

LAND TENURE SECURITY IN '70 PERCENT FORESTLAND POLICY' OF THE LAO PDR

SEPTEMBER 2019

The context

The two policies aiming to (i) restore **forest cover** to 70 percent of the country” and (ii) allocate/zone 70 percent of the land as **State Forestland** are prominent in **forest** and **land** governance discourses in Lao PDR. In relation to forest cover, the mass media, Government meetings and some International Development Agency partners often extoll the virtues of ‘returning’ forest cover to 70 percent. In relation to forestland, the 2018 National Master Plan on Land Allocation (NMPLA) - now approved by the National Assembly - affirms the Party land policy to zone 70 percent of the country as State Forestland, even though its maps are both very low resolution and do not reflect the realities of actual land use and forest cover.

One complicating factor is that the words ‘70 percent’ and ‘Forest’ are used in both policies, which may confuse stakeholders and decision makers. Another is that the Forestry Law refers to both **‘3 forest categories’** and **‘3 forestland categories’**, although the distinction between the two is not obvious.¹

The zonation and mapping of 70 percent of the country as State Forestland results in almost 3,000 villages being located “inside” these State Forestlands, and many other villages just outside but with agricultural and other lands inside. For these villages located within State Forestland, the key issue is that they have limited, if any, secure land tenure.

A study was commissioned by the Mekong Region Land Governance Project (MRLG) to investigate the origins and the implications of implementing the 70 percent forestland policy, and to outline policy considerations. This discussion note aims to provide a more nuanced understanding of the origin, rationale, geography and tenure implications of the 70 percent policies.

The origin of the 70 percent forest policies

Both the 70 percent forestland and 70 percent forest cover policies have their origins in discussion and debates in the 1980s about the declining status of the countries forests, which culminated in statements made during the 1989 National Forestry Conference by various high level persons, ranging from the Minister for Agriculture to the President HE Kayson Phomvihane, that *“half a century ago, forests covered 70 percent of Lao”* and *“forest areas in the Lao PDR should be restored to this 70 percent figure”*. Half a century before the 1980s’ is the 1940’s, and a 1943 French forestry report on forests in Indochina has been referenced as the source of this 70 percent figure². However, this report does not clearly specify 70 percent, but rather that 60 percent

of the Laos was ‘forest area’. Various small maps of Indochina have also been found from 1900, 1938 and 1943, but they do not have any data specifically attached.

Forest cover assessment is not the same as forestland zonation/mapping:

Forest cover is the coverage of land by vegetation judged or defined to be ‘forest’, assessed as *“both natural and planted forests that has a canopy density of 20 percent or more, an area great than 0.5 ha and trees with a diameter of at least 10 cm”*. The first official assessment of forest cover in the Lao PDR was made in 1982 by the Department of Forestry (DoF), based on their definition of ‘forest cover’ and their interpretation of 1980s aerial photography. Subsequent assessments (using mainly satellite imagery) were made in 1989, 2002, 2010 and most recently in 2015. These assessments reported that forest cover declined from 49 percent in 1980/82 to 41 percent in 2010. The 2015 data was originally reported to be about 40 percent. But this is confusing as a key International Development Agency project has assessed it to be 58 percent based on a changed methodology and/or what is included or mapped as ‘forest cover’.

Unlike forest, forestland is not assessed but created, or zoned, based on the initial decisions in 1987 and 1989 that 70 percent of the country should be zoned as State Forestland, and subsequent decisions and mapping. Importantly, Article 3 of the Forest Law (2007), states that Forestland is **“all land plots with or without forest cover, which are determined by the State as Forestlands”**. Article 56 then classifies State Forestland into **3 categories** for the purpose of management: (1) Preservation / Conservation Forestland, gazetted in 1993, (2) Production Forestland, gazetted in 2006 and later and (3) Protection Forestland, which may not have yet been officially gazetted, although maps of these areas are often promoted as official/legal.

Villages, land use and forest cover in the State Forestlands

Thus, while the 70 percent forestland zonation is linked historically to the 70 percent forest cover aim, the actual delineation and zonation of forestland - especially the Protection Forestlands - is an administrative decision by the State. Thus, while they may sound like complementary policies, they are not, because:

- ➔ ‘forest cover’ occurs both inside and outside the 70 percent State Forestlands; and
- ➔ the State Forestlands contain only about 48 percent of forest, and 52 percent other land uses - see **table 1**, below.

¹ Research for this discussion note does not include updated information as per the revised Forest Law (2019).

