



Forest Conversion in Lao PDR: Implications and Impacts of Expanding Land Investments

This policy brief examines the institutional and legal framework surrounding forest conversion in Lao PDR, giving special consideration to the social, environmental, and legal implications of expanding land investments to meet Lao PDR's economic development goals summarized in the National Export Strategy (2011-2015).

Introduction

Lao PDR is a natural resource-based economy, with agriculture, forestry, hydropower, and extractive industries contributing to accelerated economic growth. Between 2001 and 2010, GDP grew 7.1 percent per year on average, and by 2020, Lao PDR aims to achieve 8 percent economic growth and graduate from Least Developed Country (LDC) status (World Bank 2014). However, fast growth has exacerbated rural-urban inequalities and certain parts of the country – the northern highland region in particular, home to many of Lao PDR's nearly 200 ethnic minorities – remain poor.

In 2010, the Department of Forests estimated Lao PDR's forest cover at 9.5 million hectares (Mha) or 40.29 percent of total land area. According to geospatial analysis, total tree cover declined at a rate between 80,000 hectares (ha) and 170,000 ha per year between 2006 and 2012 (Global Forest Watch 2014). The national *Forest Strategy* includes a commitment to increase forest cover to around 70 percent by 2020 through sustainable forest management and restoration. However, this goal may be unattainable based on the current rate of legal and illegal forest conversion. Up to 80 percent of the Lao population depends on forests and forest products, and 73 percent of rural citizens rely on small-scale agriculture and forestry for their livelihoods. In some rural communities, more than 50 percent of a family's income is derived from non-timber forest products (Ketpanh et al. 2012).

For the majority of rural citizens in Lao PDR, tenure is extremely insecure. The country's Constitution (Article 15), dated August 15, 1991 requires that citizens hold "rights to using, transferring, and inheriting [land] in accordance with the law." However, in practice, the government still claims ownership of 99.9 percent of forest land, maintaining a highly centralized system of forest governance with inadequate recognition of customary tenure rights (Rights and Resources Initiative 2014), and leaving millions of forest-dependent communities vulnerable to land expropriation. State views often conflict with villagers' notions of customary rights and authority.

Rise of Foreign Investment

The National Export Strategy (2011-2015) prioritizes a foreign investment-oriented economic growth model through nine sectors with the potential to generate revenue, including organic plantation agriculture encompassing eucalyptus and acacia (for paper, pulp, and fiber), sugarcane, and rubber. The strategy targets foreign investors who bring new technology and market access, while acknowledging that the large-scale investment model may negatively impact rural

citizens. It specifically notes that the process of land allocation for production of export commodities is unstable and unclear, potentially resulting in conflicts of interest between local communities and investors.

In accordance with the National Export Strategy (NES), Government of Lao PDR (GoL) policies have begun to promote change across the agriculture and forestry sectors. This approach is best marked by a shift from reliance on small-scale, local production and the harvesting of natural forests and lower-value products to the establishment of commoditized export-oriented industrial agriculture and forestry plantations.¹ Consequently, Lao PDR has allocated a rapidly expanding area to large-scale foreign direct investment (FDI) projects in agriculture, forestry, and other sectors promoted under the NES. Most, if not all, policies contain language regarding local livelihoods, with an aim to ensure local communities benefit from large-scale investments.

The Extent of Land Investments in Lao PDR

A 2012 report (Schönweger et al. 2012) presents the broadest national review of land-based concessions and leases to date, examining the 2,642 land agreements (totaling 1.1 Mha) officially registered in 2012 for agricultural (including tree plantations) and mining exploitation.² It found that “the number of land deals has skyrocketed in recent years, increasing fifty-fold from 2000-2009.”

The report concluded that the majority of land developed was classified as primary forest land, with 23 percent categorized as protection forest according to spatial mapping undertaken in 2011.³ The majority of land investments (62 percent) were less than five ha in size, with leases tending to be smaller than concessions; however, the largest 135 projects – 5 percent – made up 89 percent of the total area under investment.

