

Women's Access and Land Security in Customary Forest Tenure Systems in Lao P.D.R.

KEY MESSAGES

- The Government of Laos hopes to **expand forest coverage through forest management systems** at district and village levels. This has led to a situation where **formal land management and informal customary land management intersect**.
- While **legislation has attempted to acknowledge traditional practices**, the new **Land Law (2019)** has **weakened women's land rights by the removal of joint titling**, leaving some groups with predominately patrifocal inheritance systems at a distinct disadvantage.
- This briefing note is based on a case study that looked at women's access to land and forest tenure rights in traditional systems in two ethnic minority villages in Phongsaly. **Further research on customary land tenure systems is needed to inform efforts by all stakeholders** to sustain forests while also improving rural livelihoods.
- **Under customary systems, family units collectively manage all agricultural and household land, but only an individual male may inherit property.** Women are unable to own land independently of men.
- In the two villages visited, both **men and women possess equal customary rights to access forestlands**, which are inherited communally by all village members, unlike for agricultural land (paddy fields and garden) or houses.
- **Women and men have equal rights to extract forest products.** But traditional gender roles create some inequities in the practices of extraction. As a result, women work longer hours and travel on foot for longer distances.
- **Customary forest governance systems give men the power to make the rules and decisions**, which women are expected to follow. Current **state-led forest planning systems also do not involve women in the decision making process.**
- **The villagers would work harder to protect forestland and resources if the current governance system gave them more ownership.**
- Forest **resources are dwindling** due to population growth and overexploitation. **Strengthening the role of women in decision making would ease their work burden while improving natural resource and forest management.**

1. BACKGROUND

Land, forests, and water are the most valuable assets for ethnic groups that live in the forested mountain areas of Lao P.D.R. **Sustaining and ensuring continued access to these resources is central to their livelihoods and food security.** For generations, men and women’s access to these resources have been regulated by village level customary systems.

The Government of Lao P.D.R. had hoped to reach 70 percent forest coverage nationwide by 2020. The latest estimate of current forest cover is approximately 60 percent.¹ **The key to sustaining forests is understanding local values and beliefs, and how they relate to management of land, forests and water.** The same will also help develop-

ment projects improve community well-being through women's land rights, gender equality, and positive change.

There has been little research on the customary rights of women in relation to forest land and resources. This briefing note is based on a case study (Figure 1) that looked at women's access to land and forest tenure rights in traditional systems in Khmou Ou and White Tai villages of Mai district in Phongsaly province.



