



Assessment of the new Land Law  
and Forestry Law in  
Lao People's Democratic Republic:  
**Customary  
Tenure Rights over  
Land and Forests**

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April 2021



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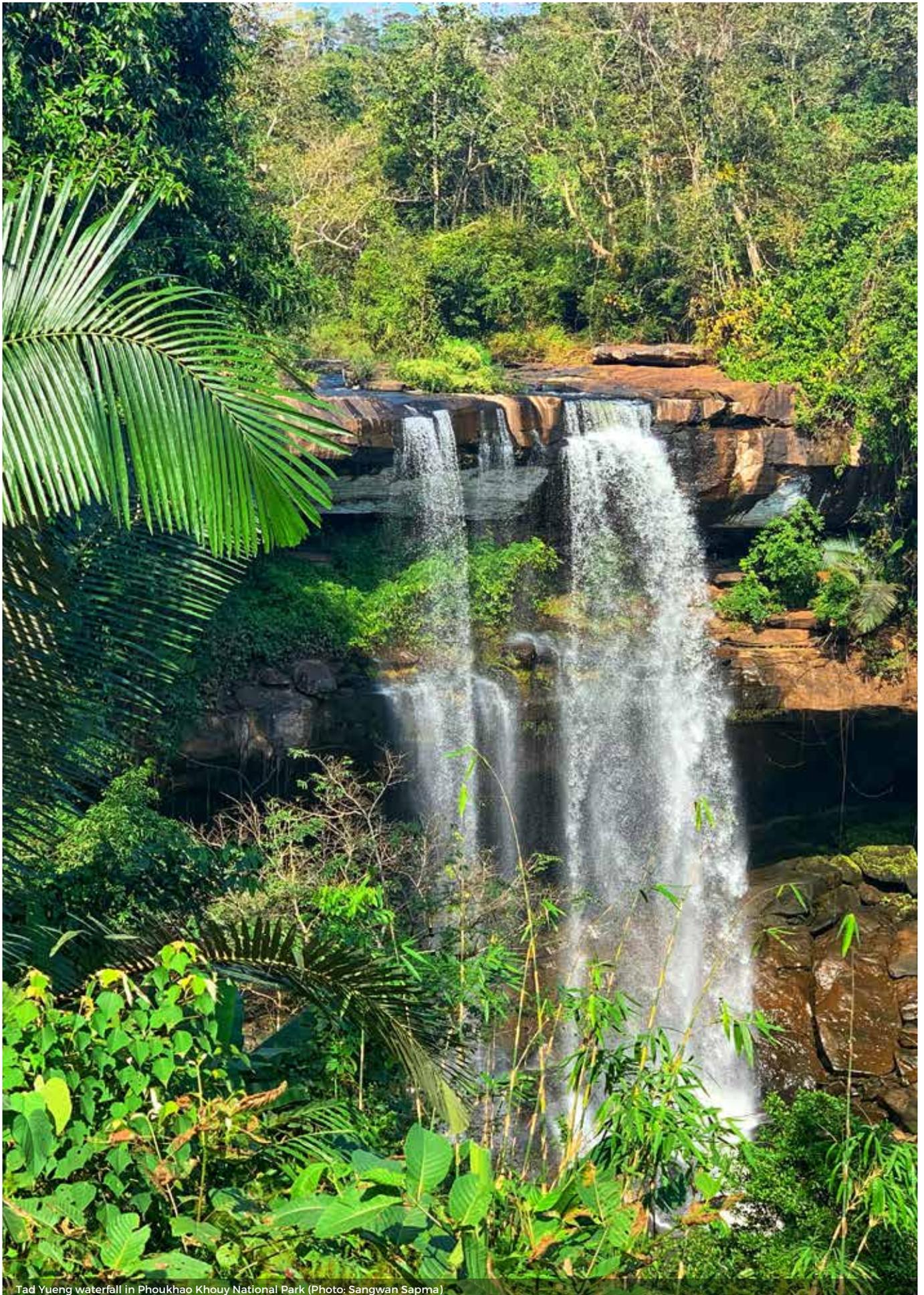
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## Abbreviations

<b>FAO</b>	Food and Agriculture Organization
<b>FPIC</b>	Free, Prior, and Informed Consent
<b>LIWG</b>	Land Information Working Group
<b>MAF</b>	Ministry of Agriculture and Forestry,
<b>MONRE</b>	Ministry of Natural Resources and Environment
<b>MRLG</b>	Mekong Regional Land Governance Project
<b>NA</b>	National Assembly
<b>NTFPs</b>	Non-Forest-Timber Products
<b>SDC</b>	Swiss Development Cooperation



Tad Yueng waterfall in Phoukhao Khouy National Park (Photo: Sangwan Sapma)

## Executive Summary

The report has been prepared to:

- **Explain the differences** between the new Land Law and Forestry Law and their predecessor laws, namely the Land Law 2003 and the Forestry Law 2007, respectively, noting both their improvements and shortcomings.
- Compare the new Land Law with the new Forestry Law to highlight any differences and **potential problems arising from gaps and overlaps**, and
- Chart a course for further input by civil society to the development of implementing decrees, regulations and procedures, through a set of recommendations, which may also be useful when the two Laws are next revised.

The **Land Law 2019** was in preparation for a number of years and multiple versions were released for discussion and comment. The final document is a substantial improvement over the 2003 Land Law in many ways. It is longer, more informative and many of its Articles are clearer. There is a variety of new or greatly expanded Parts addressing new points, such as principles for land management, land strategies, responsibilities of officials and land inspection. Key additions and the few deletions are noted in point form in Table 1. However, there are various areas of concern and many Articles do not contain enough details to be implemented. Table 1 also lists the main matters of concern to civil society as well as others, and these will require further thought over coming years. A more detailed outline of the changes and an assessment can be found in sections 3.3 and 3.4 of the main report, respectively. Sections 3.5 and 3.6 deal with problematic areas.

The **Forestry Law 2019** was adopted just prior to the Land Law in June 2019 and it, too, is a substantial improvement over the Forestry Law 2007. It, too, is longer, more informative and clearer, although there is still a variety of gaps that will need to be addressed. Table 2 lists the expanded, new and deleted matters (see sections of 4.3 of the main report for details). Overall, it is an improvement but the many gaps will

require thought and clear drafting so that the provisions can be implemented by local officials in a nationally consistent manner. Table 2 highlights problematic areas where further thought will be required, which is explained in more detail in sections 4.5 and 4.6 of the main report.

There are very **few overlaps** between the two Laws because they deal with different subject matter, as discussed in Chapter 5 of the main report. The main areas of overlap are:

- The rights and obligations of other ministries, such as the duties of the Ministry of Agriculture and Forestry (MAF) under the Land Law and the duties of the Ministry of Natural Resources and Environment (MONRE) under the Forestry Law.
- Strategic and other forms of planning.
- The nature of forest use rights – whether they are governed by the Land Law or are a unique right governed only by the Forestry Law.
- Customary rights, how they are recognized and how they are to be recorded (although this is more of a gap than an overlap because the Forestry Law says very little).

A major focus of this report is **customary tenure rights** over land and forests, under the two new Laws. Chapter 6 brings together all relevant provisions and makes an assessment of the situation. It examines the extent to which the two Laws deal with customary land use rights, how such rights are to be recognized, consistency between the two Laws in how they approach customary rights, the nature of the right under both Laws, land titling and formalization, and requisition and compensation for customary rights. The main conclusion is that the topic is not addressed in much detail, and thus leaves numerous questions unanswered. Clear provisions in the implementing decrees, regulations and guidelines will be required, as well education for villagers whose survival is dependent on exercising their customary rights.

Answers to a series of **key questions** are presented in summary form in Table 3, with references to the sections of the main report in which the matters are discussed in more detail.

<sup>i</sup> A revision of either of the Laws would not be expected for at least five years.

**Table 1: Comparison of Old and New Land Laws**

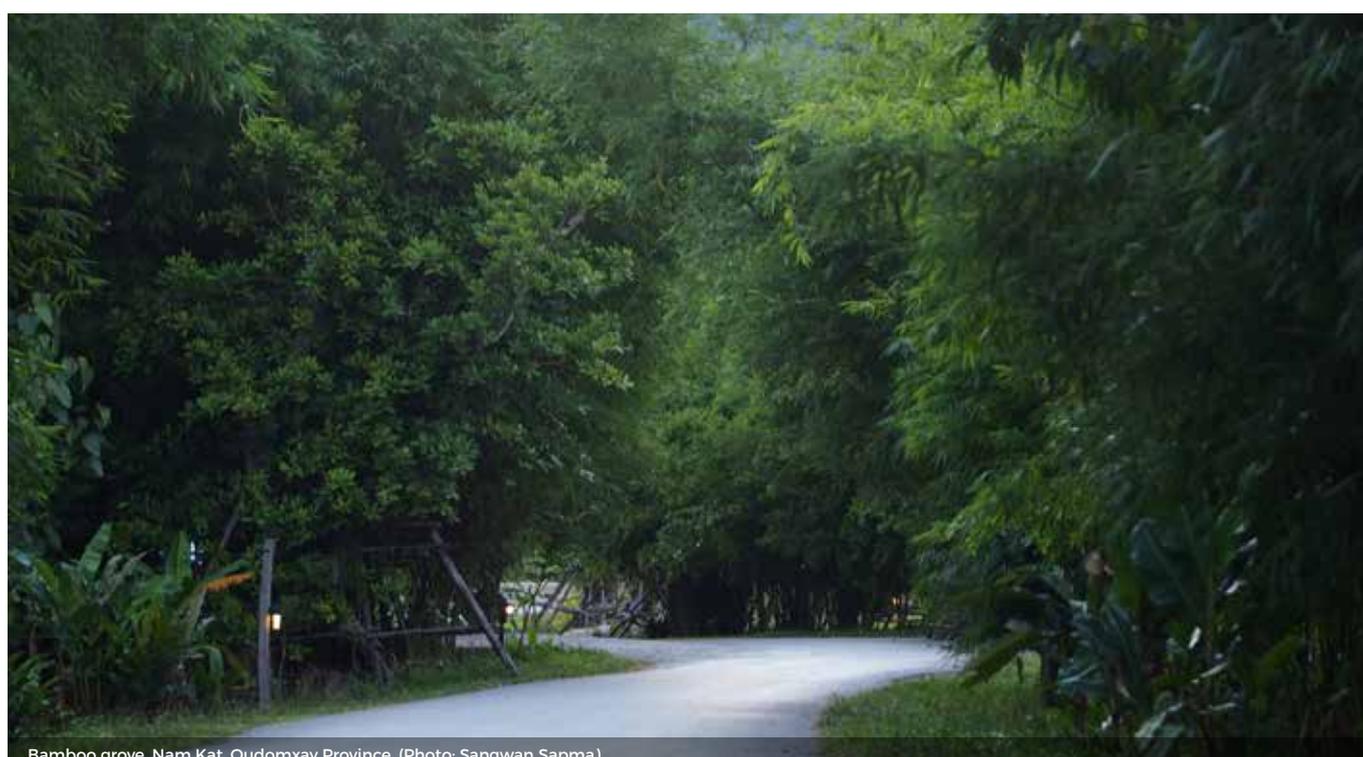
<p><b>Basic information</b></p>	<p>Adopted by the National Assembly 21 June 2019                  Changes added after adoption 23 December 2019                  Promulgated by the President: 02 August 2019                  Responsible ministry: MONRE                  Replaces Land Law of 2003</p>
<p><b>Structure, topics and articles</b></p>	<p>Structure follows Land Law of 2003, but expanded                  Contains 11 Parts (compared with six in 2003 Law)</p> <p>New Parts:</p> <ul style="list-style-type: none"> <li>Part 2 Land Allocation Master Plan, Strategic Plan and Land Use Plan</li> <li>Part 3 Land Zoning, Land Categories, Land Survey, Land Protection and Development and Land Transformation</li> <li>Part 5 Management of Land Use</li> <li>Part 6 Land Administration</li> <li>Part 7 Land Lease and Concession</li> <li>Part 9 Compensation for Damages Caused by Land Use Rights</li> <li>Part 10 Land Related Businesses</li> <li>Part 11 Prohibitions</li> </ul> <p>Contains 188 Articles (compared to 87 in 2003 Law)</p> <p>See section 3.3 of the main report and Annexes 1 and 2</p>
<p><b>Expanded matters</b></p>	<ul style="list-style-type: none"> <li>• What foreigners can own</li> <li>• Zoning and classification of land and associated duties</li> <li>• Land administration, which also includes several new topics and many new Articles</li> <li>• Land leases and concessions</li> <li>• Acquisition, use, dealing and loss of land use rights, including acquisition of rights arising through customary use, and</li> <li>• Land management</li> </ul> <p>See section 3.3.1 of the main report</p>
<p><b>New matters</b></p>	<ul style="list-style-type: none"> <li>• Set of 31 definitions</li> <li>• Principles governing land management</li> <li>• Prohibition on encroachment</li> <li>• Land allocation master plans and strategic land use plans</li> <li>• Various provisions relating to State land</li> <li>• Acquisition of land use rights covering condominiums</li> <li>• Loss of rights due to State investment purposes</li> <li>• Land related businesses</li> <li>• Prohibitions against land users and officials</li> <li>• Transitional and consequential provisions.</li> </ul> <p>See section 3.3.2 of the main report</p>
<p><b>Deleted matters</b></p>	<ul style="list-style-type: none"> <li>• Prohibition against speculation</li> <li>• Maximum holding size</li> <li>• Temporary land certificates</li> <li>• Water area lands</li> <li>• Land of Lao citizens who fled or gave land to collectives</li> </ul> <p>See section 3.3.3 of the main report</p>

<b>Matters requiring further attention</b>	<ul style="list-style-type: none"> <li>Recognition of customary use and ownership</li> <li>Land titling and formalization of tenure</li> <li>Condominiums</li> <li>Land valuation</li> <li>Land related businesses</li> <li>Settlement of land disputes and grievance redress</li> <li>Control of village common lands, and</li> <li>Requisition and compensation (Articles 147 to 155)</li> </ul> <p>See section 3.5 of the main report</p>
<b>Other matters of concern</b>	<ul style="list-style-type: none"> <li>Villagers' role in the granting of leases and concessions</li> <li>Rights over land used for swidden cultivation and forest land</li> <li>Collective/common lands</li> <li>Gender issues</li> <li>Resettlement</li> <li>E-government</li> </ul> <p>See section 3.6 of the main report</p>

**Table 2: Comparison of Old and New Forestry Laws**

<b>Basic information</b>	<p>Adopted by the National Assembly 13 June 2019                  Promulgated by the President 25 July 2019                  Responsible ministry: Agriculture and Forestry (MAF)                  Replaces Forestry Law of 2007</p>
<b>Structure, topics and articles</b>	<p>Structure follows Forestry Law of 2007 but is expanded                  Contains 15 Parts (compared with 12 Parts in 2007 Law)                  New Parts:                      Part 2 Forestry Strategy                      Part 6 Forestry Businesses and their Operations                      Part 9 Forest Protection Fund                      Part 11 Criminal Proceedings relating to Forest and Forest Land                          (Part 9 of 2007 Law on Settlement of Conflicts was deleted)</p> <p>Contains 175 Articles (compared with 130 Articles in 2007 Law)</p> <p>See section 4.3 of the main report and Annexes 3 and 4</p>
<b>Expanded concepts</b>	<ul style="list-style-type: none"> <li>More specific Articles and definitions and more specific rules on forest ownership</li> <li>Devolution of power to convert forest categories from central to provincial governments</li> <li>Significant revisions to the sections on forest management, forest protection, forest development and forest utilization</li> <li>New provisions relating to leases and concessions on forest land</li> <li>Specific provisions on forestry businesses</li> <li>Statements on carbon trading</li> <li>Greater focus on non-timber forest products</li> <li>Expanded list of prohibitions, and</li> <li>Expanded list of rights and duties of officials</li> </ul> <p>See section 4.3.1 of the main report</p>

<p><b>New concepts</b></p>	<ul style="list-style-type: none"> <li>• A new Part dealing with forestry strategy</li> <li>• A system for plantation registration certificates and their uses</li> <li>• A new Part on the Forest Protection Fund</li> <li>• Six new Articles on criminal proceedings</li> </ul> <p>See section 4.3.2 of the main report</p>
<p><b>Deleted matters</b></p>	<ul style="list-style-type: none"> <li>• Part 9 of the 2007 Law, Settlement of Conflicts (two Articles)</li> <li>• Exclusion of the National Assembly from a role in converting categories of forests</li> <li>• Deletion of the word 'ownership' in favour of 'management' of forests</li> <li>• Streamlined set of Articles on inspection of forests.</li> </ul> <p>See section 4.3.3 of the main report</p>
<p><b>Matters requiring further attention</b></p>	<ul style="list-style-type: none"> <li>• Recognition of customary use</li> <li>• Nature of the forest use right</li> <li>• Swidden cultivation</li> <li>• Requisition and compensation</li> <li>• Carbon ownership and trading</li> <li>• Wetlands, and</li> <li>• Transitional and consequential provisions</li> </ul> <p>See section 4.5 of the main report</p>
<p><b>Other matters of concern</b></p>	<ul style="list-style-type: none"> <li>• Control of village lands</li> <li>• Villagers' role in the granting of leases and concessions</li> <li>• Grievance redress mechanisms</li> <li>• Gender issues</li> <li>• Land titling and formalization of tenure of forest land</li> <li>• Collective/common lands, and</li> <li>• Resettlement.</li> </ul> <p>See section 4.6 of the main report</p>



Bamboo grove, Nam Kat, Oudomxay Province. (Photo: Sangwan Sapma)

**Table 3: Key Questions about the New Land Laws and Forestry Laws (Matrix)**

Question	Assessment
<ul style="list-style-type: none"> <li>- How have the recommendations developed in each briefing note been taken into consideration in both Laws, including the recommendations made by the Forest Sector Working Group?</li> <li>- What are the improvements and/or gaps compared with the previous versions?</li> <li>- What are the key remaining issues?</li> </ul>	<p>A series of recommendations was made by the development partners and civil society organizations in relation to the <b>Land Law</b>. These were primarily in the areas of appropriation, resettlement, lack of consent, grievance redress, land titling, gender, collective ownership and swidden cultivation. Despite the reactions from the National Assembly to the presentations and materials prepared by the Advisory Group and other stakeholders, the recommendations were not, in general, accepted by either the drafters of the Law or the National Assembly. See main report sections 3.5 and 3.6 for a discussion of each of the topics.</p> <p>Similarly, development partners and civil society organizations were engaged during the drafting of the <b>Forestry Law</b> and made many suggestions. Some of these were accepted but there remain areas that did not follow the suggestions and also where a lack of clarity remains. See main report sections 4.5 and 4.6 for an analysis of the gaps in the Forestry Law.</p> <p>While recommendations were not fully accepted, there are nonetheless many <b>improvements</b> in both new Laws. They are longer, cover more topics, are more informative, address important basic issues and are better organized and drafted. Compared with the previous versions, both Laws are a step forward in improving implementation and the protection of rights. A list of the expanded and new matters, plus an assessment of the changes, can be found in summary form in sections 3.3 and 3.4 for the Land Law and sections 4.3 and 4.4 for the Forestry Law. See also Tables 1 and 2.</p> <p>However, there are also numerous <b>gaps</b>. While the drafting has been improved, the Laws are still not clear in many places. The Forestry Law, in particular, has numerous gaps dealing with customary land use rights. Gender aspects are not addressed in either Law and villagers are excluded from the decision-making process regarding leases and concessions on forest land.</p> <p>The remaining issues are listed in Table 1 for the Land Law and Table 2 for the Forestry Law. As these issues are complex, the text of the main report should be consulted, together with the recommended actions for each issue. For the Land Law, see sections 3.5 and 3.6; for the Forestry Law, see sections 4.5 and 4.6. See also Chapter 5 for overlaps between the two Laws and Chapter 6 on customary rights.</p>

<sup>2</sup> The Land Information Working Group (LIWG) and the Land Law Advisory Group prepared 7 briefing notes to advise the National Assembly for the Land Law revision. These briefing notes are available on the LIWG website.

