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Policy, Laws and Regulations and the UNFCCC Cancun Safeguards: Frameworks and Gaps in the Lao PDR

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The final responsibility for opinions expressed in the report lies with the author, Dr. Rita Gebert. They do not necessarily represent the opinions of GIZ or of any member of the Government of the Lao People's Democratic Republic.

Abbreviations

ADB	Asian Development Bank
AEC	ASEAN Economic Community
BeRT	Benefits and Risks Tool
CAST	Country Approach to Safeguards Tool
CBD	Convention on Biological Diversity
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CITES	Convention on International Trade in Endangered Species
ClIPAD	Climate Protection through Avoided Deforestation
CP	Conference of Parties
DFRM	Department of Forest Resource Management
DG	Director General
DOF	Department of Forestry
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
EUR	Euro
FCPF	Forest Carbon Partnership Facility
FDF	Forest Development Fund
FDI	Foreign Direct Investment
FLEGT	Forest Law Enforcement Governance and Trade
FOMACOP	Forest Management and Conservation Project
FPIC	Free, Prior and Informed Consent
FS2020	Forest Strategy 2020
FSC	Forest Stewardship Council
FSSWG	Forest Sub-Sector Working Group
GCF	Green Climate Fund
GHG	Greenhouse Gases
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
GoL	Government of the Lao PDR
ha	hectare(s)
IEE	Initial Environmental Examination
INGO	International Non-Governmental Organisation
KfW	German Development Bank
LPRP	Lao People's Revolutionary Party
MAF	Ministry of Agriculture and Forestry
MONRE	Ministry of Natural Resources and Environment
MRV	Measurement, Reporting and Verification
NA	National Assembly
N/A	Not Available
NPA	National Protected Area (formerly known as National Biodiversity Conservation Area)
NT2	Nam Theun Two (name of hydropower project)
NTFP	Non-Timber Forest Product
PES	Payment for Environmental Services
PFA	Production Forest Area

PLR	Policies, Laws and Regulations
PM	Prime Minister
PSFM	Participatory Sustainable Forest Management
RECOFTC	The Centre for People and Forests
REDD	Reducing Emissions from Deforestation and Forest Degradation
REDD+	REDD <i>plus</i> the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
REL	Reference Emission Level
R-PP	Readiness Preparation Proposal (for REDD+)
SBSTTA	Subsidiary Body on Scientific Technical and Technological Advice
SEPC	Social and Environmental Principles and Criteria
SES	Social and Environmental Standards
SESA	Strategic Environmental and Social Assessment
SEZ	Special Economic Zone
SIS	Safeguards Information System
SUFORD-SU	Sustainable Forestry and Rural Development-Scaling Up (project)
TF	Task Force
TOR	Terms of Reference
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Collaborative Programme on REDD+ in Developing Countries
VCS	Verified Carbon Standard
VDF	Village Development Fund
VFM	Village Forest Management
VFMP	Village Forest Management Plan
VilFoMA	Village Forest Management Agreement
VMU	Village Mediation Unit
WCS	Wildlife Conservation Society
WWF	World Wide Fund for Nature

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Executive Summary

The Lao PDR has set an ambitious forest cover goal of 70% by 2020. The Government of the Lao PDR (GoL) includes forestry as one of the pillars contributing to poverty reduction in the country. But the longstanding goal of 70% forest cover is at risk. There are many challenges facing forest governance in the Lao PDR at present, and the challenges to the forestry sector arising from other sectors are daunting. It is often easy to blame local communities for deforestation and forest degradation, but there are underlying drivers such as economic development policies and governance problems that are among the root causes of deforestation. There is increasing recognition that many of the direct and underlying drivers of deforestation in Laos arise outside the forest sector. The Forestry Strategy 2020 Assessment, 2014 makes this clear: *In spite of much effort for mainstreaming climate change and REDD+, market-oriented economic development including agriculture, mining and infrastructure development are increasing in the whole country. Those activities are likely to lead the causes of deforestation and forest degradation. Coordination with other sectors is much more important for REDD+ implementation than in the past.*

Laos is in the process of establishing a comprehensive legal and policy framework that would cover the issues most relevant for the implementation of REDD+ and the UNFCCC safeguards. Nonetheless, there remain significant gaps in the policies, laws and regulations (PLRs) that govern land and forest management in Laos. Unfortunately, at the time of this study the most crucial pieces of draft legislation—the Land Policy, and major amendments to the Land and Forest Laws were not yet tabled for approval at the National Assembly. The PLR gaps related to the Cancun safeguards will need to be systematically filled, but it cannot be expected that this will be a quick and easy process. There are some areas, such as Payment for Environmental Services (PES), that are not at all covered by any PLRs until now. Others, such as on land tenure security, benefit-sharing, information transparency and dissemination, and grievance redress are incomplete. Without creation of new PLRs or adjustments to some existing ones it will be extremely difficult to implement the Cancun safeguards and the attendant Safeguards Information System (SIS) and thus any REDD+ payments.

REDD+ readiness planning and implementation for the safeguards will certainly need the full support offered by the Forest Carbon Partnership Facility (FCPF) grant project (World Bank support) that is just starting, along with other development partners such as GIZ, JICA, SNV, and WCS. A strong focus would need to be put on the safeguards along with support for Village Forest Management (VFM) and community land titling. In developing a national safeguards framework, or country safeguards system, there will need to be a Safeguards Working Group established and supported under the REDD+ Task Force. Since such a Working Group has yet to be established and the REDD+ Task Force and REDD+ Division – as secretariat to the National REDD+ Task Force – are only in their “start-up” phase, the substantive work of this gap analysis has been carried out without adequate inputs from the GoL. There will still need to be intense dialoguing and common understanding created among key stakeholders on the role of the safeguards and a SIS as requirements for results-based payments under REDD+.

One of the major gaps for REDD+ and the UNFCCC safeguards lies in the land and forest tenure policies towards local communities of all ethnic groups in Laos. The legal framework on customary uses of land and forest remains incomplete and does not accord secure rights and

tenure in its current form. Moreover, there are no policies that give special recognition to different ethnic people's need for forest, forest land and for different forest products (including NTFPs) to have secure livelihoods. There are, rather, restrictions on what villagers may do in certain categories of forest, including whether they are allowed to sell NTFPs or not. Villagers are, legally, never allowed to sell timber. Years of forest allocation and forest protection policies, also aimed at eradicating the major livelihood practice of shifting cultivation, have reduced local communities' claims to land.

More recent developments in the awarding of concessions for mining, hydropower and industrial tree plantations have made local communities' land tenure even less secure. How to ensure that local communities of all ethnic groups are not further alienated from their traditional forest lands through concessions and other infrastructure projects? One important PLR to reduce land alienation, and that already exists, is the allowance of community land titles. Under the current Land Law community titled land may not be given for concession or lease, under the draft Land Law, it may be possible with a majority vote. To date, however, very little land has received community title in Laos. Indeed, rural areas in general have very few individual titles either.

Current PLRs do not cover benefit-sharing adequately (exception for Production Forest Areas). Local communities are too little supported to have a say in forest resource management and clear benefits from forests. In the absence of clear benefit-sharing mechanisms, future REDD+ payments (or other benefits in kind) will also be difficult to make fairly. Local communities who are faced with the highest opportunity-costs should also receive the highest benefits. A major challenge for the implementation of REDD+ would be to ensure that benefits reach participating local communities of all ethnic groups in a timely manner. Equally challenging would be to establish mechanisms by which local communities know exactly what their entitlements are and by when they should receive them.

It is predictable that poorer local communities with few viable livelihoods alternatives will have difficulties with results-based financing modalities as foreseen under REDD+. There would need to be mechanisms that include upfront payments as well, such as followed under the KfW-financed side of CliPAD for activity-related payments to villagers. Since local communities' livelihoods may be insecure (and be made even more insecure by REDD+-related changes in forest and land use), any design of a benefit distribution system would need to take both "activity" (ex. getting a benefit from performing an activity like forest fire prevention and patrolling) and "performance" (proved reduction in degradation or deforestation) into account. Given the known budgeting difficulties, it would also be necessary for a special fund that reaches villages with upfront payments. This could take place, perhaps, under the umbrella of the Forest Development Fund or the Environmental Protection Fund, but would require many rounds of discussion.

VFM is not a requirement *per se* under the Cancun safeguards, but it would be one of the most important options to ensure that local communities of all ethnic groups are able to benefit from REDD+. A good strategy will be to link Village Forest Management and community titling, by which local communities are provided more scope for autonomous decision-making. For VFM to work well, however, allocation of good quality forest land to villages for permanent titling would have to be accelerated, while refraining from declaring

too much village forest for protection or conservation purposes (that accords communities fewer rights). VFM would require revisions to both the Forest Law and various regulations to give it more legal backing in the country. Well-implemented VFM would go a long way to achieving more security and greater decision-making power for local communities, especially when it includes the possibilities of maintaining shifting cultivation within village forest and agricultural landscapes.

The SUFORD-SU forestry project is already undertaking activities on VFM and community land titles for village use forests. CliPAD is also working toward Village Forest Management Agreements (VilFoMa); the two projects should work closely together on clarifying and strengthening villagers' forest use rights under VFM. No approach to REDD+ in the Lao PDR will be complete from a safeguards point of view without addressing the issue of NTFPs and biodiversity, and this is also a topic that can be well-covered under VFM.

Some PLRs, especially those related to sustainable forest management and to environment impact assessments both allow for participation and encourage it. Nonetheless, the top-down nature of PLR implementation in Laos leaves less room than required for "full and effective participation" called for under the Cancun safeguards. One of the major risks for the Cancun safeguards in the Lao PDR is an underlying lack of trust that local communities are skilled enough to manage the land and forest areas within their village boundaries. Virtually all PLRs call for supervision and checking by officials of what village authorities are managing. In turn, the village authorities are to check and supervise what the villagers at large are doing. When there is so little trust, it is not possible for local communities to have full and effective participation, nor for them to gain full benefits from REDD+ implementation.

During the process of REDD+ readiness under the FCPF grant—especially the Strategic Environmental and Social Assessment (SESA)—local communities of all ethnic groups, will need to have greater voice in arriving at forest land-related decisions. Another important aspect will be to create information campaigns on the entitlements, rights and obligations that local communities have vis-à-vis forest and land. Government officials from all levels would also need systematic capacity building to enable them to understand and support a process of REDD+ safeguard readiness. Development of a transparent and credible SIS will also need to become a priority in achieving REDD+ readiness, but only after consensus is reached on how to deal with the safeguards in Laos.

Implementing REDD+ and the Cancun safeguards will not bring about a major paradigm shift in Laos, but their serious implementation—with provision of transparent and credible information both within the country and to the international community—could contribute to improving the rights of local communities, while conserving the forest and biodiversity resources of the country. Secure land tenure, and VFM, are also directly associated with the future of REDD+ in Laos. There will undoubtedly need to be serious discussions in Laos as to a development trajectory that promotes economic development but without serious harm to the environment or the people who depend directly on forest resources for livelihoods.

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1. Introduction and Background

This study was commissioned by the Forest Governance Programme of the *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH* in cooperation with the Climate Protection through Avoided Deforestation Programme (CliPAD) currently implemented by the Department of Forest Resources Management (DFRM) under the Ministry of Natural Resources and Environment (MONRE) in the Lao People's Democratic Republic (Lao PDR).¹ CliPAD is supported by GIZ and the German Development Bank (KfW). The main objective of the study is to provide an analysis of the Policy, Laws and Regulations (PLRs) in the Lao PDR that pertain to the UN Framework Convention on Climate Change (UNFCCC) Conference of Parties' (CP) decisions to establish, implement and monitor governance, social and environmental safeguards² for Reducing Emissions from Deforestation and Forest Degradation (REDD+).³ The study also includes another point of departure arising from landmark Decision 1/CP 16 in 2010 – initial ideas on a Safeguard Information System (SIS) in the Lao PDR.

The Lao PDR has been on the road to REDD+ readiness for a number of years, beginning around 2007 - 2008. A Readiness Preparation Proposal (R-PP) to apply for funding under the Forest Carbon Partnership Facility (FCPF) was submitted by the Ministry of Agriculture and Forestry (MAF) at the end of 2010. The grant was only approved and signed in the second half of 2014, however, and few activities have been implemented under its auspices as of this writing in April 2015. A number of development partners provide REDD+ support to the Lao PDR, including Germany, Japan, Finland, United States and the World Bank. Further support is provided by Austria via the World Wide Fund for Nature (WWF) in southern Laos.

Despite the various support measures REDD+ is not yet well-known beyond a small circle of government officials who work closely on it.⁴ This should be set to change with the more active implementation of the FCPF grant in the coming period. This study, then, aims to support the REDD+ readiness processes in Laos with a special focus on a PLR gap analysis vis-à-vis the Cancun safeguards. It also provides an overview of what could be initial steps needed in the Lao PDR for an SIS. Recognising key PLR gaps should help to provide initial inputs for designing REDD+ safeguards in the Lao PDR during the implementation of the FCPF grant. Without the safeguards in place, and the beginnings of an SIS, full REDD+ implementation with performance-based payments will not be possible.

In the report that follows, the safeguards will be addressed from several angles relating to governance, social and environmental concerns as embodied in the Cancun safeguards. They will be contextualised in Chapter 3 for the Lao PDR in terms of the perceived risks that may either negatively influence REDD+'s successful implementation or which may arise as a result of implementing REDD+; a note on drivers of deforestation and forest degradation is also included. Chapter 4 provides a matrix with 34 criteria to show where gaps for safeguards implementation lie.

¹ Hereafter referred to interchangeably as Lao PDR or Laos. Note that CliPAD was implemented by the Department of Forestry (DOF) under the Ministry of Agriculture and Forestry (MAF) during its first phase of implementation. It moved to MONRE in the second half of 2014 for its second implementation phase to last until 2018.

² Hereafter referred to interchangeably as the Cancun safeguards or the UNFCCC safeguards. They refer to the safeguards included at Appendix I of Decision 1/CP 16 (2010).

³ The "Plus" in REDD+ stands for the role of conservation of forest carbon stocks, sustainable management of forests and enhancement of carbon stocks. See Paragraph 70, Decision 1/CP.16.

⁴ Personal communication, REDD+ Office.

Chapter 5 highlights major PLR areas requiring attention from policy and law decision-makers in the Lao PDR and provides some options and recommendations for PLR gap-filling measures. Chapter 6 provides initial thoughts on developing an SIS in Laos, including what some of the challenges might be.

1.1 Study Methodology

The Terms of Reference (TOR) (attached at Annex 1) for this study exceed the state of REDD+ readiness in the Lao PDR. In other words they represent a set of tasks that go beyond what is possible in a limited time with limited resources and the current institutional framework. The TOR requests that a PLR gap analysis *and* a contribution are made toward the monitoring of safeguards, the latter using *A Sourcebook of Biodiversity Monitoring for REDD+*.⁵ In fact, both of these important stages in REDD+ readiness require two precursors that do not yet exist in Laos: a clearly designated REDD+ implementing or coordinating body and a clear vision and strategy for REDD+ in the national context. As long as both of these precursors are lacking, the exercise will remain largely an academic one with the risk of too little ownership or buy-in from the country itself. As *The Little Book of Legal Frameworks for REDD+* (2014: 42) mentions, “The successful development and implementation of REDD+ at the country level requires clear institutional arrangements.” Clear institutional arrangements still need to be developed and supported in Laos.

Nonetheless, it is hoped that through discussions and dialogue on the Cancun safeguards, partly through this study, there is greater exposure of key government staff to safeguards concepts. This, in turn, will reap some positive benefits when safeguards discussions are held more intensively during the implementation of the FCPF grant later in 2015 and through until 2017 or so (for an overview of the FCPF grant activities and expected outputs, see Table 1 below and Annex 2).

The study was carried out in the Lao PDR by Dr. Rita Gebert, a senior socio-economic development expert with extensive experience on rural and forest dependent livelihoods in upland regions of Southeast Asia, and on safeguards implementation in the forestry sector. The main methodology in carrying out the study was interviews with both Lao and foreign experts knowledgeable about REDD+ and/or the forestry sector in the Lao PDR. As it turned out, however, despite extensive support in the forestry sector in Laos over many years, there has been little consolidation of the work done on safeguards in general in the country. There has also been little discussion or analysis in Laos in relation to the Cancun safeguards.⁶ In contrast, there is more experience in-country on the World Bank safeguards. In the forestry sector, they are especially relevant in the implementation of the Sustainable Forestry and Rural Development – Scaling Up (SUFORD–SU) programme on participatory sustainable forest management (PSFM) in production forest areas (PFAs).

In addition to many interviews having been carried out with a range of development partners, researchers and government officials (see Schedule at Annex 3), a lot of time also had to be spent on gathering together the most relevant PLRs for analysis, and doing a risk analysis to contextualise the safeguards. The author is most grateful to the GIZ-supported Forest Law Enforcement

⁵ Published by the Zoological Society of London and a co-publication with GIZ.

⁶ One exception was a safeguards workshop, sponsored by RECOFTC, that took place in mid-2014 in Vientiane.

Governance and Trade (FLEGT) project for providing an extensive collection of forestry-related PLRs in the Lao PDR. Other PLRs were provided by other colleagues, found at the Lao Gazette website or in the LaoFAB Repository.⁷ The author is also grateful to SUFORD colleagues Edwin Payuan and Jukka-Pekka Tolvanen for sharing insights on PLRs pertaining to village forestry and community land titling. For a list of PLRs studied for this analysis, please see the chart at Annex 4.

While more details will be provided below, the quality of data and monitoring processes in general in the Lao PDR is a major cause of concern. A credible SIS should be based on the country's existing data collection, management and monitoring systems. In the Lao PDR, however, such systems remain problematic, despite serious efforts by the Government of the Lao PDR (GoL) to improve them. Many districts in the country have inadequate and/or unskilled staff, and poor or no computer facilities, to collect and manage data. Moreover, these would be the very districts where REDD+ type of activities would most likely be implemented: poorer, remoter areas where there is more forest but which are severely under-budgeted and understaffed. This applies as much to the forestry and general environmental sector as to every other sector in the country.⁸

The study methodology thus had to be changed during the time spent in Laos. The assumption that there would be an institutional structure or framework with which to actively work was not quite right. It was also assumed that the FCPF grant implementation would have progressed further than it has. As neither of these preconditions was present, the study "starting point" was at a more preliminary level than expected. Therefore, while an analysis of the PLRs and some possible starting points for an SIS are made here, it was not possible to make use of what would otherwise be a useful general guide, *A Sourcebook of Biodiversity Monitoring for REDD+*, to establish monitoring for biodiversity-related aspects. As the Sourcebook was not developed with the conditions in Laos in mind, it would require a concerted effort of many months to try to adapt it; in this regard, the author suggests rather that the CliPAD partner, Wildlife Conservation Society (WCS), Draft "Biodiversity and Ecosystem Services Safeguard Approach for the Houaphan Jurisdictional REDD+ Programme" be used as a starting point for eventual dialoguing on biodiversity monitoring under an SIS for Laos. It is being developed with local conditions and realities in mind, and will continue to be worked on in the next months.

The REDD+ readiness of Laos and Vietnam may be briefly compared here in order to put this PLR gap analysis into a regional context. Back in 2013, after Vietnam had already established a REDD+ Task Force and Working Groups, the Working Group on Safeguards commissioned a PLR gap analysis by a four-person team that worked for several months in country. At the same time the Government of Vietnam was also developing and refining its vision and strategy for REDD+. Now, in 2015, the work on safeguards in Vietnam is continuing with national and provincial level readiness assessments of relevant agencies as to their safeguard implementation capacities. The Vietnamese are continuing now with an SIS development consultancy.⁹ Of interest is the timeline presented by the Government of Vietnam showing the goal that safeguards monitoring will be

⁷ Large collection of reports, articles, dissertations and government documents, including PLRs, especially related to the "green" sector in the Lao PDR. Open to members of the LaoFAB discussion forum.

⁸ A recent International Monetary Fund Report 15/45 (2015: 59) on Laos makes this clear: *Data provision has serious shortcomings that significantly hamper surveillance, especially regarding national accounts, government finance, monetary and financial and external sector statistics. These shortcomings are mostly due to lack of capacity . . . Government finance statistics remain weak.*

⁹ Based on two sets of Terms of Reference prepared by the Vietnam REDD Office and UNDP in March 2015.

ready for full scale roll-out by 2017. This represents, then, a period of some four years of study, analysis and dialogue on the safeguards.

Seen in this light, it neither can, nor should, be expected that a single consultant input of a few weeks duration, as in this case, will lead to a deep understanding of the safeguards, how they should be implemented in the Lao PDR, nor how they could be monitored at a level of credibility acceptable to the international community. Rather, the study provides a foundation for further safeguards work that should be continued especially under the FCPF Grant and the Strategic Environmental and Social Assessment (SESA) process. The SESA outcome, an Environmental and Social Management Framework (ESMF), would likely take another two years. It must be strongly recommended that GIZ (CliPAD) and other development partners take up the results of this study and use them for active dialoguing on safeguards and SIS development during the FCPF grant implementation. This dialoguing, of crucial importance, could only be initiated during this assignment.

1.2 What are the Cancun Safeguards?

The main outcome of CP 16 in Cancun (2010) was a set of decisions that provided a broader definition for REDD+ and introduced the concept of multiple environmental and socio-economic benefits in addition to forest-related emissions reductions. REDD+ strategies and implementation in developing countries were framed more broadly in recognition of the millions of indigenous people and local communities who live in and near forest. Under Decision 1/CP16, Paragraph 70 clarifies the CP's intentions to broaden the initial REDD concept with the addition of sustainable management, conservation and enhancement of forests and forest carbon stocks. Paragraph 70 mentions the following five REDD+ activities:

- (a) Reducing emissions from deforestation;
- (b) Reducing emissions from forest degradation;
- (c) Conservation of forest carbon stocks;
- (d) Sustainable management of forests;
- (e) Enhancement of forest carbon stocks;

Paragraph 72 requests developing country Parties to define their REDD+ strategies and action plans in the country context while considering the following:

- Drivers of deforestation and forest degradation;
- Land tenure issues;
- Forest governance issues;
- Gender considerations, and
- Safeguards.

It goes on to say that the strategies and action plans with the considerations mentioned immediately above, should ensure “the full and effective participation of relevant stakeholders, *inter alia* indigenous peoples and local communities.” That “full and effective participation” is also one of the seven Cancun safeguards gives indication of the high importance this is accorded by the international community.

Paragraphs 69 and 72 refer to the safeguards that are outlined in Paragraph 2 of Appendix I, saying essentially that they are an integral part of REDD+. In fact, the safeguards themselves also include

forest governance, again showing the CP's prioritisation of this issue. Land tenure security shall not be ignored in the implementation of the activities defined under Paragraph 70; the international community obviously wishes that REDD+ should not harm indigenous people's and/or local communities' tenure security. In best case scenarios, REDD+ safeguards should lead to *improved* tenure security.

The seven safeguards mentioned under Paragraph 2 of Appendix I (to Decision 1/CP16) are as follows:

- a. Consistency with national forest programmes and objectives of relevant international conventions/agreements;
- b. Transparent and effective national forest governance structures;
- c. Respect for the knowledge and rights of indigenous peoples and local communities;
- d. Full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- e. Conservation of natural forests and biological diversity, ensuring that the actions referred to in Paragraph 70 are not used for the conversion of natural forests, but to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;¹⁰
- f. Actions to address the risks of reversals;
- g. Actions to reduce displacement of emissions.

The seven Cancun safeguards (they have not been changed at any subsequent CP) are broad in scope. They include governance, social (or socio-economic) and environmental including biodiversity aspects. Although there is a tendency to equate safeguards with "social" safeguards that prevent harm from coming to especially vulnerable local communities, the intention of the UNFCCC CP is obviously more far reaching than that.

Just as there needs to be measurements, reporting and verification (MRV) to track changes in forest carbon stocks, the developing country parties are also requested under Decision 1/CP.16 Paragraph 71 to provide information on the implementation of the safeguards in the form of *A system for providing information on how the safeguards referred to in Appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70*. This would come to be called a Safeguards Information System.

During CP.17 held in Durban in 2011, the CP reaffirmed the importance of the safeguards with Decision 12/CP.17, noting that *the implementation of the safeguards referred to in appendix I to decision 1/CP.16, and information on how these safeguards are being addressed and respected, should support national strategies or action plans and be included in, where appropriate, all phases of implementation referred to in decision 1/CP.16, paragraph 73, of the activities referred to in paragraph 70 of the same decision*. Thus, the international community has put the safeguards at the centre of REDD+ activity implementation, not as a programme add-on.

¹⁰This safeguard description has an added footnote: *Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).*

Decision 12/CP.17 builds from Decision 1/CP.16 in suggesting guidelines as to how developing country parties may provide information that proves the safeguards are all being addressed and respected. The following are the points articulated on information provision:

- a) Be consistent with the guidance identified in decision 1/CP.16, appendix I, paragraph 1;
- b) Provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis;
- c) Be transparent and flexible to allow for improvements over time;
- d) Provide information on how all of the safeguards referred to in Appendix I to decision 1/CP.16 are being addressed and respected;
- e) Be country-driven and implemented at the national level;
- f) Build upon existing systems, as appropriate.

(Further discussion on SIS is found in Chapter 6.)

Decision 2/CP.17 (Paragraphs 63 and 64) is the first one to link the Cancun safeguards to results-based payments under any type of funding mechanism for REDD+:

Paragraph 63. Agrees that, regardless of the source or type of financing, the activities referred to in decision 1/CP.16, paragraph 70, should be consistent with the relevant provisions included in decision 1/CP.16, including the safeguards in its appendix I, in accordance with relevant decisions of the Conference of the Parties;

Paragraph 64. Recalls that for developing country Parties undertaking the results-based actions [a footnote is included here which says “In accordance with decision 1/CP.16, appendix II”] referred to in decision 1/CP.16, paragraphs 73 and 77, to obtain and receive results-based finance, these actions should be fully measured, reported and verified, and developing country Parties should have the elements referred to in decision 1/CP.16, paragraph 71, in accordance with any decisions taken by the Conference of the Parties on this matter;

In other words, Paragraphs 63 and 64 show the resolve of the CP that the developing country Parties must be REDD+ ready with national strategies and plans that have been developed in accordance with the safeguards. It is also expected that the safeguards will be implemented, monitored and reported on throughout the lifetime of REDD+ activities.