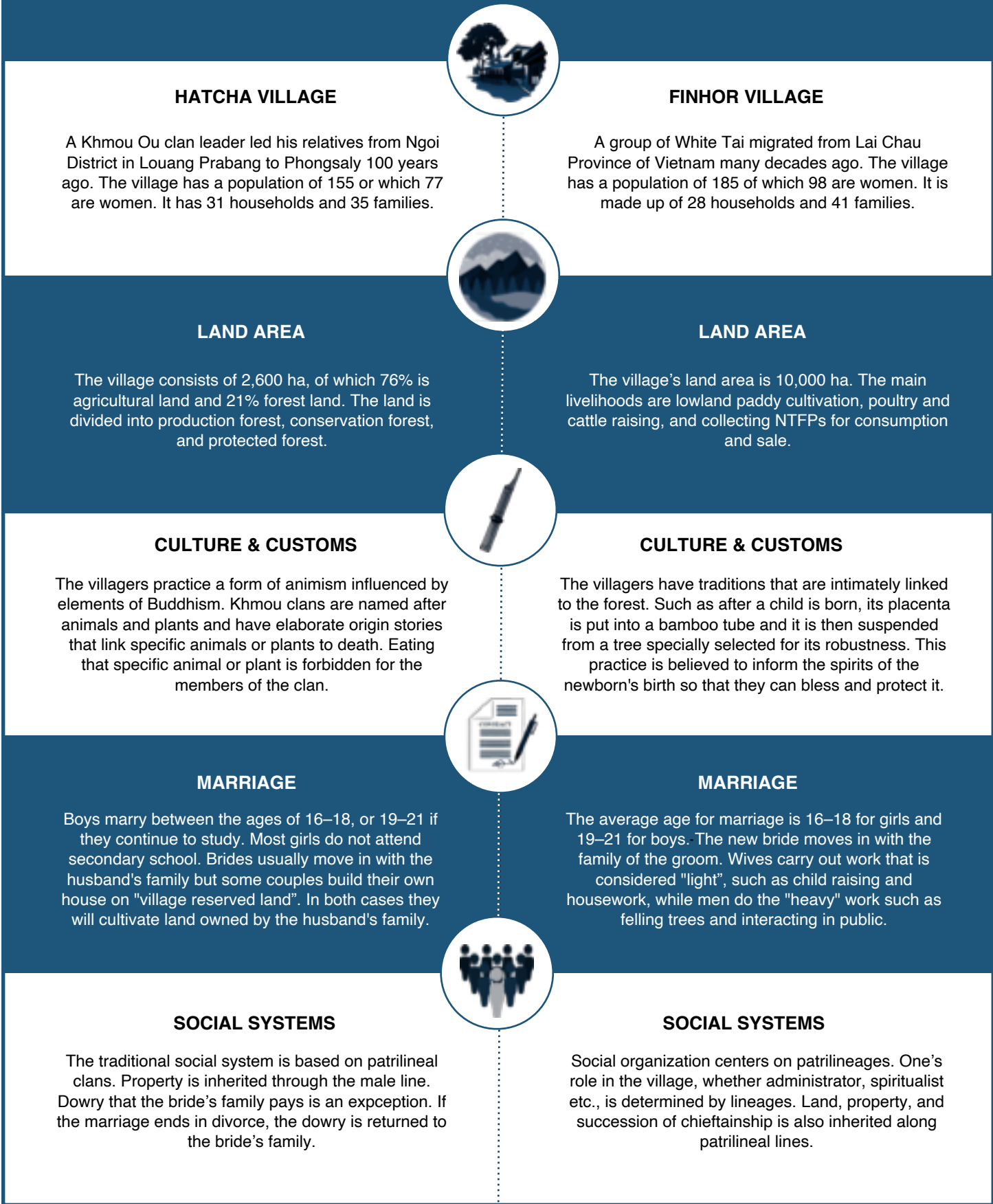
Khmou women discussing gender division of labor in Hacha village © Ms. P. K. Phetsakhone