<ul style="list-style-type: none"> <li>- How are the customary rights of people recognized for both individual and collective land and for land in both forest areas and non-forest areas under these Laws?</li> <li>- Do these provisions clearly articulate what are the limitations, duration and bundle of rights?</li> <li>- What else needs to be clarified and how?</li> </ul>	<p>The topic of customary land use rights is not fully addressed and this leaves numerous questions unanswered. While the provisions are a step forward in protecting customary land use rights, room remains for these rights to be ignored, limited or restricted.</p> <p>Customary land use rights are mentioned under the <b>Land Law</b> in two Articles (Articles 127 and 130), which are reasonably clear. Article 130 lays out the conditions for acquiring land use rights on customary land, but it is not clear what ‘customary rights’ entail. Article 44, without alluding to the term ‘customary’ also provides scope for the recognition of customary use of forestland through land use certificates. It is particularly important to note that all of these Articles that speak to recognition of customary land are implicit about rights for individuals (or households), and do not suggest that customary use in collective forms can be considered for recognition.</p> <p>See Chapter 6 for a discussion and a set of items that need to be clarified in the implementing decrees and regulations.</p> <p>Customary land use rights are not mentioned under the <b>Forestry Law</b>. The Law provides for four categories of forest utilization including customary utilization under ‘Chapter IV Forestry Activity – Section 4. Forest Utilization’, but omits this category under ‘Chapter V Forestland – Section 4 Utilization of forestland’. Customary utilization is granted for forests, trees, timber and non-forest-timber products (NTFPs) in Articles 60 and 64 and 123. See Chapter 6 for a discussion and list of recommended actions.</p>
<ul style="list-style-type: none"> <li>- In terms of customary tenure rights, are the two new Laws in line with each other?</li> <li>- What are the exact provisions related to customary tenure and how will the provisions in both Laws (Forest / Land) be implemented?</li> <li>- What needs to be clarified between the implementation of the two Laws, and how will this support effective implementation?</li> </ul>	<p>The Land Law addresses customary land use rights directly, whereas the Forestry Law addresses customary utilization of forest, timber and NTFPs. The Articles are Land Law 127 and 130, and Forestry Law 60, 64 and 123. See main report sections 3.5.1, 4.5.1, 5.3.5 and 6.2.</p> <p>The fact that the Forestry Law omits customary utilization as a category of utilization of forest lands is inconsistent with Land Law Articles 44 and 130.</p> <p>Implementation of the provisions will be a particular challenge with the Forestry Law because the Law itself provides so little detail. The statement in Article 64 (the main Article on the topic) merely defines it as: ‘[use in] a manner that people have practised for a long time within village forest areas in accordance with the allocation plan and the law’. It then provides that the use can be modified by management plans and the Law. Much work will be required to explain the consequences of such use rights, how allocation plans are to approach them, whether they can be formalized, and what transactions are possible (if any) with customary use rights. The implementing decrees and regulations will need a series of statements to clarify the situation – see main report section 6.7 for a list of required clarifications.</p> <p>The Land Law has a much more restricted focus on customary use rights. Its provisions are limited to authorizing the State to transfer land use rights to customary users in recognition of their rights (Article 127) and rules on how the rights can be acquired (Article 130), such as 20 years of continuously exercising the rights on the land. Here, the implementing decrees and regulations will have to explain how the two Articles are implemented in practice, such as how the transfer is made, the form of document, etc. – see main report section 6.7 for details.</p>

<p>- How do both Laws protect people from appropriation, resettlement, lack of consent, access to grievance mechanisms, etc., specifically in the context of land titling projects and also in the formalization of land use rights?</p> <p>- What are the limitations?</p> <p>- What are the mitigation measures in case of expropriation?</p>	<p>In relation to the <b>Land Law</b>:</p> <ul style="list-style-type: none"> <li>• The <b>requisition and compensation</b> provisions are a good starting point but they fail to adequately protect people, they omit important procedural and grievance redress safeguards, and they are somewhat vague, which will result in implementation problems. See section 3.5.7 and Chapter 6.</li> <li>• There are no provisions relating to <b>villagers' consent</b> or engagement in the process of leasing land or granting concessions over village land. This is a significant omission and creates a substantial risk. See sections 3.5.6 and 3.6.1.</li> <li>• The <b>grievance redress</b> provisions are very formulaic in the Land Law although they provide a good starting point. There is a need for detail, particularly in regard to land titling activities, and requisition and compensation, including valuation. See section 3.5.8.</li> <li>• The <b>land titling</b> provisions are an improvement but they omit important legal points and do not include safeguards. The safeguards could easily be addressed in implementing decrees and regulations. See section 3.5.2.</li> <li>• <b>Gender</b> by way of joint titling or specifying ownership for women, is not addressed in the law, which is a noticeable change from the Land Law 2003. See section 3.6.3.</li> <li>• Those practising <b>swidden cultivation</b> have no clear protections under the Law and may be at substantial risk because customary rights are based on 20 years of continuous use (Article 130) and also a right can be lost if the land is not used for three years. The term of 'continuous use' is here ambiguous and open to interpretation. See section 3.6.2.</li> </ul> <p>In relation to the <b>Forestry Law</b>:</p> <ul style="list-style-type: none"> <li>• The <b>requisition and compensation</b> provisions should be clearer. Much detail will be required in the implementing decree or regulation to make the provisions workable. See section 4.5.4 and Chapter 6.</li> <li>• <b>Grievance redress</b> is not addressed in any meaningful way. See section 4.6.4.</li> <li>• The law is completely silent about <b>formalizing forest use rights</b>. See section 4.6.3.</li> <li>• There are no provisions relating mandating <b>villagers' consent</b> or engagement in the process of planning, leasing land or granting concessions over village land. These omissions were intended by the drafters but they create substantial risks. See sections 4.6.1 and 4.6.2.</li> <li>• <b>Gender</b> is not addressed. See section 4.6.5.</li> <li>• Those engaged in <b>swidden cultivation</b> are to be encouraged to move to settled agriculture (Article 53), but there is recognition of agricultural use within Controlled Use Zones. See section 4.5.3.</li> </ul>
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<p>What safeguard measures in relation to the formalization process of the tenure rights will need to be clarified in subsequent legal frameworks (sub-decrees, instruction, procedures, etc.)?</p>	<p><b>Land Law</b></p> <p>While Article 101 of the Land Law gives some detail about the process for land title registration, there remains a need for implementing decrees, regulations and guidelines. The following safeguards would be required:</p> <ul style="list-style-type: none"> <li>• <b>Information</b> for land holders in places that are nearby, in languages they understand, in a manner that they can understand (e.g., local publications, community meetings, non-written communications, women officers for women).</li> <li>• <b>Guidelines</b> for staff on how to implement the Land Law where the situation is not clear, e.g., what to do about lost documents, one missing document, and how to assess evidence of customary use.</li> <li>• Adequate <b>notice</b> for land holders to obtain the many documents that are required (see Article 100).</li> <li>• Several levels of <b>grievance redress</b> mechanisms, beginning with a simple administrative review process, then semi-formal decision reviews by local officers, appeals to the provincial level and finally appeals to the courts.</li> </ul> <p>See the main report sections 3.5.3 and 3.5.8. See Chapter 6 for customary rights.</p> <p><b>Forestry Law</b></p> <p>There are no provisions in the Forestry Law regarding formalization of tenure rights or the processes involved, including customary rights. At most, Article 44 of the Land Law gives a general direction that the MAF is to coordinate with MONRE and others to collect information on forest land users and 'then issue legal land use certificates'. In so doing, the social safeguards should be the same as for MONRE – such as requiring the free, prior and informed consent, and thus the implementing decrees, regulations and guidelines should mirror the steps required for formalization and titling of land use rights. Education for forest land users would also be required.</p> <p>See the main report sections 4.6.3 and 4.6.4. See Chapter 6 for customary rights.</p> <p>There is some overlap between the two Laws in terms of how agricultural use within a forest will be approached. It is not clear whether a land use certificate or a land title will be needed. See section 5.3.5.</p>
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Mr. Khamsay Keosithong (left) and Mr. Buathong Vongsamphan (right) the villagers of Ban Yai Village, Phou Koud District, Xiangkhong Province are explaining the three forest categories to MRLG staff Sangwan Sapma. (Photo Bart Verweij)

## 1 Introduction

This report on the new land and forestry laws has been prepared at the request of the Land Information Working Group (LIWG), which is coordinating the input of civil society, donors and development partners in developing the legal framework for land and tenure rights. The report seeks to achieve several main aims:

- To explain the differences between the new Land Law and Forestry Law and their predecessor Laws, namely the Land Law 2003 and the Forestry Law 2007, respectively, noting both their improvements and shortcomings.
- To compare the new Land Law with the new Forestry Law to highlight any differences and potential problems arising from gaps and overlaps, and

- To chart a course for further input by civil society to the development of implementing decrees, regulations and procedures, through a set of recommendations, which could also be useful when the two Laws are next revised.

The above will cover seven key areas that have been raised with the Ministry of Natural Resources and Environment (MONRE) and the National Assembly, namely: rights over land for shifting cultivation; requisition and compensation; leases and land concessions; gender in land rights; tenure security; grievance redress mechanisms and land titling. A final Chapter will focus on customary rights, particularly customary tenure rights in forest locations, where several of these seven key areas overlap.



Nam Nern River at Ban Son Koua Village in Nam-Et Phou Loey National Protected Area, Xam Nuea, Hua Phan Province. (Photo: Sangwan Sapma)

## 2 Background

### 2.1 Land Law

The new Land Law was adopted by the National Assembly in June 2019 following an extensive drafting process that took staff of MONRE more than three years and involved wide internal consultation, including input from the provinces. There was also a great deal of engagement by civil society and development organizations and donors with the drafters of the Law as well as with the National Assembly during its consideration of the legislation. Although the Law was adopted by approximately 65 per cent of votes in 2019, further additions were required before promulgation.

The Land Law 2019 is the third such Law on the topic in Lao PDR and follows the original Land

Law 1997 and the Land Law 2003. The basis for the land laws is the Prime Ministerial Decree No 99/PM of 1992, which first introduced the land use rights in their current form.

### 2.2 Forestry Law

The Forestry Law was also adopted by the National Assembly in June 2019, preceding the adoption of the Land Law: it had been intended that the Land Law would be adopted first because some of the concepts in the Forestry Law were thought to build on those in the Land Law. The drafting of the Forestry Law also benefited from input from civil society organizations. The Law was promulgated by the President on 25 July 2019.

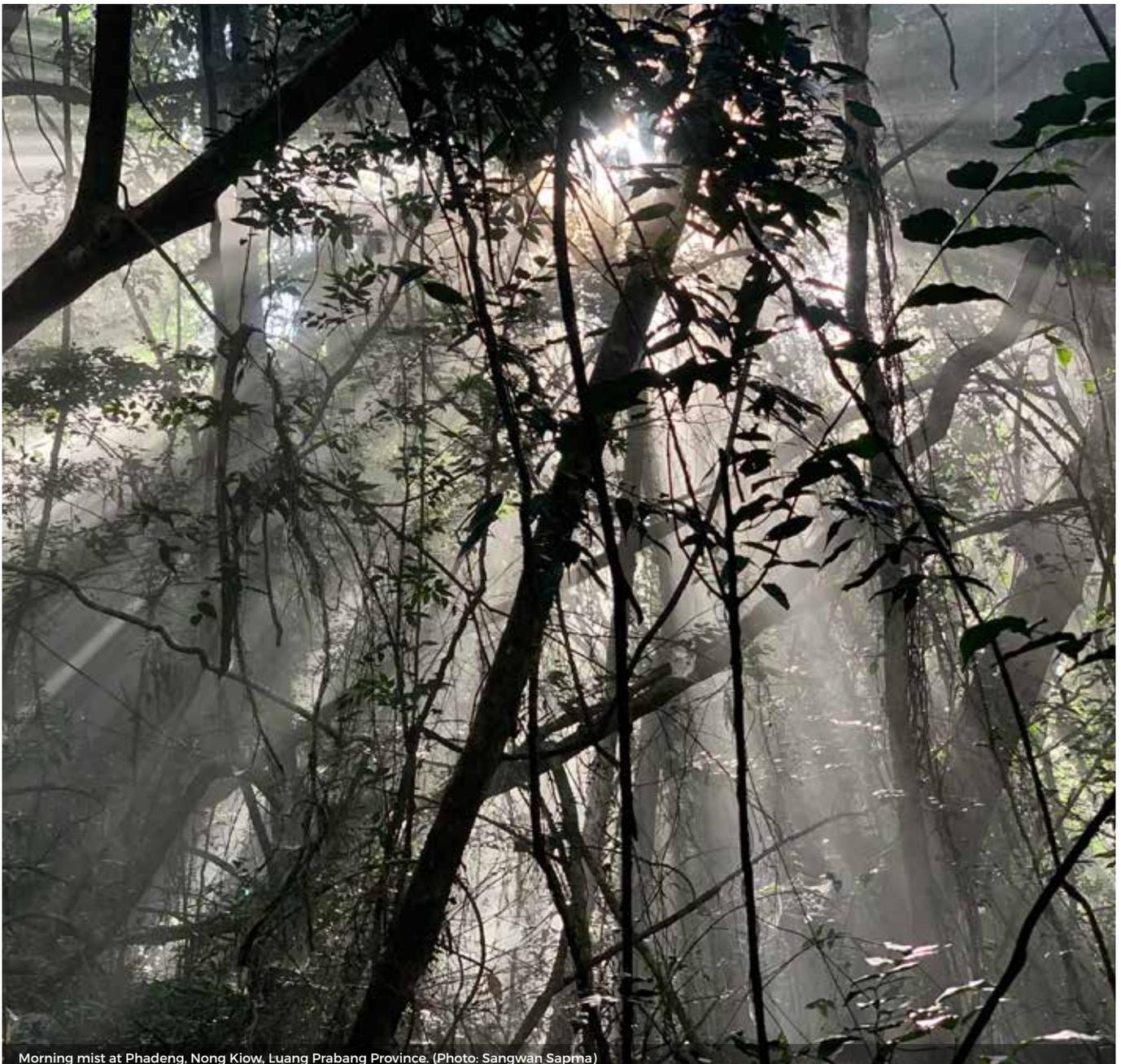
<sup>3</sup> A revision of either of the Laws would not be expected for at least five years.

The new Forestry Law replaces the Law of 2007, which itself replaced a Law on Forestry of 2005. Previous Laws include the original Law on Forestry 1996.

### 2.3 Next steps

One of the objectives of those drafting the Land Law was to address issues that were covered by prime ministerial implementing decrees, such as the Decree No 88 of 2008. The aim was to have all relevant matters covered by the Law itself, and thus the new Land Law runs to 188 Articles, as against 87 in the Land Law 2003. However, it is clear from a reading of the new

Law that much detail still remains to be clarified, so it may be necessary for MONRE to produce at least one new prime ministerial implementing decree. It is certain that the various regulations, such as those dealing with land titling, will need updating and other new regulations, such as those on condominiums, will be required. Thus, there is potential for civil society and others to provide input to the drafting of those documents in such a way as to enhance the current provisions of the Law, fill the many gaps and address the small number of overlaps. Similarly, there is potential for the implementing legislation under the Forestry Law 2019 to be enhanced through input to issues such as those covered in this report.



Morning mist at Phadeng, Nong Kiow, Luang Prabang Province. (Photo: Sangwan Sapna)



Rice paddies at Ban Yai Village, Phou Koud District, Xiangkhoung Province. (Photo: Bart Verweij)

## 3 Land Law 2019

### 3.1 Key points of this Chapter

The structure and topics covered by the Land Law 2019 follow the 2003 Law with the addition of five new Parts. The new Law is substantially longer than that of 2003 and many Articles are more detailed. Overall, there is much more information in the Law, which should improve implementation. However there are still areas of concern that require further thought or that need major revisions.

A number of topics are addressed in greater detail:

- What foreigners can own
- Zoning and classification of land and associated duties
- Land administration, which also includes several new topics and many new Articles
- Land leases and concessions
- Acquisition, use, dealing in, and loss of land use rights, including acquisition of rights arising through customary use, and
- Land management

The following topics are new:

- A set of 31 definitions
- The principles governing land management
- Prohibition on encroachment
- Land allocation master plans and strategic land use plans
- Various provisions relating to State land
- The acquisition of land use rights covering condominiums
- The loss of rights due to State investment
- Land-related businesses
- Prohibitions against land users and officials, and
- Transitional and consequential provisions

Some topics have been deleted. These are:

- The prohibition against speculation
- Maximum holding size
- Temporary land certificates
- Wetlands, and
- Land of Lao people who fled or gave land to collectives

The following topics need further thought and development:

- The recognition of customary use and ownership
- Land titling and formalization of tenure
- Condominiums
- Land valuation
- Land-related businesses
- Control of village common lands
- Grievance redress mechanisms
- Requisition and compensation, and
- Transitional and consequential matters

The following topics are of concern:

- The role of villagers in the granting of leases and concessions
- Rights over land used for swidden cultivation and forestland
- Gender issues
- Collective/common lands
- Resettlement, and
- E-government

### 3.2 Introduction

The Land Law 2019, which was adopted by the National Assembly on 21 June 2019, is a substantial update, expansion and reorganization of the Land Law 2003. This Chapter looks first at what is new or different to give an understanding of how things have changed with the adoption of the new Law. It then examines key changes (and omissions) in more detail, with commentary and suggestions for improvements. The Chapter pays special attention to the manner in which customary rights are (or are not) covered by the new Law.

### 3.3 Structure and topics

The Land Law 2019 follows the same basic structure and covers the same items as are addressed in the 2003 Law, although, as the new Law is more than twice as long (188 versus 87 Articles), many more matters are covered, often in more detail.

As with the 2003 Law, the subject matter is divided into various parts (listed below), with more detailed Sections dealing with specific areas. There are now 11 Parts, compared with six Parts in the 2003 Law. Additions in the 2019 Law are highlighted in bold:

- General Provisions
- **Land Allocation Master Plan, Strategic Plan and Land Use Plan**
- **Land Zoning, Land Categories, Land Surveying, Land Protection and Development and Land Transformation**
- Land Management and Registration (now in separate Parts: **Management of Land Use** and **Land Administration**)
- **Land Lease and Concession**
- Rights and Obligations of Land Users (now **Acquisition of Rights, Rights and Obligations, Loss of Rights and Termination of Land Use Rights**)
- **Compensation for Damages Caused by Land Use Rights**
- **Land Related Businesses**
- **Prohibitions**
- Control of Land Use (now **Land Management and Inspection**)
- Settlement of Disputes, etc.
- Final Provisions

Thus, although the basic structure of the two Laws is the same, there are some significant additions in the number of Parts and range of topics covered, as well as some reorganization. For a list of all the Parts and Sections covered by the two Laws see Annexes 1 and 2.

Within each of the Parts there are major additions and changes, and very few topics were deleted. As the headings to the Articles show, a large majority of provisions are either new or were altered in some way from those in the 2003 Law.

### 3.3.1 Expanded matters

Throughout the law, the **Articles are longer** and, to some degree, **more informative** than they were in the 2003 Law. In some cases, Articles are significantly more detailed, such as the addition of a new set of definitions in Article 4 and the amended definition of land zones in Article 20.

In Part 1, a more detailed Article 3 **clarifies what foreigners can own** – they can only hold leases or concessions on land. This position is enforced in the definition of ‘right of aliens, etc.’ in the set of definitions in Article 4 and also in Article 131. Note, however, that the definition of ‘apartment’ in Article 4 specifically notes that parts of a condominium building can be owned by foreigners (see also Article 132). By extension, foreigners cannot own land use rights, which Article 3 provides for Lao citizens only.

In Part 3, there is a greatly expanded set of Articles dealing with **zoning and classification** of land (Articles 20 to 21); land surveys and protection (Articles 22 to 24, including a new definition of land development in Article 24); and changes to land categories (Articles 25 to 30).

In Part 4, which deals with each ministry's rights and obligations regarding **management of the use of land** in the category for which the ministry is responsible, there are new Articles requiring surveys, land use plans, and protection, development and use of the land, including the issuing of land titles for agriculture land (Article 38) and land use certificates for forest land (Article 44). The new provisions represent a significant expansion of the equivalent provisions in the 2003 Law, although the provisions relating to what someone can do with the forest land certificate now appear in the Forestry Law 2019 (Part 8).

In Part 6 there is a substantially expanded set of Articles relating to **land administration**<sup>4</sup> (Articles 89 to 115) covering:

- A land information system (Articles 90 to 91), which are completely new

- A land registration system (Articles 92 to 105), which have been extensively revised and include, among other changes, an Article making it clear that land titles are issued not just for private land use rights but also for those held by the State and its organizations (Article 99<sup>5</sup> and see also Article 80)
- Land registration for condominium construction (Articles 106 to 108), which is completely new set of Articles
- Land valuation (Articles 109 to 110), which is completely new
- Land transactions (Articles 111 to 112), which are completely new
- Revenues from land, including fees, rents, sales and taxes (Articles 113 to 115), which are completely new.

In Part 7, the set of Articles dealing with **land leases and concessions** has been expanded (Articles 116 to 125, formerly covered by Articles 13 and 64 to 67 of the 2003 Law in much less detail). These deal with leasing by Lao citizens, granting of leases and concessions on State land, terms of a lease or concession on State land, rights and obligations of the lessee or concession holder, and the trading of such rights, including the obligations of those who acquire the rights. Article 119 envisages that a separate regulation will provide further details about leases and concessions on public land. Article 121 extends the list of rights of a lessee or concession holder, and Article 122 includes a duty to compensate those affected by operations.

In Part 8, there is a significantly expanded group of Articles on **acquisition, use, dealing and loss of land use rights** (Articles 126 to 147). These Articles do not make major changes to the old text but they add clarity and also include some new provisions, such as the granting of land by the State, including with restricted rights (Article 127) and acquisition of the **right to use customary land for individuals** (Article 130). The provisions on loss of use rights have been expanded to deal in detail with State organs or enterprises that do not use the land within three years (Article 145).

<sup>4</sup> Land administration can be defined as *the processes of determining, recording and disseminating information about land and the ownership, value and use of land*. Land administration includes the set of systems and processes for operationalising land tenure rules. It includes the administration of land rights, land use regulations, and land valuation and taxation. Land administration can be carried out by government agencies, or through customary leaders.

<sup>5</sup> It states that there are two types of land titles: titles for public land and titles for the land of individuals, legal entities and organizations. Presumably, there could be a title issued for village utility land, although, as there is very little that can be done with such land, it would not serve any practical purpose.

In Part 13, an extensive set of new provisions on **land management**<sup>6</sup> has been introduced (Articles 167 to 181) covering the duties of MONRE land management at the central, provincial, district and village levels, and also the other ministries at the central level and in coordination with MONRE. The rights and duties of provincial and district MONRE officials are also specifically addressed. The changes are so sizeable that Part 13 could be considered a new Part because the Articles in the 2003 Law (Articles 77 to 79) dealt with controlling land use in such a narrow and superficial manner that they were of little use.