The distribution of concessions and leases across land types is central to debates over the implications of land-based investments for spatial planning, development, and conservation. While data on land cover classification remains poor, the 2012 review estimates that a total of 260,372 ha, or 45 percent of all area under investment, was granted on unstocked forests (upland or small-scale agriculture), which also covers nearly 45 percent of Lao PDR’s land area. An additional 213,650 ha, or 37 percent, was granted on primary forests. This will likely result in a high rate of conversion in Lao PDR’s most densely forested areas.

The majority of registered concessions or leases – 65 percent – were owned or leased by domestic investors, though these comprise only 17 percent of the total land area under investment. Foreign investors hold 72 percent of the total area under investment, but only 30 percent of projects. China, Thailand, and Vietnam remain the largest foreign investors both in terms of number of projects and total area, with a higher concentration of Chinese investments in northern Lao PDR and most Thai and Vietnamese investments in the south. Interestingly, foreign investment has largely occurred in areas with a higher poverty rate in comparison to domestic investment sites.

¹ See: *PM Decree 46*, Article 2.17 which bans new foreign investment licences for wood processing facilities whose raw material is based on natural forest; *PM Order 18* which bans the export of logs, sawn timber and certain NTFPs from natural forest; *PM Order 15* promotes domestic wood and NTFP processing of semi-finished and finished products for export (required for rattan and eaglewood); and *Agreement of the Minister on Good Agriculture Practices for Environmental Management Standard No. 0538/AFP*, dated 9 February 2011.

² The total area of conversion outlined in the study did not include logging concessions, contract farming, hydropower projects or mining exploration. In addition to the 1.1m ha studied, mining exploration projects covered over 1 Mha, almost equal to all other areas under concession or lease combined. Rubber plantations were estimated to account for approximately one third of the area of conversion, with significant investments in eucalyptus, acacia, and sugarcane as well.

³ Under Article 9 of the *Forestry Law No.6/NA (2007)*, forest land is categorized as Protection Forest, Conservation Forest and Production Forest. Protection forests are set aside to protect natural resources such as river ecosystems and soil quality, while conservation forests are classified for the purpose of preserving plant and animal species and other valuable areas of natural, historical, or cultural significance. Production forests are both natural (primary) and planted forests that are classified for use and production, to support the development of forest-based industries and meet economic development goals. Only specific categories of land can be allocated to AFP projects. Under *Forestry Law* and *Decree No. 135/PM* only degraded forest land and barren forest land can be used for AFP projects through land concessions. However, under the *Land Law* Agricultural Land is also available under a lease or concession, where it is not needed for agricultural purposes as determined through the Land Use Allocation Process.

Table 1: Land-Based Investments in Lao PDR by Investor Country of Origin (2000-2009)

Investor Country	Number of Deals	Total Area (ha)	Average Area (ha)	% Total Number of All Deals	% Total Area of All Deals
Lao PDR	1,705	181,477	117	65%	17%
China	299	199,015	777	11%	18%
Thailand	127	73,637	701	5%	7%
Vietnam	191	307,169	1,862	7%	28%
South Korea	75	27,114	405	3%	2%
Japan	21	29,595	1,480	1%	3%
Other	224	278,787	1,245	8%	25%

Source: Schönweiger et al. 2012.

Legal Code and Institutional Responsibilities

Lao PDR has an extensive and growing body of regulatory instruments for the agriculture and forestry sector. International obligations, greater exposure to external markets, and increasing demand for access to the land and natural resources of Lao PDR are influencing the development of these instruments. Primary instruments include: The Law on Environmental Protection (Amended) No. 29/NA, dated December 18, 2012; *Land Law* No. NA/04, dated October 21, 2002; *Forestry Law* No. 6/NA, dated December 24, 2007; *Decree on the Compensation and Resettlement of the Development Project of People Affected*, No. 192/PM, dated July 7, 2005; and the *Labour Law* No. 06/NA, dated December 27, 2006.