The latest development on the Cancun safeguards was to link them with results-based payments at CP.19 held in Warsaw in 2013. Decision 9/CP.19 is the strongest affirmation of the necessity for safeguards when it links their reporting explicitly to conditional payments: *Agrees that developing countries seeking to obtain and receive results-based payments in accordance with decision 2/CP.17, paragraph 64, should provide the most recent summary of information on how all of the safeguards referred to in decision 1/CP.16, appendix I, paragraph 2, have been addressed and respected before they can receive results-based payments.*

Whether further guidance on SIS is needed and what kind of information it should contain was discussed during the CP 20 in Lima without any result. Negotiations on this matter have been postponed to the Bonn session in June 2015. After 10 years of negotiations, countries at the SBSTA meeting in Bonn unexpectedly agreed on the remaining three items that were on the agenda for REDD+. Together with previous COP decisions, all major REDD+ elements have now been agreed to and there is sufficient guidance for implementation. Governments are encouraged to provide a summary of information on how they are addressing and respecting REDD safeguards. They should do so “periodically”.

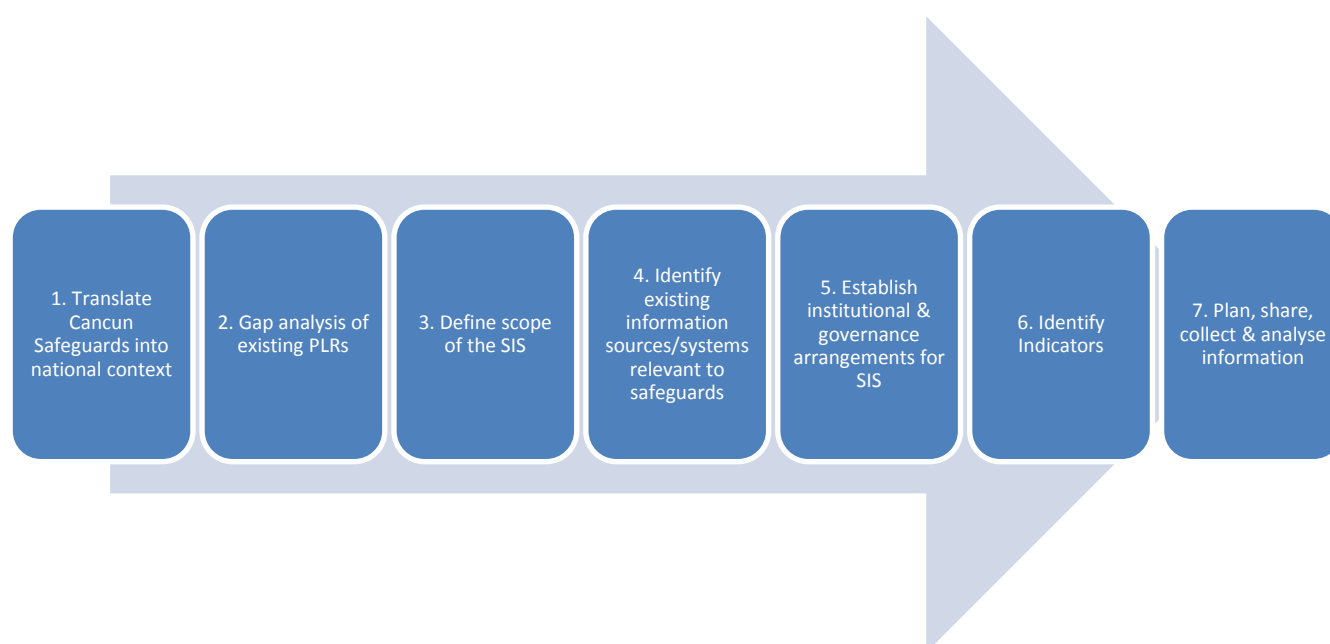
However, there is no decision on how often REDD+ countries should produce these summaries. There is no decision about who should pay for them. There is no mention of publishing summaries on the UNFCCC web platform (which had been included in the Warsaw text)

Before undertaking a safeguard “PLR Gap Analysis,” it has to be clear to all concerned as to how and why the Cancun safeguards are important for a particular country. Therefore, many developing country Parties in Asia, Africa and Latin America are now engaging in broad-based approaches to develop country safeguards systems in line with their national circumstances, sovereignty and in line with relevant international conventions and agreements to which they are a Party. The safeguards, as REDD+ itself, must be contextualised in the particular developing country Party. In general, this challenging process may be summarised as per Figure 1 below.

A PLR gap analysis has become a key part of the UNFCCC safeguards approach because of the UNFCCC wording requesting that the safeguards “are all being *addressed and respected*.” While the UNFCCC COP has not further defined the phrase “addressed and respected,” it has come to mean in practice that the country Parties should show how the safeguards are an integral part of the policy, legal and regulatory framework of the respective country. In general, this means the country safeguards systems to be developed should have two major parts to be UNFCCC compliant:

1. Addressing and respecting safeguards through implementation of relevant PLRs which establish the “content” of the safeguards (what needs to be adhered to in the implementation of REDD+ activities);
2. SIS: the collection and provision of information on how REDD+ safeguards are being addressed and respected throughout implementation of REDD+ activities.¹¹

Figure 1: General Process and Steps Towards a Country Safeguards System, Including SIS¹²



¹¹ From Judith Walcott, 2014 for UN-REDD, REDD+ Academy, presentation on Safeguards and Safeguards Information System. Document accessed at UN-REDD.net

¹² Adapted from: Judith Walcott, *op cit*.

Figure 1 above provides indication of the overall process or steps that would be required to achieve an SIS. The steps may not necessarily have to be taken in the exact order shown, but there are certainly some steps that logically would have to be completed or mostly completed before the next ones may be fully taken up. This study, for example, provides inputs for stages 1 and 2 in the Figure, while it also provides some very preliminary thoughts for stage 4, but that would have to be taken up by others. Indeed, the discussion and analyses put forward in this study should be used in discussions with the institutions responsible for REDD+ in Laos, starting with decision-makers in MONRE and MAF.

Box 1:

Safeguards in International Discourse

Affirming the importance of the safeguards with regard to biodiversity and indigenous people/local communities, the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) for the Convention on Biodiversity (CBD) made a series of recommendations on safeguards at its sixteenth meeting in May 2012.¹³ Likewise, the Forest Stewardship Council (FSC) also includes social safeguards as part of its list of principles and criteria if a forest manager wishes to gain Forest Stewardship certification.

There are a number of variations on safeguards that have been developed under different organisations, whether in relation to REDD+ readiness or other programmes and projects. The World Bank and the Asian Development Bank (ADB) both maintain safeguards policies in connection with projects that may have potentially negative impact, for example, on indigenous people/ethnic groups, such as by causing involuntary relocation or loss of assets. For the World Bank and ADB the safeguards are “triggered” if there is a chance of harm (social or environmental) that may arise from the implementation of the project.

The FCPF includes a SESA that shall lead to an EMSF as a condition of providing support for REDD+. The SESA is to create a platform for discussion among different stakeholders that results in minimised social and environmental risks resulting from the implementation of REDD+ (as elaborated in the EMSF). The FCPF is, however, aligned with the Cancun safeguards when it states “Information should be consistent with applicable World Bank and/or other Delivery Partner safeguard policies . . . as well as relevant UNFCCC guidance on safeguards.” The Carbon Fund, administered by the World Bank, also requires partner country adherence to the Cancun Safeguards. A major private initiative, the Verified Carbon Standard (VCS) and its Jurisdictional Nested REDD+ (2014, Point 3.7.2), also refers explicitly to the UNFCCC Safeguards: *Jurisdictional programs shall comply with all UNFCCC decisions on safeguards for REDD+ and any relevant jurisdictional (national and subnational) REDD+ safeguards requirements.*

For REDD+ preparation, then, it makes most sense to maintain close sight of the Cancun safeguards. The UNFCCC is the overarching body on climate change. The FCPF is an interim funding source established to help developing country partners achieve REDD+ readiness. After the Climate Change agreement takes effect from 2020, then it could be reasonably expected that most of the developing country Parties to the UNFCCC would be “REDD+ ready” and be eligible to receive funds, for instance via the FCPF Carbon Fund or a consolidated and operational Green Climate Fund. This fund would also have to operate according to the Decisions reached by the UNFCCC Conferences of Parties.

¹³See SBSTTA 16 Recommendation XVI/7 at www.cbd.int/recommendation/sbstta/?id=13056

2 REDD+ Readiness in the Lao PDR: An Overview

As mentioned above, the Lao PDR has been receiving support from various donors since around 2008 to help it achieve REDD+ readiness. Some significant momentum on REDD+ had been gained from 2008 to 2011, but from 2011 to early 2015, REDD+ readiness processes in Laos slowed down significantly. The main reason for this was the division of responsibilities for the Lao PDR's forest estate between two ministries: the newly created MONRE and the already existing MAF. So-called conservation (including National Protected Areas - NPAs) and protection forests were delegated to MONRE and PFAs left with MAF.¹⁴ Therefore, while REDD+ responsibility had previously been under MAF with the REDD+ Office having been established under the Department of Forestry (DOF) in 2008, the creation of MONRE and the DFRM led to a reorganisation of responsibilities. Under PM435/2011 MONRE was given the overall responsibility on "climate change," for coordinating with development partners for climate change support, and for reporting on the environmental conventions of which Laos is a Party.¹⁵ Thus, it took over responsibility of REDD+, and a new REDD+ Division was set up under DFRM. At the same time, however, the DOF REDD+ Office was not dismantled, and still maintains primary responsibility for the FCPF Grant since MAF was the project holder at the time of R-PP submission in 2010.

The staff with the most exposure and experience on REDD+ have remained with DOF and the REDD+ Office, while the REDD+ Division suffers from inadequately trained staff on REDD+ issues, including the safeguards. The REDD+ Division suffered a further setback when its Head retired late in 2014, but without a suitably qualified replacement having been found for him as of this writing (April 2015). A REDD+ Task Force (TF) had been established under the auspices of MAF, but with the ministerial reorganisation, a new TF was established in October 2013 with a DFRM Chairperson and DOF Deputy Chairperson. There are 22 members from different government departments, Lao Women's Union (LWU) and the Lao Front for National Construction (LFNC), but no members from outside of government (LWU and LFNC are both associated with the Lao People's Revolutionary Party (LPRP).) The TF does not yet have a clear mandate and programme of action. Moreover, none of the envisioned Technical Working Groups under the TF have been established as of this writing.¹⁶

Thus, the institutions with which to dialogue still require greater organisational clarity. It is hoped that this will change soon with renewed organisational development support from donor partners, including German development cooperation (CliPAD). An urgent need in Laos is for major stakeholders to develop a common vision for REDD+, and based on that vision, a clear strategy. The GoL, at the highest levels, has yet to make clear how and where REDD+ fits with its overall vision of socio-economic development. In other words, what are the national circumstances that will

¹⁴ These forest categories are defined in the Forestry Law, 2007. Revisions to the draft Forestry Law (2014) show, so far, that these three categories will be maintained. It seems MAF may also have responsibility for "unclassified" forest areas, and village forest areas, but this is a little unclear because of the way forest land is allocated to be within village boundaries. Moreover, some MONRE documents show that it is also responsible for protection and conservation forests within village boundaries.

¹⁵ See PM435/2011 Articles 2 and 3: Article 3.14 states that MONRE is "To be a focal point for the implementation of the strategy on climate change in conjunction with the strengthening of adaptation with climate change, reducing various impacts and greenhouse gas releases from decay and destruction of forests in order to increase the forest coverage to absorb carbon, and support the clean development mechanism projects; [Unofficial translation.]

¹⁶ CliPAD assisted with a REDD+ Capacity Needs Assessment in mid-2014, but it does not seem to have been carried forward by the time of this writing in April 2015.

determine REDD+'s direction and implementation in the Lao PDR? What is the role of an environmental mitigation programme and payment for environmental services (PES) scheme in the overall picture of where Laos is headed economically? These are major questions that do not yet have an answer, as the focus of REDD+ has been associated with a rather "black and white" vision of eradicating shifting cultivation and achieving 70% forest cover.

As of this writing, there has apparently been discussion going on in senior government circles as to the effectiveness of forest management in Laos since its split between the two Ministries. Although it is by no means decided yet, there is a possibility that all forestry-related departments will again be put together under one Ministry. Another possibility under discussion is that a new Forestry Ministry will be created. These two possibilities were mentioned by a senior government official at a Forestry Sub-Sector Working Group (FSSWG) meeting in 2014. These discussions highlight concerns that forest governance in the Lao PDR has been weakened rather than strengthened with the bifurcation of forestry responsibilities between two Ministries.

2.1 Current Work on Safeguards in Laos

When the Lao PDR's R-PP was submitted to the FCPF in 2010, safeguards were given attention, but because the Cancun safeguards had not been signed off on by that time, the document is somewhat inconsistent in its safeguards approach. Until now, however, the Cancun safeguards have not been contextualised in the Lao PDR. Chapter 3 below will help to do some of that contextualising, but as mentioned above, a crucial element in the REDD+ picture for the Lao PDR is still missing: the vision and strategy as to where exactly it fits with the country's overall development trajectory.

Although REDD+ readiness has proceeded slowly in Laos over the past few years it does not mean, however, that no attention has been paid to safeguards in the forestry sector. As shown in Box 1 above, the World Bank and ADB both have safeguards requirements as part of the grants or loans they support in client countries. In Laos, for example, the SUFORD-SU programme with both World Bank Forest Investment Programme (FIP) and Government of Finland funding has a set of safeguards that are implemented and monitored. These "triggered" safeguards include those related to indigenous people/ethnic groups, resettlement and loss of assets among others. Because of these safeguards, SUFORD has been actively implementing Free, Prior and Informed Consent (FPIC) with participating villages.

ClIPAD has also started a process of FPIC in a few villages where it works in Houaphan Province. A Japanese-supported project (PAREDD) in five villages working over a period of five years in Luang Phabang Province also used FPIC. The REDD+ FPIC process is seen, at least in part, as a means to "educate" or "create awareness" among villagers on forest protection, climate change and forest carbon sequestration with the idea to convince them to change their livelihood behaviours. This is especially the case when it comes to limiting areas under shifting cultivation, meaning that local people may not be given a full opportunity to be in an equal dialogue on their main livelihood choices. If the assumption by those coming to conduct the FPIC is that this livelihood choice should be changed, then they may well "slant" the dialogue in that direction. As a PAREDD presentation on REDD+ safeguards in May 2014 made clear, however, the latter hoped for changed behaviour may be a much more difficult proposition than assumed.

All three of these projects do include various livelihood support measures that are supposed to either reduce people's dependence on forest resources (especially the need to convert more forest land to agricultural land), or to help cover people's opportunity-costs in changing their land use patterns.¹⁷ In at least CliPAD and SUFORD, a main livelihood support modality chosen is the Village Development Fund (VDF), essentially a revolving fund. Governance safeguards have figured to a lesser extent in the three projects mentioned, but do include awareness raising and capacity building on participatory approaches, and organisational development measures. Project "up front" payment support to villages, such as VDF creation cannot be equated with future REDD+ schemes that are expressly "results-based." At the same time, however, activity- or incentive-based payments will likely be necessary for local communities and mechanisms will have to be found to make them.

All in all, the safeguards implemented so far may be considered project "add-ons." Even though some of them, such as at SUFORD, are implemented on a broad scale, it does not mean that the Lao PDR shall change its PLRs to accommodate them. Rather, work plans (ethnic group plan or resettlement plan are examples) are developed to account for the project specific triggered safeguards. This is the big difference between the Cancun safeguards and project-triggered safeguards: once a country has decided it wishes to receive results-based payments under REDD+, it has to prove on a regular basis over many years that it is implementing the safeguards. In other words, the safeguards must then be part of a country's PLRs and related procedures.

2.2 The FCPF Grant Project and the Cancun Safeguards

The implementation of the FCPF Grant Project, launched in December 2014, will surely bring greater focus to the safeguards. As mentioned above, the development of an ESMF through a SESA will certainly support safeguards development. The FCPF Project design gives implicit recognition to the UNFCCC safeguards. The relation between the FCPF objectives, tasks and expected results and the Cancun Safeguards is shown in the table below (following the author's interpretation).

Table 1: The FCPF Grant and its Relation to the Cancun Safeguards

Specific Objectives, Tasks and Expected Results of FCPF Grant Project*	Relation to Cancun Safeguards
To develop or enhance socially and environmentally sound policies and programmes to reduce deforestation and forest degradation	a) and especially b) on Effective Forest Governance.
To enhance and increase participation of all stakeholders (particularly local communities) in forest management.	d) Full and effective participation of all stakeholders, especially indigenous people and local communities.
To build institutional capacity in the forestry sector, and to improve information and data management and other related activities.	b) Transparent and Effective Forest Governance.
1.2 Assessment and alignment of REDD+ strategy and activities	Relates to all safeguards in the sense

¹⁷ It is not known to what extent these livelihood support measures that also serve to protect forest resources have been successful. The PAREDD project was shown, generally speaking, not to be a successful REDD+ pilot after five years, but JICA is planning a larger scale project that presumably would build on the lessons learned from PAREDD.

with the national PLR framework.	that a PLR gap analysis will highlight where the national PLR framework may need adjustments.
1.3 Establishment of stakeholder participation working groups, updating stakeholder participation & consultation plan, development of an effective communication and outreach strategy to ensure and facilitate participation of relevant stakeholders in REDD+ readiness preparation.	d) Full and effective participation of all stakeholders.
2.1 Carrying out of an assessment of the existing PLR framework to further develop and finalise the REDD+ strategy.	Similar in scope to 1.2
2.2 Carrying out analytical studies on land and natural resources tenure, rights, access and use, and development of participatory land use planning (PLUP) and REDD+ strategy options.	Relates to Decision 1/CP.16 Para. 72 plus the safeguards c) Respect for rights and knowledge of indigenous people and local communities, d) on Participation and e) on multiple benefits.
3.2 Carrying out analytical studies on revenue management and benefit-sharing mechanisms, establishment of a benefit-sharing working group, and development of benefit-sharing arrangements.	Relates to b) Transparent and Effective Forest Governance and to e) Incentivise protection and conservation; enhance other social and environmental benefits.
3.3 Conduct an assessment of existing feedback and grievance redress mechanisms to reinforce or develop as appropriate, such mechanisms to address the needs of relevant REDD+ stakeholders	Relates to b) Transparent and Effective Forest Governance, and to d) on Full and Effective Participation; would also relate to c) on respect for rights and knowledge (i.e., if people feel their rights not respected, they should have redress mechanism at their disposal.
4.2 Design of a system to monitor, report and verify forest carbon stock and co-benefits of REDD+	This partly relates to an SIS, but does not go far enough, as “co-benefits” only relate to safeguard e). Forest carbon stock could relate to safeguards f) and g) on Reversal and Leakage.
Strategies to address drivers of DD in place.	Relates especially to f) and g) on Reversal and Leakage. Also relates to b) and e).
REDD+ institutional framework designed and validated nationally, including an ESMF.	Relates to b) Governance and the ESMF will relate to all other safeguards.
Social inclusion mechanism in REDD+ at the national, provincial, district and community levels.	Relates to c) and d), and also relates to Decision 1/CP.16 Para. 72 that explicitly mentions gender considerations.

Table Notes: *Numbered items are listed as tasks in the FCPF Grant; the first three items are Specific Objectives, the last unnumbered items are Expected Results. (Annex 2 has a scanned version of the FCPF project design outline.)

It is highly recommended that someone well familiar with the Cancun Safeguards be actively involved in the FCPF Grant implementation, otherwise there is a chance the UNFCCC safeguards may get lost sight of. This would certainly be a drawback for the Lao PDR since, as shown above, it is the Cancun safeguards and their implementation that need to be reported to the UNFCCC. This is the requirement, along with MRV reporting, for results-based payments under REDD+.

2.3 Overview of the Legal Framework in Laos

Laos is in the process of establishing a comprehensive legal and policy framework that would cover the issues most relevant for the implementation of REDD+ and the UNFCCC safeguards. The top concerns of political decision-makers in Laos may lie elsewhere, however: for example, how they will adjust the PLR framework to promote larger economic development goals to hasten the Lao PDR's departure from Least Developed Country (LDC) status. This includes attraction and promotion of Foreign Direct Investment (FDI) in mining, hydropower, plantation concessions (both industrial trees like rubber and larger scale agriculture such as sugarcane) and Special Economic Zones (SEZs). Another issue that likely has high attention is the need to ensure that the PLR framework will be in conformity with the forthcoming ASEAN Economic Community (AEC) coming into effect by the end of 2015.

The legal and policy framework in Laos is based on a hierarchy starting with the Constitution, then laws, resolutions, Presidential ordinances, decrees, orders and decisions as determined by the "Law on Making Legislation" passed in 2012 (see Box 2 below). Although still in its early days, there is now an online Lao Gazette, where all national laws, resolutions, decrees and so forth must be posted in order to be considered "official."¹⁸ Despite this greater formalisation of the legislation making process in Laos, there is still something of a tendency towards issuance of PLRs in the land and forest sectors that may overlap or somewhat contradict each other.¹⁹ This, in turn, may cause confusion and leave too much room for interpretation at local level. District and provincial authorities may not be familiar enough with the content of individual pieces of legislation to know what to follow, let alone what to follow in cases of contradiction. In terms of REDD+ and the Cancun safeguards, consistency among the PLRs of different sectors, including their consistent implementation will remain a big challenge. See Figure 2 below.

One of the most important underlying legal aspects for all laws related to land and forest land is enshrined in the Constitution of 2003 (Article 17). The ownership of all land remains officially by the entire people of Laos as represented by the State. The State then manages land on behalf of the people and is the ultimate decision-maker over its classification, reclassification and allocation, as provided for under various PLRs. Nonetheless, with the aim of promoting FDI in Laos, the issues of land lease and "ownership" are changing to make it ever easier for the private sector to gain control of land—the Draft Land Law/Policy (2014) makes it possible for the State to expropriate land from local communities of all ethnic groups for *both* public *and* private purposes.

The Lao PDR is still striving towards achieving "rule of law." The 8th Draft National Socio-Economic Development Plan (NSED) mentions rule of law as part of the vision for 2030. Considering that this vision is so far down the road, it shows that Lao leaders are cognisant of the fact that Laos still has challenges ahead to achieve rule of law. In the short term, inadequate rule of law means in effect that decisions that are directed at local communities must be interpreted and implemented by just a few, often ill-equipped, government staff and volunteers at district level.²⁰ The different

¹⁸ This includes provincial orders, resolutions and the like. District and village regulations only require local posting, such as on a billboard, in order to be considered official.

¹⁹ Noted in the FS2020 Assessment.

²⁰ One of the great difficulties faced by government organisations like MAF and MONRE is that although their needs for staff at ground level may be high, the GoL is following strict, minimal recruitment policies because of severe budget restrictions. Many DAFO and DONRE offices are staffed with up to 50% unpaid volunteers who are often the ones who go out to have contact with villagers.

legal and policy aspects related to land and forest are hardly understood by district staff,²¹ which means that local communities have virtually no chance to understand the laws and policies that most affect them.

At present, the GoL is carrying out many training and education sessions to further advance the rule of law in Laos; part of this work includes educating local authorities so that they are able to disseminate information about laws, rules and regulations to village leaders and villagers at large.

Box 2

Hierarchy of Legislation in the Lao PDR (Law on Making Legislation, 2012)²²

- *The Constitution;*
- *Laws;*
- *Resolutions of the National Assembly;*
- *Resolutions of the Standing Committee of the National Assembly;*
- *Ordinances of the President of the Republic;*
- *Decrees of the Government;*
- *Resolutions of the Government;*
- *Orders and Decisions of the Prime Minister;*
- *Orders, Decisions and Instructions of the Minister, Minister-Equivalent and Head of a Government Authority;*
- *Orders, Decisions and Instructions of the Provincial Governors and Capital Governor;*
- *Orders and Decisions of the District and Municipality Chiefs;*
- *Village Regulations.*

If the provisions of existing legislation and newly adopted legislation are inconsistent with the provisions of international conventions or treaties that Lao PDR is party to, the provisions of the international convention or treaty prevails.

Where a contradiction exists, legislation of the higher level shall be applied.

If a contradiction of legislation at the same level exists, the later legislation shall be applied. If legislation at the same level contradicts each other, the provisions of specific [as opposed to general] legislation shall hold.

3 Risks, Drivers and PLRs: Contextualising the Cancun Safeguards

The word “safeguards” generally means a measure taken to protect something or someone, or to prevent something undesirable. In other words, safeguards are a type of risk mitigation. Proponents and analysts of the Cancun safeguards argue, however, that they are embedded in the language of the United Nations core human rights conventions. These analysts argue that the Cancun safeguards thus go beyond risk mitigation to actively propounding human rights and seeking benefits for indigenous people and local communities at the heart of REDD+ activities.²³

²¹ Personal communication, senior provincial government staff.

²² Source: Lao Gazette at <http://laoofficialgazette.gov.la/index.php?r=site/display&id=356>

²³ See for example the ClientEarth publication (2013) entitled *A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards: A Review of Relevant International Law*. The ClientEarth lawyers argue that

Seen in this light, the safeguards should mitigate risk (World Bank approach to safeguards), but additionally help protect/promote human rights and ensure that multiple benefits will be gained for both the environment and local people.

In order to understand how the safeguards fit the context of an individual country, the easiest way is to start with a risk analysis. The risks will point the way both to the level of safeguarding that is required, and what type of safeguards is required. Obviously, the more democratic and robust a country's PLRs are, the less it would have to adjust its PLRs or "create" additional safeguards procedures.

Although the Lao PDR has not partnered with UN-REDD as intensively as others, there have been a couple of tools UN-REDD has developed to assist country partners in developing their country safeguards approaches or country safeguards systems. One of these tools is called Country Approach to Safeguards Tool (CAST), which invites dialogue on risks pertaining to REDD+. Another tool, in process of adjustment to bring it in line with the Cancun safeguards, is called the Benefit and Risks Tool (BeRT). These may both prove useful during the FCPF Grant implementation period to promote dialogue on the safeguards, and create common understanding as to their necessity.

In the REDD+ world, there are two types of risks that need to be factored into the safeguards equation:

1. Those that may result in REDD+ failure (i.e., underlying risks arising from the current situation if they are not changed; examples would be uncontrolled natural forest conversion through concessions and uncontrolled illegal logging);
2. Those that might arise as a result of REDD+ implementation (i.e., villagers suffer restrictions on forest use that adversely impact their livelihoods, or forest closure in one area leads to overuse or unsustainable use of forest resources in another area).

Stakeholders involved in the forthcoming SESA process, for example, would need to develop consensus on the risks that either will affect REDD+ or possibly result from REDD+. These risks should be based on a consensus among the stakeholders at different levels on both the drivers *and* underlying drivers of deforestation and forest degradation (see Chapter 3.3 below). It is easy, for example, to blame local communities for their activities that may lead to forest degradation and even to deforestation, but there may be underlying drivers such as the implementation of certain government policies and practices that are actually the root causes of deforestation.

There is increasing recognition that many of the direct and underlying drivers of deforestation in Laos arise outside the forest sector. As MAF's R-PP stated (Executive Summary): *The drivers of deforestation and the potential solutions are largely outside the control of the forest sector and will therefore depend heavily on the support and cooperation of a number of other agencies and departments at national, provincial and district level.* Similar observations were made in the Forestry Strategy 2005 – 2020 (FS2020) Assessment (2014, Part II: 50): *In spite of much effort for mainstreaming climate change and REDD+, market-oriented economic development including agriculture, mining and infrastructure development are increasing in the whole country. Those activities are likely to lead the causes of deforestation and forest degradation. Coordination with other sectors is much more important for REDD+ implementation than in the past.*

the UNFCCC Safeguards are to be understood in the framework of protection of both human rights and the environment as embodied in the various UN conventions and agreements starting with the UN Declaration on Human Rights.

If these sectors (as shown in Figure 2 below), and the PLRs governing them, are not consistent with each other, they may end up causing greater damage to the environment, both short and long term. For example, the overall direction of the GoL for many years has been to pursue a development policy based on resource extraction and natural forest conversion. Mining and hydropower have been promoted as the motors of the Lao economy, while large scale concessions with especially Chinese and Vietnamese investors for rubber have fuelled massive forest conversion for mono-cropped plantations.²⁴ This is obviously leading to rapid declines in biodiversity in certain areas, including the availability of non-timber forest products (NTFPs) that many villagers in remoter rural areas still rely on for nutrition, household purposes and income generation. If forest sector laws promote benefit-sharing, but national fund management and disbursement regulations do not facilitate villages to receive funds in proportion to their inputs on forest conservation, this will also cause difficulties to maintain REDD+ gains in the country, not to mention forest cover goals.

Figure 2: Sectoral Consistency for REDD+ and the Cancun Safeguards

Relevant Sectoral Laws, Policies and Strategies for REDD+						
Land	Forest (All Types of Forest)	Environment	Agriculture	Chosen Pillars of Economic Growth	FDI Promotion	Fund Management and Disbursement

In the final analysis, the development course that a government chooses is part of its defined national circumstances: it is likely that “planned deforestation” is far more predominant in certain parts of the country than the “unplanned deforestation” that may be caused by smallholder farmers trying to secure their livelihoods. The Finland Futures Research Centre, commenting on REDD+ developments in Laos up to 2012 (Luukkanen et al. 2012: 4), noted with concern, “the research finds that the focus of Laos REDD+ is surprisingly strong on shifting cultivation and deforestation caused by the poor, possibly creating additional land use limitations for communities with food security challenges.” Therefore, REDD+ risk assessments should also include dialogue at senior levels of government as to the chosen development path and whether it is possible to achieve better, and more sustainable, results with a development trajectory that is based on “low emissions development,” compared to more harmful alternatives.

²⁴ There are no exact figures, but the Review of the Forestry Strategy 2020 (FS2020) (2014 Part II: 20) states that “Concession for tree plantation was issued for more than 700,000 ha already, including 467,804 ha for rubber plantation.”

3.1 Forest Governance: A Major Challenge

The risks to REDD+ arise to a significant extent in the Lao PDR from governance challenges. This does not mean that PLRs are not in place, rather it means that the gaps between the PLRs and their implementation are often larger than the content gaps (wording) between the PLRs and the UNFCCC safeguards. Participation and transparency requirements, for example, may be easily compromised as local officials “uniquely” interpret procedures they don’t understand very well. For the time being, therefore, detailed legal documents on different aspects of forest management do not necessarily serve the purpose of improving forest governance—rather, they may allow the opposite to occur, as officials at different levels still have much leeway for interpretation. While decentralised forest management is normally seen as a positive objective, it can only work well when all parties, including local communities, at the decentralised level understand the PLR framework and their rights within it.

The Profor (2012: 3) definition of forest governance states: “Forest governance includes the norms, processes, instruments, people, and organizations that control how people interact with forests.” The following graphic from a 2011 Profor publication on Forest Governance shows the “Pillars and Principles of Governance.” These “pillars and principles” provide a good overview as to what is required to meet the Cancun safeguard on “effective and transparent forest governance.” As the ClientEarth (2013: 17) authors wrote, *Failure to correctly address current national forest governance shortcomings . . . could potentially prevent REDD+ from achieving its long-term goal of sustainable reductions of GHG emissions from deforestation and forest degradation, or [of] co-benefits.*

Figure 3: Profor Pillars and Principles of Governance

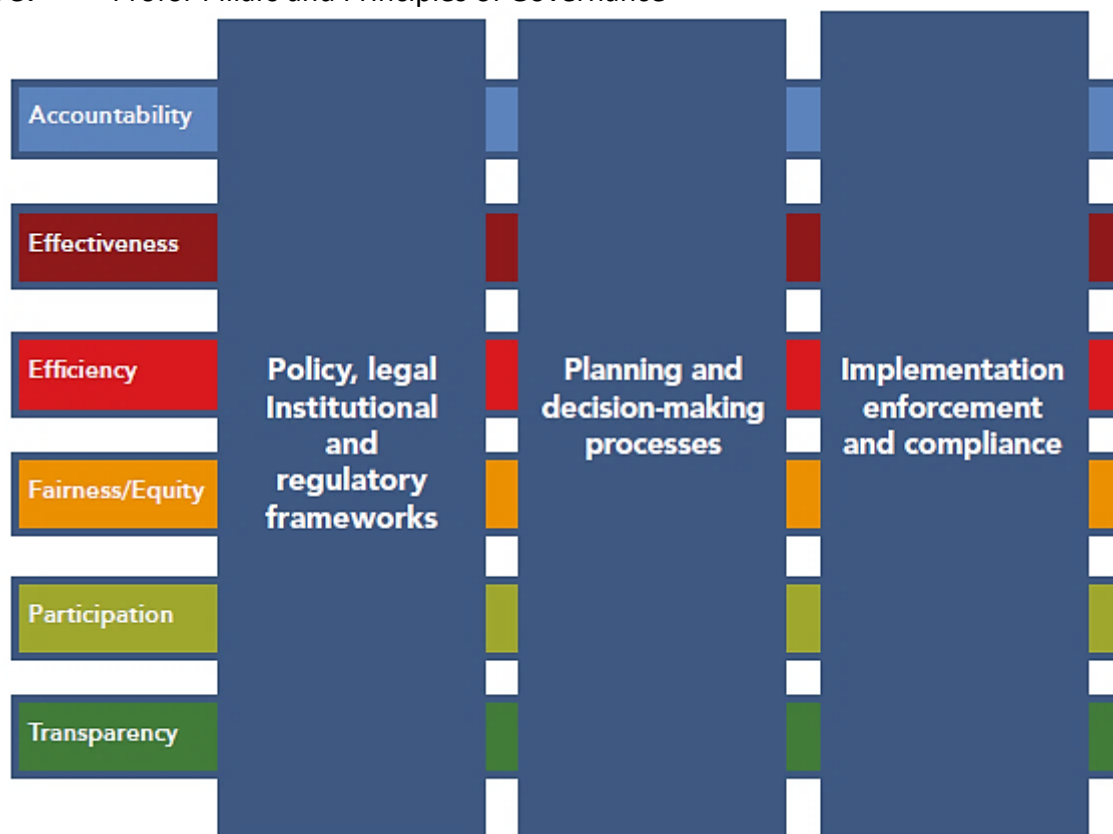


Figure 3 above shows six principles, including accountability and transparency, that apply at every part or stage of governance processes, and correspond with the UNFCCC safeguards: from the PLRs through to their procedures, implementation and enforcement. UN-REDD's Social and Environmental Principles and Criteria (SEPC),²⁵ also designed to assist countries to develop their safeguards frameworks, includes the following six criteria under its principle of “democratic governance.” It also has many overlaps with the Profor definition and is of high relevance for judging adherence to the Cancun safeguards.

1. Transparency and accountability of fund mechanisms (under REDD+);
2. Legitimacy and accountability of organisations that represent stakeholder groups;
3. Accessibility of information;
4. Ensuring full and effective participation, especially of indigenous people and local communities, in design, planning and implementation (of REDD+ activities);
5. Coordination efficiency and effectiveness of all agencies and implementing bodies relevant to REDD+ (includes outside the forestry sector);
6. Ensuring rule of law, access to justice and effective remedies.

Assessing governance shortcomings and challenges requires an open, self-critical approach if they are to be adequately addressed. This process started in Laos (under the FCPF Grant) when a workshop was held on forest governance in October 2014. A report on forest governance was also produced by December 2014 (Chokkalingam and Phanvilay). Additionally, the FS2020 was evaluated mid-last year, including many points on forest governance. Both of these 2014 evaluations indicate a number of major challenges in forest governance in the Lao PDR. These challenges, if not adequately addressed during the REDD+ readiness phase, will affect whether the Cancun safeguards may be met. Some of the major points set against the Profor principles are shown in Table 2 below. Challenges on forest governance from a local community perspective will be presented with a series of examples under 3.2.1 below.

Table 2: Forest Governance Challenges Set Against Criteria to Measure Cancun Safeguard b) Effective and Transparent Governance

Profor Principle or SEPC Criterion	Forest Governance Assessment* (quotes from report)	FS2020 Assessment** (quotes from report)
Accountability	There is limited public access to forest-related information such as inventory data, timber production, trade statistics, concession areas and developments, area and location of plantations, revenues and its distribution, conflicts and their resolution, forest-related offences and outcomes, and land use information and trends. Pg. 39	Review [of] the funding strategy focusing on the financial flow of timber revenue derived from PFAs and the suspected leakages of the revenue (indicates lack of financial accountability and/or suspected corruption). In spite of moratorium of logging quota in PFA since 2011/12, exports of wood products are skyrocketing. (indicates wood from illegal sources). V.1, p.21
Efficiency	Institutional arrangements are still in flux and the DG of DFRM announced at the Forestry Subsector Working Group (FSSWG) in early 2014 that there were plans to restructure again and bring the forest management agencies back together, though the exact nature of the arrangement and timeframe was	Overlaps and ambiguities of demarcation in responsibilities of offices remain unaddressed (on law enforcement). V.1, p.37 Responsibilities for forest management and inspection are overlapped and unclear among MAF, MONRE and MOIC (logging and sales). V.1, p74 Introduction of forest management to local

²⁵ UN-REDD's SEPC has a total of seven principles and 24 criteria.

	undecided. Pg. 25	levels has not been continuously undertaken.V.1, p.74
Effectiveness	Local provinces prioritize their own revenues and obtain them from available sources, and their actions may not be aligned with national policy prerogatives such as protecting and enhancing the forest resources. There are no effective incentives for performance or sanctions for malpractice at local levels. Pg. 55 Coordination between the different agencies responsible for tackling corruption is a problem, including between the prosecutor's office and the State Inspection Authority at the central and local levels. Pg. 56	There are big gaps between the present institutional capacity and needed capacity; Human capacity of local staff is insufficient. Number of staff and budget are insufficient. V.1, p.37 Coordination and information sharing with climate change department under MONRE and forestry sector are still weak. V.1, p.50
Fairness/Equity	The report also mentions that benefit-sharing should happen under PFAs, but that villagers are not allowed to harvest timber for sale (exception, plantations). Pg. 19	Mention of benefit-sharing with local people in PFAs, but that little timber actually harvested from PFAs. V.III, p.71
Participation	Planning and implementation processes, and mechanisms for their [communities] participation have not been adequately defined yet. Pg. 43 Many conflicts arise due to land allocations without prior land use planning, or due to poor planning using rushed and less participatory methods that did not adequately consider ongoing customary use patterns. Pg. 51 ...participatory forest management approaches are just evolving at present. What participation actually means, and the participation process, roles, responsibilities and benefits for different stakeholders still need to be ironed out in most forest areas. Pg. 37	The forestry sector has not moved forward to the direction for achieving sustainable forest management. V.I, p.15 Positive mention of villagers participating in decentralised Forest Management Units (but lack of timber quotas in PFAs).
Transparency	The quality of much of the available forest-related information across different aspects and agencies is low and there are large information gaps. Numbers come from individuals without the backing of solid factual databases. Transparency and accountability is low, and in some instances there are disincentives for accurate reporting such as for data related to the timber trade or confiscated timber. Pg. 39 Public information databases and documents are very limited at present. Concession agreements are confidential. ESIs are supposed to be public but they are also difficult to access. Pg. 40	Political interventions for controlling the sector responding to the emerging issues and the significant changes in external circumstances not happened possibly due to <u>lack of reliable information for decision making</u> . (Note that the authors actually don't know the real reasons.) V.I,p.16 Lack of reliable and updated information on sector performance makes it impossible to identify the appropriate responses to the changing circumstances in a timely manner; V.I, p. 16 Timber royalty has decreased year by year. Timber quota is mainly allocated for debt payment by provinces or other barter arrangements. V.I, p. 27. (How can this be controlled?)
Rule of Law	Many communities are also reluctant to approach the court system due to a lack of experience with it, worries over the costs involved and that there may be	Many key articles of laws and regulations are reported not properly enforced (for forest law enforcement). V.I, p.61 Legislations were not well formulated and have

	undue influence from interested parties. There is a severe lack of lawyers and legal advice available for the plaintiffs. At present, a clear grievance process, channels, and independent agencies to deal with conflicts in a fair and just manner are missing in the forestry sector. Pg. 38 – 39.	not been strictly implemented (on protected forests/watersheds). V.1, p.69
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Table Notes: * Direct quotes, some slightly altered, from the DRAFT Forest Governance Assessment Report sent for stakeholder comments in December 2014.²⁶

**Direct quotes from different pages of the FS2020 Assessment, some slightly altered; any comments in brackets are from the author of this report.

Both of the assessments from 2014, with participation and/or inputs of many officials from MAF and MONRE, show that in general Laos faces serious challenges in the forestry governance sector if it is to protect and improve its forest estate in a way that will also protect and improve the livelihoods of local communities of all ethnic groups. Forest governance will certainly require a significant level of reform.

3.2 Challenges and Risks: Examples from Practice

In this section, the author draws in part on her own, extensive field experience in Laos over a period of twenty plus years. The first sub-section below on governance is the most comprehensive, drawing attention to issues that occur at the interfaces between local communities and governmental structures that determine forest, biodiversity and livelihood outcomes. The sections follow the order of the Cancun safeguards. Because safeguard a) relates to national sovereignty and conformity with international conventions it will not be commented on. There is some overlapping and unavoidable repetition of information because of the structuring and content of the safeguards themselves.

3.2.1 Safeguard b) Transparent and Effective Forest Governance

Forest governance challenges in the Lao PDR may be observed and analysed in several ways. The Cancun safeguards should be embedded in written and disseminated PLRs, but they also need to be embedded in practice. That is, a PLR may be written in a way to completely conform with the safeguards requirements, but if it is not implemented in the same way then corrective action will still need to be taken.²⁷ The examples from practice below show that implementation gaps in PLR frameworks will need as much attention, or more, than the adjustment (in words) of the PLRs themselves. In this section six examples are provided; each example is related one or more of the Profor governance criteria and relevant PLRs are listed at the end of each example.

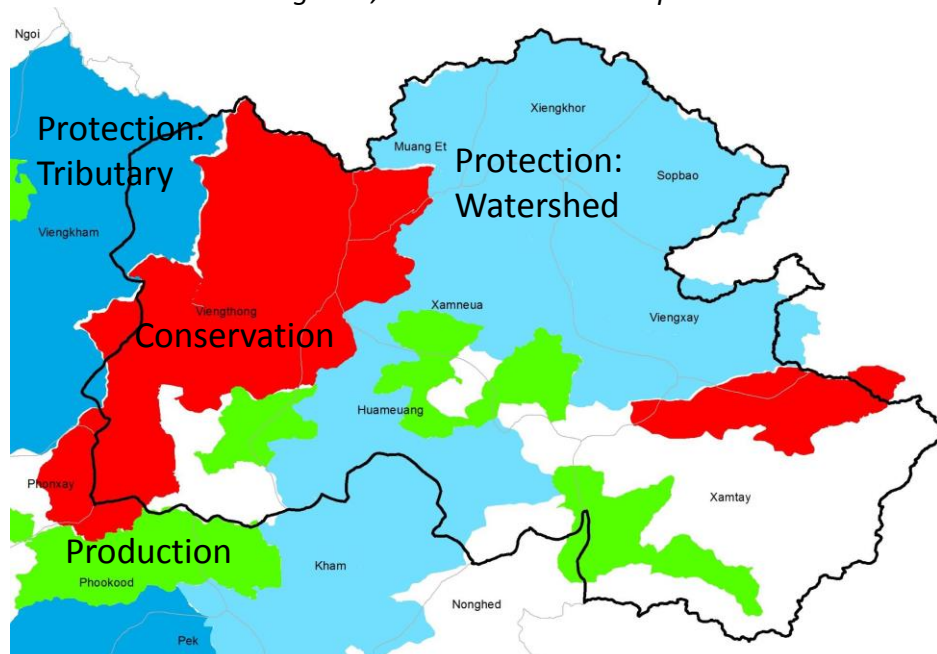
²⁶ An informant at the World Bank said that by March 2015, there had not been any comments provided by stakeholders on the content of the report, so that it could be considered final.

²⁷ This reflects a remark made under “lessons learned” of the FS2020 Review: What is the use of a strategy if the resources are not available to implement it? The same is true of the safeguards-related PLRs: they are of little use until they are assured of being implemented.

Example 1: Categorisation of Forests, Relating to Transparency and Participation, Fairness/Equity: The categorisation of forests in the Lao PDR is a good example of intransparent decision-making. The forest estate of the Lao PDR has been broken into three major categories, reduced from five under the 1996 Forest Law: conservation forest, production forest and protection forest. The main aim of protection forest is to serve the GoL's development goal of making Laos the "battery of Asia" with well-protected watersheds for hydropower projects. Conservation forest corresponds primarily to biodiversity conservation and protected areas, while production forests are to serve timber needs. Most of these forest areas have not been demarcated on the ground, and there has been little to no discussion with local communities as to the feasibility of these categories in areas also used by local communities of various ethnic groups. It is possible, under the present system, for entire communities to lie within production forests, for example, in conservation or in protection forests although in virtually all cases, the communities have been there for longer than the forest categories.

Indeed, the process of determining forest categories in Laos has been problematic at least since the 1990s.²⁸ There would have always been significant differences in how local communities consider the use of "their" forest areas and how these same areas would be seen by "professional" foresters and land use planners. Villagers have their own forest "zones" such as certain areas for NTFPs, certain areas for grazing, certain areas to protect streams and micro-catchments, hunting areas for different animals, spirit forests, etc. Insistence in the past to categorise "bush fallows" (*pa lao*) as "regeneration forest," (although essentially future agriculture land from the villagers' viewpoint) has made it difficult for "neutral" local land zoning processes to take place. Officials and authorities arrive at the local community with it already in mind that they must curtail the agricultural land devoted to shifting cultivation.

Figure 4: *National Forest Categories, 2010: Focus on Houaphan Province*



²⁸ Most of the conservation forests (now corresponding to National Protected Areas) were delineated in 1993, based on PM164/1993.

Based on an indicative forest categories map from DOF.²⁹ The light blue is watershed protection forest, the dark blue so-called tributary protection forest, the red conservation forest, the green production forest and the white means an area not classified from the national level.

As is obvious from this map, more than half of Houaphan is classified as some type of protection forest, while the second largest category is conservation forest. At the same time, however, these forest areas are home to thousands of villagers who know little of these categories if they haven't had a recent Forest and Land Allocation or PLUP exercise. To the extent that district forest officials are also aware of the classification made at higher levels, this could potentially have serious, restrictive impacts on forest land allocation at village level, because of the regulations governing zoning and forest use related to different forest types (including forest types within village boundaries).

Because of major inconsistencies between forest categories determined at national level and on-the-ground realities, the National Assembly (NA) of Laos issued Notification 273 in August 2014 to both resurvey and reconsider these categories. The NA wants MAF and MONRE to remove those areas that have already been converted for other purposes, especially including villagers' agricultural and residential land.

Example 1, Relevant PLRs: PM 164 on National Biodiversity and Conservation Areas (NBCAs)³⁰, 1993; PM 59 on Production Forest Areas, 2002; MAF Regulation 360 on NBCA Management, 2003; FS2020, 2005; Forestry Law, 2007; PM 333 on Protection Forest, 2010; PM 111 on National Defence Strategic Zones, 2011;³¹ NA Notification 273, 2014.

Example 2 on NTFPs, Relating to Access to Information and Participation: NTFPs have proved to be an important pillar of rural village livelihoods, whether for subsistence or for sale. NTFPs may only be collected for sale if a quota has been set for an area, and the quota should be based on village forest management plans (VFMPs). In practice, NTFP quotas are issued to traders/buyers without reference to VFMPs, not the least because the VFMPs are seldom made, and villagers are also seldom consulted on NTFP supplies in their areas. Districts may issue quotas regardless of real supplies; or quotas are not issued at all, but the traders purchase NTFPs anyway. Villagers do not know which traders who come to their villages have quotas and which do not. These practices lead to overharvesting, as traders buy up all NTFPs they believe will have a high resale value. The end effect is that villagers are not consulted regarding NTFP sustainable harvests, and they may also overharvest NTFPs if the price is "right." High-priced NTFPs also draw in people from other areas. Protection and Conservation Forest zoning within the village boundaries allows villagers to collect NTFPs for domestic use. Self-use of NTFPs is generally not subject to taxation (see Ministry of Finance Guideline 92/2009, Article 5). At the same time, however, NTFPs are reducing drastically and the forests are no longer the "supermarkets" for local food security that they were in the past.

²⁹ With assistance from Mike Dwyer who provided this map focussing on Houaphan (based on a DOF map from 2010, and presented by DG Silavanh in Japan in 2011).

³⁰ NBCAs are now called National Protected Areas (NPAs), but not to be confused with Protection Forests.

³¹ PM 111/2011 regulates forested border zones as military zones up to 15 kilometres "inland" from the border. PM 111 lists the districts that are considered under military zones—in these zones, the military is the lead agency to "protect" forests.

Example 2, Relevant PLRs: MAF Decision 54/1996 and MAF Guideline 377/1996 on Customary Use of Forest Resources; MAF Regulation 535 on Village Forest Management, 2001; NBSAP, 2004; Forestry Law, 2007, Ministry of Finance Guidelines 92/2009 on Managing the collection of revenue from the sale of Timber and NTFPs

Example 3 on Logging to Repay Debts and Pay for Infrastructure, Relating to Transparency and Access to Information, Accountability: Decisions made to log certain areas, either for infrastructure or other purposes such as repaying old debts, are made without reference to forest land allocations in the villages.³² This means that areas may get logged because of a district, provincial or even national decision that has not been made with reference to how local people are using the same area. Thus, “planned deforestation” becomes “unplanned” from the point of view of other stakeholders because they are not informed or consulted about such plans. Accountability to village or local stakeholders is low, and the possible consequences for local communities’ livelihoods of logging decisions are not taken into account. Villagers may only learn of the decision once the logging crew has come to their forest area.

Example 3, Relevant PLRs: It is difficult to find relevant PLRs on “Turning Trees into Capital,” except for two sources: Ministry of Finance (MOF) Guideline 92 for Managing the Collection of Revenue from the Sale of Timber and NTFPs, 2009; Lists of Timber Quotas that mention debt repayment. Since these quotas continue to be issued after the PFA logging moratorium in 2012, it means logging goes on in all types of forest, not only where infrastructure and “development projects” are getting implemented.

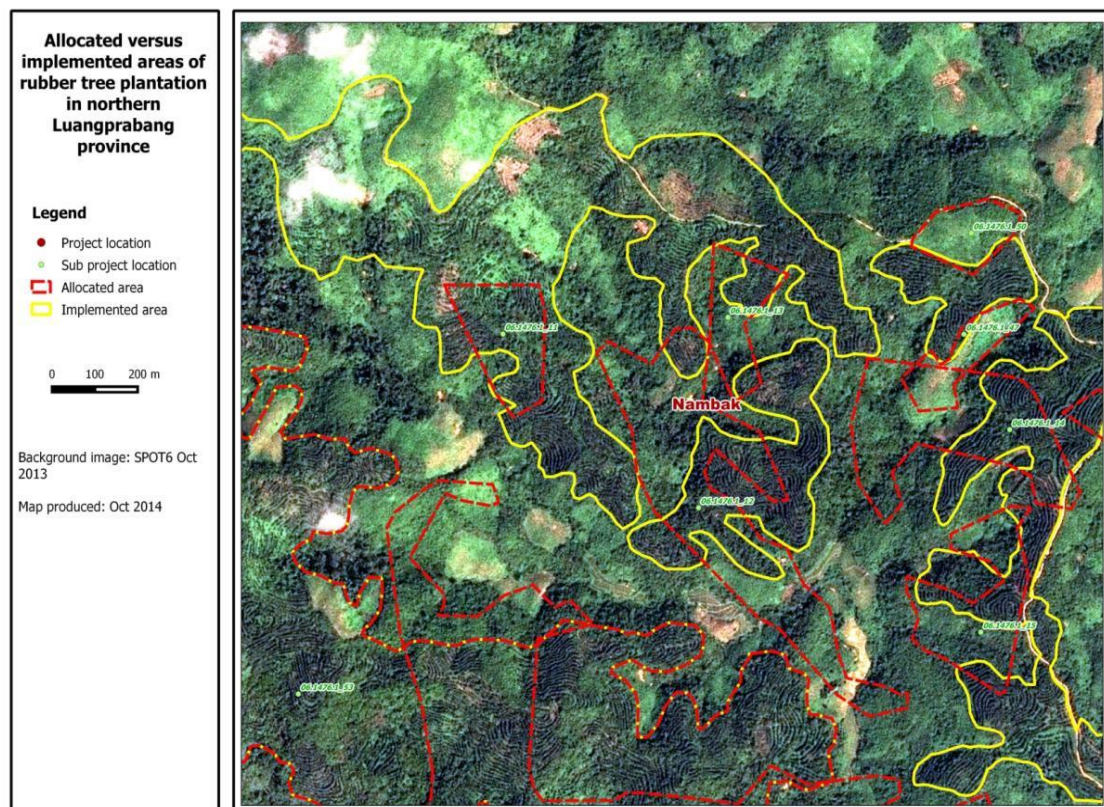
Example 4 on Concessions, Relating to Transparency, Access to Information, Accountability, Effectiveness: Mining and plantation concessions, especially for rubber, are generally agreed upon between government authorities and would-be investors without involvement of villagers (despite more recent legislation pertaining to Initial Environmental Examination (IEE), and Environmental and Social Impact Assessment—ESIA). There are countless villages in Laos where villagers have lost access to lands they had considered “theirs” because of agreements reached between government offices at different levels and concessionaires, often from China or Vietnam but also from Thailand and elsewhere. The Centre for Development and Environment, University of Bern stated (2014: 4) “CDE’s spatial analyses suggest a massive transfer of land access away from small-scale farmers and in favour of foreign investors.” Moreover, the written agreement may not coincide spatially with where the concessionaires end up establishing their plantations (see Fig. 5 below). The FS2020 assessment deemed the plantation concession situation as “uncontrollable,” meaning that the few PLRs that regulate concessions, are not doing so in reality. In some areas of the country, this has done serious harm to villagers’ land-based livelihoods and would constitute a serious risk to the success of any REDD+ activities and projects.³³ In fact, there are four ministries—MAF, MONRE, Energy and Mines and Planning and Investment—and three different administrative levels (national, provincial, district) that may enter concession agreements. This is another governance

³² The National Forestry Conference, 2012 (signed off with PM 32/2012) has said that debt repayments with timber should stop forthwith.