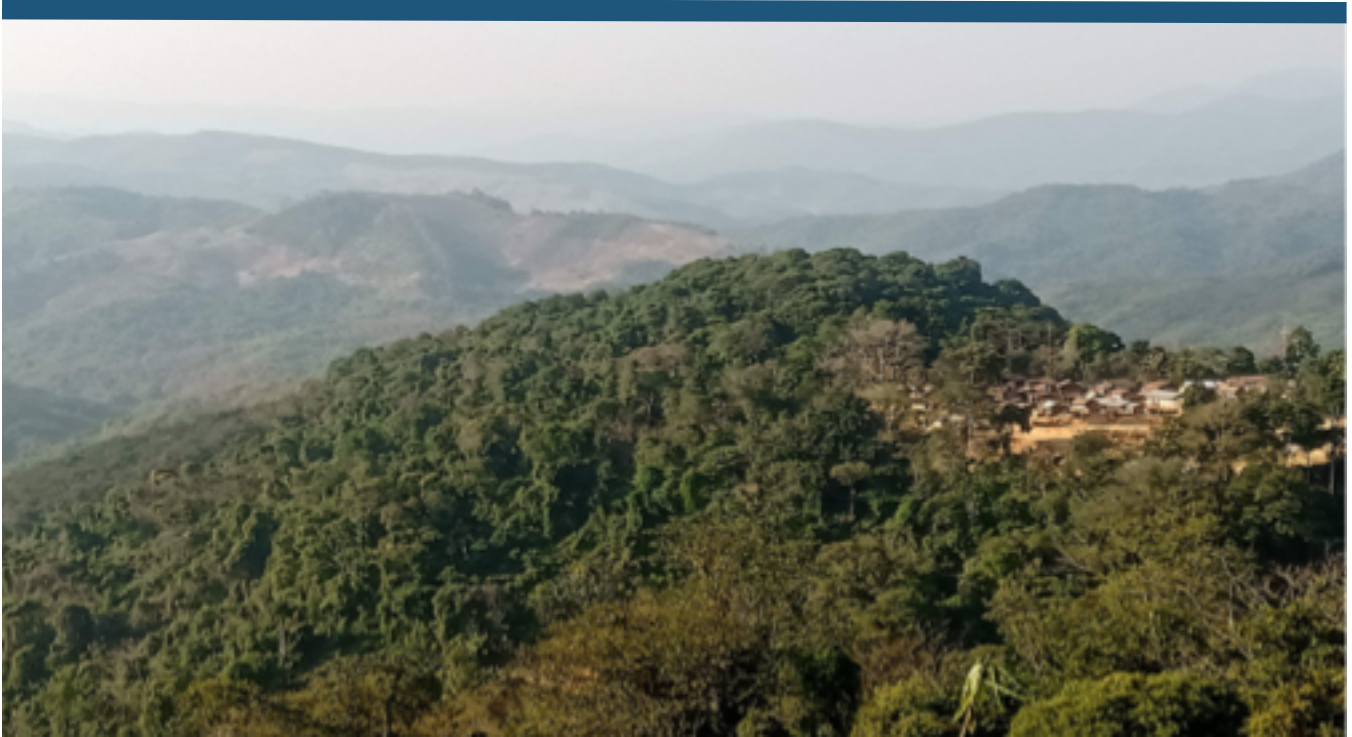
FIGURE 1

CASE STUDY

Data collection: Hatcha and Finhor villages in Mai district of Phongsaly in Jan—Feb 2021.

Methodology: Existing literature review and data collection using the Participatory Rural Appraisal approach and Feminist Anthropology perspective, which seeks to reduce male bias in research findings. Focus group discussions with women and men of all ages and social statuses as well as transect walks with villagers and observation of daily activities.





A mixed Khmou and Hmong village in Mai district, Phongsaly province © Ms. P. K. Phetsakhone

2. WOMEN AND LAND LEGISLATION

From a legal standpoint, **laws and policies intend to protect women's access to land. Most of these have been implemented in a top-down manner that may, or may not, take into consideration customary practices, traditions, and values that represent the real concerns of women.**

For example, the current Land Law (2019), Article 130, states that recognition of customary use rights is determined by continual use of the land for a period of 20 years without a conflict. **The term "use" is undefined and ambiguous, and assumed to mean under cultivation. Such a definition, or interpretation, does not work for fallow swidden systems, where the "use" of the fallow land is to regenerate forests.** If the law considers leaving such land fallow as non-

use, then farmers, primarily ethnic minorities, stand to lose large portions of their land. Secondly, **the Land Law does not address women's rights to secure tenure**, and differs significantly from the Land Law of 2003, which provided for joint titling with women. **This leaves groups with predominately patrifocal inheritance systems at a distinct disadvantage.**

Cultural traditions should be taken into consideration in the implementation of the law. Sub-legislation could be used to clarify the above issues. This would be likely to enhance social and economic development in many parts of the country.

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3. CUSTOMARY LAND RIGHTS

Informal or customary land rights are patterns of interactions established outside the formal realm of law. They are a set of community rules and regulations inherited from ancestors and accepted, reinterpreted and enforced by the community.