The new Articles confirm MONRE as the leader and coordinator in land management (Article 166, based on Articles 8 and 9 of the 2003 Law), with an expanded set of rights and duties at the national level (Article 168), provincial level (Article 169), district level (Article 170) and in the villages (Article 171). Rights and obligations are imposed on each of the ministries responsible for a category of land (Articles 172 to 178), such as the Ministry of Agriculture and Forestry (MAF)(Article 172), and a duty to coordinate with MONRE, including through the provision of data. The provincial, district and village authorities are given a further set of duties (Article 179); and all sectors and agencies are required to make plans and provide management and monitoring data to MONRE (Article 180). Finally, land officials with MONRE are provided with a set of rights to conduct their work, such as acquiring documents and making inspections (Article 181). Three other Articles in Part 13 (Articles 182 to 184) deal briefly with the conduct of land inspections by MONRE and others, such as what is to be inspected and when inspections are to occur.

### 3.3.2 New matters

There are numerous new provisions in the Law, which are marked in the title of the Article with the word 'new'. As more than half the Articles have the word 'new' in their title, the following summary covers only the main innovations in the 2019 Law.

In Part 1:

- Some 31 **definitions** of technical and specialist words in Article 4. In addition, throughout the text of the Law there are numerous Articles defining a particular concept, such as 'transfer' (Article 128) and 'compensation' (Article 148).
- A set of six **principles governing land administration** in Article 6, which should more correctly be described as principles of land management.
- A **prohibition on encroachment** and authority to demolish encroaching structures in Article 8. The concept is also mentioned in Articles 4, 84 and 159, and
- A specific mention of **international cooperation** in a new Article 10.

In Part 2, there is a completely new Section dealing with national and local **land allocation master plans** (Section 1, Articles 11 to 13); and **strategic land use plans** at the national and provincial levels (Section 2, Articles 14 to 19).

In Part 5, there is another completely new and extensive Section dealing with the management of **State land** and the use of State and also privately held land. Section 1 covers the definition of public land, acquisition of public land, management of public land, assignment of public land to villages for collective use, an inventory of public land, allocation of public lands, and protection of public lands (Articles 78 to 84). The new concept of 'public land for collective utility' in Article 81 covers lands used by villagers. In Sections 2 and 3, new provisions briefly deal with **management of privately held land** (such as recording rights and complying with land use rules) for Lao citizens (Articles 85-86) and foreigners (Articles 87-88).

In Part 8, the Section on **acquisition of land use rights** (Articles 126 to 132) covers customary land use. The list of reasons for the **loss of use rights** has been expanded to include the State's development projects, as well as the existing reason of requiring the land for a public purpose (Article 147), which is linked to the new compensation provisions in Part 9.

<sup>6</sup> Land management can be defined as *the activities associated with making informed decisions about the allocation, use and development of land resources*. It includes resource management, land administration, land policy and land information management. The objective is to put the country's land resources to best use and achieve social, environmental and economic development that is sustainable

In Part 9, there are new provisions about compensation for **loss of use right due to State investment** operations (Articles 152 and 154), which expressly oblige the State to compensate where it takes land for investment, including for issuing leases or concessions.

In Part 10, there are three new Articles on **land related businesses** (Articles 156 to 158) covering land surveying, valuation, trading of rights and other services, and which require training and official registration.

In Part 11, there is a set of **prohibitions** against activities by land users (Article 159) and officials (Article 160). There are no specific penalties but Article 186 provides that anyone violating the law will be educated, disciplined, fined or prosecuted and, in certain cases, lose their land.

In Article 188, which declares that the new Law supersedes the Land Law 2003, a **transitional provision** deals with the situation of investors and developers who signed agreements under the 2003 Law, and specifies that those agreements remain valid.

### 3.3.3 Deleted matters

The prohibition against **land speculation**, which appeared in Article 7 of the Land Law 2003, has been omitted.

Article 17 of the 2003 Law dealing with **maximum holding size** for agricultural land no longer appears. Instead, Article 37 of the Land Law 2019 states that the allocation, strategic and land use plans will regulate such matters.

In Part 2 of the 2003 Land Law, the authority of the district or municipal agriculture authorities to issue **temporary land certificates**, which can be upgraded to land titles, has been deleted. Instead, the power to issue titles covering agriculture land now specifically lies with the local Department of Natural Resources and Environment (Article 38 in the Land Law 2019). It should be noted that the equivalent Articles on forest land (Article 44 in the 2019 Law, and Article 22 in the 2003 Law) have also been modified to remove the concept of a three-year land certificate, which could be upgraded to a land title. Under the new Article 44, there is reference only to the **land use certificate**. Likewise, Article 21 in the 2003 Law, on the determination of the scope of forest land use rights, and Article 22 on the allocation of forest land use rights, have been omitted from the new Law. However, the new Law does recognize that the process of issuing land titles across the entire country will take time (in Article 130, which deals with acquisition of the right to use customary land). Paragraph 2 of Article 130 provides that, until a land title can be issued, **the State is to acknowledge and protect customary land use rights**.

Further, regarding **wetlands**, the recognition of an individual's use right in Article 26 of the 2003 Law appears to no longer exist in Article 49 of the 2019 Law, which is the equivalent Article.

In Part 3 of the 2003 Land Law, Articles 73 to 76, which deal with the **land of Lao citizens who fled** during the revolution or fought for liberation, and also **land given to collectives**, no longer appear. However, such abandonment or assignment is now the basis for a right to be terminated under Article 147 of the 2019 Law.



Green Viper, Nam Kat, Oudomxay Province. (Photo: Sangwan Saprma)

### 3.4 Assessment of the changes

Overall, the new Articles are **much clearer, fuller and more informative** than those in the 2003 Law, which suffered from being vague and difficult for provincial and district officials to implement in a uniform manner.<sup>7</sup> Many of the new or amended Articles will make it easier to both understand and implement the Law, and the set of definitions in Article 4 provides some assistance in interpretation. Thus, from a purely practical or implementation viewpoint, the new Law is welcome.

A major reform has been the formal introduction of **master planning, strategic planning, land use planning** in Part 2 (Articles 11 to 19), as well as the introduction of **principles governing land administration and management** (Article 6). These are welcome too.

The new provisions on **land administration** (Articles 89 onwards), which cover for the first time land information systems, valuation, land-related businesses and revenue from fees, can also be considered a good first step in modernizing the country's regulatory framework for land administration. The two Articles on land information systems (Articles 90 and 91), for example, address the basic issues of 1) who is to create and manage the system, and 2) the right of access to the information and under what conditions. It can be expected that, as time goes by and experience grows, separate laws on some of these topics will be developed and adopted.<sup>8</sup>

The new Law also reflects many of the **changes in organization and policy** that were sought by MONRE. The Law makes much clearer the **central and coordinating role that MONRE** has in land management and its central role in land administration. Opinions might vary as to whether this is desirable or not, but the position is now much clearer and thus inter-ministerial disagreements about jurisdiction, which bring delays, inconsistencies and inefficiencies in themselves, might be reduced.

For the business community and investors, the new or amended Articles on **leases and concessions**, including Articles 3 and 4, bring greater clarity to the area of investments involving land

made by foreigners. Part 7 provides a more complete picture of leases and concession arrangements than did the Articles of the 2003 Law (Articles 13, 64 and 65) and now makes it clear that concession rights can be traded (Articles 123 to 125). However, given the complexity of this area of law, and as envisaged in Article 119, further details will need to be elaborated through a regulation.

Similarly, although there is no express prohibition on foreigners owning land use rights, the 2019 Law can be understood to mean that **foreign investors can have only leases or concessions** on land. This, too, brings some certainty to an area that was in doubt under the 2003 Law.

It should be noted that while there is much more text, this does not mean that all matters are covered in the degree of detail required or that they address all the issues. There is still room for discretion and local practice, which will result in divergent practices and thus poses risks arising from differential local interpretation and the discretion of government entities. The main areas where additional detail and coverage would have been beneficial are discussed in the following section. However, overall the additional text and resulting clarity are steps forward.

While there are many positive developments, there are also some changes that will be controversial. The debates over these issues have been underway in the country for many years. In particular, the right of the State to **terminate use rights for State investment purposes** (rather than public purposes) is now clearly established in Article 147.2. This means, in practice, that the State is able to requisition privately owned land so that it can issue a lease or concession to a developer or investor, in addition to the right to requisition land for a public purpose. Further, while the State is obliged to compensate under Article 154, it is left to a committee to determine the value. These are other concerns about the provisions on **requisition and compensation** that will be discussed in section 3.5.7.

The transitional provisions in Article 188 are a step in the right direction, in that they deal with one category of agreements made under the 2003 Law that will continue under the 2019 Law.

<sup>7</sup> A great deal of interpretation and use of discretion were required to implement much of the 2003 Law, resulting in wide variations in practice across the country and frustration for officials who were implementing the Law.

<sup>8</sup> It is noted that many regional neighbours have, for example, laws on land information systems already, such as Indonesia, Malaysia and Hong Kong and, in the case of Thailand, a government decree.

### 3.5 Matters that require further attention

While the new Law provides many improvements on its predecessor, there are equally many areas that are either incomplete or fail to address and reflect best practice and policy positions. This section looks at the matters that require further work to best serve the country and its population.

#### 3.5.1 Recognition of customary use and ownership

Three provisions in the Land Law 2019 deal with customary use and resulting ownership. The Article of primary importance is Article 130, headed 'Acquisition of the Right to Use Customary Land'. That Article sets out the criteria for legal recognition of the act of acquiring land use rights by custom. These include exploration, development, protection and regular land use for more than 20 years before this Law becomes effective. This can take place without the need to provide documentation certifying acquisition of the land, but it does need a certificate from the village administrative authorities and from the owner of nearby land certifying continuous land acquisition and use without any disputes or with disputes being already settled.

The second relevant Article is Article 127.1, which deals with allocation of land by the State, including on the basis of 'the acknowledgement of customary land use rights'.

The third relevant Article - 44 - concerns forest land. It affirms that the State acknowledges the use of land by people who have been living and earning a living on forest land in the past, and to whom land use certificates should be issued.

Recognition of rights arising by custom is an important step forward. But there are still concerns with how it is to be enacted.

The primary concern is the formulation of the requirements in Article 130, particularly the length of time required to establish the right. The requirement to show 20 years of regular land use is likely to exclude many land parcels, such as those of recently established families, those where extra land was cultivated as the family expanded, and those of villagers who have had to move due to natural disaster, climate change or due to state-sponsored (or state-mandated)

resettlement. Additionally, the Article may be interpreted to exclude lands used for swidden cultivation.

Article 127.1 is unclear about how and when the power to allocate land based on custom will be used, although the drafters of the Law clearly had something in mind when they included customary rights in the Article. Perhaps it was intended to overcome the many requirements in Article 130 that a person would have to satisfy before the State would recognize a right arising by customary use.

Article 44 is also unclear, although the obligation to administer that Article is given to the MAF. As will be discussed later in this report, the Forestry Law 2019 has no provisions that detail how rights over forests would be granted nor detail on the issuance of the land use certificates. The broader question of whether the two Laws are in line with each other and their exact provisions relating to customary tenure will be covered in detail in Chapter 6.

#### **Recommendation**

In drafting the implementing decrees and regulations, practical details should be provided on:

- What can be considered development, protection and regular use of land in Article 130
- Exemptions for villagers who have had to move village due to resettlement in the past 20 years
- The circumstances in which the State allocates land under Article 127.1 and the process and documentation, and
- The conditions and processes for issuing land use certificates by the MAF (in the decree or regulations)

#### 3.5.2 Land titling and formalization of tenure

While the provisions relating to land registration (Articles 92 to 105) are an improvement compared with those in the previous Law, there remain some omissions and some problematic provisions. The Law does not address matters such as:

- Whether registration is mandatory or optional, particularly for transactions such as transfers, leases, etc.
- The effect of registration of such transactions, and
- How minor and major errors can be corrected.

Further, Article 100 requires applicants for first registration to have a full and extensive set of land documents, which is unrealistic in the context of rural Laos. And, as will be noted below, the Articles make no provision for digital information but instead focus heavily on paper documents. The Articles also incorporate a level of operational detail that would be better addressed in a regulation, which can be more easily amended as practices become more efficient. Finally, the Law does not contain some procedural safeguards, such as a grievance redress mechanisms.

In relation to customary use rights, it appears that Article 130 overrides the long list of requirements in Article 100, but this should be confirmed in the implementing regulation.

### 3.5.3 Land valuation

#### **Recommendation**

In drafting the implementing decrees and regulations, there should be provisions relating to the obligation to register, the effect of registration, correction of errors, exemptions where the full set of documents is not available, and the use of digital technology. Safeguards should also be addressed, particularly the grievance redress mechanisms. And the effect of Article 130 should be clarified.

The provisions relating to land valuation (Articles 109 and 110) give an indication of what land valuation is, what valuations are to be used for, and how regularly valuations are to be conducted, but they do little more. In fact, the Articles leave numerous questions and issues to be addressed. It appears that the Articles deal only with government valuations.

Some basic principles of valuation that should be addressed are as follows:

- Clarification that valuation of land includes not just the land use rights but other rights such as leases.
- Imposition of an obligation to create a recording system for valuations and sale prices.
- Establishment of the basic procedural aspects, such as the obligation to inform land use right holders (and others) of the value that has been calculated.
- Creation of an obligation to publish the methodologies that are used, including the valuation maps.
- Specification that the methodology of valuation should take into account non-market values, such as social, cultural, religious, spiritual and environmental values in special cases, such as compensation for the requisition of land.
- Requirement that a sales price index should be created, based on sale prices, and that any analysis of property prices should be published.
- Imposition of an obligation to publish the results for the public, but to do so in a way that respects privacy norms.
- Establishment of an appeal system for official valuations, such as a two tier approach with an administrative review and then a review in the courts.<sup>9</sup>
- Clarification of any rules required for private sector valuation.

These matters would need to be aligned with the provisions of other legislation, such as the Consumer Protection Law of 2010, in cases where the valuations are undertaken by the private sector.

#### **Recommendation**

Ideally, there would be a separate law on valuation, as there is in numerous countries. In the interim, the implementing decree or regulation should address the basic elements of valuation listed above, including procedural safeguards.

<sup>9</sup> The points are taken from Sections 18 and 19 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

### 3.5.4 Land related businesses

The rather short provisions on land related businesses (Articles 156 to 158) are a good first step in introducing consumer protection in the sector by requiring training and registration, although they require more thought and detail.

To fully protect the consumer and the integrity of the sector, it would be necessary to have clear requirements relating to the type of training needed and any obligations for continuous training; a public register of professionals that could be inspected; a set of provisions on complaints, investigation, disciplinary actions and penalties (including revocation of registration); and a body responsible for investigating complaints, etc. It may be that the drafters envisage that professional organizations or chambers would deal with these matters on the basis of self-regulation, but this would likely result in variations in addressing fundamental issues.<sup>10</sup>

It is noted that land related businesses would be regulated under the Law on Enterprise of 2013 and the Law on Consumer Protection of 2010.

#### **Recommendation**

The implementing decrees and regulations should address the basic features of consumer protection that are not already covered by other laws, such as training and complaints resolution.

### 3.5.5 Control of village lands

It appears from a reading across numerous Articles of the Land Law 2019 that villagers have limited powers in relation to the village lands,<sup>11</sup> that is, the land within their administrative boundaries, with the State<sup>12</sup> holding most powers except in narrowly defined land areas that villagers use in common.

There is no category or definition of common village lands in the Land Law 2019. For certain purposes of management, lands can be classified into one of eight categories (agriculture, forestry, water, industrial, etc. as listed in Article 21). For other management purposes, land can be divided into public land (which may be subject to rights, such as leases or concessions) or land over which land use rights have been granted.

The concept of common village lands equates most closely to the category of 'public lands', as described at the end of Article 78, these being 'lands that the State reserves and conserves'.<sup>13</sup> As provided in Article 8, the State does not permit illegal acquisition and encroachment of (public) lands.<sup>14</sup> Where there is encroachment, Article 84 instructs the authorities to inspect and requisition such land.

Article 79 described how public land can be acquired (presumably, from the State), which includes land allocated and reserved by the State as public land. The allocation and reservation could be envisaged to occur on the basis of one of the plans described in Part 2 of the law, such as the land allocation master plan, the strategic plan or land use plan (Articles 11 to 19). Land can be either preserved by the State for various purposes listed in Article 19 paragraph 1 or used for development other than forestry, as listed in Article 19 paragraph 2.

Following on from Article 80, which assigns primary responsibility for public lands to MONRE, Article 81 then narrowly defines the land that villagers can enjoy as a group. This indicates that the often-large areas of forest around villages are not the responsibility of the village. Article 81 creates a new concept of 'public land use for collective utility', that it...

...is the transfer of public land use rights to the villagers... to collectively use the lands in accordance to the local land allocation plan and laws.

<sup>10</sup> Such an approach would be in addition to that established by the Law on Consumer Protection 2010.

<sup>11</sup> These are lands within the administrative boundary of a village but not owned/used by an individual, group or entity. For administrative purposes, the fourth tier is the village, with an estimate of some 8,600 villages covering the entire land area of the country.

<sup>12</sup> In this regard, although the State could be construed to mean the village administrative authorities, a more likely reading of the Law is that the State means MONRE at the central, provincial and district levels as expressly stated in Article 80.

<sup>13</sup> As provided in the Constitution and repeated in Article 3 of the Land Law 2019, land belongs to the national community and is managed by the State. Lao individuals and entities can hold long-term use rights that are granted by the State.

<sup>14</sup> Note, however, the concept of encroachment appears to be limited to infringements to rights over land that are already created, rather than public land without any rights granted over it, according to the definition in Article 4 of 'land encroachment' and 'right to use public land'.

Note, that the State transfers this right to the village, rather than the village holding it as an inherent right.

Further, the extent of public land use for collective utility is potentially restricted by the rest of Article 81, as examples given pertain only to ‘cemeteries, sacred forest, common ponds, temples, schools, health centers, village administrative office, village markets’. Finally, Article 81 makes it clear that such land cannot be transferred, sold, exchanged, leased, subject to concession, contributed as a share or used as security for a loan.

The rights and duties of the village level of MONRE are somewhat narrowly defined (see Article 171), although Article 171.3 does include the power to sign contracts, the nature of which are not described in the Article.

In conclusion, from a reading of the numerous provisions in the Land Law 2019 in which the State (and MONRE) takes control of all non-private lands and the narrow definition of public land use for collective utility in Article 81, plus the restricted powers over the land in both Articles 81 and 171, it would appear that the Land Law 2019 expresses the view that villagers should not have full control over the land within their administrative boundaries but rather that the central, provincial and district level authorities should have that control. The power to lease out village lands, in particular, was cited as an instance in which the rights of village authorities should be curtailed. Any powers that the village authorities might have to give leases or concessions, or even to permit shifting cultivation by villagers, are probably only possible if a high-level plan authorizes such action.

On the issue of rent and concession payments, which has been highly contentious, it would appear that villages have been effectively excluded from the possibility of receiving any funds from the use of the land within their administrative boundaries. Articles 113 to 115 appear to give MONRE and the Ministry of Finance full control of this matter.

### **Recommendation**

The position as stated in the Law should be accepted and the focus shifted to involve villagers in the decision-making processes that lead to strategies, plans and the granting of leases and concessions. The Land Law 2019 is largely silent on the processes and safeguards (if any) that will apply when the numerous powers in relation to State or public land are exercised. So the focus should be on ensuring that a minimum number of protections for villagers are included in the implementing legislation dealing with the processes.<sup>15</sup>

### **3.5.6 Requisition and compensation**

Articles 144 to 147 on loss of land use rights and Articles 148 to 155 on compensation, regulate cases where a land use or other right is lost, setting out numerous circumstances that can result in a loss and the compensation (if any) that is due to the former owner. Of primary interest is the case of requisition by the State for public purposes or the State’s development projects in Article 147. It is of interest because this area of law is commonly problematic around the world and also because it can touch on many members of the community, whether they live in urban, peri-urban or rural areas.<sup>16</sup>

While the new Articles are longer than those in the 2003 Law (Articles 62 to 63 and 68 to 72), they fail to address many of the basic matters that would provide procedural safeguards to the community and that commonly appear in laws on requisition and compensation. In particular, the Law should include:

- A requirement to assess alternative means to deliver the public infrastructure, such as an alternative site.
- A requirement to buy the land use right (if the owner agrees) at the market price.
- A requirement to compensate not just the owners of the land use rights but also lessees and concession holders.

<sup>15</sup> As Article 119 notes, a regulation on leases and concessions is to be drafted.

<sup>16</sup> It appears that the provisions relating to the termination of a land use right and compensation would apply whether a land title has been issued or not. If a land title had not yet been issued, the holder of the right may however encounter problems proving his/her ownership.

- An obligation to follow a clear process, which has a number of stages and mandated time periods, such as preliminary notification, community consultation, negotiated agreement, final notice and then recording of the requisition in the land register.
- The option for an owner to appeal against the amount of compensation if he/she thinks it is inadequate.
- An obligation to offer the land to the former owner for re-purchase if it is no longer required by the State.<sup>17</sup>

There are many laws from regional neighbours that could be used as a basis for an expanded set of provisions on these topics although, ideally, a separate law would be drafted.<sup>18</sup> It is noted that in paragraph III.5 of the Resolution of the Party's Central Committee on the Enhancement of Land Management and Development in the New Period of August 2017, the government was to 'study and clearly set out rules and measures of enforcement and to ensure interest and justice for all relevant parties' in relation to the requisitioning of land. This duty might result in a new law on the topic, although this seems unlikely given that the Land Law has just been passed with an expanded set of provisions. A new decree or regulation is perhaps more likely. All of the above recommendations could be effective if stated in a decree or regulation. Such a decree or regulation should also include instructions on the factors to take into account in making valuations for compensation purposes.

### **Recommendation**

While the government and National Assembly have not accepted the above legal and procedural safeguards, there is an opportunity, when drafting the implementing decree or regulation, to ensure that the basic safeguards are included.

