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Report on

Land Tenure Considerations in Sri Lanka's Proposed National REDD+ Strategy

Sri Lanka UN-REDD Programme

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Final Report on Land Tenure Considerations in Sri Lanka's Proposed National REDD+ Strategy
Sri Lanka UN-REDD Programme

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Acronyms

ADB	Asian Development Bank
ARC	Alliance for Religions and Conservation
CEA	Central Environmental Authority
CF	Community Forestry
DFID	Department for International Development
DWC	Department of Wildlife Conservation
EIA	Environmental Impact Assessment
ESIA	Environment and Social Impact Assessment
FD	Forest Department
FFPA	Fauna and Flora Protection Ordinance
FRA	Forest Resource Assessment
FPIC	Free Prior and Informed Consent
IEE	Initial Environmental Examination
JEDB	Janataha Estate Development Board
LIS	Land Information System
LRC	Land Reform Commission
LUPPD	Land Use Planning and Policy Department
MASL	Mahaweli Authority Sri Lanka
NFI	National Forest Inventory
NFMS	National Forest Monitoring System
NPPD	National Physical Policy and Planning Department
NTFP	Non-timber Forest Product
PAM	Policy and Measure
PES	Payment for Environmental Services
PLR	Policy Laws and Regulations
RDA	Road Development Authority
RPC	Regional Plantation Companies
SD	Survey Department
SEA	Strategic Environmental Assessment
SFM	Sustainable Forest Management
SLSPC	Sri Lanka State Plantations Cooperation
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure

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Executive Summary

Under its REDD+ Programme, Sri Lanka has identified a number of potential policies and measures (PAMs) that could be implemented to reduce deforestation and degradation. The aim of this paper is to analyze the tenure considerations related to potential PAMs in order to identify the risks and benefits associated with each one. Considering other criteria as well, this analysis should assist decision makers in deciding if a particular PAM should be pursued or prioritized in the country's REDD+ Strategy. In addition, potential strategies are suggested to minimize the risks and maximize the benefits if a particular PAM were to be implemented.

The paper first provides an overview of the forest and land use situation in Sri Lanka where forests have declined rapidly over the past several decades from 84 percent of the land area in the late 1800s to the current 29.7 percent. Major drivers of deforestation and degradation in Sri Lanka including encroachment, infrastructure development projects, large scale private agriculture ventures, and localized drivers of forest degradation affect forests, a very large extent of which is under State jurisdiction (82.25%), primarily divided between the Forestry Department and the Department of Wildlife Conservation. Non-state forest lands ('other forested lands') include mainly plantations, home gardens, and temple forests.

The institutional and policy context are presented. Key institutions involved in land tenure issues include the Forest Department, the Central Environmental Agency, the Department of Wildlife Conservation, the Ministry of Land (and associated departments) and the Mahaweli Authority. Tenure related issues in the country are briefly introduced. Land registration is underway since 2007 under the Bim Saviya Programme, however, the involvement of multiple agencies with conflicting mandates has led to overlapping claims, also affecting forest areas. Landlessness is also a prominent issue linked to forest encroachment, and is attributed to high population density, limited arable land, and the scarcity of off-farm employment; a 2004 State of the Economy report claimed that 27 percent of peasants were landless. Sri Lanka has a population of indigenous people known as the Veddha who, over the past few decades, have been largely alienated from forest lands that they traditionally managed. The solution to the Veddha land issues touches on REDD+ and presents both challenges and opportunities. Furthermore, traditional practices of *chena* cultivation and grazing in forest areas, create pressures on forests while at the same time being vitally important for local livelihoods.

One of the largest challenges for forests has been conversion for development purposes. The pressure is very high, with the Forest Department receiving 397 requests for conversion in 2012, and a steady stream of requests continues. Initiated in the 1970s, the Mahaweli Development Programme is the most significant development project in the country. Large-scale river basin development has reached 39 percent of the country, with significant impacts on forests. Land issues in the North and East are introduced briefly as these regions require special attention following 26 years of civil war. Resettlement, land mines, and information gaps add to the challenges in this area.

While recognizing tenure as including a ‘bundle’ of rights, the framework for analysis of the PAMs considers also the *Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security*, relevant Cancun Safeguards, and World Bank policies related to involuntary resettlement. The PAMs related to land use planning, encroachment, forestry boundary demarcation, consolidation of natural forestlands, and payments for ecosystem services were determined to have the strongest tenure considerations and associated risks. PAMs with some (medium) tenure considerations included improvement of law enforcement, strengthening of the environmental impact assessment and strategic environmental assessment processes, development of agroforestry models, improved land and productivity practices, governance of temple forests, protection of watersheds, and support to non-forest lands. Finally, a number of PAMs were considered to have minimal tenure implications particularly in terms of risk, and these include: national forest inventory, development of indicators, building awareness on governance and policies, and identifying the local supply chain for fuelwood demand.

The author provides specific ideas for reducing tenure risks when implementing each PAM. The strategies to address the tenure risks are then summarized in the conclusion to cover ten broad areas including stakeholder engagement, training and capacity building, awareness raising, amendment to policies and laws, securing of tenure rights, creating positive incentives, coordination and collaboration, improved land use planning, monitoring of forests and tenure, and further research. The principles of the *Voluntary Guidelines* can provide the underlying framework for evaluating and guiding the process forward.



Natural regeneration plot of Burutha (*Chloroxylon swetenia*) trees in a degraded forest in the Puttalam District (Photo: Shanthakumara Baminawatte)

1. Introduction

1.1 Why the Need to Consider Tenure in REDD+?

REDD+ and tenure are inherently linked. Tenure refers to the set of laws and institutions that determine the rights to access, use, and transfer resources, and is established through a combination of both statutory and customary ownership rights.

What is land tenure?

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions. (FAO, 2002)

Land tenure is characterized by the bundles of rights, rules, and institutions that define individual or community access to land. Critical rights include rights of access, rights of withdrawal of resources, rights of management, rights of exclusion, rights of alienation (to sell property), and authority to sanction (Ostrom and Schlager 1996, USAID 2011).

In most cases, those who have legitimate tenure rights to a resource have a stronger interest to sustainably manage the resource and hence land tenure security is often associated with less deforestation. Accordingly, secure tenure of land, trees and forests may be seen as an *enabling condition* for reducing deforestation and forest degradation, but not a guarantee that this will occur. Clear and secure tenure is one of several important factors that is likely to encourage sustainable forest management; however, a number of other governance factors also come into play.

Reflecting this important recognition of the importance of land tenure in the context of REDD+, the Cancun Agreements of the United Nations Framework Convention on Climate Change (UNFCCC) specifically request developing country Parties to address land tenure issues when developing and implementing national strategies or action plans. (Decision 1/CP.16, paragraph 72).

Tenure should ideally be considered in the early design stage of a REDD+ strategy as various policies and measures (PAMs) are being considered for investment and implementation. Particular PAMs supported under a REDD+ programme could aggravate land tenure concerns. Likewise, REDD+ PAMs could be mutually beneficial in both reducing emissions and reinforcing tenure security. Some PAMs may have little or no effect on or relevance to tenure, but it is nevertheless advisable to review possible linkages in advance. Sri Lanka is one of the few UN-REDD partner countries that has realized the importance of analyzing the tenure implications of its potential REDD+ PAMs at an early stage.

1.2 Objectives and Methodology of the Study

The overall goal of this study is to analyze the tenure dimensions related to potential PAMs that Sri Lanka is considering under its National REDD+ Strategy. The assessment provides relevant background information on the tenure situation in Sri Lanka with a view to informing a comprehensive and nuanced view of particular PAMs. In addition it looks at individual PAMs that are currently under consideration to examine the potential tenure-related risks and benefits associated with undertaking them. The author introduces ideas for adjusting the strategy to increase tenure-related benefits or to mitigate potential risks.

This study is intended to build on prior studies and to inform future studies including the development of Sri Lanka's national approach to REDD+ safeguards. This tenure study has been informed by national REDD+ Programme documents and has drawn information from the following studies conducted under the UN-REDD Programme:

- Women's Inclusion in REDD+ in Sri Lanka: Lessons from Good Practices in Forest, Agriculture, and Other Natural Resources Management Sectors (2013)
- Drivers of Deforestation and Forest Degradation in Sri Lanka: Assessment of Key Policies and Measures (2014)
- Institutions and Processes for REDD+ in Sri Lanka (Briefing Paper) (2014)
- Review of Sri Lanka's Policies, Policy Instruments and Institutional Arrangements for REDD+ (2014)
- Policies, Laws and Regulations Review of REDD+ PAMs in Sri Lanka (2016)

In addition, a review of existing literature on the tenure situation in Sri Lanka has been conducted. Most importantly, however, the study relies on the input from a wide range of stakeholders who were interviewed (See Annex 1). The knowledge and opinions of some 26 individuals in government, civil society, and the private sector were collected. Interviews were based on a question matrix prepared in collaboration with the Programme Management Unit (PMU) of the UN-REDD Programme with questions divided into the three pre-identified PAMs areas including: 1) Forests, Wildlife and Watersheds, 2) Land Use Planning, and 3) Other Forested Lands.

In order to evaluate the tenure dimensions of various PAMs, the author has referred primarily to the *Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security* (VGGT). These Guidelines provide the benchmark by which to evaluate national frameworks and institutions as well as the implementation of tenure governance in practice. These Guidelines also provide the basis for defining some of the recommendations.

2. Background on Forestry and Land Tenure Systems in Sri Lanka

2.1 Forest Cover and Its Decline

In Sri Lanka forests cover approximately 29.7% (1.95m ha) of the land area, with dense forest amounting to 21.88% (1.44m ha). Eighty-six percent of the natural forest is located in the dry and intermediate zones of the country, and these areas contain about 85% of the closed canopy forests and 90% of the sparse (open) forests in Sri Lanka. The total area of dense natural forests in the country is 1.44 million ha of which 167,000 ha are identified as primary forest, while the remaining area is categorized as naturally regenerated forests. Approximately 79,941 ha (FD, 2009) are identified as plantation forests, including coconut and rubber plantations. (Edirisinghe, E.AP.N. et al.)

Forest cover in Sri Lanka has declined sharply over the past century as evidenced in a number of studies. Early forest inventories suggest that Sri Lanka's closed canopy (dense) forest cover declined from about 84% of the land area in 1881, to 44% in 1956 and to 31.2% in 1992 (Legg et al., 1995). It further declined to 29.6% in 1996 (GIS database of the FD). A district-level analysis suggests that closed canopy forest cover increased in recent years but the accuracy of this data is unclear. The Forest Resource Assessment (FRA) indicates that the trend in forest cover loss has considerably slowed down during the recent past but is still continuing and now increasing (FRA, 2010; MENR, 2009).

Table 1: Statistics on forest cover

Item	Area (000 ha)			
	2001	2005	2010	2014
Closed Canopy / Dense Forest	1,582	1,461	1,438	1,438
Sparse Forest	464	472	429	429
Mangroves	8.7	9.5	15.7	15.7
Total Forest Cover	2,119	1,942	1,951	1,951

Source: Central Bank Report Sri Lanka-2014 (Calculations based on data available at Forest Department)

Findings of a recent study on the drivers of deforestation and degradation suggest that current (i.e., from 1992 onwards) drivers of deforestation in Sri Lanka result from four major proximate drivers including encroachment, infrastructure development projects, large scale private agriculture ventures, and localized drivers of forest degradation scattered around the country. The study also concluded that:

- Overall, the process of deforestation has slowed down all over Sri Lanka. The current rate of deforestation (7,147 ha/year) has dropped significantly compared with the earlier rate reported in the period 1956 - 1984 (42,200 ha/year).
- Even if five hotspots of deforestation have been identified, deforestation also appears to be more scattered and widespread all over the country..
- Deforestation still takes place at a higher rate in the dry zone compared to the wet zone.

As seen on the forest cover map (2010), what remains of forest cover is highly fragmented, making protection and management challenging. Furthermore, the level of forest degradation has not been clearly assessed. Moreover, regions in the north and east are rapidly changing

since the end of the civil war. With the support of the UN-REDD Programme, a forest cover assessment in these areas is underway to gain a more comprehensive understanding.

Some countervailing forces also have emerged that tend to minimize, reverse or reduce the rate and extent of deforestation. Key inhibitors identified in the drivers study include protected area management and policies, environmental laws and regulations, spread of home gardens as a source of timber and other resources, community dependence and customary rights, public pressure and awareness, migration for employment, and off-farm employment opportunities.



Sinharaja Forest (Photo: A. Corblin)

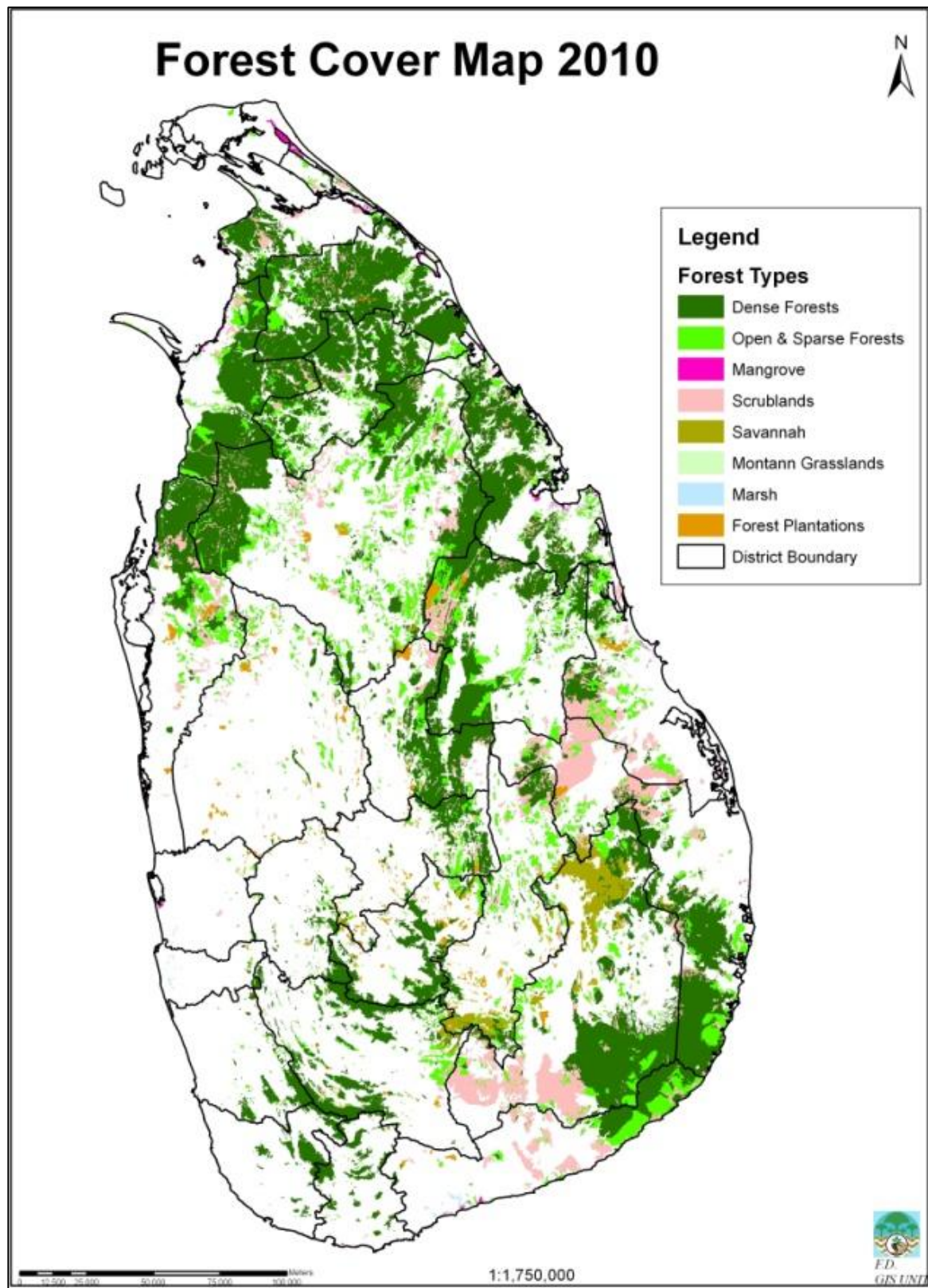


Figure 1: Forest cover of Sri Lanka in 2010. Source: Forest Department, 2010

2.2 Land Use

Sri Lanka is one of the most densely populated countries in the world, and therefore much of the land has been put into productive use. Table 2 below shows how land is used throughout the country.

Table 3 reveals the relatively low proportion of primary forest compared to regenerating forest. These primary forests, most important from a biodiversity perspective, are conserved within protected areas. Furthermore, the extent of plantations, while significant, does not indicate widespread conversion.

Table 2: Land Use

Land Type	Land Use	Hectares (Year 2000)	% Area
Urban land	Urban Land/Settlement	27,830	0.4%
Agriculture	Homesteads (associated non-agricultural land)	943,495	14.3%
	Horticulture Plantation	1,779,245	27.1%
Crop land	Paddy	912,927	13.9%
	Other Crop Land	176,218	2.7%
Forest land	Dense Forest	1,070,555	16.3%
	Open Forest	439,050	6.7%
	Forest Plantation ¹	93,910	1.4%
Range land	Scrub land	590,180	9.0%
	Grass land	97,274	1.5%
	Wetlands	55,698	0.8%
	Barren Land	93,810	1.4%
	Water	285,778	4.4%
	Unclassified	124	0%
Total		6,566,094	100%

Source: Survey Department (2015)

Table 3: Area of primary, naturally regenerated, and planted forests in Sri Lanka

Main forest characteristics	Area (000 ha)				
	1990	2000	2005	2010	2015
Primary forests	257	197	167	167	167
Naturally regenerated forests	1,769	1,761	1,756	1,731	1,688
Planted forests (forest plantations)	258	234	195	205	215

Source: Forest Resource Assessment (2015).