The national ministries with key procedural responsibilities related to the approval of concessions and the conversion of land and forests include the Ministry of Natural Resources and the Environment (MoNRE), Ministry of Agriculture and Forestry (MAF), Ministry of Planning and Investment (MoPI), and Ministry of Industry and commerce (MoIC). Others, such as the Ministry of Finance, Ministry of Communications, Transport, Post and Construction, Ministry of Energy and Mines, Ministry of Tourism, and Ministry of Electricity, also have varying responsibilities related to land and forest conversion. These line ministries have historically had unclear and overlapping mandates for the assessment, oversight, monitoring, and compliance of land conversion allocation and implementation. While challenges remain, the GoL is in the process of clarifying these mandates.⁴

There are numerous laws, decrees, and regulations on land, investment, and forest management for which the various government agencies are responsible. However, despite a robust regulatory framework, the capacity to ensure legal compliance has been limited. Indeed, the concept of “legality” in relation to land-based investment is not necessarily reflected in national law. The right to operate in a certain area may be dictated by the entity that has authorized concession activity, rather than the legal basis upon which that authorization was issued.

Therefore, many critics note that concessions and leases have been granted to investors without adherence to national regulations and with little regard to customary tenure. Furthermore, poor coordination between national, provincial, and district governments often causes conflict or inertia as each level has the ability to grant land concessions at different scales. The lack of transparency inherent in land-based investments and forest conversion in Lao PDR can undermine responsible investment (from organizations and companies with high social safeguards) and restrict the capacity of impacted citizens to seek redress (particularly those illegally displaced by concessions).

National Land Policy Development

In 2011, the GoL committed to review and revise various policies pertaining to land and natural resources, beginning with the promulgation of a new National Land Policy, the provisions of which will apply to forest,

⁴ Further clarification with regard to roles, responsibilities, obligations and requirements are outlined under the Ministerial Agreement on Endorsement and Promulgation of a List of Investment Projects and Activities Required 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, and Ministerial Instruction on Environmental and Social Impact Assessment of the Investment Projects and Activities, No. 8030/MONRE, 17 December 2013.

agriculture, mining, and water. In her keynote address at a major international land and forestry conference in Vientiane, Dr. Souvanpheng Boupphanouvang, President of the Committee on Economy, Planning and Finance of the National Assembly of Lao PDR, stated the government's intention to undergo a nationwide formal process of large-scale land reform. "Competition for land among various sectors is intensifying," explained Dr. Boupphanouvang. "As a nation, we must act to prevent conflicts and ensure that the increasingly scarce land resource is developed in a way that contributes to national development goals and alleviates poverty among the rural population."

In her address, Dr. Boupphanouvang also identified the following concerns necessary for an effective new land policy:

- Ensuring that the vast majority of Lao households in both urban and rural areas have secure land rights (e.g., official acknowledgement of traditional land rights before land is opened up to foreign investors);
- Ensuring clarity and consistency in the legal framework and implementing guidelines;
- Ensuring effective institutional and administrative capacity at central and local levels to administer and monitor land transactions;
- Raising awareness amongst citizens about the terms, opportunities, and risks associated with various land-use scenarios before foreign investors are invited to Lao PDR; and
- Ensuring transparency in all land-related transactions so that citizens and local communities can monitor how well laws and regulations are being implemented – effectively performing a "watchdog" function at a local level.

Early drafts of the National Land Policy seemed to address several of these commitments and incorporated language on prior consultation (e.g., a threshold requirement of three-fourths of landowners' consent to acquire lands) and compensation (e.g., in the event of land acquisition), as well as clear definition of rights categories (collective and customary). However, the drafting committee has since revoked these commitments. The Land Issues Working Group (LIWG), a network of international NGO and national civil society representatives supporting equitable and sustainable land use in Lao PDR, continues to advocate for equitable land reform in the Policy, reflecting international best practices.⁵ Chapter 5 of the *Environmental Protection Law (Revised)*, No. 29/NA, dated December 18, 2012, requires public participation, and has released a manual on participatory land use planning and land allocation that attempts to instruct concerned parties to resolve potential issues through land management Memoranda of Understanding.

