

# Timber Legality Risk Assessment

## Laos

Version 2.0 | December 2021



COUNTRY RISK  
ASSESSMENTS



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## A. Introduction

This Timber Legality Risk Assessment for Laos provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. Preferred by Nature has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

### Version history

Version 1.3: Published May 2017

Version 2.0: Published December 2021

Version 2.0 was updated based on Version 1.0 from May 2017.

### Overview of methodology

The risk assessment was updated based on research conducted in 2019 by experts knowledgeable of the country situation of Laos. Laos is in the process of updating its forest legislation, and while several main laws have been passed, the implementing legislation detailing the interpretation and practical implementation of the laws have not been developed. Therefore, effort has been made to map out changes in legislation. However, it is still early to evaluate the effectiveness of implementation and whether the risks identified in the risk assessment version 1.3 from 2017 are still applicable. Based on a precautionary approach the risks identified in 2016 have been maintained.

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and Preferred by Nature. A detailed description of the methodology can be found on the [Preferred by Nature Sourcing Hub](#).

### Interviews with experts

The list of experts is not included in the risk assessment. However, all experts are known to Preferred by Nature.

Version 1.0: Expert consultation conducted 10-13 May 2016.

Version 2.0: NA

### Public consultation

Online public consultation on the Sourcing Hub: NA

## B. Overview of legality risks

This report contains an evaluation of the risk of illegality in Laos for six categories and 26 sub-categories of Law. We found:

- Specified risk for 21 sub-categories.
- No legal requirements for 5 sub-categories.

The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber logging activities, third parties' rights and trade and transport.

For **Legal Rights to Harvest**, there is a risk of:

- Conflict between villages and other types of forest management, due to:
  - Lack of village titles leads to logging rights being allocated and plantations established on village lands/village forest
  - Risk of double-layered classification, when a village is situated inside more than one of the three nationally categorised forest types (1.1)
- Lack of business registration (1.1)
- Concessions being established or granted in violation of regulations (1.2)
- Concession plantations being established without proper maps/boundaries (1.2)
- Concession licences being issued for areas greater than allowed by Law (100ha) (1.2)
- Forest being cleared for plantation concessions (illegal) (1.2; 1.9)
- Clearing of forest outside concession boundaries (1.2)
- Lack of social and environmental impact assessments (1.3, 1.10, 1.13)
- Lack of plantation certificates" and use of "borrowed" plantation certificates (1.3)
- Annual Logging Plan (which sets basis for maximum allowed harvest volumes) is based on inadequate inventories and requests from districts as well as prepared in the office without conducting actual field surveys. This leads to the approval of unsustainable logging activities (1.3).
- Wood quotas approved by officials without legal authority (1.3)
- Lack of management plans with which logging is to be comply (1.3)
- Logging in areas with development projects fails to comply with basic requirements of relevant forest legislation (1.3)
- Lack of documentation and maps for areas to be converted, or conversion of areas greater than areas granted for development projects (1.3)
- Bribes used to obtain logging permits (corruption) (1.4)
- Governmental authorities involved in forging of documents (1.4)
- Conversion of areas within conservation/protection forests (1.4)

For **Taxes and Fees**, there is a risk of:

- Risk that smallholders lack business registration, and do not pay taxes (1.5)
- Inconsistent application of taxes and fees at the provincial level (1.5, 1.6, 1.7)
- Risk of corruption related to payment of tax (1.5, 1.6, 1.7)

- Unofficial sale, and lack of harvested timber being registered in log yards as required for tax registration (1.5, 1.6, 1.7)

For **Timber Harvesting Activities**, there is risk of:

- Harvesting regulations not being met by forest operators (1.8)
- The logging plan is often seen as a quota giving the right to cut a certain volume, and harvesting practice driven by needs to supply the sawmills (1.8)
- Legal requirements covering protected tree species are being ignored and protected species being harvested without official authorization (1.9)
- Conversion of protected areas for development projects established in conflict with legislation (1.9)
- Illegal sale (laundering) of natural-grown timber through teak plantations (1.9)
- General disregard of environmental requirements (1.10)
- Misuse of fertilisers and other chemicals (overuse and use of banned pesticides) (1.10)
- Risk of non-compliance with health and safety rules (1.11)
- Failure to clear unexploded ordinance (UXO)/mines (1.11)
- Health issues from handling pesticides (1.11)
- Lack of labour contracts (1.11)
- Risk of priority of employment not being given to local Lao citizens (1.11)
- Risk that workers do not nor receive salary (1.12)

**Third Parties' Rights**, there is risk of:

- Local communities are not adequately compensated when communal lands are re-allocated to a company (1.13)
- Lack of formalization of complaints from villagers due to corruption (1.13)

For **Trade and Transport**, there is a risk of:

- A lack of, or falsification of the registration of harvested logs at Log yard II (1.16)
- Disparities between records of quantities, species composition and quality of harvested timber at different stages of the chain of custody (from pre-felling inventory, to log list and custom documents) (1.16)
- Timber being transported without required documents (1.17)
- Transport documents carrying incorrect information (1.17)
- Irregular or unofficial timber exports (1.19)
- Dual contracting between exporters and importers, with underestimated prices on the Laos side and real prices invoiced in the receiving country (1.19)
- Illegal harvest and export of Siamese rosewood under CITES export permits (1.20)
- Illegal issuance of CITES export permits (1.20)

## Timber source types and risks

There are four main timber source types found in Laos. Additionally, there exists minor sources of legal timber, namely confiscated timber.

Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found that where there is applicable legislation, the risks do not differ between them.

<b>Conversion timber</b>	Timber from Conservation Forests, Protection Forests or Production Forests under the national Annual Logging Plan for conversion timber. Areas for conversion include areas of forestlands for government-approved development projects (geological prospecting, mining, road and hydropower dam construction, establishment of agriculture plantations). Documents required are a harvesting plan and a logging permit for conversion timber harvested under development projects
<b>Timber sourced via selective logging and concessions in natural production forest</b>	<p><i>Note that there is currently a ban on logging operations in Natural Production Forests.</i></p> <p>Timber from the Production Forest sourced via selective logging under the National logging plan for selective logging. Documents required are a 15-20-year forest management plan, a harvesting plan, and a logging permit.</p> <p>A type of selective logging is harvesting under <i>special logging plans</i>. The legal framework for timber harvesting under such special logging plans is vague and principles of allocation of special logging plans are inconsistent with main elements of the forest legislation in Laos. Therefore, special logging plans are not included as a source type.</p>
<b>Plantation timber – smallholders</b>	Timber from Plantation Production Forests located on village agriculture land allocated within the state forest. Land is managed by small holders, up to 3 hectares can be held per household. Documents required are a three-year temporary land use certificates for tree planting and permission to log from the Provincial or Vientiane Capital Agriculture and Forestry Office.
<b>Plantation timber – concessions</b>	Timber from Plantation Production Forest concessions located on degraded forest or barren forestland. Documents required are a registration (for areas of 1,600 m <sup>2</sup> or more) and a management plan (for areas of 5 ha or more).
<b>Village forests</b>	Note that village forests according to the revised Forest Law, 2019 can become a source of commercial timber in future. As of December 2021, implementing legislation for this source type is still lacking. If the source types become relevant in future legislation, legality risks and mitigation options shall be assessed.

This matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Natural Forest		Tree plantations	
		Conversion	Concession /Selective Logging	Small holders	Concessions
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified	Specified	Specified
	1.2 Concession licenses	N/A	N/A	Specified	Specified
	1.3 Management and logging planning	Specified	Specified	Specified	Specified
	1.4 Logging permits	Specified	Specified	Specified	Specified
Taxes and fees	1.5 Payment of royalties and logging fees	Specified	Specified	N/A	N/A
	1.6 Value added taxes and other sales taxes	Specified	Specified	N/A	N/A
	1.7 Income and profit taxes	Specified	Specified	Specified	Specified
Timber logging activities	1.8 Timber logging regulations	Specified	Specified	N/A	N/A
	1.9 Protected sites and species	Specified	Specified	Specified	Specified
	1.10 Environmental requirements	Specified	Specified	Specified	Specified
	1.11 Health and safety	Specified	Specified	Specified	Specified
	1.12 Legal employment	Specified	Specified	Specified	Specified
Third parties' rights	1.13 Customary rights	Specified	Specified	Specified	Specified
	1.14 Free prior and informed consent	N/A	N/A	N/A	N/A
	1.15 Indigenous/traditional peoples rights	N/A	N/A	N/A	N/A
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified	Specified	Specified
	1.17 Trade and transport	Specified	Specified	Specified	Specified
	1.18 Offshore trading and transfer pricing	N/A	N/A	N/A	N/A

	1.19 Custom regulations	Specified	Specified	Specified	Specified
	1.20 CITES	Specified	Specified	N/A	N/A
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A	N/A	N/A
Processing	1.22 Legal Registration of business	Specified	Specified	Specified	Specified
	1.23 Environmental requirements for processing	Specified	Specified	Specified	Specified
	1.24 Processing requirements	Specified	Specified	Specified	Specified
	1.25 Health and Safety in the timber processing sector	Specified	Specified	Specified	Specified
	1.26 Legal employment in the timber processing sector	Specified	Specified	Specified	Specified

## C. Overview of the forest sector in Laos

The forest cover assessment undertaken by the Department of Forestry under the Ministry of Agriculture and Forestry in 2015, estimated the forest cover in Laos to be 13.7 million hectares or 58% of the total land area. This figure is down slightly from the 59.3% forest cover reported in the preceding assessment in 2010<sup>1</sup>.

Existing Forestry Law recognises three forest categories: conservation (25%), protection (35%) and production (16%) forests, which together comprise 76% of the current forest area. The remaining forest area is unclassified. Thus, a significant share of current forest is located outside the three mentioned forest categories.

Table 2 summarises the change in forest cover over a 10-year period from 2005 to 2015. This loss in forest cover has mainly been driven by the expansion of agricultural activities (including tree plantations), and clearing and conversions for hydropower, mining, and other infrastructure projects including urbanisation.

*Table 2: summary of forest cover change in Laos<sup>2</sup>.*

Forest classification	Area in 2005 (ha)	Area in 2005 (% total)	Area in 2015 (ha)	Area in 2015 (% total)	Forest loss/gain (ha)	Forest loss/gain (%)
Protection forests	4,779,000	34%	4,619,000	35%	-160,000	-3.35%
Conservation forests (protected areas)	3,532,000	25%	3,470,000	26%	-62,000	-1.76%
Production forest areas	2,237,000	16%	2,142,000	16%	-95,000	-4.25%
Sub-total of the three forest categories	10,548,000	76%	10,231,000	77%	-317,000	-3.01%
Other forests outside the 3	3,328,000	24%	3,139,000	23%	-189,000	-5.68%
Overall total	13,876,000		13,370,000		-506,000	-3.65%

All natural forests and forest land in Laos are state-owned and managed by state agencies at four levels of government (national, provincial, district and village), while individuals and organisations are not permitted to own natural forest, but may be able to lease such land.

<sup>1</sup> <http://documents.worldbank.org/curated/en/706711560546421547/pdf/Partnerships-and-Opportunities-for-a-New-Green-Forest-Economy-in-Lao-PDR-Sustaining-Forest-Landscapes-and-Livelihoods.pdf>

<sup>2</sup> MAF Forest Inventory and Planning Department (FIPD), 2018

Foreigners do not qualify for land title in Laos but are eligible as foreign investors to lease degraded land or barren land from the state for agriculture and tree planting.

Current legislation does not allow the allocation of concessions for commercial timber logging in natural forests.

All intended timber harvesting in plantation and natural forests shall be included in the Annual Logging Plan approved by the National Assembly. The Annual Logging Plan is developed by the Ministry of Agriculture and Forestry based on applications provided by provincial offices of Agriculture and Forestry.

Commercial timber harvest in natural forest is only permitted:

- a) To selectively cut timber in production forests in which inventory, survey and forest management planning have been conducted, and on the basis of a pre-logging survey (Article 23), or
- b) Conversion areas of forestlands for government-approved development projects (geological prospecting, mining, road and hydropower dam construction, establishment of agriculture plantations) on the basis of a complete and thorough pre-logging survey (Article 24)

Commercial timber harvesting in natural forests shall be conducted in compliance with harvesting regulations under logging permits and logging contracts by special logging units that are officially established by approval of the Ministry of Agriculture and Forestry under administration of the agriculture and forestry authorities or are otherwise sub-contracted under supervision of government staff.