³³ CDE 2014 “Policy Brief on Land Issues in the Lao PDR” mentions that 45% of concessions impact directly on small-scale agricultural landscapes (using land cover data from 2002), it could be much more by now.

issue in that the required vertical and horizontal coordination among ministries may not be taking place.

Figure 5: Allocated and Actual Rubber Plantation Concession Areas, Nambak District Luang Phabang



This map was produced by the Centre for Development and Environment and presented to the Land Issues Working Group in January 2015.

The areas allocated (in red) and the areas actually used (in yellow), show surprisingly little overlap. If there were REDD+ project activities in the area that depend on the maintenance or improvement of natural forests, the results-based payments would not be made since the relevant authorities have obviously not controlled the activity of the concessionaire.

Example 4, Relevant PLRs: Land Law, 2003; Forestry Law, 2007; PM 135 on State Land Lease or Concession, 2009; Since both the Land Law and Forestry Law have been under revision for several years already, there may well be changes to the rules and procedures on concessions compared to what they currently are; there is currently a moratorium (PM 13/2012) on mining, rubber and eucalyptus concessions in effect since June 2012 and lasting until December 2015. There had also been two earlier moratoriums on land concessions of over 100 ha. issued in May 2007 and again in 2009, but which analysts determined to have been observed in breach.

Example 5 on Benefit-Sharing in the Forestry Sector, Relating to Transparency, Fairness/Equity, Accountability, Access to Information: Decisions reached on benefit-sharing mechanisms on forest resources, especially including timber, by the State remain unclear for local communities. The best example of benefit-sharing dates back to village forestry activities that took place in Savannakhet

and Khammouane under the FOMACOP³⁴ project in the late 1990s, where villagers who participated in forestry management and timber harvesting with forestry offices were able to sell timber legally. Since then, the payments for villagers from timber harvesting in production forests have not only plummeted, they have become less transparent than before, and villagers are not clearly informed as to what their entitlements should be.³⁵ Matters are not helped both by the lack of quotas and the lack of harvestable timber in PFAs. Most of the moneys (88%) shall go to the State Treasury (partly for the Forest and Forest Resource Development Fund (FDF), 12% is to be shared in unspecified ways among stakeholder villages by payments into VDFs that should be supervised by local officials. The question may also be raised here as to whether 88:12 represents “fair” sharing between State and villages; it appears low if several villages are involved that would have to share the 12%. Without payments villagers eventually lose interest in cooperating with different forest offices.

Example 5, Relevant PLRs: There are few PLRs that regulate benefit-sharing mechanisms or PES. Greatest clarity exists for PFAs that have requisite management plans. President Decree 01 on Revenue Sharing from Timber in PFAs, 2012. The Environmental Protection Law (2012) mentions the possibility of PES (Article 49), as does the Draft (2014) Forestry Law.

Example 6, Land Allocation and Zoning, Relating to Accountability: If land allocation and zoning have taken place in a local community, villagers may not be in agreement with the results, but they have little recourse to appeal decisions they do not agree with. Conflicts are known to occur, for example, when authorities at different levels relocate entire villages to join existing villages where land allocation and zoning processes were already conducted. The previous land allocation exercise may then be nullified as both new and old villagers scramble to ensure they have adequate productive land. As mentioned by the Forest Governance Assessment authors, grievance and redress mechanisms are not in place. Normally, the villagers’ main redress is “administrative,” meaning they have to make their grievances known to the “relevant” administrative unit that had already decided against their perceived interests. Moreover, legal redress is hardly available since the only accessible mechanism is the Village Mediation Unit (VMU) that has no power to decide anything beyond the administrative village in which it is located. District Courts have been getting closed in favour of fewer “regional” courts within a province because of too few judges.³⁶ For some villagers a grievance mechanism they know of, and use, is the NA Hotline, only open while the NA is in session. It is not known, however, what action(s) are taken when the NA receives such complaints, but it is known that most complaints do relate to land problems. In fact, there should be NA Member Constituency Offices but there are very few of these in reality.

Example 6, Relevant PLRs: NA 07 Law on Handling Petitions, 2005; PM 46 on Local Grievance Mechanisms, 2009; with Ministry of Justice Guidelines on VMUs, 2010. (Both the land law and the forestry law mention the possibility of administrative redress, but not with any independent mechanism mentioned.) There is a special grievance procedure and mechanism established to

³⁴ FOMACOP = Forest Management and Conservation Project.

³⁵ This allows an element of siphoning to creep in when accounts are not clear for all relevant stakeholders, including local communities.

³⁶ See the UNDP (2011) Study on the Access to Justice in the Lao PDR: *Whereas, in the past, there was meant to be a first instance court in each district - although, in practice, in 2010, there were only courts in 102 of 143 districts, due to a shortage of judges - these district courts have now been consolidated into 39 area courts.*

handle complaints arising under the resettlement programme at the Nam Theun 2 (NT2) Hydropower Dam (and probably at other such projects which involving the World Bank or ADB), but it is project-related and directly supported by the Nam Theun Power Company. On relocation see, for example, PM 36/2009 on “how to solve problems related to disorganized migration linked to permanent resettlement and livelihood issues of various ethnic groups.”

3.2.2 Safeguard c) Knowledge and Rights of Indigenous People and Local Communities

The issue of respect for knowledge and rights of indigenous people and local communities is bound up with the human rights conventions to which the Lao PDR is a Party. In fact, it is a Party to all the core human rights conventions, voted in favour of UNDRIP in 2007 and has also signed the Voluntary Guidelines on Responsible Governance of Tenure (FAO and Committee for Food Security: 2012) which also emphasises indigenous and customary land rights. The GoL does not, in fact, acknowledge that it has “indigenous peoples” within its territory although there would be some smaller ethnic groups have a longer settlement history in the territory than do some branches of the Lao-Tai ethno-linguistic group.³⁷ (For more information on PLRs and Ethnic Groups, see Annex 5.)

In practice, customary rights to forest resources and to land tenure are recognised only to a limited extent in the Lao PDR,³⁸ and all PLRs issued since 1996 make clear that the State can decide unilaterally if a customary practice will be revoked—no matter how long it has been practiced, nor what importance it may have for the local people. The recognition of customary land rights has not led to a widespread push for community³⁹ land titling that would provide villages with somewhat more tenure security than they have at present. Cases of successfully implemented community land titling and registration are still limited in Laos. Nakai is the only rural district in Laos where there has been systematic registration of permanent individual and community titles, but that only in the NT2 resettlement area including some 14 villages of differing ethnic groups.⁴⁰ SUFORD-SU plans to embark on a process of community titling for Village Use Forest in PFAs. GIZ Land Management and Decentralized Planning project is also working on communal land titling, however, the crux is that communal titles are only being given for village use forest or agricultural land.

Customary rights remain rather vaguely defined and ill-protected in Laos, although they are included under laws and regulations. Not only may they be revoked unilaterally, customary practices are to be included under officially sanctioned VFMPs and thus may be restricted according to State-defined forest types. Timber harvest as a “customary practice” is not recognised (although timber may well be needed for certain customary purposes). Moreover, local forest and land

³⁷ The United Nations, including World Bank, have defined that local communities may be considered “indigenous” even when not accepted by the respective government, when certain criteria are fulfilled such as (a) living within (or maintain attachments to) geographically distinct ancestral territories; (b) tending to maintain distinct social, economic, and political institutions within their territories; (c) typically aspiring to remain distinct culturally, geographically and institutionally rather than assimilate fully into national society; and (d) self-identifying as indigenous or tribal. (see UN-REDD SEPC, Glossary, p. 11; this is the same set of criteria as used by the World Bank for safeguard OP.10, Indigenous People.)

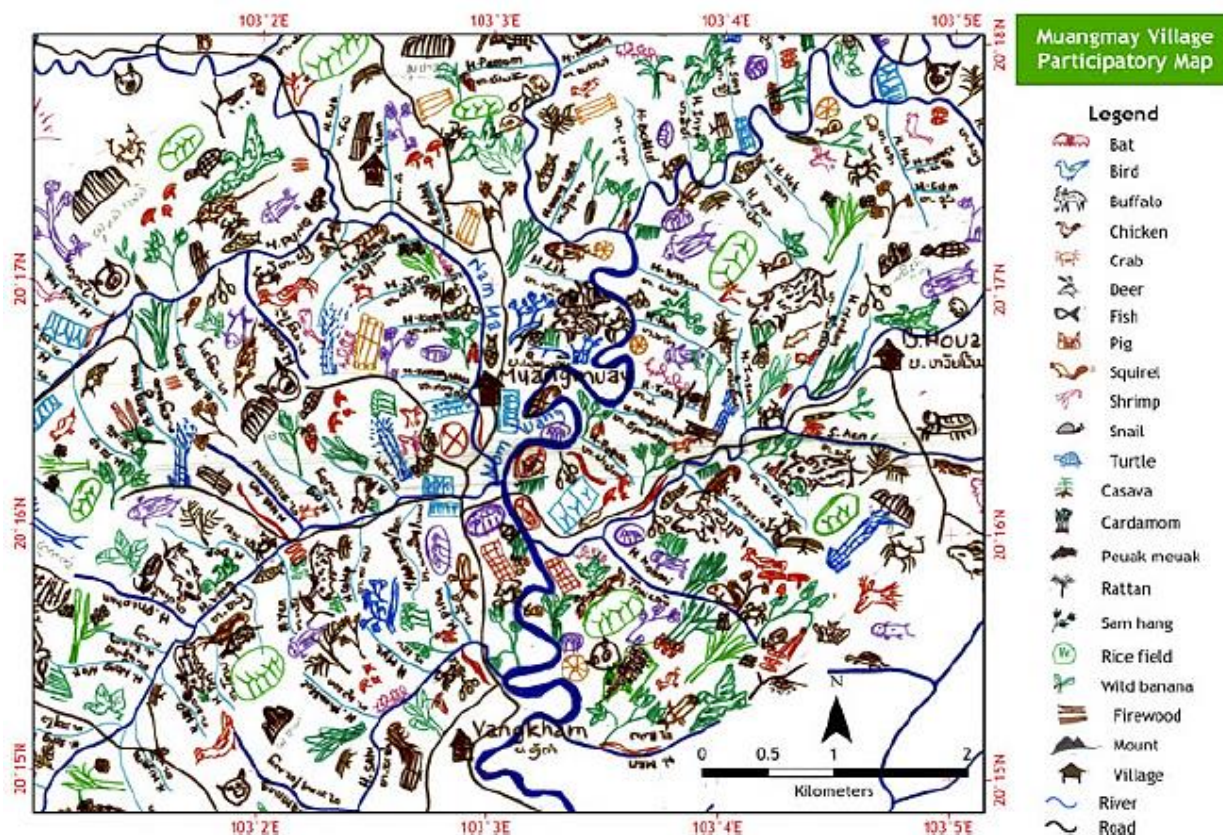
³⁸ Customary rights are mentioned under MAF Decision 054/1996 and MAF Guidelines 377/1996.

³⁹ The word “communal” seems to have been replaced by “community” from older to most recent land PLRs, but they are essentially the same thing (was not possible to check Lao versions of the PLRs).

⁴⁰ Community land titling was not extended to any other villages in Nakai District.

management practices of local communities are often considered environmentally damaging. Thus, village-determined forest categories based on traditional knowledge are inadequately considered. Despite many good intentions, for example, the PLUP and land zoning processes carried out in villages normally only consider the forest categories of the Forest Law;⁴¹ additionally, a map produced under PLUP may include small areas of spirit and cemetery forest.⁴² Thus, the much more nuanced definitions local people have as to the type and uses of the forests around their villages are lost in the administrative need for conformity, *and* in the government priority to stop shifting cultivation.⁴³ Figure 6 below copied from M. Boissière et al (2014: 156)⁴⁴ in the *Journal of Biodiversity Conservation* captures some of the complexity with which villagers see the natural world around them.

Figure 6: Participatory NTFP and Biodiversity Map by Khmu Villagers in Luang Phabang



This is a participatory map of natural resources, NTFPs, biodiversity and land use of Khmu women and men (young and old) at Muang Muay village in Luang Phabang Province. The map shows a

⁴¹ In a break with PLUP tradition in Laos, The Agro-Biodiversity Initiative (TABI) project also does a type of PLUP, but the government and participating project staff do not use the government's pre-defined forest categories as a starting point. In this way, the project is also able to capture far greater biodiversity, forest types and forest use than otherwise would be the case.

⁴² There is a contradiction between PM88/2008 on implementing the Land Law and PM333/2010 on Protection Forest. The former says that Protection Forest may not be titled, but the latter includes "spirit forest" under Protection Forest and which obviously should receive community title.

⁴³ Of interest here is the 1995 Draft of MAF 054/1996; it actually allowed shifting cultivation and included it as a legitimate customary practice! The decision of the 1996 Party Congress to eradicate shifting cultivation obviously resulted in the changes made between the 1995 Draft and the 1996 final version.

⁴⁴ "Can We Make Participatory NTFP Monitoring Work? Lessons Learnt from the Development of a Multi-Stakeholder System in Northern Laos"

degree of complexity that could never be achieved with the simplified land categories used during PLUP exercises.

Government officials have shown rather uniformly negative attitudes towards shifting cultivation at least since 1996, but with a longer history that goes back to the late 1970s, and the desire to ban shifting cultivation in watershed areas (FS2020, 2005: 3). The 6th Party Congress held in 1996 articulated the aim to eradicate shifting cultivation by 2010. This is, however, the chosen form of agriculture by the majority of ethnic groups living in highland areas in the country and based on their understanding of managing their land and natural resources. A one-sided condemnation of such a major practice shows that more awareness on these livelihood choices is required. Forest land management practices are, after all, bound deeply with socio-cultural values. Authors of the FS2020 (2005: 39) did make more conciliatory comments regarding shifting cultivation, however, when drawing a distinction between pioneering shifting cultivation and rotational shifting cultivation: *Rotational upland cultivation⁴⁵ on allocated plots or within agreed areas, without encroachment upon new forest areas, is an accepted alternative, although sedentary cultivation on upland or sloping areas using improved, conservation-oriented farming methods is preferred.* Recent discussions in DOF suggest further acceptance of longer rotation shifting cultivation fallow areas (*pa lao*) as “agro-forestry” areas (available for further cultivation) following the International Panel on Climate Change (IPCC) classification, and not as “regeneration forest” as upland fallows were termed in the past (See for example, MAF Decision 051/2009, Articles 2.2 and 6 that specifically emphasise shifting cultivation fallows for regeneration).⁴⁶

The GoL has been following relocation policies over a period of many years. For the most part, the promoted concept is that people grouped together in larger villages or towns closer to road networks will have better access to development services and livelihoods opportunities. While there may well be sound reasons for following this development course, it also has had negative consequences, as written in the Draft 8th NSEDP (2015: 14).⁴⁷ Moreover, when people are requested to resettle away from areas they value socio-culturally (livelihood patterns deeply linked with socio-cultural beliefs and practices), it may cause them distress that goes beyond the economic upheavals that accompany poorly planned and under-supported relocation projects. That the GoL is able to relocate villagers with little or no compensation⁴⁸ indicates their low level of tenure insecurity. The Committee for the Convention on the Elimination of all forms of Racial Discrimination (CERD)⁴⁹ made several recommendations (CERD/C/LAO/CO/16-18, 2012: Paragraph 18) to the GoL, including: **The Committee reiterates its previous recommendation calling on the State party to consider all possible alternatives to relocation and to pay attention to the cultural ties of certain ethnic groups to their land. Moreover, the Committee recommends that the State party provide opportunities for smaller ethnic groups to define development in their own terms**

⁴⁵ By this the FS2020 authors meant a rotation of seven to twelve years, not the three year rotation that is apparently also mentioned in agricultural policies and strategies.

⁴⁶ Calling upland fallows “regeneration forest,” means that people are not allowed to return to these fallows for agricultural purposes, as that would then be against the law: converting forest land without permission of Government, and subject to punishment under the criminal code.

⁴⁷ The NSEDP authors (p. 14, Paras 44 and 45) lay the blame mainly on poorly planned resettlement whereby appropriate services are not available for resettlers, nor “production areas,” nor adequate infrastructure.

⁴⁸ An exception is when there is needed relocation in the event of a special investment project, such as for hydropower;

⁴⁹ The Lao PDR became a Party to this Convention in 1974.

and to contribute to decision-making as to how development is operationalized. [Bold in original CERD Committee text.]

Relevant PLRs: Among others, MAF Decision 054 on Customary Use of Forest, 1996; MAF Regulation 022/2010 to prepare for Complete Stop of Shifting Cultivation; PM 88 on the Land Law, 2008; PM Order 36 on Internal Migration and Resettlement, 2009; National Adaptation Programme of Action to Climate Change, 2009 (includes project proposal on “eradicating shifting cultivation.”); MAF Decision 051 on Forest Regeneration, 2009; LPRP Central Committee Instruction No. 03 /PBP, on transformation of villages into development units and large villages into small towns in rural areas, 2011.

3.2.3 Safeguard d) Full and Effective Participation

People’s abilities to participate fully and effectively in different processes and procedures are determined by a large number of factors. These include their assumptions as to how they are perceived by “outsiders,” including local authorities, government officers, project staff, etcetera. Local people’s perceptions of those who come to their villages (and the “carrots and/or sticks” they bring with them) may have a big effect on how they participate and what they agree to. For example, people may agree to certain things they don’t understand or don’t want that much, because they worry they forego some kind of benefits (like a VDF or agricultural inputs) if they do not. Participation—and how full and effective—is also associated with relations that may have been developed over many years between a certain village or group and those external to it.⁵⁰ For indigenous people—in Laos virtually all ethnic groups—full and effective participation must extend to FPIC as provided for under UNDRIP.

Despite acknowledging the necessity for participation in recent years, the PLRs of Laos are essentially top-down in their substance with ill-defined procedures that do not provide adequate space for local communities’ participation. Definitions and articles tend to define local communities’ “rights” in terms of restrictions, and without having consulted the affected communities *before* defining the restrictions. Rather than trusting local communities’ natural resource management skills, they should follow forest management plans approved by the Districts. Families in local communities are allowed to harvest timber for their own use (MAF 535, 2001 allows 5m³/year/family), but the areas where they are allowed to harvest, and the harvest itself, must be defined and approved by village *and* district authorities.

When a project team comes into a village and requests that all adult villagers should join a meeting, it may be that most of them will come. At the end of the meeting, however, who will decide whether it was “effective” or not? Many people having been in attendance, but what will they have understood of the proceedings? Were the proceedings carried out in a way socio-culturally appropriate for the local people? Although some projects and/or government staff do work in local languages with villagers, there are no laws or regulations that require this. This means that women of ethnic groups, such as Hmong, Khmu, Talieng, Katang, etc. are at high risk of not receiving full

⁵⁰ In Laos this sometimes goes back to the history of the revolution and whether a particular village or community appeared to be pro- or anti-revolutionary, or whether any “heroes” are living there or not. There are several PLRs, including the NSEDPs, that give priority status for privileges and benefits to heroes of the revolution.

information on consultations and decisions that affect them even when they attend the meetings themselves.

Full and effective participation is also predicated on people having adequate information as to the “pros and cons” of what is under discussion, and what should be decided upon. For example, do people understand the full implications for their future livelihoods of a PLUP/zoning process when they enter into it? The resulting, agreed upon, “land use zones” may have large areas of protection forest or conservation forest. Whether these are legitimate categories for many villages should be carefully discussed, not the least because under the current Land and Forest Laws (see PM88/2008), it is not possible for villagers to get community land title for any type of forest except for “Village Use Forest.”⁵¹ Thus, if they agree, without fully understanding the titling and management implications of the forest categories they may find themselves “managing” small areas of badly degraded forest zoned as “Village Use Forest.”

Moreover, if the local communities do not understand the full implications of their upland fallows getting zoned as “forest,” they may make agreements that could cause them serious problems in future. For example, if there is a REDD+ project based on smallholders giving up large fallow areas to be regenerated as permanent forest (as under MAF 51/2009), they may agree because they assume a certain level of support. If it turns out, however, that viable alternatives to shifting cultivation are too few, they may be worse off than before. From both a villager and REDD+ activity point of view, a significant risk may arise if a PLUP zoning exercise has not been done realistically. That is, if not enough land has been set aside for future agricultural purposes, where shall productive areas for future generations come from? The only choice left to farmers may be to shorten their fallow periods and/or convert forest land into agricultural land

Village Forest Management (VFM) is one of the most important concepts that could have positive interlinking features with REDD+.⁵² VFM was piloted many years ago under the FOMACOP⁵³ project, but despite some notable successes⁵⁴ the concept was deemed by senior decision-makers as not so acceptable for Lao conditions when the project came to an end around 2000 - 2001. The current status of VFM in Laos is restricted to a reintroduction of VFM piloting, mainly under SUFORD-SU. The project is piloting VFM in connection with community land titling for Village Use Forests in PFAs. Indeed, to minimise the risk of inadequate participation and promote clear benefits for the villagers, including permanent forest land titles, VFM should be more widely piloted again in Laos, leading eventually to full scale rollout. It would be a major step forward in reducing

⁵¹ Confusingly, this is also called Village Production Forest in some documents; where village areas overlap with the nationally defined Production Forests, it may likely result in the villages being allocated poor quality production forest to be their Village Production (or Use) Forest. The best quality Production Forest is kept as State forest.

⁵² VFM, also known as Community Forest Management, should not be confused with a VFMP which is essentially a DOF requirement for a village to be able to harvest NTFPs and domestic timber needs “legally.” VFM accords much more decision-making autonomy to villagers than current local forestry practices allow.

⁵³ FOMACOP, with World Bank and Finnish support, was implemented in some 70 villages in Khammouane and Savannakhet Provinces from around 1996 to 2002.

⁵⁴ The author met, and interviewed, villagers in Savannakhet in 2012 who had earlier participated with DAFO/PAFO on the FOMACOP project. Despite the project activities having been undertaken in the forests near their villages so many years previous, some of the village men were still able to explain very clearly as to how they participated and what kind of benefits they got under the project. More recent forestry projects in the area did not elicit such clear and positive memories.

the risks that the necessary, underlying conditions for the Cancun safeguards—especially c), d) and e)—will not be met.

Relevant PLRs: There are no laws in Laos that give special place for smaller ethnic groups, and there are no laws that provide for FPIC, or foresee villagers at large as decision-makers. The “*Sam Sang*” Directive (3 Builds) refers to the village as a “development unit” without decision-making powers. There are several PLRs that refer to villager participation, such as PM 59/2002 on PSFM and PFAs and, in more recent years the MONRE Regulations on IEE and ESIA (8029 and 8030). The PLUP Manual, 2010 and the latest version of the Local Development Planning Manual, 2012 (issued by the Ministry of Planning and Investment - MPI) both make a point of the importance of villager participation, and include mechanisms to promote it. Manuals, however, do not carry weight in law, even when they are approved by Directors-General!

3.2.4 Safeguard e) Enhanced Social and Environmental Benefits

The fifth Cancun safeguard asks us to look at incentivising the protection and management of natural forests while at the same time ensuring their ecosystem services and social and environmental benefits for local communities of all ethnic groups. This makes it rather complex, in that both natural forests and local people’s livelihoods be enhanced as a result of REDD+. It might be termed the “multiple benefits safeguard.” As mentioned, there are too few clear rules and laws that promote benefits that households and communities may derive from timber, NTFPs and forest land generally. One result, in the absence of adequate law enforcement, is that the illegal timber trade flourishes⁵⁵ while valuable flora and fauna become rare as the forests are emptied of their highest value resources.

In the context of Laos, there are many risks that make it difficult to ensure that this safeguard on multiple benefits may be met. For example, when REDD+ projects are implemented, it may be that livelihood measures benefit the few who are already better off in their respective villages. It may also be that when groups, or villages, give up fallow land to natural regeneration and future (permanent) forest, that their chosen livelihood alternatives are not sustainable on reduced land areas. The smallholders of today may become the landless workers of tomorrow.⁵⁶

Experience shows that poorer families, often more forest-dependent than better off families, may be unwilling to take loans from either VDFs or elsewhere to invest in productive activities. They may feel that the activities they want to conduct are risky or not profitable enough to warrant a credit. Moreover, better off members of a VDF may also fear that poor families will be unable to repay and discourage them from borrowing. Thus, if a VDF is the only, or main, mechanism by which alternative livelihoods are supported the poor may end up worse off than before the REDD+

⁵⁵ A KPL News Agency press release on 11 April, 2015 wrote that eight Lao-registered trucks full of apparently smuggled timber were seized on Highway 7 in Nghe An Province (meaning they exited at Nonghaet District). The KPL release goes on to report “Phan Huy Chuong, deputy chief inspector of the province Department of Transport, said dozens of Laotian trucks with timber are hiding on small roads off National Highway 7 to avoid Vietnamese traffic police. He said that more officers have been stationed on the highway to tackle the problem.”

⁵⁶ See the Agricultural Census, 2011-2012 which states that there are 49,000 more landless workers in the rural areas from the time of the last census to the current one.

project or programme started. Both SUFORD-SU and CliPAD are trying out the VDF mechanism, and they should be urged to share their experiences and lessons learned.

One of the biggest issues in the Global South, and Laos is no exception, is that insecure land use rights make people hesitant to make long term investments. They will judge that their risk of shorter term loss is greater than longer term benefit if their land is at risk of expropriation, or if they expect to be resettled. Thus, pressure on forest land use will remain high in the local area, as smallholders also have started to seek short term over long term benefits.⁵⁷ It is not in their economic interest to forego short term gains to protect natural forest unless there are a) relatively short term gains to be had from this as well, or 2) their tenure security allows them to plan for the long term.