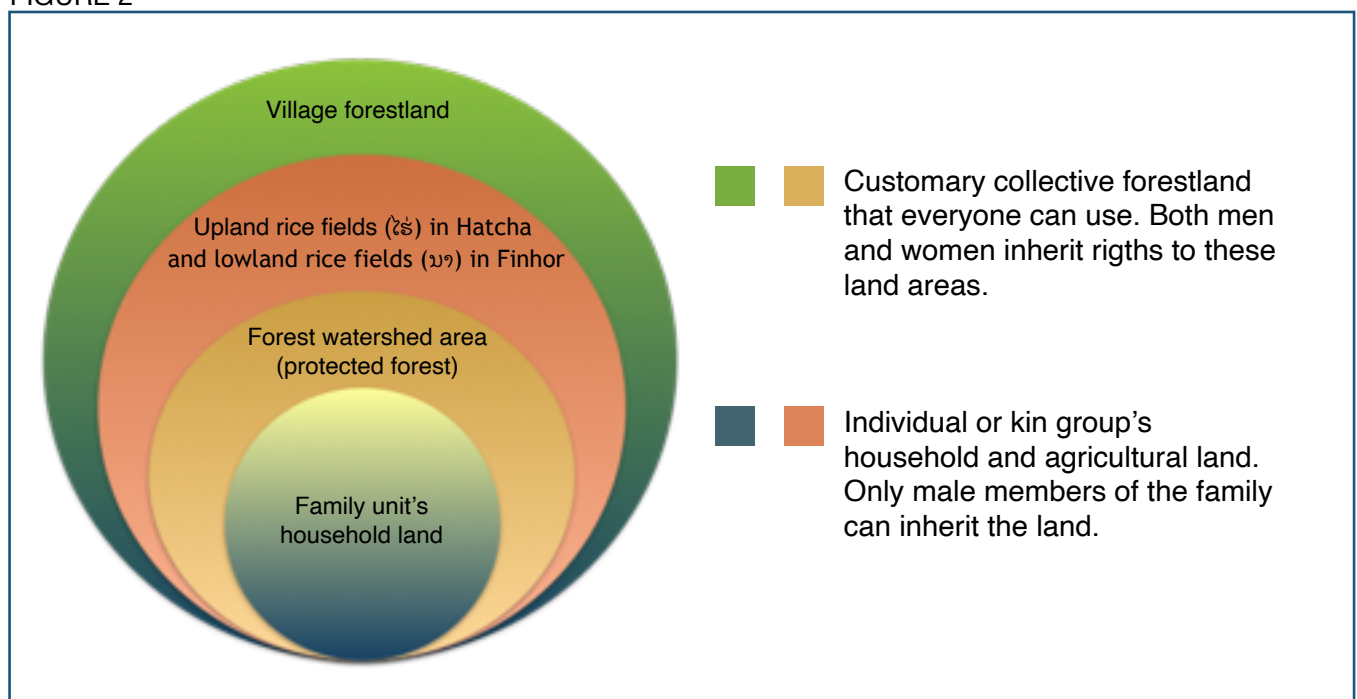
Men and women in focus group discussions in Hacha and Finhor villages expressed the same sentiment: “customary land rights are rights over land inherited from our mother and father, we have rights over it, other people cannot take it away from us, it is only for our children”. Children here refer to sons, and mother implies joint land rights with the father.


Women’s land tenure rights as individuals is a separate category and not as straight-forward. The culturally defined nature of **their relationship to men (e.g. husbands, fathers, brothers) and their social position (e.g. single, married, widowed) form a complex matrix of factors that affect women’s rights to land and entrench dependence on men for their livelihoods.**

Figure 2 shows the four types of land recognized by villagers. The land areas are color coded to show the type of inheritance they represent — communal or individual/kin group inheritance.

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FIGURE 2





“Selling broom grass and other NTFPs provides a subsistence income for our family...I have no other sources of cash income...if we have no forest we have no food.”

A Khmou woman from Hatcha

Broom grass left to dry after a trader purchased it from villagers © Ms. P. K. Phetsakhone

4. RIGHTS OF FOREST ACCESS

Both women and men have equal rights to extract resources from forests. Women commonly collect forest resources for daily consumption, an important activity that demonstrates their status as "a good woman" and member of society. Women also venture deep into the forests where they collect NTFPs for sale. Men, on the other hand, hunt for wild animals that are mostly for daily consumption.