Under the new Forestry Law, it is unclear whether non-government business can be registered as an enterprise for the purpose of logging in natural forests, as Article 134 of the Forestry Law states that businessmen cannot harvest or clear forestland '*where is not allowed to do so by the agriculture and forestry sector*'. All logging in natural forests must be undertaken with the approval, supervision and monitoring of government officials.

The agriculture and forestry authorities are responsible for measuring and grading timber stacked on second log landing, and for making log lists. Timber harvested in natural forests is state property and shall be sold through a bidding process or negotiations with interested buyers so that the government can maximise revenue from this natural resource. Minimum costs (royalties) per cubic metre of timber bought from second log landing are set and updated periodically by the Ministry of Industry and Commerce according to species and grade.

Beginning in the 2011/2012 logging season, the Lao government has not issued quotas on logging in production forest areas before a forest survey is undertaken and forest management plans are made. Thus, today, almost all permitted timber harvesting in Laos is conducted based on permits (quotas) for land clearances under government-approved development projects.

Logging of plantation timber for commercial purposes may be conducted only where land-use rights have been granted, or forest-use zones for villages have been approved. Household use is permitted). Rights and other requirements, such as felling and registration are also prescribed under the new Forestry Law. Rights to establish a plantation can be granted under a concession or leased.

Over 700,000 ha of concessions for rubber and eucalyptus plantations have already been granted; a government strategy set a target of 500,000 ha of tree plantations by 2020. According to official data, the cumulative plantation area reached 487,000 ha in 2015. At that time, rubber trees (*Hevea brasiliensis* for latex extraction) accounted for 61% of this area and Eucalyptus (*Eucalyptus* spp. for pulp and sawn wood) or Acacia for 15%. Of the remainder, 11% is teak (*Tectona grandis*), which is considered the most important species.

In 2018, the Government directed the authorities to stop issuing new leases or concessions for the establishment of rubber plantations on government-owned lands.

In 2019, Laos had a CPI of 29, indicating that the country has high corruption levels and a low degree of legal compliance.

The issuing of PMO 15 (2016) and the funding and redirection of resource to its implementation was a clear demonstration of commitment to address existing shortfalls and provide time to establish more robust regulatory instruments as well as more effective enforcement and compliance responses.

The GoL has developed legislation and policies that assign specific roles and responsibilities related to combatting forest based crime, including distinct authority to manage, monitor, investigate and enforce laws and regulations, to various ministries and departments, including Agriculture and Forestry (MAF), Natural Resources and Environment (MoNRE), Industry and Commerce (MOIC), Finance (MOF), Public Security (MOPS), Health (MOH), and the Ministry of Transport (MOT). Within these Ministries, individual departments, both at the national, provincial and district levels, have specific functions as defined in terms of reference. The roles of these departments are devolved to the provincial, district and village levels through the local administration.

Agencies with a role in the enforcement of forest and wildlife crime include the Department of Forest Inspection (DoFI), the Environmental and Economic Police, the Anti-Corruption Agency, Customs, and the Armed Forces. The DoFI, established in 2008, falls under the MAF. It is the GoL's lead agency for enforcement activities under the Forestry Law 2019, and the Wildlife and Aquatic Law 2007 No07/NA.

Further to PMO15, the GoL has enacted important legal changes under the Criminal Procure Law in October 2018 (broadened and clarified authority to act for law enforcement agencies), instituted Prime Minister Order #5 and adopted a new Penal Code which enhanced penalties that includes provisions targeting transnational and organized criminal networks and the individuals who support them. The new Penal Code also address many previous inconsistencies and gaps under laws, including international agreements such as CITES and the objectives of the Asia/Pacific Group on Money Laundering (APG).

This improved regulatory framework demonstrates the GoL's commitment to protect its forests and wildlife resources and to meet its international obligations under CITES, the UN Convention Against Organized Crime, and the UN Convention Against Corruption. Donor organizations have also started to provide support to the Department of Forest Inspection (DoFI), Lao Wildlife Enforcement Network (Lao-WEN) and its partners. This support has resulted in the establishment of centralized investigation and enforcement systems to combat illegal forest-based trade.

The GoL has operationalized a risk-based approach to law enforcement activities, referred to as the Strategic and Tactical Enforcement Patrol Program (STEPP), and is improving coordinated, multi-agency operational responses at a provincial, national or international level. However, these systems and processes are not, and practical experience is limited and disjointed.

Despite these advances, forest management and law enforcement agencies, for the most part, still lack the expertise to fully implemented sustainable approaches, effectively monitor and investigate criminal networks and locate illegal forest products. They are also deficient in capacity to identify and properly distinguish certain products, especially at border crossings, and don't have sufficient resources to undertake sustained enforcement actions.

The following section provides further information on the hierarchy of laws and the interactions of various regulatory instruments and related authorities in Lao PDR and is designed to assist a reader in interpreting a particular instruments relationship in regard to other such instruments, whether higher, lower or similar.

## Hierarchy of Law

The Lao PDR the hierarchy of Laws is implied in the Law on Making Legislation No 19/NA 2012 and consists includes the issuing of specific administrative instruments relevant to specific laws and responsible ministries, departments, organisations or individuals. The general level of hierarchy is:

- The Constitution
- Laws
- Resolutions of the National Assembly
- Resolutions of the Standing Committee of the National Assembly
- Ordinances of the President of the Republic
- Decrees of the Government
- Resolutions of the Government
- Orders and Decisions of the Prime Minister
- Orders, Decisions and Instructions of the Minister and Head of a Government Authority
- Orders, Decisions and Instructions of the Provincial Governors and City Governors
- Orders, Decisions and Instructions of the District and Municipality Chiefs
- Village Regulations

The Law on Making Legislation requires legislation be published in the Official Lao Gazette (<https://laoofficialgazette.gov.la/>) in order to be Effective (Article 80). This is the official source for all legally enforceable primary and subsidiary legislation of general application for Lao PDR at the national, provincial and capital levels. Districts / Municipalities and villages have the option to publish legislation on the Official Gazette and/or in other local media or post it in a way that people can access it easily.

Note: The Lao PDR Trade Portal (<https://www.laotradeportal.gov.la/>) website provides information regarding importing/exporting goods into/from Lao, including information related to import/export process, regulations for specific products, and relevant laws.

The *Guide for Import-Export*, on the right of this page provides a comprehensive set of information and guidelines in plain language, and the database is also designed for convenient search by topic.

Importantly, Article 9. Contradiction of Legislation of the Law on Making Legislation states: "Legislation being developed shall be consistent with higher legislation."

Where a contradiction exists, legislation of the higher level shall be applied. If a contradiction of legislation at the same level exists, the later legislation shall be applied. If legislations at the same level contradict each other, the provisions of specific legislation shall prevail.

However, contradictions may continue to exist after legislative changes and undermine the effectiveness of enforcement.

The new 2017 Penal Code (Article 333) makes reference to CITES ("Any person importing, exporting, re-exporting, transshipping or transiting aquatic and wildlife including parts, organs and products of such aquatic and wildlife unlawfully with regulations relating to CITES, shall be punished by three months to five years of imprisonment and shall be fined not exceeding 10,000,000 Kip" as well as making it illegal to import, export, transport such items (Article 274, 282, 284 and 335).

## Authority

Authority is defined under the Constitution, vested under laws, and codified under regulatory instruments issued via different administrative authorities. Administrative authority applies to those officials under direct responsibility chains.

Under Article 5 of the Constitution, The National Assembly and other state organisations are established and function in accordance with the principle of democratic centralism: a term applied to policy defined by a ruling party.

Importantly, Under the Constitution, Article 69, The government is the executive branch of the State. Under Article 73, the Prime Minister appoints senior government officials, including provincial Governors, which is why

The following sources have been used:

- a) Chatham House: <http://www.illegal-logging.info/>;
- b) The Environmental Investigation Agency: <http://www.eia-international.org>;
- c) The EU FLEGT process:  
[http://ec.europa.eu/comm/development/body/theme/forest/initiative/index\\_en.htm](http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm);
- d) Independent reports and assessments of compliance with related Laws and regulations, e.g., the Royal Institute of International Affairs: <http://www.illegallogging.org>;
- e) Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- f) Transparency International Corruption Perceptions Index:  
[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi);

Additional sources:

- g) Saunders, J., 2014, Illegal Logging and Related Trade - The Response in Lao PDR, Chatham House,  
[https://indicators.chathamhouse.org/sites/files/reports/CHHJ2363\\_Laos\\_Logging\\_Research\\_Paper\\_FINAL\\_FOR\\_RELEASE.pdf](https://indicators.chathamhouse.org/sites/files/reports/CHHJ2363_Laos_Logging_Research_Paper_FINAL_FOR_RELEASE.pdf)
- h) FAO, 2015, Global Forest Resources Assessment, <http://www.fao.org/forest-resources-assessment/en/>
- i) Sin Tong, P., 2009, Lao people's democratic republic forestry outlook study, FAO,  
<http://www.fao.org/docrep/014/am612e/am612e00.pdf>
- j) Radio Free Asia, 2016, New Lao Prime Minister Issues Ban on Timber Exports,  
<http://www.rfa.org/english/news/laos/new-lao-prime-minister-issues-ban-on-timber-exports-05172016152448.html>

Where relevant, these sources have been specifically referenced under the "sources of Information" section for each applicable sub-category.

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.*

##### 1.1.1. Applicable Laws and regulations

- Law No. 04/2003 NA on Land, 21 October 2003, Article 12. Available at: <http://extwprlegs1.fao.org/docs/pdf/lao77471.pdf>
- Forestry Law No. 64/NA 2019 (Approved 13 June 2019).
  - a. Ownership. Article 4: Ownership of forest and forestland; Article 40: Management of Trees in Urban Areas and in Land of Individuals, Legal Entities or Organizations; Article 41: Registration of Planted Forest, Planted NTFPs and Planted Trees: Article 87:) Lease or Concession of Forestland
  - b. Village Forests. Defined under Article 3.8 and 9. Article 39: Village Forest Management Planning; Articles 62-65: Utilization of resources; 114: Forest and Forestland Areas Preserved and Developed by Villages; and 120: Allocation of Right to Use Forest and Forestland of the State
  - c. Survey, Classification and Management. Article 20: Forest Survey; 22: Forest Classification and Management Planning; 23: Survey for Logging in Production Forests Area; 24: Survey for Logging in Forestland Conversion Areas; 25: Survey for Logging NTFPs; 47: Preservation of Protection Forests; 48: Preservation of Conservation Forests; 49: Preservation of Production Forests; 50: Preservation of Tree and NTFP Species; 57: Demarcation of Forest Regeneration Areas, Tree Plantations and Selection of Tree Species for Plantations; 68: Survey of Forestland
  - d. Logging. Article 23: Survey for Logging in Production Forests Area, 26: Formulation and Approval of Natural Forest Logging Plan; 27: Formulation and Approval of NTFPs Logging Plan from Natural Forest; 28: Logging from Production Forests, and 29: Logging from Forestland Conversion Areas.
  - e. Forest Categories. Article 14: Forest Categories; 18: Conversion of Forest Categories; 66: Categories of Forestland; 77: Categories of Forestland Utilization
  - f. Degraded and barren forestland. Article 5: State Policy on Forest and Forestland; 59: Activities of Planting Trees and NTFPs; 60: Promotion of Tree and NTFP Plantations; 79: Utilization of Forestland for Households; 89: Lease or Concession of Forestlands for Regenerating Forests and Planting of Trees and NTFPs. Available at: <https://laoofficialgazette.gov.la/>
- Decree No. 88/2008 PM on the Implementation of the Land Law, 3 June 2008. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/2008-Decree-on-Implementation-of-the-Land-Law-No-88-PM.pdf>
- Decree No. 59/2002 On Sustainable Management of Production Forest Areas, 22 May 2002. Available at: <http://thereddesk.org/countries/Laws/decrees-sustainable-management-production-forest-areas-no-592002>

- Instruction 822/1996 MAF On Forestland Allocation for Management and Use, 2 August 1996 provides guidelines on how to conduct FLUPLA and identify forest zones within a village boundary. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Instruction No. 03/1996 PM for Expansion of Land Management and Land & Forest Allocation, 12 July 1996. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/page/3/>
- Regulation 535/2001 MAF On Management of Village Forests, 18 June 2001, [Article 2](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 360/2003 MAF on National Protected Area Management, Aquatic Animals and Wildlife, 8 December 2003, [Article 16](#). Available at: [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/12/21/000112742\\_20041221102009/Rendered/INDEX/309400v20SEMPOP.txt](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/12/21/000112742_20041221102009/Rendered/INDEX/309400v20SEMPOP.txt)

#### 1.1.2. Legal authority

- Selective logging: Ministry of Agriculture and Forestry, Provincial Offices of Agriculture and Forestry, District Offices of Agriculture and Forestry, Village Forestry Units (Organisations)
- Conversion: Ministry of Natural Resources and Environment, Ministry of Energy and Mines (for mining concessions), Provincial/City Offices of Natural Resources and Environment.
- Plantations (concessions): Ministry of Natural Resources and Environment (MONRE) and Provincial/City Offices of Natural Resources and Environment.
- Plantations (smallholding): District offices of Natural Resources and Environment or District Agriculture and Forestry Offices.

