particularly with regard to upland areas used for shifting cultivation which the State classified as degraded, and thus suitable for conversion.¹⁴⁷

A recent government-supported study recommended the broad recognition of usage, usufruct and protection rights to all lands that are not individually claimed and to which communal management systems exist.¹⁴⁸ Subsequently, various pieces of regulation^{149,150} provided for the issuance of titles and/or certificates recognize customary use rights to individual, household and communal land (forest and non-forest) on a case-by-case basis. The first such titles were recently issued with respect to an SNV project in Sangthong district. The GOL is also conducting, together with UNDP (United Nations Development Program), a project entitled Customary law and Practice in the Lao PDR, which aims to strengthen the status of customary rights in the Lao legal framework. Even so, collective land may still not be sold, transferred, used as security, leased or granted for concessions.

Customary law itself varies depending on the community and type of land, though it is common for land tenure to be considered to belong to the community, with use or usufruct rights belonging to families or individuals.¹⁵¹ Forests, however, are generally perceived to be the communal property of the entire community.¹⁵²

Forest carbon ownership

Forest carbon ownership is not yet formally regulated within Lao PDR. Under the PM/WREA regulation on CDM approval procedures, ownership of Carbon Emission Reductions (CERs) vests in project participants, with fees and service charges payable to the government.¹⁵³ Both Article 5 of the Forestry Law and the 2010 Pm Decree on Protection Forest state that the State encourages the utilization of forest for, *inter alia*, carbon offsets. Full regulation of forest carbon ownership is currently being discussed in the context of the review of the Forestry Law.

¹⁴² Ibid, Article 41.

¹⁴³ Seidel et al. (2007), at 38.

¹⁴⁴ Forest Law 2007, Article 42.

¹⁴⁵ Seidel et al. (2007), at 20.

¹⁴⁶ Ibid., at 1.

¹⁴⁷ Hanssen (2007), at 5.

¹⁴⁸ Seidel et al. (2007), at 48-49.

¹⁴⁹ PM decree No.88/PM, dated 3 June 2008 Articles 2 and 26 (2).

¹⁵⁰ Ministerial Instructions on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, No. 564/NLMA, 2007, Article 4.11.

¹⁵¹ Seidel et al. (2007), at 10.

¹⁵² Ibid., at 11.

¹⁵³ Chokkalingam (2009), at 34.

4.2 Laws and Policies addressing forestry and land-use

Overall socio-economic development policy

Overall socio-economic development in Lao PDR for the period 2011-2015 is to be guided by the Seventh National Socio-Economic Development Plan (NSEDP), the final draft of which has now been prepared and is awaiting official endorsement. The NSEDP seeks to develop all aspects of the national economy, and lays particular focus on agriculture, hydropower, tourism, mining and building materials. The plan seeks to achieve 3% growth annually in the agriculture/forestry sector, while decreasing the share of the labor force working in these sectors below 70%. At the same time, it aims to increase forest cover to 65%, as well as rehabilitating 3.9 million ha of deteriorated forest and expanding forest classification and certification.

Overall forest and land-use policy

As noted above, the LULUCF sector accounts for the largest share of Lao PDR's GHG emissions. As a result the sector is at the center of the 'Strategy on Climate Change of Lao PDR 2010'. This strategy, which covers, both adaptation and mitigation, focuses on mainstreaming climate change into government strategies and policies and building international partnerships. Mitigation for the forestry sector includes the prevention of slash and burn through the promotion of sustainable agricultural practices and alternative livelihoods, fuel switching for forest-dependent communities, reducing forest fires, integrating forest management, effective land-use mapping and planning, and pursuing carbon market opportunities.¹⁵⁴

The **Forestry Strategy 2020 (FS 2020)** is the highest official document guiding the forestry sector, and provides the overall framework for forestry development and reform until 2020.¹⁵⁵ It sets out 146 proposed actions in nine discrete programs—ranging from land-use planning and production forest management to biodiversity conservation and NTFPs—and seven cross-cutting issue areas, primarily focused on enforcement, implementation and legal frameworks. It co-exists with the Agricultural and Forestry Five Year Plan (2011-2015) and the **Agricultural Development Strategy 2011-2020**, which consists of MAF's overall five-year policy framework and the long-term policy framework for the agricultural sector, respectively.