Market forces lead to boom and bust crop cycles and the Lao PDR is no exception to this. These cycles have led, so far, to massive land use change, including forest fallow conversion (old fallows turned to short rotation agriculture, with resulting reduction in both agro- and natural biodiversity). Such cycles are sure to continue in future. This is also a challenge for REDD+ in Laos to provide adequate tangible benefits—cash or otherwise—to local people so that they would be able to escape from this damaging boom and bust cycle. At issue as well is the likely continued awarding of concessions, as mentioned above. As mentioned, these have two inherent risks vis-à-vis multiple benefits: 1. The concession itself reduces biodiversity by replacing natural forest areas with monoculture plantations; 2. The concession overlaps with areas that people rely on for their forest service needs (NTFPs, wood, maintenance of local water tables, and the like), forcing them to go elsewhere to find these services.

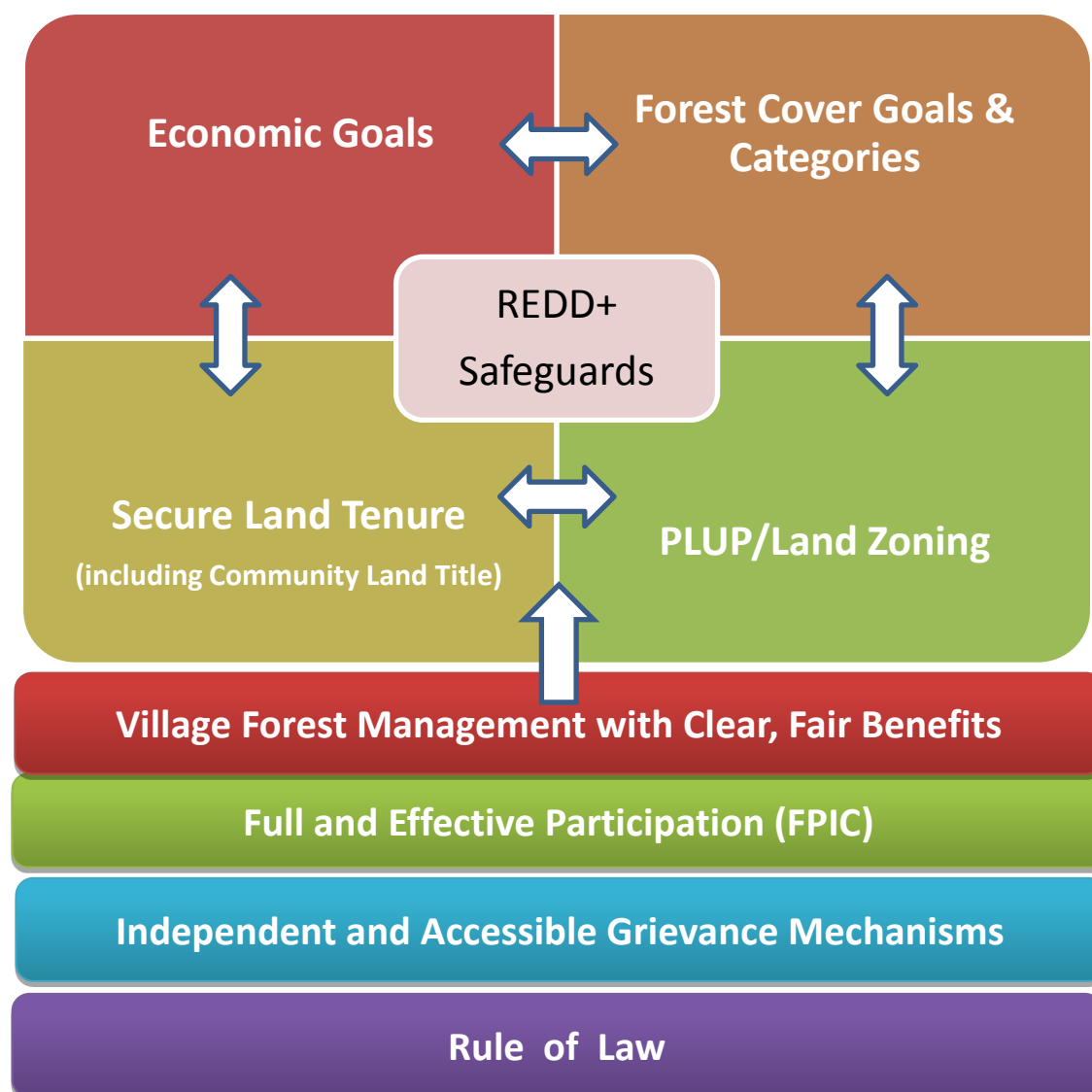
Relevant PLRs: MAF Regulation No. 822 on Land-Forest Allocation for Management and Use, 1996; Land Law, 2003; Forestry Law, 2007; Northern Lao PDR – China Industrial Economic Development and Cooperation Plan 2008 – 2020, 2008; PLUP Manual, 2010; Agricultural Master Plan, 2011 – 2015, 2010; Agricultural Development Strategy to 2025, (presentation from 2014 available); Upland Development Strategy (updated, 2015).



Maize: Moving in on a northern hillside.

⁵⁷ An exception to this is with smallholder rubber and teak in parts of northern Laos – the former especially in Luang Namtha, and the latter in Luang Phabang. Smallholder decisions to invest in these plantations may yield very good benefits, but also carry with them significant risks such as when the world commodity price drops such as has been the recent case with rubber. Recent studies (Newby, 2014 and Smith, 2014) show that smallholder teak is often a losing proposition for smallholders for a number of interlinked reasons, including taxation.

Figure 7: Interlinked Variables Affecting Local Communities and What the REDD+ Safeguards Would Need to Address



In Figure 7 the top boxes show some of the major aspects affecting local communities and their chances of benefiting under REDD+. The Cancun safeguards in Laos would need to take into account economic versus forest cover and forest category goals⁵⁸ (which are not necessarily in harmony with each other) while ensuring secure land tenure through PLUP and land zoning. The supporting elements underneath the top four boxes show some ways forward; the Cancun safeguards must be grounded in the rule of law with appropriate grievance mechanisms, full participation and means to ensure clear, fair benefits for local communities of any ethnic group. Genuine VFM is an excellent mechanism to ensure clear, fair benefits for local communities.

⁵⁸ The goal written in all major PLRs, including the Draft 8th NSEDP, is 70% forest cover. However, as the assessors of the FS2020 wrote in 2014 (Part III: 6): According to the latest available information, there is no indication that the forestry sector is successfully reversing the trend of declining forest cover. . . . It seems unlikely that the target of 70% forest cover will be achieved by 2020.

3.2.5 Safeguards f) and g) Risk of Reversal, Risk of Displacements

The last two UNFCCC Safeguards f) and g) encompass the carbon aspects of REDD+: the permanence or sustainability of the measures, and the risk that measures undertaken in one area may have negative displacement effects to another (also known as leakage). Concessions have been mentioned a number of times above as they represent serious risks to the success of REDD+. Because of intransparent and uncoordinated decision-making processes taking place at different levels in the Lao PDR (a governance issue), it is possible under current conditions for land to be suddenly taken for a concession with little or no prior notice in a local area.⁵⁹ As mentioned, there is a moratorium (PM 13, June 2012) on issuance of concessions for mining, rubber and eucalyptus plantations, but not for hydropower or SEZs.

In the remoter, hillier areas that characterise large parts of Laos, the number of economically viable alternatives that people have to their current livelihoods may be rather few. The opportunity-costs for villagers to change their current forest exploitation practices will be too high, and the risk of reversal will remain a reality. Likewise, to stop different types of forest exploitation in one area may just lead to people exploiting forest elsewhere if they do not have viable livelihood alternatives. As the FS2020 Assessment (2014: 13) clearly states: *Many areas which in reality are used for agricultural production (mainly shifting cultivation) have been classified as forest areas to be regenerated. Unless the local population can be offered alternative livelihoods, there is a high risk that forestry investments made in such areas will be lost.*

The provinces and districts in Laos pursue development policies that are generally in line with the approved NSEDPs. Every province and district will have its own five-year SEDP. Nonetheless, this will not stop *ad hoc* development promotion from occurring. For example, under a general district development strategy on crop processing, an investor agrees to build a cassava processing factory but requires tonnages of cassava that do not yet exist in the locality. In order to satisfy the demand of the factory, the district will promote much more cassava cultivation. If this requires the conversion of more fallow land to short rotation crops, or that “protection forests” within a village boundary are now turned over to cassava cultivation then reversals will occur. The same is also true if a district or province authorises other economic activities that require land clearance and/or forest conversion.

In the final analysis, different stakeholders’ prioritising short term economic gains will almost certainly outweigh REDD+ payments and longer term benefits from maintaining and/or improving forest functions. Trade-offs in favour of longer terms benefits (i.e., deferred but more sustainable benefits) do not fit well with the current development trajectory in Laos, and powerful economic interests will continue to pose a major risk to avoiding reversals and displacements.

Relevant PLRs: SEDPs, at different levels, both current and past (the reason for paying attention to past SEDPs at provincial and district level is that “old” projects, planned years previous, may suddenly be brought forward for implementation if there is budget available). There is no specific PLR that addresses permanence and leakage; the (re-)establishment of the Department of Forest Inspection (DOFI) in 2007, shows at least an intention to improve forest law enforcement. There is

⁵⁹ The National Forestry Conference, 2012 (PM 32/2012) observed many difficulties for forest management caused by poorly controlled concessions.

also an MOU (2012-2017, signed in 2012) between DOFI and the Vietnamese Forest Protection Department to cooperate on forest law enforcement that theoretically at least would reduce displacement from one country to the other (largely Vietnam to Laos).

3.3 A Note on Drivers of Deforestation and Forest Degradation

The chapter above has put the Cancun safeguards in the context of tangible risks from two angles: those that could put the successful implementation of REDD+ at risk, and those that REDD+ implementation could cause if they are not mitigated. At the same time, the discussion of risks also raises the issue of drivers, direct and underlying, of deforestation and forest degradation. It is crucial to understand the different drivers in order to complete the overall picture of what is in the “realm of the possible” for REDD+. Understanding drivers, including underlying drivers, will also contribute to developing an MRV and SIS for Laos.

It was not the remit of this study to include a driver analysis. Nonetheless, the CliPAD project provided a draft report on drivers that had been prepared by Wildlife Conservation Society (WCS) colleagues in 2014 with inputs from CliPAD advisory staff.⁶⁰ The report covers Houaphan Province where GIZ, KfW and WCS cooperate on CliPAD. Since the report on drivers is not yet finalised, it will not be quoted and only major general points will be raised here. The draft report does, however, provide an overview as to the complicated picture of drivers and underlying drivers in a province like Houaphan and how difficult it may be in reality to separate individual causes and effects with clarity, establishing historical and future deforestation rates, and also establish an appropriate reference emission level (REL). The lines between planned and unplanned deforestation are often blurred.

Many of the drivers mentioned below are difficult to measure and some are more serious or acute than others. Some of them obviously have their origins with local communities, but most of them have causal factors that are far beyond the control of local people. If, for example, the central government allows a logging concession in a local area, the people may not know anything about it in advance, but when it happens they will be forced to adjust their land and forest resource use, resulting in possible reversals or displacements.

1. Infrastructure/“Planned Deforestation.” The province is keen to develop its infrastructure, including roads, hydropower and transmission lines and an SEZ with new airport. Such infrastructure construction would normally be considered “planned deforestation” and part of “national circumstances.” Thus, “planned deforestation” would not be included in the REL, and would be taken out of scenarios for predicting future deforestation. At the same time, however, planned deforestation may impact on villagers’ use areas thus forcing them to use forest resources elsewhere. In Houaphan, major development projects include the creation of new districts which, in turn, require infrastructure construction. The Province and Districts plan to pay for the infrastructure construction by “trees for capital” deals as mentioned under 3.2.1 (Example 3) above.

⁶⁰ Luck Bounmixay WCS and Sebastian Koch GIZ 2015, Report on the Assessment of Drivers of Deforestation and Forest Degradation in Houaphan Province. Draft, not for quotation.

2. Concessions and Larger Scale Contracts. Houaphan does have a number of mining, and mine survey, concessions that were issued by the central or provincial governments. On the other hand, it does not seem to have plantation concessions such as found in other northern provinces (ex. rubber, banana). The mining concessions also involve constructing access and feeder roads, sometimes of quite a substantial scale to allow heavier machinery to move in and out of the larger mining areas. Mining concessions would also fall under “planned deforestation;” the only question here is whether the deforestation is properly controlled to keep it to the minimum required, rather than the maximum.

3. Commercialised Upland Agriculture. In Houaphan the main commercial crops at present are maize and cassava (the latter much less than the former). As mentioned above, the switching over from upland rice cultivation (and maize for local use), has meant a shift to short term (three year) rotations of upland fields. In some areas this includes larger scale destruction of forest fallows. Commercialised agriculture is clearly a driver of both deforestation and forest degradation, but the question is whether this government-driven policy for agricultural development (that brings about forest conversion) will be counted as “planned deforestation” and part of national circumstances. If not, then there will have to be some serious consideration of cash crop promotion in the province.

4. Short Rotation Shifting Cultivation. Provincial and district authorities still consider shifting cultivation as a driver of deforestation, although long rotation shifting cultivation has much less of an impact on the environment than short rotation because of the fallow succession (often involving a rapid regeneration of scrub, bushes and trees). When people’s movements and access to land are circumscribed, then they also have to confine their use of upland plots. Short rotation agriculture in the uplands (characterising much of Houaphan’s agricultural landscape) causes more serious forest degradation than long rotation shifting cultivation. The percentage and area of land affected by short rotation shifting cultivation would need to be accurately specified.

5. Domestic and Transnational Demands for Timber, Including Valuable Timber Species. As in all other provinces, Houaphan is also affected by outright illegal commercial logging for valuable species, but also by “extended logging” in infrastructure or concession areas (the concessionaire logs a larger area than formally allowed, perhaps claiming there aren’t enough good trees). Houaphan has very little area declared as production forest. Timber must, then, be sourced from either protection or “unclassified” forests which begs the question of legality of “timber for infrastructure” deals, even if government-sanctioned. With logging bans in neighbouring Vietnam and China, transnational demands for timber are high; local villagers are sometimes hired to find valuable tree species for selective logging and provided chainsaws by timber smugglers.

6. Needs and Demands for Wood/Charcoal. Local needs and demands for wood, including charcoal, are also increasing with population growth. It seems that the provincial capital of Sam Neua still relies virtually 100% on firewood and charcoal for cooking and heating.⁶¹ Although it is not really allowed, poorer rural households cut or collect firewood for sale to urban and peri-urban dwellers. In other countries, average firewood and charcoal needs per person per annum have been calculated, but the author is not sure as to whether such calculations have been made in Laos, and to what extent improved woodstoves are now being used.

⁶¹ It is possible to have smallholder woodlots of *mai tiou* to produce high quality charcoal, but the author is not sure whether this is possible in Houaphan, or if it has been tried.

7. Domestic and Transnational Demands for NTFPs and Bamboo. Drivers of forest degradation and biodiversity losses are directly related to local and transnational demands for NTFPs and bamboo. If NTFPs and bamboo would only be collected for local, non-commercialised use, it would be much easier to manage these resources more sustainably and in ways that do not lead to degradation. In Houaphan, however, there are a number of NTFPs (mushrooms and resins for example) that command very high prices nowadays and people are only too tempted to collect as much as possible of these NTFPs rather than taking care to manage them sustainably.

8. Population Growth and Livelihoods Insecurity. Laos is an extremely young nation with around 60% of its population below the age of 25. A province like Houaphan with a predominantly rural population will certainly have more than 60% under 25. With relatively few economic opportunities outside of upland agriculture, all these young people have to find gainful employment. Some of the conversion of forest to agricultural land is the inevitable result of this combination of population growth and lack of opportunities. How to quantify this historically? How to change this for the future? Are there ways to reduce pressures on forests while ensuring that this young population is gainfully employed?

9. Relocation/Resettlement and Internal Migration. As mentioned above, a major GoL policy has been to relocate its people living in remoter locations and provide them new areas to live closer to roads and larger living centres. People may also be relocated because of various development projects. This type of relocation causes both deforestation and forest degradation. At the very least, when people arrive in a new area they must provide themselves with housing timbers and firewood. There may be no flat land available for them to cultivate, meaning they will have to either open new plots for agriculture (perhaps converting forest land) or send part of the family back to the “old” area to cultivate crops or raise livestock in both places. Moreover, a certain percentage of relocation efforts end in such failure that people are forced to destroy forest resources to try to establish themselves in a new area, but then have to return to the one from which they came because of insurmountable difficulties.

10. Forest Fires. There are both planned and unplanned forest fires. It is a common practice throughout Laos for farmers to burn off crop residues before they start the next planting season regardless of whether it is shifting cultivation or not. They may also set fires to promote new grasses for livestock. Such fires occasionally get out of control, and accidental fires also happen, whether started by persons or weather-related conditions.

In summary, the primary drivers behind deforestation and forest degradation, including reductions in biodiversity, are often economic development interests associated with infrastructure construction and resource exploitation, poorly controlled plantation development, illegal logging and wildlife smuggling.⁶² Such drivers rely on exploiting local communities with few livelihood alternatives. Thus, insecure livelihoods also belong to the underlying drivers of forest degradation in the sense that people with few alternatives will be receptive to suggestions from outsiders to harvest valuable timber species, poach wild animals or overharvest valuable NTFPs. Their lack of

⁶² It has not been a talking point of this report, but the Lao PDR is, unfortunately, known as one of the wildlife smuggling hotspots in Asia. It has had at least two reprimands from CITES, of which it has been a Party since 2004; the most recent reprimand (and trade suspension) came in early 2015 with the Lao PDR not having prepared a required National Ivory Action Plan for submission to CITES.

income generation alternatives means also that they may have to convert their old fallows to shorter term rotations on the promise of higher cash income from the district and traders. Any programme related to slowing down or reversing the trend towards “empty forests” will have to address such livelihoods issues as part of more integrated landscape approaches to REDD+ and climate change.

4 Summary Gap Analysis of PLRs Relevant for the Cancun Safeguards

The discussion in the sections above has shown that relevant PLRs do, indeed, exist that cover some of the different aspects explicit or implicit in the Cancun safeguards. There are no safeguards, however, besides a) that are completely covered by current PLRs. The gaps will be highlighted below through further, detailed analysis in tabular form. There are, moreover, some areas where there is no PLR framework at all to cover “new” issues. Among these are PES and how to manage carbon offset projects (with the private sector) under REDD+. “Carbon rights” is also a topic that is yet to be included in any currently valid PLR. The revised Forest Law will likely include definitions of, and more detailed articles on, forest carbon but it is not known when the new law will be ready, nor exactly how “carbon rights” will be covered.

Within the past five to ten years there have been many changes made in the PLR Framework in the Lao PDR. In some cases new laws, decrees and resolutions have been created (such as on IEE and ESIA) and others revised to bring them up to date and better reflect the Lao PDR’s place in an ever more globalised political economy. With so many changes happening within a short space of time, however, it is proving difficult for those “on the ground” to keep up. Thus, while lawmakers at the highest levels continue to make changes, often with the assistance of development partner experts, the implementation gaps between new PLRs and what occurs at local level are not getting narrower. The “rule of law” is a necessary goal but one that is still far off, as local officials and villagers will require much more awareness, knowledge and practice on PLRs that are themselves in a state of flux.⁶³

Another aspect of the PLRs that may cause “confusion” for implementers is that they are, in fact, interrelated but only partly cross-referenced; those that are cross-referenced require access to several laws or decrees, but these are seldom available in a district office. When one PLR mentions concessions, for example, it may not adequately cross-reference all the relevant Articles from other laws that might affect the awarding of particular types of concessions. In some cases PLRs may have been repealed, replaced or updated, but the information is not properly disseminated to the district offices. According to the Politburo Directive on Sam Sang, District authorities are required to disseminate laws to villages, but this will only work well if the authorities themselves are in a position to be able to explain the laws.

In judging whether PLRs conform to the Cancun safeguards, it helps to disaggregate the safeguards into criteria against which the PLRs may be more easily measured. In this respect, there are a number of safeguards standards or guidelines—generally with principles, criteria and steps—that

⁶³ An example from the *Vientiane Times* of 7 April, 2015: it is reported that a new resolution is being prepared to “speed up” the process of hydropower approval, making it more transparent and less corrupt. This will mean yet another important environmentally-related PLR for provincial and district officials to learn how to put into effect.

should assist in creating a country safeguards system. These have been developed within the past few years. UN-REDD, for example, developed the SEPC with seven principles and 24 criteria.⁶⁴ Another standard in use is the Social and Environmental Standard (SES) with eight principles and 34 criteria. This was developed by the *REDD+ SES Initiative* overseen by a multi-stakeholder International Steering Committee and supported by a secretariat from the Climate, Community & Biodiversity Alliance and CARE (INGO led, but working closely with government REDD+ agencies).⁶⁵

In the section that follows the author has decided—unilaterally, in the absence of a Safeguards Working Group to cooperate with in Laos—to apply a set of 34 criteria, as shown in Table 3 below. These criteria are based on an earlier work by Annandale et al done in 2013 towards a PLR gap analysis in Vietnam, and which drew primarily on the SEPC and SES criteria. The conditions in the two countries have their own particularities, of course, but the similarities in the political and legislative systems do make it possible to apply the same set of criteria.

Table 3: 34 Criteria Used for PLR Gap Matrix

Cancun Safeguard	Interpretation Criteria Used to Assess PLR Gaps
a) [REDD+] Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements	1 Objectives of National Forest Strategy. Goals stated in NSEDP. 2 Lao PDR's accession and/or ratification of relevant international conventions and agreements and statements within locally relevant legislation that link to these. 3 Statements of commitment to national poverty reduction strategies, national biodiversity conservation policies/action plans, and other sustainable development strategies.
b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty	1 Clear and coherent institutional structures and mandates for forest management. 2 Clear and coherent jurisdictional (sub-national) laws and institutional mandates for forest management. 3 Clear system for environmental <i>and</i> social assessment of potential impacts emanating from policies, plans, programmes, and projects that may affect forest resources. 4 Clear system for appraisal and approval of policies, programmes, plans, and projects that may affect forest resources. 5 Transparency and accountability towards other stakeholders impacted by national forest governance structures. 6 Participatory procedures for decision-making on, and implementation of, forest management and benefit sharing. 7 Access to information on ownership and use rights, decision-making processes and recourse mechanisms. 8 Transparent rules on converting or alienating forests, including for sale, land use planning, easements and concessions. 9 Legislative fines, penalties and prosecutions that appropriately address deterrence.
c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national	1 Incorporation of traditional knowledge into forest management and governance. 2 Statements promoting and enhancing gender equality, gender equity and women's empowerment. 3 Rules to obtain and protect FPIC. 4 Dispute resolution and grievance redress mechanisms that are equitable,

⁶⁴ UN-REDD collaborates with 58 partner countries across Africa, Asia-Pacific and Latin America and the Caribbean. There are UN-REDD National Programmes in 21 countries, including in ASEAN – Cambodia, Indonesia and Vietnam.

⁶⁵ The SES Initiative framework is being piloted in some 13 countries, including Indonesia and Nepal in Asia, generally at jurisdictional level.

circumstances and laws	transparent, accountable, independent, confidential and affordable (or free), and that respect customary justice systems of indigenous peoples and local communities. 5 Reinforcement of capacity of the judiciary for alternative dispute resolution, including expanding adjudicators, arbitrators or mediators to include administrative bodies and representatives of local communities.
d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities.	1 Clearly defined and enforceable rules on levels, timing and mechanisms for stakeholder participation in decision-making. 2 Incorporation of culturally sensitive, traditional and community structures for decision-making, including representatives chosen by themselves in accordance with their own procedures. 3 Broad public consultations at various levels of project <u>design</u> and implementation (i.e. public notice and open comment periods) 4 Accessible and enforceable “access to information” rules for all applications.
e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ activities are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.	1 Rules for the entitlement to benefits, and how benefits will be distributed among investors, landowners, government, local communities and indigenous peoples and persons engaged in forest management (i.e. for opportunity costs, traditional knowledge, employment, management, royalties). 2 Pricing tools, value addition and other incentives to promote alternative and sustainable livelihoods, for instance from NTFPs or ecotourism. 3 Clear and defined rights to forests and carbon ownership, use and transfer. 4 Clear and accessible legal framework supporting and protecting attribution of entitlements for land tenure, including for customary, freehold, leasehold, concessions, leases and public ownership, use, management and transfers of interests. 5 Rules on the alienability and acquisition of lands, including compensation or resettlement. 6 Coordination of land tenure with forest governance objectives and other land use planning.
f) Actions against risk of reversals.	1 Action plans to deal with force majeure events (i.e. fires, extreme weather events, droughts). 2 Statements indicating an awareness of the risk of reversals of REDD+ achievements, including potential future risks to forest carbon stocks. 3 Rules for risk mitigation mechanisms such as title registration, insurance, bonds, liens, guarantees and buffers or carbon pools. 4 Risk management tools for monitoring and enforcement.
g) Actions to reduce displacement of emissions.	1 International or regional treaties on displacements. 2 Information systems that report on how displacements are being addressed. 3 Statements indicating the need to avoid or minimize adverse impacts on carbon stocks, other ecosystem services and biodiversity of non-forest ecosystems.

In the matrix that follows, each of the Cancun safeguards is listed, and relevant Lao PLRs are broadly (not in detail) measured against the 34 criteria included under Table 3. The matrix includes brief descriptions of the PLRs as to where they may correspond to the selected criteria. For some of the criteria, mention is made as to whether there is existing, related, monitoring or not. While there are many PLRs that provide partial coverage of the Cancun safeguards, there are several areas with large gaps in both the PLRs *and* implementation. Primary among these are PLRs on PES (basically non-existent), on benefit-sharing (incomplete), on grievance redress (rudimentary), on full and effective participation/FPIC (incomplete), on the status of carbon, also in association with carbon offset projects (very incomplete to non-existent), on reversals and on leakages (incomplete to non-existent). Chapter 5 takes up the issue of options and recommendations for PLR gap-filling.