#### 1.1.3. Legally required documents or records

- Selective logging: Business registration certificate for organisations.
- Conversion: Concession/lease agreement and business registration certificate for organisations.
- Plantations (concessions): Decision on conversion of degraded and barren forest lands made by authorities of different levels (municipal, district, province, national) depending on area. Business registration certificate for organisations.
- Plantations (smallholding): Land title, or a three-year temporary land use certificate (TLUC) for tree planting issued by District offices of Natural Resources and Environment or District Agriculture and Forestry Offices in coordination with district and village authorities.

#### 1.1.4. Sources of information

##### *Government sources*

- theredddesk.org (2005). *Forestry Strategy to the Year 2020 of the Lao PDR*. [online] Ministry of Agriculture and Forestry, Lao PDR. Available at: [http://theredddesk.org/sites/default/files/fs\\_2020.pdf](http://theredddesk.org/sites/default/files/fs_2020.pdf)
- laolandissues.org (2012). *Govt urged to review land compensation* [online]. Land Issues Working Group. Vientiane Times, 18 August 2012. Available at: <http://www.laolandissues.org/2012/08/20/govt-urged-to-review-land-compensation/>

##### *Non-Government sources*

- EU FLEGT Facility (2012). *Study for Understanding Timber Flows and Control in Lao PDR*. [online]. LTS International. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>

- Kenney-Lazar, M. (2010). *Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos*. [online]. Vientiane: Faculty of Forestry, National University of Laos. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/3-Land-Concessions-Land-Tenure-and-Livelihood-Change-Plantation-Development-in-Attapeu-Province-Southern-Laos.pdf>
- Sigaty, T. (2003). Report on Legal Framework of Forestry Sector for Forestry Strategy 2020 Lao PDR. SIDA. Vientiane. Laos.

#### 1.1.5. Risk determination

##### *Overview of Legal Requirements*

Natural forests and forest land are designated as property of the national community, with the State acting as representative in the management and allocation of forest land for use by individuals and organisations.

The Government of Laos holds national responsibility for zoning and demarcation of boundaries for each land category, including forest land (Article 12, the Land Law).

The three categories of forest in Laos managed by the government are:

- a. National protection areas (35%)
- b. National conservation forests (26%)
- c. National production forests (16%)
- d. Other forestlands outside these areas (23%)

A significant share of current forests (24%) are located outside of the three mentioned forest categories and are unclassified, and there is no clarity as to which state agency is responsible for the management of these areas.

Reclassification of different categories of forests requires approval from the government, or in some cases from the National Assembly Standing Committee.

After forest zoning, classification of forest categories, delineation of forest and forest land areas, the state allocates ownership to organisations and individuals.

Lao individuals and organisations may obtain land use rights through titles or leases. The Government of Laos land-titling project under the Ministry of Finance issues private title to Lao citizens in urban and peri-urban centres, but not for forest land or land in rural villages.

Individuals and organisations may not own natural forest, since it is state property.

Households and individuals can be granted the right to use and inherit plots of degraded and barren forest land for agriculture and tree planting, and can potentially obtain full property rights and title after an initial three-year trial period (Temporary Land Use Certificates) upon a showing of good management and payment of taxes, but such rights and titles may not be transferred or used as collateral.

Foreigners do not qualify for land titles in Lao but are eligible as foreign investors to lease forest land from the State for tree planting or other specified activities.

The Forestry Law (2019) states that timber and forest resources on these lands remain the property of the State except for *the planted trees of individuals, legal entities and organizations* (Article 87). In some specific cases, the Government of Laos leases forest areas as a form of concession to a village or association of villages for up to 50 years, including some commercial timber rights, upon payment of royalties and fees, in addition to customary use and management rights. For instance, Prime Ministerial Decrees have authorised village associations and lease agreements for villages in the Nakai-Nam Theun area to mitigate the costs of resettlement from the inundation zone.

Customary rights are prescribed under Article 64 of the Forestry Law. These rights are different to those associated with village rights as they extend to cultural activities that are prescribed in plans or laws.

Village-use rights. Village forest areas are defined under Article 3.8 and their permitted use under Article 3.9 of the Forestry Law. Provisions for village management and planning is prescribed under Article 39 and can apply to any forestland category. Article 39 also states that *Village forest management planning shall be regulated by a separate specific regulation* which can allocate exclusive customary use and protection rights with no tax obligations. This timber cannot be sold but can only be used by villages for use within that village.

Within the village boundary, villagers are allowed to collect and sell NTFPs, and to harvest timber for domestic use. Customary use rights include logging of 5m<sup>3</sup>/year of timber from natural forest for non-commercial household and public purposes. Villagers may be allocated land for tree planting and regeneration, and ownership of the resulting trees is guaranteed upon registration.

The Law does not specify the duration or terms of these agreements, but Prime Ministerial Decree 59 sets a minimum of 10 years.

Through the Land Use Planning and Land Allocation Programme (stipulated by MAF Guidelines on Land Use Planning and Allocation for Management and Use, No. 0822/MAF 1996), the boundaries of village forests have been identified and agreed upon between villages and district authorities.

Village forests are classified into three categories: village-use forests, protection forests (roadside, water resources, and river-side forests) and conservation forests (sacred and cemetery forests). The MAF Regulation (0535/MAF issued in June 2001) on Village Forestry Management gives guidelines for classification of forest land allocated to villages and clarifies the rights and responsibilities of villagers in protecting, conserving and using their forest.

#### *Plantations:*

Plantations are defined under Article 3 of the Forestry Law and an objective of this law is to promote tree plantings for multiple benefits. Commercial development is encouraged (Article 54, 76, 94 and 117) where suitable lands have been identified (Article 57 and 68) and is restricted to degraded and barren forestland (Article 59, 60, and 89).

While the Forestry Law clearly declares that all natural forests remain the sole property of the State, plantations and trees outside natural forests may be individually owned (Article 4) and those on forestlands are restricted to degraded or barren areas may be leased (Article 5).

On non-forestlands, approval from the Government is not required for individuals and organisations. However, Article 40 and 41 of the new Forestry Law does require these plantings to be registered so that a village certificate (of ownership) can be issued.

Where a right is recognised, plantation owners may have the right of occupation, use, profit, transfer and inheritance from these resources where they have an existing right (Article 94 104) and planted and maintained them with their own funds and labour (Article 126).

Household use is permitted (Article 63, 70 and 71). Rights (Article 117, 119, 121-23, and 126) and other requirements, such as felling (Article 30) and registration (Article 41 of the Forestry Law) are also prescribed.

Rights to establish a plantation can be granted under a concession or lease (Articles 87-91).

PMO09 bans the issuing on new leases or concessions on government lands for rubber plantations (part 1.2) while promoting Eucalyptus, Acacia, *Acacia Mangium*, Teak, Bamboo and other native species (part 1.3).

This Order continues to support the 2+3 system but requires existing agreements to be reviewed to address any gaps where benefits are not equally shared (part 1.6). Please note that this system

involves farmers providing the labour and the land while the companies supply the saplings, technical assistance, and marketing (*Vientiane Times*, 30 March 2016).

The Forestry and Tax [Laws](#), and Prime Ministerial [Decree 150/2000](#) on Land Tax, exempt tree plantations from land taxes and fees. Exemptions from land tax have been used to encourage plantation registration, as plantations eligible for tax exemptions must be registered under [Directive 1849/AF.99](#).

#### *Description of risk*

##### *Borders and mapping:*

The borders of different categories of forests are not precisely defined. Zoning and management plans for different categories of forest have yet to be developed.

Forests are defined under Article 2 of the Forestry Law as 'land with various tree species growing naturally or planted in an area more than zero point five (0.5) Hectares with crown cover more than 20 percent (20%)'.

Delineation of the three forest categories, especially at the national and provincial levels, are made on large scale maps, and also contain types of land use other than forest, which, in a strict sense, are not forest as defined in the Forestry Law.

The following forestland types allow for secondary land uses if these do not undermine the primary role of these categories; these are Village land forest; plantations which are restricted to degraded and barren forestland; and conversion land which, in a strict sense, is no longer forestland.

According to current strategies (including the 8th National Socio-Economic Development Plan 2016-2020 (NSED-8), the Vision 2030<sup>3</sup>, the 10-Year Socio-Economic Development Strategy (2016-2025)<sup>4</sup>, the National Green Growth Strategy 2019-2030, and the Forestry Strategy to the Year 2020<sup>5</sup>) given the lack of detailed maps, the high rate of population increase and rapid changes in land use, it is not feasible at this stage to delineate forest and to manage it at this scale for the chosen purpose.

The Study for Understanding Timber Flows and Control in the Lao PDR (2012) revealed that the areas mapped as protection forest were often used for agricultural production, and even included major town areas. In one case, an entire district was mapped as protection and production forests, but in reality, contained the district's capital, large lowland agricultural areas, and a coal mining concession.

The Strategy for Agricultural Development 2011 to 2020<sup>6</sup> may also generate conflicts with the objective to establish a 70% forest cover as it allows for an expansion of agricultural production lands and increased market focused investments. However, the new Forestry Law provisions may reduce these impacts through clearer approval processes and increased transparency.

A further example: MAF Regulation No. 360/2003, [Article 16](#), prohibits the expansion of rice fields and shifting cultivation in conservation forests, as well as gathering of forest products, hunting, removal of plant and animal species, and any other type of forestry activities in the restricted areas of national protected areas and corridors. However, strict enforcement of these restrictions is impossible and unfeasible given the degrees of population movement and increase. Coordination among concerned

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<sup>3</sup>Whose objective is to transform Lao PDR into an upper middle-income country by 2030 by quadrupling the country's per capita gross domestic product and gross national income.

<sup>4</sup> The 10-Year Strategy is composed of seven sub-strategies: (i) sustainable and green growth; (ii) graduating from Least Developed Country status by 2020; (iii) enhancing human resources development; (iv) promoting sustainability and environmental protection; (v) enhancing the effective rule of law; (vi) improving global and regional integration; and (vii) Industrializing and modernising the country.

<sup>5</sup> <http://extwprleqs1.fao.org/docs/pdf/lao144178.pdf>

<sup>6</sup> [https://www.qafsfund.org/sites/default/files/inline-files/5.%20LaoPDR\\_strategy.pdf](https://www.qafsfund.org/sites/default/files/inline-files/5.%20LaoPDR_strategy.pdf)

sectors within these forest areas is insufficient, and due to lack of management units in some national protected areas, especially at the field level, deforestation and forest degradation may go unnoticed (Forestry Strategy to the Year 2020 of the Lao PDR, 2005), and listed prohibited practices are often continued by villagers as part of their customary rights, or under licenses issued by the relevant authority.

Through the land and forest allocation process, village boundaries and village forest and agricultural areas are delineated and ownership bestowed (Article 39 and 40 of the Forestry Law, and forest areas are classified into one of the three categories. However, Article 39 states that *Village forest management planning shall be regulated by a separate specific regulation*, and it is unknown if this has been issued. Specific permitted uses are detailed under Article 62-66, and in Protection forests, such uses are restricted to controlled use or buffer zones (Article 71). Village forest management is allocated (Article 120) and administered by the Village Administrative Authority (Article 39, 111 and 114).

Conversion of village protection and conservation forests can be approved by the Provincial People's Assembly (Article 86). Article 53 specifically restricts uncontrolled shifting cultivation practices.