² Maurand (1943) French-Indochina Report, cited by DoF (2005) Wood energy situation in Lao PDR, Vientiane.

Table 1: The area of State Forestlands ('national' forestland only), percentage forest cover and number of villages inside.

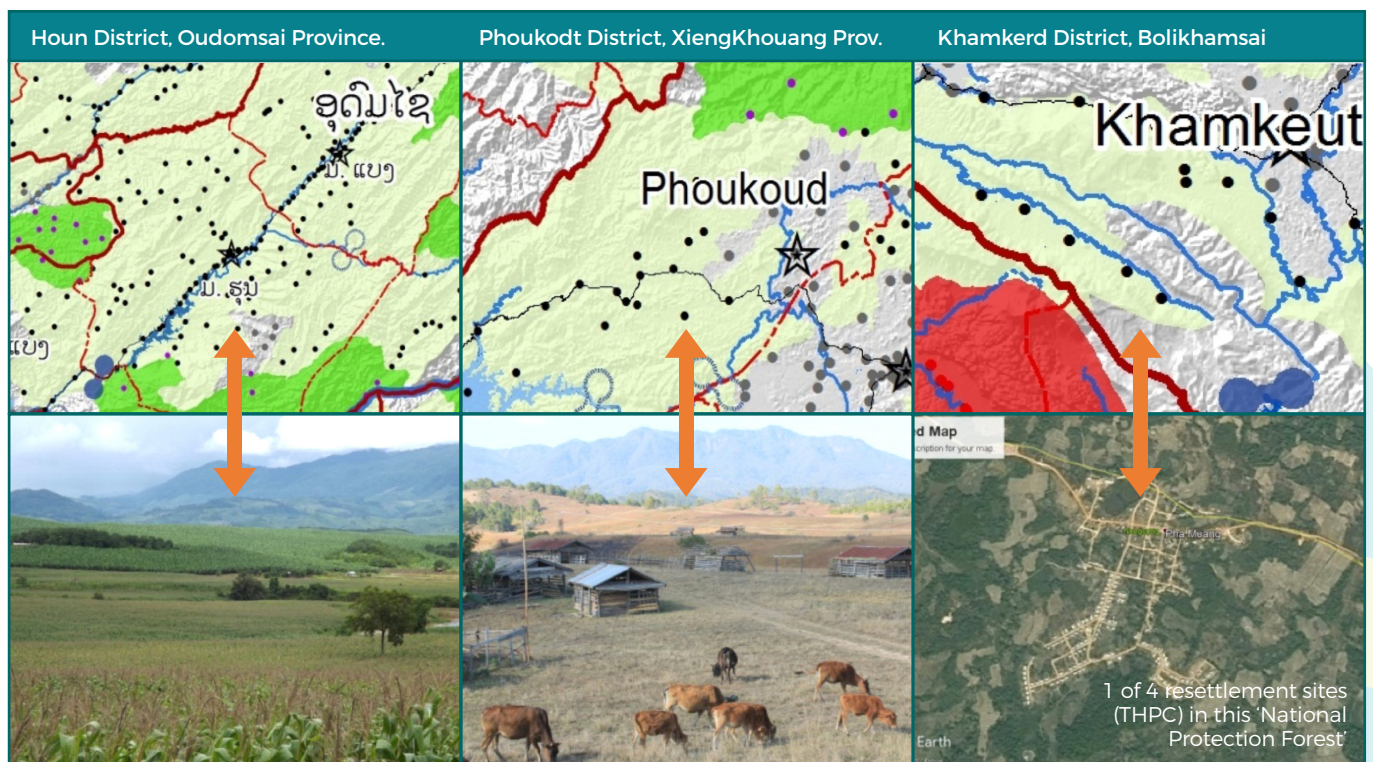
State Forestland Category	Area		Forest Cover (2010)			Non-forest % of Zone	Nr. of Villages	Nr. of families ('000)
	Ha	% of Lao	Ha Forest	% of Zone	% of Lao			
Inside 3 Forestland Zones	15,877,223	69%	7,581,465	48%	32.9%	52%	2,993	227
National Conservation Forest	3,878,684	17%	2,588,300	67%	27%	33%	340	24
National Protection Forest	7,482,109	32%	2,614,000	35%	27%	65%	1,896	145
Provincial/District Protected Area	1,403,093	6.1	982,165				95	
National Production Forest Area	3,113,336	14%	1,397,000	45%	15%	55%	662	58
Outside 3 Forestland Zones	7,177,625	31%	1,963,835	27%	8.5%	73%	5,650	793
TOTAL Lao PDR	23,054,848	100%	9,545,300		41.4%		8,643	1,020