Extracting forest resources is dependent upon individual capability. While access to forests is the same for men and women, some inequities exist due to traditional gender roles. **Women tend to work longer hours and travel on foot for longer distances while men use motorbikes to transport NTFPs.**

Additionally, the forest resources are dwindling due to population pressures and unsustainable levels of harvesting. This is a concern to villagers for whom NTFPs are an important part of their livelihoods.

A Khmou woman from Hatcha said that, "selling broom grass and other NTFPs provides a subsistence income for our family...I have no other sources of cash income...if we have no forest we have no food."

Better management of natural resources based upon improvements in women's engagement in joint decision making would ease the burden while improving natural resource and forest management.

5. RIGHTS TO EXTRACTION AND BENEFITS TO COMMUNITIES

Access to and use of collectively owned land is a birthright that both men and women have traditionally had till today. There are no restricted areas in the regular forests that women or men can not enter. An exception is the sacred forest identified at Finhor. It is the only primary forest left in their village. The sacred forest is rich in biodiversity with wild animals, medicinal plants, NTFPs, and big trees. The belief is that men and women do not enter this particular area because doing so would make them sick and bring bad luck to the whole village.

The Khmou have very complex relations with the forest. Many of the associated practices are a secret. However, in essence, Khmou women have unrestricted access to forests, and appear to spend more time in the forests than men do. One Khmou Ou woman expressed it this way: "women have the right to go everywhere in the forest ...the same as men... we go to the forest everyday and sometimes women go further than the men."



Leafy green vegetables collected by women of Finhor village © Ms. P. K. Phetsakhone

6. WOMEN'S ROLE IN CUSTOMARY FOREST GOVERNANCE

Land tenure is linked to kinship, marriage and other village institutions. The most important traditional institution for land governance is the kin group. A kin group is a traditional structure, governed by male leaders, usually important elders of the lineage or clan.

The family institution comes second. It defines the rights for land and property distribution, ownership, use, and benefit sharing between family members, kin members and the village community.

Third is the traditional village administration along with contemporary village authorities. This governance structure is a mix of traditional practices and state policies that focuses on forest land and resource management. All these institutions are managed by male elders and guided by traditional customs in keeping with religious practices that are accepted by all members of the community.

The village elders and village authorities are the rule makers. They inform villagers, monitor people's practices, and mete out punishment to those who break rules. Women are not included in the rulemaking but usually participate only in the last stage when leaders inform villagers of the rules.

Neither in Hacha nor Finhor are there any female village elders; thus, they remain outside of the governance structure. A man living in Finhor discussing rulemaking shared this view about women's involvement in decisions regarding timber extraction: "...women are not part of the rulemaking because it is not their role, they cannot read and write... they don't know how to do public work and management work, even though they go into the forest and utilize the forest resources as men do".

Women usually have less formal education and experience in the public sphere, which makes them feel less confident about engaging in forest management or making decisions about forest usage. Nevertheless, a few young women in Hacha stated that they could do forest management

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A White Tai man from Finhor

work like men if only their husbands would support them and share their household work, including childcare. Finhor women are more reluctant to participate in the forest management work.²



Villagers of Hacha village © Ms. P. K. Phetsakhone

7. WOMEN'S INVOLVEMENT IN FORMAL FOREST GOVERNANCE

Over the past years, the forestland governance system in Laos has changed, including the actors who make the new rules. Now, the governance institution is comprised of the state and its related offices, as well as the village leadership. **The rule makers are government staff, working closely with village authorities, all of whom are men.**

In 2017, Hacha village completed a Participatory Land Use Planning (PLUP) exercise led by the District Agriculture and Forestry Office (DAFO) and DoNRE (Department of Natural Resources and Environment) with financial support from World Renew. Now, the forestlands are categorized into three types of forests: 1) production

forests, 2) conservation forests, and 3) protected forests. These forest types all have associated policies created by the district PLUP team, in consultation with villagers.

These changes are well recognized by both women and men in the village. Both groups reported that forestlands and resources used to belong to them, and they used to have full rights to manage and control them. These lands and resources are still villager owned, but now under the control of the government, or in Lao ລັດ ຄູ້ມຄອງປະຊາຊົນເປັນເຈົ້າ.