Delineation of village forests can lead to double-layered classification in circumstances where a village is situated inside one of three nationally categorised forests and there is conflict between the national and village levels on the management and use of forests.

Rights to manage village forests are often not verifiably granted to villagers. Commonly, borders of village lands are drawn on a single "hard copy", which is a billboard in a village; if this is lost or damaged, the village loses its only legally recognised source of information on its forest rights (Kenney-Lazar, 2010).

Laos has about 1.6 million land plots, and so far about 620,000 plots have been titled, of which 300,000 are owned by the State, while the rest are villagers' land. The government had planned to complete a land survey and allocation of lands to villagers, as well as a land title project by 2015. Land disputes were the top issue of concern raised by members of the public who called the National Assembly hotline during the June 2012 session of the National Assembly (*Vientiane Times*, 21 August 2012). The lack of title means that disputes can arise when allocating logging rights and establishing plantations.

Under the new Forestry [Law](#) and the [Law on Enterprise 11/NA 2005](#), business registration is required for all participants in the plantation value chain. Article 41 of the Forestry Law (as well as references in Articles 19, 30, 63 and 68) indicates that there is a legal requirement for the registration of plantations (both plantations under concession agreements and plantations under temporary land use certificates). Article 41 notes that *the steps and details for registration of planted forest, planted NTFPs and planted trees verification shall be prescribed in a specific regulation* and it is unclear if such a regulation has been issued.

However, few smallholder plantations have been formally registered. According to Smith (2014), only about 10% of teak smallholder plantations are registered, as most growers do not see the benefits of getting plantation registration certificates (regulations are considered to be overly complex, with numerous steps and associated costs). There is some evidence that some farmers "borrow plantation certificates" when they sell their timber to meet this legal requirement (Smith and Phengsopha, 2014).

Business registration is also required for the importation and selling of forestry and wood-transport equipment, including logging machinery and chainsaws (Article 38, 134, and 136), although it appears that this is inconsistently enforced and it is unknown if there are supporting instructions issued to Customs or the Ministry of Industry and Commerce. These regulations are designed to regulate machinery that could be used in illegal operations, but also potentially create barriers to the development of small-scale timber logging and processing operations.

Summary:

For all source types, there is a risk of or relating to:

- A lack of detailed maps (showing accurate borders and zoning)
- Low levels of technical and professional capacity to implement resulting in inappropriate, inaccurate, and inconsistent identification, planning, and management standards
- Conflicts and inappropriate allocation and approvals while provisions under the 2007 Forestry Law have yet to be updated to reflect new provisions under the 2019 Forestry Law.
- Conflict between villages and other types of forest management, due to;
  - Lack of titles, meaning that disputes with villages can arise when logging rights are being allocated and plantations established
  - Risk of double-layered classification, when a village is situated inside more than one of the three nationally categorised forest types
  - Rights to management of village forests not being verifiably granted to villagers

For Plantations (smallholding), there is risk of or relating to:

- A lack of business registration
- Access to working capital, technical support, equitable market information, and competitive scale.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.1.6. Risk designation and specification**

Specified risk

**1.1.7. Control measures and verifiers**

- Map of national forest categories: provide idea of possible location of forest management unit and potential risk in case of overlapping of development project or plantation with officially designated forest categories.
- Village Forest Management Agreement and maps of village land and zoning of village forests: existence of these documents reduces risk of possible violations of rights of villagers. These documents can be used to assess compliance of location of timber source (tree plantation, forest conversion under development project etc.) to zoning of village area.
- Land title for private land confirming legitimate right to plant trees.
- Land title for private land or a three-year temporary land use certificate for tree planting issued by the District Office of Natural Resources and Environment/District Agriculture and Forestry Office: legitimates right of holder to conduct commercial tree planting. Documents must include accurate descriptions of borders as well as a map.
- Temporary Land Use Certificate for tree planting issued by District Offices of Natural Resources and Environment confirms legitimate right to plant trees.
- Business registration: confirms legitimate right to deal with logging operations and to harvest plantation timber for commercial use.

**1.2. Concession licenses**

*Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations*

where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

### 1.2.1. Applicable Laws and regulations

#### *Selective logging:*

- Law No. 06/2007 NA on Forestry, 24 December 2007, Articles 43 <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>

#### *Conversion and Plantations:*

- Law No. 04/2003 NA on Land, 21 October 2003, Articles 8, 21, 22, 64, 65, 66, and 67 <http://extwprlegs1.fao.org/docs/pdf/lao77471.pdf>
- Law No. 06/2007 NA on Forestry, 24 December 2007, Articles 33, 35, 43, 49, 69-76, 90, 95 <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- The Law No. 02/2009 NA on Investment Promotion, 08 July 2009, Articles 21-28, 31 [http://laotradeportal.gov.la/ero-Laws/Final\\_Investment\\_PromotionLaw\\_in\\_English.PDF](http://laotradeportal.gov.la/ero-Laws/Final_Investment_PromotionLaw_in_English.PDF)
- Decree No. 88/2008 PM on the Implementation of the Land Law, 3 June 2008, Articles 21 and 22 <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/2008-Decree-on-Implementation-of-the-Land-Law-No-88-PM.pdf>
- Decree No. 135/2009 PM on State Land Lease or Concession, 25 May 2009, Article 6, 26, 27, 28, 29, 31 [http://rightslinklao.org/eng/index.php?option=com\\_docman&task=doc\\_download&gid=100&Itemid=70](http://rightslinklao.org/eng/index.php?option=com_docman&task=doc_download&gid=100&Itemid=70)
- Instruction No. 20/2010 NLMA, on Implementation of Decree of State-owned Land for Concession, 9 April 2010, Chapter 1, Article 3. <http://www.laolandissues.org/wp-content/uploads/2012/03/NLMA-Concession-Instruction-2010-April-Eng.doc>
- Order 13/2012 PM on Halting Investment Projects Related to Mining, Rubber, Eucalyptus, 11 June 2012. <http://www.laolandissues.org/wp-content/uploads/2012/03/Prime-Minister-Order-No13NA-on-halting-concessions-June-2012.pdf> (*in Lao*)

#### *Plantations (concessions):*

- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, Article 2, 4, 5-7, 12 <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 535/2001 MAF on Management of Village Forests, 18 June 2001, Article 2 <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Directive No. 1849/1999 MAF on Registration of Tree Plantations, 10 July 1999, Article 1-6 <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### *Plantations (smallholding):*

- Notification No. 1374/2010 MAF.MC on the Application for Registering Tree Planting Parcels and Grown Timber Certificate, 24 August 2010, Article 3 <http://flegtlaos.com/resources/forestry-legality-compendium/>

- Instruction No. 1668/2008 NLMA.CAB on the Use of New Formats of Land Titles and New Registration Book, 29 April 2008, Article 3.
- Instruction No. 564/2007 NLMA on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, 6 August 2007, Article 1.2.5, 1.2.7, 1.2.8, 1.2.9, 1.2.10, 1.2.11, 4.11, 8.1 [http://thereddesk.org/sites/default/files/45.\\_nlma\\_instructions\\_on\\_adjudications\\_pertaining\\_to\\_land\\_us\\_1.pdf](http://thereddesk.org/sites/default/files/45._nlma_instructions_on_adjudications_pertaining_to_land_us_1.pdf)

### 1.2.2. Legal authority

- Plantations (concessions): Ministry of Natural Resources and Environment (MONRE) and Provincial/City Offices of Natural Resources and Environment.
- Plantations (smallholding): District offices of Natural Resources and Environment.

### 1.2.3. Legally required documents or records

- Tree plantations (concessions): by the Ministry of Natural Resources and Environment or Provincial/City Offices of the Ministry of Natural Resources and Environment. A decision on the conversion of degraded and barren forest lands made by the authorities at the relevant levels (province, national), depending on area.
- Plantations (smallholding): Land title, or a three-year temporary land use certificate for tree planting issued by a District Office of Natural Resources and Environment.

### 1.2.4. Sources of information

#### *Government sources*

- [lad.nafri.org](http://lad.nafri.org) (2009). Findings of the State Land Concession and Lease Inventory Project in the Pilot Province of Vientiane Province, Lao PDR, Phase II. [online]. Vientiane. CRILNR (NLMA). Available at: <http://lad.nafri.org/la/fulltext/2266-0.pdf>
- [nationmultimedia.com](http://www.nationmultimedia.com) (2016). *Govt gives green light for two eucalyptus operators*. [online]. 30 March 2016, Vientiane Times. <http://www.nationmultimedia.com/search/?q=Govt%20gives%20green%20light%20for%20two%20Eucalyptus%20operators>
- [laolandissues.org](http://www.laolandissues.org) (2012). *Govt halts new mining projects, land concessions for tree farms*. [online]. Land Issues working Group. 26 June 2012, Vientiane Times. Available at: <http://www.laolandissues.org/2012/06/26/govt-halts-new-mining-projects-land-concessions-for-tree-farms/>
- [vientianetimes.org](http://www.vientianetimes.org) (2015). *Govt reopens for new mining investment*. [online]. 25 December 2015, Vientiane Times. Available at: [http://nutiminn.is/kattarshians/http://www.vientianetimes.org/FreeContent/FreeContent\\_Govt\\_reopens.htm](http://nutiminn.is/kattarshians/http://www.vientianetimes.org/FreeContent/FreeContent_Govt_reopens.htm)
- Govt to halt protected area encroachment / Vientiane Times, 05 April 2013
- [laolandissues.org](http://www.laolandissues.org) (2012). *Government urged to review land compensation*. [online]. Land Issues Working Group. Vientiane Times, 20 August 2012. Available at: <http://www.laolandissues.org/2012/08/20/govt-urged-to-review-land-compensation/>
- Midgley, S. (2006). *Position Paper on Tree Plantation Sector Development in Lao PDR*. [online]. Forestry Strategy 2020 Implementation Promotion Project. Department of Forestry. Salwood Asia Pacific Pty. Ltd. October 2006. Available at: <http://lad.nafri.org/la/fulltext/1594-0.pdf>
- Oudomxay approves land concession for rubber tree plantation / KPL (Lao News Agency), 25 January 2016.

### Non-Government sources

- Baird, I. (2010). *Quotas, powers, patronage, and illegal rent-seeking. The political economy and the timber trade in southern Laos*. [online]. Forest Trends, Washington D.C., U.S.A. Available at: [http://www.forest-trends.org/documents/files/doc\\_2421.pdf](http://www.forest-trends.org/documents/files/doc_2421.pdf)
- Baird, I. (2014). *Degraded forest, degraded land and the development of industrial tree plantations in Laos*. [online]. Singapore Journal of Tropical Geography. Volume 35, Issue 3, November 2014. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/sjtg.12076/full>
- Forest Trends (2010). *Timber Markets and Trade between Laos and Vietnam: A Commodity Chain Analysis of Vietnamese-Driven Timber Flows* [online]. Available at: [http://www.forest-trends.org/documents/files/doc\\_2365.pdf](http://www.forest-trends.org/documents/files/doc_2365.pdf)
- Forest Trends (2014). *Forest Conversion in Lao PDR: Implications and Impacts of Expanding Land Investments*. [online]. Available at: [http://www.forest-trends.org/publication\\_details.php?publicationID=4677](http://www.forest-trends.org/publication_details.php?publicationID=4677)
- Global Witness (2013). *Rubber barons: How Vietnamese companies and international financiers are driving a land grabbing crisis in Cambodia and Laos*. [online]. Global Witness. London. Available at: <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/>
- Hunt, G. (2014). *An Analysis of FSC Certification of Oji LPFL*. [online]. Plantation Watch. Available at: <http://plantation-watch.org/wp-content/uploads/2015/06/Analysis-of-FSC-Certification-of-Oji-LPFL-2014.pdf>
- Kenney-Lazar, M. (2010). *Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos*. [online]. Vientiane: Faculty of Forestry, National University of Laos. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/3-Land-Concessions-Land-Tenure-and-Livelihood-Change-Plantation-Development-in-Attapeu-Province-Southern-Laos.pdf>
- Kenney-Lazar, M. (2015). *Authoritarian Resource Governance and Emerging Peasant Resistance in the Context of Sino-Vietnamese Tree Plantations, Southeastern Laos*. BRICS Initiative for Critical Agrarian Studies Working Paper, No. 1. The Hague: The International Institute for Social Studies.
- Lestrelin G. et al. (2013). *The context of REDD+ in the Lao People's Democratic Republic: Drivers, Agents and institutions*. [online]. Occasional Paper 92. Bogor, Indonesia: CIFOR. Available at: <http://www.cifor.org/online-library/browse/view-publication/publication/4227.html>
- Schönweger, O., Heinemann, A., Epprecht, M., Lu, J., Thalongsechanh, P. (2012). *Concessions and Leases in the Lao PDR – Taking Stock of Land Investments*. [online]. Geographica Bernensia. Available at: <https://landportal.info/library/resources/concessions-and-leases-lao-pdr>
- Smirnov D. (2015). *Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation*. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>
- Smith, H. (2014). *Legal issues and legality barriers for smallholder plantation owners in Lao PDR* [online]. Presentation published by ACIAR. Available at: <http://www.illegal-logging.info/sites/default/files/Hilary%20Smith%20Presentation.pdf> / [http://teaknet.org/download/teaknet2014/Session%20III/conf\\_1.pdf](http://teaknet.org/download/teaknet2014/Session%20III/conf_1.pdf)
- Smith, H. and Phengsopha K. (2014). *Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR*. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy\\_Brief\\_on\\_Smallholder\\_Plantations\\_in\\_Lao\\_PDR\\_Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy_Brief_on_Smallholder_Plantations_in_Lao_PDR_Eng.pdf)
- Stenhouse R. and Bojö J. (2011). *An environmental perspective on hydropower and mining development in the Lao PDR*. [online]. Background Paper for Lao PDR Development Report 2010:

Natural Resource Management for Sustainable Development. Washington, D.C.: World Bank. Available at: [http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010\\_Environment.pdf](http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010_Environment.pdf)

- Stora Enso (N.Y). Environment Impact Assessment: Stora Enso's Proposed Project Commercial Plantations in Savannakhet and Saravanh Provinces, Lao PDR. Annex 4. Legislation Relevant to Tree Plantations.
- Stuart-Fox, M. (2006). *The Political Culture of Corruption in the Lao PDR / Asian Studies Review*. [online]. March 2006, Vol. 30. Available at: [http://www.academia.edu/8266641/The\\_political\\_culture\\_of\\_corruption\\_in\\_the\\_Lao\\_PDR](http://www.academia.edu/8266641/The_political_culture_of_corruption_in_the_Lao_PDR)
- Transparency Internationals Corruption Perception Index 2015. Available at: <http://www.transparency.org/cpi2015>
- Wellmann, D. (2012). *The legal framework of state land leases and concessions in the Lao PDR*. [online]. Discussion paper developed under the GIZ NU-IRDP contribution to the NUDP as product of the land management component. Available at: <http://www.laolandissues.org/wp-content/uploads/2012/03/Legal-Framework-of-Concessions-in-the-Lao-PDR-Discussion-paper-GIZ-Wellmann.pdf>

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

##### *Selection Logging and Conversion: N/A*

According to the Forestry Law, Articles 28 and 29, timber harvested from natural forests remain the property of the Government and must be carried out:

- where there is a sustainable forest management plan and the survey is done according to Article 23 or
- in the approved forestland conversion areas where the survey is completed according to Article 24.

All logging (Article 26) and harvesting of NTFPs (Article 27) in natural forests is undertaken in accordance with the Annual Logging Plan as specified under the Forestry Law and as ultimately approved by the Government based on National Assembly approvals. This plan is developed by MAF and its provincial counterparts.

Under PMO15 (2016), conversion project developers or construction contractors cannot carry out logging and MAF has the direct responsibility for timber harvest and sales under established harvesting units. However, under the Forestry Law, timber logging in natural forests is only allowable by enterprises legally established and possess capacity and are approved by the PAFO (Article 26, 28, 29, 89, 104, 105). Under this law, it may be possible for non-government enterprises to be registered for the purpose of logging in natural forests, as Article 134 states that businessmen cannot harvest or clear forestland 'where is not allowed to do so by the agriculture and forestry sector'. All logging in natural forests must be undertaken with the approval, supervision and monitoring of government officials.

##### *Plantation (concessions):*

Concessions for tree plantation are restricted to degraded and barren forest lands. Concessions can be on production forestlands, but only in the form of a lease or concession for no more than 50 years (with a maximum extension of 30 years).

- Degraded Forestland is the forestland areas where forests have been heavily and continually damaged for many decades and take many years to regenerate by itself, which has the crown cover not over 10% and the volume of standing trees with more than 10 cm diameter and no more than 20m<sup>3</sup>/ha (Article 3.15)

- Barren Forestland is the forestland areas where forests have been heavily and continually damaged for many years causing the areas to be covered by Alang alang (*Imperata cylindrical*), Vetiver, shrub, which the trees cannot naturally regenerate by itself (Article 3.16).

The Ministry of Natural Resources and Environment, formerly the National Land Management Authority, is technically in charge of approving prescriptions for the issuing approval for all land concessions, except mining and hydro-electricity concessions. The Ministry of Planning and Investment issues final consent, with consultation across other line agencies (including the Ministry of Agriculture and Forestry, the Ministry of Industry and Commerce, the Ministry of Energy and Mines etc.) and the appropriate provincial counterparts.

In the Lao PDR, a tree plantation is broadly defined as an operation approved by the State to plant trees on an area of degraded or barren forest land (Regulation No. 196/2000 MAF [Article 2](#)).

Plantations eligible for registration must have an area of 1,600m<sup>2</sup>, and legislation recognises different planting systems, some of which imply fewer than 1,100 trees/ha (MAF [Directive 1849/AF.99](#)).

*Plantations (smallholding):*

For the establishment of plantations, approval from the Government is not required for individuals and households who plant trees on land formally allocated to them and using their own funds and labour. It is not clear if village forest areas could be developed to include commercial tree plantations.

Village forest area is defined under Article 3.8 and their permitted use under Article 3.9 of the Forestry Law. Provisions for village management and planning is prescribed under Article 39 and can apply to any forestland category. Article 39 also states that village forest management planning shall be regulated by a separate specific regulation which can allocate exclusive customary use and protection rights with no tax obligations.

Three-year temporary land use certificates for tree planting on degraded forest land (three ha per labourer in a household) are issued to villagers by the District Administrative Authority in coordination with the Village Administrative Authority. More land can be requested from village and district authorities. If managed properly during the initial term, then the lessee may request the Land Management Office to issue a Land Title for long-term use (Land [Law](#), 2003, [Articles 21 and 22](#)).

Concessions for tree plantations are granted upon approval by the Ministry of Natural Resources and Environment or by Provincial/City Offices of Natural Resources and Environment, depending on: the category of land (degraded forest land or barren forest land), the size of the concession, and the duration of concession agreement ([Decree 135/PM 2009 Article 28](#), Forestry [Law](#), 2007 [Articles 75 and 76](#)).

Approval of concessions (only for Land Title for Long Term Use) is conditional upon surveys which have to be conducted and approved before the lease or concession is granted (Forestry [Law](#), 2007, [Article 74](#)). The following documents must be developed:

- Study on socio-economic information and appropriateness to natural conditions, land tenure rights
- Business feasibility study
- Social and environmental impact assessment, including appropriate resolution measures, and
- Operational plan on protection of water resources and the environment, land clearing, village development, participation of local people, benefit sharing etc.

A "technical social and economic impact assessment" is required for any tree plantation of more than 5 ha, including groups of neighbouring parcels with a total area of more than 5 ha (Regulation 196/AF, 2000 [Article 4](#)).

Procedural requirements for foreign investors to gain permission and licenses for tree plantation are described in Regulation No. 196/2000 MAF, [Article 7](#).

The legitimacy of concession rights is confirmed by a concession registration certificate, while the terms and conditions are defined in the concession agreement ([Law on Investment Promotion Articles 25, 26](#)).

The requirements and procedure for the registration of tree plantations are specified in [Directive No. 1849/1999 MAF Articles 1-6](#) and [Regulation No. 196/2000 MAF, Article 12](#) (See 1.1.4).

In May 2007, the Prime Minister of the Lao PDR announced a moratorium on granting of new land concessions greater than 100 ha to give the Government of Laos an opportunity to review its policy on granting large-scale concessions, and to address the shortcomings of its previous land management strategy.

In an attempt to properly regulate the existing mining and tree plantation investment projects, order No 13/PM on ceasing consideration and approval for new investment of mining exploration and survey, rubber and eucalyptus plantations was implemented on 11 June 2012. This moratorium (2012(13/PM)) on consideration and approval for proposed new rubber and eucalyptus plantation projects was extended in December 2015 by a decision of the Prime Minister's cabinet (*Vientiane Times*, 25 December 2015).

The Government clarified that the moratorium does not apply to investments in tree plantations by companies operating on a 2+3 system, where farmers provide the labour and the land (often under temporary land use certificates) while the companies supply the saplings, technical assistance and marketing without large land concessions from the Government (*Vientiane Times*, 30 March 2016).

#### *Description of risk*

##### *General:*

Despite an extensive regulatory framework on land concessions, the capacity of relevant government agencies to ensure legal compliance are limited, and many critics note that concessions and leases have been granted to investors without adherence to national regulations, and with little regard to customary tenure (Forest Trends, 2012).

According to Wellmann (2014), screening of the concession inventory data suggests that currently about 5 million hectares of the Lao PDR are leased or conceded to either domestic or foreign parties. How much of this is plantation concessions is not known.

However, the Government-supported State Land Leases and Concessions Inventory (Schönweger et al., 2013), considered to be the most comprehensive source on land-based investment in the Lao PDR, was able to compile documents for concessions and leases of a total area of only 1.1 million hectares.

Schönweger et al. (2012) found that no line agencies, either at the central or provincial levels, had full or sufficiently detailed information on land leases and concessions granted to date. Moreover, where data was available, it was often inaccurate, and the size and location of investment projects – both allocated areas and actual developments – were frequently unknown.

Data for each project available at the provincial and district levels was rarely complete, especially with regard to documents related to the project approval process. In some cases, only one type of project document, such as the investment licence, agreement or contract was available, and for some, no documents at all were available or shared. Information about the implementation status and progress of projects (e.g. land clearance, planting, processing and production) was almost never available.

Registration of plantations is a legal requirement for all plantation owners (plantations under both concession agreements and temporary land use certificates), but few smallholder plantations have been formally registered. According to Smith (2014), only about 10% of teak smallholder plantations are registered, as most of the growers do not see the benefits of getting plantation registration certificates (regulations are overly complex, with numerous steps and associated costs). There is some evidence that some farmers “borrow plantation certificates” when they sell their timber, to meet this legal requirement (Smith and Phengsopha, 2014).

The lack of a monitoring mechanism and on-the-ground regulatory enforcement for land concessions has created an environment in which companies feel free to proceed with development plans, with or without written permission or approval documentation. Furthermore, a lack of transparency in all land-related transactions results in situations in which citizens and local communities cannot monitor how well Laws and regulations are being implemented.

The allocation of large-scale land concessions has been a highly controversial issue in Laos over the past decade, so much so that the Government of Laos has already issued several moratoriums on land concessions. Despite the decision to extend a moratorium on the consideration and approval of proposed new large-scale rubber and eucalyptus plantation projects, at the end of January 2016 Oudomxay authorities approved a 30-year land concession on a total area of 420 hectares for a Chinese businessman to plant rubber trees in the Namor district of Oudomxay Province (KPL, 25 January 2016).

#### *Obtaining concessions through bribes*

Transparency International has ranked Laos 130<sup>th</sup> of 180 countries in their 2019 Corruption Perception Index (CPI) report<sup>7</sup>, with score of 29 (which is far below the FSC's "low risk" threshold of 50). Professor Martin Stuart-Fox argues that "...the outlook for reduction of corruption in the Lao PDR is not encouraging, despite the new anti-corruption Law. Political patronage is deeply engrained in the political culture of the Lao PDR, and in particular in its political institutions and their functioning" (Stuart-Fox, 2006).

According to the report of the Inspection Committee of the Party Central Committee, and the Government Inspection Authority, in 2018 inspection authorities uncovered 595 people involved in illegal cases of corruption relating to timber of whom 50 were government officials, 182 were businessmen and the remaining were local residents<sup>8</sup>.

The embedded problem of corruption in state agencies responsible for the management of the land resources sector has been acknowledged by many.

According to Forest Trends research (2010), Vietnamese companies usually pay significant "invisible costs" to provincial and national authorities to obtain land for the establishment of rubber plantations.