¹ Other unconfirmed sources indicated that the extent forest plantations in the country could vary between 80,000 to 90,000 ha. This cannot be verified by satellite imagery and has to be verified by extensive ground surveying. Currently, the plantation database of the FD is not updated, and therefore no complete data on plantations are available.

2.3 Forest Ownership and Jurisdiction

In Sri Lanka, 82.25 percent of the country's land is owned by the State while only 17.75 percent is privately owned, reflecting a history of centralized control over land. Records from as early as 500 B.C. document land allocation by the Kings while successive colonial governments (Portuguese (1505 – 1656), Dutch (1656 – 1796), and British (1796 – 1948)) asserted their control over land while instituting land ordinances and centralized administration systems.

Table 4: Land ownership

Land ownership	Extent (ha)	Percentage of total land area
Total Land Area	6,570,134 ²	100.00
State owned	5,403,899	82.25
Privately owned	1,166,235	17.75

Source: A compilation of LUPPD using data from various sources

2.3.1 State Managed Forests

For the most part, natural forests in Sri Lanka are owned, managed and protected by the State Forest Department (FD) or the Department of Wildlife Conservation (DWC), which account for approximately 1,767,000 hectares of the total forest estate, equivalent to over 26.5% of the total land area of Sri Lanka³. Forest resources owned privately or by other parties are considered to be negligible in relation to State-controlled forests, but may nevertheless be a significant part of the national REDD+ strategy. These 'other forested lands' are described in the next section.

Table 5: Forest ownership

Forest ownership	Area (000 ha)			
	1990	2000	2005	2010
Public	2,101	2,035	2,002	1,978
Private	183	157	116	125
Others	n/a	n/a	n/a	n/a

Source: FRA (2015).

Much of the State-owned forestland controlled by the FD and the DWC are designated protected areas⁴ falling within a number of sub-categories as follows:

Table 6: Extent and type of protected areas administered by FD & DWC

Ownership	Number	Area (ha)
Forest Department (FD) Jurisdiction		
National heritage and wilderness area (also world heritage)	1	11,127
International biosphere reserves	3	41,823
Conservation forests including 20 mangrove areas	117	136,587

² The official area of Sri Lanka is 65,610 square kilometers. The author acknowledges some discrepancies which were not able to be reconciled.

³ See: https://en.wikipedia.org/wiki/Protected_areas_of_Sri_Lanka

⁴ Some land within protected areas is grassland or scrubland and therefore not classified as part of the forest cover.

Reserved forests	n/a	1,095,050
Total	n/a	1,474,124
Land cover		22.4%
Department of Wildlife Conservation (DWC) Jurisdiction		
National parks	29	475,495
Nature reserves	5	57,056
Sanctuaries	61	277953.46
Strict natural reserve	3	31,575
Total	98	842,079
Land cover		12.8%

Source: Database of FD and DWC (2016)

According to the IUCN, approximately 55 percent of all natural forests lie within the protected areas under the jurisdiction of these two departments (IUCN and WCMC, 1997). In terms of administration, State forests are tightly controlled. In the case of the FD, staff are assigned to 23 forest divisions that are divided into more than 300 ranges, which are further divided into beats. In the case of the DWC, the island is divided administratively into 12 regions. Each region consists of protected areas categorized as shown in the above table.

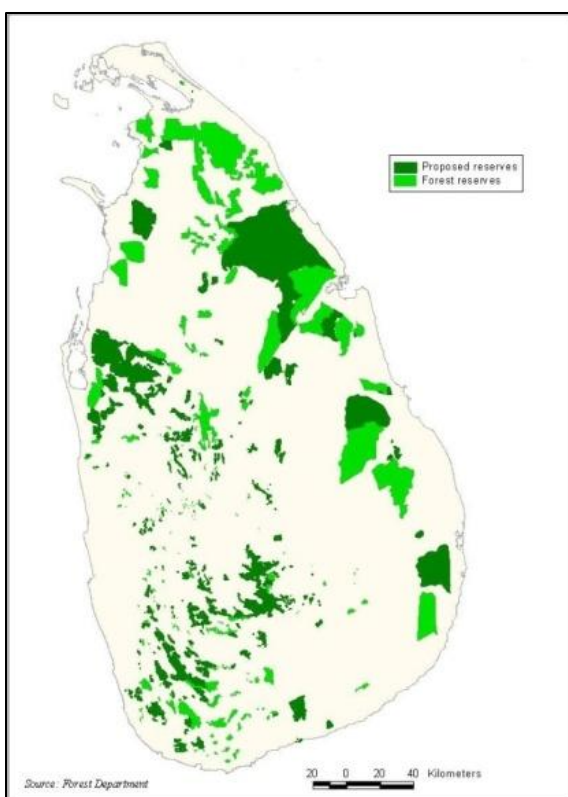


Figure 2: Distribution of protected area network of Sri Lanka under Forest Department. Sources: MENR (2006; 2009); MENR and UNEP (2009).

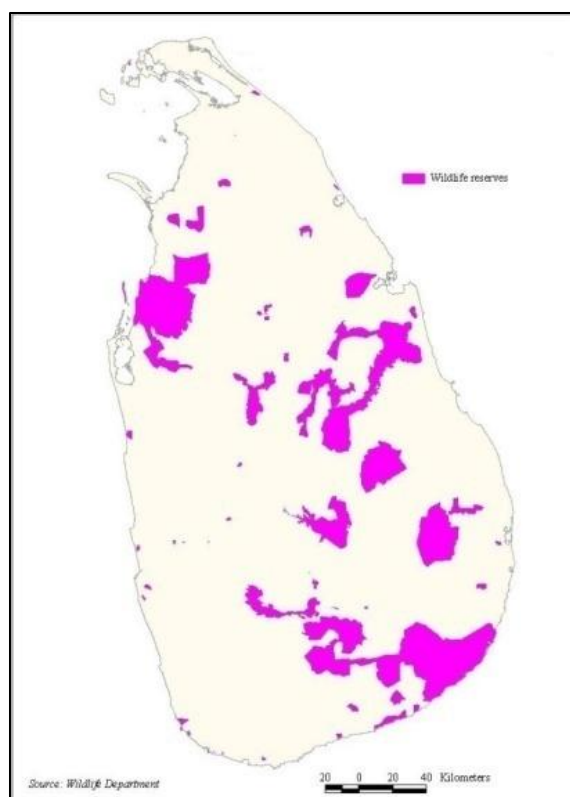


Figure 3: Distribution of protected area network of Sri Lanka under Department of Wildlife Conservation. Sources: MENR (2006; 2009); MENR and UNEP (2009)

In addition, a new category of protected area is administrated by the Central Environmental Authority (CEA). These are known as Environmental Protection Areas (EPAs) and are gazetted under the provisions of sections 24C and 24D of the National Environmental Act No. 47 (1980). There are currently eight EPAs detailed in table 7 below and four more are proposed (Ministry of Mahaweli Development and Environment, 2015).

Table 7: Details of the 8 Environmental Protection Areas in Sri Lanka

No.	Name of the Protected area	Main Reason/s for Protection	Area (ha)	Mapped Scale	Gazette Notification (date & Number)
1	Muthrajawela buffer zone	Wetland eco system conservation and flood detention	206.6	1:10,000 & 1:50.000	2006.10.13 (1466/26)
2	Thalangama Wewa	Catchment protection and Biodiversity conservation	118	1:10,000 & 1:5000	2007.03.05 (1487/10)
3	Gregory lake	Aesthetic value	46.04	1:10,000 & 1:50.000	2007.03.05 (1487/10)
4	Knuckles	Watershed management and Biodiversity conservation	3,167	Map obtained from Forest department 1:50,000	2007.07.23 (1507/9)
5	Maragala mountain range	Watershed management and Biodiversity & Archaeological conservation	2,500	1:10,000	2008.08.01 (1560/26)
6	Walauwewatte Wathurana Swam forest	To protect point endemic two species	6.2	1:10,000	2009.04.24 (1598/21)
7	Bolgoda lake	Wetland eco system and Biodiversity conservation	2,100	1:10,000 & 1:50.000	2009.12.30 (1634/23)
8	Hantana mountain range	Ecosystem conservation	3,800	1:10,000 & 1:50.000	2010.02.17 (1641/28)
		TOTAL	12,214.5		

Source: CEA, 2016

Scattered along Sri Lanka's coastline are important mangrove forests that cover 15,669 hectares⁵. These areas are under the authority of the FD, though the Coast Conservation Department's role in overall management in coastal regions is complementary. In the 1990s, mangrove forests were destroyed and converted to areas for shrimp aquaculture. However, the shrimp farming industry failed, and these areas have been abandoned. There could be potential to rehabilitate these areas and replant mangroves; however one barrier is the long term leases

⁵ Figure of 2010 forest cover mapping (Edirisinghe et al. 2015).

(99 years) which some of the aquaculture companies still possess. In May 2015, Sri Lanka announced the Sri Lanka Mangrove Conservation Project⁶, a joint program with foreign and domestic NGO support to protect all of the country's remaining mangroves through demarcation, gazetting, legal protection, and enforcement.



Mangroves in Trincomalee (Photo: A. Corblin)

2.3.2 Other Forest Lands and Tree Tenure

Outside the forest lands owned and controlled by the FD, DWC, and CEA which are mentioned above, there are a number of other types of forest land in Sri Lanka, as described here briefly.

❖ Forest Plantations and Woodlots

A number of different entities own forest plantations including State government departments (FD, DWC), State corporations, village collectives, and private plantation owners. Between 1972 and 1975, some 419,100 hectares were nationalized with tea plantations accounting for 39.7%, rubber for 17.8%, coconut for 11.5%, and other land 31%. Most of these lands were vested with two state corporations: the Janatha Estate Development Board (JEDB) and State Plantation Corporation (SPC). Plantations managed by Regional Plantation Companies (RPCs) currently account for approximately 6,000 hectares, while village collectives lease approximately 16,250 hectares of farmers' woodlots.

⁶ See: <https://www.seacology.org/project/sri-lanka-mangrove-conservation-project/>



Forest plantation in the Central Highlands (Photo: A. Corblin)

❖ Home Gardens and Tree Tenure

Home gardens are widespread throughout Sri Lanka and represent a significant non-forest⁷ carbon sink, classified as 'settlement' land. Home gardens are said to cover 858,490 hectares, a relatively large area comparable to about half of natural forest cover. Notably, home gardens provide approximately 40 to 60 percent of household fuelwood supply, among other food and medicinal household goods. There are regulations to protect trees within these systems, and village officers are responsible for monitoring. Since home gardens tend to be part of deeded private property, tenure is generally secure.

Throughout Sri Lanka there is a ban on felling trees in natural forests. Even within home gardens there are restrictions on cutting certain species (i.e. jack tree, wal del and female Palmyrha), requiring a permit from the Divisional Secretariat through the Grama Niladhari, and village officers are responsible for enforcing these rules. In this sense, owners of home gardens are subject to some restrictions on the rights over trees on their properties.

As mentioned, home gardens are not considered to be part of Sri Lanka's forest cover. However, they remain potentially important in addressing drivers of deforestation and forest degradation and therefore may be relevant to a number of PAMs under Sri Lanka's National REDD+ Strategy.

❖ Temple Forests

Traditionally in Sri Lanka temple lands were given by the King to the community in order to facilitate their provision of goods and services to the temples. Some of the temple lands contain forest areas of significant size and richness, and one source estimated that temple forests may cover as much as 30,000 hectares (in sum) though specific figures are not available.

⁷ Home gardens are not included under Sri Lanka's definition of 'forest'.

Over time, the authority over temple lands has shifted from the surrounding community into the hands of the high priest. This concentration of power in the hands of the high priest has left the temple forests vulnerable to conversion. In one notable case in Soragune (See Box 2 – p.53) the temple forest has been leased and cleared for a golf course while natural forests on the hillside were converted to rubber. Leasing of temple lands must be approved by the Ministry of Buddhist Affairs, but nevertheless with ‘proper justification’ forests may be converted to other uses. In practice, decisions may be taken by the priest or appointed layman called the Basnayaka Nilame.

Table 8: Tree resource management systems in Sri Lanka outside natural forests

System	Ownership(s)	Extent (ha)	Remarks
Forest Plantations	FD	76,469	Only the inventoried and mapped extent is given, the records give the total as 135,622 ha for 2000
	DWC	2,352	No timber harvesting is being undertaken
	Village communities	9,771	Farmers woodlots established under the participatory forestry project (1993-2000)
	RPC/State	12,784	Tea, rubber and coconut estates leased to private sector by the government
	JEDB/SLSPC	1,795	Government statutory bodies
	Others	6,000	Newly established private sector forest plantations
Home Gardens	Private family holdings	858,490	Stocking of utilizable timber trees varies considerable according to many factors such as agro-ecology, population density etc.
Rubber based agroforestry	RPC, JEDB/SLSPC and small holders	193,000	Timber often used as fuelwood, for furniture and as support material in the construction industry
Coconut based agroforestry	RPC, JEDB/SLSPC and small holders	300,700	Timber has gained importance as a material for roof construction
Orchards of horticultural crops	DOA, private	n/a	Mainly mango, cashew, rambutan, durian, jackfruit
Other perennial croplands	Mostly small holders	45,300	Includes cinnamon, cocoa, coffee and palmyra plantations mixed with timber trees
Roadside plantings	RDA	18,288 km	1,288 km complete with community participation under the participatory forestry project (1993-2000)

Sources: FD (2009), CBSL (2010).

Note: FD=Forest Department; DWC=Department of Wildlife Conservation; RPC=Regional Plantation Companies; JEDB=Janataha Estate Development Board; SLSPC=Sri Lanka State Plantations Cooperation; RDA=Road Development Authority.

2.3.3 Customary Tenure

Customary tenure refers to the tenure rights to the land and/or associated resources based on institutions and norms that derive from and are sustained by the community itself, rather than the state or state law. Customary tenure rights are relatively weak in Sri Lanka, and have been eroded first by the Waste Land Act in 1887 during British Rule and then with successive amendments to the Fauna and Flora Protection Ordinance.

In the case of Sri Lanka's Veddha indigenous people, their customary tenure rights have only been partially recognized by the DWC through the granting of access and usufruct rights to non-timber forest products (NTFPs). This issue is explained further in Section 3.2.4.1. *Chena* (see section 2.5) and rice paddy within forests are another example of customary user rights. In the past, a permitting system was used to identify land parcels under customary use, but this system has been abandoned.

There are also some examples of collective land management within forest reserves based on customary norms. For example, in some remote areas communities manage water resources to fill water tanks. Grazing of livestock is also tolerated in some State forest areas. Rather than recognizing these access and use rights, the government tends to turn a blind eye, at least currently. There are no legal documents or arrangements to recognize these customary rights.

While customary tenure exists in a number of different forms, due to a lack of data, it is difficult to determine even approximately how many people are engaged in the various land use activities, in which locations, and covering how much forest area. Further research is recommended in the conclusion.

2.4 Institutional Context

This section provides a brief overview on the government institutions with the most direct involvement in the governance of forest land, emphasizing their role and responsibility in regards to land management and tenure concerns.

❖ The Forest Department

The Forest Department (FD) has a long history in Sri Lanka (est. 1887) and is responsible for managing approximately 55 percent of the country's forest lands. The Forest Ordinance, described in Annex 4, is the primary piece of legislation which guides the activities of the FD.

❖ The Department of Wildlife Conservation

Established in 1949, the Department of Wildlife Conservation (DWC) plays an important role in managing Sri Lanka's biodiversity, housed in a network of protected areas which cover approximately 13% of the country's land surface. The Fauna and Flora Protection Ordinance (FFPO), summarized in Annex 4, is the key piece of legislation used for enforcement.

❖ The Central Environmental Authority

The Central Environmental Authority's most relevant task in this analysis is its role in managing Environmental Impact Assessments (EIAs) that inform land management decisions, sometimes related to possible conversion of forest lands for other purposes. The CEA is responsible to ensure that any land tenure concerns or disputes are settled prior to commencing an EIA. The EIA process is discussed further in Section 3.3.2.

❖ **Coast Conservation and Coastal Resource Management Department**

This department has been gradually upgraded over the years and since 2009 has a Director General appointed to lead the institution in implementing the Coastal Zone Management Plan and meet its objectives to develop and manage the shorelines and improve the living standards of coastal communities. This department plays a complementary role in managing Sri Lanka's mangrove forests.

❖ **The Mahaweli Authority of Sri Lanka**

The implementation of the Mahaweli Development Programme is a mandate of the Mahaweli Authority of Sri Lanka (MASL) established in 1979 by an Act of Parliament. The Mahaweli Development Authority's primary task is to implement a Master plan that includes rehabilitating and maintaining the irrigation network, administering the land, and enhancing agricultural productivity and the post settlement process. MASL is responsible for managing irrigation for 101,526 hectares in the dry zone. MASL has an Environment and Forest Conservation division and previously also a technical subcommittee on environment that coordinated quite effectively between agencies at the national level. The MASL under the Mahaweli Environment Programme earmarked and reserved a number of important lands as protected areas (national parks, national reserves, sanctuaries, etc.) under the FFPO; in addition MASL developed forest plantations that were later handed over to the FD. The MASL remains an important State landholder and is also responsible for resettlement schemes that sometimes impact forests. In one controversial case the MASL was behind the degazetting and clearing of 500 hectares of the Padaviya Forest Reserve in Anuradhapura District, for the resettlement of 3,000 families displaced by an irrigation scheme.

❖ **The Survey Department**

The Survey Department (SD) was established by the British in 1800 to undertake systematic recording of survey plans, and it still plays a leading role in land administration by providing spatial records related to land regulations. The SD is responsible for many categories of title plans, including, prior to 1980, the Forest Survey Preliminary Plans to guide settlement in forest areas. Today the SD is responsible for analyzing the land cover data that other agencies, including LUPPD, MASL, CEA and FD, use for land use planning and management. In addition, the Survey Department's Land Information System (LIS) division plays an important role in the country's Land Registration Programme, as described further below.

❖ **Land Use Policy and Planning Department**

The Land Use Policy Planning Department (LUPPD) is the institution primarily responsible for land use planning in rural (non-urban) areas in Sri Lanka, and implements plans at all levels, including village, division, district, provincial, and national levels. With 24 offices throughout the country and 245 Divisional Land Use Officers, LUPPD has a strong decentralized structure. The overriding mission of the institution's work is the 'optimum utilization of the land resource towards sustainable development'. With regards to forests, LUPPD's stance is that all natural forest should be protected. In addition, LUPPD seeks to identify new areas that should be given protection status, to connect areas of fragmented forest, and to restore degraded areas.

❖ **Department of Land Settlement**

The Department of Land Settlement, in the Ministry of Land, is responsible for deciding which lands belong to the State and which lands are private, and for issuing plans and making transfers as appropriate.

❖ **Department of Land Commissioner General's**

The Department of Land Commissioner General's under the Ministry of Land focuses on the management of resettlement schemes and interprovincial land development projects, distribution of land under government ordinance (e.g. granting or permits for commercial or industrial purposes), conservation of state reserves to be repossessed, and tax recovery on land permits, among others.

❖ **Registrar General**

The Registrar General's Department operates under the Ministry of Public Administration and Home Affairs and is responsible for registration of legal documents pertaining to movable and immovable properties. Land registration is carried out by 45 land registries located at the district level.

❖ **Ministry of Megapolis and Western Development**

The Ministry of Megapolis and Western Development is primarily responsible for urban affairs and is tasked to develop new urban areas that will be soon be under construction as a part of the Megapolis Development Plan. There is some concern that forests will be negatively affected. There is a plan to establish a Megapolis Authority under a parliamentary act and to plan development activities in the Western Province. It is not yet clear how its authority will integrate with that of other ministries and departments.

2.5 Policy and Legal Context

A description of relevant national sectoral policies and legislation is presented in the UN-REDD study entitled "Review of Sri Lanka's Policies, Policy Instruments and Institutional Arrangements for REDD+" (2014). In terms of policy and legal support for REDD+, the framework is considered to be quite complete with relatively few gaps and weaknesses, besides implementation and enforcement. Annexes 3 and 4 highlight some of the land tenure aspects of key policies and legislation that in turn relate to the analysis of tenure risks and benefits associated with potential REDD+ PAMs. Relevant policies include the Haritha Lanka Programme (2008 – 2016), the Punarudaya National Program (2016 – 2018), Sri Lanka Next, National Environmental Policy (2003), National Physical Planning Policy (Draft 2002), National Policy on Land Use, the National Involuntary Resettlement Policy (2001), National Forest Policy (1995), National Wildlife Policy (2000), National Policy on Protection and Conservation of Water Sources, their Catchments and Reservations in Sri Lanka (2014 Draft), and National Agriculture Policy and National Policy on Industrial Development.

Key legislation has also been analyzed under a separate review entitled 'Policies, Laws and Regulations, analysis of REDD+ PAMs in Sri Lanka' (UN-REDD, 2016). Important legislation that affects land tenure include the Forest Ordinance, Land Ordinance, National Environment Act, Fauna and Flora Protection Ordinance, Temporalities Act, and the Land Development Ordinance. See the Annex 4 for a brief summary.

2.6 Cross-cutting Issues

In this section, a number of cross-cutting tenure-related issues occurring in Sri Lanka are covered briefly to give the reader an introduction to some of the situations and challenges that affect the analysis of tenure-related risks and benefits.

❖ Land registration and overlapping claims

Under the country's Bim Saviya Land Registration Programme, initiated in 2007, land registration is ongoing⁸. Land deeds are gradually being converted to land titles with cadastral mapping and a digital land information system. Unique land parcels are registered with typical attributes such as 'land name', 'claimant', 'land use category' etc. To date approximately one million land parcels have been published in the registry, but these represent only about ten percent of the total land claims to be registered. It is estimated that an additional 30 to 40 years are needed to complete the registration process, though there is a possibility that new technology could speed up this work. Currently four departments collaborate in the Bim Saviya Programme which is rolled out in 22 Divisional Secretary's Divisions. The departments are:

Under the Ministry of Lands:

- Department of Land Settlement
- Department of Survey
- Department of Land Commissioner General's

Under the Ministry of Public Administration:

- Department of Registrar General's

The issue of overlapping land claims is primarily due to multiple agencies involved in transferring tenure of lands from one party to another in a disorganized manner, and this issue also applies to forest lands. According to the study on the drivers of deforestation, the issue is particularly problematic in the case of forest lands which have been transferred to the jurisdiction of the FD more recently. Without boundary markers, officers on the ground are not clear about where the forest boundary lies, making it more difficult to control encroachment.

One example of overlapping or conflicting tenure rights over forest lands occurs in wildlife sanctuaries. Under the National Heritage Wilderness Areas Act, No.03 (1988), people living in sanctuaries were given permits to remain in the sanctuary, but they no longer had the right to sell or alienate their property, even though they believed that they should retain this right. Cardamom farming within forests is another example. In the Knuckles Forest Reserve, farmers were engaged in the practice for more than a hundred years, with special permits since the 1960s when cultivation became commercialized. However, cardamom cultivation has been banned due to concerns that it inhibits forest regeneration.

❖ Landlessness

The problem of landlessness has long been a common feature with Sri Lankan farmers, resulting as early as 1840, in the Crown Lands Encroachment Ordinance. According to the 2002 Census of Agriculture, some 7.9 percent of 'agricultural operators' did not own the land they cultivated,

⁸ See <http://www.bimsaviya.gov.lk/web/> for further information.

and according to a 2004 State of the Economy Report, some 27 percent of peasants were deemed to be landless. With a population over 21 million which is continuing to grow (0.8% per year) and a population density of 325 people per square kilometer (2012 census), pressure on land is high. The arable land per person ratio has been recorded as only 0.15 ha in 2000.

Landlessness has been attributed to several factors including the lack of a finalized land policy (still in draft), issues of overlapping jurisdictions which impede proper administration and land allocation, limited availability of agricultural land, and scarcity of off-farm employment. The issue of landlessness has an impact on forests since some of the landless may encroach on and cultivate forest lands as a means of subsistence.

❖ **Indigenous land issues**

There are six major clans of indigenous Veddha people in Sri Lanka, whose livelihood strategies vary depending on their location, with some communities along the coast relying on fisheries, while other communities further inland engage in forest based livelihoods under customary tenure systems. The number of people self-identifying as Veddha has varied with most estimates ranging from approximately 3,500 to 6,000. Without more research it is hard to be sure of the exact population. This lack of clarity is also due to the cultural integration of Veddha people into mainstream society, whereby indigenous traits are less well defined. For instance, some Veddha people who move to urban areas change their surnames to Sinhalese names to avoid discrimination in the job market. Also from a legal perspective, indigenous status and identity in the Sri Lankan context are not well defined by law.

Historically the ancestral territories of the Veddha people were not given special consideration. In the early 1980s, the Mahaweli Development Program led to relocations of ten Veddha villages. Veddha families were given parcels of paddy and farm land in exchange for moving out from the forest; in effect, they were treated the same as other non-Veddha families, and asked to relocate without consideration for their indigenous status or hunter-gatherer lifestyle. According to the current Veddha Chief, Uruwarige Wanniya, this was a forced eviction as the community did not feel that they had a choice or were adequately compensated.

The Veddha allege that since 1974 they have been given official assurances that a sanctuary of 1,500-acres would be created for them to pursue their traditional way of life. Successive governments have repeated this pledge, but to date no government has implemented the pledge. A more recent proposal has been to implement a permitting system whereby members of the Veddha community would receive ID cards granting them special access to the forest reserve to continue their traditional practices other than hunting. Unfortunately, even this compromise has stalled and only 10-15 cards have been issued.

❖ **Land grabbing and encroachment**

The study on the drivers of deforestation and forest degradation noted encroachment on State forest lands as one of the four primary drivers affecting Sri Lanka's forests, with the permissive policy of regularization acting as an incentive. The scale of this problem is quite high with some 975 cases of illicit encroachment and clearing being taken to the courts in 2012 (PLR analysis of REDD+ PAMs). An earlier 2004 report of the Land Commissioner General's Department recorded 36,732 incidents of encroachment across eight divisions with 7,855 of these being regularized by September 2005.

The politically well-connected elite tend to be blamed for most of the larger scale land grabbing while smallholders and the landless are said to be involved in encroachment on State forest lands. The issues surrounding land grabbing and encroachment are often complicated and nuanced, as demonstrated by the case of housing construction in Wilpattu National Park (See Box 1).

Box 1: Housing Construction in Wilpattu National Park

Wilpattu National Park in the northwest is one of the oldest forest sanctuaries and one of six Ramsar Wetlands, established in 1937. Between 2012 and 2015, more than 500 acres were cleared for new settlements and housing by displaced families from Mannar, Thalaimannar, Maruchchikatti, Karadikkuli and Palikkuli districts, claiming the area as their original home prior to eviction by the Liberation Tigers of Tamil Eelam (LTTE) in 1990. Environmental advocacy groups, including the Environment Conservation Trust Sri Lanka, allege that clearance has been sanctioned by the government constituting “massive scale illegal land grabbing”.

Source: <http://www.sundaytimes.lk/140420/news/wilpattu-houses-under-wildlife-fire-93227.html>

❖ **Conversion of forest land for development purposes**

As mentioned one of the key drivers of deforestation is conversion of forests for infrastructure in the name of development. While the procedures for approval of a project through various departments constitute a system of checks and balances to ensure that environmental impacts are avoided or minimized, nevertheless, the pressure to develop and convert forests is sometimes overwhelming. For example, in 2012 there were 397 requests for acquisitions. The FD receives numerous requests every month and struggles but feels compelled to identify alternative land when refusing to recommend conversion of forests. The majority of acquisitions are carried out for road widening, and water supply and irrigation projects. Smaller parcels are taken over for schools, playgrounds or sports grounds.

The Mahaweli Development Programme is the most significant development project in the country. Initiated in the 1970s with the goal of integrated river basin development, the project covers 39 percent of the country and 55 percent of the dry zone. The aim has been to establish new settlements and to facilitate agriculture through the construction of reservoirs and hydroelectric plants. According to an evaluation by DAI, more than 400,000 families have been settled in the lower catchment, with ‘transformation of several hundred thousand hectares of subhumid tropical rainforest into cultivated fields’. Until 2005 the Mahaweli Authorities Act gave the Programme the authority to coordinate and control resource decisions in the area, but this authority has diminished. Forestlands, including plantations, have been transferred back to the FD’s jurisdiction.

As recently as January 2016, the Western Region Megapolis Plan was announced with a goal to “create a dynamic regional spatial structure that promotes economic productivity, attracts investments, enhances business opportunities and creates jobs.” The plan involves construction of satellite cities involving as many as 45 industrial zones. There is concern that forest reserve land may be affected. At the time of writing, the FD had already received a request for 2,000 hectares for a new city development called Mankula.

Finally, there are aspirations expressed within government to support a transition away from smallholder to industrial scale agriculture. While the goal is to increase productivity, it is not clear if questions of impacts on local livelihoods and natural resources, including forests, have been fully considered.

❖ **Land issues in the North and East**

The 26-year-long civil war caused hundreds of thousands of people to flee their homes in the north and east of the country and left some 294,000 people displaced. As they fled, many families lost key documents, including property deeds. At the time of return after 2009, families were unable to obtain copies of documents as most of the local government services were dysfunctional and hence many people could not prove that they owned their land. By 2015, more than 238,000 internally displaced people and 6,300 refugees had returned to Mannar, Jaffna, Vavuniya, Mullaitivu and Kilinochchi districts. In some cases, settlers have encroached on FD lands without going through formal procedures and claim ownership over some of these lands. This is the case in Vavuniya, Mannar, Mullaitivu and Kilinochchi. Destruction of forest in the North East is also attributed to misappropriation by local politicians and acquisition for infrastructure development such as the A9 road.

Another issue which arises in the North and East is the overexploitation of forest resources within the reserves. Local populations on the forest periphery have occasionally been given access to the buffer zone to collect non-timber forest products (NTFP) such as sticks for fishing or firewood for special religious events. In exchange, royalties must be paid (ADFO, Kilinochchi). It is not clear how well these restrictions are followed.

An additional challenge is the presence of land mines. While most mines have been cleared in agricultural areas, according to Halo Trust, 'mines present an obstacle to the safe return of internally displaced people and prevent access to paddy fields, fishing jetties and grazing land affecting the lives and livelihoods of thousands of people.' There is a goal of clearing remaining mines existent primarily in forest lands and paddy fields by 2020.

In 2013 the Government launched the 'Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces' under Land Circular No. 2013/01. The Programme aims to implement a number of recommendations including the development of participatory land use plans for each district and the allocation of land according to the Constitution while 'keeping national security needs in perspective'. Furthermore, it recommends strict controls to prevent any alienation of State land other than for internally displaced peoples. Nevertheless, much work remains to be done in order to resolve politically sensitive land issues in the North and East to bring stability to the area while at the same time observing good land use practices.

❖ **Chena cultivation**

Chena⁹ or shifting rain-fed cultivation in the highlands has long been practiced in Sri Lanka. Studies claim that shifting cultivation 'remains a suitable and indispensable form of land use in

⁹ The technique is a simple two stage process. First an area of forest is slashed and then burned to clear it of existing vegetation. Seeds (dry grains such as 'tala' 'kurrakkan' and 'meneri') are then thrown onto this nutrient-rich soil. The number of crop seasons possible on a single piece of land depends on the quality of

upland areas in Asia, and that it can continue to be managed sustainably from viewpoints of both natural resources management and household food security under conditions of sufficient and legally recognized access to land (FAO, 2015). After independence, the government issued permits for the purposes of chena cultivation, however, the issuing of permits has become significantly more restrictive with only existing chena plots being approved on a seasonal basis. Nevertheless, chena cultivation continues to be practiced, particularly in the dry zone and to a lesser extent in the intermediate zone, resulting in land degradation and thwarting efforts to introduce alternative farming systems. In Sri Lanka approximately one million farmers depend on chena as either a primary or secondary source of income. Traditional chena practices were based on sustainable resource use that did not deplete soils or inhibit forest regeneration. However, according to the author of the study on the drivers of deforestation and forest degradation, the characteristics of chena agriculture have changed over time, so that cultivation is often more intense and commercialized rather than for subsistence, with this modern variant of chena farming being a major cause of encroachment.

❖ **Grazing in State forest lands**

Grazing of livestock on forest lands is a common occurrence in Uda Walawe, Beliatta, Thangalla, Ratnapura and Monaragala areas. Both smallholders as well as more wealthy owners of large herds engage in this activity. In some cases, such as in Uda Walawe National Park, authorities have installed electric fences to deter the release of cattle into the Park as well as to reduce human-elephant conflict. Disgruntled farmers, whose access has been restricted, claim that they have been grazing cattle in the Park prior to the Park's establishment in 1972. Similarly, in the Ritigala Strict Nature Reserve in the Dry Zone (1582 ha), local people use the buffer zone of the reserve for grazing their animals and for fuelwood collection. The buffer area forests are State owned, however, villagers claim de facto common property rights. Nevertheless, when animals stray into the reserve, DWC officers impose sanctions.

❖ **Gender and land issues**

The 2013 review entitled 'Women's Inclusion in REDD+ in Sri Lanka' noted a number of barriers to women's inclusion including limited gender awareness, traditional ideologies, a lack of women's organizations, and a lack of national commitment for gender mainstreaming. According to the study, "In general women have equal rights to own, inherit and control land and property. In practice, by inheritance land is often given to men as a wealth generating property. This stems from the traditions of the dominant patriarchal system of the society." According to the Land Development Ordinance (1935), land is inherited by the oldest male child unless there is a living will in place to instruct otherwise. As a result, only around nine percent of women own land in Sri Lanka. The 2013 report proposes that lack of land ownership by women could be a disincentive to their involvement in tree planting activities, while also noting that women are heavily engaged in the maintenance of home gardens.

Particularly in the North and East, concern has been raised about inequality of land rights wherein women tend to be excluded from land titling and compensation schemes that mostly recognize men as the 'heads of households'. Furthermore, particular rules in Tamil society restrict married women from disposing of their land without the husband's consent.

the initial soil, but eventually the soil quality is depleted and the cultivator abandons the plot to clear a new one.

On a more positive note, there has been praise for community forestry interventions which have successfully increased women's technical capacities and interest in forest management by involving them in tree nursery and planting activities.

3. Tenure Aspects of Selected REDD+ PAMs

This section begins with an introduction to the potential REDD+ PAMs and the evaluation criteria used to analyze tenure-related risks and benefits. Next is an introduction to each potential REDD+ action with a short risk benefit analysis for each one.

3.1 REDD+ PAMs and Evaluation Criteria

3.1.1 REDD+ PAMs

Stakeholders in Sri Lanka have come together for a number of brainstorming sessions and workshops to discuss, evaluate and rank a long list of potential policies and measures to address the drivers of deforestation and forest degradation. The finalization of the REDD+ PAMs is an ongoing process that requires both subject-area expertise and a participatory approach conducive to broad buy-in and ownership of proposed PAMs. This process is still ongoing in Sri Lanka. Therefore, a final list of detailed REDD+ PAMs was not available at the time of this study. However, the preliminary PAMs identification process has identified three key topic areas with a preliminary list of potential REDD+ PAMs within these areas. The topic areas were identified as follows:

- Forest, Wildlife and Watersheds
- Land Use Planning
- Other Forested Lands

Subsequently, the PAMs that might be supported under each topic were listed (See Annex). In this study, some of the PAMs with similar approaches or issues have been combined for analysis. Nevertheless, there are, at the time of writing, some 19 potential PAMs whose tenure dimensions are considered.

3.1.2 Evaluation Criteria

The criteria for evaluating the proposed REDD+ PAMs are based on the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT) as well as the World Bank's draft Environmental and Social Framework related to the World Bank's Safeguards Policies.¹⁰ In addition, three of the Cancun Safeguards are considered as an additional lens through which to evaluate some of the PAMs. Not all aspects of this framework can be applied to each PAM due to lack of relevance for some. It is also important to remember that this analysis on the tenure dimensions of particular PAMs is only one aspect of the analysis of the REDD+ PAMs, among several as noted in the introduction (e.g. gender, policy and legal). The determination of which PAMs to pursue must be based on careful consideration of a larger range of factors. Some PAMs with high tenure-related risks could be advisable based on other factors that outweigh tenure risks.

¹⁰ <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

3.1.2.1 *The Voluntary Guidelines*

The VGGT provide the basis for evaluation of the tenure dimensions for the range of proposed REDD+ PAMs. This landmark soft law document, endorsed by the Committee on World Food Security in 2012, represent a global consensus and internationally accepted standard with regards to tenure. The VGGT's general principles provide the basis for rights being recognized and respected, safeguarded, able to be enjoyed, and capable of being defended. Importantly, the VGGT also define principles of implementation:

- human dignity
- non-discrimination
- equity and justice
- gender equality
- holistic and sustainable approach
- consultation and participation
- rule of law
- transparency
- accountability
- continuous improvement

Furthermore, the VGGT lay out articles pertaining to 1) legal recognition and allocation of tenure rights and duties, 2) transfers and other changes to tenure rights and duties, 3) administration of tenure, 4) responses to climate change and emergencies, and 5) promotion, implementation, monitoring and evaluation. While the VGGT do not specifically identify potential risks and benefits related to land tenure, they do provide a benchmark by which to evaluate the status of tenure governance.

Of note, the VGGT recognize both statutory and customary tenure rights as legitimate,¹¹ and encourage States to acknowledge, document and respect all legitimate tenure rights.

3.1.2.2 *The World Bank Environmental and Social Framework and Operational Policies*

The World Bank's Safeguard Policies have been under review since 2012, including the Environmental and Social Framework. The draft framework addresses issues of land acquisition and involuntary resettlement as well as indigenous people's issues, including the criteria for establishing and implementing Free Prior and Informed Consent (FPIC). Operational Policy 4.12 on Involuntary Resettlement is also considered to be a guiding principle in land matters. It states that involuntary resettlement should be avoided where feasible, or minimized, and it lays out required measures for handling compensation and resettlement.

¹¹ The VGGT does not specifically identify which rights are legitimate as this will vary by country and over time. Instead, the VGGT sets out a consultative and participatory process for identifying which tenure rights are legitimate. And then any tenure rights deemed to be legitimate but which are not currently protected by law should be given legal recognition (see para. 4.4)

3.1.2.3 *The Cancun Safeguards and UNDRIP*

The following three Cancun Safeguards are particularly relevant to considerations of tenure within REDD+:

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 including UNDRIP¹²;

d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities;

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;

Referred to in safeguard 'c', the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, contains several articles (para. 10, 26, and 27) that relate specifically to land tenure concerns, and may be summarized as follows:

Indigenous peoples have rights to:

- the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- own, use, develop and control the lands, territories and resources that they possess.
- redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for their lands, territories and resources which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

States have obligations to:

- give legal recognition and protection to indigenous lands, territories and resources.
- adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources according to a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems.
- avoid forcible removal of indigenous people from their lands or territories. No relocation shall take place without the free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

¹² United Nations Declaration on the Rights of Indigenous Peoples. See: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

3.1.2.4 Tenure-related Risks and Benefits

The developers of this study have expressed a need to understand the likely risks and benefits associated with potential REDD+ PAMs. Besides raising human rights concerns and ethical issues, tenure-related risks have the potential to cause delays and increase costs in implementation. These risks could be risks to the tenure rights of any stakeholder including the State, communities, or private landholders. Risks could affect either statutory or customary tenure rights.

REDD+ PAMs determined to pose medium to high risks related to tenure could be reconsidered or ranked lower among priorities. Likewise, PAMs that could synergistically reduce deforestation and forest degradation while also improving tenure security would be evaluated more favorably.

In order to analyze tenure risks and benefits, a rights-based approach is adopted founded on the concept of tenure as including a bundle of rights. Then the risks and benefits related to these rights are analyzed by considering various scenarios in both State and non-State lands. For this analysis, the bundle of tenure rights has been divided into five elements, as follows:

- **Right to access / enter an area**

The right of access in this case is defined simply as the right to enter an area. Local people may for example use paths through the forest to get from one place to another. This right to enter an area without extraction or use may be significant on different levels. For example, from a practical perspective, people may take short cuts through the forest that save them time and reduce the opportunity costs of travel. People may have burial grounds or sacred areas within the forest that are important for them from a spiritual or religious perspective.

- **Usufruct rights**

Usufruct rights are defined as the right to use and enjoy the property of another, provided its substance is neither impaired nor altered. This term combines the right to use the land for personal benefit with the right to also derive a profit from the use of that land. So, for instance, a farmer could collect NTFP or practice chena cultivation and sell the harvest.

- **Management rights**

The right to manage an area of forest in this case refers to the right to control and make decisions over it. This may also include the right to benefits, such as timber or non-timber products. Management rights may also have financial or livelihood implications. For example, there may be a value associated with the right to decide where and how to harvest, cultivate or undertake other silvicultural practices.

- **Rights to exclude and sanction**

The right to exclude refers to a rights holder's ability to keep others away from a resource', usually deriving from the norm of inviolability of property. In other words, an owner with statutory or customary rights would have the right to deny access or use of his/her property to others. The right to sanction implies a mechanism of social control to uphold or enforce tenure rights. The rights to exclude and sanction can be particularly important when there is competition over resources such as forests. As an example, local communities managing forests may be empowered with the right to conduct patrols and enforce their own regulations with outsiders coming into the area.

▪ **Rights to transfer / alienate**

The right to transfer or alienate land is a well-defined tenure right which usually applies to ownership, but may also apply to a lease or usufruct rights. It can include alienation in the form of a sale or lease, or as collateral. This right may sometimes be qualified with certain restrictions. For example, a parcel of land could be passed down only within a family through inheritance but prohibited for sale to external parties. In some cases, restrictions on the right to transfer may serve to maintain consistent ownership and management, and prevent a sale due to short-term shocks or emergencies – a restriction that is not without other consequences.

The table below lays out the framework for analyzing the risks and benefits to tenure rights through the lens of the VGGT, the relevant World Bank policies, the Cancun Safeguards and UNDRIP. It further highlights the risk-benefit considerations related to specific ‘unbundled’ tenure rights.

Table 9: Framework of Analysis

	Potential Risks / Considerations	Potential Benefit/ Considerations	Mitigation or improvement
Guiding Frameworks			
Voluntary Guidelines	<ul style="list-style-type: none"> Principles and norms of good tenure governance are not followed Increased conflict Loss of livelihoods 	<ul style="list-style-type: none"> Improved tenure governance Reduced conflict Improved livelihoods Respect for human rights 	Strategies for minimizing risks and maximizing benefits
World Bank	<ul style="list-style-type: none"> Involuntary resettlement, relocation or loss of shelter without due process 	<ul style="list-style-type: none"> Involuntary resettlement is avoided or settled to full satisfaction of those being displaced 	“
Cancun Safeguards & UNDRIP	<ul style="list-style-type: none"> Lack of respect for IP & local community rights and UNDRIP Lack of full and effective participation of IPs and communities Conversion of natural forests 	<ul style="list-style-type: none"> IP and community rights respected Full and effective participation of IPs and communities No natural forests converted, instead conserved with social benefits 	“
Tenure Rights			
Right to access/enter	<ul style="list-style-type: none"> Loss of access Discontent communities Increased conflict 	<ul style="list-style-type: none"> More secure access Reduced conflict Boost to enforcement/collaboration 	“
Usufruct rights	<ul style="list-style-type: none"> Involuntary resettlement, relocation or loss of shelter 	<ul style="list-style-type: none"> More productive results of use 	“

	<ul style="list-style-type: none"> • Loss of income source or means of livelihoods • Increased conflict 	<ul style="list-style-type: none"> • Improved livelihoods/incomes • Incentives to invest in sustainable use 	
Right to management	<ul style="list-style-type: none"> • Negative impacts on livelihoods • Increased conflict 	<ul style="list-style-type: none"> • Increased or more secure management rights • Incentives to manage sustainably 	“
Right to exclusion	<ul style="list-style-type: none"> • Increased conflict and illegal activity • Reduced productivity 	<ul style="list-style-type: none"> • Increased or more secure rights to exclude • Reduced illegal activity 	“
Right to transfer / alienate	<ul style="list-style-type: none"> • Loss of financial security • Reduced incentive to invest in land/forest improvement 	<ul style="list-style-type: none"> • Increased or more secure rights to transfer • Increased incentive to invest 	“

The table after each PAM briefly summarizes the tenure risks and benefits as well as potential strategies to minimize risks and maximize benefits. The framework above is used as appropriate in considering each PAM.

3.2 REDD+ PAMs With Significant Tenure Dimensions

3.2.1 Improved land use planning and management

Regulated spatial planning aims to reconcile competing demands for resources in a systematic manner. The LUPPD has already completed land use plans for 125 Divisional Secretary Divisions (of a total of 315) and these are available in hard copy. District level plans and divisional plans for the north and east of the country are also well underway, with district plans being ready in March 2016. In order to produce the plans, LUPPD relies on data from other government agencies, now in digital format. For example, land use/cover data is retrieved from the Forest Department. Base maps for the preparation of land use plans are obtained from the Survey Department.

In terms of improvements to land use planning, there are four main PAMs whose tenure implications are considered here. These include:

- Improve coordination mechanism (including with FD)
- Improve consultation and participation with non-state actors
- Make spatial plans mandatory and enhance accountability
- Support the implementation of the district spatial plans

Though not part of this analysis, Sri Lanka could also consider review of a couple of the measures highlighted in the VGGT, including 1) the existence of policies and laws on regulated spatial planning which also consider planning and territorial development by indigenous peoples and communities, and 2) appropriate risk assessments required for spatial planning.

3.2.1.1 *Improved coordination mechanism*

According to the VGGT, “States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems.” Furthermore, the roles and responsibilities of each agency should be well-defined (para. 5.6).

In Sri Lanka three agencies have responsibilities related to land use planning including the LUPPD, the CEA, and the National Physical and Policy Planning Department (NPPPD). Their responsibilities are as follows:

- LUPPD – district-level plans

- CEA – regional land use schemes

- NPPPD – regional and national plans

The REDD+ Technical Working Group (TWG) is in the process of trying to improve coordination of these three agencies to avoid duplication and conflicting plans.

Furthermore, there is already a mechanism for coordinating land use decisions related to forest in the form of an Interministerial Coordination Committee whose main task is to decide on the release of forestland for other purposes. However, under this PAM coordination would be further improved.

The high level Committee involves secretaries from relevant ministries, but does not include the LUPPD, and should. Typically a team of officers from different agencies will go to the field to examine boundary issues and the situation on the ground, subsequently making a report to the Committee. The Conservator General of the Forest Department receives the recommendation of the Committee and is then asked to make a decision on release of the lands.

LUPPD perceives a need to increase awareness on land utilization among the multiple stakeholders participating in this process, and its participation in this Committee could help to do this. In addition, even though LUPPD guidance on land use is oriented towards forest conservation, the working relationship between the LUPPD, CEA, NPPD and FD needs to be reinforced through more formal mechanisms, so that forest priorities are adequately considered.

There are no potential tenure risks apparent in this PAM while potential benefits could be improved checks and balances in the review and decision-making related to land use plans.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> No risks 	<ul style="list-style-type: none"> Strengthen checks and balances 	<ul style="list-style-type: none"> Include LUPPD in the Interministerial Coordination Committee, expand its mandate, and clearly define roles and responsibilities of each member (VGGT) Provide technical training to the Committee members on land utilization, land tenure, REDD+, the standards (VGGT, Cancun, UNDRIP, WB) and other relevant topics.
See: Para. 5.6 VGGT		

3.2.1.2 *Improve consultation and participation with non-state actors*

According to the VGGT, wide public participation in the review of land use plans is considered best practice, with consultation and participation being one of the principles of implementation (#6). This participation should include communities, the marginalized, and vulnerable people. The LUPPD has established good cooperation with other government departments such as the SD, FD, DWC, and CEA. LUPPD regularly collects and exchanges land use planning data and subsequently makes recommendations to other departments. Plans and recommendations are also presented by the District Land Use Planning Committee to stakeholders at the divisional level. These events are open to the public and sometimes farmers' associations or CSOs attend. Though there are no deliberate efforts to achieve gender balance in these meetings, attendance by men and women is relatively balanced.

The idea behind this PAM is to involve more stakeholders not only in the final review meeting, but also at an earlier planning stage. Furthermore, it is important that stakeholders participating in the land use planning process not only attend meetings, but also have sufficient knowledge and capacity to understand the plans and validate findings or make contributions. Additional capacity building for various stakeholder groups may be necessary for this type of active participation to be possible. According to the VGGT, "Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision making and governance of their tenure systems" (para. 9.2). Participants should be knowledgeable of the VGGT and other safeguard policies. There are only benefits likely here, and no potential tenure-related risks. For instance, engagement of more informed stakeholders could lead to better more accurate plans with higher local commitment.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> No risks 	<ul style="list-style-type: none"> More informed and engaged stakeholders could lead to better land use plans with more local ownership. Customary and statutory tenure rights would be more likely to be accurate. 	<ul style="list-style-type: none"> Provide capacity building to these stakeholders for effective participation. Make plans available for comment.
See Para 9.2 VGGT, Cancun Safeguard (d)		

3.2.1.3 *Make spatial plans mandatory and enhance accountability*

The LUPPD evolved from a project in the 1980s and for this reason it still lacks the formal legal mandate that most other government departments possess. One of the key challenges of the LUPPD is the lack of legislative backing for its plans (in contrast to the Urban Development Authority which implements land use planning in urban areas). Without a legal act to require implementation, the land use plans of the LUPPD remain as recommendations and not requirements. To address this issue, LUPPD has prepared an Act that is currently under the consideration of the Attorney General. One of the issues under debate is whether authority over plans should be devolved or instead rest at the national level (the latter being LUPPD's preference).

Another weak point to be addressed in the system is the lack of monitoring or follow up on implementation of the plans. There is a general lack of accountability, one of the principles of implementation of the VGGT (#9). Currently, the LUPPD relies on the recipient agency of the plan to follow it up using their own indicators and has no knowledge of how useful or relevant LUPPD plans have been. There is no data to show whether implementation has brought the government closer to its goal of optimum use of land resources, which could also include tracking of impacts on forests and useful social indicators.

According to paragraph 20.1 of the VGGT, "States should conduct regulated spatial planning, and monitor and enforce compliance with those plans, including balanced and sustainable territorial development, in a way that promotes the objectives of these Guidelines." In the current situation, a lot of good technical work is underutilized. Assuming that the LUPPD has accurate data and continues its high quality work, there are many potential benefits for making its plans compulsory, or at least enhancing accountability. For example, benefits could include more sustainable and productive land use and better recognition of existing tenure rights in development planning. It is important to ensure that not only statutory tenure rights, but also customary tenure rights are considered in land use planning. While maintaining principles of good land governance, a degree of flexibility should be allowed in implementation to accommodate the complexity of land use planning. Monitoring should be based on indicators related not only to quantitative targets, but also to equity, justice, gender, consultation, sustainability, and transparency, following the VGGT principles. Some of the potential benefits of taking these actions would be more sustainable and productive use of land with reduced impact on forests, better recognition of tenure rights in development planning, and better coordination among agencies.

The tenure risks related to a stronger land use planning department and a more accountable system are minimal. To further minimize risks, LUPPD could base final approval of a plan on compliance with the standards mentioned in the analytical framework, using a checklist approach. For instance, criteria such as wide participation (VGGT, Cancun), avoidance of conversion of natural forests (Cancun) or involuntary resettlement (WB), and promotion of equal access for women and girls (VGGT) could be applied to plans.

There could also be potential problems or conflicts if data is not complete or accurate. A time bound appeal process is also recommended to allow for those opposed to a particular plan to officially voice their concerns. In the case of plans affecting indigenous territories (recognized or not), Sri Lanka could consider an approach to land use planning consistent with the principles of

Free Prior and Informed Consent (FPIC). Undertaking FPIC may incur higher costs, however, if stakeholders are involved throughout the process of land use planning, achieving formal consent may only be a formality and will act to cement collaboration for implementation. The VGGT does not specifically call for FPIC for regulatory spatial planning, however ‘wide public participation in the development of planning proposals and the review of draft spatial plans’ are encouraged in order to ensure that ‘priorities and interests of communities, including indigenous peoples...are reflected’ (para. 20.4).

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Conflicts arising due to incomplete or inaccurate data, including lack of recognition of customary land rights (including bundle of rights) (VGGT) and conflicting land use. 	<ul style="list-style-type: none"> More sustainable and productive use of land with reduced forest impact. Better recognition of existing tenure rights in development planning The land use plan becomes a tool for improved coordination among agencies. 	<ul style="list-style-type: none"> Base final approval of a land use plan on compliance with the standards. Allow for a (non-lengthy) appeal process for implementation of mandatory land use plans. Establish centralized and accessible monitoring system to track implementation of land use plans. Include indicators related to equity, justice, gender, consultation, sustainability, transparency, accountability and continuous improvement (following VGGT principles & para. 8.4). Ensure that customary tenure rights are acknowledged and considered in land use planning (VGGT, UNDRIP).
See: Implementation Principle #9 VGGT, Para. 20.1 VGGT, Para. 20.4 VGGT, Cancun Safeguards (e)		

3.2.1.4 Support the implementation of district spatial plans

Under the VGGT, States should ensure that implementing agencies have the human, physical, financial and other forms of capacity to implement land-related policies and laws (para. 6.1). The LUPPD is already very well staffed, with a total of approximately 600 staff, of whom more than 500 are based in the districts. Land use planning is typically carried out by one lead officer at the divisional secretariat level, assisted by three to four additional officers with skills in GIS, agriculture, or other relevant areas. Environmental management and forestry are not among the skills of the LUPPD staff, so they rely on officers from CEA, FD or DWC for these types of issues. The total cost of implementing a land use plan at the district level is approximately 100,000 rupees (US \$714). A per-hectare cost has not yet been calculated.

LUPPD has specifically requested training for its officers from the UN-REDD Programme. It is suggested that the training should include also an introduction to the VGGT, a document that is currently largely unheard of in Sri Lanka, even among key agency personnel. It will also be helpful for officers to know about the Cancun Safeguards, UNDRIP, and World Bank safeguards related to land. With additional training on these topics, LUPPD officers will be better equipped to deal with land use planning challenges they face on the ground. They will better understand the principles of responsible tenure governance including the theory of a bundle of rights as well as the need for consultation, participation, transparency, equity, justice, and continuous improvement. They will also be more aware of Sri Lanka's obligations under UNDRIP which may be relevant in areas of Veddha populations. It is important that these international guidance documents be contextualized for Sri Lanka to accommodate the practical needs of LUPPD officers. Of note, senior management at the LUPPD who were interviewed did not indicate a need for general budgetary support for implementing land use plans.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Capacity to implement may not be sustained if trained officers are transferred to other departments. 	<ul style="list-style-type: none"> LUPPD officers better informed on tenure rights, including the complexities of a bundle of rights and the need to recognize customary tenure. Leads to better and more detailed plans, fewer conflicts. 	<ul style="list-style-type: none"> Train LUPPD staff on REDD+, the VGGT, Cancun Safeguards, UNDRIP, and WB Safeguards. Help officers to understand the application of these standards in the context of their work in Sri Lanka. Organize regular refresher training and training for new recruits.
See: Para. 6.1 VGGT		

3.2.2 Improved management of encroachment and relocation

3.2.2.1 *Stricter enforcement of Forest Ordinance to stop regularization of encroachment*

From time to time, encroached land may be 'regularized' in other words de-gazetted from State forest lands and transferred to the private ownership of settlers / encroachers. The issue is complex due to political interference whereby politicians become involved in efforts to regularize encroachments for political gain. Even though encroachment on State forest is an offense under the Forest Ordinance¹³, regularization is seen as a humanitarian gesture, since those who settle on the forest boundaries tend to be poor with few alternative livelihood options. They clear small patches of forest for agricultural purposes. Larger problems of youth unemployment and population growth are also said to underlie forest encroachment in Sri Lanka.

¹³ Under the Forest Ordinance, "where any person unlawfully clears or encroaches or is in unlawful or unauthorized possession of a portion of, any Conservation Forest, Reserved Forest, Village Forest or any Forest not included in those categories, such person may be punished as well as ejected from such land."

The procedure for regularization must be endorsed by the Minister, approved by Parliament, and follow the criteria defined in the Land Development Ordinance. The Ordinance provides that the alienation of State land to any person is to be firstly on the basis of a permit authorizing the occupation of the land and later the issuance of a grant upon fulfillment of requirements. This process of regularization happens infrequently (every 10 years or so) but is nonetheless perceived to be a significant factor in the loss of forests.

One of the principles of implementation of the VGGT revolves around ‘rule of law’ and ‘adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated’. Furthermore States should adopt and enforce anti-corruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations (para. 6.9). These guiding principles should be kept in mind in revising the Government’s approach to encroachment.

Further strengthening the rules on regularization of encroachment could have a number of risks and potential benefits. Risks will be higher if settlers have been long established in the area and have come to feel that they have some customary rights to resources. In this case, conflicts are more likely. The most obvious benefit is that stricter enforcement could act to deter future encroachment. If it is determined that relocation is required, then it is important that the relocation package is very adequate and that follow-on support is provided to facilitate a smooth transition of the displaced. Sri Lanka’s Policy on Resettlement should be followed as well as the World Bank’s safeguard and operational policies related to resettlement. Furthermore, when relevant, States should ensure that land reform programs provide ‘the full measure of support required by beneficiaries’ and that ‘the full costs of land reforms, including costs of support services, should be identified in advance and included in relevant budgets’ (para. 15.8).

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Conflicts may erupt if people’s customary access, usufruct or management rights are denied. Could become a political issue. Possible involuntary resettlement cases. 	<ul style="list-style-type: none"> Stricter enforcement and penalties could be a deterrent to new encroachment. Possible win-win solutions for both FD (less new encroachment) and encroachers (granted adequate compensation and clear title) 	<ul style="list-style-type: none"> Ensure that the laws forbidding encroachment are widely publicized (VGGT). Conduct patrols on forest borders to pre-empt encroachment. Follow FPIC principles in cases of proposed relocation and increase potential compensation package in terms of quality of land, adaptation measures. Deal with root causes of population growth, unemployment and

		<p>landlessness through family planning services, jobs training, resettlement, etc.</p> <ul style="list-style-type: none"> • Implement anti-corruption measures in the case of arbitrary use of power. (VGGT 6.9) • Improve agricultural productivity in chena through soil fertility improvements and crop diversification, and link producers to buyers. • Conduct additional research to determine the extent of forest encroachment and approximately how much investment would be needed to resolve, particularly in terms of compensation for resettlement.
See: Para. 6.9 VGGT, Para 15.8 VGGT		

3.2.3 Improved forest boundary demarcation and monitoring

The Forest Department leadership believes that State forest boundary demarcation and monitoring is the most important strategy to reduce deforestation and enhance forest regeneration and should be given top priority. According to its experience, the tendency to encroach on forest lands after demarcation only continues in very exceptional cases. The Asian Development Bank (ADB) has supported forest demarcation in Sri Lanka under its Forest Resources Management Project (2000 - 2008), during which approximately 17,279 kilometers were surveyed and demarcated. Due to the conflict, forests in the North and East have not yet been demarcated, and now with peace in the country, this area is a priority for demarcation with efforts currently underway.

With approximately 80 percent of their boundaries demarcated, national parks under the jurisdiction of the DWC face fewer issues with regards to boundary encroachment, however, the DWC still believes that complete demarcation would be useful. In the case of sanctuaries there is more need to demarcate.

Land disputes are common during the process of forest demarcation according to FD officers. For this reason, the FD has developed a set of Guidelines to assist officers in conflict resolution during the process (in Sinhalese, English translation has been initiated in March 2016). The

VGGT also provides a recommendation that ‘decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the judicial authorities (para. 21.4). Furthermore, if forest boundaries overlap with indigenous ancestral territory, UNDRIP should be followed. FD Guidelines are currently under revision with the support of the UN-REDD programme. Compliance with the VGGT, UNDRIP, and other international standards will be analysed.

Most conflicts (90%) are resolved outside the courts, but when conflicts do arise, additional meetings are needed and the process of demarcation becomes slower and more costly. The risks to further demarcation include denial of access to benefits for local people and increased conflict, while a potential benefit of a participatory process could be more clarity on community rights within the area and better collaboration.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Loss of access, use, management for those who enter/use forest within boundaries. Increased conflict. 	<ul style="list-style-type: none"> Areas for community access, use, management, etc. are clarified. 	<ul style="list-style-type: none"> Involve stakeholders in the process of on-the-ground demarcation. (VGGT Principle of Implementation 6), following FPIC principles Consider a permitting system to allow certain activities such as traditional <i>chena</i> to continue (but not expand) within forest boundaries. Provide boundary decisions in writing and allow the right to appeal (VGGT, para. 21.4) Review the FD Guidelines on boundary demarcation to ensure compliance with international standards. Introduce compensation package for loss of access or use of forest land as a result of boundary demarcation
<ul style="list-style-type: none"> See: VGGT Principle of Implementation #6, Para 21.4 VGGT 		

3.2.4 Devolution of forest management to communities

3.2.4.1 Resolution of forest claims by indigenous communities

In January 2014, the Veddha Chief Mr. Uruwarige Wanniya addressed the UN-REDD Programme Executive Board with an 8-point list of expectations including to ‘provide legal solutions for the land rights of the IPs (rights to their ancestral lands)’. The Policy Board responded that this particular request was not directly within the scope of the Programme, however it concluded

that ‘the consultation process to assess and analyse use rights should include IPs with recommendations to inform future decisions.’

The Veddhas have been represented at UN international forums on indigenous people and have become more aware of international safeguards such as UNDRIP. Furthermore under the VGGT, while reinforcing UNDRIP, States are advised to “respect and protect the civil and political rights of defenders of human rights, including...indigenous peoples...and should observe their human rights obligations (para. 4.8). Furthermore, States should “provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems” (para. 9.4). The Cancun Safeguards call for respect for the knowledge and rights of indigenous peoples. If Sri Lanka fails to resolve the question of Veddha ancestral rights to forest areas, there is a possibility that the country will not be able to adequately fulfill the requirements of this safeguard.

Whether or not and how to address the issue of indigenous land rights within REDD+ is a difficult question. The issue is complicated by the fact that many Veddha people today have already left the traditional Veddha lifestyle, having moved to cities and changed their names. Some even deny their heritage which may be seen as a social stigma. Only a few Veddha people still actually live within the forest, including the chief, while most have moved to resettlement areas or cities.

The risks of settling forest claims with the Veddha could include the possibility that the Veddhas could claim much larger areas beyond a previously agreed 1500-ha area.¹⁴ An assessment of the current situation and discussions on mutually agreeable solutions should precede a decision. A satisfactory resolution could increase general interest and support for REDD+. If undertaken responsibly and respectfully, Sri Lanka could benefit from the Veddha’s commitment to protect and use forests sustainably. Solidarity and cohesive leadership among the Veddha community would be key. In any case, earlier promises to provide access permits through the DWC should be followed through.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Forest claims from Veddha to former ancestral territories could increase in area Involuntary resettlement of remaining forest dwellers 	<ul style="list-style-type: none"> If Veddha land issues are addressed, compliance with Cancun Safeguard (c) would be enhanced. Sri Lanka demonstrates respect for IP and human rights, International best practice, and respect for 	<ul style="list-style-type: none"> Conduct assessment on status of Veddha and potential solutions acceptable to all parties. Strengthen recognition of customary rights in law and policy. Consider following through on the promise of a 1,500-ha area granted to Veddha to pursue their traditional way of life. Reinforce access and permits under DWC for usufruct rights. Rights to hunting may still be restricted.

¹⁴ See: <http://vedda.org/wanniyalaeto.htm>.

	Cancun Safeguards and UNDRIP	
See: Cancun Safeguard (c), Para 4.8 VGGT, Para 9.4 VGGT, UNDRIP		



Vedha Chief leading a meeting (Photo: PMU)

3.2.4.2 *Community forestry and community participation in forest management*

While it may be the case that the Veddha people have collectively managed forest areas in a traditional sense, it was not until the early 1980s that recognized ‘community forestry’ was introduced and supported by external development partners including ADB, AusAid, DFID, and more recently UNDP. These projects have met with mixed results. Critics claim that forest dependence is not high enough in Sri Lanka to motivate effective community management. Others claim that forests allocated in the dry zone were degraded and of low value, thus not providing enough incentive for sustainable management. Villagers provided cheap labor in efforts to rehabilitate degraded State lands without full authority or access to benefits. A more recent initiative supported by UNDP has involved 10,000 households in the replanting of forests in 167 sites across 17 districts¹⁵ (UNDP Sri Lanka, 2013). The 4-year project runs from 2012 to 2016.

¹⁵ Districts of Puttalam, Kurunegala, Anuradhapura, Mannar, Vavuniya, Mullaitivu, Trincomalee, Batticaloa, Ampara, Polonnaruwa, Matale, Kandy, NuwaraEliya, Badulla, Moneragala, and Hambantota, Ratnapura.

Of key importance, while different approaches have been tried in terms of involving communities in forest management, the State has maintained the upper hand without fully devolving long term management and decision-making authority to communities. In other words, the full bundle of tenure rights as described earlier, has not been transferred to community groups. In fact, community forestry in the Sri Lankan context is a significantly weaker form of rights devolution. According to the Sri Lanka Community Forestry Programme (SLCFP), a 'community forestry approach' is a process in which "a community is mobilised, forestry and related development needs identified and prioritized, and government or private sector resources mobilized to meet the forestry and livelihood development priorities of selected communities'. Notably, there is no mention of a transfer of rights or benefits.

Supporting community forestry and greater community participation in forest management, with provision of significant tenure rights could have a number of benefits, but also a few risks if not carried out appropriately. Benefits could include greater collaboration and partnership with local communities in forest management as well as livelihoods improvements. A potential risk could be lack of sustained community interest due to modernizing lifestyles. There are a number of recommended strategies including an assessment of CF initiatives to date and experimentation with different models including those where communities are fully empowered with ownership rights. Community tenure rights to own and manage forests collectively should be reinforced in the legal and policy framework. This point is reinforced by the PLR analysis of the Sri Lanka UN-REDD Programme which states, "It may be seen that the PLR framework has introduced provisions that provide for community participation in forest management particularly, forests that are not within Conservation or Village Forests as well as within reserved forests. In order to realize the full benefit of these provisions, the necessary regulations need to be prescribed in terms of the law." The development of such frameworks to recognize legitimate tenure rights are promoted by the VGGT with an important note that such frameworks should be 'non-discriminatory and promote social equity and gender equality (para. 5.3).

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Community interest in CF wanes as local people transition to more modern independent lifestyle. 	<ul style="list-style-type: none"> Communities become partners and stewards in forest protection efforts. Recognized tenure rights provide boost to usufruct rights, sustainable management and long term investment. Livelihood improvement and poverty reduction. 	<ul style="list-style-type: none"> Evaluate the strengths and weaknesses of previous CF projects to get a better sense of various models. Grant communities long term ownership/management rights (full bundle of rights) to areas of forest for them to manage sustainably. Experiment with different models of devolution of authority. Reinforce community tenure rights through policy and legal framework that are non-discriminatory and promote social equity and gender equality (VGGT para 5.3).
See: Para 5.3 VGGT		

3.2.5 Consolidation of natural forest lands under the Forest Department

In this section, we look at consolidation of natural forest lands under the FD. These lands would include forests belonging to the Land Reform Commission (LRC) as well as to plantation companies.

3.2.5.1 Acquisition of forested lands under the Land Reform Commission (LRC)

Some forestlands in Sri Lanka are currently governed by the Land Reform Commission (LRC), as a result of interventions under the Land Reform Law of 1972 to divide up large holdings over 10 hectares of paddy or 20 hectares of highland, and redistribute land to landless peasants to bring about more equity. The LRC has expropriated 419,100 ha from large landowners (who did not manage to reduce the size of their holdings through sale or donation). About one-third of the land taken was forestland, while the remaining was vested with the Janatha Estate Development Board (JEDB) and the Sri Lanka State Plantation Corporation (SLSPC) and planted with tea, rubber, or coconut. These lands were brought under the LRC jurisdiction. It is unclear precisely how much natural forest is currently under LRC control, however estimates are less than 20,000 hectares. The FD provided figures for several areas that are currently under negotiation through a Cabinet proposal for transfer back to the FD's jurisdiction. It appears that the potential areas for transfer are relatively small, and therefore there is limited significance in the consolidation of the FD's authority over these forests.

Galle District	347.4 ha
Matara District	1,157.9 ha
Rathanapura District	3,149.3 ha
Kandy and Matale Districts	174.0 ha

In order to reduce risks and enhance potential benefits, it is important to ensure that the tenure rights over the lands for acquisition are clear. In general there is a relatively clear procedure for land acquisition taking 72 weeks (unless obstacles encountered, in which case the process is prolonged) wherein systems of checks and balances are in place. It is important that the analysis should include a review of both statutory and customary tenure rights (which should be recognized prior to any rights transfer). In this way, potential conflicts could be avoided. The VGGT does not specifically address this type of intra-governmental land transfer proposed under this PAM, however, the general principles of transparency, consultation and participation with regards to public land may be applied (para. 8.5 & 8.6).

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none">• If not properly considered, loss of customary rights in some areas, depending on access, use, etc.• Without clear demarcation on the ground	<ul style="list-style-type: none">• Cohesive and consistent policies and practices would be followed for additional forest lands.	<ul style="list-style-type: none">• Carry out negotiation of acquisition with affected local communities in accordance with FPIC principles and with the potential provision of compensation packages for loss of tenure rights, access and use• Ensure that the transfer does not affect customary land rights (which may not be recorded or recognized).• Involve multiple stakeholders in the process

following acquisition, there may be confusion as to jurisdiction.		<ul style="list-style-type: none"> Consider demarcation on the ground after acquisition and the costs of doing so.
See: Para 8.5 and 8.6 VGGT		

3.2.5.2 *Transfer of natural forest lands under plantation companies*

Within some of the plantations in Sri Lanka, there remain some natural forests. For instance, in some of the long-established tea plantations, the upper reaches are kept as natural forests, maintained for watershed and biodiversity protection and for recreation. Some of these plantations are owned by government, while others are privately managed by Regional Plantation Companies (RPCs) under 99-year leases. According to some government officers, the tea industry has declined. Unproductive tea plantations that haven't been well maintained could be converted to rubber or other forms of land use in order to improve productivity. However, conversion of natural forests within plantations is generally not permitted according to the Forest Ordinance and would require an EIA. It would also contravene Cancun Safeguard (e) related to conversion of natural forests. The PAM proposal to consolidate the management of these natural forestlands under the FD aims to increase the level of protection to prevent such conversion.

In the case of acquiring natural forestlands from within State-owned plantation corporations or the Development Board, there is little likelihood of conflict as it would be an internal transfer between government entities. In all such areas, the FD should not try to restrict existing non-destructive practices such as recreation.

In both cases, the FD should consider its capacity to expand its jurisdiction to new areas. Additional staff and equipment may be required.

Potential Risks / Considerations	Potential Benefits	Strategies
<i>Privately owned</i>		
<ul style="list-style-type: none"> Conflict if existing tenure rights (customary/statutory) are not recognized. Difficult to monitor as can be quite far from other forest territory. 	<ul style="list-style-type: none"> More cohesive management. Enforcement strengthened. 	<ul style="list-style-type: none"> Recognize existing tenure rights prior to acquisition and, if local rights are affected, conduct transfer in accordance with FPIC principles Engagement of private plantation owners throughout the process of acquisition. Consider effect on plantation workers if any.
<i>State-owned</i>		
<ul style="list-style-type: none"> Difficult to monitor as 	<ul style="list-style-type: none"> Better enforcement as 	<ul style="list-style-type: none"> Research and recognize

removed geographically from other forest territory.	more integrated under Forest Ordinance.	existing tenure rights prior to acquisition.
See: Cancun Safeguard (e)		



Tea plantation (Photo: A. Corblin)

3.2.6 Payment for ecosystem services / conservation easements

It was not possible to identify existing examples of payments for ecosystem services (PES) in Sri Lanka, however, there could be potential to establish such models. In this section, we consider two potential models: a conservation easement model based on examples in the United States and a water catchment PES similar to those existing in Vietnam.

1) Conservation Easement

In the United States, conservation easements have been used to incentivize private property owners to put some or all of their land under conservation in perpetuity. A conservation easement is an interest in a property established voluntarily by agreement between the landowner and the government (or a land trust). The easement 'runs with the land' meaning that it is also applicable to future owners of the land and becomes part of the 'chain of title' for the property. In the US conservation easements have been used for a number of purposes including to perpetuate and foster the growth of healthy forests; the easement generally forbids

subdivision and other real estate development. The landowner is compensated for the opportunity cost of developing the land financially through state and federal tax advantages (the payment) but also through the knowledge that he/she has contributed to the public good through preservation of the resource for future generations.

Conservation easements could be established in Sri Lanka for the patches of natural forests remaining within plantations or in other areas of privately owned forests such as temple forests. Within Sri Lankan Roman-Dutch law and the 1998 Registration of Title Act there is already a provision for 'servitude' that could provide a legal basis for conservation easements. In addition, the PLR study mentions the possibility of special tax consideration under the Inland Revenue Act in relation to donations made to charities. Conservation easements have the potential to incentivize the long term conservation of forest fragments and could be piloted to test the concept in the Sri Lankan context, prior to national roll-out.

By definition, tenure is an integral element of implementing conservation easements. Without clear and secure tenure, it would be impossible to apply for or grant conservation easements since payments are tied directly to the notion of tenure. The prospect of the benefits associated with easements could incentivize some land owners to demarcate and register the forests on their lands, while making the commitment to long term conservation. Carbon sequestration could also be optimized by including easement areas in forest inventories and linking payments to biomass.

2) Watershed PES

PES schemes around watershed conservation in Vietnam have been relatively successful and could serve as a model for such pilots in Sri Lanka. Sri Lanka has 103 river basins and over 10,000 watersheds so there is wide geographical potential. One of the challenges in administering a PES scheme in a watershed context is the issue of overlapping jurisdictions across the area. Some river basins, such as the Kalaya Basin with 16 tributaries already have cooperative administrative structures in place, so such areas could be good areas for pilots. There is also an opportunity to explore a PES project with the Ceylon Electricity Board (CEB) that produces approximately 40% of Sri Lanka's electricity from hydropower. Conservation of forests in these watersheds has a value that could be recouped in electricity costs. PES initiatives linked to mini-hydro projects are another possibility.

Similar to easements, tenure would also be a critical aspect of watershed PES projects. Watersheds are likely to contain a mix of State and non-State forest lands, adding to complication. Initial pilots for PES could be most efficient if located in areas where tenure rights are already quite clear. By taking a piloting approach in a limited geographical area, Sri Lanka could gain experience with PES and collect lessons learned for implementation in more complex situations.

One of the notable differences in a PES approach is that it is a 'carrot' or an incentive rather than a 'stick' approach which relies on authority to enforce rules. Generally speaking a mix of carrots and sticks are thought to be most effective in a strategic approach to improved forest governance.

The VGGT, Cancun and WB Safeguards, and UNDRIP do not provide any guidance specific to PES initiatives, however, the quest for recognition of legitimate tenure rights is highly

complementary and such PES schemes should be implemented following the VGGT principles, emphasizing rule of law, transparency, accountability, and a quest for continuous improvement.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Financial incentives could intensify competition for land and aggravate tenure issues. 	<ul style="list-style-type: none"> Easements could provide incentives for landowners to demarcate forests within their holdings and to clarify tenure and land use. Long term conservation of forest fragments and watersheds Enhance carbon sequestration by linking payments/tax breaks to biomass through forest inventories. 	<ul style="list-style-type: none"> Conduct awareness raising on PES/ easements (e.g. study tour) with policy makers so they can see firsthand its potential and the importance of clear and secure tenure. Ensure the sustainability of payments through multiple sources. Provide access to PES/ easements also to smallholders through special support provisions and bundling of parcels. Conduct analysis to determine the right level of payment/ tax break. Follow VGGT principles of implementation of rule of law, transparency, accountability and continuous improvement, among others.
See: VGGT Implementing Principles		

3.3 Other REDD+ PAMs with Some Tenure Risks or Considerations

3.3.1 Improvement of law enforcement on the ground

Improving law enforcement in State forests has a number of potential tenure risks and benefits. If law enforcement is part of improving broader aspects of governance in society and applied evenly, then these efforts are likely to contribute to improving tenure arrangements and bring benefits. If law enforcement is conducted in proper ways (without use of undue force, etc.) it can serve to prevent new encroachments into forest areas and reduce illegal activity. If forest officers have a good understanding of tenure rights, both customary and statutory, then they will have better judgment in dealing with challenges on the ground. However, if there are encroachment activities that are not based on legitimate tenure rights, or if forest officers are poorly equipped to deal with these issues, then there is a risk of conflict during enforcement.

In the case of non-State owned forests the FD does not have authority to enforce the Forest Ordinance. The current system of beats does not incorporate these areas, and therefore relationships have not been established. Simple systems of self-monitoring could be put in place with home garden owners or temples using small rewards as an incentive.

Along with enforcement, it is important, according to the VGGT, to provide prompt and affordable access to justice that is independently adjudicated, in the case of tenure disputes arising from enforcement. Anti-corruption measures should be in place, and there should be special attention to women's tenure rights.

Potential Risks / Considerations	Potential Benefits	Strategies
<i>State forests</i>		
<ul style="list-style-type: none"> Impact on usufruct rights – could affect livelihoods. Increased conflicts in buffer zones and forest edges where encroachments and chena have taken/are taking place. 	<ul style="list-style-type: none"> Prevent new encroachments before they happen. 	<ul style="list-style-type: none"> Educate forest law enforcement officers on tenure rights. Explore involving local people in enforcing their own forest protection regulations based on devolution of forest management rights. Continue to allow access to enter, sustainable collection of NTFP. Combine with awareness raising on laws and policies. Provide access to justice (VGGT, General Principle 4)
<i>Non-state forests</i>		
<ul style="list-style-type: none"> Stricter enforcement re: to home gardens by village monitors could breed discontent Restrictions on temple lands affect temple rights to manage so would require legal backing. Taking away these rights could create opposition 	<p>Home gardens: No significant benefits Temple forests: Unclear benefits.</p>	<ul style="list-style-type: none"> Involve home garden owners in self-monitoring/reporting in supportive way. Encourage conservation of temple forests through incentives, networking of conservation monks, etc. Build technical collaboration between FD and non-state forest owners. Provide access to justice (VGGT)
See: General Principle 4 VGGT		

3.3.2 Strengthening the EIA process

Under its National Environmental Act (1988), Sri Lanka already has a relatively robust Environmental Impact Assessment (EIA) requirement in place and more than 25 years of experience in implementation. EIAs are required in both State and private lands.¹⁶

The main responsibility for managing the EIA process falls with the Central Environmental Authority, with the exception of the coastal areas where the Coast Conservation Department assumes responsibility. EIAs are mandated only for large scale development projects or for projects located in environmentally sensitive areas. In the case of 'less complex environmental issues', the project proponent may opt for the less stringent Initial Environmental Examination (IEE) instead.

Sri Lanka's EIA process is fairly well defined (See Annex 6). A potential impact on natural forests by an infrastructure or development project will automatically trigger the need for an EIA. In the case of funding by a multilateral donor, the donor's own assessment guidelines may supersede or complement Sri Lanka's own EIA requirement.

According to officials at the CEA, land disputes often occur in the lead up to the EIA process. Therefore, an EIA should be conducted only after land issues are satisfactorily resolved, and this is part of the prerequisite submission of preliminary information to start an EIA; however, occasionally EIAs may go ahead without CEA being informed that land disputes are still pending. CEA has been blamed (wrongly it claims) for proceeding with the EIA even though land issues have not been settled. It is the responsibility of the project proponent to make sure that land issues are clear before proceeding, and the proponent should make a declaration to this effect.

Another key issue is the lack of clear criteria to distinguish between the requirement for an EIA versus for an Initial Environmental Examination (IEE), which is significantly less rigorous. For instance, the IEE does not require a public comment period as the EIA does. Without clear criteria in place, the decision making process is vulnerable to political pressure. At the same time, having clear criteria could also guide a project proponent to stay just under the acceptable limit, so this factor must also be taken into account.

The authors of the drivers study criticizes the EIA as being "not a deterrent to the conversion but only a procedure to find some strategies to mitigate the impacts." Furthermore, they state that "most of the EIA reports are normally based on value judgments of individuals and sometimes are biased."

In addition, the lack of monitoring and enforcement on mitigation measures is perceived as another significant gap. For instance, according to the Public Interest Law Foundation, in the case of a mini-hydropower project in the Sinharaja Forest Reserve, there were 25 conditions for the developer to follow, but there were not all adhered to. In this case, the Public Interest Law Foundation has filed a court case.

According to the VGGT, "when investments involve large-scale transaction of tenure rights...States should strive to make provisions for different parties to conduct prior

¹⁶ EIAs are required in private lands according to the Land Acquisition Act.

independent assessments on the potential positive and negative impacts...” (para. 12.10). Furthermore the Cancun Safeguard (e) advises against the conversion of natural forests.

In order to improve the situation, it is suggested that the criteria for EIA’s be more clearly defined and accountability measures improved with regards to implementation. Furthermore, additional due diligence should be conducted on land tenure issues prior to starting the EIA process. Sri Lanka should also consider integrating more social indicators into an ESIA to ensure that issues such as tenure are fully considered.

Potential Risks / Considerations	Potential Benefits	Strategies
<i>State Forests</i>		
<ul style="list-style-type: none"> Land disputes not known to the CEA cause future problems for projects Projects are wrongly categorized resulting in less exigent IEE, which could in turn lead to tenure issues being ignored. 	<ul style="list-style-type: none"> EIAs less susceptible to political pressure could mean less infringement on tenure rights. Fewer conflicts and court cases due to avoided disputes. Better monitoring would ensure that mitigation measures put in place, including those affecting tenure rights. 	<ul style="list-style-type: none"> Reduce political pressure for land conversion by suggesting other possible locations for projects. Define criteria for EIA vs. IEE. Additional due diligence on land tenure prior to the initiation of EIA. EIAs should consider possible downstream effects of projects being considered, including impacts on tenure Institute monitoring and enforcement of mitigation measures Consider ESIA, to ensure social aspects fully reviewed, including tenure. Refer to the VGGT to improve EIA procedures and to the Cancun safeguard (e) to avoid forest conversion.
<i>Non-State Forests</i>		
Same as above	Same as above	Same as above.
See: Cancun safeguard (e), VGGT 12.10		

3.3.3 Support inclusion of SEA under the Environmental Act

A Strategic Environmental Assessment (SEA) is a 'systematic decision support process, aiming to ensure that environmental and possibly other sustainability aspects are considered effectively in policy, plan and programme making.' SEAs tend to be more unstructured than EIAs, but they are generally regarded as promoting an international standard of land governance. In the context of Sri Lanka, SEAs have been used to assess the impacts of large scale infrastructure development projects at a landscape level. SEAs have been conducted in the north of the country to guide infrastructure development, however there is as yet no legal requirement, and in some cases the recommendations of the assessment have not been adhered to (e.g. UNDP's ISEA). However, according to the CEA, inclusion of an SEA requirement in the Environmental Act is currently being discussed in the ministry and drafting of legal text is expected to be imminent.

Regardless of a legal requirement, multilaterals such as the World Bank will conduct SEAs and spatial planning prior to financing infrastructure projects. However, other less conscientious investors may forego such analysis if it is not required.

Under the VGGT, there are a number of relevant articles related to spatial planning which may be drawn from in implementing SEAs. Some of the most relevant points in the Guidelines related to spatial planning include:

- Spatial planning should reconcile and harmonize different objectives of the use of land, fisheries and forests (para.20.1).
- States should develop through consultation and participation, and publicize, gender-sensitive policies and laws on regulated spatial planning (para. 20.2).
- Formal planning systems should consider methods of planning and territorial development used by indigenous peoples and other communities with customary tenure systems, and decision-making processes within those communities (para. 20.2).
- Spatial planning should consider all tenure rights, including overlapping and periodic rights. Appropriate risk assessments for spatial planning should be required (para. 20.3).

Potential Risks / Considerations	Potential Benefits	Strategies
Without strong legal or political commitment, may be wasted effort.	Holistic approach integrates land tenure concerns	<ul style="list-style-type: none"> • Draw on Haritha Lanka's aim to prepare landscape character maps and recommendations for whole country. • Integrate SEA into the 2011 – 2030 National Physical Plan • Consider integration of LUP and SEA processes • Draw on VGGT recommendations related to spatial planning.
See: Paras. 20.1, 20.2 & 20.3 VGGT		

3.3.1 Development of agroforestry models

Agroforestry is considered to be a traditional practice in Sri Lanka where the cultivation of trees and crops in home gardens and social tree planting are well-established practices. Different models have been developed including teak-based models in the 1960s. Current models tend to focus on smaller plots in the dry zone where cash crops are interspersed with fast growing tree species. These trees are periodically harvested when the canopy cover closes to allow sunlight to continue to enter. Agroforestry is an inhibitor of deforestation and degradation as it can prevent erosion and supply fuel wood and other products to support local livelihoods, decreasing pressure on natural forests. Under this PAM, agroforestry would be extended with the development and introduction of new models. Following the Cancun Safeguard (e), degraded natural forests would not be converted but rather enriched through agroforestry practices.

Box 3. The Sri Lanka Community Forestry Program and Farmer Woodlots

The current Sri Lanka Community Forestry Program (SLCFP) has three main reforestation models namely, 1) enrichment planting (in natural reserves), 2) buffer zone planting and 3) farmers' wood lots (FWL). Both enrichment and buffer zone plantings take place on State lands and land ownership cannot be transferred to anyone. As a result, farmer involvement in maintenance is weak. In order to address this issue, the FD allowed selected farmers to harvest forest products such as galsiyambala, cashews, medicinal plants, as long as they did not damage trees.

In the case of FWLs, the FD provides 25 -year lease agreements to farmer groups with some conditions on proper maintenance and protection. Farmers are restricted from settling on the land, but the lot can be transferred with the approval of the relevant authorities. After 20 years, farmers can harvest trees under the supervision of the FD, retaining 80% of the income and paying 20% to the government as a royalty.

Tenure security is an important prerequisite for successful agroforestry implementation. Whether the agroforestry intervention is implemented by a collective or a private individual, the incentives to invest and maintain the system (with longer growing cycles) will be much greater if tenure is clear and secure. If tenure is not secure then there is the risk that efforts will be short-lived. Another consideration in the testing and establishment of new models should be integration with existing land management traditions and practices. For example, agroforestry initiatives should not affect existing access or usufruct rights. On the contrary, they could build on community forestry practices and structures.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Insecure tenure in agroforestry areas could lead to short-lived efforts. 	<ul style="list-style-type: none"> Tenure security could increase investment in land productivity. 	<ul style="list-style-type: none"> Ensure secure tenure for agroforestry plots. Build on traditional knowledge and community structures in selecting agroforestry models. Use agroforestry to enrich

		degraded lands rather than converting natural forests.
See: Cancun Safeguard (e)		

3.3.2 Improved land productivity and rehabilitation practices

This PAM relates primarily to capacity building and enforcement to improve land productivity and rehabilitate degraded land in order to reduce pressure on forests. The agrarian department would be the target audience for capacity building efforts, while the private sector would also be engaged in implementation on private lands. In Sri Lanka non-State land is relatively scarce and its productivity is a key focus of the government. In fact, under the Agrarian Development Act (2000), if land is not used productively it may be confiscated by the government in order to be put to more productive uses. Furthermore, the Soil Conservation Act provides the legal framework for soil conservation; however, soil conservation measures are often not implemented due to lack of resources. Implementing this PAM would involve identification of prime agricultural lands during land use planning processes, soil conservation through mechanical and agronomic measures with a focus on the central highlands, and increased land productivity through better crop management.

There are minimal risks associated with this PAM since the measures are most likely to take place on private agricultural land or existing state plantations. One minor risk could be that increased financial support for land productivity could lead to the conversion of natural forests to cropland in order to access subsidies. This would be contrary to the Cancun safeguards. Therefore, tenure should be clarified in areas targeted for support.

If land productivity measures are implemented with small farmers and in resettlement areas, they may serve to reinforce tenure rights and reduce the hardship normally associated with resettlement. Under the VGGT the State should, to the extent that resources permit, provide 'productive' land for resettlement (para. 16.9). Increasing land productivity for small farmers may also have the beneficial effect of reducing encroachment.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Conversion of natural forest to cropland. 	<ul style="list-style-type: none"> Reduced hardship in resettlement schemes. Reduced encroachment if small farmers are targeted. 	<ul style="list-style-type: none"> Clarify tenure on lands designated for improved productivity. Consider support to land productivity in resettlement areas.
See: Para. 16.9 VGGT		

3.3.3 Improved governance of temple forests

A significant portion of forest, perhaps 30,000 hectares, falls under the jurisdiction of Buddhist temples governed by the Buddhist Temporalities Ordinance (1931). There are two proposed PAMs that relate to improved governance of temple forests. The first relates to involving the FD in the management of temple forests, while the second one proposes revision of the aforementioned law.

3.3.3.1 Forest Department involvement in temple forest management

It is suggested that the Forest Department's authority and control over forests within temple lands be increased in order to prevent conversion to other land use. These forests could be clearly demarcated and further enriched with community participation, when appropriate. A database could be established to monitor the temple forest holdings. The FD could also participate in a review of the guidelines and principles for releasing temple forest lands for other purposes.

The success of this PAM depends on recognizing the existing tenure rights of the temples and working within this framework. These rights would include the full bundle of tenure rights from access to alienation, and more research should probably be conducted to understand these. Furthermore, according to the VGGT, States should "recognize that policies and laws on tenure rights operate in the broader political, legal, social, cultural, religious, economic and environmental contexts" (para. 5.9), therefore, the FD should not consider these lands merely as forests to be protected, but should recognize the diverse values they may hold for local people in the religious community. If the FD attempted to take over or exert undue or unwelcome influence in these areas, the result could be conflict rather than cooperation.

Buddhist philosophy promotes harmony with nature and emphasizes the importance of forests in the life of the Buddha who was born and died in the forest. While a few Buddhist leaders have opted for conversion of forests, there are also examples of monks who have been promoting conservation (See Box 2). Sri Lanka's REDD+ Programme could harness the influence of the Buddhist community to promote reduced deforestation. As one example, the UK-based Association of Religions for Conservation (ARC) has supported religious leaders in their conservation efforts, and has developed networks to share experience within and across religious communities.

The FD could propose a supportive role in forest management while allowing temple leaders to maintain their authority over the area. Incentives for conservation such as easements (See Section 3.2.6) and training and capacity building could provide motivation to avoid conversion. By granting access rights to State-owned forests for meditation, collaboration may also be improved.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none">Conflict and backlash if FD attempts to exert too much control over temple forests, impinging on	<ul style="list-style-type: none">Conservation values of temple forests are enhanced through transparent systems of	<ul style="list-style-type: none">Research the range of existing tenure rights in temple forests recognizing diverse values including

existing tenure rights.	data collection, community involvement, and networking among temples.	religious values (VGGT). <ul style="list-style-type: none"> • Strengthen collaboration by granting access rights for meditation in State-owned forests. • Record range of tenure rights in proposed database. • Involve religious leaders and communities throughout the process of demarcation, with respect for Buddhist traditions.
See: Para 5.9, VGGT		

Box 2. Buddhist Community Advocates for Forest Protection

According to Centre for Environmental Justice, the 628-acre Soragune Forest, belonging to the Soraguna Temple, was illegally sold to a hotelier to build a 36-hole golf course and resort, despite the fact that the forest was in an important water catchment area. In order to draw attention to the need to conserve this forest, a 'Sangha Agna' was issued by Buddhist monks who organized a Dharma Yathra (Buddhist procession lasting several days) and the symbolic ordination of trees with orange robes. Over 60 Buddhist monks and more than 4000 lay people participated.

3.3.3.2 Revision of Buddhist Temporalities Ordinance

Temple forests are governed under the Buddhist Temporalities Ordinance (1931). Subsequent amendments have been made through several acts, for instance to align with newer policies and laws. The Ordinance governs the management of temple property, including forests. It states that the management of temple property is 'vested in a person or persons duly appointed trustee' or else in 'the Viharadhipati (head of temple administration) of such temple'. The trustee or controlling Viharadhipati is subject to the supervision of the Commissioner General of Buddhist Affairs who is assisted by an Advisory Board.

This PAM would entail revision of the Ordinance to promote forest conservation by strengthening restrictions to prevent conversion of natural forests. This would be in line with Cancun Safeguard (e). A top-down authoritative approach to revising the law could create conflict, since proposed changes to the law would impinge on the temple's forest management rights. Therefore, a stepwise approach is recommended whereby demand for such a revision within the Buddhist temple community is first nurtured through awareness raising and external support for conservation initiatives.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Perceived threats to the temples' management rights could lead to negative reactions and conflict. 	<ul style="list-style-type: none"> Strengthened restrictions on forest conversion 	<ul style="list-style-type: none"> Take a stepwise approach by first nurturing support for the revision which is in line with Cancun Safeguard (e). Explore the possibility of FD in the temple advisory boards.
See: Cancun Safeguard (e)		

3.3.4 Protection of watersheds

This PAM of protection of watersheds refers to a range of activities including development of river basin plans, soil conservation, tree planting for slope stabilization, construction of gullies, and proper water extraction. The Mahaweli Authority has a great deal of experience in watershed management, and can provide guidance in implementation. Improved watershed management is well aligned already with the Haritha Lanka development policy. This PAM has some commonalities with the PAM related to PES watershed projects and the PAM related to land rehabilitation and productivity and therefore some similar tenure elements as well. Before undertaking activities to protect watersheds it would be important to confirm that there are no land tenure issues that could affect the intervention or be impacted by it. Even in State lands, there could be customary practices. Effects on downstream property owners should also be considered, though it is more likely that these would be positive in nature. As with a number of other PAMs, the involvement of relevant stakeholders in the process of designing and implementing activities is essential (VGGT Principle of Implementation 6).

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Interventions could be short-lived if tenure is not clear. 	<ul style="list-style-type: none"> Better collaboration with stakeholders. 	<ul style="list-style-type: none"> Undertake watershed protection strategies in areas where land tenure is already relatively clear. Engage with relevant stakeholders in the development of initiatives. Consider also downstream effects of interventions.
See: VGGT Principle of Implementation 6		

3.3.5 Various support to non-forest lands

Some non-forest lands also play an important role in sequestering carbon and mitigating climate change including home gardens, urban areas, roadsides, and mangrove restoration areas. Home gardens are widespread and particularly significant in the Sri Lankan context. These areas also

often serve as buffers for larger forest areas. Some of the preliminary activities under this PAM include:

1. Promotion of home gardens through the FD and introduction of training for tree management in home gardens
2. Supporting mangrove replanting programmes on FD and private lands in the coastal area
3. Involving the private sector in tree planting in urban centers and along roads.

Tree planting and management normally requires a significant investment of time and resources and tree survival is enhanced if there is a sense of ownership. In home gardens, tenure is clear, however along roadsides, in urban spaces, and along the coastline, tenure may not be well established. Before investing in tree planting and restoration, the tenure aspects of planting areas should be carefully considered.

These measures could increase home garden productivity, and contribute to a national REDD+ strategy by reducing the pressure on natural forest areas. Since tenure in these areas is already clear, this would be one less complication for implementation of such a measure.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> Trees and seedlings may not survive if tenure is not clarified. 	<ul style="list-style-type: none"> Subsidies and investment in home garden systems will strengthen the rural economy. 	<ul style="list-style-type: none"> Clarify tenure in tree planting and mangrove restoration areas. Develop a template for REDD+ Implementation Agreements (RIAs) with home garden owners
<ul style="list-style-type: none"> See: VGGT Principle of Implementation 3 		

3.4 PAMs with Minimal or No Tenure Relevance

3.4.1 SFM of natural forest and plantation forest, assisted natural regeneration, and enrichment planting

Implementing sustainable forest management (SFM), assisted natural regeneration (ANR), and enrichment planting are all potential strategies to boost carbon stocks within existing forests. If these activities take place within State forests, then there could be some risks or benefits to tenure depending on the location of the activity. Forest buffer zones are most likely to benefit the most from improved forest management practices such as SFM, since they tend to be the most degraded. However, these areas also tend to be more populated and therefore competition for resources is likely to be higher. For instance, local people may graze their cattle, practice chena, or access the forest on a regular basis. While forest management activities could provide much appreciated short-term employment for villagers, conflicts could also arise if tenure rights within the target area are not first clarified.

Similar risks for these activities could be present in non-State forests. As non-state forests tend to be more fragmented and the FD's jurisdiction is not always clear, it is unlikely that these activities will be pursued in these areas, as monitoring could be significantly harder.

Tenure risks could be minimized by locating forest enhancement activities in areas without significant populations or use by local people. However, if tenure benefits are to be maximized, a more proactive approach could be taken to involve local communities in the activities, for example by sponsoring training and implementation with communities taking a leading role. This approach could be more costly and time-consuming, but the benefits of partnership with local people could outweigh the costs and extra time involved. There could also be livelihood benefits from employment and access to forest products (such as fuelwood from ANR pruning activities).

Potential Risks / Considerations	Potential benefits	Strategies
<i>State forests</i>		
<ul style="list-style-type: none"> Potential conflict in areas where grazing takes place and cattle destroy seedlings. 	<ul style="list-style-type: none"> Short-term employment for villagers which enhances collaboration. 	<ul style="list-style-type: none"> Concentrate forest enhancement activities in areas without community use. <i>or</i> Involve communities in planting activities for employment, improved cooperation. Devolve management rights to enrichment / ANR areas or work with CF groups.
<i>Non-state forests</i>		
Same as above	Same as above	

3.4.2 National forest inventory

Conducting a national forest inventory (NFI) is a technical exercise (desktop and in the field) to collect and analyze forest information, and therefore it does not directly impact tenure in either State or non-State forest lands. Some UN-REDD partner countries are considering installing National Forest Monitoring Systems (NFMS) that integrate land tenure data. By having forest and tenure data together in one place, it can be easier to get a more complete picture of the dynamics in and around a forest, which can be of benefit to better governance of both forests and land.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> No tenure risks foreseen. 	<ul style="list-style-type: none"> Additional clarity on priority areas for conservation and protection vs. sustainable use to assist in land use planning. 	<ul style="list-style-type: none"> Include a layer of tenure data in NFMS.

3.4.3 Development of forestry indicators consistent with international criteria

The development of forestry indicators consistent with international criteria would not have any immediate tenure risks or benefits; however the inclusion of indicators that relate to land tenure could have medium to long-term benefits for forest management and REDD+. Some examples of such indicators could be the amount of community-owned or managed forests or the number of conflicts over forest land, including those involving involuntary resettlement.

Potential Risks / Considerations	Potential Benefits	Strategies
<ul style="list-style-type: none"> If no social/tenure indicators are chosen, possible lack of attention to these issues could be detrimental to forest management. 	<ul style="list-style-type: none"> Tracking of social / tenure indicators could help to track these issues and improve forest management. 	<ul style="list-style-type: none"> Consider social/tenure indicators to monitor and draw attention to tenure issues.

3.4.4 Building awareness on forest governance and policies

Normally there is very little, if any risk, in educating people on forest governance, laws and policies, including those related to tenure. On the contrary, a better informed population will be more likely to respect existing laws and regulations, for example those forbidding encroachment. In implementing awareness raising on forest governance, it is important to present materials in formats and language which are accessible to local people. Rules related to tenure and forests should be clarified for consistent messaging. Furthermore, Sri Lanka may consider introducing the VGGT, its norm-setting principles and provisions (tailored for different stakeholder groups) to provide the overarching vision of forest tenure governance.

Potential Risks / Considerations	Potential Benefits	Strategies
No risks foreseen.	<ul style="list-style-type: none"> Better informed population. Reduced conflict, encroachment, conversion. 	<ul style="list-style-type: none"> Clarify tenure rights in language people understand easily. Include awareness raising on the VGGT as a norm setting standard for forest tenure governance. Increase awareness on pertinent land tenure policies, laws, and procedures

3.4.5 Identifying the local supply chain for fuelwood demand

There is a need to satisfy the industrial demand for fuelwood through more sustainable sourcing, reducing the tendency to rely on timber from natural forests. One of the PAMs suggests taking a supply chain approach, linking the needs of individual manufacturing plants to sustainably managed woodlots in the vicinity. These 'outgrowers' would manage woodlots with

fast-growing species such as Gliricidia or Calliandra and deliver timber to manufacturers. Woodlots could be either privately or collectively managed and located on either State or non-state lands. In any case, it would be important that the owners or managers of these areas would have secure long term title, to incentivize investment in nurseries, planting, and long term management. In the case of allocating land for new woodlots, it would also be important to make sure that existing tenure rights, including customary access and usufruct rights would not be affected.

Potential Risks / Considerations	Potential Benefits	Strategies
Without secure tenure rights, woodlots may not be sustained.	More secure titles for woodlot owners and managers, leading to investment and livelihood benefits.	<ul style="list-style-type: none"> • Ensure clear long term tenure rights for woodlots. • Ensure no existing tenure rights affected by new woodlots. • Involve local communities in woodlot management to the extent possible.

4. Conclusion

This study has provided an analysis of the tenure-related risks and benefits associated with potential PAMs with reference to internationally accepted definitions and standards including the VGGT and the World Bank and Cancun Safeguards. The analysis reveals a range of tenure-related risks and benefits that could result from PAM implementation. Some of the risks include: conflicts, political divisions, involuntary resettlement cases to be dealt with, loss of tenure rights with negative livelihood implications, failure to comply with the Cancun safeguards, confusion over jurisdiction, intensifying competition over resources, discontent among constituents or withdrawal of support for the REDD+ Programme, lack of sustainability of efforts and wasted resources. On the other hand, benefits could include enhanced carbon sequestration, better informed and equipped officers better able to perform their duties, more sustainable and productive land use, better recognition of tenure rights in development planning, more informed and engaged stakeholders, more accurate data for decision making, deterrence of encroachment, more allies among indigenous and communities in efforts to protect forests, livelihood improvements, more effective enforcement and incentivized forest stewards.

As a result of the analysis, a number of both general and PAM-specific recommendations are suggested, throughout the text and summarized thematically below.

Stakeholder engagement

It is important to engage multiple stakeholders in the implementation of the PAMs in order to better understand and respect their tenure rights throughout the process. Examples of where active engagement should be encouraged area in land use planning, acquisition of privately-owned forest lands in plantations, demarcation of forests including also temple forests, discussions of carbon accounting and benefit sharing for home garden owners, and in forest enhancement activities. Where stakeholder engagement is required in the design and

implementation of such PAMs, it is important that the principles of FPIC are applied and, where appropriate, potential compensation packages for loss of use, access or other rights are factored into the costs of the PAM.

Training and Capacity Building

Skills on tenure-related topics among government officers require upgrading. Some ideas of where to start include training on the VGGT and Cancun Safeguards for LUPPD, CEA, and FD officers and for the Interministerial Coordination Committee examining land acquisition. The training should teach both theory and practice so that officers can apply the VGGT in their tasks such as land use planning and forest law enforcement.

Awareness Raising

There is a need to raise awareness more generally on tenure rights among the general population. The VGGT and related learning materials should be adapted for the context and audience for this purpose. In addition, awareness on Sri Lanka's laws and policies related to forest and land laws should be increased to prevent encroachment and inform rural people on their tenure rights.

Amendment to Policies and Laws

A number of revisions to policies and laws are suggested in order to bring them in line with international standards and improve tenure governance. For instance, the policy on Involuntary Resettlement should be upgraded to a law. Customary tenure rights should be more clearly defined and respected in both policy and law. Provisions should be put in place to make it possible to devolve tenure rights over forest areas bearing in mind the need for greater equity and gender equality, for example to community forest groups, and stewards of agroforestry areas and woodlots. More practically speaking, land use plans prepared by the LUPPD should be made compulsory (with a right to appeal) and criteria to differentiate between the need for an EIA and IEE should be clarified with requirements to prevent abuse and monitor project mitigation measures. In order to bring about these changes, it may be necessary to build demand for the revisions through awareness raising.

Securing Tenure Rights

There are some key opportunities to provide greater tenure security over forest areas, thereby increasing the incentives for sustainable management. Tenure rights over forest areas should be clarified and made secure in a range of different forestland use categories including community forestry, agroforestry, woodlots, indigenous territories, NTFP collection areas, chena, and ANR areas. The challenge of solving the issue of Veddha forest tenure claims should be further assessed in order to reach a meaningful compromise solution. There are some existing permitting systems which should be reviewed or followed through on, as appropriate.

Creating Positive Incentives

Though PES projects are a new idea for Sri Lanka, watershed PES and conservation easements have the potential to reinforce tenure rights while creating positive incentives for sustainable management. Technical support for forest management to temple communities and other groups such as home garden owners could also increase tenure recognition while boosting motivation to protect trees and forests.

Coordination & Collaboration

There are a number of recommendations to increase coordination and collaboration in tenure-related endeavors. These include establishing stronger links between LUPPD and the FD and including LUPPD in the Interministerial Coordination Committee. It is also possible that FD officers could join temple advisory boards to provide advice on forest management.

Improved Land Use Planning

Land use planning is already at a fairly good stage in Sri Lanka, but it could be further improved by reviewing guidelines with relation to the VGGT, making plans mandatory with an appeal process, better integrating the recognition of customary tenure rights, and expanding the implementation of SEAs.

Monitoring of Forests and Tenure

There is a need to improve information and monitoring on forests and tenure. For example, a database on temple forests is recommended. A tenure layer could also be added to the NFMS. When thinking about REDD+ indicators, Sri Lanka should consider social indicators which indicate progress related to forest tenure.

Further Research

Further research is recommended on the tenure dimensions in a number of areas including on community forestry models, indigenous territories, plantation forests, temple forests, and more generally on customary tenure across various landscapes.

The VGGT as a Benchmark

The VGGT have provided a means to evaluate the proposed PAMs and references are made throughout the report to specific relevant provisions. The VGGT and in particular the ten Principles of Implementation should be referred to regularly to evaluate and adjust implementation of the PAMs.

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Annexures

Annex 1: List of Interviewees

#	Name	M/F	Title	Organization	Email	Telephone	Date
1	Ms. Sonali de Silva	F	Chairperson	Public Interest Law Foundation (CSO)	sds12373@yahoo.com	+94 723 278 230	28 Jan
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3	Uruwarige, Wimalarathne	M	Veddha Chief		n/a		29 Jan
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10	Ramani Jayasundere (Dr.)	F	n/a	Independent Consultant	ramanij@sltnet.lk	0777 514411	1 Feb
11	Baghya Nilanthi Fernando	F	Senior Superintendent of Surveys	Survey Department	bhagyafernando@gmail.com	718013210	2 Feb
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17	Mr. Sisira Hapuarachchi	M	District Officer	Land Use Policy & Planning Dept.	sisirahapu@yahoo.com	071 8259546	3 Feb
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Annex 2: Preliminary REDD+ PAMs

Forest, Wildlife and Watersheds	Land Use Planning	Other forested lands
Improvement of law enforcement on the ground (capacity building, staffing, etc.)	Support district level LUP development periodically (Enhancing technical capacities of LUPPD, Improve coordination between LUPPD and stakeholders through District Physical Planning Committee - especially FD and DWC)	Section 3, N13 (Act), provide regulations to conserve standing forest / avoid LU changes
Forest boundaries demarcation	Support district level LUP implementation (e.g. support incorporation of these plans into FD plans, afforestation, reactivation of implementation mechanisms)	Support discussions/coordination between FD and Temples
Assisted Natural Regeneration of degraded forest	Empowerment of the district level law enforcement system (police, court, legal systems)	On the ground activities on Temple lands (demarcation, enrichment planting, community involvement)
SFM of natural forest (conservation forest, PAs, completion of forest management plans)	Improve land productivity and rehabilitation practices	Promote acquisition of LRC forested lands by FD
SFM of plantation forest (management of existing agroforestry woodlots)	Support inclusion of SEA under Environmental Act. (mandatory for large scale development projects)	Introduce conservation easement (agreement between land owner and government to maintain private forests and get benefits - e.g. tax reduction)
Development of agroforestry models (silviculture, woodlots, etc.)	Strengthening EIA process (capacity building, monitoring, etc.)	Support a mechanism for transferring natural forest lands under plantation companies owned by the government to FD

Community participation in forest management (forest vigilant committees, models for participatory governance)	Support to non-forested lands (home gardens, urban center, public lands, settlements, etc.)	Identify local supply chain for fuelwood demand (between tea factories / industries and communities) - Lands leased to RPCC (Plantation Ministry)
Protection of watersheds (river basin plans, soil conservation, tree planting, construction of gullies, proper water extraction)		
Update the Policies based on the PLR study		
R&D in forest, wildlife and watershed (define the sectors)		
NFI (allometric equations development, etc.)		
Development of forestry indicators consistent with international criteria		
Preparation of guidelines for PS forestry		
Enrichment of protected areas with suitable species		
Law to stop regularization of encroachments?		
Awareness on forest governance and policies		
Reinforce forest certification (timber supply)		
Livelihoods activities based on NTFPs		

Annex 3: National Policies Related to Land and Forest Governance

- **Haritha Lanka Programme (2008 – 2016) and the Punarudaya National Programme (2016 – 2018)**

The Haritha Lanka Programme was approved by a decision of the Cabinet of Ministers in 2008 to incorporate environmental sustainability into the country's economic development and national development planning process. Among the 10 missions within the Programme's National Action Plan are goals of 'saving the fauna, flora and ecosystems' and 'responsible use of land resources'. The Plan is further detailed with relevant actions including:

- Take effective action to relocate wherever possible and prevent further encroachment of natural forests
- Initiate programmes to identify and rehabilitate degraded critical habitats
- Plan and implement a mechanism to provide incentives for establishment of community wood lots near areas of high biodiversity and minimize extraction of firewood from such areas
- Establish forest cover in degraded and neglected cultivated land, particularly in upper watershed areas
- Review all land related laws and regulations with a view to strengthening their effectiveness in addressing land degradation problems
- Explore the possibility of developing an umbrella framework law to deal with land related issues
- Increase the size of the carbon pool by reforestation and afforestation of degraded forests, marginal croplands and waste lands.
- Expand the green belt on the coastline with the participation and sustainable use of communities / coastal inhabitants.

Weak coordination has been cited in the lack of progress on the Haritha Lanka program, however, components of the program have been integrated to the Environmental Action Plan 2016 - 2020. Following the transition in government from President Mahinda Rajapakse (2005 – 2015) to Maithripala Sirisena (2015 - present), President Sirisena introduced the three-year Punarudaya National Programme (2016 – 2018) which lays out similar sustainable development goals, while also including activities from the Action Plan. Of relevance the new Programme calls, among others, for:

- Increasing the forest cover from 29.7 to 32 percent under the "Wana Ropa" national programme
- Surveying and conservation of 6,000 km/25,000 hectares of forest under "Wana Arana Rekavarana" programme'

- **Sri Lanka Next**

Sri Lanka Next is a very recent campaign towards the 'blue green era' and was formally launched in January 2016. The campaign will integrate a number of new initiatives planned for 2016 to promote Sri Lanka's efforts to mitigate and adapt to climate change. The campaign proposes to work in conjunction with various government institutions including the FD and the national REDD+ Programme, in adopting a low carbon development model. 'Sri Lanka Next' is intended to ensure that there is a 'green element in sectors such as construction, transport, and urban and rural development' and to manage land use change effectively.

- **National Environmental Policy (2003)**

This policy binds all organizations and individuals to exercise due care to protect the environment and avoid its degradation. The aim of this overarching policy is to ensure sound environmental management within a framework of sustainable development in Sri Lanka. This policy is supported by many other policies and strategies developed for other sectors.

- **National Physical Planning Policy (Draft - 2002)**

The National Physical Planning Policy is in draft form at present. It provides for the sustainable management of existing forest resources and gives priority in forestry to conservation, which is complementary to the National Forest Policy. The National Land Use Policy emphasizes the need for maintaining protective forest cover on lands steeper than 60 percent.

- **National Policy on Land Use (Year??)**

Although there is a National policy on Land Use, required legal provisions for implementing the policy are still pending approval. This deficiency affects the ability to carry about the national policy. However, LUPPD manages to overcome this deficiency by using the provisions in the Land Ordinance and the National Environment Act to implement its work.

- **National Involuntary Resettlement Policy (2001)**

With the assistance of the ADB, the Ministry of Land and Land Development has prepared a National Involuntary Resettlement Policy (NIRP) as well as a comprehensive guidance document for public officials on implementation. The NIRP was adopted for the benefit of people displaced by land acquisitions for development purposes and is intended to ensure that affected persons are adequately compensated, relocated and rehabilitated. Furthermore, it encourages reduction of delays and better community relations. The policy aims to establish a framework that meets international best practices on involuntary resettlement. The policy is supported by legal provisions in the Land Acquisition Act of 1950 and the National Environmental Act, No. 47 (1980), as well as gazette notification No. 859/14. The NIRP lays out 13 Policy Principles to guide implementation (See Annex).

- **National Forest Policy (1995)**

The National Forest Policy (NFP) approved by the government in 1995 states that all the forest areas are to be managed in a sustainable manner in order to ensure the continued existence of important ecosystems and flow of forest products and services. It also recognizes and respects the traditional rights, cultural values and religious beliefs of people living in and adjacent to forest areas. There are adequate provisions for collaborative management of protected areas and for benefit sharing. The three main objectives of the National Forest Policy are:

- To conserve forests for posterity, with particular regard to biodiversity, soils, water, and historical, cultural, religious and aesthetic values.
- To increase the tree cover and productivity of the forests to meet the needs of present and future generations for forest products and services.
- To enhance the contribution of forestry to the welfare of the rural population, and strengthen the national economy, with special attention paid to equity in economic development.

The policy was drawn up to provide clear directions for safeguarding the remaining natural forests of the country in order to conserve biodiversity, soil and water resources. In accordance

with the policy, the forests under the jurisdiction of the FD are being reclassified and placed under four management systems ranging from strict conservation, non-extractive use, management of multiple use forests for sustainable production of wood and management of forests with community participation.

- **National Wildlife Policy (2000)**

The primary objective of the National Wildlife Policy (revision of the 1999 policy) is to conserve wildlife resources for the benefit of present and future generations. The main concern of the policy is protected area management and wildlife conservation. The Fauna and Flora Protection Ordinance under the administration of the Department of Wildlife Conservation provides the legal framework for implementing the policy. The policy emphasizes the need for participation of local communities and partnership with the private sector.

- **National Policy on Protection and Conservation of Water Sources, their Catchments and Reservations in Sri Lanka (2014, Draft)**

This draft policy aims to ensure ‘the protection and conservation of all the water sources and their source areas in Sri Lanka through an optimum management’. Among the proposed actions related to land use are demarcation of the boundaries of water sources and their catchments and legal declaration of such areas, conservation of the lands in the areas demarcated as water sources and their catchments and related reservations (regardless of the ownership of such lands), avoidance of inappropriate use of land in the areas related to water sources through the preparation of land use plans, and rehabilitation of degraded lands in the areas related to water sources.

- **National Agriculture Policy and National Policy on Industrial Development**

The National Agriculture Policy and National Policy on Industrial Development emphasize the need for expanding the area under field and industrial agricultural crops in addition to increasing yields. Sometimes these policies conflict with the objectives of forest policies and exert pressure to convert degraded and secondary forests to non-forest uses.

Annex 4: Tenure-related Legislation

This section provides a brief overview of some of the key legislation which pertain to forest land governance and impact consideration of tenure issues. As there are too many land and forest-related acts and legislation, only a few of the most crucial ones are introduced.

- **Forest Ordinance (1907)**

The Forest Ordinance is a comprehensive law covering many aspects of forest management including reserve forests, village forests, forest produce, timber transport, and penalties. Under the Ordinance, the Minister may declare "reserved forests" and within these areas destructive activities are prohibited (among others, trespassing of cattle, poisoning of water, destruction of trees, hunting). The Ministry may also designate a "village forest" for the benefit of any village community, though designated trees remain the property of the State, with certain tree species protected. According to the 1979 amendment of the Ordinance, it is prohibited to:

- a. make a fresh clearing or cultivate any land already cleared;
- b. cut or set fire to any forest;
- c. alter or remove any boundary mark, wall, ditch, notice, board, embankment, fence, hedge, etc.

Another provision prohibits mining and quarrying on forest reserves or village forests without a permit.

- **National Environment Act (1980) and Amendment (1988)**

This Act aims to ensure the "protection, management and enhancement of the environment, for the regulation, maintenance and control of the quality of the environment; for the prevention, abatement and control of pollution". Importantly, the Act sets out the requirements for an Environmental Impact Assessment or Initial Environmental Examination for projects that relate to timber extraction and conversion of forestland, among others. Likewise, the Act gives the CEA, the ability to recommend 'rational exploitation of forest resources'. The CEA is also given the authority to issue directives related to development projects which may cause damage to the environment. Failure to comply with directives under the Act can result in suspension of a project.

- **Fauna and Flora Protection Ordinance (1938)**

This law gives the Minister the authority to declare nature reserves including strict nature reserves, national parks, nature reserves, jungle corridors, and intermediate zones. Of particular relevance, the ordinance forbids construction of buildings and roads within the reserves and gives the authority to the Department Director to issue or revoke permits or licenses for various use or activity within the reserves. Furthermore, in the event of the change of boundaries or the dis-establishment of a National Reserve, Sanctuary or Managed Elephant Reserve, a study should be conducted including an investigation of the ecological consequences of the proposed change.

- **State Land Ordinance (1949)**

This Ordinance deals with the power of the State to sell, lease, grant or otherwise dispose of State lands for management and control. Thirty-year leases (extendable up to 50 years) may be issued for individuals and institutions for the purpose of residence, agriculture and commerce. Grants may be issued to transfer the 'full ownership of the land to the lessee' for residential purposes, and may also be obtained by approval of the President.

- **Land Development Ordinance (1935)**

The Land Development Ordinance regulates the alienation of State land. There are provisions relating to the power of the Land Commissioner to alienate State land as well as seize and sell land. Permits may be cancelled unless the conditions and provisions of the permit are observed. Notably, an amendment of 1973 prevents alienation of State land to persons who are not citizens of Sri Lanka and forbids fees for registration of permits while requiring grants to include information on the extent and description of the boundaries of land.

- **Buddhist Temporalities Ordinance (1931)**

Temple forests are governed under the Buddhist Temporalities Ordinance. Subsequent amendments have been made through several acts, for instance to align with newer policies and laws. The Ordinance governs the management of temple property, including forests. It states that the management of temple property is 'vested in a person or persons duly appointed trustee' or else in 'the Viharadhipati (head of temple administration) of such temple'. The trustee or controlling Viharadhipati is subject to the supervision of the Commissioner General of Buddhist Affairs who is assisted by an Advisory Board. Temples represent a significant non-State land holder so this ordinance is important legislation.

Annex 5: Policy Principles of Sri Lanka's National Involuntary Resettlement Policy

1. Involuntary resettlement should be avoided as much as possible by reviewing alternatives to the project as well as alternatives within the project.
2. Where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves and improve their quality of life.
3. Gender equality and equity should be ensured and adhered to throughout.
4. Affected persons should be fully involved in the selection of relocation sites, livelihood compensation and development options at the earliest opportunity.
5. Replacement land should be an option for compensation in the case of loss of land; and in the absence of replacement land cash compensation should be an option for all affected persons.
6. Compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. This should include transaction costs.
7. Resettlement should be planned and implemented with full participation of the provincial and local authorities.
8. Participatory measures should be designed and implemented to assist those economically and socially affected to be integrated into the host communities.
9. Common property resources and community and public services should be provided to affected persons.
10. Resettlement should be planned as a development activity for the affected persons.
11. Affected persons who do not have title deeds to land should receive fair and just treatment.
12. Vulnerable groups should be identified and given appropriate assistance to improve their living standards.

Annex 6: Sri Lanka's Environmental Impact Assessment Procedures

1. EIA process is implemented through designated "Project Approving Agencies (PAA)" led by the Central Environmental Authority (CEA). The PAAs are EIA administrative agencies that are responsible for guiding the EIA for projects and for issuing EIA approval or rejection. A single PAA is appointed as the appropriate PAA for each EIA by the CEA.
2. The EIA reports are required to be open for public inspection and comment for a mandatory period of 30 days.
3. The project proponent needs to submit some preliminary information about the project to the CEA, in order to initiate the EIA / IEE process. The project proponents are advised to submit preliminary information to the CEA at a very early stage in the project cycle (a Basic Information Questionnaire is available).
4. EIA / IEE process involves 6 major steps; (i) screening (ii) scoping (iii) preparation of the EIA / IEE report (iv) review of the report (by the public and the PAA) (v) approval with terms and conditions or rejection with reasons (vi) post approval monitoring. The project proponent or consultants hired by the project proponent is responsible for preparation of the EIA / IEE report.
5. The time allowed for the PAA for each step has been stipulated in the Gazette provided that the information submitted by the project proponent is sufficient to proceed. There is no time limit given for preparation of the EIA / IEE report by the project proponent.

(Source: CEA)