MAF is responsible for the overall coordination, implementation and monitoring of the FS 2020, with most specific actions being assigned to individual departments.¹⁵⁶ Other government agencies have also been assigned responsibility for some actions, most notably the NLMA.¹⁵⁷ It is likely that some responsibilities currently under MAF will fall under the new MNRE, though the division of these responsibilities remains to be decided. MAF is to report to the government on implementation and monitoring on a periodic basis and to recommend necessary measures for improved implementation,¹⁵⁸ which has occurred almost annually since 2006.

From 2006-2010 the **Forest Sector 2020 Implementation Project (FSIP)**, financed by JICA and Sida, was conducted focusing on preparation of implementation plans, establishing frameworks for stakeholder consultation and priority policy implementation -- including REDD+

¹⁵⁴ Strategy on Climate Change of the Lao PDR PDR 2010, adopted by Decree No. 137/2010, at 13-15.

¹⁵⁵ FS 2020, at 64.

¹⁵⁶ Ibid., at 64 and Annex 2.

¹⁵⁷ FS 2020, Annex 2. Note that Annex 2 refers to the Prime Minister's Office (Department of Land Use Planning and Development), which is housed within NLMA.

¹⁵⁸ FS 2020, at 64.

readiness.¹⁵⁹ The FSIP has now been replaced by the Forestry Sector Capacity Development Project (FSCAP), which has a similar focus¹⁶⁰

The regulation of forests is primarily governed by the **Forest Law 2007**, though as noted above several provisions of the **Land Law 2003**, along with several other laws, regulations and decrees are also relevant to forestry. These include Prime Minister's Order No. 30/2007, which upholds the ban on export of sawn wood and roundwood;¹⁶¹ and, recent decrees on payment for ecosystem services (PES) and EIA.¹⁶² The Forest Law 2007 is generally considered to be clear, though there are some ambiguities and sections that lack clarity.¹⁶³ The GOL has, however, noted that there are a large number of laws, decrees and orders relating to agriculture and forestry, but they are often not clear in intent nor consistent with one another.¹⁶⁴

The GOL is currently considering a substantial **revision of the Forestry Law** as part of its Master Plan on Development of the Rule of Law.¹⁶⁵ Though still in the very early stages, reform is expected to focus on the facilitation of the implementation of REDD+ in Lao PDR, including the clarification of carbon rights issues. Other issues expected to be addressed include forest definitions, land-use rights, forest category classification, benefit-sharing, FPIC, harmonization of the law with the draft Policy on Land and Natural Resources (see further below), and clarification of the rights and roles of the various government bodies following the present restructuring. Laws in other sectors are also expected to be amended to ensure compatibility with the revised law.¹⁶⁶ This reform is currently being driven by the DOF, though it is expected that the REDD+ Task Force, through the (to be established) sub-technical working groups will also play a key role in drafting revisions. These working groups are the appropriate bodies to channel technical expertise from donor organizations into the REDD+ process, and outside experts may find excellent opportunities to contribute to and collaborate with the working groups in a helpful way. Though the National Assembly had originally called for the revisions to come before it by December 2011, it is now expected that this will not occur until June 2012 at the earliest.¹⁶⁷

4.3 Policies and laws addressing main drivers

While the FS 2020 and Forestry Law 2007 have provided a decent legal and policy framework, there is a specific need to address discrete drivers of deforestation in Lao PDR through specific laws, policies and better governance structures. The section below describes measures aimed at addressing the most significant drivers identified above, before assessing the key cross-cutting issue of enforcement and implementation of law and policy.

¹⁵⁹ GOL (DOF), —Annual Review of REDD+ Activities in Lao PDR”, Vientiane, 21 February 2011, at 8.

¹⁶⁰ Annual Review of REDD+ Activities in Lao PDR, at 9.

¹⁶¹ Barney and Canby (2011), at 10.

¹⁶² Decree No. 112/PM of 16 February 2010 on Environmental Impact Assessment.

¹⁶³ Lao PDR R-PP, at 28.

¹⁶⁴ Strategy for Agricultural Development, at 20.

¹⁶⁵ Decree No. 265/PM, dated 11 September 2000, on the Adoption and Promulgation of Master Plan on Development of the Rule of Law in the Lao PDR toward year 2020.

¹⁶⁶ See Forest Carbon Asia, “Workshop to revise the forestry legal framework to enable REDD+ in Lao PDR”, available at <http://www.forestcarbonasia.org/in-the-media/workshop-on-revising-the-forestry-legal-framework-in-lao-pdr/>.

¹⁶⁷ Information obtained during visit to Vientiane, September 2011.

Shifting cultivation

Stabilizing, and ultimately eradicating, shifting cultivation has been a major policy priority of the GOL since the early 1990s. The key strategy for achieving this goal has been to **stabilize land settlement** and catalyze a shift to sedentary farming practices. This was done through two closely inter-related policies, the Land and Forest Allocation Program (LFAP) and the Land-use Planning and Land Allocation (LUP-LA) process. High importance was placed on these policies in the 1990s, with the LUP-LA process described as the GOL's top priority for the period.¹⁶⁸

LFAP/LUP-LA involved delineating village boundaries, prescribing access, use and management rules for each section of land, transferring resource management to village committees, and allocating land parcels to individuals and households through the issuance of temporary land-use certificates.¹⁶⁹ This process represented a major shift from the previous position where, while land was officially owned by the state, forest land was primarily subject to open-access and customary rules. LUP-LA has been implemented in approximately 32% of villages,¹⁷⁰ with LFAP covering approximately 50%.¹⁷¹

The effects of LFAP/LUP-LA have been mixed. Several sources report that the policies have had a significant effect on slowing down the rate of deforestation and degradation, and have led to an increase in the amount of secondary forest.¹⁷² At the same time, it is broadly considered that these policies have had a major negative impact on villagers' access to both agricultural land and NTFPs, disrupting their traditional systems without adequately providing for alternative livelihoods. Reports have noted that rapid implementation and insufficient resource allocation led to traditional management practices, including joint-management of village areas, being ignored and standardized systems being imposed on villages.¹⁷³ As noted above, the decrease in land available for shifting cultivation led, rather than to a switch to sedentary systems, to the shortening of the fallow period, resulting in extensive land degradation.

LUP-LA has recently been revised, and is now known as Participatory LUP-LA (PLUP-LA).¹⁷⁴ PLUP-LA focuses on village-cluster-level planning, with the objective of improving coordination between villages and increasing participation in land-use planning.¹⁷⁵ Though MAF stated in 2010 that the PLUP-LA process has been rescinded in favor of land titling,¹⁷⁶ this does not appear to be the case. It is understood that the process is now the sole adopted process for land allocation to smallholders, and indeed that titles are issued as part of the process. Some sources have reported that the process is being brought forward at great speed to the detriment of its participatory objectives,¹⁷⁷ though others have reported that few districts have progressed past Stage 5 (creation of land management plans); and, no rights have yet been registered. The

¹⁶⁸ Khamphay Manivong and Phouthone Sophathilath, "Land Use Planning and Land Allocation in the Upland of Northern Lao PDR: Process Evaluation and Impacts", Economy and Environment Program for Southeast Asia, October 2009 [*hereinafter* Manivong and Sophathilath (2009)], at 2.

¹⁶⁹ Fujita and Phanvilay (2008), at 121; PLUP-LA Manual, at 1.

¹⁷⁰ Manivong and Sophathilath, at 4.

¹⁷¹ Fujita and Phengsopha (2008), at 117.

¹⁷² Manivong and Sophathilath (2009), at 19; Guillaume Lestrelin, Mark Giordano and Bounmy Keohavong, "When "Conservation" Leads to Land Degradation Lessons from Ban Lak Sip, Lao PDR", International Water Management Institute Research Report 91, at 18; Fujita and Phengsopha (2008), at 119.

¹⁷³ Fujita and Phengsopha (2008), at 119-120; Seidel et al. (2007), at 21; Fujita and Phanvilay (2008), at 124.

¹⁷⁴ See PLUP-LA Manual.

¹⁷⁵ PLUP-LA Manual, at 2.

¹⁷⁶ Strategy for Agricultural Development, at 19.

¹⁷⁷ Chokkalingam (2009), at 30.

LFAP, for its part, has been on hold since 2007,¹⁷⁸ and it would appear that the PLUP-LA process has now taken over its functions. A table of the legal documents most relevant to the PLUP-LA process is provided as Annex 2.

Conversion of forests to agricultural land

Several problems relating to the issuance of large-scale agricultural concessions exist. These include a historical lack of consideration of land-use planning or existing local rights, active (and at times violence) resistance from land users, growing criticism by the National Assembly concerning their social and environmental effects, and the lack of money finding its way into the public finances.¹⁷⁹ As a result the Prime Minister issued a **moratorium on concessions over 100 ha** in 2007. The purpose of the moratorium was to give the government time to review the policies concerning the issuance of large-scale concessions and address the shortcomings of previous strategies.¹⁸⁰ At the time of writing, the moratorium remains in place, though there have been reports that the absence of a clear legal footing has resulted in Provincial authorities continuing to grant concessions.¹⁸¹ In addition, it is the current policy of DOF that no plantation concessions are to be issued in classified forests (Protection, Production or Conservation).¹⁸²

A **three-pronged approach** is currently proposed by NLMA to address the issues leading to the moratorium. This involves:

- (i) The development of a Policy on Land and Natural Resources;
- (ii) A Law on the Management of Land and Natural Resources; and
- (iii) The development of a spatially-explicit national land master plan, setting out the existing and planned developments for each sector, on which all future concessions are to be based.¹⁸³

Of the three, a **Policy on Land and Natural Resources** has now been drafted and is expected to be submitted to the NA for approval shortly. The draft policy sets out guidelines for the drafting of the Law on the Management of Land and Natural Resources, and refers to conducting assessment of the appropriateness of land use, and adopting environmental criteria for granting land concessions, as well as requiring consents of landowners/users before concessions are granted. No concrete proposals have yet been developed for the latter two.¹⁸⁴

The new policy further potentially includes the planned introduction of “**smart agriculture**”, or linking prospective private sector investments to a set of social and environmental criteria. However, the concept of smart agriculture is still very new in Lao PDR, and there is currently no indicative policy in place, nor a concept of how this might work in practice.

On a broader level, MAF’s top priority for the agriculture sector is the **transition from subsistence to commercialized smallholder production**.¹⁸⁵ If operationalized with the correct policies and resources and with due regard for traditional practices and management systems, the economic and food security benefits of such a transition could reduce the need and scope for large-scale concessions. Great care and planning will be necessary to ensure that this

¹⁷⁹ Hanssen (2007), at 8-9; Phimmavong et al. (2009), at 508.

¹⁸⁰ Hanssen (2007), at 1.

¹⁸¹ Tong (2009), at 23.

¹⁸² Chokkalingam (2009), at 32.

¹⁸³ Information obtained during visit to Vientiane, September 2011; Chokkalingam (2009).

¹⁸⁴ Information obtained during visit to Vientiane, September 2011.

¹⁸⁵ Strategy for Agricultural Development, at 27.

transition is undertaken in such a way that swidden cultivators are not disenfranchised without access to alternative livelihoods, as occurred under LFAP, as this may lead to increased encroachment on natural forests.

Unsustainable and illegal logging

A major cause underlying the high levels of unsustainable and illegal logging activities is the ambiguity, inconsistency and incompleteness of laws and regulations governing logging activities coupled with a lack of monitoring and weak enforcement. This prevents adequate regulation of quotas and concessions and allows companies and individuals to exploit the system to maximize extraction.