4.1 PLR Gap Analysis Matrix

Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps <i>Both PLR and Implementation</i>	Remarks <i>Including on Reporting and Monitoring</i>
a.) [REDD+] Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;	a1 Objectives of National Forest Strategy. Goals stated in NSEDP.	Main objective of GoL is to achieve 70% forest cover by 2020, and is repeated in all relevant PLRs, including Draft 8 th NSEDP. Future REDD+ actions would both complement and be consistent with this major objective.	No major gaps in terms of formal statements and commitments to forest and environmental protection. “Gap” lies more in interpretation and implementation of PLRs in Provinces and Districts, and in inter-sectoral inconsistency.	There are no regular or clear monitoring procedures on how objectives of the Forest Strategy should be reported on; 2014 assessment of progress indicated a big challenge related to data collection on virtually all forest-related indicators. 70% forest cover by 2020 considered unattainable.
a) Objectives of national forest programmes, cont’d.	a2 Lao PDR’s accession and/or ratification of relevant international conventions and agreements and statements within locally relevant legislation that link to these.	Laos is a member of UNFCCC. Laos ratified the CBD in 1996; As part of its CBD commitments, Laos did formulate an NBSAP in 2004. Laos joined Ramsar Convention in 2010. According to Law on Making Law (2012), “If the provisions of existing legislation and newly adopted legislation are inconsistent with the provisions of international conventions or treaties that Lao PDR is party to, the provisions of the international convention or treaty prevail.”	The NBSAP had a workplan to 2010 which is yet to be updated; Laos is yet to fulfil reporting requirements to the CBD. Laws and policies do not generally explicitly refer to Laos’ obligations under the international conventions. Laos has yet to develop a clear “climate change” policy framework, but it does have a 2009 Climate Change Strategy (not updated). Recent report (2015) to Ramsar COP12 states there is ongoing work to bring Lao PLRs into conformity with Ramsar Convention.	As above, major challenges in the Lao PDR to conduct regular, adequate data collection for monitoring and action to meet its timely reporting requirements under conventions on environment and human rights. Generally, few specific linkages between existing laws and the international treaties and conventions, although some have been altered to make them more compliant. (ex. Penal Code).
a) Objectives of national forest programmes, cont’d.	a3 Statements of commitment to national poverty reduction strategies, national biodiversity conservation policies/action plans, and	There are no gaps on this, re: poverty. Most policies and strategies explicitly refer to the overarching goal of poverty reduction and exiting from LDC status by 2020.	Biodiversity is not clearly mentioned cross-sectorally (only forest cover goals). Sustainable development is not so clearly defined in various policies and plans.	A lot of regular, countrywide monitoring on poverty, but quality is a question: tendency to report only successes, and based on now outdated (not adjusted for high inflation rates) per capita income

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps <i>Both PLR and Implementation</i>	Remarks <i>Including on Reporting and Monitoring</i>
	other sustainable development strategies.			figures. Biodiversity conservation is underreported, whether flora or fauna (including large fauna).
b.) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty	b1 Clear and coherent institutional structures and mandates for forest management.	<p>Division of responsibilities between DFRM and DOF essentially to have production forests and forest law enforcement under DOF and protection/conservation forests under DFRM. Enforcement responsibilities are split between the two ministries, but DOFI under MAF appears to be lead on this.</p> <p>FDF established in 2005, and an Environment Protection Fund (EPF). FDF predates EPF by a few months.</p>	<p>Previous institutional arrangement with all Forest-related Divisions and Departments under MAF seems to have been clearer than the post-division of responsibilities. Many forest laws and decrees passed prior to institutional reorganisation and not brought up to date.</p> <p>Gap is especially large at local level where allocated village forests should theoretically be taken care of by two different departments. Coordination difficulties exist at Central level which causes some slow-downs at other levels in terms of leadership and management.</p> <p>Various factors, including moratorium on timber harvesting from PFAs have caused FDF to have inadequate funds.</p> <p>According to EPF no other environmental funds should exist but it is predated by FDF.</p>	<p>Discussion has apparently been re-opened as to the institutional arrangements for forest management; this indicates that internal assessments are not so favourable regarding the current set-up.</p> <p>There is a Division of Village Forestry and NTFP Management, but its role in creating, for example, VFMPs is unclear beyond assisting the provinces; it was only established in 2012 (apparently, there are only 10 VFMPs in the country done with the lead of this Division).</p> <p>The FS2020 Review deemed the FDF “inadequate” to contribute to the funding of forest management in Laos.</p> <p>Village forests are a “loose category” institutionally in that they may include forest types that are under the responsibility of MONRE or MAF.</p>
b) Governance cont'd	b2 Clear and coherent jurisdictional (sub-national) laws and institutional mandates for forest management.	Yes. General policies such as <i>Sam Sang</i> and on Development Planning show clear enough mandates from provincial down to village	The mandates for different levels are clear enough on paper, including for example land ceilings they are authorised to lease for	Example of Village Forest Committees (or similar); have been sanctioned for many years, but still today there is only a tiny minority that actually functions.

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps Both PLR and Implementation	Remarks Including on Reporting and Monitoring
		level.	concessions, but the interpretation at sub-national levels means that clarity and coherence may be diluted. Lack of capacities at jurisdictional levels always major issue.	
b) Governance cont'd	b3 Clear system for environmental and social assessment of potential impacts emanating from policies, plans, programmes, and projects that may affect forest resources.	Fairly recently promulgated Environmental Law (2012), and MONRE EIA regulations 8029 on IEE and 8030 on ESIA and 8056 on types/sizes of development projects requiring IEE or ESIA (all issued Dec. 2013). These laws and regulations provide for consultation of all key stakeholders and “affected persons.”	No gaps on paper, but many projects started before the three key MONRE regulations issued in 2013. Capacities are big issue, as is willingness to fully involve all relevant stakeholders in IEE or ESIA	Main issue here lies in local staff's abilities to understand and support IEE or ESIA, and adequate coordination with other agencies.
b) Governance cont'd	b4 Clear system for appraisal and approval of policies, programmes, plans, and projects that may affect forest resources.	If the National Assembly does not exercise oversight during its sessions, there is no other “clear system” to double-check how various policies, etc. may affect forest resources.	Large gaps here what with ongoing “timber for capital” and “timber to repay debts” deals. Logging from infrastructure development areas is not well-regulated or controlled.	A major issue here lies in inter-sectoral coordination, and allowing “timber for capital” measures that are so destructive of forests. Forest Conference 2012 resolved to stop this practice.
b) Governance cont'd	b5 Transparency and accountability towards other stakeholders impacted by national forest governance structures.	The Forest Law and FS 2020 mention “participation” of different stakeholders. This includes local people. At Central level there is accountability to Ministerial level; Laws do set out tasks and responsibilities of all levels, including their accountability.	There is limited downward accountability in the forest governance structures; generally upward reporting based on fixed targets. Many important decisions taken at Central level without reference to conditions at local levels (ex. determination of boundaries of production, protection and conservation forest).	No policy or regulatory statements that would support “freedom of information” in terms of how decisions are made; this includes financial matters related to benefit-sharing. At local levels, people often only know of decisions taken at higher level when the “bulldozers move in.”
b) Governance cont'd	b6 Participatory procedures	Various PLRs mention that	Big gaps here. Even	There is too little transparency in

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps <i>Both PLR and Implementation</i>	Remarks <i>Including on Reporting and Monitoring</i>
	for decision-making on, and implementation of, forest management and benefit sharing.	“participation” of communities is a requirement (PM59/2002 on PSFM, for example). FS2020, 3.2.3.3 “To strengthen the role of forestry in poverty eradication, . . . villagers in production forest areas. . . should participate in forestry planning and operations at the field level and should share in the derived proceeds.” President Decree 1/2012 describes benefit-sharing in PFAs with PSFM.	“customary use rights” are circumscribed by need to follow plans and regulations which is a contradiction in terms. Unequivocal procedural elements are missing for participation. Local communities are not recognised as decision-makers under current legislation, and have no voice in benefit-sharing.	existing forest legal documents re: benefit-sharing mechanisms. Local communities have certain rights, but they are inevitably determined from higher levels and villagers must always follow plans and regulations determined elsewhere.
b) Governance cont’d	b7 Access to information on ownership and use rights, decision-making processes and recourse mechanisms.	Use rights are set out in PLRs like Land and Forest Laws, Recourse mechanisms to administrative authorities are also mentioned in these same Laws and in the Environmental Law. Right of petition is provided as under the 2005 Law on Petitions. NA Hotline during NA sessions.	Right of appeal of major decisions such as a village being located within a protection forest does not seem to exist. Actual access to information is limited; if local people feel aggrieved they complain to Village Headman in first instance. Their information on other recourse mechanisms seems limited.	In many local communities, people simply carry on with their livelihood activities until told otherwise; it is not based on an understanding of existing PLRs unless there has been a dissemination campaign. Information on petitions, grievances made through NA Hotline, and their outcomes, is not known, and unlikely that any data are systematically collected on this.
b) Governance cont’d	b8 Transparent rules on converting or alienating forests, including for sale, land use planning, easements and concessions.	Land Policy (2014 revision) and Land Law (2003) and Forest Law (2007) make clear that only “barren” or “degraded” forests may be converted for other uses, turned into concession areas, etc. PM 135/2009 on	There is an “out” clause stating that forests may be converted if in the “public” interest (no rights of appeal on this) Another issue is that “degraded” or “barren” are not clearly defined so that local communities could	No data on how much “extra” forest has been lost to infrastructure development in Laos. No clear data on how much so-called “barren” forest land was in fact part of village use land and lost to concessions.

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps Both PLR and Implementation	Remarks Including on Reporting and Monitoring
		Concessions also says “barren” forest land may be given in concession.	protect their defined use forests. Logging in infrastructure areas inadequately defined.	
b) Governance, cont’d.	b9 Legislative fines, penalties and prosecutions that appropriately address deterrence.	PLRs which mention deterrence normally mention warnings, re-education and fines. The Penal Code of 2005, Art. 139 mentions up to five years prison and unspecified fines for illegal logging.	The main laws do not specifically mention the amount of fines for levels of infraction, and at local level it is not sure how a system of fines would be implemented. It seems the law does not provide a credible deterrent to illegal logging.	Very little information available on warnings and fines in Laos, and what effect, if any, they might have. Have heard of “shifting cultivators” getting fined for cutting trees in areas they apparently were not supposed to.
c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws	c1 Incorporation of traditional knowledge into forest management and governance.	Forest Law 2007, and Land Law 2003 both recognise “customary rights,” but without giving them precedence or special status. The 2007 Law on Wildlife and Aquatic Animals also recognises “customary rights,” but not knowledge (this law doesn’t include flora). Laos is Party to the Nagoya Protocol which acknowledges traditional knowledge and rights to genetic resources.	This is an area where there are major gaps; “traditional” knowledge has no special status in law, there are no means so far of incorporating it in law, and ethnic groups are “equal” but also without special status (starting from the Constitution).	Traditional knowledge in Laos is not incorporated in general into laws; people have customary rights but restricted to “following the laws and regulations” that have not included their knowledge! There is no regular reporting by either MONRE or MAF on how customary rights are respected in different aspects of forest and biodiversity management. The GoL has difficulties to meet its regular reporting requirements, for example, to the CERD, CEDAW, CESC and CBD Committees.
c) Knowledge and rights of local communities, cont’d.	c2 Statements promoting and enhancing gender equality, gender equity and women’s empowerment.	The Land Law (Draft) and MONRE Regulations on land say there is “gender equality” on land rights and titles.	No major legal documents related to Forestry or Environment specifically mention equal gender rights, or acknowledge any special role of women in forest management (for example)—it remains a major gap.	Reference would have to be made to the National Committee on the Advancement of Women and the latest National Plan for the Advancement of Women.
c) Knowledge and rights	c3 Rules to obtain and	There are a number of laws	There are no PLRs in Laos	Different donor-supported projects

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps Both PLR and Implementation	Remarks Including on Reporting and Monitoring
of local communities, cont'd.	protect free, prior informed consent.	and regulations that call for “consultation,” such as the Environmental Law, 2012 and the MONRE Regulations 8029 and 8030 on IEE and ESIA.	that go so far as to include necessary “consent” of ethnic groups or local communities. This is a major gap as they do not “protect” FPIC. There are also no specific provisions or guidelines for conducting consultations with different ethnic groups in ways the groups consider appropriate.	in the forestry sector are piloting FPIC measures, generally with either the LFNC or LWU or both of them together. There is little systematic reporting on the success, or otherwise, of FPIC from the affected groups’ points of view.
c) Knowledge and rights of local communities, cont'd.	c4 Dispute resolution and grievance redress mechanisms that are equitable, transparent, accountable, independent, confidential and affordable (or free), and that respect customary justice systems of indigenous peoples and local communities.	There are grievance redress mechanisms (see b7), but access to justice is limited; VMUs are encouraged but can only handle intra-village conflicts (VMUs may well rely on traditional dispute resolution mechanisms even though they are recognised in law).	Grievance redress mechanisms are not clear enough beyond village level (VMUs, traditional elders only within the village). The rule of law does not extend to rural areas in sense of people being able to make appeals should they feel their legal or human rights have been violated. Law on Petitions (2005) does not make special provision for remote areas or for people who may have trouble to write.	There is no systematic monitoring or reporting on how grievances are handled in the Lao PDR, unless specific projects such as NT2
c) Knowledge and rights of local communities, cont'd.	c5 Reinforcement of capacity of the judiciary for alternative dispute resolution, including expanding adjudicators, arbitrators or mediators to include administrative bodies and representatives of local communities.	The Ministry of Justice encourages Village Mediation Units (VMUs) to resolve village-level disputes. Ministry of Justice Advice/2010 on Resolving Village Disputes.	Basically, there are limited means for dispute resolution beyond village level; people with serious grievances call the NA Hotline during its sessions. Few provisions for dispute resolution that go beyond “administrative procedures” that villagers cannot understand well.	Local legal system is still too weak in Laos to support different alternatives on dispute resolution. The weakness is reflected in district promotion of “case free villages” that dissuade villagers from taking disputes beyond the village level. There is no reporting on the number of grievances, nor their resolution, in Laos.
d) The full and effective	d1 Clearly defined and	Encouragement for	With an administrative	Participatory planning exercises

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps Both PLR and Implementation	Remarks Including on Reporting and Monitoring
participation of relevant stakeholders, in particular indigenous peoples and local communities.	enforceable rules on levels, timing and mechanisms for stakeholder participation in decision-making.	stakeholder participation in planning, forest and/or land management is provided for in: PSFM for production forests, PM59, 2002, PLUP Manual, 2010; Participatory Planning Manual, 2012 MPI; MONRE Regulations 8029 and 8030 on IEE and ESIA. Poverty Reduction Fund Implementation Manual has strict provision and procedures for participation.	system based on upward accountability, the procedural aspects of participation are not well-defined and followed in the absence of donor-supported projects. Timing is also not clear.	may happen as “one off” events (once in several years) that local communities may later have no memories of; they are invited to make inputs, but what happens to these inputs at higher levels may be unknown to them because no feedback mechanism. Manuals do not have the “force” of law or of ministerial regulations.
d) Full and effective participation, cont'd.	d2 Incorporation of culturally sensitive, traditional and community structures for decision-making, including representatives chosen by themselves in accordance with their own procedures.	N/A	There are no PLRs in Laos that go this far in support for local participation and decision-making.	There are no provisions in any PLRs for this although it may happen informally or on an ad hoc basis. It should actually become part of a REDD+ SIS, with local representatives included in providing reports.
d) Full and effective participation, cont'd.	d3 Broad public consultations at various levels of project <u>design</u> and implementation (i.e. public notice and open comment periods)	Environmental Protection Law and regulations 8029 and 8030 do provide for public consultations.	Public consultations should take place, but they are dependent on the project holder carrying them out. If local authorities not so aware of IEE and ESIA regulations, they may not insist on full consultations.	Reporting on public consultations is sketchy at best; information as to what has taken place is seldom reported on or made public.
d) Full and effective participation, cont'd.	d4 Accessible and enforceable “access to information” rules for all applications.	N/A	Free and enforceable access to information is next to impossible in Laos.	
e) That actions are consistent with the conservation of natural	e1 Rules for the entitlement to benefits, and how benefits will be distributed	Benefit-sharing is mentioned in President Order No. 1/2012 but only for PFAs,	Benefit-sharing is not clearly legislated for in Laos. No legislation on PES.	President Decree 1/2012 came in when there were no quotas for PFAs, so there are few recent

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps <i>Both PLR and Implementation</i>	Remarks <i>Including on Reporting and Monitoring</i>
forests and biological diversity, ensuring that REDD+ activities are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.	among investors, landowners, government, local communities and indigenous peoples and persons engaged in forest management (i.e. for opportunity costs, traditional knowledge, employment, management, royalties).	and only in relation to “sustainable forest management.” There is a draft REDD+ decree on carbon offset projects which may address some of these points.		examples of actual benefit-sharing in Laos, and it's not been reported on. Past payments that were to reach villages, based on timber revenues sometimes did not reach village bank accounts because of unclear procedures of releasing funds from higher levels. No data available on villager level of satisfaction with benefit-sharing mechanisms under PFAs in the past.
e) REDD+ multiple benefits, cont'd.	e2 Pricing tools, value addition and other incentives to promote alternative and sustainable livelihoods, for instance from NTFPs or ecotourism.	N/A for the most part. Ecotourism is seen as a possible income earner for local people in Laos: The Forestry Law, 2007 Article 43 is one of a number of PLRs that allows or encourages tourism in natural forests.	GoL policies vis-à-vis rural dwellers are geared to commercial agriculture and having local communities less reliant on forest resources; positive incentives to promote local, agro-forestry livelihoods less common.	
e) REDD+ multiple benefits, cont'd.	e3 Clear and defined rights to forests and carbon ownership, use and transfer.	Rights to forests have been getting defined since the 1990s, but still not clear for local communities because State's not relinquishing de facto control of most forest land in Laos. People do have rights to trees (carbon) they planted on barren forest land (Forest Law, Art. 4).	Carbon ownership use and transfer is not yet clear under any law (concept newer than recent laws).	Community land title to Village Use Forests is possible but quality, quantity and adequacy of such forests may be a question mark.
e) REDD+ multiple benefits, cont'd.	e4 Clear and accessible legal framework supporting and protecting attribution of entitlements for land tenure, including for customary, freehold,	Land Law 2003 covers some of the topics clearly, but under Draft Land Law 2014, State is allowed to expropriate land for both public and private purposes.	At issue is that local communities often unaware of their land use rights; Land expropriation for private purposes is allowed in Laos which makes local tenure	Land grabbing in Laos, especially in the South, appears widespread, but is not systematically monitored, documented and reported.

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps Both PLR and Implementation	Remarks Including on Reporting and Monitoring
	leasehold, concessions, leases and public ownership, use, management and transfers of interests.		much less secure. Land titles would at least give people more chance for adequate compensation, but most rural people do have registered titles. Validity or legality of 3-year Land Use Certificates never tested.	
e) REDD+ multiple benefits, cont'd.	e5 Rules on the alienability and acquisition of lands, including compensation or resettlement.	Partly compliant. Rules on compensation and resettlement contained in PM192/2005 in the case of "development projects." Land Law (Draft) sets compensation depending on land type and whether expropriated for public or private purpose.	Draft Land Law (2014) makes it possible for the State to expropriate land for private purposes;	In the past Community Land was unavailable for concessions/leases; under Draft Land Law, requires only a simple majority to agree; Land has become a contentious, conflicted issue in Laos but little data are available on conflict resolution and the like.
e) REDD+ multiple benefits, cont'd.	e6 Coordination of land tenure with forest governance objectives and other land use planning.	Yes, there is some coordination to protect both people's tenure and forest resources: people may live with forest but are restricted in what they may exploit; resource use rights are mentioned in both Forest Law and Land Law.	Rural land tenure security remains problematic in that very few rural land parcels have been titled and registered for "permanent titles."	
f) Actions against risk of reversals.	f1 Action plans to deal with force majeure events (i.e. fires, extreme weather events, droughts).	Action plans yet to be developed, but orders on vigilance against fire are made (not put in frame of an action taken to mitigate risk of reversal). Adverse climate events and disaster mitigation, also affecting forests, starting to become part of policy dialogue.	Few provisions.	
f) Risk of reversals, cont'd	f2 Statements indicating an awareness of the risk of	N/A	No provisions	

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Cancun Safeguard	Interpretation Criteria	Compliance with Safeguards	Gaps <i>Both PLR and Implementation</i>	Remarks <i>Including on Reporting and Monitoring</i>
	reversals of REDD+ achievements, including potential future risks to forest carbon stocks.			
f) Risk of reversals, cont'd	f3 Rules for risk mitigation mechanisms such as title registration, insurance, bonds, liens, guarantees and buffers or carbon pools.	N/A	No provisions	
f) Risk of reversals, cont'd	f4 Risk management tools for monitoring and enforcement.	N/A	No provisions	Systematic and accurate monitoring is the weakest link in the governance system.
g) Actions to reduce displacement of emissions.	g1 International or regional treaties on displacements.	There is no treaty as such but an MOU 2012 – 2017, between the Forest Protection Department, Vietnam and DOFI, Laos on cooperating on law enforcement between the two countries.	No provisions as such, but MOU does mention international agreements both countries have signed up to, including REDD+.	The existing MOU between two Forest Departments could be used as a beginning point for further, more specific MOUs to encourage FLEGT and displacements reductions.
g) Displacement of emissions, cont'd.	g2 Information systems that report on how displacements are being addressed.	N/A	Large gap on this, as no clear concepts under any laws yet as to how displacements should be addressed besides “regular” law enforcement activities which are fairly inadequate.	Since there is no clear picture yet on multiple drivers, there is also no information system possible on how to address leakage.
g) Displacement of emissions, cont'd.	g3 Statements indicating the need to avoid or minimize adverse impacts on carbon stocks, other ecosystem services and biodiversity of non-forest ecosystems.	N/A	No provisions.	

N/A = Not Available

5 PLR Options and Recommendations

In conducting the PLR gap analysis in Laos it became quickly apparent that there are major mismatches between the information/data needs for such an assignment and what is actually available. These mismatches cannot be overcome at present. The first, as described under Chapter 2 above, is that there is, as yet, no common vision or strategy as to what the role of REDD+ should be in Laos. Certainly the concept that REDD+ should be used to “eradicate” shifting cultivation because it is “the” driver of deforestation needs major revision. Without a REDD+ vision, the discussion on the Cancun safeguards remains somewhat academic.

The second critical mismatch is that major laws pertaining to both land and forestry have been under revision for several years. An overarching Land Policy, to which the latest revisions of the Land and Forest Laws must conform, is not ready. The DFRM has been in process of drafting a REDD+ PLR (most likely with PM decree status) to take carbon offset projects into account, but this is also not ready.⁶⁶ The third critical issue, as mentioned under Chapter 2, is that the institutional clarity for REDD+ is also not yet present. When DOF was split and part of its forest management and supervision functions were allocated to DFRM under the new MONRE it also meant, in effect, that the national responsibilities for REDD+ were split and diluted.

In terms of the Cancun safeguards there are several issues that stand out as particularly important PLR gaps requiring high attention, as follows:

- Land tenure security, including forest land tenure security and use rights;
- PES and Benefit sharing, including VFM;⁶⁷
- Transparency (Information);
- Grievance Redress.

It is still a blank page, however, as to which institution should take the lead on these issues as there is as yet no Safeguards Working Group, not to mention a strong one that would be needed to fulfil the challenging tasks ahead. Such a group should be supported under the FCPF grant as a priority.

At present, therefore, viable options and recommendations on PLR gap filling are extremely difficult to make. No one knows a) what the institutional landscape vis-à-vis forests and environment will look like twelve months from now, and b) what major, suggested, revisions to the Land Law and Forest Law will be approved.⁶⁸ Therefore, the sections below can only provide rough and general ideas—ones that hopefully the FCPF grant implementers will be able to work on and take further—and should not be understood as more than that. In the final analysis, the question of “gap-filling” would revolve around three major options:

1. Change all relevant laws, decrees and regulations to make them conform with the Cancun safeguards;
2. Create new, specific PLRs to conform with REDD+ and the Cancun safeguards;

⁶⁶ A company called New Chip Xeng is cooperating with the GoL in such a carbon offset in south-central Laos involving some 347,000 hectares of two National Protected Areas (Xe Bang Nouan bordering Savannakhet and Salavan and Dong Phou Vieng wholly within Savannakhet); a first in the Lao PDR, but apparently not yet with a supporting legal framework.

⁶⁷ The author wishes to emphasise again that references to VFM are to village or community forest management concepts by which villagers have a maximum of effective participation, including decision-making power over the forests they require for their livelihoods.

⁶⁸ Development partners have been invited to submit comments to both the Land and Forest Law drafting committees, but of course no one knows which of the many suggested Articles (especially the Forest Law because there were so many submissions) will be taken up.

3. Change only a very few, current (key) PLRs to bring them into conformity with the Cancun safeguards.

At this stage, given the time (around four years if completed within 2015) it has taken to revise two major pieces of legislation, it is most certainly *not* advisable to try to revise all relevant laws, decrees and regulations. Since it is unknown how far the Land and Forestry Laws are with the revision processes, and by what mechanism a report like this one could still – at this late stage – be brought to bear on the ongoing revisions, it also does not seem a hopeful option to propose to revise even a few key pieces of legislation. Moreover, as this report has argued throughout, it is often the gap between law and practice that is the most crucial, rather than the gap between the wording of a domestic law, for example, and international safeguard standards.

Therefore, it may be best to wait until the revised Land and Forest Laws are available, and then work closely with MONRE and/or MAF on clear sets of related regulations that conform with both the revised laws and the Cancun safeguards, particularly in relation to land tenure security and VFM. In this regard, for example, relevant human rights and environmental conventions and their Articles could be mentioned under the regulations (if not already clearly mentioned under the main laws). The Law on Making Legislation (2012) states unconditionally that if there is any discrepancy between a Lao law and an international convention, then the Articles of the international convention take precedence above the Lao law.

Since there are at least three key topics which have very little, or only partial, legislation to cover them it would appear that the optimum course of action would be to support MONRE and MAF in the first instance on formulating new legislation that could cover the key topics of PES and benefit-sharing. On “Freedom of Information” and on Grievance Redress there are obviously other Ministries that are involved. For example, if it is deemed that the Law on Petition (2005) could be revised to make it more comprehensive (with more accessible mechanisms than at present), then this would likely need to involve the Ministry of Justice and a Standing Committee of the National Assembly. Likewise, an overarching “Freedom of Information Law” would probably need to be sponsored by a body like the National Assembly and/or, perhaps, the Ministry of Home Affairs.

In the next four sections, the author revisits four main issue areas that need PLR attention by first reviewing the existing state of the PLRs with a “What’s There?” sub-section followed by a “What’s Needed?” sub-section.

5.1 Land Tenure Security

What’s There?

The process of land titling and land registration in rural Laos has been extremely slow. Still today, the vast majority of parcels that have been titled and registered are in urban areas.⁶⁹ Moreover, as mentioned above, the GoL’s systematic attempts over decades to ban shifting cultivation has meant that bush fallow (*pa lao*) has been categorised as forest rather than agricultural land and not eligible for titling (unless included under village use forest). As mentioned above, because village forest lands and resources are often communally managed (including areas under shifting cultivation), community titling should be prioritised.

⁶⁹ Personal communication, LIWG, and Minutes of Land Sub-Sector Working Group on Land Policy and Tenure, February 2015.

Under a draft of the revised land law (2014), Article 49 (Amended) states that land use rights to forest land may be granted “to families, villages, groups of villages and organizations for the purpose designed for each forest category by issuing a certificate for them for the term as determined by the Government.” The Article goes on to state that “individuals and entities” may not receive titles to forest land “unless it is necessary to change the land category from forest land to another land category as per laws and regulations.”⁷⁰ Unfortunately, there is nothing to state that the certificates could be permanent, but rather that titles to forest land would only be issued if the forest land has already been re-categorised. There is also no provision under Article 49 for limits of forest land allocation. Article 21 under the Land Law 2003 is clearer than the Amendment of the Draft Land Law:

The State authorises individuals and families to use, for the long term and in an effective manner, forest land which is unstocked land or degraded land in conformity with their [respective] objectives in an area not exceeding three hectares per labour force in the family. Any person wishing to use forest land in a larger area has the right to apply to receive a lease or concession from the State.

The Land Policy (Draft, mid-2014) reaffirms customary rights of Lao people to use land that is under long, continuous, regular, peaceful and collective possession, protection, development and use with or without a properly certified document relating to the land use rights and provided that such land is not within the state reserved or conserved zones. Customary rights are recognised but not accorded real protection under this statement. First, as in previous laws and decrees on land, it mentions “long, continuous” use. The terms “long” and “continuous” are not properly defined under legislation in Laos. It could be interpreted that land under shifting cultivation does not count towards “customary rights” because it is not under “continuous” possession and use. Second, customary rights are not recognised in state-reserved or conserved zones (also not exactly defined). This begs the question of what happens when a local community pre-exists the naming of a state-reserved or conserved zone. The Forestry Law 2007, Article 24, allows local communities to use wood and collect NTFPs in so-called “controlled use zones” in Conservation and Protection Forest.

In terms of agricultural land use rights, a household is determined by its active labour force. Agricultural land of different categories may be allocated to a household to use based on the number of people working in the family.⁷¹ On the other hand, however, it is not fixed as to how much land of any type may be allocated to a local community altogether, whether for titling or to manage on behalf of the State but without any further claims to it. Moreover, there is some debate as to whether it is necessary for all land in a district (without special land use categories such as a National Protected Area) to come within village boundaries.

Ultimately, the State may repossess land if it is not being used in accordance with the laws, regulations and plans. How often this happens in practice is not known, but one supposes it is a rather rare occurrence in comparison with land expropriation in recent years for both public and private purposes. Compensation is not clear, especially so in the many cases where local communities do not have any official titles or registration. Most rural people have nothing more

⁷⁰ This makes it unclear, of course, as to the difference in definition between an “individual” and a family. The Lao version of the text was not available to check.

⁷¹ Surprisingly, this is not clearly defined in the Land Law, and there is no cross-reference to the Labour Law. Does it refer to the age range of 15 – 60, for example? What if a working person leaves for employment elsewhere but maintains official residence in the local village?

than tax certificates to prove their land use, while some have “temporary land use certificates,” only valid for three years not upgraded to permanent titles (as is the intention).

Under both the existing (2003) and draft (2014) Land Law, Community Land Titles are allowed. Community titles have greater restrictions on them than individual titles in that they are “indivisible” and not saleable. Under the Draft Land Law (Art. 37), land under community title may be given for lease or concession but would require a majority decision. This is a change from the previous National Land Management Authority (now a Department under MONRE) Instruction 564/2007⁷² which states that communal/community titled land may *not* be given for lease or concession. There was, therefore, greater protection for communities against unwanted concessions under NLMA 564/2007 compared to the Draft Land Law.⁷³ Despite potential challenges, for many local communities it still makes more sense to have land allocated to them on a community basis.

SUFORD-SU has recently commissioned an important study on the legality of community titles for village use forest areas in PFAs. The findings (presented in March 2015) are that such community titles are legal. The findings also indicate that community titles would be legal for village forests in villages that are located in “unclassified” forest areas in the country. Whether village forests need to mirror the three forest types for national forests is under discussion. Some expert inputs to the revised Forest Law (see Chokkalingam, 2014) indicate that “village forests” should be just that, and not be burdened with categories that may not be meaningful to the local communities, and also prevent them from getting titles.

What’s Needed?

Land tenure security underlies both REDD+ and the UNFCCC safeguards; it is mentioned under Paragraph 72 on par with the safeguards, as a requirement for REDD+ country strategies and action plans. Without tenure security, neither social nor environmental safeguards can be fully implemented.

The content of the draft Land Law and Land Policy is not finalised. Nonetheless, of great importance would be to alter the articles on land expropriation to bring them in line with the international Voluntary Guidelines on Tenure. The Land Issues Working Group (LIWG: 2014) has already given feedback on the latest, publicly available versions of the Land Law and Land Policy; in summary, the LIWG’s greatest concern lies in the ease with which it is possible to expropriate land for private purposes in Laos, and that there are no clear appeal procedures or grievance redress mechanisms.

Titling for forested areas within village boundaries also requires change. Greater clarity on definitions of “village use forests” is certainly needed in the PLRs so that these forests may include larger, and better quality, forest areas than at present (that would then be worthwhile for villagers to manage under VFM). If larger areas of village use forest are declared, this would also give villagers the chance to have community land titles to larger areas than at present. At the very least, PLUP Guidelines should be changed so that local officials work with villagers to

⁷² Of interest, the new MONRE 6036, on land titling and registration, on the face of it an updated Instruction to replace NLMA564, does not have any Articles or descriptions on land use rights and obligations as the earlier 564 did.

⁷³ Given the way that information flows in local communities, there is a major risk that a “simple majority” could be fraudulently gained if the village leadership is in favour.

define “reasonable” areas of village protection or conservation forest to the extent they are required at all in villages, not “maximum” areas.

5.2 Benefit-Sharing and PES, including VFM

What’s There?

The development of a workable benefit-sharing mechanism in the forestry sector has received attention from both MAF⁷⁴ and MONRE. There are, as yet, no PES regulations in place, although the possibility of this is included under the Environmental Protection Law (Revised, 2012, Article 49). PES is also mentioned under the Draft Forestry Law, and under the Agricultural Master Plan, 2011 – 2015. Nonetheless, the type of benefits for communities, including households/individuals, is not yet clear in Laos. People may be willing to protect forest areas, but given livelihood insecurity, this would have to be done with appropriate PES mechanisms⁷⁵ or on a benefit-sharing basis with people having adequate, future harvesting income rights. At issue, perhaps, is less whether people are willing and able to protect forest areas, but whether they will have adequate support from the DAFOs and DONREs to do this.

PM59/2002 on PFA establishment and management (Article 11.2) states that *log sale decisions [from PFAs] shall be based on a transparent method involving participation of concerned parties, including representation of village forestry organizations (VFOs), on an annual basis under the guidance of the Governor of each province, municipality or special zone*. It may be assumed that if VFOs are actively involved in log sale decisions with transparent pricing or auctioning methods they will then know exactly what the payments will be. PM 17/2008 on Forest Management (Article 3.2) makes provision for local communities to “participate” in “the management of protection and conservation forests” and that “appropriate” benefits go to them: . . . *people in the villages situated around Protection and Conservation Forest Areas to be trained and assigned with forestry jobs (protection, regeneration, rehabilitation) for which they will receive appropriate benefit in kind or money from the performance of these jobs*.

Presidential Decree (01/2012), based partly on PM59/2002 on PFA Management, is on Benefit-Sharing from PFAs using the PSFM modality. It states that 12% of the revenues generated by the sales of timber from the PFA where a village is located should be paid into a VDF (but with fund use under the supervision of the DAFO and District Government⁷⁶). The Presidential Decree has not been implemented to date because no timber has been legally harvested from the PFAs since the decree went into effect.

VFM, like secure land tenure, is an important underlying concept to ensure the Cancun safeguards can be implemented. Part of the problem for successful VFM in Laos, however, is that poor quality forest tends to be allocated to local communities as “Village Use Forest,” while the best quality forests have been retained under the State-administered categories. DOF Guideline 2156/2006 on PFAs (Article 6.3.1) states for example: *The village managed forest area in the sub-forest management area should consist of dry dipterocarp forest, except the forest type which is included in the productive forest area*. The DOF Guideline also defines (5.3) *Non-*

⁷⁴ The 2012 Forestry Conference PM 36/2012 mentions the need for PES and governing regulations.

⁷⁵ It may be worthwhile to study the experiences with PES (PFES) in Vietnam whereby hydropower projects in particular make payments based on certain formulae.

⁷⁶ This contradicts VDF supervision provisions in general in Laos: they are normally under either the Lao Women’s Union or the District Poverty Reduction Office.

commercial wood production area: This area consists of village managed forest area . . . Local communities do not, then, have the opportunity to *legally* harvest mature timber for commercial purposes from natural production forest within the boundaries of their village areas, nor from other forest types within their boundaries unless they have planted the trees themselves on a small plantation. As mentioned, MAF 535/2001 gives the right to harvest, on approval, 5m³ per family per annum for housing.

As the situation stands now unwieldy forest management plans and quotas set far from the local communities with unclear benefit-sharing, and often without their direct participation or knowledge, do not encourage these communities to become actively engaged in forest management.

What's Needed?

As mentioned above, the issue of forest types within village boundaries should be urgently resolved in order to clarify people's rights under REDD+ in terms of security, carbon and benefits. Generally speaking if a village is "allocated" protection and conservation forests, these are still considered to be part of the State forest estate.⁷⁷ In such cases, the State maintains full rights to the carbon which may have a negative impact on subsequent benefit-sharing with communities.

Poorer local communities with few viable livelihoods alternatives will have difficulties with results-based financing modalities as foreseen under REDD+. Any design of a benefit sharing and distribution system would need to take *both* "incentive" payments (ex. getting a benefit from performing a certain activity like forest fire prevention and patrolling) and "performance" payments (proved reduction in degradation or deforestation) into account. Given the GoL's known difficulties with providing regular budgets to reach villages, it will likely be necessary either to establish a new fund to provide villages with upfront payments (such as CliPAD does at present), or to make changes to the Forest Development Fund.

MONRE in cooperation with MAF, would have to sponsor new decrees on benefit-sharing and on PES that that are environmentally relevant, thereby REDD+ relevant, and not just PFA-related as at present. These decrees would have to explicitly cover any type of forest, and include the concept of incentive payments in addition to results-based payments. Further analysis will be required to see what type of procedures are realistic to ensure benefits actually reach local communities in a timely manner. This may require further study of the Forest Development Fund established in 2005 and the Environmental Protection Fund, also established in 2005. It will be important to streamline payment procedures; if a payment reaches a national level fund (like the FDF), the payment would then have to reach the village within a limited time, while local communities entitled to benefits would have to be properly informed of the benefit to expect and *when* to expect it so that they may initiate inquiries if the benefits are not forthcoming.

Although the author did not have a chance to study the topic of taxation and registration costs vis-à-vis smallholders, it appears that the tax structure and registration processes related to timber plantations (smallholder teak as an example), for example, could wipe out any small profits the plantation holders might otherwise look forward to.⁷⁸ Thus, further study on tax exemptions for local communities participating in REDD+ projects would also have to be made.

⁷⁷ Personal communication, DFRM.

⁷⁸ See Hilary F. Smith (2014), *Smallholder Teak Plantation Legality in Lao PDR: A Study to Assess the Legal Barriers to Smallholder Teak Plantations and the Associated Timber Value Chain*.

A return to VFM would require at the least new regulations from MAF in cooperation with MONRE that would allow the VFM modality to exist in a strengthened version, and coupled with community land titling. Limited community timber harvesting for commercial purposes, for example, should be allowed.⁷⁹ While PSFM is a positive feature in the PFA landscape, VFM would be more in keeping with the REDD+ safeguards.

5.3 Transparency / Availability of Information

What's There?

Making information in Laos available to all relevant stakeholders in a timely manner is a big challenge, but a major underlying factor in the successful implementation of the Cancun safeguards. The main PLRs at present that include articles or clauses on provision of information are those related to the environment and environmental assessments, such as PM 112/2010 on EIA, the Environmental Protection Law (2012) and MONRE Regulations on IEE and ESIA (8020 and 8030, both from 2013). Additionally, PM 192/2005 on Resettlement (compensation) also makes provision that information reaches affected stakeholders at all levels. The revised Environmental Law and attendant regulations are quite new, and thus not yet widely applied or implemented.

What's Needed?

It would be difficult and time-consuming to make adjustments in the many different specialised PLRs to make them conform with the transparency ideals represented by the Cancun safeguards. Transparency and freedom of information, however, are certainly required to make FPIC work for example. Thus, it may be advisable to draft an overarching decree or law that promotes “Freedom of Information” as far as the national circumstances of the Lao PDR would allow it. Unfortunately, the Constitution (2003) does not make overt provision to give Lao citizens freedom of information (right to free speech and to association, however, is given).

5.4 Grievance and Redress Mechanisms

What's There?

As shown above, there are rudimentary grievance and redress mechanisms in Laos, but they are ones that work best within a single village; i.e., either customary mechanisms such as councils of elders or the VMU. In fact, villagers are actively discouraged from seeking judicial or administrative redress beyond their villages. They are rewarded instead for *not* bringing cases to the district authorities or to a sub-provincial court by being declared a “*Ban Pot Kadi*,” meaning essentially a “case free village.” The problem here, of course, is that any conflicts involving outsiders (such as concessionaires for example) cannot be settled by a VMU.

Generally speaking local communities have *both* little awareness as to their rights and entitlements, *and* limited access to justice beyond village level mechanisms. There is no independent or neutral ombudsman whom people may approach regarding perceived problems, also in relation to land rights. The closest that comes to this is the NA Hotline. Nonetheless, the Constitution (2003) states under Article 41, *Lao citizens have the right to lodge complaints and*

⁷⁹ Although it is not working as well as it should, there is a Village Forest Association (without strong VFM modalities, however) with commercial timber rights that was established in the NT2 resettlement area.

petitions and to propose ideas to the relevant State organisations in connection with issues pertaining to the public interest or to their own rights and interests. Complaints, petitions and ideas of citizens must be examined and resolved as provided by the laws. As mentioned above, the Law on Petitions (2005) provides only for *written* submissions, although this does not cover the intent of the Constitution’s Article 41 (since it only says “right to lodge complaints and petitions.”)

Thus, if the implementation of REDD+ were to cause conflicts or other difficulties from the perception of local communities (such as disagreements on PLUP outcomes, disagreement on amount of benefits promised and actually received, etc.), there is no ready grievance and redress mechanisms that local communities of all ethnic groups would be able to access.

What’s Needed?

More accessibility and greater neutrality of grievance procedures and mechanisms beyond the village level are urgent needs. A promising starting course of action could be to revise the Law on Petitions, 2005 so that it includes, for example, oral petitions.

An additional course of action would be to establish ombudsman’s offices, perhaps with assistance of the National University of Laos, Faculty of Law and the Lao Bar Association. The INGO called Village Focus International, active in Laos for many years, has developed materials for use at local level on land and forest laws and rights under its RIGHTS Link project funded by the SDC. It could provide materials for broader dissemination or also provide advice on the possibility of a functional ombudsman’s office in Laos. The persons who operate the NA Hotline may also be consulted. There may be a need to involve and/or support the NA Standing Committee on the issue.

6 Towards a Safeguards Information System: Initial Thoughts⁸⁰

Decision 1/CP16 strengthened and clarified UNFCCC’s position on safeguards, while the aspect of reporting on them gained in clarity at Durban (CP17, 2011) and Warsaw (CP19, 2013). From Durban, we are able to gain the first elements of an SIS, but the “guidelines” that emerged from Durban and Warsaw are extremely broad. Indeed, there are no harmonised guidelines on either the safeguards themselves nor on “adequate” reporting formats from the international community (via UNFCCC) so far. The issue of guidance from the UNFCCC on SIS development is a contentious one; some country parties are much more in favour of this than others. Table 4 below provides indication of the UNFCCC requirements.

For a country safeguards system, an SIS needs to be based on a PLR gap analysis that in turn is based on a contextualised analysis of how and where the safeguards fit in the particular country strategy and plans. In the chapters above, the safeguards have been contextualised in the Lao PDR by linking them with different types of likely risks. Based on the PLR gap analysis the next step should be to perform a similar gap analysis on the existing information systems that could serve as the foundation for an SIS. An overview of these steps is provided in Figure 8 below, taken from UN-REDD’s website. Given the limits associated with this review some initial ideas,

⁸⁰ On the general aspects of SIS development and reporting, the author is indebted to a UN-REDD presentation, “REDD+ Safeguards and Safeguards Information System” accessed at the UN-REDD.net website. The presentation was made by Judith Walcott, 2014.

under 6.1 below, are provided on some of the challenges (gaps) and starting points for an SIS in the Lao PDR.

Figure 8: Flowchart—From Safeguards Goals to PLRs and SIS

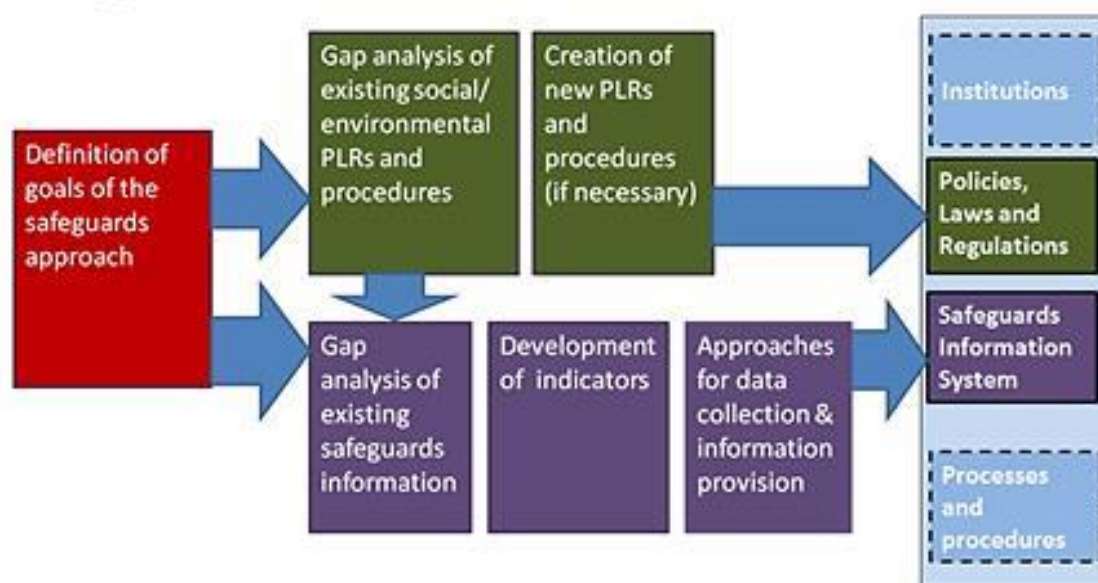


Table 4: SIS Elements and Providing Safeguards Information: An Overview of UNFCCC Requirements

CP Decision 12/17 Wording	SIS Element
Be consistent with Cancun guidance.	Conform to Contents of Cancun Safeguards
Provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis.	Publicly accessible Information, Periodic (Regular) Reporting
Be transparent and flexible to allow for improvements over time.	Adjust and Improve over Time
Provide information on how all of Cancun safeguard elements are being addressed and respected.	Comprehensive
Be country-driven and implemented at the national level.	Country Steered and Managed
Build upon existing systems, as appropriate.	Utilize Existing Systems
Providing Safeguards Information (from CP17 and CP19)	
What is to be Reported?	Summary of information on how all of the Cancun safeguards are being addressed and respected throughout the implementation of REDD+ activities.
How is it to be Reported?	To be included in National Communications or communication channels agreed by the COP. The summary of information can also be provided via the web platform on the UNFCCC website on a voluntary basis.
When is it to be Reported?	Periodic submission of information. Provision of safeguards information is to start at the time of implementation of REDD+ activities <i>and</i> to follow the same frequency as the submissions of the National Communications (frequency is different for LDCs compared to other REDD+ countries).

6.1 Challenges for SIS Development and Some Starting Points

As already emphasised in the chapters above, the state of REDD+ readiness in the Lao PDR is preliminary, with institutional clarity still to be established. Unfortunately, the FCPF Grant does not include a major activity, or set of tasks, to establish an SIS in the Lao PDR; rather, its main focus (See Task 4.2) looks to be on developing an MRV, but with monitoring of “co-benefits.” Since the Cancun safeguards require that Parties provide information on what actions they are taking against reversals and displacements of emissions, parts of an SIS would draw on an MRV and vice versa. Nonetheless, as there is yet no consensus on how the Cancun safeguards themselves should look or be implemented in Laos, it is too early to discuss details of an SIS. Nonetheless, all stakeholders in Laos must be cognisant that an SIS is a *necessity* for all REDD+ countries that want to receive funds via *any* mechanism related to the UNFCCC and GCF. Moreover,

The criteria shown in the PLR Gap Matrix, for example, have been adapted from a detailed PLR gap analysis that had been conducted in Vietnam, and although based primarily on SEPC and SES criteria, it does not mean that they should be the definitive set for Laos. Without national agreement on how to break the safeguards down into their respective principles and criteria, it is also not possible to move towards the indicators required for an SIS. In this respect, it will be crucial for any sub-national/jurisdictional projects such as CliPAD to work actively with the FCPF grant project to support the development of a safeguards/SIS system that will be managed at national level.

The mid-term assessment of the FS2020 (2014) has determined monitoring, data collection and analysis to be one of the most serious problems in the forestry sector. There were a number of programmatic areas in the FS2020 that could not be properly assessed because of a lack of data, or a lack of good quality data. Likewise, the Forest Governance Assessment (2014: 39) observed, *The quality of much of the available forest-related information across different aspects and agencies is low and there are large information gaps. Numbers come from individuals without the backing of solid factual databases. Transparency and accountability is low, and in some instances there are disincentives for accurate reporting such as for data related to the timber trade or confiscated timber. There are substantial inconsistencies in data arising from within and between different agencies.*

Although large numbers of development partner-supported projects and programmes in the forestry sector have put considerable time and effort to develop and implement monitoring systems, the standard of data collection and analysis required for a credible SIS (or MRV for that matter) remains low when seen outside the framework of partner-supported projects. Thus, the overall situation pertaining to data management in the country would dictate against rapid progress made in creating a workable SIS/MRV. A slow and steady step-by-step approach will certainly be the way to go. A useful starting point to develop indicators and monitoring methodologies for biodiversity aspects (Cancun safeguard e.) has been drafted by WCS for use by CliPAD in Houaphan. It is entitled, “Biodiversity and Ecosystem Services Safeguard Approach for the Houaphan Jurisdictional REDD+ Program.” Using SES criteria, the WCS authors have devised a number of stages, steps and levels for biodiversity and ecosystem monitoring and reporting. The report is still in draft form, but should be available from WCS or CliPAD.

Given the safeguards’ linking with international conventions, SIS reporting to the UNFCCC may be seen in a similar vein to regular reporting requirements under the conventions to which a

State is Party. This is unfortunately somewhat problematic for Laos, as it has not often managed to meet reporting requirements, including deadlines, under the human rights and environmental conventions. For example, it has yet to report on its commitments under the ICESCR. Under the CBD, it has yet to update its Action Plan (was only to 2010), CERD and CEDAW reports are generally delayed; CITES made a recent recommendation to suspend all trade (ivory) with Laos because it did not develop or report on a required National Ivory Action Plan (the second CITES reprimand against Laos). The Ramsar Convention reporting format is quite simple and straightforward and may offer some useful SIS starting points (for format).

Although starting points are available, the GoL REDD+ stakeholders will need concerted efforts from different development partners to ensure that the safeguards are reported on as per UNFCCC requirements. If inadequate assistance is available for this, there is also a significant risk that the REDD+ readiness phase in Laos will take longer to reach a stage where results-based payments may be made.⁸¹ Of greatest importance to keep in mind, however, is that the UNFCCC CP does not expect the REDD+ countries to start from scratch in developing an SIS – they should build from existing systems. Some ideas on this are provided in Box 3 and Table 5 below.

⁸¹ Reporting requirements for LDCs are less stringent than for other countries. While Laos is still an LDC, it plans to have graduated by 2020-21, meaning it will then have to conform to all FCCC reporting requirements, including the required periodicity (for SIS – means submitting a report concurrently with any application for funding).

Box 3:***Biodiversity Monitoring: Starting Points in Laos***

Biodiversity monitoring in Laos has not become part of the institutional landscape despite many years of support from development partners. Biodiversity monitoring has, in fact, a history that goes back to the 1990s in Laos after the initial National Biodiversity Conservation Areas were established in 1993. The Government of Sweden (SIDA) provided many years of support to NBCA management, including management and co-management modalities. An evaluation conducted by the Lao-Swedish Forestry Management Programme in 2001 of 20 NBCAs, showed that the biggest challenge was “information management and monitoring” with it being non-existent to poor in 19/20 NBCAs. This situation has hardly changed over the past 14 years. WCS has also been involved for many years on NBCA management and monitoring. As early as 2000, WCS published a manual entitled: *NBCA Biodiversity Monitoring, Part One: Monitoring Manual** by S. Ling. The manual includes six mostly low-cost and simple monitoring methods: Patrolling, Village Discussions, Joint Monitoring Team Logbook (village level), Monitoring of Ecologically Sensitive Sites, Fishery Monitoring and Photo Points. A WCS-implemented project at Xe Pian NBCA additionally included a seventh point on local wildlife trade monitoring by observing markets and restaurants. Poulsen et al (2005) reported on the biodiversity monitoring that took place under the life of project at Xe Pian. While monitoring proceeded well during the project life, it turned out that as soon as the donor funding for it came to an end, so did virtually all the monitoring activities, with the exception of some patrolling. An instructive point here is that the monitoring methods chosen for use at Xe Pian were very simple and very low cost but still were not taken up as part of the government’s management approach to the NBCAs. This issue remains relevant for biodiversity monitoring under any REDD+ scheme.

More recently, Boissiere et al. (2014) published their results on participatory monitoring for NTFPs. The team also developed very simple and low cost methodologies, but which villagers lost interest in when they discovered other, for them, more important sources of income generation in their areas. Of interest as well is Finn Danielsen’s et al (2013) work on community-based forest monitoring for REDD+, as it includes discussions on participatory monitoring in both Vietnam and Laos (Houaphan): *Community Monitoring for REDD+: International Promises and Field Realities*. All these works, from the early NBCA monitoring to these recent action researches show that low cost, local community-centred monitoring methodologies are valid in the Lao context.