Kenney-Lazar (2010) presents a case in which a Vietnamese corporation provided material incentives to certain village leaders and government officials to ensure the successful acquisition of land for the establishment of a rubber plantation.

#### *Companies begin activities on land before receiving authorisation*

The inventory of state land leases and concessions in Laos (Schönweger et al., 2012) documented a number of cases in which companies have begun activities on land before receiving (and sometimes before even requesting) authorisation from the relevant government authority.

#### *Getting approval of concessions above 100 ha from authorities without proper authorisation*

According to Forest Trends (2014), despite the moratoriums on the granting of new land concessions larger than 100 ha announced by the Prime Minister in May 2007 (PM Announcement No. 743), and further suspension of approvals for all investment proposals for the exploration and survey of a range of mineral ores and rubber and eucalyptus plantations (PMO No. 13) in June 2012, concessions of various sizes continue to be granted in a number of scenarios.

A number of provincial reports have provided evidence that some authorities have abused or "misinterpreted" their power and mandates. The inventory of state land leases and concessions in Laos

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<sup>7</sup> <https://www.transparency.org/cpi2019?/news/feature/cpi-2019>

<sup>8</sup> <https://iclao.com/one-trillion-kip-in-state-assets-misappropriated-in-past-year/>

(Schönweger et al., 2012) found that in many cases authorities at the provincial or district levels were approving land areas over the limit of their mandate. For instance, authorities of Vientiane and Xayabury provinces approved land concessions for tree plantations of 670 and 300 ha respectively, which exceed many-fold the limits of their authority.

In order to evade the Law and grant such large concession areas at the provincial level, the land was divided into several parcels, and the approvals were made in separate documents.

#### *Establishment of commercial tree plantations in natural forests*

In numerous cases, plantation concessions have been issued or extended into areas where establishment of commercial tree plantations is not legally allowed. The inventory of state land leases and concessions in Laos (Schönweger et al., 2012) revealed that a considerable share of tree plantation projects granted permission (59,517 ha, or 19%) occur on land categorised as forest. Most of the tree plantation area occurring on land categorised as forest falls within protection forest (42,257 ha). A sizeable amount of tree plantation (10,127 ha) was found within areas categorised as conservation forest.

For example, concession areas allocated to several rubber plantations were found to fall inside the Dong Hua Sao National Protected Area in Champasak Province (Schönweger et al., 2012).

The Government revealed that allocation of rubber plantations contributed to encroachment of 39,000 ha in Phou Phanang and Phou Khao Khoay National Protected Areas in Vientiane and Borikhamxay provinces, and ordered that all encroachment into protected areas cease. The Government intended to confiscate illegally planted lands and incorporate them into the protected areas as national property (*Vientiane Times*, 05 April 2013).

Forest Trends research (2010) provides an example of a Vietnamese company applying for land in Attapeu province to establish a rubber plantation for which the primary objective was to get “legal” access to timber logging in natural forest. As a result, the company was granted 20,000 ha of forest land, half of which had standing trees of marketable value.

Despite legislation that prohibits the clearing of productive natural forest during the process of development of tree plantations, much evidence has been collected recently to prove that a number of concessions have been granted for areas such as dense forest (which means that plantation establishment begins with deforestation).

For example, the report on the results of the state land leases and concessions inventory in Laos (Schönweger et al., 2012) presents a case in which a concession for an area of 300 ha, granted to plant rubber trees was predominantly covered by healthy secondary and primary forest. However, land survey report by the District Agriculture and Forestry Office stated that the land consisted solely of fallow forest (left after shifting cultivation, 2-7 years old), in other words, that no trees with economic value existed within the area.

Hunt (2014) highlights numerous examples of large scale clearance of dense/rich natural forests in Oji LPFL concessions (pulp wood plantations) conducted by the Government of Laos immediately prior to preparing land for plantations operations. It involved clearance of high conservation value forests – forest which meets the FSC criteria of forest areas fundamental to meeting the basic needs of local communities (e.g. subsistence, health), and/or critical to local communities’ traditional cultural identity (village conservation forest areas, among other areas).

Baird (2014) notes that productive dry dipterocarp forest has been frequently defined as degraded, thus allowing eucalyptus plantation development to occur, even when this has caused serious negative impacts on productive habitats with great livelihood importance for local people who rely on them. According to Hunt (2014), lands designated as degraded commonly include secondary forest, or areas that are part of extensive agro-forestry cropping systems such as rotational (“shifting”) cultivation. Such areas have been shown to have a high degree of biodiversity, and the resources within these forest areas are invariably used by villagers for their livelihood needs.

One reason for this is the lack of clear legal definitions of “degraded” and “barren” forest lands, which can be zoned for conversion into planted forests, and what exactly constitutes “degradation” (Lestrelin et. al, 2013; Baird, 2014). Baird (2014) emphasises that “the concept has been left vague and open to interpretation... even while the term has remained [a] powerful determinant of what happens on the ground”. He suggests that vague wording and the lack of clear and consistent definitions gives the state more power to facilitate plantation development, or to prevent it, and to decide either way arbitrarily.

Additionally, commercial grade timber harvested in preparation for conversion activities has become a critical source of timber in Laos (Forest Trends, 2014; Smirnov, 2015). Potential revenue from conversion timber is a strong enticement for local authorities to facilitate the development of large land concessions (including rubber and eucalyptus) in forested areas, in contravention of legislative requirements.

Baird (2010) points out that when the Government allocates concessions for industrial crops, they only give concession holders permission to cultivate land, while logging operations associated with concession lands are usually allocated to other companies that become responsible for removing the marketable trees from “degraded” forest land before an investor clears the remaining vegetation and begins replanting the area. On the other hand, a Forest Trends report (2010) presents examples when logging could be a part of concession deals.

In 2010, a Vietnamese corporation reported that it held rights to 300,000m<sup>3</sup> of timber for furniture production, which was “sourced from the reclamation of land from forest for rubber plantation” in Southern Laos (Global Witness, 2013).

Much evidence has been collected indicating that concessions acquired for plantations are used as a cover for access to valuable timber resources. Some companies discontinue the projects or transfer the concessions to other companies after extracting all conversion timber, which is extremely profitable but legally questionable (Forest Trends, 2010; 2014). The legal status of this wood remains unclear, and information on the extent, volumes, use, and value of such timber is limited and inconsistent.

Furthermore, under cover of clearance of plantations, logging operators often extend the range of their logging operations into the areas surrounding the concession (Schönweger, O. et al., 2012).

#### *Granting concessions without maps and border demarcations*

Numerous reports provide evidences of the unavailability of maps for granted concessions.

As shown by the concession inventory conducted in Vientiane Province in 2008-2009 (CRILNR (NLMA), 2009), the unavailability of maps and even of simple schematics identifying concession borders has been a systematic violation. According to this inventory, only 5% of all active land lease and concession projects (e.g. agriculture, plantation, mining, hydro dams) were able to provide proper maps with boundaries of lease/concession areas (12 of 237), including 3.5% of agriculture projects (4 of 114), which include plantation projects. In 21.9% of cases, representatives’ rough hand-drawn maps were available, including 27.2% of agriculture projects (31); it has been noted that these maps often “did not reflect reality”.

According to Wellmann (2014), screening of the data of the concession inventory suggests that currently about five million hectares of the Lao PDR are leased or conceded to either domestic or foreign parties.

However, even the government-supported State Land Leases and Concessions Inventory (Shonweger et al., 2013), considered to be the most comprehensive source on land-based investment in the Lao PDR, was able to spatially reference only 53% of all concessions and leases. Of the 2,642 deals in the inventory, spatially referenced data was available for only 1,258 projects (48% of all projects) covering 587,564 hectares. The inventory also revealed several examples of low quality concession maps. In one case in 2006, a company was granted authorisation for a rubber plantation of 214 ha. At the same time, borders on the map attached to the contract covered an area of 3,411 ha. By the time the inventory was made, the developer had already cleared 345 ha of forest.

Kenney-Lazar (2010, 2015) mentions cases of the granting of massive concessions for pulp and rubber plantations in which maps demarcating the extent of the plantation fields were made by the companies after the land had already been cleared.

It is not unusual for concession holders to clear land outside of the agreed-upon boundaries (Kenney-Lazar, 2010). Kenney-Lazar (2010) provides an example of a Vietnamese company which acquired more land in Savannakhet province at the local level than allowed within their MOU with the central Government while district officials “only complained that the company cleared land outside of the area allocated to them, and did so without notifying the district, only apologizing and making up excuses afterward” (Kenney-Lazar, 2015).

Further, analysis of satellite images of areas with some rubber concessions in Attapeu province has revealed large areas of forest cleared beyond the legal boundaries of concessions (Global Witness, 2013).

#### *Failing to conduct and get approval for social and environmental impact assessment before granting concession*

Numerous researchers provide evidences that companies either conduct required social and environmental impact assessments post-factum – already long after acquiring land concessions – or do not conduct them at all.

For instance, according to Kenney-Lazar (2015), a Vietnamese company cleared land in Savannakhet province for the establishment of a eucalyptus plantation before detailed surveys of what land was available had been conducted. Further, companies usually only conduct surveys if there is a conflict with villages concerning the land cleared. Another Vietnamese corporation did not conduct any environment and social impact assessments prior to being granted a concession in Attapeu province for the establishment of a rubber plantation. The required assessments were made after the project had been operational for two years (Kenney-Lazar, 2010).

#### Summary:

Concessions in natural forest are not allowed.

For Plantation (concessions) there is risk of or relating to:

- Concession licences being issued as a result of corruption (bribes)
- Licenses being issued without legal authority
- Concessions being established without authorisation
- Concession licences being issued for areas greater than allowed by Law (100 ha)
- Forest being cleared for plantation concessions (illegal)
  - *Within conservation forest, or*
  - *Established on areas that are not degraded/barren*
- Concession plantations being established without proper maps/boundaries
  - *Clearing of forest outside concession boundaries*
- Concessions being established without social and environmental impact assessments

For Plantations (smallholding), there is risk of:

- Lack of plantation certificates” and use of “borrowed” plantation certificates

#### *Risk conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### 1.2.6. Risk designation and specification

Specified risk

### 1.2.7. Control measures and verifiers

- Basic document justifying necessity of forest conversion allows checking of whether authorities were empowered to sign agreement; shall include accurate description of concession borders and a map. Date of map must correspond to date of agreement's signing.
- Concession/lease agreement for tree plantation by the Ministry of Natural Resources and Environment or Provincial/City Offices of Natural Resources and Environment: legitimates right of holder regarding commercial tree planting; allows checking of whether authorities were empowered to sign agreement; shall include accurate description of concession borders and a map. Date of map must correspond to date of agreement's signing.
- Decision on conversion of degraded and barren forest lands made by authorities of different levels (municipal, district, province, national) depending on area: confirms that decision on conversion was made by authorities according to their mandate.
- Study on socio-economic information and appropriateness to natural conditions, land tenure rights: must be undertaken and approved before concession agreement is signed; must include information on existence or absence of third party rights; provides evidence that area lacks productive forests and complies with definition of degraded forest or barren land (in case of concession for establishment of tree plantation).
- Social and environmental impact assessment, including appropriate resolution measures: must be undertaken and approved before concession agreement is signed; must provide evidence that area lacks productive forests and complies with definition of degraded forest or barren land (in case of concession for establishment of tree plantation), to substantiate absence of irreversible negative effect, and to provide measures for reforestation and/or compensation of negative social and environment impact; must provide proof of consultations with stakeholders.
- Operational plan on protection of water resources and environment, land clearing, village development, participation of local people, benefit sharing etc.: must be undertaken and approved before concession agreement is signed. Must include maps with accurate borders of clearing areas, proofs of consultations with stakeholders, information on compensation to, and benefit sharing with, affected local population.

## 1.3. Management and logging planning

*Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

### 1.3.1. Applicable Laws and regulations

*General:*

- Law No. 06/2007 NA on Forestry, 24 December 2007, Article 49. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 4 on annual logging plan. Available at:

<http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>

- Order No. 15/PM On Strengthening Strictness of Timber Harvest Management and Inspection, Timber Transport and Business, 13 May 2016, [Article 4](#) on temporary suspension of logging in production forest. [Article 4.1](#) on requirement to integrate conversion timber into annual harvest plan. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Guideline 0105/](#) MAF of the Minister of Agriculture and Forestry Concerning Implementation of the Prime Minister's Order No. 17/PM, dated 22/09/2008 on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 07 November 2008, [Article 3](#).
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, [Article 5](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, [Article 12](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Decree No. 111/PM](#) on National Defence Strategic Zone, 24 March 2011.