Sources: (i) Forest Cover: FIPD/DoF, (ii) Area: GIS-based calculation by FIPD/DoF, (ii) Nr. Villages, Population: CDE

Table 1 also shows that 2,993 villages - or 35 percentage of all villages in Lao PDR - are actually located inside State Forestlands, often for many generations and well before they were mapped as State Forestlands. By a combination of GIS analysis, visual interpretation of satellite imagery and observations of daily life and land use in the rural areas, it can be seen that many different land uses existing in the 52% of un-forested land in the State Forestland (see figure 1 for just some examples), including:

- Villages and urban infrastructure;
- Rice paddy fields, fixed croplands, and permanent agriculture crops (e.g. coffee, tea, rubber etc.);
- Upland fields and rotational agriculture (which are often mapped as 'potential forest');
- Land concessions for industrial and agricultural use; and
- Hydropower projects and village resettlement sites.

Figure 1: Illustration of current land use in areas zoned and mapped as "National Protection Forest"



Legal framework of land tenure in State Forestlands

The gazettement of the 3 categories of State Forestlands was done over a long period of time and was not complimented by good maps - and sometimes no maps at all. For example, the 1993 PM Decree 164 declaring National Conservation Forests only specifies a gross area and a very small map.

The multiple PM Decrees establishing Production Forests only have gross areas, 2 coordinates, and no maps. It is not known if the National Protection Forests have been officially gazetted.

The legal framework of land tenure in State Forestland is a complex network of laws, decrees, decisions, and instructions in both the Forestry and Land legislations, which lacks clarity about land tenure of citizens in State

Forestland. Article 4 of the Forest Law (2007) states that forestland is the property of the national community but managed by the state. It allows villagers to use degraded forest land but does not specify for what purpose. Article 22 of the Land Law (2003) does allow local authorities to provide land certificate, and possibly titles, to forest land, but again does not specify for forestry or other land uses. In some instances, the legislation appears to be contradictory, for example:

- Decree 88 on Implementing the Land Law states that local authorities are not allowed to issue any certificate for granting the land use rights or land utilization rights for (10) categories of land, including Forestland (Article 7); while
- Article 26 of the same Decree states that Customary Land Utilization Rights will be provided to those who *“protect and utilize... land... in a regular, continued and long-term manner until the present time (even) without any documents”*.

Notwithstanding the above, the usual interpretation by Government of Laos (GoL) agencies, especially at the central level, is that State Forestland cannot be tenured with a certificate or title, to villagers, as it would then no longer be State Forestland, and thus the total area of State Forestland would fall below the designated 70 percent figure. Recent tilting of village lands by some local authorities is thus contested by GoL central and forestry agencies.

National Assembly request to conduct land-use analysis and re-delineate State Forestlands

In 2014, the National Assembly requested the GoL to review land use and re-delineate the ‘3 Forestland Categories’ (3FC) so as to ensure that their boundaries did not encompass villages and villager land use. A pilot participatory review and re-delineation was undertaken in Luang Prabang Province. The World Bank then agreed to fund, via its LENS 2 facility, the conduct of this activity in the rest of the country, to help the GoL respond to the National Assemblies request. A key rationale of the World Bank support for this 3FC re-delineation - which would likely see a decrease in area zoned as State Forestland - was the need to provide a more rationale and manageable State Forestland estate, focusing on protecting remaining forests and regenerating areas with the real possibility to do so, and not overlapping with other land uses and developments. While a Project Agreement was signed between the World Bank (via LENS2) and the Ministry of Natural Resources and Environment (MONRE), the GoL and the Party did not agree to the concept of re-delineation of State Forestland (see below), and the project was cancelled after about one year, in early 2017.

Recent policy and legal endorsement of 70 percent State Forestland

The Party Central Committee Resolution 26 (3/8/2017) on ‘The Enhancement of Land Management and Development in the New Period’ confirmed the policy when it directed to **“quickly develop a land master plan... (but)... maintain**



the area of forestland to cover 70 percent”. This led to the subsequent drafting by MONRE in 2017 of the “National Master Plan on Land Allocation” (NMPLA) which specified that 70 percent of the country is State Forestland. This NMPLA was proposed to the National Assembly, who endorsed this plan on 28/5/2018 (Resolution 098/NA). However, the Master Plan now endorsed by the National Assembly uses very low-resolution maps and minimal data or assessment of the realities of current land use and development. Thus, even though the National Assembly requested in 2014 to improve land use mapping and re-delineation forestland estate, there has been no credible land use mapping undertaken to inform on the extent and importance of these non-forested land uses, which would normally be required for a Land Use Master Plan.