### **3.5.7 Grievance redress mechanisms**

The provisions on the settlement of land disputes in Part 12, Articles 161 to 166 follow the standard approach in Lao laws. It is commendable that the laws acknowledge the multiple non-court based options that are available for both administrative and private disputes. As with the other laws that include similar provisions, however, the text is so general as to provide little more than a directive on the types of dispute resolution options and the order in which they should be followed, with the ultimate forum being the court. As multiple laws suffer from this lack of meaningful detail, it would perhaps be preferable for a single law on administrative disputes and alternate dispute resolution to cover the situation across all areas of government administration in adequate detail.<sup>19</sup>

In the specific context of a law on land, disputes arising from land titling need special attention. Unfortunately, this issue is not addressed in Part 6, Chapter 2 on the Land Registration System. Presumably, the provisions of Articles 161 to 166 were considered by the drafters of the law to also apply to disputes regarding land titling.

Although the issue of grievance redress applies across land administration, land management and land rights, it is a particular issue in land titling because that is a process in which fundamental rights are investigated and formally established. The people whose rights are being investigated should therefore have a full set of options to ensure that their rights are properly protected, including through a grievance redress process. This would also make the work of local officials easier because they would have clear guidance on how to approach disputes, rather than relying on their own views and discretion.

<sup>17</sup> These suggested changes were presented to the National Assembly in a briefing note but were not adopted.

<sup>18</sup> See, for example, the Singaporean Land Acquisition Act: [http://www.asianlii.org/sg/legis/consol\\_act/laac152191/](http://www.asianlii.org/sg/legis/consol_act/laac152191/)

<sup>19</sup> For example, there is a well drafted Law on Economic Dispute Resolution that covers the range of trade disputes. It could serve as a model.

### **Recommendation**

There is much room for the implementing decrees and regulations to deal with disputes in a more meaningful way. The land titling regulation, for example, could be expanded to bring its provisions into line with best practice as to the handling of objections and appeals. In fact, all implementing legislation should provide the type of detail on dealing with disputes that will ensure that the processes are not only in line with best practice but they are also detailed enough that their application will be consistent across the provinces and districts.

Ministerial Decree No 135 of 2009 on State Land Lease and Concession. Both decrees were issued under the 2003 Law, so their basis will cease to exist now that the 2019 Law is promulgated. Conversely, given that they were issued by the Prime Minister and to the extent that they are not inconsistent with the 2019 Law, they could still have some legal force. It is not clear.

Ideally, the drafters should have directly addressed this point. As one of the objectives of the new Land Law was to shift text from the decrees into the law, MONRE may not have plans to prepare a new decree on either topic. However, if MONRE were to see a need for further explanation or details, then a new decree could be prepared and, presumably, it would address the question of whether Decree No 88 or Decree No 135 is still in force.

### **3.5.8 Transitional and consequential matters**

While the new Law, like all Lao laws, declares simply that it supersedes the previous Law and that all 'regulations and provisions that are in contradiction with this law shall be null and void', the question arises as to the status of Prime Ministerial Decree No 88 of 2008 on the Implementation of the Land Law and Prime

### **Recommendation**

When a new implementing decree is drafted, it should specifically reference the existing decrees and regulations and declare which (if any) are no longer effective.



A rare wild orchid on the treetop in Vang Vieng District, Vientiane Province. (Photo: Sangwan Sapma)

### 3.6 Other matters of concern

The following matters were raised with the drafters of the Land Law and the National Assembly but were not accepted.

#### 3.6.1 Role of villagers in the granting of leases and concessions, and Free, Prior and Informed Consent (FPIC)

Nonetheless, as villagers use forest land for many purposes, such as agriculture (including swidden cultivation), food gathering and hunting, collection of medicinal plants and water supply, they have a stake in what happens to the land around their settlements and permanent agricultural fields. Therefore, they need to be consulted if their livelihoods are to be protected and any potential harm to them is to be minimized.

However, at present, there appears to be no mechanism in the Land Law that would require or prompt officials to engage with villagers and nothing that would give villagers a right to be involved. First, the provisions relating to the making of land allocation master plans, strategic plans and land use plans do not mention community engagement. Second, the obligation of lessees and concession holders to not violate the rights and interests of other persons in Article 122.5 is expressed in a very general manner. Third, the obligations of lessees and concession holders expressed in Article 122 envisage that there could be negative impacts on villagers (because Item 3 requires the payment of compensation to those who are affected by the operations), so a lack of harm minimization (such as through engagement with villagers) appears to be expected.

During the preparation of the Law and its consideration by the National Assembly, LIWG and others advocated strongly that it should incorporate an obligation and mechanism to ensure villagers' full free, prior and informed consent (FPIC) to developments within the administrative boundaries of their village. That position was not accepted by either the drafters or the National Assembly.

The conclusion that villagers are not explicitly positioned as leading in the process of forest land development is consistent with the above discussion on the control of village lands. Without some clear rights in the planning and development of village lands, concepts such as full, prior and informed consent are outside the scope of the Law.

#### *Recommendation*

While the Land Law might not deal with the involvement of villagers in the planning and development of forest land, there is potential to include in the implementing decrees and regulations some requirements for villagers to be involved, such as through the development of plans, and for some basic obligations on lessees and concession holders to engage with villagers.<sup>20</sup>

#### 3.6.2 Rights over land used for swidden or shifting cultivation and forest land

A further area of concern that was raised with MONRE and the National Assembly is the Law's treatment of land used for swidden or shifting cultivation, land that is not permanently cultivated year by year. The Law does not appear to include protections for shifting cultivation land. Article 130, in particular, indicates that the protection of use rights applies only to those lands that have been developed and continually used—possibly excluding shifting cultivation land which, by definition, is not. This interpretation of the law is also consistent with current State land management practice wherein fallowed land is generally regarded as abandoned.

As to the first point, Article 100 lists an extensive set of documents that are required to establish ownership of rights so that a land title could be issued. It is certain that those who periodically work dry paddy lands would not have such documents, including land grant certificates, land maps, declaration of payment of land use fees, etc. Article 130 recognizes that many villagers would not have such documentation, even for paddy land, and so it stipulates that a

<sup>20</sup> There is some precedent for the villagers to be involved, such as Prime Ministerial Decree No 84 of 2016, although that is a decree dealing with resettlement.

certificate from the village head and a neighbour can be used as the basis for formally acquiring the rights. Note, however, that under Article 130, the land user must have regularly used the land for 20 years, which is highly unlikely to be the case with swidden or shifting cultivation of land.<sup>21</sup>

As to the second point, Article 144 sets out the circumstances in which land use rights will be lost. These include not only a failure to pay land taxes for three consecutive years but also the failure to develop the land for five years. As land used for swidden cultivation commonly needs an extended period in which to lie fallow and thus to regenerate its growing potential, it is likely that authorities would determine that rights over lands lying fallow were lost, and thus the farmer could claim only those lands that were currently being cultivated.

While the Land Law presents real difficulties, it might be possible to address lands used for swidden cultivation in one of the land allocation plans, strategic plans for land use, land strategy or land use plan, as envisaged in Part 2 of the Law. However, given that the government has sought to minimize the area of land under swidden cultivation, and also to expand the area covered by forest, it appears unlikely that the plans and strategies would be sympathetic to swidden cultivators.

The issue of proving 20 years of cultivation as required by Article 130 has already been discussed. It is noted that the 20-year requirement effectively excludes the customary rights over lands used for swidden cultivation from being recognized.

### **Recommendation**

The government's position on swidden cultivation is clear and it should not be expected that any implementing decrees or regulations would facilitate this form of agriculture. The government's position should therefore be accepted.

### **3.6.3 Gender issues**

The Land Law 2003 included a clear provision in Article 43 that the land register book should give the names and surnames of persons with land use rights, with the specific reference to the 'names of the husband and wife who have received the land use rights if the land is matrimonial property'. The Constitution of 2015 directly mentions women in several places in recognition that they are disadvantaged in areas such as health and education.

Unfortunately, the safeguard to women's property rights was dropped in the Land Law 2019. Despite many attempts by civil society to have it reinstated during the drafting process, together with other suggestions that would advance the position of women in relation to land, none of them was accepted by the drafters or the National Assembly. Instead, the Land Law adopts the word 'individual' throughout, which the drafters said would include both men and women. It is reported that the Law on Development and Protection of Women of 2004 is adequate to deal with the rights of women in relation to land.

However, as land is an area in which women face particular hurdles, some specific actions should be included in implementing decrees or regulations, such as to:

- Include some of the words from the Constitutional guarantee of equality in Article 5 (Land Law 2003) regarding protection of the interests of land use right holders. For example, it would be possible to include: 'in accordance with the Constitution, the State recognizes and protects the equal rights of men and women in relation to land, including the right to land allocation'.
- Specify in relation to the allocation of land that women can receive land independently of their marital status.
- Include a presumption that any land owned by a person who is married is regarded as matrimonial land, unless one spouse can demonstrate otherwise, and that the title should be issued in the name of both spouses.

<sup>21</sup> Article 100 does not specify any category or use of land so it could apply to areas other than paddy fields and orchards that a villager has used for 20 years continuously, such as private forestry activities or grazing land. There is no clear interpretation of what constitutes 'continuous use.'

- In relation to changes to land categories and other decision-making processes (such as leasing or granting concessions), clarify that, for jointly held or family land, both spouses must apply.
- Make clear that land use and land allocation planning should involve 'the whole village' including men and women, not just household representatives.
- In relation to the requisition and compensation provisions, clarify that compensation must be paid jointly to joint owners.
- Specify that all applications and other types of forms issued under the Land Law, or in relation to matters regulated by it, must include space for both husbands' and wives' names.
- Re-state the former provision requiring that both husband and wife are to be recorded on a title for matrimonial land.
- Introduce monitoring provisions that require information to be gathered and reported in a gender disaggregated manner, and for this information to be published.

The LIWG/Advisory Group briefing note on the topic could be used as the basis for discussions on the implementing legislation.

**Recommendation**

It is recognized that the process to change attitudes to women's rights, acknowledge the particular disadvantages that they experience, and make statements in laws to improve their position, is long and slow. Bearing this in mind, persistence in advocating for improvements is required, and when the implementing decrees and regulations are being prepared, there is an opportunity to once again press the case for women in relation to property through such measures as those listed above.

**3.6.4 Collective/common land use**

The issue of introducing a form of land use in the Land Law that would permit groups of people to jointly hold rights to land was promoted by civil society during the drafting of the Law. The example of a bamboo grove that was commonly owned and worked by a group of villagers was often given.

The concept was adopted in the Land Law 2019 in Article 3 and more specifically in Article 81, which introduced 'public land use for collective utility'. That land is for the whole of the village to use and encompasses 'cemeteries, sacred forest, common ponds, temples, schools, health centers, village administrative office, village markets'. Such land cannot be sold, leased or otherwise made the subject of a transaction. However, the articulation of this Article significantly limits the extent to which collective land use rights may be recognized for instances of household units or clans engaging collectively in the use of uplands for subsistence agriculture through shifting cultivation practices, as is found commonly throughout the country. The concept of collective ownership was also picked up in relation to condominiums (see, for example, Article 132).

There are alternative ways in which a group of people can own land together, such as recording all of them on a land title as individual owners or through the formation of a business entity, such as a partnership, or even a company. Where required, these options could be used, but this is not considered a realistic pathway for addressing the many cases of customary collective use of uplands.

**Recommendation**

The government's decision relating to the concept of collective ownership should be accepted. No further efforts to introduce the concept of collective ownership of land for individuals should be made. However, the land titling regulation should note the possibility of more than one owner.

### 3.6.5 Resettlement

Resettlement has been a special area of concern in Lao legislation, such as Prime Ministerial Decree No 84 of 2016 on Compensation and Resettlement Management in Development Projects, while the recently adopted Law on Resettlement and Vocation of 2018 deals comprehensively with this matter.<sup>22</sup>

The question arises regarding the place of resettlement in the Land Law, if it exists at all. This is separate to requisition and compensation, which have already been addressed. Resettlement refers to the wholesale moving of peoples from one place to another by the State.

The Land Law 2019 does not have any provisions on resettlement (nor did the 2003 Law).

The main question regarding resettlement is whether Prime Ministerial Decree No 84 of 2016 on Compensation and Resettlement Management in Development Projects still applies. This is not clear from either the Land Law or the Law on Resettlement and Vocation, although Article 85 of the Law on Resettlement specifically states: 'Any regulations and provisions that contradict this Law shall be void.' This indicates that Decree No 84 would no longer apply. Thus, many of the safeguards that were in place under Decree No 84 are no longer in effect.

The other question is whether any safeguards could be introduced when the implementing decrees and regulations under the Land Law are prepared. As the Law does not deal with the topic of resettlement, and as the Law on Resettlement and Vocation clearly does deal with the topic, it would appear highly unlikely that MONRE would enter into this area and include the topic in its implementing decrees or regulations.

#### **Recommendation**

In the implementing decree, the status of Decree No 84 of 2016 should be clarified.

### 3.6.6 E-government

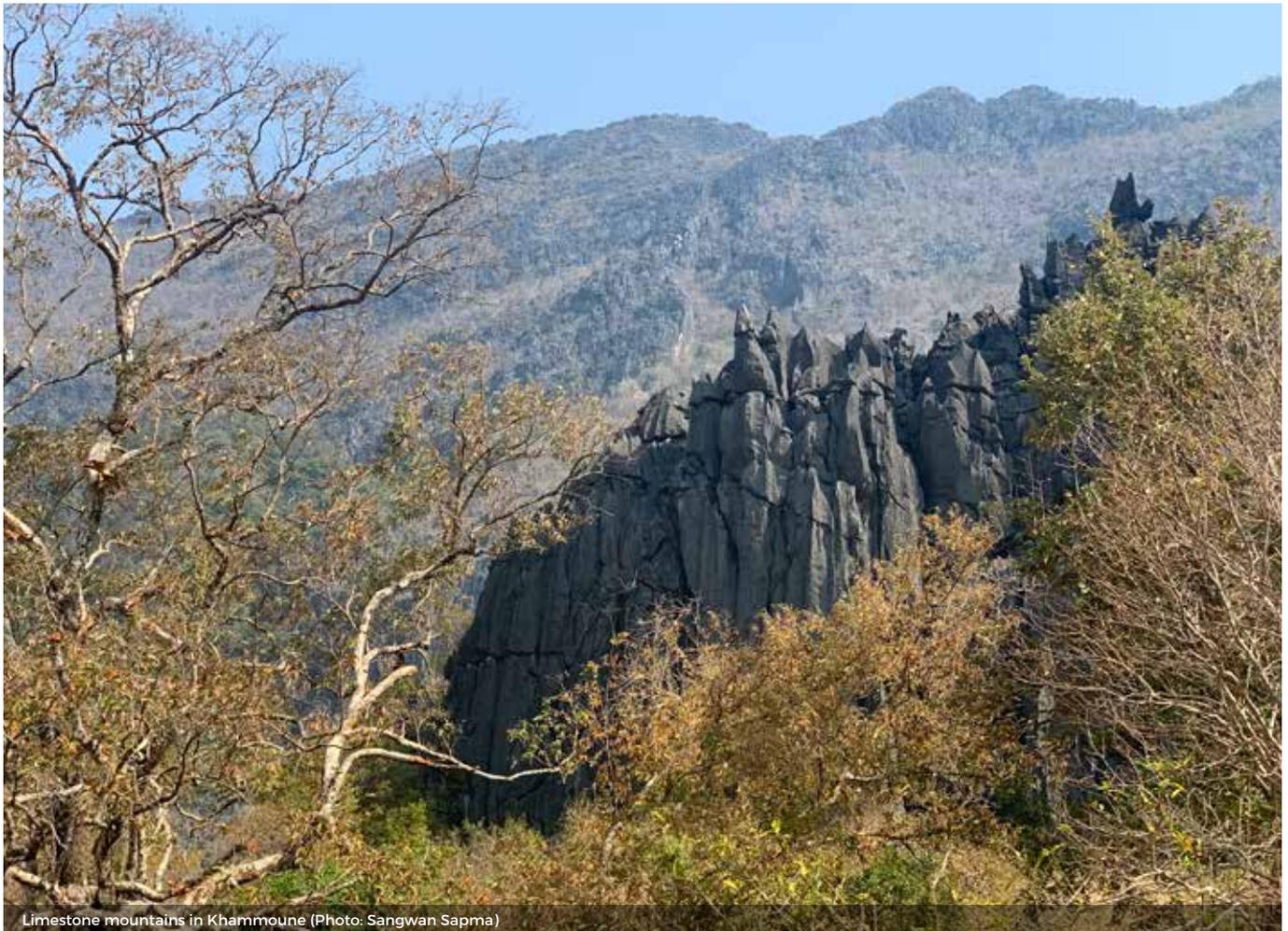
Finally, the new Law does not deal with e-government in any way. Presumably, the drafters thought that a technology-neutral law could be applied in practice using any media or means available. Alternatively, they might have thought that the Law on Electronic Transactions of 2012 sufficiently addressed their needs. While the Law on Electronic Transactions forms a solid basis for the use of electronic documents and signatures under the Land Law, it would have been useful to include some specific provisions to address the requirements for introducing an e-system of records and services in the land sector. They would be as follows:

- The power to keep records in any medium or combination of media that the Minister for MONRE decides.
- The power to convert paper documents into digital form, and for the digital version to be regarded as equally valid as the paper version.
- Relatedly, a statement that digital documents are regarded as the equivalent to the originals when a copy from the database is produced, either with or without the need for an official stamp.
- The power to provide services electronically, including the registration of transactions and plans in digital form.
- The power to accept electronic payments for services, taxes and application fees.
- The power to issue notices to land right holders electronically (if the holder agrees).
- Digital data created or collected in the land administration system belongs to the State.

#### **Recommendation**

When drafting the implementing decrees and regulations, it would be possible to address all of the suggested points and thus ensure an e-government approach to land administration and management.

<sup>22</sup> That law is administered by the MAF. A separate advice on the Law on Resettlement and Vocation was drafted for LIWG in 2019 and is available on their website.



Limestone mountains in Khammoune (Photo: Sangwan Sapma)

## 4 Forestry Law 2019

### 4.1 Key points of this chapter

The structure and topics covered by the Forestry Law 2019 follow the Forestry Law 2007 with the addition of four new Parts. The new Law is somewhat longer than its 2007 predecessor (175 versus 130 Articles) and many Articles are more detailed.

A number of topics are addressed in greater detail:

- There are more specific Articles and definitions and more specific rules on forest ownership
- The devolution of power to convert forest categories from central to provincial governments is included
- There are significant revisions to the Sections on forest management, forest protection, forest development and forest utilization
- There are new provisions on leases and concessions on forest land
- There are specific provisions on forestry businesses
- Statements on carbon trading are now included
- There is a greater focus on non-timber forest products (NTFPs)
- The list of prohibitions has been expanded, and
- The list of rights and duties of officials has also been enlarged

The following topics are new:

- A Part dealing with forestry strategy
- A system for plantation registration certificates and their uses
- A Part addressing the Forest Protection Fund, and
- Six new Articles on criminal proceedings

The following topics are new:

- Part 9 of the 2007 Law, Settlement of Conflicts (two Articles)
- The National Assembly has been excluded from a role in converting categories of forests
- The word 'ownership' has been deleted in favour of 'management' of forests, and
- A set of Articles on the inspection of forests has been streamlined

The following topics need further thought and development:

- The recognition of customary use
- The nature of the forest use right
- Swidden cultivation
- Requisition and compensation
- Carbon ownership and trading
- Wetlands, and
- Transitional and consequential provisions

The following topics are of concern:

- The control of village lands
- The role of villagers in the granting of leases and concessions
- Land titling and formalization of tenure on forest land
- Grievance redress mechanisms
- Gender issues
- Collective/common lands, and
- Resettlement

## 4.2 Introduction

The Forestry Law was adopted by the National Assembly on 13 June 2019 and promulgated by the President on 25 July 2019. It replaced the equivalent law of 2007, which itself replaced a Law on Forestry of 2005 and, before that, the first Forestry Law of 1996. The new Law was several years in the making and involved input from civil society, donors and development partners. Forests and forestry are important topics for the country, particularly in light of the plans for economic development and funds available for carbon capture. The target of 70 per cent of the country to be covered with forest is often repeated. It was originally intended that the Land Law would be adopted before the Forestry Law, because the Land Law deals with concepts and issues that are relevant to land

on which forests stand. However, due to the slow pace of finalizing the Land Law, both Law revision processes were completed simultaneously – which ended with the Forestry Law being passed before the Land Law. As a result, there is some (slight) mismatch between the two Laws that might have been avoided had the original plan been followed. As with the Chapter on the Land Law, this Chapter reviews the structure, notes what has changed and then examines particular issues of concern.

## 4.3 Structure and topics

The Forestry Law 2019 follows the same basic structure and covers the same items as are addressed in the 2007 Law, but in an expanded way and with the addition of a series of new Articles. The new Law has 175 Articles compared with 130 Articles in the 2007 Law, which makes it 35 per cent longer.

The basic structure remains the same between the two Laws, based on the division of subject matter into various Parts (listed below), with more detailed Sections dealing with specific areas. There are now 15 Parts, compared with 12 in the 2007 Law. Additions in the 2019 Law are highlighted in bold:

- General Provisions
- **Forest Strategy**
- Forest Categories
- Forestry Activities
- Forest Land
- **Forestry Businesses and their Operations**
- Scope of Protection and Development of Forest and Forest Land
- Rights and Obligations of Forests and Forest Land Users
- **Forest Protection Fund**
- Prohibitions
- **Criminal Proceedings relating to Forest and Forest Land**
- Management and Inspection of Forest and Forest Land Activities
- National Arbour Day, Logos, Uniform and Seal
- Rewards for Persons with Outstanding Performance and Measures against Violators
- Final Provisions

Part 9 of the 2007 Law, Settlement of Conflicts, and its provisions were deleted.