Under the Forestry Law 2007 logging is now only allowed in Production Forest areas where inventory, surveys, and **sustainable management plans** have been completed.¹⁸⁶ Advances achieved through the SUFORD project have seen the development of such management plans steadily progressing, though these are rarely carried out outside SUFORD project areas.¹⁸⁷ 14% of Production Forest Areas are currently under FSC certification, with plans to expand this to 3.1 million ha in the coming years.¹⁸⁸

The Forestry Strategy 2020 lays out several actions aimed at improving legislative clarity, including clarifying which laws are still in force, conducting training on legal drafting, and instituting multi-institutional drafting teams.¹⁸⁹

One initiative intending to address the issuance of unsustainable logging plans is to move from national harvest plans to the bottom-up setting of harvest levels in accordance with management plans.¹⁹⁰ It is not clear, however, precisely what this entails or how it will work in practice, including how overall harvest levels will be monitored to ensure sustainability, making this a potential area for further research. In addition, efforts are underway to better link certified forest management areas to domestic wood processors, which is currently very limited.

Enforcement and Implementation of Law and Policy

It is widely agreed by academics,¹⁹¹ civil society organizations¹⁹² and the GOL itself¹⁹³ that the efficacy of laws and policies governing forestry and land-use are severely hindered by incomplete and **ineffective implementation coupled with inadequate enforcement**. Corruption, lack of resources and insufficient human resource capacities are often cited as key underlying factors.¹⁹⁴ In addition, district and village authorities are said to often lack a clear understanding of government legislation, preventing implementation at the local level.¹⁹⁵

There are several initiatives underway to address these shortcomings. The Forestry Strategy 2020 sets out actions on, *inter alia*; (i) clarifying enforcement responsibilities; (ii) considering the establishment of a cross-sectoral program of forestry officers, police, customs and others for

¹⁸⁶ Forestry Law 2007, Article 49.

¹⁸⁷ Information obtained during visit to Vientiane, September 2011.

¹⁸⁸ Lao PDR R-PP, at 44.

¹⁸⁹ FS 2020, at 59.

¹⁹⁰ *Ibid.*, at 55.

¹⁹¹ C.f. Fujita and Phengsopha (2008), at 116, 124; Tong (2009), at 20.

¹⁹² C.f. EIA/Telepak, at 4.

¹⁹³ Lao PDR R-PP, at 28; FS 2020, at 41

¹⁹⁴ See, e.g., Thapa, at 84; Fujita and Phengsopha (2008), at 116; FS 2020, at 41.

¹⁹⁵ Fujita and Phengsopha (2008), at 124; Tong (2009), at 29.

detection and suppression of illegal logging and log trading; and (iii) capacity building through education and human resource development.¹⁹⁶ In addition, the DOFI has recently been established, and will operate on a five year plan for 2011-2015 that seeks to improve performance as more staff are recruited and trained.¹⁹⁷

5. Conclusion

In Lao PDR ambitious reforms are under way in the forest and land-use sector, including reforms at institutional level through the creation of a new Ministry of Natural Resources and Environment as well as an overall reform of the forestry law to improve forest and land management and include REDD+. Much of this has been stimulated over the past couple of years by various internationally supported initiatives, e.g. through engagement with the FCPF and the World Bank in preparation of implementing the FIP. While high level of support is being noticed within the GOL for these reforms, there is very limited capacity within the government to develop and implement corresponding work plans. Donors in the country are aware of this and are striving towards improved donor coordination to assure complementarity efforts. Hence, finding the outside experts to complement existing expertise and initiatives in Lao PDR is crucial.