GIZ has cooperated with the London-based Zoological Society to produce a comprehensive and detailed sourcebook: Latham, J.E., Trivedi, M., Amin, R., D’Arcy, L. (2014) *A Sourcebook of Biodiversity Monitoring for REDD+*. It may be worthwhile for GIZ in Laos (CliPAD) to cooperate with WCS on some of the issues in this sourcebook especially related to participatory monitoring, for example. The author finds that the Sourcebook, owing to its complexity, would need at least several months of expert time just to contextualise it for a country like Laos that has serious personnel and budgetary constraints, especially at local levels. Thus, many of the biodiversity monitoring methods discussed in the Sourcebook are either too complicated or too expensive, or both, to fit the situation in Laos. As noted above, even the simplest and low cost methods for NBCA (now NPA) biodiversity monitoring were not taken on board. It also must be kept in mind that biodiversity monitoring is only be one aspect of a more comprehensive SIS; thus, utmost importance needs to be placed on keeping monitoring as low cost as possible given the many unknowns in the volume of REDD+ payments that might be made in a country like Laos.

*Unfortunately, not available on the internet.

Table 5: Starting Points for SIS in the Lao PDR

Cancun Safeguard	Possible Existing Reporting or Monitoring Frameworks	Decisions to be Made (only indicative)
a) National forestry frameworks, REDD+ consistency with these.	None, but should be a relatively straightforward exercise with reference to a few key national policies and strategies like FS2020 (and beyond) and NSEDPs.	Should this be the REDD+ Division's task?
b) Transparent and effective forest governance	If regularly undertaken, the Forest Strategy reviews and any updates to governance assessments may provide necessary information.	What indicators to use. Who to carry this out? The Forestry Sub-Sector Working Group? What to report on to UNFCCC? How to share information within the country?
c) Respect for indigenous people and local communities	Lao PDR already has reporting obligations under the various international human rights conventions to which it is Party: CERD, ICESCR, CEDAW. Overlaps with Cancun safeguard reporting requirements should be studied. Reporting on areas that might overlap with FSC-forests may also include useful data.	What indicators to use. Who to collect and analyse data where it is not already available as part of the international conventions' reports? How will local communities be involved in providing inputs? Obviously not only the task of a REDD+ Division or Safeguards Working Group.
d) Full and effective participation	A large scale project like SUFORD-SU could provide a starting point on monitoring and reporting on participation. The Poverty Reduction Fund (PRF) is another large scale project that reports on participation.	What indicators to use. Who to collate and/or compile necessary data? How will local communities be involved in providing inputs?
e) Incentivise natural forests, multiple-benefits of REDD+	On Biodiversity, Laos has reporting commitments to the CBD, to CITES and for the Ramsar Convention. If it is paying attention to the CBD Aichi Targets, indicators for these would also help. Different organisations like WCS are also developing biodiversity monitoring guidelines in the Lao context (cooperation with KfW and GIZ). WCS draft monitoring guidelines include participatory methodologies for assessing changes in local ecosystem services. It will be worthwhile to look up Biodiversity M&E field methods that were developed 15 years	Biodiversity aspects come under MONRE/DFRM, but what indicators to report on for UNFCCC? How will local communities be involved in providing inputs (benefits, their observations of biodiversity changes in their areas)? Baseline surveys would need to capture local communities' living conditions before, during and after implementing REDD+ activities. The PRF has some of these data, but who should try to access the data, who should decide on their validity? Who should carry out additional surveys?

	ago as most were very simple. SNV will be working on multiple benefits for REDD+ in Laos, and may also be able to contribute. On Livelihoods, the PRF may be able to share data in that with its broad coverage, it may have data for villages that may be included under REDD+ activities.	
f) Risk of reversals	Some existing reporting / monitoring formats related to forest cover monitoring, and obviously bound together with MRV	Who is responsible at what level? Is it primarily FIPD to collate and analyse data? Will “reversals” be on both deforestation and degradation? What time frame to use, especially in areas where shifting cultivation is practiced.
g) Risk of displacement	No existing reporting/monitoring formats but obviously bound together with MRV. Some ongoing work on concessions by CDE ⁸² may help with monitoring indicators.	Who is responsible at what level? Is it primarily FIPD to collate and analyse data? What indicators to use at ground level to verify there has <i>not</i> been leakage? How to demarcate areas to assess for leakage?

Overall, the Lao PDR has a challenging road ahead of it to reach REDD+ readiness, including the development of a country safeguards system. Along the way there will have to be serious decisions and trade-offs made regarding the overall path of economic development and environmental protection. REDD+ is one of several mitigation mechanisms by which to serve the goals of environmental protection and reduced greenhouse gas emissions, but it will not be effective if “business as usual” scenarios with illegal logging and forest conversion for large scale concessions continue as before. It will need to be seen that if the only stakeholders who need to change their behaviour to become REDD+ “compliant” are the smallholders who rely the most on forest resources for their livelihoods, then the future of REDD+ in the Lao PDR will be a difficult one. Underlying drivers of deforestation and forest degradation that come from different sectors in the country will also need to be urgently addressed.

In the immediate future the REDD+ Division and revitalised REDD+ Task Force should be assisted to start discussing and coordinating on the PLR gaps and the necessary gap filling measures. Drafting new legislation or revising existing legislation comprise one method of gap filling, but in Laos a long, hard look will have to be taken to see the gaps between legislation that supports the implementation of the Cancun safeguards and what actually happens on the ground. The REDD+ Division will need to do this in close collaboration with MAF, but also involving other State actors and with inputs of local communities of all ethnic groups. The FPCF’s forthcoming SESA activity may well be the most appropriate mechanism to bring the Cancun safeguards and necessary SIS development to the centre of the REDD+ landscape in the Lao PDR, but all key development partners working on REDD+ will have to cooperate together to ensure this.

⁸² Centre for Development and Environment, Bern University but with an office in Vientiane.

7 Selected References

All GoL PLRs, including Strategies and Plans are listed at Annex 4.

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Annex 1

Terms of Reference

PLR-Gap Analysis and Monitoring of REDD+ Safeguards in Lao PDR

Supported by the Forest Governance Programme of GIZ in cooperation with the Climate Protection through Avoided Deforestation Programme (CliPAD)

Objective:	<p>Objective 1 – Legal Framework for Safeguards: The service provider/s will conduct a Policies, Laws and Regulations (PLR) Gap Analysis including Grievance and Redress Mechanisms with respect to UNFCCC Cancun Safeguards in Lao PDR.</p> <p>Objective 2 – Monitoring of Safeguards: Based on the results of the PLR Gap Analysis the service provider/s will enhance the national process on REDD+ Safeguards in terms of monitoring environmental and social safeguards, respective responsibilities and implementation</p>
Time Frame:	<p>Package 1: 30 working days</p> <p>Package 2: 23 working days</p>
Milestones and outputs:	<p>Package 1: Legal Framework for Safeguards</p> <ul style="list-style-type: none"> • Overview of international requirements for REDD+ Safeguards under consideration of recent developments under the UNFCCC (COP 20) in order to clarify objectives of a national Safeguards Information System (SIS) • Data collection and analysis / identification of gaps in policies, laws and regulations in Lao PDR with respect to UNFCCC Cancun Safeguards requirements, including interviews with key stakeholders • Stakeholder consultation workshop with representatives of the Lao Government and Civil Society to discuss the outcomes of the analysis and develop measures to close identified gaps <p>A final report on gaps in policies, laws and regulations including identified measures and recommendation to address these</p> <p>Package 2: Monitoring of Safeguards</p> <ul style="list-style-type: none"> • Stocktaking of existing approaches to monitor environmental/biodiversity and social criteria in Lao PDR that are relevant in the context of a national SIS • Preparation of an overview of potential methodological approaches for Lao PDR to monitor social and environmental safeguards under REDD+ with the help of the “Sourcebook on Biodiversity Monitoring for REDD+” • Stakeholder workshop for the consultation on indicators for the monitoring of environmental/biodiversity and social safeguards , development of a implementation roadmap and clarification of responsibilities in terms of technical implementation (technical working group under the National REDD TF) and reporting to the UNFCCC • Summary report that formulates recommendations and necessary steps for the development of a national SIS in Lao PDR.
Background:	<p>Climate Protection through Avoided Deforestation (CliPAD) is a development programme of the Lao Government, supported by the Federal Government of Germany through technical and financial assistance implemented by GIZ and KfW. CliPAD was initiated in 2009 to support the Lao Government in its REDD+ Readiness Process at national and sub-national level. The programme provides policy advice and capacity development supporting the establishment of the</p>

	national and provincial REDD+ framework and REDD+ planning processes. At the local level, mitigation activities are piloted and pro-poor REDD+ mechanisms and sustainable financing models are developed. As part of the REDD+ Readiness process, CliPAD aims to support the Lao Government in the development of a Safeguards Information System (SIS). Meeting the requirements of the UNFCCC Cancun Safeguards, a Policies, Laws and Regulations (PLR) Gap Analysis would be the first step in developing a National Safeguards implementation Roadmap for Lao PDR.
Organization:	The service provider reports to the CliPAD-TC Programme Director. The service provider will possibly need assistance with REDD+ expertise and Lao translation for forestry terms provided by the project.
Tasks:	<p>The service provider will:</p> <ul style="list-style-type: none"> ○ Submit a detailed implementation proposal/outline on how to conduct this assignment (including timeframe and budget) <p>Package 1:</p> <ul style="list-style-type: none"> ○ Prepare an overview of international requirements for addressing REDD+ Safeguards under consideration of recent UNFCCC developments ○ Review policies, laws and regulations in Lao PDR regarding UNFCCC Cancun Safeguards by desk study as well as interviews with key stakeholders ○ Prepare detailed outline of and conduct the stakeholder consultation workshop ○ Prepare the PLR Gap Analysis report for Lao PDR <p>Package 2:</p> <ul style="list-style-type: none"> ○ Conduct a stocktaking of existing approaches to monitor environmental and social aspects/criteria in Lao PDR ○ Prepare an overview and suggest possible methodological approaches for monitoring social and environmental safeguards (for environmental safeguards with help of the sourcebook for biodiversity monitoring for REDD+) ○ Prepare detailed outline of and conduct the stakeholder workshop on safeguard monitoring, implementation and responsibilities ○ Develop a summary report that formulates recommendations and necessary steps for the development of a national SIS in Lao PDR
Work Place and Organisation:	Desk study including stakeholder consultation in Vientiane / workshops in Thalat, Vientiane Province

Annex 2:**Excerpts from Presentation of FCPF Development Objective and Task Areas, as provided at FCPF Project Launch December, 2014**

(Phase: 2014 – 2017, with Mid-Term Review in 2016: if successful, then another USD 5 million in addition to committed 3.6 million will be possible).

(Following is from a scanned document—thanks to Nelson Gapare, SNV for providing it.)

Project Development Objective: *is to contribute to Laos' efforts to design and implement a sound national REDD+ strategy.*

Specific Objectives include:

- to assist Laos in Readiness Preparation for REDD+, so that the country become ready to participate in and benefit from the emerging Performance-based Payment System from REDD+ within the context of UNFCCC (UN Framework Convention on Climate Change) ;
 - to develop or enhance socially and environmentally sound policies and programs to reduce deforestation and forest degradation;
 - to develop internationally recognized REL and MRV (in cooperation with other Gov/Development Partner projects);
 - to enhance and increase participation of all stake holders (particularly local communities) in forest management;
 - to building institutional capacity in the forestry sector, and to improve information and data management and other related activities.
-
- Tasks and Activities of the Project would be mostly related to analytical work and REDD+ Readiness Process including the development of the REDD strategy and relevant legal and regulatory frameworks, capacity development including training and workshops, as well as stakeholder consultations (eg. on planning how to achieve REDD+), communication campaigns and awareness raising.

Task 1: Readiness Process Management and Stakeholder Consultation

- **Task 1.1:** Establishment of operational REDD+ offices at the national level and in selected provinces, and establish protocols for coordination between these offices.
- **Task 1.2:** Assessment and alignment of REDD+ strategy and activities with the national policy legal and regulatory framework. *individual*
- **Task 1.3:** Establishment of a stakeholder participation working groups, updating of the stakeholder participation and consultation plan, development of an effective communication and outreach strategy, to ensure and facilitate participation of relevant stakeholders in REDD+ Readiness Preparation *media*

Task 2: REDD+ Strategy Development

- **Task 2.1:** Carrying out of an assessment of the existing policy and regulatory framework to further develop and finalize the REDD+ strategy.
- **Task 2.2:** Carrying out analytical studies on land and natural resources tenure, rights, access and use, and development of participatory land use planning and REDD+ strategy options.
- **Task 2.3:** Carrying out of the SESA (Strategic Environmental and Social Assessment) and develop of the ESMF (Environmental and Social Management Framework).

Task 3: Implementation Arrangements

- **Task 3.1:** Establishment of the necessary institutional, regulatory, and financial arrangements for supporting the REDD+ preparation process. — FC
- **Task 3.2:** Carrying out of analytical studies on revenue management and benefit sharing mechanism, establishment of a benefit sharing working group, and development of benefit sharing arrangements..
- **Task 3.3:** Conduct of an assessment of existing feedback and grievance redress mechanism, and reinforcement and/or development, as appropriate, such mechanism to address the needs of relevant REDDD+ stakeholders.
- **Task 3.4:** Assessment of the needs and development of options to build capacity in information and knowledge management of relevant institutions for the REDD+ preparation process.

Task 4: Reference Emission Level and Monitoring Systems

- **Task 4.1:** Development of reference emission levels aligned with REDD+ strategy.
- **Task 4.2:** Design of a system to monitor, report and verify the forest carbon stock and co-benefits of REDD+.
- **Task 4.3:** Establishment of a carbon registry, which can be used for both carbon and non-carbon requirements of REDD+

Expected Results of the Project

- Strengthened technical and institutional capacities for effective management, implementation and coordination of REDD+ Programs, projects and policies
- Strategies to address drivers of deforestation and degradation in place
- REDD+ institutional framework designed and validated nationally, including an Environmental and Social Management Framework
- Social inclusion mechanisms in REDD+ at the national, provincial, district and community levels
- Regional collaboration mechanism for REDD+ implementation and avoidance of emissions displacement
- National reference scenario for emissions from deforestation and forest degradation prepared, taking into account the relationship between national accounting and sub-national implementation of activities; a national carbon registry developed and operational
- Once readiness phase complete, Laos will be eligibility to **participate in the C Fund Financing** (possible up to \$20 - \$50 million)

Management Arrangement

Project Management is integrated into DoF Institutional Arrangement:

- Project Steering Committee is chaired by DoF (other 12 members from Gov. relevant agencies and key stakeholders incl. DFRM as Deputy Chair)
- Project Management Team (PMT) is housed at the REDD+ Office (Deputy Director of REDD+ Office is assigned to be the Head of PMT) – the PMT consist of staff from REDD+ Office (DoF) and REDD+ Division (DFRM)
- Financial Management Unit of DoF with supports from the project consultants is assigned to oversee financial matters of the project
- Office Management Issues are dealt by Administration Unit/Infor. Management Unit of REDD+ with supports from consultants
- Technical supports to the projects mainly come from contract consulting firm, individual consultants
- TF Technical Issues will also be provided by REDD+ Working Groups set up by REDD+ TF.

Annex 3**Mission Schedule, including Persons Met**

Date	Location	Activity/Person(s) Met
Early Feb.	Berlin	Arranging persons to meet in Vientiane, preliminary reading on REDD+ legal framework in Laos.
19.02	Vientiane	International travel and arrival Vientiane
20.02	Vientiane	Meetings with Esa Puustjaervi CTA SUFORD-SU and Edwin Payuan, Village Forestry Advisor. Arranging further meetings.
21.02	Vientiane	Internet research and document study
22.02	Vientiane	Internet research and document study
23.02	Vientiane	Briefing with Jens Kallabinski, TL CliPAD TC. Meeting with Ralf Kueppert, GIZ FLEGT (support for NPAs).
24.02	Vientiane	Meeting with Steeve Daviau, SUFORD Ethnicity and Gender Advisor. Discussion with Thongsoune, CliPAD TC Coordinator. Meeting with Hanna Saarinen, LIWG Coordinator. Meeting with Dietmar Braeutigam, CTA CliPAD FC.
25.02	Vientiane	Meeting with Savanh, Head of DOF REDD+ Office. Meeting with Richard Hackman from FERN. Meeting with Mr. Scott Stanley and Mr. Sean McNamara from WCS.
26.02	Vientiane	Meeting with Robert Davis, World Bank (TTL FCPF). Meeting with Nelson Gapare, REDD+ Advisor SNV. Meeting with Mr. Khamsene, Deputy DOF REDD+ Office. Meeting with Mr. Gabriel Eickhoff, Director of Forest Carbon.
27.02	Vientiane	Prepare letter of intro for other government partners, finalise list of interlocutors, arrange further meetings with other development partners. Meeting with Paula Williams, M&E Advisor at SUFORD SU. Meeting with Chris Flint, CTA at TABI.
28.02	Vientiane	Document Study.
1.03	Vientiane	Document Study.
2.03	Vientiane	Discussion with Steeve Daviau and Edwin Payuan, SUFORD; get more references from them.
3.03	Vientiane	Debriefing presentation of Kay Kallweit, REM GIZ, Meeting with Heiko Woerner, GIZ FLEGT, Meeting with Katharina Földi, Deputy Development Cooperation at German Embassy, Discussion with Sebastian Koch CliPAD.
4.03	Vientiane	Meeting with Colin Moore, Forest-Carbon; Meeting with Sebastian Koch; Meeting with Mirjam de Koning, GIZ Project Director of Hin Namnor Project).
5.03	Vientiane	Reading and analysis of PLR documents; arranging further meetings.
6.03	Vientiane	Study of PLR documents. Meeting with Mrs. Akiko Inoguchi, FAO REDD+
7.03	Vientiane	Internet research, study PLR and safeguards documents.
8.03	Vientiane	International Women's Day.
9.03	Vientiane	Internet research, study PLR and safeguards documents.
10.03	Vientiane	Meeting with Mr. Saysamone Phothisat, Deputy DG DFRM/MONRE, Meeting with Mr. Phonsavanh Mr. Thongsoune, DFRM Head of CliPAD PMU, Ms. Miehlau, Mr. Jahnsen-Gutierrez: Senior Advisors to Lao National Assembly

Date	Location	Activity/Person(s) Met
		Committees.
11.03	Vientiane	Meeting with Jukka Pekka Tolvanen, SUFORD.
12.03	Vientiane	Meeting with Ms. Syphavanh, DFRM REDD+ Division Acting Head. Mr. Jens Laugen, THPC on PES.
13.03	Vientiane	Mr. Khamphone Mounlamai, NAFRI. Meeting with Mrs. Phaengphan Head of LFNC Training Division (under Training and Dissemination Dept.) and FPIC Training Team. Mr. Sengrath Phirasack, DG of Village Forestry and NTFP Management Division, DOF. Dr. Vongdeuane, DG of Land Use Planning and Development Division, MONRE.
14.03	Vientiane	Consolidation of documents studied.
15.03	Vientiane	Meeting with Nelson Gapare, SNV MB-REDD
16.03	Vientiane	Discussion with Jens Kallabinski on FCPF Grant. Meeting with Dr. Kinnalone, DOF REDD+ Office Deputy.
17.03	Vientiane	Go to NAFRI (but correct person unavailable). Discussions with CliPAD, Sebastian Koch. Meeting with Mike Dwyer, CIFOR.
18.03	Vientiane	Consolidating information from different PLRs.
19.03	Vientiane	Consolidating information from different PLRs.
20.03	Vientiane	Meeting with Micah Ingalls, MONRE PEI project.
21.03	Vientiane	Studying CliPAD documents related to PLUP and Drivers of DD
22.03	Vientiane	Workshop preparation.
23.03	Vientiane	Presentation workshop preparation.
24.03	Vientiane	Presentation consolidation. Presentation and discussion of findings.
25.03	Vientiane	Final debriefing and wrapping up.
26.03	Departure	International travel back to Berlin
27.03	Berlin	PLR Report Drafting.
– 16.04		

Annex 4**Chart of PLRs Included for Gap Analysis**

Constitution and Laws	Policies and National / Sub-National Strategies
Constitution, Amended 2003	Land Policy (Draft, 2014)
Land Law, 2003	NSEDP, 7 th (2011-2015) and 8 th Draft (2016-2020)
Law on Local Administration, 2003	Climate Change (2010)
Law on Submitting Petitions, 2005	Forest Strategy to 2020 (2010)
Amended Penal Code, 2005	Agricultural Development
Forestry Law, 2007	Northern Uplands Strategy, 2016 – 2020
Wildlife and Aquatic Animals Law, 2007	Export Strategy, 2011 – 2015
Law on Making Legislation, 2012	National Biodiversity Strategy and Action Plan to 2020 (Action Plan to 2010), submitted in 2004.
Environment Protection Law 2012	Northern Industrial Development Plan, to 2020
Draft Forestry Law, 2014	
Draft Land Law, 2014	
Presidential Decree and NA Notifications	PM Decrees
President Decree 01/2012 on Benefit-Sharing in PFAs with PSFM.	PM 164/1993 on establishment of Conservation Forest (NBCAs)
NA Notification 0273 on Resurvey of Three National Forest Categories, 2014.	PM 59/2002 on the establishment of PFAs
	PM 38/2005 on creation and purpose of Forest Development Fund.
	PM 146/2005 on creation and purpose of Environment Protection Fund.
Directives Regulations and Guidelines (not MAF or MONRE)	PM 192/2005 on Compensation for Loss of Assets or Resettlement arising from Development Projects
Resolution of Politburo No.3/2012 on Formulation of Provinces as Strategic Units, Districts as Comprehensively Strong Units and Villages as Development Units (<i>Sam Sang</i>)	PM 17/2008 on Strengthening the Forest Management, Protection and the Coordination and management of Forest and Forestry Business
LPRP Central Committee Instruction No. 03 /PBP/2011, on transformation of villages into development units and large villages into small towns in rural areas,	PM 88/2008 on Implementing the Land Law of 2003
Ministry of Finance, Guideline 92/2009 on Managing Collection of Revenue from Sale of Timber and NTFPs	PM 36/2009 on “how to solve problems related to disorganized migration linked to permanent resettlement and livelihood issues of various ethnic groups.”
Ministry of Justice, Advice/2010 on Resolving Village Disputes.	PM 46/2009 on Local Grievances (VMU)
	PM 135/2009 on Concessions
	PM 112/2010 on Environmental Impact Assessment
	PM 333/2010 on Protection Forest
Ministerially-Approved Manuals	PM 111/2011 on National Defence Strategic Zones (include “protection” forest areas);
Participatory Land Use Planning, 2009 (MAF and NLMA)	PM 435/2011 on the Establishment and Responsibilities of MONRE
Participatory Planning Manual, 2012 (MPI)	PM 13/2012 on Moratorium of Mining, Rubber and Eucalyptus Concessions

	PM 32/2012 on Adopting Minutes of National Forest Conference
	PM 262/2012 on Functions and Organisation of MAF
MONRE and its Predecessors: Regulations	MAF Decisions, Regulations and Guidelines
NLMA 564 on Land Titling and Registration, 2007	MAF 054 on Customary Use of Forest, 1996
MONRE 6036 on Land Titling and Registration, 2014	MAF 377/1996 Guidelines on Customary Use of Forest Resources;
MONRE 8029 on IEE, 2013	MAF 822/1996 on Land and Forest Allocation for Management and Use
MONRE 8030 on ESIA, 2013	MAF 535 on Village Forests and NTFPs, 2001
MONRE 8056 on Projects requiring IEE or ESIA	MAF 204 on PFA Establishment, 2002
	MAF 360 on NBCAs, 2003
	DOF Guideline 2156/2006 on PFAs and their Management.
	MAF 051 on Forest Regeneration, 2009
	MAF 022 on Eradication of Shifting Cultivation, 2010

Note: Some of these documents are available at the Lao Gazette website (rather in Lao than English), some of the Laws are available at the Lao National Assembly website. Some are available in the LaoFAB Repository. Others are available with colleagues from SUFORD and FLEGT. CliPAD colleagues should also have some.

Annex 5

PLRs and Ethnic Groups in Laos

The Constitution of 2003 proclaims the Lao PDR as a multi-ethnic society; Article 8 of the Constitution says that the State strives to promote unity and equality of all ethnic groups, with no act of division or discrimination to be tolerated. Thus, the Constitution of Laos recognises the equality of all ethnic groups before the law. The LFNC made an officially recognised list of 49 different ethnic groups living in the Lao PDR in time for the Population Census enumeration of 2005. These 49 ethnic groups (including 160 sub-groups), of which by far the largest are the Lao, followed by the Khmu and the Hmong, are broken into four ethno-linguistic groups of which the Lao-Tai are in the majority with some 65% of the population. There is no legal recognition of any group being indigenous to Laos, or of having any special characteristics. Special indigenous/ethnic relationships, or rights, to land and forest are not recognised. All the forest- and land-related legal documents, apply equally for all people in Laos, whether they are a member of the Lao-Tai majority or one of the other three ethno-linguistic groups in the country.

Laos has acceded to the key international human rights treaty relevant for indigenous people/ethnic groups: the International Covenant on the Elimination of Racial Discrimination (CERD). The Convention on Biological Diversity (CBD) of 1992 to which Laos is a Party since 1993 has a clause that emphasises indigenous people—8(j): *respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge . . .* This clause is consistent with Cancun safeguard c) on respect for knowledge and rights of indigenous people and local communities.

Laos was one of 144 countries that voted “yes” to adopt UNDRIP during the General Assembly session held in September 2007. UNDRIP is not, however, legally binding, although its content with a focus on indigenous people generally reflects articles already included under the core international human rights treaties and covenants (of which Laos is also Party). Article 26 of UNDRIP relates to indigenous people’s land rights such as their *right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*, but it would be difficult to reconcile this Article with Article 17 of the Lao Constitution of 2003 which states: “Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.” Article 3 of the Land Law 2003 also does not recognise special rights: Land of the Lao PDR is under the ownership of the national community as prescribed in Article 17 of the Constitution in which the State is charged with the centralized and uniform management [of land] throughout the country and with the allocation [of land] to individuals, families and economic organisations for use, lease or concession. .

Therefore, ethnic peoples’ traditional or customary ownership and management of forest and forest land are not clearly acknowledged. The only partial exception is scattered references to “customary use,” such as under Article 42 of the Forestry Law 2007. But even this states *Customary utilization of forest and forest products shall be practiced in accordance with a designed plan and with village regulations and laws and regulations on forests.* Although not stated under Article 42, it is implied that the “designed plan” would need to be approved by the correct authority.