Villagers of Finhor entering forest to collect food © Ms. P. K. Phetsakhone

This means that villagers have rights of access and use, and a responsibility to protect the forests, but the rights to release or transfer these areas to another form of land use, or forest type, is controlled by the state.

During the PLUP process, the technical team consulted the village women separately on their use of forest resources. However, the **women were not invited to join discussions about land zoning activities or decision making policies. The only subsequent interaction with women was when they were called to hear the technical team present the new policies and rules.**

Finhor village has yet to go through either a PLUP or a Village Forest Management Planning exercise. However, the DAFO has informed the village about a district plan to increase forest coverage, and villagers are aware that the state has control over fo-

rest use. DAFO sent a letter a few years ago to inform villagers of this policy and that villagers should protect the forest in areas identified by DAFO. There were no rules or policies included in the letter. Most of the women were not aware of this announcement.

Although the formal governance system has changed, in practice village community members still follow customary, traditional practices with respect to forests and their use. **The current governance system marginalizes women, even as it has diminished villagers' control over their forest lands and resources. The loss of collective ownership and collective rights has reduced local communities' motivation and incentives to protect their forestlands and resources.**

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8. RECOMMENDATIONS

- **Changes to gender norms are needed to ensure women's access to security of tenure over forestlands and resources.** Specifically, men need to recognize women's rights and promote women's empowerment.
- **Conduct additional research on various ethnic groups' customary practices,** with an emphasis on understanding women's access to and use of land and forests. **The resulting knowledge should be used to strengthen and inform future laws, policies, and legislation.**
- **State laws and policies should recognize traditional collective land rights and collective ownership, including use and extraction of forest resources,** and be implemented with a strong enforcement and a monitoring system. The current land law emphasizes recognition of the customary land rights. **Sub-legislation could be used to ensure these ethnic minorities' rights, especially of women.**
- **Promote projects that empower rural women's livelihoods** through technical assistance for the domestication of NTFPs and other income generating activities, especially in ethnic minority communities.
- **PLUP technical teams should ensure meaningful participation of women in decision making processes, and provide awareness on women's rights, by including members of the Commission for the Advancement of Women (CAW) on their staff.** Consultation and consent of women's groups and female villagers should be required. This is an essential condition for securing women's rights and to recognize their customary ownership and access to resources.
- **Raise local leaders' awareness of and understanding of women's land rights, and promote a combination of formal and informal management mechanisms.** A good monitoring and information sharing system should be put in place that is accessible for local people, including women who cannot read and or write.
- **Women's customary rights to land and forests should be brought into relevant policy dialogues by government and development partners** such as the Land Subsector Working Group. Multi-sector working groups, like LIWG and its members, should join in legal and policy discussions with other relevant networks, such as the Lao Gender Network, and NPA network.

ENDNOTES:

¹Sousath Sayakoumane, Head of the Forestry Department. <https://laotiantimes.com/2020/05/28/laos-may-not-achieve-2020-target-of-70-percent-forest-cover/>

²Khmou women do swidden cultivation and are more familiar with forest management, whereas White Tai women are primarily paddy rice cultivators.



About the Land Information Working Group

The Land Information Working Group (LIWG) is a civil society network that was set up in 2007. The LIWG consists mostly of international and local civil society organization staff and other individuals working on land issues in Lao PDR. The group has over 80 Core Members representing nearly 40 organizations, and over 180 individual Supporting Members. The LIWG activities are implemented through the LIWG Secretariat which is overseen by the Committee, elected from among the member organizations. The group was established so that its members could inform one another about land matters, especially in view of increasing land related foreign direct investment (FDI) projects and concerns over the negative impacts on the livelihoods of rural communities, as well as to develop common initiatives to address some of these issues. The LIWG does this by cooperating with a wide variety of stakeholders: civil society, government, development partners, private sector, and, importantly, the communities themselves.

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The information presented in this briefing note reflects the practices and experiences of women and men in the villages visited. The views expressed are those of the author and do not necessarily reflect the views of the funders or the Land Information Working Group.

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