Implementation of the FIP and related leveraged investments is going to be a major focus for the Government in the coming years. The investment plan shows that the substantial amount of work needed to develop and strengthen the legal, incentive and governance framework for REDD+ is to be mainly funded by the Government. However, this requires a substantial amount of work and expertise for which outside experts would be well suited to provide support. On the basis of the foregoing analysis, the following areas have been identified as presenting potential opportunities for assistance by outside experts. The initial areas identified for potential policy assistance from outside experts are:

1. Work with GOL and other donor projects to successfully integrate forest carbon rights and other key REDD+ issues into the current revision of the Forestry Law. This could also be expanded to include PES systems in general and would address the underlying requirement to recognize management and protection functions of communities and design appropriate payment structure for service provision.
2. In coordination with other donor projects, assist GOL in developing policy to accommodate REDD+ pilot projects under a “nested approach”, in which project level activities are integrated within national and sub-national reference levels. This could include piloting a regulatory and carbon accounting structure at the sub-national level, on the basis of which lessons could be learnt for national level implementation.
3. Assist GOL in improving its ability to distinguish between legal and illegal logging to allow improved enforcement of the allowable cut and enhance the regulatory framework for sustainable forest management.
4. Assist GOL in refining its definition for degradation and implementation thereof at local level to avoid issuance of concessions on non-degraded forests or forests with good potential for natural regeneration. Such definition would need to be consistent with monitoring requirements of a potential REDD+ scheme.

¹⁹⁶ FS 2020, at 59-60.

¹⁹⁷ Lao PDR R-PP, at 44.

5. Assist GOL in revising its processes for granting concessions. This may include adopting social and environmental criteria and requiring consent from landowners/users before concessions are granted. This work could be integrated into the ongoing process to develop a Policy on Land and Natural Resources.

Annex 1: Summary of Stages in the PLUP-LA Process (Source: GOL (MAF & NLMA), -Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level”, Vientiane, March 2010, at 29)

Stage	Description	Responsibility	Approx. Duration
1	Preparation for land use planning	DAFO, DLMA, KBO and VA	2 days
2	Socio-economic, land and forest data collection	DAFO, DLMA, KBO and VA	1-2 days
3	Delineation of village and village cluster boundaries (management areas)	DAFO, DLMA, KBO and VA	2 days
4	Village and village cluster land use zoning	DAFO, DLMA, KBO and VA	2-3days
5	Village and village cluster land management plans	DAFO, DLMA, KBO and VA	2-3 days
6	Land data and digital map record keeping (Duration for this activity is difficult to quantify; a duration of 5 days is estimated for actual map production)	Data: DAFO, PAFO, DLMA and PLMA Maps: FIPD and NLMA GIS Units, (Provincial GIS Units if present)	5 days
7	Land registration in rural villages	DLMA, KBO and VA	15 -20 days
8	Village and village cluster networks and networking	DAFO, KBO and VA	2 days
9	Monitoring and evaluation	DAFO, DLMA, KBO and VA	Continuous process

Annex 2: Most relevant legal documents for village and Kumban land use planning (Source: GOL (MAF & NLMA), “Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level”, Vientiane, March 2010, at 4)

No.	Title of Legal Document
1	O3/PM, June 1996: Instructions and Recommendations on the Continuation and Expansion of Land Management and Land and Forest Allocation
2	822/MAF, August 1996: Directives on Land and Forest Allocation for Management and Use
3	No. 0054/MAF, 1996: Ministerial Approval/Decision on Customary Use Rights of Forest Resources
4	The Land Law, October 2003
5	Decree No 192/PM, July 2005, on Compensation and Resettlement for Affected People by Development Projects
6	Forestry Law, (revised 2007)
7	Ministerial Direction No. 564/NLMA, August 2007 on Adjudication Pertaining to Land Use and Land Occupation Right for Registration and Land Titling
8	Draft Prime Ministerial Decree on State Land Leases and Concessions, 2007
9	Instruction No. 1668/NLMA. CAB, dated 29 April 2008: on the Use of New Formats of Land Titles and New Registration Book
10	Decree No. 88/PM on the Implementation of the Land Law, June 2008
11	Draft PM Decree ... on Protection Forests, 2009
12	DoF September, 2008: Handbook on Village Rights and Responsibilities to Manage and Use Forests, Forest Land, Aquatic Animals and Wildlife”.