Implications for villagers - and development - in the 70 percent State Forestlands

The insecure land tenure for the approximately 3,000 villages located in State Forestland means that it is unlikely that villagers (and even companies) will invest time and money into sustainable land and forest management. For example, villages will continue to focus only on annual food and cash crop production, at the expense of natural forest management. Similarly, the GoL strategy of “Green Growth”, drafted in partnership with various development partners, to accelerate re-forestation to help achieve 70 percent forest cover aim will be much constrained by the lack of legal recognition of villagers as commercial foresters and the lack of legal recognition and certification of their land tenures. Significant re-forestation is likely not possible under these circumstances.

Vast areas delineated as State Forestland are classified as **‘potential forest’**. These areas are considered by foresters to be abandoned, degraded, unstocked or unused land, and prioritized for regeneration and reforestation. However, significant areas of this **‘potential forest’** is actually productively used, or fallowed, by villagers for food, nutrition, livelihood and income generation. These degraded forests have also been a prime target to allocate land concession in Lao PDR. Often, this land has been used traditionally for many years or generations and continues to expand with population growth. Thus, if re-generation through plantations occurs, there are nutritional and environmental concerns for these populations, as monocultures can reduce food security, nutrition, eco-system services and result in soil degeneration, erosion and others.

Another implication of the 70 percent Forestland Policy is that forestry agencies do not have the capacity to manage 70 percent of the land area of the Lao PDR, which may be reflected in the diminishing stands of good forest due to the diversion of resources and attention away from managing the actual remaining forests.

Policy recommendations and programmatic development

To improve forest management, the Ministry of Natural Resources and Environment and the Ministry of Agriculture and Forestry could be mandated and resourced to re-start the process of mapping and assessment, in detail, of current land use and forests over the whole country, and use this as a basis to re-delineate State Forestlands, so that they do not encompass significant numbers of villages and village production land. Another important objective of this re-delineation would be to more closely align forest cover (and other natural lands) with the zonation of State Forestland, and thus protect remaining forests and regenerate those areas with a real possibility to do so, and thus attain closer to 70 percent forest cover.

An appropriately detailed and objective land use and customary tenure mapping and database for the Lao PDR is urgently required. Such land use assessment and mapping must use both participatory and robust technical methods, as recently developed by processes such as the

participatory Forest and Agriculture Land Use Planning, Allocation and Management (pFALUPAM). This process may be better undertaken as a multi-stakeholder exercise, both in terms of GoL agencies and International Development Agency partners and should be a key foundation for 'green growth' programmes.

In addition to the re-delineation of State Forestland, it is important to recognize and protect the customary land rights of those citizens and communities living in or close to forest estates and their uses of forest on which they depend for their livelihoods. The GoL can provide clear and long-term legal land tenure recognition across both the Land and Forest legislations, followed by land registration of all customary land users, of those citizens that have lived on their land for years.

In addition, villages located within State Forestland boundaries could be provided with the legal right to become commercial foresters as one practical measure to provide them incentives to contribute to increase the forest cover of State Forestland.

This Discussion Note prepared by MRLG is based on a detailed report researched and written by Chris Flint.

Reviewed by Justine Sylvester, Christian Castellanet, John Meadows, Antoine Deligne, Jean-Christophe Diepart, Michael Victor and Edwin Payuan

Full Citation: MRLG (2019). *Land Tenure Security in '70 percent Forestland Policy' of the Lao PDR*, Discussion Note Series #6. Vientiane: Mekong Region Land Governance.



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike International \(CC BY-NC-SA 4.0\)](https://creativecommons.org/licenses/by-nc-sa/4.0/)

The Mekong Region Land Governance Project (MRLG) aims to improve the land tenure security of smallholder farmers in the Mekong and has been operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014.

The Mekong Region Land Governance (MRLG) is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Government of Luxembourg.

For more information on MRLG, please visit www.mrlg.org.

Mekong Region Land Governance

Unit 11, House No. 262, Ban Saphanthong Kang, Sistattanak District, Vientiane Capital, Lao PDR
PO Box 2973, Vientiane Lao PDR 01000
Phone: +856 21 454 807
Email: info@mrlg.org

Disclaimer

The views, opinions and interpretations expressed in this publication are those of the authors and contributors. They should not be interpreted as representing the official or unofficial views or positions of SDC, BMZ and Luxembourg.

Funded by:



Implemented by:



Supported by:

