

EXPERT WORKSHOP ON ILLEGAL LAND CONVERSION IN THE MEKONG REGION - Lao PDR -



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Introductions

- Sidavone Chanthavong is a Lao forester who is experience in natural resource management policies and practices; linking trade demand for sustainable timber and NTFS's management; and integrated planning on ecosystem and climate change adaptation.
- Aidan Flanagan is an Australian forester who is experience in all aspects of supply and value chain processes, forest and community development, market access and trade; and governance and enforcement practices.



Pressures

- Long history of conversion
 - Supported by natural biophysical and geostrategic advantages
- National development policies
 - Millennium goals, poverty alleviation, etc
 - international demand for wood and land
- Demand for wood and forest products
 - largely being driven by China and Vietnam



1992 photo of land clearing, Nam Theun

Historically

- Concessions and leases granted to develop land
- Business were promoted without first creating sufficient regulations regarding tenure security and national strategic land allocation and suitability assessment procedures.
 - National, Provincial and District levels of government had the ability to grant land concessions to private investors
 - Different line ministries and agencies had unclear and often overlapping mandates and responsibilities
 - A lack of effective coordination between different agencies at a National, Provincial or District level.



National Export Strategy: 2011-2015

- Targets sectors that have the potential to generate foreign exchange which necessary to boost economic growth
- The allocation of land assets under concessions or leases has been an important tool of policy and authority in Lao PDR.
 - Land classified as ‘degraded’ can be allocated for conversion for development and has become the primary legal vehicle for FDI that generates revenue.



Legal and regulatory requirements

- Land Law No. NA/04, 2002
- Decree on the Compensation and Resettlement of the Development Project of People Affected, No. 192/PM,;
- Labour Law No. 06/NA, 2006
- Forestry Law, No. 06/NA, 2007,
- *Law on Investment Promotion No. 02/NA, 2009*
- *Presidential Decree on State Land Leases and Concessions No. 135/PM, 2009*
- *Environmental Protection Law, No. 29/NA, 2012*
 - Art.6. Principles for the protection of the environment
 - Art 7. Commitment to “protecting, improving, rehabilitating, controlling, monitoring and inspecting the environment
 - Art 68. Actions that are prohibited



Support tools

- *Environmental Impact Assessment Guidelines (2012)*
- A key instrument of GoL's evolving environment and development policies is the requirement for developers to undertake an IEE or an ESIA.

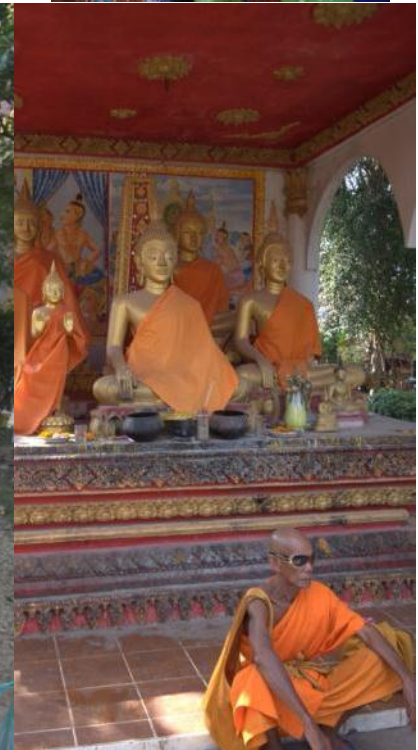


Requires

- Risk to be identified
- Actions to avoid, mitigate or rehabilitate or compensate for negative impacts

Social and environmental impacts of conversion

Particularly on disadvantaged people,
and ethnic minority and/or language
groups



Common deficiencies associated with agriculture and forestry plantation projects



General deficiencies	Lack of awareness of legal obligations and requirements	Social conflict	Lack of community involvement in project approval
	Lack of respect for legal obligations or requirements		Health impact on workers from hazardous material (including chemical use)
	Lack of land survey prior to activities commencing		Harsh or unsafe working conditions
	Lack of clear boundaries, or respect for boundaries		Influx of foreign workers without due planning
	Lack of EIA or feasibility studies		Inequitable benefit sharing
	Lack of worker contracts, fair or safe working conditions		Restrictions to cultural sites
	Commencing work before authority granted		Loss of access to natural resources
Economic impacts	Lack of training and technology transfer for villagers	Environmental impacts	Loss of food security and access to productive agricultural land
	Inadequate contribution, or failure to contribute, to the village development fund		Encroachment on natural forest or protected area
	Failure to pay taxes or charges		Lack of appropriate buffers or protection zones
	Encroachment on productive village land		Clearing outside permitted land
	Lack of employment or poor wages for local communities		Erosion via planting on steep slopes
	Inadequate compensation to villagers for lost or alienated land or land resources		Planting near or within watersheds
	Loss of timber and forest products for villagers		Use of chemicals threatening water sources
	Damage to infrastructure in villages		Increased sedimentation of water sources
	Late payment of wages		Plantations causing lower water levels
	Failure to provide promised infrastructure		Fragmentation to habitats
Lack of training and technology transfer for villagers	Loss of habitat and biodiversity		

Regulatory initiatives

- ***Prime Ministers Order No. 13/PM*** (11 June 2012)
 - Suspends approvals until 31st December 2015 investment proposals for Rubber and eucalyptus plantations (Article II)
 - Initiated a review of concessions and their benefits
- ***Ministerial Agreement on Endorsement and Promulgation of a List of Investment Projects and Activities Requiring for Conducting Initial Environmental Examination or Environmental Impact Assessment, No. 8056/MONRE, 17 December 2013***
- ***Ministerial Instruction on Initial Environmental Examination of the Investment Projects and Activities, No. 8029/MONRE, dated 17 December 2013***
- ***Ministerial Instruction on Environmental and Social Impact Assessment of the Investment Projects and Activities, No. 8030/MONRE, 17 December 2013***



General obligations under IEE or ESIA

- To **anticipate and avoid adverse impacts** on the health, safety, and livelihood opportunities of impacted people and their communities over the project life cycle
- Develop and implement an effective, transparent **engagement and informed consultation process** that incorporates principles to ensure free, prior and informed consent, and actively promotes participation
- Avoid where possible the loss of, alienation from or exploitation of lands and access to **natural and cultural resources**.
- Processes identify and manage project risks and **impacts on disadvantaged people** and ethnic minority groups and incorporate the rights and interests of these people.
- Ensure there are appropriate **actions** developed and implemented **to avoid, mitigate or rehabilitate** where risks are identified or manifest



2014 and beyond

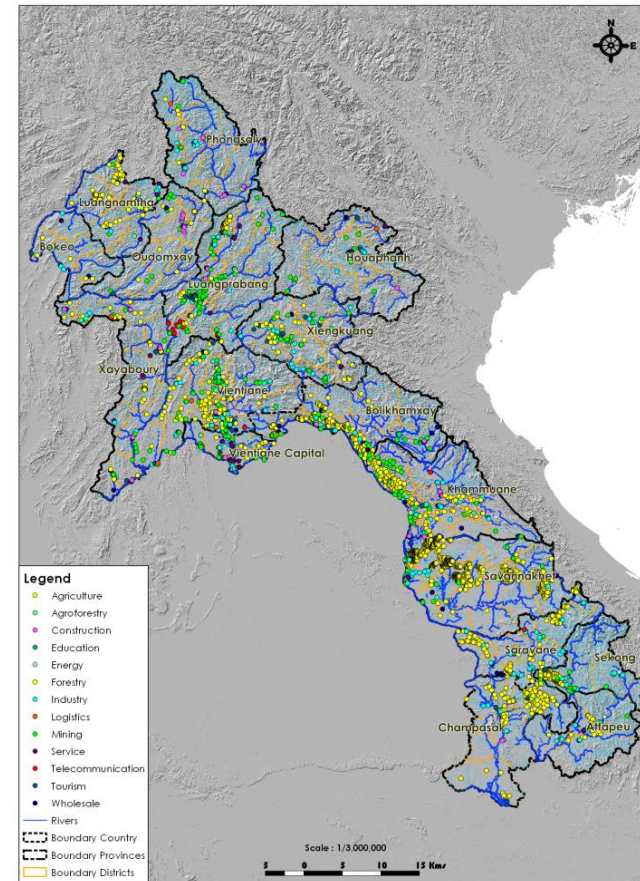
- UNDP working with MoNRE to develop technical guidance notes for
 - Agriculture and forestry plantations
 - Mining
 - Hydro power generation
- Technical capacity being developed at National, Provincial and District levels



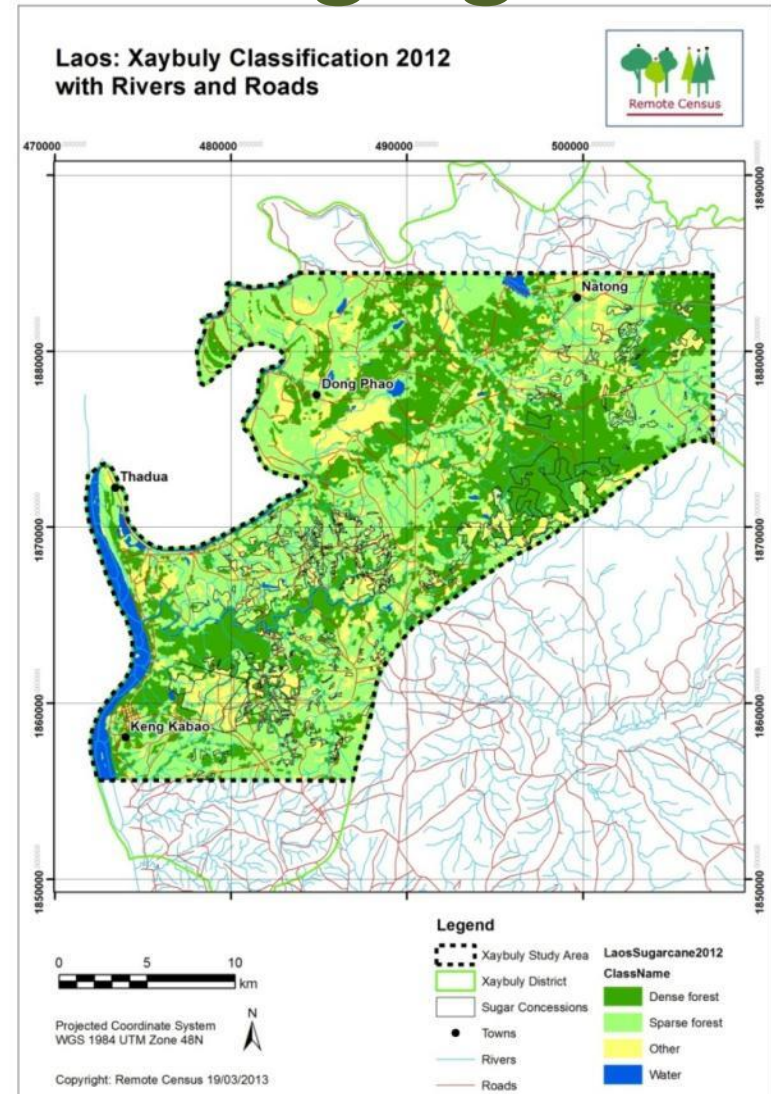
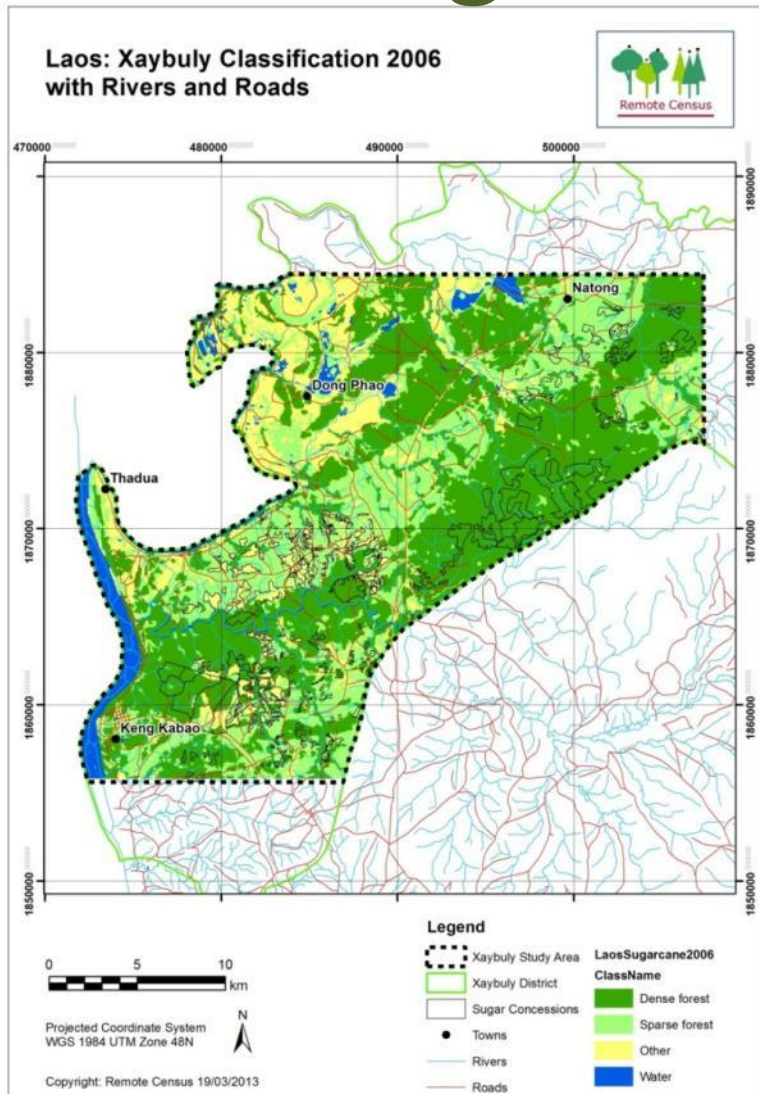
Conversion timber project, 2013