*Selective Logging:*

- [Law No. 06/2007](#) NA on Forestry, 24 December 2007, [Article 18](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Order No. 31 PM on National Production Forest, 05 November 2013. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/?wpdmc=concessions-and-leases>
- [Guideline No. 2156/2006](#) DOF, on Sustainable Production Forest Management Planning, 6 November 2006, Part III on outline of management plan and main principles of planning, Part IV on procedures for approval and Part V on rights and responsibilities. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Guideline No. 2157/2006](#) DOF [Guideline](#) on Timber Logging in Production Forest, 6 November 2006, Part IV, on logging plan and approval. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, [Article 8, 9](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 60/MAF.03, 24 February 2003 on minimum cutting diameters.
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Articles 3 and 5](#) on the restriction of commercial logging to production forest areas with inventory and management plans, and permission and supervision requirements for logging timber in infrastructure development areas, [Article 3](#) on preparation of Annual Logging Plan and logging plan, [Article 4](#) on the requirement for compliance with Annual Logging Plan and government annual logging plan. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, [Article 2](#) on termination of debt repayment through allocating logging plan directly to investor and prohibition of granting permits to barter timber with any types of projects, [Article 4](#) on completion of forest management plans for production forest in 2015. [Article 10](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

- Guideline No. 2155/2006 DOF on Participatory Forest Inventory, 06 November 2006, Articles 3 and 4 on scope and implementation of forest inventory and reporting requirements, Part V on Methods of Pre-logging Inventory, Part VI on tree marking and coding, Part VII on post-logging assessment. Available at: <http://forestindustries.eu/sites/default/files/userfiles/1file/21.-DOF-Guideline-on-Participatory-Forest-Inventory.pdf>

*Conversion:*

- Law No. 06/2007 NA on Forestry, 24 December 2007, Article 18. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 4 on the requirement for compliance with Annual Logging Plan and government annual logging plan, Articles 5 on permission and supervision requirements for logging timber in infrastructure development areas. Available at: [http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20he%20Forest%20Management%20,%20Protect.pdf](http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf)
- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, Article 8.3 on general principles of pre-harvest Inventory in areas with infrastructure construction. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0112/2008 MAF on Logging and Post-Logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Article 2 on definition of logging area, clear cut, selective logging and cleaning, Chapter II, Section 1 on planning, Chapter III, Section 1 on setting up the committee responsible for logging management and reservoir cleaning, Chapter IV, Section 2 on monitoring and evaluation. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

*Plantations:*

- Law No. 10/NA on the Promotion of Domestic Investment, 22 October 2004, Article 13. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, Articles 9-11, 14. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 7 specifies that MAF is to issue specific rules to manage plantation timber, particularly to survey and register tree plantations by individuals and juridical entities in each locality; to establish regulations on logging and the preparation of annual logging plans. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20he%20Forest%20Management%20,%20Protect.pdf>

### 1.3.2. Legal authority

- **Selective logging:** Department of Forestry of the Ministry of Agriculture and Forestry, Provincial Agriculture and Forestry Offices.
- **Conversion:** The supervision committee responsible for logging management, Provincial Agriculture and Forestry Offices.
- **Plantations (concessions):** Ministry of Natural Resources and Environment (MONRE) and Provincial / City Offices of Natural Resources and Environment.
- **Plantations (smallholding):** District offices of Natural Resources and Environment.

### 1.3.3. Legally required documents or records

- Selective logging: National and provincial annual logging plans/quotas approved by the National Assembly and the Ministry of Agriculture and Forestry, forest management plan for production forest area endorsed by the Department of Forestry of the Ministry of Agriculture and Forestry, pre-logging inventory and tree marking report approved by Provincial Agriculture and Forestry Office.
- Conversion: National and provincial annual logging plans/quotas approved by the National Assembly and the Ministry of Agriculture and Forestry, logging plan approved by the supervision committee responsible for logging management, or by Provincial Agriculture and Forestry Offices.
- Plantations (concessions): Approved plantation management plan.
- Plantations (smallholding): National and provincial annual logging plans/quotas approved by the National Assembly and the Ministry of Agriculture and Forestry, approved plantation management plan for registered plantations.

### 1.3.4. Sources of information

#### *Government sources*

- thereddesk.org (2005). *Forestry Strategy to the Year 2020 of the Lao PDR*. [online] Ministry of Agriculture and Forestry, Lao PDR. Available at: [http://thereddesk.org/sites/default/files/fs\\_2020.pdf](http://thereddesk.org/sites/default/files/fs_2020.pdf)
- laolandissues.org (2012). *Govt postpones this year's logging plan*. [online]. Vientiane Times, 27 January 2012. Available at: <http://www.laolandissues.org/2012/01/27/govt-postpones-this-years-logging-quota/>
- asianews.network (2016). *Lao ministry hopes to reopen forest for logging*. [online]. Vientiane Times, 09 May 2016. Available at: <http://www.asianews.network/content/lao-ministry-hopes-reopen-forests-logging-16455>
- Midgley, S. (2006). *Position Paper on Tree Plantation Sector Development in Lao PDR*. [online]. Forestry Strategy 2020 Implementation Promotion Project. Department of Forestry. Salwood Asia Pacific Pty. Ltd. October 2006. Available at: <http://lad.nafri.org.la/fulltext/1594-0.pdf>
- laolandissues.org (2014). *Minister vows to speed up forest surveys, rehabilitation efforts*. [online]. Vientiane Times, 5 May 2014. Available at: <http://www.laolandissues.org/2014/05/05/minister-vows-to-speed-up-forest-surveys-rehabilitation-efforts/>
- vientianetimes.org (2016) *Nation losing more forests than it gains, minister says* [online]. Vientiane Times, 14 June 2016. Available at: [http://annx.asianews.network/content/laos-loses-more-it-gains-timber-exports-21588?qt-top\\_contributors=1](http://annx.asianews.network/content/laos-loses-more-it-gains-timber-exports-21588?qt-top_contributors=1)
- laolandissues.org (2014). *Pilot scheme to eradicate illegal logging*. [online]. Vientiane Times, 24 July 2014. Available at: <http://www.laolandissues.org/2014/07/24/pilot-scheme-to-eradicate-illegal-logging/>
- vientianetimes.org (2016). *Province, district authorities have no right to approve logging*. [online]. Vientiane Times, 14 June 2016. Available at: <https://opendevlopmentmekong.net/news/province-district-authorities-have-no-right-to-approve-logging/#!/story=post-1858925&loc=17.9640988,102.6133707,7>

#### *Non-Government sources*

- Baird, I. (2010). *Quotas, powers, patronage, and illegal rent-seeking. The political economy and the timber trade in southern Laos*. [online]. Forest Trends, Washington D.C., U.S.A. Available at: [http://www.forest-trends.org/documents/files/doc\\_2421.pdf](http://www.forest-trends.org/documents/files/doc_2421.pdf)

- Forest Sector Performance Indicators 2014, Review report. Part III. September 2014.
- Hodgdon, B. (2010) *Community Forestry in Laos*. [online]. Journal of Sustainable Forestry, 29: 1, 50 –78. Available at: <http://dx.doi.org/10.1080/10549810903463452>
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- Moore, C., Ferrand, J. & Khiewvongphachan, X. (2011) *Investigation of the Drivers of Deforestation and Forest Degradation in Nam Phui National Protected Area, Lao PDR*. [online]. GIZ, Climate Protection through Avoided Deforestation Programme (CliPAD), Department of Forestry. Available at: <http://theredddesk.org/sites/default/files/resources/pdf/2013/giz-clipad-deforestation-drivers-analysis-nam-phui-npa-lao-pdr.pdf>
- Smirnov D. (2015). Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>
- Smith, H. and Phengsopha K. (2014). *Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR*. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy\\_Brief\\_on\\_Smallholder\\_Plantations\\_in\\_Lao\\_PDR\\_Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy_Brief_on_Smallholder_Plantations_in_Lao_PDR_Eng.pdf)
- Tropical Rainforest Programme. (2000). *Aspects of forestry management in the Lao PDR*. [online]. Amsterdam. Available at: <https://portals.iucn.org/library/node/26100>
- Phengsopha, K. (2015). *Presentation on Study for Understanding Timber Flows & Control in Khammoune, Sayaboury Provinces*. [online]. Vientiane, 7th of April 2015. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>

### 1.3.5. Risk determination

#### *Overview of Legal Requirements*

#### *General - Annual logging plan:*

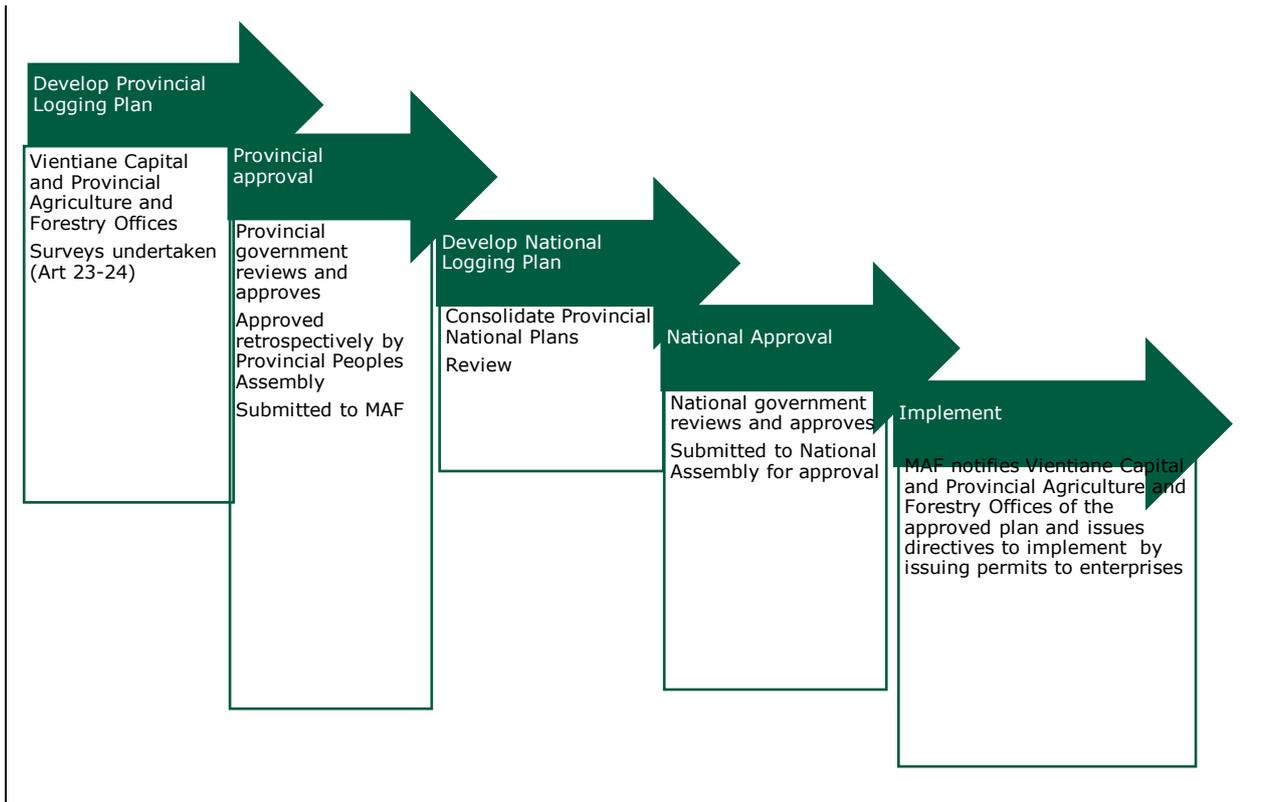
According to the Forestry Law, the main document allowing logging in natural and plantation forests is the (national) Annual Logging Plan approved by the National Assembly

This divides quotas amongst the Provinces, where the District Agriculture and Forestry Offices (DAFOs) distribute provincial logging plans amongst the districts and, together with their provincial counterparts (PAFOs), to individual production forests, based on the approval of the Government.