Although there are only a few completely new Parts and the basic structure remains the same, there are some significant additions that the above list of Parts does not reveal. For a list of all the Parts and Sections covered by the two Laws see Annexes 3 and 4.

Like the new Land Law, within each of the Parts there are numerous changes but no topic of substance was deleted. The Law can therefore be considered a development and expansion of the previous Law. And the changes have been extensive, with practically every provision of the 2007 Law being altered in some way. This can be seen in the title to the articles where the word 'amended' appears next to the Article number. Additionally, there are multiple new Articles, as the word 'new' in the Article titles also shows.

#### 4.3.1 Expanded matters

In Part 1, all but the last two Articles from the 2007 Law were either modified and, in most cases, expanded and made more specific, such as the list of **43 definitions in Article 3** and the **rules on ownership of forest** in Article 4.

In Part 3 on Forest Categories, Article 18 expands the provisions of Article 44 of the 2007 Law to partly **devolve the power to convert** forest categories from the central government to the provincial and district administrations.

In Part 4 on Forest Activities, which is the largest Chapter in the Law and comprises four Sections<sup>23</sup> and Articles 19 to 65, all but five of the Articles are expanded or new. Key changes in Part 4 are listed below.

In Section 1 (Articles 19 to 45) on **forest management**, which is significantly expanded through both revisions and additions:

- A greatly lengthened Article 19 lists some 26 activities that make up forest management, with an additional 27th item 'any other necessary activities'. Each of the activities is the subject of a revised or new Article later in Section 1.

- New and expanded provisions are included to reflect the greater emphasis on planning and approvals, such as Articles 21, 22, 26, 27 and 39.
- Greater recognition of non-timber forest products (NTFPs), such as in Articles 25 (inventory), 31 (harvesting), 34 (trading) and 37 (transporting).
- The introduction of the product assurance and certification concepts in Article 43 and formal recognition of the importance of genetic resources of trees and other species in Article 42.
- An obligation to sell certain timbers through an open auction process appears in Article 33, and
- The registration of trees, including on land belonging to individuals, and recognition that the trees belong to right holders are set out in Articles 40 and 41.

In Section 2 (Articles 46 to 53) on the **protection of forests**:

- Specific actions to be taken to manage protection forests and conservation forests, based on surveys, mapping and planning (included in Articles 47 and 48, respectively) along the lines previously listed for production forest;
- Article 26 of the 2007 Law on preservation of water resources in forest zones has been deleted, but numerous references to water resources and their importance have been preserved throughout the Law (as appears in the 2007 Law); and
- A specific Article on restricting uncontrolled shifting cultivation (Article 53) is included, that requires government and local authorities to manage and allocate land and forest to villagers in forest areas for permanent settlement.

Section 3 (Articles 54 to 60) on the **development of forests** closely follows the Section on the same topic in the 2007 Law. All but two of the seven Articles has been amended but the only noteworthy change appears in Article 60 on promotion of tree and NTFP planting (Article 35 of the 2007 Law), which recognizes and promotes a **private property-based approach** to growing trees in paragraph 1, particularly on land to which the

<sup>23</sup> The four Section headings follow those in Part 3 of the 2007 Law.

State has issued land use rights and other rights. Once registered, such forest can be transferred, inherited, used as collateral for a loan and the rights can be compensated if the State takes the land. It is not clear whether Article 60 is speaking about both land use rights and forest use rights issued under the Forestry Law 2019 but it appears from the heading and opening sentence of the Article that Article 60.1 relates to the trees rather than the land.

Section 4 (Articles 61 to 65) on the **utilization of forests** is much shorter, with several Articles from Section 4 of the 2007 Law being moved to other parts. The text of Articles 61 to 65 mostly follows the text of Articles 39 to 43 of the 2007 Law but have been adjusted to require **approvals** from the MAF (or provincial or district equivalent) to harvest certain types of trees. The range of benefits to the village or public in Article 62 has been expanded to include **non-harvesting activities** including scientific research, ecotourism, recreation, sacred forest, environmental protection and carbon trading. Further, there is now recognition of the **importance of NTFPs** in each of the Articles.

In Part 5 on Forest Land, which is an expanded and modified version of Part 4 of the 2007 Law, the same structure has been maintained but the provisions on who has the **authority to convert** from one category to another have been re-arranged to make them clearer, and there is a new Article on obligations in relation to converting forest land (Article 82). Article 71 paragraph 3 **permits agriculture** (and other economic activities) in Controlled Use Zones, which is an innovation over Article 24 of the 2007 Law. Part 5 also has a new Section dealing with **leases or concessions** of forest land (Articles 87 to 91) which covers:

- The lease or concession of forest land (Article 87, based on Article 74 of the 2007 Law)
- The lease or concession of forest land for ecotourism (Article 88 – a new Article)
- The lease or concession of forest land for regenerating forests and the planting of trees and NTFPs (Article 89 - a new Article)
- The lease or concession of forest land for activities based on forest ecosystem services (Article 90 – a new Article), and

- The concession of forest land for mineral extraction operations (Article 91, also new).

In a new Part 6 on Forestry Businesses and their Operations, some Articles from Part 3 of the 2007 Law have been combined with a range of new Articles on the types of forestry businesses in Section 1, including wood processing and charcoal production (Articles 95 and 96) and also trading in forest carbon (Article 103). Other Articles have been substantially revised and there appears to be a greater focus on NTFPs. In Section 2 on the operation, suspension and cancellation of forestry businesses, five new Articles deal with:

- Applications to operate a forestry business (Article 104)
- Requirements to establish and run a forestry business (Article 105)
- Circumstances in which the business can be suspended (Article 106) and cancelled (Article 107) by the Forest and Forest Land Management Organization; and
- Appeals to suspension or cancellation orders (Article 108).

Part 9 on Rights and Obligations of Forests and Forest Land Users, which is based on Part 6 of the 2007 Law, has not been expanded but rather **streamlined** by clearer drafting. Articles 119 to 129 closely follow the content of Articles 89 to 99 in the 2007 Law.

In Part 10, which is in similar terms to Part 7 of the 2007 Law, there is a list of **prohibitions** on civil servants (Article 133), businesses (Article 134), the general population (Article 135) and individuals and entities (Article 136). With the exception of Article 133, the list of prohibited actions for each group has been enlarged to catch activities related to cutting and exporting timber, collecting and selling NTFPs and a small number of other forest related activities.

In Part 12, Section 1, all of the existing Articles have been retained and expanded regarding the **rights and duties of officials** of the MAF at the central, provincial and district levels and also the village level economic and financial units. The central level now has 18 rights and duties, against seven in the 2007 Law, and those belonging to the provincial level have doubled in number. However, it is the rights and duties of other government and (possibly) non-government bodies (Article 109 in the 2007 Law) that have

been most greatly expanded. Now, there are separate Articles (153 to 160) assigning rights and duties to other ministries, such as MONRE and the Ministry of Finance, local administrative authorities and also 'other sectors and stakeholders' who have to duty to educate and contribute to the management, protection, development and inspection of forests in accordance with their legal obligations. Other ministries are obliged to coordinate their activities or enter into agreements with the MAF.

#### 4.3.2 New matters

While there are some new Parts, the content of these mostly builds on the text of the Articles of the 2007 Law. Thus, many of the features of the Forestry Law 2019 tend to be expanded rather than new matters, as discussed above. Nonetheless, there are some truly new provisions in the Law that are discussed below.

A new Part 2 has been introduced dealing with **forestry strategy**. Four new, short Articles make some general points about the strategy, the government bodies that are responsible for the strategy at the central and provincial levels, and the components of the strategy.

In Part 4, Article 41, and also in Articles 63 and 126, the new concept of the tree and NTFP **plantation registration certificate** is addressed. Article 41 introduces the certificate and describes briefly its nature and purpose. Article 126 provides that such certificates can be used as collateral for loans or shares for businesses.

A new Part 9 on the **Forest Protection Fund** has been created by introducing a new Article defining the Fund (Article 130) and modifying Articles 37 and 38 of the 2007 Law to make a new Article 131 relating to an expanded range of sources for the fund and a new Article 132 on 1) five principles for using the Fund, and 2) seven functions that can be funded from it.

A new Part 11 entitled **Criminal Proceedings Relating to Forest and Forest Land** (Articles 137 to 147) has been inserted. It includes six new Articles on:

- Criminal proceedings (Article 137)
- Reasons for opening an investigation (Article 138)

- Investigation procedures (Article 139)
- The period for investigation (Article 140)
- The seizure and confiscation of assets (Articles 141), and
- The preparation of case files to be sent to the People's Prosecution Agency for prosecution (Article 142)

Part 11 also includes Articles that have been slightly revised and relocated from other Chapters of the 2007 Law, such as the identification of the investigation bodies, including forestry officers, and their rights and duties. These Articles are in addition to those that appear in Part 14 - Articles 167 to 173 - which cover measures against violators, these being education, discipline, fines, civil measures and penal measures, and additional punishments including confiscation of assets.

#### 4.3.3 Deleted matters

In Part 7, which reflects Part 5 of the 2007 Law and deals with who is to protect and develop forests and forest land, most of the Articles (109 to 118) have been remade with minor variations. However, in Article 109, the role of the National Assembly in approving proposals for protection forest, national conservation forest and production forest covering more than 50,000 hectares has been removed, with a corresponding **shift in authority to the government** based on a proposal from the MAF. Further, the word 'ownership' has been deleted in Article 116 (formerly Article 84) and now the word '**management**' is used. The heading of Article 85 of the 2007 Law, which was 'Forest Ownership', has been replaced in Article 117 with 'Persons Protecting and Developing Forest and Forest Land', and two Articles (86 and 87 of the 2007 Law) have been deleted concerning the allocation of rights by district authorities to households to preserve and develop forest. Note however that Article 4 already deals with the ownership of forest and forest land.

Related to the above, in its discussions with the MAF during the preparation of the Forestry Law, civil society<sup>24</sup> noted that there were some variations in **how authorities are referenced** in the law, such as 'investigation body' (Article 137), 'forestry officers' (Article 145 and elsewhere), 'State Forestry and Forestland Management Organization' (Article 4 and elsewhere), 'Forest and Forest Land Management Organization'

<sup>24</sup> Civil society consisted of development partners, academics and others.

(Article 28). This makes the Law somewhat confusing and could result in overlaps and gaps in jurisdiction. Clear explanations will be needed in the implementing decrees and regulations, and also staff guidelines and manuals regarding the responsibilities of each body noted in the Law.

Part 9 of the 2007 Law, **settlement of conflicts**, has been deleted. It included only Articles 117 and 118 concerning settlement of administrative conflicts and civil conflicts, respectively, and provided direction on the first instance approach to resolving the conflicts, with appeal options also listed. The omission of these provisions does not create problems as there are existing measures in other laws to deal with conflicts.

In Part 12 of the 2019 Law, Section 2 on **inspection** of forest and forest land has been greatly streamlined from the equivalent Section in Part 8 of the 2007 Law. Four Articles dealing with the purpose of inspection and the rights and duties of the inspection organization and forestry officers have been omitted or relocated to Part 11 (Articles 145 and 146). The reduced version of Part 12, Section 2 contains only three Articles and even these have been somewhat streamlined and consolidated.

As will be discussed below, there is no mention of **certificates** for forest and forest land use (or other) rights, although this is not a deletion because the 2007 Law did not address the topic either. The topic of certificates is however addressed in Article 44 of the Land Law, where the duty to investigate and issue use certificates over forest land is assigned to the MAF.

#### 4.4 Assessment of the changes

Many improvements have resulted from the redrafting of the Forestry Law 2019. As with the Land Law 2019, the changes in drafting and organization of the text make the new Forestry Law a **much clearer and informative** text in many, although not all, of its Articles. Further, as it is approximately one-third longer than the previous Law, there are more matters that are specifically addressed, as outlined above.

The new Law is a **more practical, business-focused** document, and the recognition and use of **private property rights** is to be welcomed. And although it is limited to forest resources rather than forest

land, there is **recognition of customary utilization of forests, timber and NTFPs** in the Law.

The Law demonstrates a clear shift in the **concentration of authority and power to the MAF**, with many Articles making it clear that the MAF has the primary (although not always ultimate) decision-making power. It appears that the MAF is seeking to exert its authority on other ministries and particularly the provincial and district authorities in the same way that MONRE is attempting through the redraft of the Land Law.

However, despite the various improvements, there are **some concerns with the Law**:

- There are a number of policy areas that either require further attention or substantial reform. These will be discussed in sections 4.5 and 4.6 immediately below.
- A number of Articles have simply been carried forward from the 2007 Law with minor or no changes at all, and thus are **no clearer** than they were in the previous Law. As with many Lao laws, Articles often simply give a definition of a concept but do not make it clear what rights or obligations exist, who can act, or what the consequences of an act would be. Where the Articles have not been updated, there are often unanswered questions. This general problem will be illustrated below where specific areas of concern are discussed. This problem arises from **poor drafting** of earlier versions of the Law but the failure to address them in the 2019 Law is a missed opportunity.
- Although this was also the case with the 2007 Law, a **great deal of the detail**, including important detail, is **left to the strategies, plans, regulations** and, presumably, the discretion of officials.
- While the new Law is longer and, in many ways, more informative than the earlier Law, it is still expressed in very general terms that could be **interpreted in various ways**. This not only makes it difficult for investors and business people to make decisions but it also creates conditions for variations across and within the provinces. The MAF has given itself a more central role in forest management and approvals, but without clear guidance and inspections, the provinces will continue to go their own ways due to the often vague and open manner in which some Articles are drafted.

## 4.5 Matters that require further attention

This and the following section look at specific matters of concern that emerge from the Forestry Law 2019. It also considers how the recommendations contained in advice provided by civil society have been taken into consideration in the Forestry Law 2019. It identifies both the improvements and more commonly the gaps, and makes recommendations for the key outstanding issues.

### 4.5.1 Recognition of customary use

In understanding how customary use is recognized in the Forestry Law, it is important to first appreciate that the **Forestry Law explicitly separates the notion of forests from forestland**. Furthermore, the Law is structured to address forestlands and their utilization under 'Chapter V Forestlands' separately from forest utilization for use of forests, timber and NTFPs under 'Chapter IV Forestry Activities'.

Within this context, the Forestry Law recognizes customary utilization in the latter Chapter, wherein Article 64 deals very briefly with customary use of forests, timber and NTFPs. It is based on Article 42 of the 2007 Law, which was somewhat longer and more informative. Article 64 provides simply:

Customary utilization of forests, timber and NTFPs is the use of forests, timber, and NTFPs in a manner that people have practiced for a long time within village forest areas. Such utilization shall be in accordance with the forest management plans and the Law.

The statement in Article 64 is basically a definition of customary use with no consequential action or declaration of acceptance or recognition. It does, however, imply recognition, but in a way that could be greatly limited through the plans and law.

Some additional information appears in Article 60.2, which limits the use of forest in certain areas, restricting it to customary use.<sup>25</sup>

There is no formal recognition of customary use

of forest by villagers in Article 64, as there was in Article 42 in relation to timber, and the topic is to be regulated by 'forest allocation plans and the Law'.<sup>26</sup> Nor is there a process to establish its existence. The expression 'for a long time' will present particular problems where villages have had to move due to climate change, natural disaster or other reasons. Development partners raised the issue of customary use with the drafters of the Forestry Law, noting that 1) customary use should be recognized as a means to formally acquire forest land use rights, 2) there needs to be more information on what customary use covers, and 3) directions are required on how groups within declared forests who conduct agriculture are to be treated. None of these matters appears to have been addressed in the final version of the Law.

It is unclear how secure this entitlement is, whether it can be revoked by the authorities and, if so, whether compensation would need to be paid. (It can certainly be restricted, as per Article 64, by the plans or the law and that would almost certainly not result in compensation.) It is unclear whether customary use of forests falls within the category of a forest use right, which can be transferred, but due to the nature of customary use (and the provisions of Articles 125 and 126 in Part 8), it would appear that it cannot. It is also unclear whether customary rights can co-exist with other types of rights to use forest, although this appears likely.

Article 64 and the rest of the Forestry Law provide practically no guidance on implementation. There is no process, nor parameters (such as how long the right was exercised or where) that would help district and provincial officials in applying Article 64, other than the statement that the villagers must have exercised the rights for 'a long time'. It can be expected therefore that variations in practice will arise around the country, with officials using their own interpretations and discretion to deal with customary rights.

Finally, there is no provision on the delineation and recording of the areas in which customary utilization of forests are recognized (if that is intended), so that they can be recorded and thus better protected.

<sup>25</sup> The planting of trees for the purpose of environmental, water resource and biodiversity protection, for community benefit in urban and rural areas and for enhancing forest ecosystem services, can be carried out in degraded forest areas and barren forestland in protection, conservation and riparian forests and other areas allocated by the State. Such planted trees cannot be harvested or utilized for commercial purposes. Such trees can only be used for customary use and must come only from Controlled Use Zones. The policy and the rights of and the benefits to the tree planters are provided in specific regulations.

Customary use is also mentioned in Article 61.3 but only by way of introduction to Article 64.

<sup>26</sup> The reference to 'the Law' is unclear, although it might be referring to the Land Law.

It is important to note again that, under the Chapter dealing with forestlands, the Forestry Law omits customary utilization as one of the four categories of utilization. Articles in the Chapter on 'Rights and obligations of forests and forestland users' are more or less consistent in this approach, wherein Article 125 on 'Rights to use forests and forestland' does not mention customary utilization, whereas this is mentioned under Article 123 on 'Rights of users of planted forests and forest plantation areas' referring the reader back to Article 64. Article 110 on 'Acquisition of rights to use forests and forestland' lists three means of acquisition without reference to customary means. This omission of customary utilization of forestlands is an outright inconsistency with Articles 44 and 130 of the Land Law and begs clarification about whether the Land Law might supersede the Forestry Law.

This topic is further explored in Chapter 6 of this paper which focuses on customary rights.

### **Recommendation**

To address these and other uncertainties, it would be useful to have clear statements in the Forestry Law dealing with the recognition of customary rights and what entitlements arise from such rights that are consistent with tradition.

In terms of implementation, it will be necessary to have clear guidance in the decrees and regulations addressing practical issues about identifying the nature and extent of customary use, how to record the related rights, and how customary rights are to be reconciled with other uses and rights to forest land, including measures to address grievance where conflicts arise. Such rights will need to be taken into account in the issuing of leases and granting of concessions, as discussed in Chapter 3, which can have major impacts on the customary use of forest resources.

### **4.5.2 The nature of the forest and forestland use right**

The provisions relating to the right to use forest and forest land, which have been carried forward from the 2007 Law with some modifications, raise questions about the nature of this right. It appears from the provisions of Chapter VIII that there are two types of forests and associated lands – one that relates to the use of State forest and forest land (Articles 120, and presumably 124 to 128<sup>27</sup>) and another that relates to planted forest and forest plantation areas (Articles 121 to 123).

The right to use the forest is a unique right (or rights) contained in the Forestry Law, in particular, Chapter VIII, Articles 119 to 129. The right (or rights) limited to planted forests and forest plantation areas (i.e., excluding State forest and forestlands) has many features in common with the rights granted to holders of land use rights (i.e., separate from the rights of holders of State land use rights), such as the right to transfer, inherit and use, and the right to compensation for requisition as permitted in Article 133 of the Land Law 2019 (noting the rights to lease or to give as a guarantee for loan are not mentioned in the Forestry Law).

For the rights relating to State forests and forestlands (i.e., as opposed to planted forests and forest plantation areas), three rights - to manage and protect, to use, and usufruct<sup>28</sup> - are specified in Articles 124, 125, and 126, respectively. Article 124 denies government organizations the rights to transfer or inherit rights to manage and protect, with specifications and relaxation relating only to exceptional cases. In the Land Law, Article 140 outlines the rights of those who are eligible to use State land, and particularly specifies that the rights include the protection and use of State land, but do not include the rights to transfer and inherit, to lease or give concessions or use the land as a guarantee.

An alternative view, would be that the forest use right is in fact a modified form of the land use right over forest and forest land, and that therefore the provisions of the Land Law apply.

<sup>27</sup> Whereas Article 120 mentions "State Forest and Forestland", Articles 124-129 mention only 'Forest and Forestland'. This may represent the unintended mistake of omitting the term 'State', as this would make more sense for Articles 124-128. But Article 129 mentions cases of transfer and inheritance of forestland which are not discussed elsewhere (except for in the context of planted forests and forest plantation areas), and would conflict with the provisions in the Land Law that do not allow for transfer and inheritance of State land. This being the case, one is drawn to consider that Articles 124-129 may be alluding to forest and forestlands more generally, regardless of whether or not they are State land.

<sup>28</sup> Usufruct rights are the rights to derive benefit from, in this case, forests.

However, were this the case, then there would be no need to go into such detail and repetition of the Land Law's provisions in Articles 119 to 129 of the Forestry Law. Therefore, the more pragmatic view would appear to be that the forest use right (or rights) is a separate, slightly different right and it is not regulated by the Land Law, which deals with land use rights.

This is pertinent as only land use rights can be the subject of land titling activities. Article 44 in the Land Law recognizes the use of forest land for various purposes, and makes a provision for issuing land use certificates where people have been using the land before the area was classified as forestland. Whereas, there are no provisions in the Forestry Law relating to titling or the issuance of land use certificates.

Further, **if the forest use right is not a form of land use right**, and thus not subject to the Land Law, then it is **necessary for the provisions of the Forestry Law to adequately regulate this right**. Therefore, the provisions need to be spelt out in sufficient detail to make the nature of the right clear and workable in practice. The provisions on transfer and inheritance of planted forest and forest plantation areas (Articles 121, 122) appear adequate but not so for other aspects of the right, particularly compensation for requisition, which is mentioned but without any details at all. The superficial nature of the drafting means that the provisions give no practical guidance to those who have to implement the Law, such as the process, manner of assessing compensation, etc.

Finally, it is unclear **who can hold a forest use right**. The Law refers repeatedly to 'individuals' but does not qualify this to mean Lao individuals, and Article 8 implies that the term 'individuals' includes foreigners.<sup>29</sup> In contrast, the Land Law 2019, in relation to land use rights, clarifies that Lao citizens can own such rights, while foreigners can have leases or concessions: such clarity does not exist in the Forestry Law 2019.

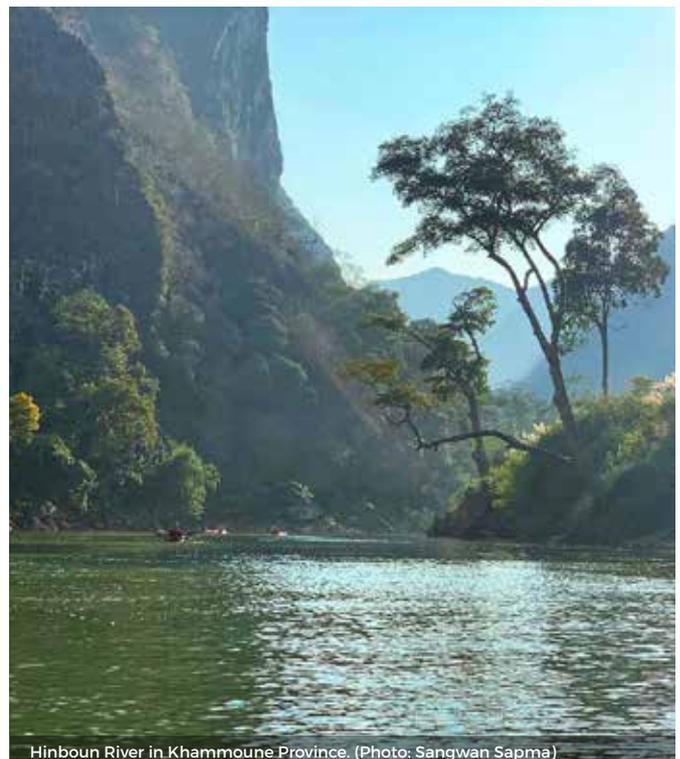
A related issue arises from the Resolution of the Party's Central Committee on the Enhancement of Land Management and Development in the New Period of August 2017. It notes in Item III.1 that State land that is granted to individuals, etc. without land use rights, may not be transferred

or sold/purchased. It may well be that the provisions of the Forestry Law under Article 129 alluding to the right to transfer forest use rights are in contradiction with this Resolution.

### Recommendation

When subsequent or subsidiary legislation is developed, it would be useful for the matters discussed above to be adequately addressed and explained from a property rights perspective. Implementing decrees and regulations should answer the following questions:

- What is the nature of forests and forestlands? When are forests and forest lands State land and when are they not State land?
- What are the provisions for planted forests and plantation areas on State land, as opposed to those on other lands?
- What entitlements apply to each of the rights?
- Who can hold one of these rights?
- What are the rules on requisition and compensation?  
(See 4.5.4 below)



Hinboun River in Khammoune Province. (Photo: Sangwan Sapma)

<sup>29</sup> The scope of this Law covers national and international individuals, legal entities, and organizations that engage in forestry activities in Lao PDR.'

### *Thoughts on the nature of the forest use right*

As noted in the summary of changes, there is a shift towards a private property rights approach to the forest use right, with the right resembling the land use right in many ways, such as the right to transfer and give by inheritance. There are also many instances where the people or bodies who planted trees are described as the owners of such trees (see, for example, Articles 4, 30, 33, 40, 41 and 87). However, against this move to private property, there is a clear shift away from individuals' 'ownership' of the forest and forest land towards their 'management and protection' of such forest and forest land in the 2019 Law. The word 'ownership' appears primarily in relation to trees, whereas for the forest and forest land, the references are to allocation for the purposes of management.<sup>30</sup> This can be contrasted with the 2007 Law, where ownership of forest and forest land was mentioned in various places (see, for example, Article 3.16, 84, 85.1, 85.3).

Thus, a related question is the extent or nature of the forest use right, not in terms of the area of forest and forest land (see below under land titling) but rather the nature of the right itself.<sup>31</sup> Is it a form of property that can be owned, a use right of the land or simply a use right of the trees with a corresponding right of access to the trees across the land?<sup>32</sup> How, for example, does a forest use right differ from a lease or a concession, other than the fact that a lease or concession is granted for a limited duration? There are no clear answers to these questions in the Law and to a degree, the questions are somewhat academic because for most people, particularly small-scale foresters, there will be little at stake. However, for larger-scale plantations, it could well be an issue, particularly for valuation and insurance purposes.

#### **4.5.3 Swidden/shifting cultivation**

The topic of shifting cultivation is specifically noted in Article 46.7 and detailed in Article 53, with a further reference in Article 118. The policy of the government has for many years been to minimize shifting cultivation in favour of settled agriculture, and the provisions of the Forestry Law 2019 make this position very clear. Article 53, in particular, directs that uncontrolled shifting cultivation should be restricted and, in its place, stable, sedentary livelihoods should be promoted. To achieve this end, government officials are to allocate land and forest for permanent settlement.

The topic of swidden cultivation was raised with the MAF during the drafting of the Forestry Law. Civil society sought to have both primary and rotational types of swidden cultivation defined separately and exempt swidden cultivation

from the application of the three-year period rule (Article 128.2 Forestry Law<sup>33</sup>), under which a right is deemed to be abandoned if not exercised for three years. These requests were not successful.

It appears that the express provisions of Article 53 would override any rights to customary use that permitted shifting cultivation, such as envisaged in Article 64.

Note that that the reference to 'uncontrolled' shifting cultivation was included in Article 53 to distinguish it from controlled or organized shifting cultivation. This is not clear from the Law but enquiries to the MAF could be undertaken. If so, then some forms of shifting cultivation could be incorporated within the management plans and forest agreements that are envisaged under Article 120 of the Forestry Law.

<sup>30</sup> See for example: Article 116 (Revised) Allocation of Forest and Forestland: After the classification and delineation of forest and forestland areas, the State allocates forest and forestland areas to individuals, households, legal entities and organizations for management purposes. Article 124 (Revised) Rights to Manage and Protect Forests and Forestland: Individuals, legal entities and organizations have the right to manage and protect forests and forestlands allocated by the State and to conduct activities in accordance with the Law. See also Articles 4.35, 4.41, 5 paragraph 2, 37 paragraph 3, 40 paragraph 2, 71 paragraph 3 and 103.

<sup>31</sup> The 'bundle of rights' that make up the forest use right are fairly clearly spelled out in the Forestry Law, such as right of transfer and right to give as inheritance. The right to give as security for a loan is not so clear. See Articles 121, 122 and 123.

<sup>32</sup> In the English Common Law, this is known as a 'profit a prendre'.

<sup>33</sup> 'Not utilizing State forests and forestland within a period of 3 years.'

**Recommendation**

The implementing decrees, regulations and plans should ensure that sufficient land is provided to meet the needs of the relevant people and also include safeguards regarding how changes are implemented, such as notices, notice periods and grievance redress provisions and mechanisms. An exemption of the three-year rule might be addressed in such implementing or explanatory documents, together with definitions of the two types of swidden cultivation that were requested by civil society.<sup>34</sup> Further, if the MAF envisages that controlled swidden cultivation is acceptable, then a template for regulating it could be developed for inclusion in the management plans and forest protection agreements that are envisaged under Article 120 of the Forestry Law.

**4.5.4 Requisition and compensation**

As with the Land Law 2019, the provisions of the Forestry Law 2019 on requisition and compensation are inadequate. The relevant provisions occur in various places throughout the Forestry Law 2019, specifically in Articles 60, 82 and 129.

First, the provisions are vague and give the government no specific right to requisition forest use rights or the land on which those rights exist. It is possible that the drafters were relying on the powers in the Land Law and thought it unnecessary to repeat the authority of the government to terminate rights where they were needed. However, it appears that the rights in the Forestry Law are not the same as those covered by the Land Law (as discussed in 5.5.2 above), and thus the provisions of the Land Law do not apply.

Second, and related to the first issue, is the lack of detail about the basis for requisitioning land – Article 129 is unclear about what is a public benefit, which would form the basis for the rights to use the forest being terminated. Would it, for example, extend to significant economic activities such as the creation of a new plantation that will export timber? In the Land Law, this type of private

activity is specifically included as a basis for requisition (Article 147.2), but in the Forestry Law it is not so clear.

Third, there are no details on the processes or procedural safeguards, such as the notices required, the time periods of notices, appeal rights, recording decisions, etc. There are no provisions for grievance redress. These are the same shortcomings that have been noted in relation to the Land Law.

Fourth, the nature and manner of calculating compensation and who is responsible for so doing are not addressed. Given that much of the value of the forest use rights would relate to the trees themselves, particular rules on putting a value on the right would be required, with a corresponding appeal right.

Last, it is unclear how the requisition and compensation provisions in the Forestry Law and Land Law interact, if at all.

**Recommendation**

The implementing decrees and regulations need to address the basic elements of requisition and compensation, including procedural safeguards, along the lines recommended for the Land Law and with the addition of specific rules on calculating compensation for trees.

**4.5.5 Carbon ownership and trading**

The word ‘carbon’ is mentioned in nine Articles, with Article 103 dealing specifically with trading in forest carbon. However, throughout the Law, the concepts of carbon capture and trading are addressed superficially. In most cases, the concept is mentioned as part of a list, with no actions. Even Article 103 gives little information, stating instead that the government will define policies, strategies and laws regarding the trade in forest carbon. Some basic questions, such as whether carbon rights can be owned and who owns them, are not addressed and will be left either to interpretation or waiting for the government to provide further information. When other countries have had laws since the 1990s that deal with fundamental issues of ownership,<sup>35</sup> it is a missed

<sup>34</sup> These are primary and rotational.

opportunity to have not addressed the fundamentals in the Forestry Law.

### **Recommendation**

A law, decree or regulation dealing specifically with issues surrounding carbon rights relating to trees should be prepared.

#### **4.5.6 Wetlands**

The omission of Article 26 of the 2007 Law on water resources in forest zones appears to be a deliberate decision, so presumably the drafters had in mind that the issues covered in Article 26 would be addressed elsewhere, such as in land use or natural resource management plans.

### **Recommendation**

The status and protection of water resources in forest zones should be monitored as the implementing decrees, regulations and plans are made. International experience has shown that tree plantations can have a significant impact on water resources and riparian areas, so careful planning and monitoring are essential. The country's obligations in relation to wetlands, such as those under the Ramsar Convention, should also be monitored.

#### **4.5.7 Transitional and consequential provisions**

As with practically all Lao legislation, there are no transitional or consequential provisions at the end of the Forestry Law, except to declare that it replaces the 2007 Law and that any terms or provisions in contradiction to the Law are cancelled. Presumably all existing rights and obligations are now regulated under the new Law, although the terms of actual agreements would probably remain the same to the extent that they do not contradict the terms of the 2019 Law. The status of decrees and directives

issued under the 2007, such as Prime Ministerial Decree No 333 of 2010 on Protected Forest, are unclear but they may remain in force to the extent that they do not contradict the provisions of the new Law.

### **Recommendation**

The implementing decree should make clear how the provisions of the Forestry Law apply to agreements that were entered into under the 2007 Law and also which of the decrees and regulations made under the 2007 Law continue to apply.

## **4.6 Other matters of concern**

The following section looks at matters that were raised with the drafters of the Law and the National Assembly but were not acted on. They are therefore matters that would require a change of policy or a substantial redraft of the Law, or both.

### **4.6.1 Control of village lands**

As discussed in relation to the Land Law, villages commonly include large areas of land beyond the fields and housing areas, such as forested or grass lands. Although it is not always expressly stated, the concepts and approaches in the Forestry Law are founded on the view that the government at various levels above the village has control of such non-settled land and has the decision-making power in terms of, among other things, allocating the right to use it. And in Part 8, Articles 119 and 120 make it clear that acquisition of rights in relation to forests and forest land come only from the State. This is in contrast to villagers having the right without reference to any other authority to use the land within their administrative boundaries as they think fit, as has traditionally been the case. (It is unclear how Article 64 on customary use relates to the rights discussed in Part 8.)

This approach is not new. All forestry legislation since the 1990s has attempted to insert central, provincial and district level government control

<sup>35</sup> See, for example, the law that formally recognized carbon rights as a property rights in 1998 in the Australian state of New South Wales <https://www.legislation.nsw.gov.au/acts/1998-124.pdf>

between the villagers and the land around them, particularly forest land.

In practical terms, the Forestry Law 2019 is silent on the mechanism for investigating and assessing the existence and extent of customary rights, as already discussed. And even if villagers could establish customary use of all the village lands, there is nothing to stop district, provincial or central level authorities from granting rights over that land to others. In fact, this is what is expressly envisaged in Part 8 of the Forestry Law. Thus, it appears clear that villagers do not have the right to control all the lands within the village boundaries, such as for granting leases and concessions.

**Recommendation**

The government has had the same policy position on control of forest land for many decades, so it should be accepted. The approach most likely to succeed in safeguarding villagers is to make them part of the process for allocating and granting rights by the State.

**4.6.2 Role of villagers in granting leases and concessions, and FPIC**

The approach noted immediately above regarding villagers' lack of control over the village land is perhaps most obvious in relation to the granting of leases and concessions. The Forestry Law gives villagers no role or power in the granting of leases or concessions over land within the boundaries of their village, even if it could have a substantial impact on their lives. Section 5 of Part 5, on Lease or Concession of Forest Land, omits any reference to the village or village level administration. And the right to lease land or forest rights granted to villagers is not among the list of rights included in Chapter 8, Articles 119 to 129. Further, the provisions of the Land Law 2019 on leases and concessions offer no help, as discussed in Chapter 3 of this report.

Thus, as with the Land Law, there is no place in the Forestry Law for engagement with villagers about what happens to the land within the

village's administrative boundaries. Nor is there any place for concepts such as 'full, prior and informed consent' (FPIC) in the Forestry Law. Finally, the grievance redress provisions are inadequate to deal with the situation where villagers come into conflict with lessees and concession holders.

**Recommendation**

When drafting the implementing decrees and regulations, the matter of villagers' involvement in granting of leases or concessions needs to be addressed, particularly in light of the impact that a lease or concession for forestry purposes could have on villagers. An obligation to consult with villagers and, preferably, obtain their free, prior and informed consent to any such leases or concessions would provide an important safeguard to their lives and livelihoods.<sup>36</sup>

**4.6.3 Land titling and formalization of tenure of forest land**

There are no provisions in the Forestry Law 2019 relating to land titling or formalization of forest use rights, nor are there any provisions on how transfers and inheritance of rights (as envisaged in Articles 121 and 122) are to be recorded. There are therefore no rights, obligations, procedures or grievance redress provisions (and thus no safeguards) relating to the granting and recording of rights under the Forestry Law 2019.

A related issue raised by civil society is that there are no details on the instruments to be used for allocation (Articles 111, 116, 119 and 120).

The drafters of the law might have thought that the implementing decree or regulation would deal with the recording of forest use rights granted by the State, recognition of customary rights, and transfers and inheritance of rights. There is, for example, also no provision on the issuing, recording and use of the forest certificates identified in Articles 126 and which can be used as collateral. It is quite possible and normal for a decree or regulation to cover these more practical topics.

<sup>36</sup> This could be addressed in the regulation on leases and concessions that Article 119 of the Land Law notes will be drafted or in a specific regulation under the Forestry Law.

Alternatively, the drafters might have thought that they could rely on the provisions of the Land Law 2019, such as Article 44 and also the provisions on land titling regarding the issuing of forest use land titles and the recording of transfers and inheritance.<sup>37</sup> It is possible to interpret some (but not all) of the provisions in Part 6, Section 2 of the Land Law on the Land Registration System so that it covers forest use rights as well as land use rights. For example, Article 93 on the Land Registration Book and Article 94 on Land Title Registration speak about legal use rights in respect of different categories of land. However, Article 94 on Land Titles is specific about limiting the issue of a land title to cases of land use rights, and Articles 104 and 105 also deal only with land use rights. Thus, the question of whether Part 6, Section 2 of the Land Law could be used to record forest use rights is open and, if MONRE were to cooperate, it would be possible to do so. If so, then the comments in relation to the Land Law in terms of requirements, procedures, safeguards, etc. would apply equally to forest use rights.

Assuming, however, that MONRE either does not agree with the interpretation that allows forest use rights to be recorded in the Land Registration System or is unwilling to do so, then it would be necessary to cover all these matters in the decrees or regulations implementing the Forestry Law. It would be necessary to cover such matters as:

- Which officials are responsible for recording?
- What documentation is required?
- What power do officials have to carry out their tasks?
- What are the rights and obligations of forest users (across the different categories) for first registration?
- What are the processes and procedures for first registration, including safeguards such as notice periods and grievance redress options?
- What document does the rights holder receive and what does it show?
- What are the rules on recording transfers and inheritance?
- What are the fees and other costs involved?

The provisions of the Land Law could be used as a starting point to develop a decree or regulation on forest use rights registration, and there are numerous guides to drafting such legislation.<sup>38</sup> However, it should be noted that this would be a substantial piece of work. Preparing the equivalent regulations for MONRE's predecessor in the 1990s took several months.

Civil society raised this issue and noted that good records would assist with minimizing conflict by promoting security of rights.

### **Recommendation**

As a first step, the intention of the MAF should be established. Then, discussions with MONRE should be held to establish whether the Land Registration System could be used for recognizing and recording forest use rights and transactions with them. If MONRE does not agree, then assistance with the drafting of a decree or regulation on the topic should be provided if the MAF agrees.

#### **4.6.4 Grievance redress mechanisms**

The provisions of the 2007 Law on settlement of disputes (Articles 117 on administrative disputes and Article 118 on civil disputes) were deleted from the 2019 Law. As noted above, the omission of these provisions does not create problems as there are existing measures in other laws to deal with administrative and civil conflicts. No equivalent set of Articles was inserted in a different form, along the lines of those in the Land Law 2019 (Articles 160 to 165). Therefore, there are no specific grievance redress provisions in the Forestry Law 2019. Anyone with a grievance would have to use the regular channels to resolve it, including disputes between villagers and lessees or concession holders. Given the conflict seen in recent years, the lack of specific provisions on grievance redress in the Forestry Law is perhaps a missed opportunity to require complainants to make use of a variety of options to resolve disputes prior to taking a matter to court.

<sup>37</sup> Article 44 of the Land Law 2019, entitled Use of Forest Land, says: The State acknowledges the use of land by people who have been living and earning for their living in forest lands before the area is classified as forest lands by tasking the Ministry of Agriculture and Forestry to coordinate with the Ministry of Natural Resources and Environment, other line Ministries and local administrative authorities to conduct surveys, data collection and re-allocate the forest lands and then issue land use certificates in accordance with the Law to individuals or families and encourage them to contribute to the protection of forests in accordance with Forestry Law and other relevant Laws. Note however that there is no Law under which land use certificates could be issued, as the Forestry Law does not address this issue.

<sup>38</sup> See, for example, Chapter 5 of the FAO Technical Guide No 9: Creating a system to record tenure rights and first registration <http://www.fao.org/3/a-i7559e.pdf>

**Recommendation**

In drafting the implementing decrees and regulations, it would be useful to explore alternative means for resolving disputes and to outline the procedural safeguards involved, such as notice, notice periods, access to impartial third parties, etc. Particular attention should be given to disputes with lessees and concession holders.

**4.6.5 Gender issues**

The Forestry Law 2019 is drafted in a gender-neutral manner, so that its provisions apply to both men and women, as well as businesses and organizations. It does not include any specific provisions that would assist women to overcome the traditional and other barriers to their engagement and control of economic activities. The references to families and family income generation in Articles 53, 63 and 71 would suggest that women are likely to be regarded only as part of a (male-headed) household.

**Recommendation**

When drafting the implementing decrees and regulations, it should be made clear that the provisions relate to both men and women, to ensure that officials and villagers take into account the rights of women to gain access and control over economic assets. The recommendations on gender made in relation to the Land Law could also apply to the Forestry Law.

**4.6.6 Collective/common lands**

As with the Land Law, it was proposed that the Forestry Law should recognize that groups of individuals could be joint users of rights. Such groups were sometimes referred to as 'collectives' and 'village collectives'. They were to be in addition to individuals, legal entities and organizations as bodies who could receive forest use rights.

As is the case with the Land Law, the Forestry Law 2019 did not adopt this additional category of

possible holder of forest use rights. However, the lack of inclusion of this category should not form a barrier to a group of people seeking the grant of a forest use right – they can apply as a group of individuals and have the documentation issued in all of their names. See section 3.6.4.

**Recommendation**

The government's decision to reject the concept of collective ownership should be accepted. No further efforts to introduce the concept of collective ownership of land for individuals should be made. However, the regulation dealing with formalization of tenure rights in forests should note the possibility of more than one owner.

**4.6.7 Resettlement**

There are no provisions in the Forestry Law dealing with resettlement or relocation of villagers. There are some statements about swidden cultivation, as noted above, but these relate to activities of villagers within their village. It would appear that, for major resettlements, the Law on Resettlement and Vocation of 2018 would apply, so the terms of that Law would regulate how the resettlement was conducted and what rights the villagers had. The Forestry Law 2019 does not protect villagers in any way from resettlement.