Examined data for 1989-2011

- 3,529 lease and concessional applications, 2,479 were active
 - allocated area of 1.416 million ha
 - actual land utilisation of 0.882 million ha
- 65% Lao nationals
 - 12% China
 - 7% Vietnam
 - 4% Thailand
- 45% unstocked forest land, 47% forest land
- 5 types of contract arrangements
 - 46% concessions
 - 39% leases
- 37% of these contained no land area information
 - 23% were for approvals for less than one hectare.
- Registered capital at least \$7,243 million
 - foreign concessions or leases at least \$2,103 million
 - These are conservative estimates as less than 20% reported either capital or registered capital values.



Using satellite imaging



Mill use of conversion timber

- 12 different wood processing facilities in Savannakhet and Khammouane Province
 - a combined mill requirement of 46,908m³
 - 7% was sourced from GoL Production Forests
 - 36% from activities associated with concession and lease conversions.
 - estimated that up to 25,000m³ originated from sugar concessions.



Challenges remain

Activities restricting forest recovery

- shifting agricultural practices
- illegal logging and over-exploitation of timber
- illegal trade in forest products
- infrastructure projects
- conversion to agriculture and other land-use competition

Impacts associated with developing AFP

- loss of access to traditional land
- loss of cultural links to land and places
- loss and fragmentation of wildlife and forest habitat due to inundation
- loss of aquatic migration capacity upstream
- loss of productive agricultural land
- increased reliance on off-village incomes or a focus on cash cropping.



Definitions of legality are as complex as the supply chain for conversion timber are long

- One of the barriers to the formulation of an international law over forests is the perceived risk to national sovereignty
 - What may be ‘legal’ to a producing State may be viewed as ‘illegal’ in the eyes of international donors or consumers.
- Market access sustainability criteria are being introduced by more developed nations
- Initiatives include the United States *Lacey Act 1900*, the European Union’s FLEGT **Action Plan** and Regional Programming for Asia (EUTR 995); and **Australia’s *Illegal Harvesting Prohibition Act (2012)***
 - The diversity of approaches presents challenges for countries and businesses looking to access international markets as many trade, investment and voluntary measures have a requirement that legality can be demonstrated.
 - The adoption of these initiatives must also be cost effective and avoid distorting markets by pricing compliant products out of the market, and hence promoting illegal or unsustainable practices



Without development, who will deliver...



Health services



Improved living conditions



Protection of natural and cultural values



Educational opportunities



infrastructure

Conclusion

Irrespective of the framework eventually adopted the challenge remains to develop a system that:

- reflects the unique nature of Lao communities, history and forests;
- delivers value to the nation and its people
- Promotes compliance, is efficient in its implementation and governance arrangements
- is effective in delivering co-benefits by balancing the environmental, social and economic drivers of the individual, community and government
- is participatory and equitable.



Thank you