Assessing Levels of Illegality in Forest Conversion

As noted above, the legality of approval of development agreements for land is not simplified under one law or regulatory instrument. The legislative framework is extensive and often inconsistent. It is also acknowledged that not all existing developments have met their social or legal obligations. Some concessions have been issued or extended into areas without authority, including national protected areas, land under customary tenure, and lands that have not been classified as suitable for the activity being developed. Conflicts often arise due to a lack of appropriate, transparent, and equitable consultation with affected local communities. Many of those affected are ethnic minorities or are otherwise disadvantaged, and/or lack compensation for acquired land.

In May 2007, the Prime Minister of Lao PDR announced a moratorium on the granting of new land concessions greater than 100 ha in an effort to give the GoL an opportunity to review its policies in granting large-scale concessions and to address the shortcomings of its previous land management strategy (Announcement No. 743).

Despite the moratorium, concessions of various sizes continue to be granted under a number of scenarios, including:

⁵ Their recommendations can be downloaded at <http://www.laolandissues.org/2014/05/23/liwg-supports-development-of-the-lao-national-land-policy/>.

- Conversion activities where no approval was sought or additional lands were cleared outside agreed boundaries;
- Conversion activities that ostensibly meet the agreed purpose and required legal approvals but are in reality a cover for access to valuable timber resources. The development project does not progress but the timber is harvested according to the law. The timber may or may not be processed legally;
- Legitimate conversion activities that were inappropriately approved, often including areas where conversion is illegal (e.g., the area supports intact rather than degraded forest land); and,
- Conversion activities that are approved through inappropriate processes where authority is vested in an unaccountable individual or more than one agency or is otherwise unclear.

In June 2012, a further Order, *PMO No 13/PM* was issued, which suspends approvals for all investment proposals for the exploration and survey of a range of mineral ores (Article 1.1.) and the export of raw minerals (Article 1.2.) and rubber and eucalyptus plantations (Article 2) until the end of 2015. The moratorium included proposals submitted before the issuance of the Order, unless already approved in writing. However, in the seven months following the moratorium announcement, a total of 208,805 ha of land were still made available to concessionaires, 54 percent of which were for rubber production and some of which was reported in the Dong Hua Sao National Biodiversity Conservation Area (Global Witness 2013). These were technically “legal” due to a loophole in the 2012 ban allowing concessions with official written approval by the GoL.

Conversion Timber

Commercial grade timber harvested in preparation for conversion activities has become a critical source of timber and is integrated into National quotas (Barney et al. 2010). However, this quota does not account for all timber sourced from all conversion activities related to concessions or leases. For large volumes, the legal status of this wood remains unclear and information on the extent, volumes, use, and value of such timber is limited and inconsistent.

Despite laws that largely prohibit the clearing of high value or productive natural forest during the process of development, the potential revenue from conversion timber is a strong enticement for developers to exploit this resource in contravention of legislative requirements or their concession agreement. Harvesting the timber from land allocated for development and then transferring the land and concession rights to a third party is extremely profitable but also legally questionable. In these instances, the original development project may or may not ultimately be implemented, legal obligations may not be enforced, and social obligations may not be met. Limited official capacity to monitor these activities or enforce regulatory provisions contributes to the loss of forests that would otherwise be protected.

Consequently, it is highly likely that there is conversion timber entering the Lao PDR supply chain which is not fully compliant with GoL laws. Essentially, this timber can be classified as “illegal” because it does not meet regulatory requirements. A number of gaps in the current legal framework make it impossible or impractical to prevent most of this timber from entering the processing stage.

Social and Environmental Impacts of Illegal Conversion

Ethnic minorities and other local communities can be disadvantaged or marginalized in concessional land allocation processes, with customary land and resources lost or reduced; compensation limited, inadequate, or non-existent; and environmental and social safeguards ignored. This has directly contributed to localized land conflicts (primarily between communities and concessions), an important issue of concern. In June 2012, land disputes were by far the most frequent subject of public complaints to the National Assembly (Vientiane Times 2012). The lack of statutory recognition of land tenure often means that local communities have little or no political recourse to defend their rights.

Analysts and human rights groups blame land-based investments, or “land grabs,” for “ushering in a new wave of poverty in Lao PDR,” marked by a growing population of newly landless poor and ensuing rapid urbanization (MacLean 2014). Local civil society groups claim that when the government relocates farmers to consolidated villages near towns and cities, families are given only half the area necessary for traditional farming, and there is ample evidence that relocation services are not provided in many cases. The United National Development

Programme (UNDP) found that populations from upland villages that are resettled can suffer mortality rates of up to 30 percent when they are forced to abandon their traditional livelihoods. The UNDP also noted that conflict between communities over resettlement territory, and concessionaires' failure to obligations to provide education and health facilities, were notable drivers of poverty.

FLEGT Voluntary Partnership Agreement

Lao PDR is currently negotiating a FLEGT Voluntary Partnership Agreement (VPA) with the European Union (EU). VPAs are legally binding trade agreements, committing the two parties to trading only in verifiable legal timber and other forest products. By entering into a VPA with the EU, Lao PDR aims to improve opportunities to access high-value markets, diversify and increase revenue from timber exports, reduce illegal logging and associated trade, provide opportunities for technology transfer (particularly to Lao PDR's secondary timber processing industry), enhance transparency, and improve governance.

The Department of Forest Inspection under the Ministry of Agriculture and Forestry is the national focal point for developing the VPA. The GoL announced its interest in negotiating a VPA in February 2012. In October 2013 the Ministry of Agriculture and Forestry opened a Forest Law Enforcement, Governance and Trade (FLEGT) Standing Office with support from Germany's Agency for International Cooperation (GIZ).

A VPA is only one of a number of international approaches meant to curb supply- and demand-side drivers of illegal logging; other approaches include the US Lacey Act (amended 2008), Australia's Illegal Logging Prohibition Act (2012), and the Japanese Law Concerning the Promotion of the Procurement of Eco-Friendly Goods and Services by the State and Other Entities (Law No. 100 of 2000, including the 2013 Basic Policy on Promoting Green Purchasing). These initiatives could incentivize Lao PDR's main trading partners, such as Vietnam and China, to consider changing their import requirements so that verification of timber legality can be demonstrated.

However it is important to recognize that to date, the EU Timber Regulation does not address legalities from forest conversion to agriculture and other uses, rather than traditional selective logging.

Recommendations

- Review land-forest concessional laws and regulatory instruments to remove inconsistencies and clarify roles and responsibilities across Ministries;
- Improve the capacity of concessional compliance Ministries (MoNRE and MAF) to effectively review, monitor, and enforce compliance;
- Establish secure and equitable land and resource tenure rights for local communities, individuals, and collectives by recognizing customary ownership structures, particularly the right to prevent unlawful expropriation (exclusion rights);
- Promulgate the draft National Land Policy in accordance with international best practice, including the investment guidelines of the UN Committee on World Food Security and the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests;
- Ensure that the FLEGT VPA negotiation process (and eventual bilateral agreement) targets current legal and resource capacity deficiencies, and provides a solid framework for legal compliance and that conversion timber is adequately controlled and tracked to restrict access to wood from illegally converted forests;
- Clarify the responsibilities of concession and lease holders in regards to the protection of environmental and social values, avoidance of negative impacts, and community consultation, preferably through adherence to Free, Prior, and Informed Consent principles;
- Support mechanisms that allow for effective enforcement or suspension or termination of concessions or leases which consistently fail to meet regulatory requirements or deliver environmental or social benefits;
- Establish supply chain mechanisms that document compliance with regulatory requirements, including reporting requirements on processors and exporters of timber products; and

This policy brief was authored by Jade Saunders, Aidan Flanagan, and Naomi Basik, based on research conducted by Aidan Flanagan. It was financed by the DFID Forest Governance, Markets and Climate (FGMC) Programme. We thank Kerstin Canby, Eve Richer, and Anne Thiel for reviewing the brief.

Other policy and information briefs can be found at www.forest-trends.org



- Support access to due process and fair, equitable, and accessible grievance mechanisms that promote dispute resolution through dialogue and independent arbitration for individuals and communities affected by concessions.

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