Less major resettlement could also be envisaged where a large area of land within a village was required for a lessee or concession holder to conduct forestry activities. It is unclear from the Law how the rights of villagers using that land would be affected, but the references to requisition in the Forestry Law leave it unclear whether taking villagers' land (as opposed to the trees) for a plantation would form the basis for compensation.

**Recommendation**

For resettlements of a kind outside the provisions of the Law on Resettlement and Vocation, which covers substantial resettlements, the implementing decrees and regulations under the Forestry Law 2019 could make provision for smaller resettle-

ments of villagers from land that they are using, such as for forestry purposes. This should include both procedural provisions, so that there is a clear pathway for officials to follow which would protect villagers' rights, and substantive matters such as a requirement to provide compensation and how to assess it. These provisions should be tied to those relating to requisition and compensation so that it is clear how the two approaches apply.

#### 4.7 Other matters (raised by civil society)

In addition to the matters raised above there are various issues that civil society raised with the MAF during the preparation of the Forestry Law. Most of these issues could still be addressed through decrees or regulations.

**Promotion of tree planting and NTFP:** civil society noted that while tree planting in forest is addressed, the Law says nothing about promoting planting on land allocated to individuals or villages. Presumably, the drafters of the Law thought that the self-interest of people would result in them planting trees on their own land if it made economic sense, so there would be no need for promotion. As for whole villages, the land that can be held by a village for collective utility is defined narrowly (according to Article 81 of the Land Law<sup>39</sup>) and is unlikely to include land suitable for tree planting, except perhaps within the grounds of temples, offices and schools.<sup>40</sup>

**Tree and NTFP species preservation:** civil society advocated for a revised definition of conservation to include conservation status and the omission of other aspects, such as wood properties. It was thought that there was also a lack of specificity in relation to how the species are defined and conserved. Article 50 defines conservation of tree and NTFP species and lists the activities to be undertaken in a very generic manner, including conducting a survey and following the law to conserve them. The lack of specificity in the final version of the Forestry Law will maximize the potential to develop decrees and regulations that deal with species preservation.

**Protected area management:** civil society noted that there were a few problems with the rules regarding protected forest area management, such as what is permissible and what is actually occurring, and a lack of definition. The references to buffer zones appear to define protected areas as well as any other terms in the Law, but there are still restrictions on what can be undertaken in such zones. The issue of what is happening in practice – namely, the use of this land for agriculture – is not specifically addressed in Article 71.3, which defines buffer zones, but such use is not outlawed. It would appear that low impact activities, such as ecotourism, would be permitted only if they are run by villagers.

**Timber Legality Assurance System:** civil society wanted improved accuracy in terminology regarding this system. The topic is noted in Articles 5 and 9 and addressed substantively in Article 43, where it uses the expression 'timber and wood product legality assurance system' and notes that the system will be developed, consistent with international conventions and treaties. Article 5 provides that 'wood product legality assurance systems [will be developed] in accordance with internationally recognized forest management standards'.

**Charcoal production:** civil society sought more detail and clarity on this topic, which is covered primarily in Article 96. That Article provides some basic rules on charcoal production and export, but at the end it notes that the topic will be addressed in specific regulations. Thus, additional details and rules can be included when the regulations are prepared.

**Selling timber through auction:** civil society indicated that there would be a need for clear regulations about how the auction process specified in Article 33 would operate and that the power to issue such a regulation might be outside the ambit of the Forestry Law. A regulation on the auction process would need to specify the rules and may need to be issued jointly with the Ministry of Industry and Communications.

<sup>39</sup> See also Article 81 of the Land Law, which defines 'public land use for collective utility' as cemeteries, sacred forest, common ponds, temples, schools, health centres, village administrative offices and village markets.

<sup>40</sup> It also covers sacred forest but whether commercial timber production would be allowed in sacred forest is unknown.



Tad Xangthevada Waterfall at Phou Khao Khouay National Park in Bolikhamxay Province. (Photo: Sangwan Sapma)

## **5** Inconsistencies between the Land Law 2019 and Forestry Law 2019

### **5.1 Introduction**

The previous Chapters have looked at the laws individually, with a focus on the areas in which further work is required to either improve them or to make the implementing decrees and regulations clearer, more comprehensive and more in line with best practice. The matters addressed in those Chapters could be regarded as 'gaps'. This chapter looks at the 'overlaps', that is, cases where the two Laws deal with the same subject matter and the extent to which they are inconsistent. Overlaps are just as confusing as gaps to those applying and implementing the law because they must try to reconcile sometimes contradictory statements or positions, resulting in confusion, variations in practice and inefficiencies. This Chapter also looks at how the overlaps could be addressed, such as through implementing decrees and regulations.

### **5.2 Extent of overlaps in the two laws**

As already mentioned in the preceding sections, the omission of 'customary' as a category of utilization of forestlands under the Forestry Law is an inconsistency with the Land Law which recognizes this.

As the two Laws deal with different subjects, there should not be a great deal of overlap between them. However, because forests are grown on land and people who wish to develop and harvest forests need access to land, there is necessarily some commonality between the topics addressed in the two Laws.

Mostly, the Laws create no overlaps because 1) they deal only with certain aspects of a topic that is addressed in the other Law, or 2) they are dealing with topics not covered in the other Law.

For example, the Forestry Law deals with leases and concessions, which are covered in the Land Law, but it does so only from the perspective of the activities undertaken by the lessees and concession holders in relation to forest, rather than the nature of the leases or concessions, which appears in the Land Law. And the Forestry Law deals with carbon rights but these are specific to forests and therefore not addressed in the Land Law at all.

There are however a few areas of overlap or potential overlap that emerge from a reading of the two Laws. These are discussed next.

## 5.3 Specific overlaps

### 5.3.1 Rights and obligations of the MAF under the Land Law 2019

The Land Law assigns duties to the MAF, namely:

- Article 40: making a survey of forest land
- Article 41: making forest land use plans
- Article 43: coordinating in the development of forest land
- Article 44: recognizing long-term use and issuing land use certificates, and
- Article 172: surveying, planning, providing data and monitoring use

These rights and obligations do not appear to overlap with the Forestry Law. They are consistent with or in addition to the duties of the MAF listed in the Forestry Law. However, there is a clear gap between the two Laws on the topic of issuing land use certificates based on long-term use of forest, as will be discussed in the following Chapter.

#### **Recommendation**

There is no recommendation because the Articles on duties create no conflict.

### 5.3.2 Rights and obligations of MONRE under the Forestry Law 2019

Similarly, the Forestry Law makes references to the **rights and duties of MONRE** such as in Articles 109, 110, 115, 148 and 154. These Articles note

that MONRE has a role to play in national land planning and that the MAF needs to coordinate with MONRE in various of its obligations. There is therefore no substantive overlap here.

#### **Recommendation**

There is no recommendation because the Articles on duties create no conflict.

### 5.3.3 Strategic and other planning

Both laws have a focus on **strategic and other forms of planning**, whether they be land allocation plans under the Land Law or forest management plans under the Forestry Law. There will necessarily be some overlap in the process of planning as the basic preliminary steps should be the same, particularly in the gathering of information. The strategies and plans have different purposes but the subject matter – natural resources and access to them – is common. Therefore, from a practical viewpoint, there is likely to be overlap in how the strategies and plans are developed. It will be important for the two ministries and their provincial equivalents to work closely so that land, which the MAF considers to be forest land, is not included in MONRE's land allocation plans, and also so that other land is not left in limbo (that is, neither forest nor land for allocation).

In addition, various Articles in the Forestry Law direct **coordination between the MAF and MONRE** but this is likely to be a difficult task because the priorities, schedules and resources needed for making strategies and plans are likely to differ. Practical matters, such as the scale of maps and the degree of accuracy of delineating boundaries, could also be problematic.

#### **Recommendation**

MONRE and the MAF should establish an inter-ministerial committee to coordinate the creation of strategies and plans, possibly with a secretariat to support its work and to agree on common practical issues.

### 5.3.4 Nature of land and forest use rights

The question of whether a forest use right is a land use rights or some other type of right has already been discussed. The conclusion is that **forest use rights** and **land use rights are different things** so there is no overlap. However, if this conclusion is wrong then, two major questions arise:

- Can land titles be issued for forest use rights as outlined in the Land Law? If so, then the requirements and processes would apply, and the MAF's responsibility under Article 44 of the Land Law to issue land use certificates would be unclear.
- Could a forest use right be used as collateral for a loan or leased if it is a form of land use right? The Forestry Law is silent on this point but the Land Law permits it, so people could argue that a forest use right could be employed in that way.

It is noted however that, even if forest use rights and land use rights are deemed to be different things, the Forestry Law also speaks about forests and forestland use rights, which would be difficult to argue as separate from land use rights. It would, however, make sense to understand forestland use as a sub-set of land use in general, and that due to the unique nature of forestlands, this is deemed relevant to be specifically and separately dealt with under the Forestry Law.

#### Recommendation

The implementing decrees and regulations should clarify whether a forest use right is a form of land use right. It appears that a forest use right should be expressly declared to be different from a land use right and not capable of being the subject of a land title, mortgaged or leased.

### 5.3.5 Customary rights

The situation regarding customary rights varies between the two Laws. More details will be provided in the following Chapter. The provisions of **the Land Law**, particularly Article 130 on the acquisition of customary rights, **do not expressly exclude forest land**. So the rules in Article 130 might apply to rights arising through custom

in forests and forest land, which could provide the basis for a land title. And in fact, Article 44 of the Land Law expressly refers to people who have been living and earning their living in the forest as having rights. But Article 44 goes on to say that these people are to be issued with land use certificates and the duty to do this lies with the MAF.

As already mentioned in the preceding sections, the omission of 'customary' as a category of utilization of forestlands under the Forestry Law is an inconsistency with the Land Law which recognizes this. As Article 44 of the Land Law states that people would receive a land use certificate for forest land, it appears that Article 130 of the Land Law would not be used as the basis for a land title under the Land Law. This raises the question of what happens to agriculture land within forest. See Article 71 of the Forestry Law, which permits agriculture in Controlled Use Zones. Would these people be able to receive a land title? As the land is forest land, Article 44 of the Land Law would appear to cover the situation, but see the final paragraph of Article 38 on agriculture land.<sup>41</sup>

#### Recommendation

The implementing decree or regulation should clarify the extent to which the provisions of the Land Law on custom apply to forest and forest land, if at all. The question of issuing a title for agriculture land within Controlled Use Zones, and whether this is a forest use right or land use right, should also be clarified.



<sup>41</sup> It provides that the State acknowledges the right of citizens on long-term use of agricultural land by issuing the land titles with the respective local Department of Natural Resources and Environment as prescribed in article 101 of this Law.

### 5.3.6 Users of forest land

Article 44 of the Land Law provides that forest land can be used for families **and businesses**. Also, Article 44 refers to families, which are rarely mentioned in the Forestry Law. Instead, the Forestry Law speaks about individuals. This too is a minor case of overlap and inconsistency, and it should not create any issues.

#### *Recommendation*

There is no recommendation because the Articles on duties create no conflict.

### 5.3.7 Public utility land

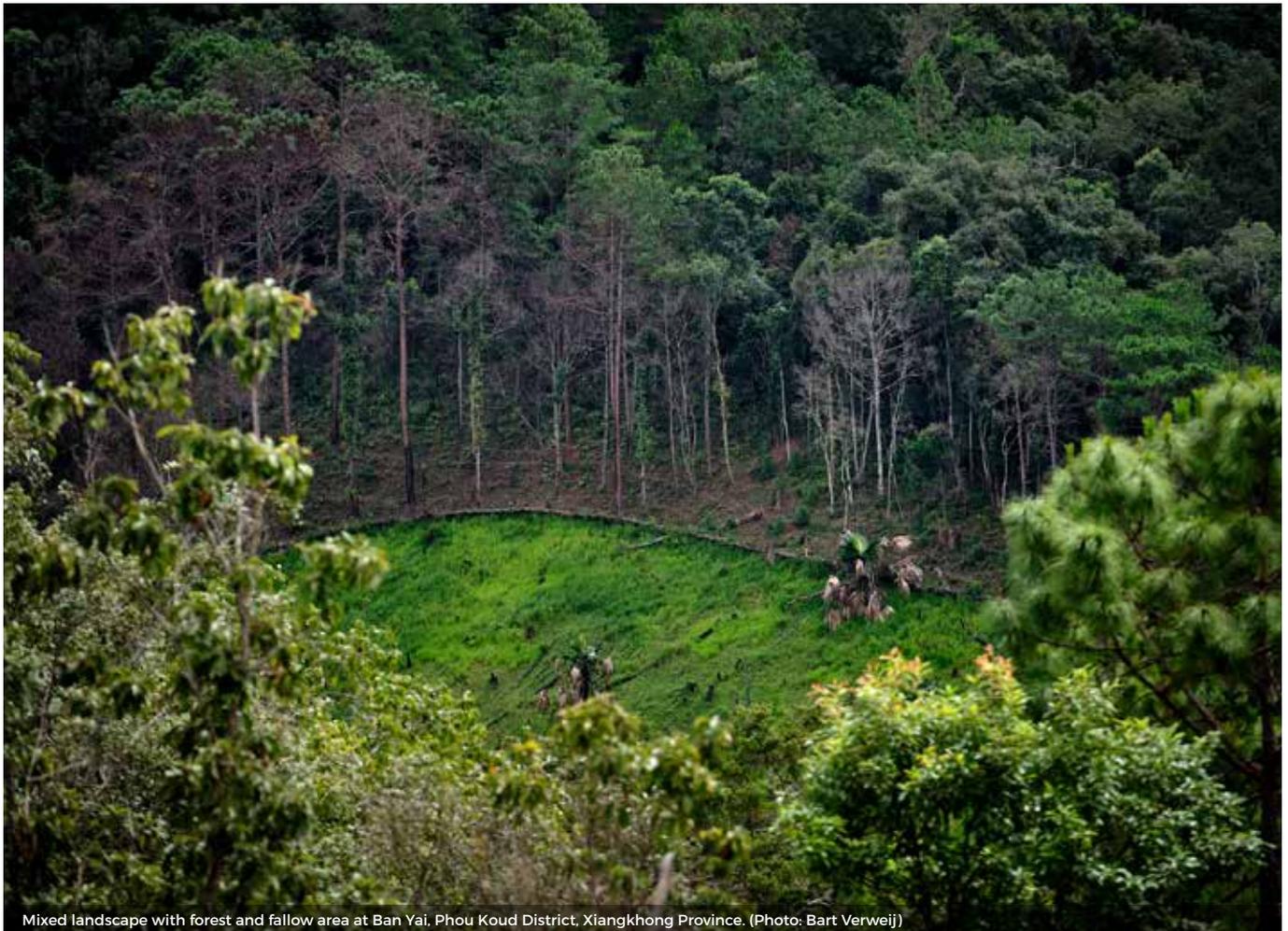
Public utility land, which the Land Law addresses in Article 81 for villagers to use in common, is expressly noted in Article 44 of the Land Law. That Article is part of the section on the management of forest land, and Article 44 states that **forest lands can be used for public utility**. This is not an overlap that would give rise to a conflict between the two Laws. Rather, it is a clarification that forest land can be used for this particular purpose.

#### *Recommendation*

In the planning guidelines, processes and templates under the Forestry Law, the category of public utility land should be expressly included.



The mountain range in Vang Vieng District, Vientiane Province. (Photo: Sangwan Sapma)



Mixed landscape with forest and fallow area at Ban Yai, Phou Koud District, Xiangkhong Province. (Photo: Bart Verweij)

## 6 Customary land use rights in the Land Law 2019 and Forestry Law 2019

### 6.1 Introduction

Customary land use rights are a special area of concern because so much of the country is populated by people who live and work according to custom, using land and forest as their ancestors have done over the centuries. It is also an area that has been somewhat contentious, as authorities seek to exert control over land and forest that is used by villagers according to custom.

This Chapter brings together the comments on customary land use rights at various points through this report. It takes a closer look at the topic and considers how customary land use rights will be treated in practice. Specific questions to be addressed are:

- How are the customary rights of people recognized in respect of both individual and collective land and for land in both forest areas and non-forest areas under these Laws?
- Do these provisions clearly articulate what are the limitations, duration and bundle of rights?
- Are the two new Laws in line with each other? What are the exact provisions and, across Laws (Forest / Land), how will they be implemented?
- What else needs to be clarified and how?
- What needs to be clarified between the two Laws, implementation plans? And how will this support effective implementation?

Based on the analysis of the Laws and answers to the above questions, this Chapter concludes with a lengthy set of recommendations for future decrees, implementing procedures and advocacy work for the recognition of customary land use rights.

## 6.2 The extent to which the two Laws deal with customary land use rights

A search of the **Land Law** 2019 shows that the words ‘customary’ appears in two Articles: Article 127 on Land Transfer by the State and Article 130 on Acquisition of the Right to Use Customary Land.<sup>42</sup> Article 44 on forest land is also relevant, although it does not use the word ‘customary’, as is Article 38 on agricultural land. In the **Forestry Law** 2019, the word ‘customary’ appears in:

- Article 60 on Promotion of Tree and NTFP Planting
- Article 64 Customary Utilization of Forests, Timber and NTFPs, and
- Article 123 on the Rights of Users of Planted Forests and Forest Plantation Areas

The Land Law’s references to ‘customary’ in Article 130 is informative.

In the Forestry Law ‘customary utilization’ is specific and limited to forests, timber and NTFPs, and ‘customary utilization’ of forestlands is not mentioned.

## 6.3 Recognition of customary rights

### 6.3.1 Land Law

For **private land use**, Article 127 of the Land Law authorizes the State to give a ‘total transfer’ of land use rights based on acknowledgement of customary land use rights. This appears to mean that the State will make a grant of a land use rights to people who can demonstrate that they have customary land use rights. There are no details about the mechanism but presumably the grant would be documented and name the person, possibly as part of the land titling process.

Article 127 may be linked to Article 130, which describes the circumstances for recognition of customary rights. Article 130 provides that a Lao citizen who has developed and regularly used land for more than 20 years before 2020 can be recognized as having the land use right, which can form the basis of a land title. Supporting evidence from the village head and

neighbours is required. Prior to the issuing of a land title, the State is to acknowledge and protect the rights of people who come within the terms of this Article.

From a forestry perspective, Article 44 of the Land Law is highly relevant. It provides that the ‘State acknowledges the use of land by people who have been living and earning a living in forest land before the area is classified as forest’. It goes on to say that the MAF, in coordination with MONRE and other authorities, is to ‘reallocate the forest lands and then issue legal land use certificates’. There are no details in this Article and it is unclear how it interacts with Article 130 (if at all). Similarly, Article 38 provides that the State ‘acknowledges the right of citizens on long term use of agricultural land by issuing the land titles’, although this does not necessarily refer to customary rights.

As for as **collective land use**, customary rights of a kind are recognized in the Land Law only for public utility lands in villages. Article 81 deals with the concept of ‘public land use for collective utility’, which means the lands within a village that everyone uses. Examples of these lands are listed in Article 81 and include ‘cemeteries, sacred forest, common ponds, temples, schools, health centers, village administrative office, village markets’.

However, the articulation of this Article significantly limits the extent to which collective land use rights may be recognized in cases where household units or clans engaging collectively in the use of uplands for subsistence agriculture through shifting cultivation practices, as is found commonly throughout the country.

See sections 3.6.4 and 4.6.6.

### 6.3.2 Forestry Law

For private use of forest resources based on custom, the Forestry Law notes in Article 61.2 that there is such a thing as ‘**customary use**’ of certain types of trees but gives no other information. The main element covering this is Article 64, headed ‘Customary Utilization of Forests, Timber and NTFPs’. It states:

<sup>42</sup> ‘Custom’ is not used by itself, except for references to customs in the sense of taxation and duties.

<sup>43</sup> It should be noted, as discussed in Chapter 3, that the requirement to prove 20 years of regular use is regarded as highly problematic and would exclude many people who have legitimate customary rights from claiming their rights, particularly those who have had to relocate their village and those using swidden cultivation.

Customary utilization of forests, timber and NTFPs is the use of forests, timber, and NTFPs in a manner that people have practiced for a long time within village forest areas. Such utilization shall be in accordance with the forest management plans and the Law.

Finally, Article 123 on the rights of users of planted forests and forest plantation areas provides that, 'The rights to customary use shall be practiced as described in Article 64 of this law.'

Thus, even taken together, these three Articles give very little information about customary rights to forest. In fact, the drafters appeared to have left the whole topic to either the plans or the regulations. However, it can be said that the Forestry Law does at least recognize the possible existence of customary rights, even if there are few details about how to recognize them and what they mean in practice.

Note that the Forestry Law does not deal with customary rights over land, but rather customary rights to the resources on the land.

An alternative way of understanding customary use, and the extent to which the Forestry Law and the State recognize it, is by piecing together various Articles in the Law that deal with rights commonly exercised in the customary setting but that are not specifically called 'customary rights'.

In addition to the very limited provisions relating to customary rights, there are a number of rights under the Forestry Law that would overlap with customary rights, although the Articles are not expressed in a way that indicates recognition of customary rights themselves. For example:

- Article 63: 'The State allows villagers to use timber from village use forests for constructing and repairing houses', although only with district approval and in accordance with the regulations.
- Article 65: Permits the use of timber for commercial purposes from forest areas that the State allocates for village use.
- Article 71: 'Controlled Use Zones are forest areas which the State allocates to villages inside and adjacent to Conservation Forests

to sustainably manage and protect biodiversity and thereby receive appropriate benefits. These areas can be used for ecotourism, for harvesting NTFPs from the natural forest, for agriculture production and for planting trees and NTFPs. Controlled Use Zones are allocated by the State to support family income generation, but on the condition that the felling of naturally grown trees for commercial purposes is prohibited.'

- Article 114: 'District administration authorities allocate forests and forestland to village administration authorities to manage, inspect, protect, develop and utilize in accordance with village forest management plans as prescribed in Article 39 of this law.'
- Article 120: 'The provision of rights to use State forests and forestland is decided by the district administration authority who allocate forest and forestland to village administration authorities for long term and sustainable use according to village forest management plans, forest management and protection agreements and relevant laws.'

Thus, while these are not designated as customary rights, the entitlements created under these Articles and the management plans and agreements could cover many rights associated with customary usage. The main difference between these rights and rights arising through custom appears to be that the State has a substantial (or perhaps dominant) role in determining just what is and is not permitted in a particular setting, and that the State could exclude any or all of the rights by means of a plan or the law.

There is **no concept of collective forest use** by the village as a whole, of the kind described in Article 81 of the Land Law, that gives property rights to the village. However, the Forestry Law refers extensively to 'the village' in relation to forest conservation, protection and development.<sup>44</sup> The many Articles, together with the management plans that need to be prepared, could give villages extensive and important powers over the forest and forest land around their village. Much depends on what the district

<sup>44</sup> See for example the definition in Article 3.9 of 'land and forest land allocation at the village level' and Article 3.41 of 'forest development village'; mention of village protection and village conservation forests in Articles 15 and 16, respectively; village use forests' allocated by the State, as mentioned in Articles 31, 64 and 65; 'village forestry management planning' in Article 39; land allocated to villages in buffer zones in Article 71; forest and forest land protected and developed by villages in Articles 114 and 120; and rights and duties of the Agriculture and Forestry Sub-Unit under the Village Economic and Financial Unit in Article 152.

level authorities are willing to grant to each village. While there could be a great deal of overlap between customary rights and those granted by the district authorities and in the management plans, strictly speaking this is not recognition of customary village rights because the State is granting the rights.

As for **collective or common land use**, as discussed in section 4.6.6, there is no specific concept of ownership of forest use rights by a group of individuals. However, as with the Land Law, it would be theoretically possible for forest use rights to be held by more than one individual.

### 6.3.3 Are the two Laws consistent?

The two Laws have an inconsistency in an important area; the Forestry Law's omission of customary utilization of forestlands is an outright inconsistency with Article 44 of the Land Law and begs clarification about whether the Land Law could supersede the Forestry Law.

The Forestry Law does not deal with customary rights over forest resources, focusing instead on rights created under that Law or the management plans.

Note, there is some possible overlap regarding agriculture land within Controlled Use Zones of forest land, as discussed in Chapter 5.

## 6.4 The nature of the right

### 6.4.1 Land Law

In the **Land Law**, Article 127 describes the rights arising from a 'total transfer' based on customary land use rights to include all the normal rights associated with a land use right, that is, rights to protect, make use, take benefits, transfer and give as inheritance. It appears that these rights include the right to lease and give as a guarantee, which is part of the right to take benefits (see Article 136 for a description of the right to take benefits). Thus, where the State grants a land use right based on custom in accordance with Article 127, the full set of rights is clearly defined.

It is not clear what rights arise in relation to customary land use, acquired pursuant to Article 130, but they appear to be the same as those under

Article 127.<sup>45</sup> Article 130 envisages that a land title will be issued for these rights, indicating that the full range of rights could be included. In any case, there is no specific limitation on customary rights in the Land Law.

The rights associated with **public lands for collective utility** are clearly defined in Article 81. They include the right to protect and use the land but no rights to transfer, sell, exchange, lease, give a concession over, or use as a share or deposit. Presumably this also excludes pledging the land as a guarantee for a loan. This makes sense because lands that are for everyone's use should not be disposed of.

As with all land use rights, these rights appear to continue **without an end date**. They would come to an end only if one of the events described in Articles 144 to 147 occurred, such as a failure to comply with obligations regarding the land (Article 144) or requisitioning the land for a public purpose (Article 147.2).

### 6.4.2 Forestry Law

As noted above, the Forestry Law does not mention 'customary' as a means of acquiring forestland use rights.

The Forestry Law mentions 'customary' only as a category of utilization of forests, timber and NTFPs. It gives no indication about what the nature of the rights could be. Nor does it say how rights can be dealt with – leaving this topic to be addressed in the management plans (in accordance with Articles 64 and 123). Further, in accordance with Article 64, the exercise of customary rights can be modified by the management plan. This presumably means that they can be restricted or, perhaps, even extinguished through the plan. Thus, as management plans will vary from village to village, it is possible that a customary use right will continue to exist in one village but will be modified (or extinguished) in the neighbouring village.

### 6.4.3 Are the two Laws consistent?

Here, the two Laws are **inconsistent** because the Forestry Law excludes 'customary' as a means of acquiring forestland use rights, contrary to the

<sup>45</sup> This would be certain if the act of recognizing customary rights under Article 130 resulted in a 'total transfer' pursuant to Article 127.

notion under Articles 44 and 130 of the Land Law. And the Forestry Law establishes a parallel system of forest use rights, so there is no immediate inconsistency with the Land Law and its land use rights, even those based on custom.

## 6.5 Land titling and formalization of customary rights

### 6.5.1 Land Law

There are three Articles of relevance to the **formalization of customary rights**:

- Article 127, which deals with the grant of land by the State. The grant document would form a basis for the issue of a land title under Article 100, which specifically includes a 'certificate of acquisition', such as a certificate relating to land, and granted by the State.
- Article 130, which clearly envisages that a land title will be issued for customary rights that are recognized. The second paragraph deals specifically with the situation prior to the issue of a land title, so the drafters intended that a land title would ultimately be issued.
- Article 99, which makes specific provision for land titles for public land and private land. Thus, land for public use as a collective utility could be the subject of a land title.

Additionally, the Land Law deals in Article 44 with the use of forest land. It provides for **acknowledgement of forest use** by people and directs the MAF to 'allocate forest lands and then issue legal land use certificates'. It is unclear if the lands would be the same as were used by custom, although the implication is that they are the same. The approach taken in Article 44 is not so much full equivalence of customary rights to formalized rights but rather acceptance that people have had rights and the replacement of those rights with an allocation of forest land, on which a land use certificate can then be issued. As such, it is consistent with the terms of the Forestry Law which focuses on the State allocating management rights rather than formalizing existing ownership rights.

### 6.5.2 Forestry Law

There is a **lack of provisions on land titling and formalization** of customary rights in the Forestry Law. This appears to have been done on purpose

and with the terms of Article 44 of the Land Law in mind. However, the lack of reference to the land use certificate in the Forestry Law, which the MAF has the responsibility to issue, is an omission. Consequently, there are also no provisions in respect of the requirements, procedures or the safeguards, such as grievance redress mechanisms, relating to the issuing of land use certificates in the Forestry Law.

### 6.5.3 Are the two Laws consistent?

As the Forestry Law does not deal with land titling, it is not inconsistent with the Land Law. It is noted that the Forestry Law does not use the expression 'land use', as in Article 44, but rather 'forest and forestland use'.

## 6.6 Requisition and compensation for loss of customary rights

### 6.6.1 Land Law

Once a **land title for customary use** rights has been issued, there should be no difference in the way that right, and any other rights with a land title, are treated. Thus, the rights could be requisitioned by the State and compensation would be due.

**Prior to the issue of a land title**, the situation is less clear. Articles 153 and 154 of the Land Law, which deal respectively with compensation for loss caused by public purpose operations and the State's investment operations, speak of 'land' and 'land use rights' but do not mention customary rights. However, paragraph 2 of Article 130 stipulates that prior to the issue of a land title, the State will protect customary use rights, so perhaps compensation would be due to the holder of such rights before a land title is issued.

The Land Law does not deal with compensation in cases involving the loss of public land for collective utility, including for the appropriation of such land for State investment operations. So, it is unclear whether the villagers could expect compensation for the loss of part of their village if it were taken for investment purposes. It would appear not, because Article 151 speaks only of the land of 'individuals, legal entities or organizations', unless the village could be regarded as an organization.<sup>46</sup>

### 6.6.2 Forestry Law

Requisition and compensation are relevant to customary rights relating to forest whether the rights have been formally recognized or not. The Forestry Law notes in several places that where land is required by the State, compensation can be paid. See, for example:

- Article 60.1 in the context of promoting the planting of trees and NTFPs.
- Article 82, paragraph 3, which states that: 'In the case that the State needs to convert forestland that was allocated to an individual or organization to use for a prescribed purpose, to use for another purpose with greater benefit to the country, the Government will make compensation in accordance with regulations.'
- Article 129.4 states that, on the termination of the right to use forest and forest land, where it is required by the State, 'the State shall provide compensation for any loss in accordance with the law'.

It is not clear whether these statements apply to customary rights, particularly if they had not yet been formally recognized. Once the rights have been formally recognized through the grant of a forest use right, then those rights would probably be treated as any other forest use rights. The situation prior to formalization is unclear from the Law.

The Forestry Law does not itself deal with requisition or compensation in any substantive way, as has been discussed in Chapter 4, and this applies equally to rights based on custom. In Article 82, it provides that compensation will be paid in accordance with 'the regulations' and in Article 129.4, it is in accordance with 'the law'. Which regulations or law are not specified, although the reference to the law is most likely a reference to the Land Law.

Against the view that the Land Law applies to forest use rights is that fact that the Land Law's provisions on requisition and compensation (Articles 144 to 155) are concerned only with land use rights. Although forest use rights share some characteristics with land use rights, such as the right to transfer, inherit, use, etc., as listed in Article 123 of the Forestry Law, they are almost certainly

a different type of legal right. This is probably also the case with customary use rights. If the Land Law does not apply, then the regulations under the Forestry Law need to specify the processes and safeguards for requisition and compensation.

No matter which law or regulation applies, special guidelines are needed on valuing the loss of a forest use right (whether it was based on custom or not), so that there is a place for the regulations under the Forestry Law to deal with questions such as valuation of the use, including trees that either grow naturally or have been planted by the forest use right holder.

### 6.6.3 Are the two Laws consistent?

The two Laws are basically consistent. Both say that, if the State needs the land, it can take the land but the rights holder will be compensated. This is a good starting point. However, further details are required for both Laws and those details should be consistent between the two. Provisions should clearly ensure that customary rights are covered.

## 6.7 Way forward

There are numerous matters that need to be clarified both within and between the two Laws. This can be done through the implementing decrees and regulations and, to a lesser extent, the management plans under the Forestry Law. Guidelines and staff training will also be necessary to explain the details. Clear rules will not only provide safeguards for villagers but they will also make implementation simpler for officials and minimize the extent to which officials must use their discretion and make their own interpretations. Clear rules will also deliver a nationally consistent approach to customary rights.

Additionally, engagement with villagers, including through educational materials, will be required to make them aware of their rights. This will be particularly important where the two Laws differ in their approaches to customary rights.

Regarding the **Land Law** the following clarifications will be required in the implementing decrees and regulations:

- The types of rights arising under Article 130 when customary land use is acquired.

<sup>46</sup> Organization refers to the State bodies, such as the Lao Front for National Development and other mass organizations, rather than administration at the central, province, district or village level.

- The process and documents involved in recognition of customary rights under Articles 127 and 130 of the Land Law, including as part of the land titling process.
- How Articles 44 and 130 interact, including whether Article 44 covers more cases than Article 130, that is, cases where land has been used for less than 20 years.
- The extent to which the specific terms of Article 130 override the long list of requirements in Article 100 for the issue of a land title. Would a land map still be required?
- Confirmation that a land title would be issued for land used for the purposes of public use as a collective utility. An explanation of how the lands would be identified and what documentation, if any, would be required.
- How a land title based on customary use rights would differ from an ordinary land title.
- The details relating to how a land use certificate for forest land can be used as the basis to issue a land title (if at all).
- Confirmation that compensation would be paid to villagers, or alternative land provided, when public land for a collective utility is taken for State investment operations.
- A list of the types of uses and transactions that can be made with rights over forest and forest land (in accordance with Article 123).
- A template covering customary uses in villages for inclusion in forest management plans should be developed which can be inserted into each plan and which will describe, protect and promote customary use rights. Similarly, a common template should be developed and utilized for forest management and protection agreements.
- A regulation on the issuing of land use certificates by the MAF should be developed, as described in Article 44 of the Land Law, covering the requirements, processes, safeguards and nature of the certificate. It would be useful to describe the basis for the 'State to acknowledge the use of land by people who have been living in forest land', as stipulated in Article 44, such as the length of use, nature of use, etc.
- Clarification about whether the compensation provisions apply to customary use rights even if they have not been formally acknowledged.
- Guidance about which law is to regulate requisition and compensation for forest and forest land.
- A regulation on compensation for loss of rights to use forest and forest land, including those arising through custom, should be developed, with a focus on the processes and valuation, including safeguards such as mechanisms to address grievances relating to valuations.

Regarding the Forestry Law, the following will be required in the implementing decrees and regulations:

- An explanation of the nature of customary rights over forest and forest land.
- Clarification about how customary rights are to be recognized and what the expression 'for a long time' means (in Article 64).



Khmu Village, Oudomxay Province. (Photo: Sangwan Sapma)

## 7 Annexes

### 7.1 Annex 1 Land Law 2003 – Outline and Structure

The Land Law of 2003 has 87 Articles divided across 6 Parts and various Chapters, as follows:

<b>Part 1</b>	1-7	General Provisions
<b>Part 2</b>	8-51	Land Management and Registration
		Chapter 1 Land Management Organization (8-14)
		Chapter 2 Management of Agriculture Land (15-18)
		Chapter 3 Management of Forest Land (19-22)
		Chapter 4 Management of Water Area Land (23-26)
		Chapter 5 Management of Industrial Land (27-29)
		Chapter 6 Management of Telecommunication Land (30-32)
		Chapter 7 Management of Cultural Land (33-34)
		Chapter 8 Management of Land for National Defence and Security (35-37)
		Chapter 9 Management of Construction Land (38-42)
		Chapter 10 Land Registration (43-51)
<b>Part 3</b>	52-76	Rights and Obligations of the Land User
		Chapter 1 Rights and Obligations of a Lao Citizen concerning Land (52-63)
		Chapter 2 Rights and Obligations of a Aliens, Apatrids and Foreign Individuals concerning Land Lease or Concessions (64-68)
		Chapter 3 Compensation for Losses (69-76)
<b>Part 4</b>	77-79	Control of Land Use
<b>Part 5</b>	80-84	Land Dispute Settlement, Policies towards Persons with Outstanding Performance and Measures against Violators
<b>Part 6</b>	85-87	Final Provisions

### 7.2 Annex 2 Land Law 2019 – Outline and Structure

The Land Law 2019 has 180 Articles divided across 11 Parts, as follows:

<b>Part 1</b>	1-10	General Provisions
<b>Part 2</b>	11-19	Land Allocation Master Plan, Strategic Plan and Land Use Plan
		Section 1 Land Allocation Master Plan (11-13)
		Section 2 Strategic Plan and Land Use Plan (14-19)
<b>Part 3</b>	20-30	Land Zoning, Land Categories, Land Survey, Land Protection and Development and Land Transactions
		Section 1 Land Zoning and Classification of Land Categories (20-21)
		Section 2 Land Survey, Protection and Development (22-24)
		Section 3 Land Transformation (25-30)
<b>Part 4</b>	31-77	Management and Use of Each Category of Land

		Section 1	Management of Agriculture Land (32-38)
		Section 2	Management of the Use of Forest Land (39-44)
		Section 3	Management of Water Area Lands (45-49)
		Section 4	Management of Industrial Lands (50-55)
		Section 5	Management of Transport Lands (56-61)
		Section 6	Management of Use of Cultural Lands (62-67)
		Section 7	Management of Land Use for National Security-Defence Purposes (68-69)
		Section 8	Management of Construction Land (70-77)
<b>Part 5</b>	78-88		Management of Land Use
		Section 1	Management of Public Land Use (78-84)
		Section 2	Management of Lands of Lao Citizens (85-86)
		Section 3	Management of Land of Aliens, Stateless Persons, Foreigners and their Organizations (87-88)
<b>Part 6</b>	89-115		Land Administration
		Section 1	Land Information System (90-91)
		Section 2	Land Registration System (92-105)
		Section 3	Registration of Land Construction for Building Condominiums (106-108)
		Section 4	Land Valuation (109-110)
		Section 5	Land Transaction (111-112)
		Section 6	Revenue from Land (113-115)
<b>Part 7</b>	116-125		Land Lease and Concession
		Section 1	Lease of Lao Citizen's Land, Lease and Concession of Public Lands (116-120)
		Section 2	Rights and Obligations of Lessor or Concessioner (121-122)
		Section 3	Trade of Rights to Use Public Allocation Land within Defined Period (123-125)
<b>Part 8</b>	126-147		Acquisition of Rights, Rights and Obligations, Loss of Rights and Termination of Land Use Right
		Section 1	Acquisition of Land Use Rights (126-132)
		Section 2	Rights and Obligations of Holders of Land Use Rights (133-143)
		Section 3	Loss of Right to Use Land and Land Use Rights (144-147)
<b>Part 9</b>	148-155		Compensation for Damages Caused by Loss of Land Use Rights
<b>Part 10</b>	156-158		Land Related Businesses
<b>Part 11</b>	159-160		Prohibitions
<b>Part 12</b>	161-166		Land Dispute Settlement
<b>Part 13</b>	167-184		Land Management and Inspection
		Section 1	Land Management (167-181)
		Section 2	Land Inspection (182-184)
<b>Part 14</b>	185-186		Policies towards Persons with Outstanding Performance and Measures against Violators
<b>Part 15</b>	187-188		Final Provisions

### 7.3 Annex 3 Forestry Law 2007 – Outline and Structure

The Forestry Law of 2007 has 130 Articles divided across 12 Chapters, as listed below. Chapters 3 on Forestry Activities and 4 on Forest Land make up almost half of the Law.<sup>47</sup>

<b>Chapter 1</b>	1-8	General Provisions
<b>Chapter 2</b>	9-13	Forest Categories
<b>Chapter 3</b>	14-55	Forestry Activities
		Section 1 Forest Management (14-21)
		Section 2 Forest Preservation (22-29)
		Section 3 Forest Development (30-38)
		Section 4 Forest Utilization (39-55)
<b>Chapter 4</b>	56-76	Forest Land
		Section 1 Management of Forest Land (56-57)
		Section 2 Preservation of Forest Land (58-61)
		Section 3 Development of Forest Land (62-65)
		Section 4 Utilization of Forest Land (66-76)
<b>Chapter 5</b>	77-88	Scope of Preservation and Development of Forest and Forest Land
		Section 1 At the Central Level (77-78)
		Section 2 At the Local Level (79-83)
		Section 3 By Households (84-88)
<b>Chapter 6</b>	89-99	Rights and Obligations of Natural Forest, Forest Plantations and Forest Land Users
<b>Chapter 7</b>	100-103	Prohibitions
<b>Chapter 8</b>	104-116	Management and Inspection of Forest and Forest Land
		Section 1 Management of Forest and Forest Land Areas (104-109)
		Section 2 Inspection of Forest and Forest Land (110-116)
<b>Chapter 9</b>	117-118	Settlement of Conflicts
<b>Chapter 10</b>	119-120	National Arbour Day, Uniform, Logo and Seal
<b>Chapter 11</b>	121-128	Rewards for Persons with Outstanding Performance and Measures against Violators
<b>Chapter 12</b>	129-130	Final Provisions

<sup>47</sup> The law replaces an earlier Forestry Law, No 13/NA of 2005, which in turn replaced the original Forestry Law, No 1/NA of 1996. Thus the new Forestry Law, No 64/NA 2019 is the fourth law on the topic.

## 7.4 Annex 4 Forestry Law 2019 – Outline and Structure

The Forestry Law 2019 has 175 Articles divided across 15 Chapters, as follows:

Chapter 1	1-9	General Provisions
Chapter 2	10-13	Forestry Strategy
Chapter 3	14-18	Forest Categories
Chapter 4	19-55	Forestry Activities
		Section 1 Forest Management (19-45)
		Section 2 Forest Protection (46-53)
		Section 3 Forest Development (54-60)
		Section 4 Forest Utilization (61-65)
Chapter 5	56-76	Forest Land
		Section 1 Management of Forest Land (66-68)
		Section 2 Protection of Forest Land (69-72)
		Section 3 Development of Forest Land (73-76)
		Section 4 Utilization of Forest Land (77-86)
		Section 5 Lease or Concession of Forest Land (87-91)
Chapter 6	92-108	Forestry Businesses and their Operations
		Section 1 Forest Businesses (92-103)
		Section 2 Operation, Suspension and Cancellation of Forestry Businesses (104-108)
Chapter 7	109-118	Scope of Preservation and Development of Forest and Forest Land
		Section 1 At the Central Level (109-110)
		Section 2 At the Local Level (111-115)
		Section 3 Persons Protecting and Developing Forest and Forest Land (116-118)
Chapter 8	119-129	Rights and Obligations of Forests and Forest Land Users
Chapter 9	130-132	Forest Protection Fund
Chapter 10	133-136	Prohibitions
Chapter 11	137-147	Criminal Proceedings relating to Forest and Forest Land
Chapter 12	148-163	Management and Inspection of Forest and Forest Land
		Section 1 Management of Forest and Forest Land Activities (148-160)
		Section 2 Inspection of Forest and Forest Land Activities (161-163)
Chapter 13	164-165	National Arbour Day, Logo, Uniform and Seal
Chapter 14	166-173	Rewards for Persons with Outstanding Performance and Measures against Violators
Chapter 15	174-175	Final Provisions



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