The Annual Logging Plan is determined on the basis of a proposal prepared by the Ministry of Agriculture and Forestry, and the proposal itself is prepared on the basis of applications submitted by provincial authorities

Provincial and Capital City Agriculture and Forestry Offices summarise annual logging plans, which include the results of pre-logging inventories in production forest areas and in areas with various development projects (roads, transmission lines, hydropower dam construction, mining, clearance for tree and industrial crop plantations etc.) which have already been approved by the Government, in their provinces.

After the Government and the National Assembly approve the Annual Logging Plan for the country, the Ministry of Agriculture and Forestry issues the national Annual Logging Plan and then designates logging volumes for each province based on the proposed logging plans for each province. The process is summarised as:



Logging of natural forests is only officially allowed in Production Forests (Article 28) and approved conversion areas (Article 29) under approved logging plans (Article 26 or 29) and where resource assessment surveys (Article 20) and inventory (volume and quality species) surveys (Article 23 or 24) and sustainable management plans (Article 28) have been completed.

Approval should be made in July of each year to allow logging over the dry season (generally October to April), and the approval of additional quotas is strictly prohibited (PMO15, Part 7.2 states that "For logs harvested beyond the approved quota, they are subjected to confiscate and become the State asset and strictly conduct prosecutions to the offenders"). An example of government approval of the Annual Logging Plan is Notice No. 135/2013 GO on the Implementation of the Tree Plantation & Forest Regeneration Plan and the Timber Logging and NTFP Logging Plan for the Year 2012 ± 2013, 30 January 2013, Article 1 on timber quotas, and associated tables.

Article 20 appoints MAF to 'to lead the survey of forest and forest resources ', and their provincial counterparts to coordinate and implement them (Article 150). It is an offence to falsify survey data (Article 133). Businessmen can undertake resource surveys with permission (Article 134), which would presumably under approval of MAF.

*Selective logging:*

Commercial timber logging in natural production forest areas is only permitted where a forest inventory survey (Article 23 and 24) and forest management plan have been conducted and developed for production land (Article 28), and on the basis of a pre-logging inventory survey for conversion land (Article 29).

The Department of Forestry of the Ministry of Agriculture and Forestry has the overall responsibility for coordinating preparation of management plans in association with relevant sectors and local authorities, as well as for final endorsement of these plans (Article 22, 39).

The template of management plans and general principles of planning, the pre-logging inventory, and tree marking are described in [Guideline No. 2156/2006](#) DOF Part III and Regulation No. 0108/2005 MAF, [Article 8](#).

The period of validity of the forest management plan corresponds to a 15-20 year cutting cycle, meaning that every 15 or 20 years the management plan must be revised and updated (Regulation No. 0108/2005 MAF [Article 9](#), [Guideline No. 2156/2006](#) DOF Part IV).

For logging in production forest areas, District Agriculture and Forestry Offices prepare a logging plan based on the forest management plan and pre-logging inventory report approved by the Department of Forestry.

The main requirements of the pre-harvest inventory in production forest areas are listed in the Forestry Law.

The pre-harvest inventory shall be conducted in a harvestable compartment one year before a harvest operation, and includes (Regulation No. 0108/2005, [Article 8](#)):

- A 100 % inventory of all species of large trees that have a girth equal to or greater than an allowable girth for harvest defined in the MAF regulation
- A listing of tree species assessing stand quality and mapping location of large trees that have been previously listed, and
- The designing of skid trails for log extraction, and defining of sites for log yards I and II.

All boundaries of licensed logging areas for natural forests shall be clearly demarcated on maps of an appropriate scale, and on the ground. Logging plans shall include:

- Topographic map, with scale 1:25,000-1:50,000
- Forest management map, with scale 1:10,000-1:25,000, and
- Tree location map, with scale 1:1,000 or 1:2,000

[Guideline No. 2155/2006](#) Part V sets very detailed requirements for the selection of trees to be cut and to leave standing. Part VI describes the tree marking procedure. Results of the Pre-harvest Inventory and Tree Marking are approved by the Provincial Agriculture and Forestry Office (Regulation No. 0108/2005 [Article 9](#)).

#### *Conversion:*

Forest legislation requires precise specification of expected volume and species composition in the annual plan for timber to be harvested in areas of hydropower development, mining, infrastructure construction. This is to be based on the result of the pre-felling survey (Forestry [Law](#), 2007, [Article 18](#); Order No. 17/2008 PM [Article 5](#); Order No. 15/PM, 13 May 2016, [Article 4.1](#)).

Current regulations on management and logging planning do not cover logging in the course of clearance of an area for mining.

Under Article 29 of the Forestry Law (2019), the GoL appoints a 'responsible committee to manage, monitor and inspect the logging in accordance with regulations'. This committee is responsible for operational planning, appointing a logging enterprise, compliance monitoring, and inventory management at log yards I and II (as per Article 32).

The procedure for forming the supervision committee responsible for management of logging and clearing in areas with hydropower development, and its rights and duties, are described in Regulation No. 0112/2008 MAF Article 25 and 27. The supervision committee is mandated to guide the pre-logging survey (assessment of timber resources), and to approve the logging plan through the application by the team responsible for field logging management (Article 6 and 27). On the other hand, Regulation No. 0108/MAF 2005 Article 11 assigns inventory of areas with proposed infrastructure construction to

the Provincial and Capital City Agriculture and Forestry Offices, thus leading to a contradiction in areas of overlap.

According to regulation No. 0108/MAF on 20 April 2005 [Article 8.3](#), pre-harvest inventory within areas with infrastructure projects shall include measurement, coding and stamping of all trees with a diameter at chest height equal to or greater than 10 cm. This measurement is close to [Article 18](#) of the Forestry Law (2007), which requires for surveying prior to infrastructure construction that all tree species with a circumference over 15 cm be marked.

A detailed regulatory framework exists only for logging in reservoir areas of hydropower dams, although the Government has been calling for urgent issuance of additional legislation related to logging in mining areas, hydropower development areas, road alignments, transmission lines and areas to be cleared for tree/industrial crop plantation (Agreement No. 32/PM 2012, [Article 10](#)).

Pre-harvest survey and logging planning in flooding areas of hydropower dams includes assessment of volume of all tree species with a diameter over 10 cm, marking of selected trees (in case of selective logging), zoning logging and NTFP logging areas, mapping of logging and sub-logging areas to a scale of 1:50,000 and 1:10,000, demarcation of logging areas by staking poles, designing of the network of log hauling roads, bridges, log yards, and the surveying of historical and archaeological sites, and of wildlife (Regulation No. 0112/2008 MAF, [Articles 2 and 7](#)).

#### *Plantations:*

Domestic investment enterprises shall operate in accordance with the feasibility study or business plan that was attached to the application for an investment licence ([Law on the Promotion of Domestic Investment, 2004, Article 13](#)).

Plantation owners are required to undertake all tree plantation activities (production and transport of seedlings, site preparation, planting, protection, maintenance and thinning activities etc.) in compliance with the approved plantation management plan and technical standards of the Ministry of Agriculture and Forestry (Regulation No. 196/2000 MAF, [Articles 9-11](#)). Note that it is unclear whether these rules have been elaborated.

Harvest of planted trees for commercial purposes by a registered plantation shall be consistent with the plantation management plan (Regulation No. 196/2000 MAF, [Article 14](#)), although no technical requirements exist on the preparation of that plan.

It is unclear who is responsible for pre-harvest measurements, although there is an expectation that these assessments must be made by the District Agriculture and Forestry Office (Smith and Phensopha, 2014).

A quota system has been developed for natural forests and large scale plantations. While there seems to be a clear protocol that logs from smallholders should be included in the annual logging plan, it is unclear how (or whether) smallholder plantation volumes are actually included, and whether the legality of this timber can be demonstrated subsequently (Smith and Phensopha, 2014).

#### *Description of Risk*

##### *General - Annual logging plan:*

The Annual Logging Plan is developed on the basis of a proposal prepared by the Department of Forestry of the Ministry of Agriculture and Forestry. The proposal is itself prepared on the basis of applications submitted by provincial authorities. Formally, provincial applications must be based on the actual supply capacity of the forests, a long-term forestry development strategy, and on the amount of wood harvested by necessity of forest clearance for development projects. In practice, however, requests for quota are usually bound up with the financial needs of central and local authorities and demands for raw materials by the various sawmills, furniture makers and other wood processing factories in each province (Baird, 2010; Forest Strategy to the Year 2020 of the Lao PDR, 2005).

Minister of Agriculture and Forestry, Dr Lien Thikeyo, describing forestry management in Laos, highlighted that officials have misunderstood the division of responsibility between the central and local levels, and that some village and district authorities approve wood quotas for entrepreneurs despite the fact that it is not their role to do so (Vientiane Times, 14 June 2016).

Deputy Minister of Agriculture and Forestry, Mr Thongphat Vongmany, also stressed the point that many local (provincial and district) authorities have violated the Forestry Law in the past by granting logging permission for timber not included in the Annual Logging Plan and without having a Lawful right (Vientiane Times, 14 June 2016).

The WWF's report (Smirnov, 2015) concludes that the legal status of much of the timber harvested in Laos is in doubt because the Government of Laos lacks reliable information on issued logging licenses (quotas). Furthermore, numerous signs have been observed in production forest areas of locals felling and processing logs into sawnwood/planks. This is done without logging permits and undermines the Annual logging plan.

#### *Selective logging:*

Since the 2011-12 season, the Lao government has not issued national quotas on logging in production forest areas before a forest survey and forest management plan have been made. The moratorium was articulated in Order No. 31/PM 2013, while for the first time a decision not to approve Annual Logging Plan in production forest areas was announced by Deputy Prime Minister on January 26, 2012 (Vientiane Times, 27 January 2012).

Agreement No. 32/PM 2012, Article 4, called for urgent development of forest management plans for production forest and that these be completed in 2015. The Ministry of Agriculture and Forestry aimed to complete a survey on the remaining areas of production forest which had yet to be surveyed and assessed by 2015 (Vientiane Times, 05 May 2014). However, work was still in progress in the first half of 2016. According to an official from the Forest Department of the Ministry of Agriculture and Forestry, by May 2016 the forest survey was about 50 or 60 percent complete (Vientiane Times, 09 May 2016). Order No. 15/PM on 13 May 2016 reinstated the temporary suspension of logging in production forest, and stressed the necessity of carrying on the development of production forest management plans (Article 4).

As the Government of Laos has the opportunity to allow logging in national forests in any given year, the risks in relation to selective logging are described based on the practices of selective logging before the moratorium was in place. Whether the risk specification will be changed if selective logging is allowed depends on whether the legislation is properly implemented.

According to the Forest Strategy to the Year 2020 of the Lao PDR (2005), it was reported that occasionally:

- Management plans for production forest areas are not implemented,
- Logging has been undertaken immediately after completion of the management survey, without awaiting the pre-logging survey or tree marking, and
- In spite of long-term logging plans, logging rotations and annual coupe areas specified in management plans, logging actually proceeds predominantly in accessible or well-endowed areas, or focuses on higher value trees.

Many researchers have reported that personnel of District Agriculture and Forestry offices responsible for coupe demarcation in accordance with management plans have no relevant experience (for instance, working with maps), lack the necessary equipment and, what is more, important foresters are not incentivised to fulfil these duties. This, combined with their very low salaries, makes it easier for them to participate in corrupt management practices (Hodgdon, 2010).

For instance, inspection in an FSC-certified production forest area (Thapangtong districts of Savannaket province) with a valid forest management plan and approved logging plans (Jonsson, 2006) revealed that:

- On all inspected logging sites, no tree was marked as per requirements (simplified marking was done with bad paint and in such a way that it was often impossible to read the numbers), and
- Most of the tree maps did not have skid trails marked.

#### Ghost inventories and inaccurate inventory

Timber logged from conversion forest areas has generally not been subject to a forest inventory or of sufficient quality to allow effective monitoring and accountability. Consequently, logs were often sourced from outside approved areas (noting such areas were in themselves usually poorly defined) and either directly exported or laundered by the mixing of logs from unauthorized areas.

According to Baird (2010), most pre-logging inventory in production forest areas was not actually done at all, let alone according to the stated rules. Instead, officials often conduct "ghost inventories", while they sit in government offices, or at home.

Given that many production forests have already been depleted by predatory logging, forestry officials have fabricate survey data in such a way as to overestimate volumes of particular commercial species. Extra volume of timber is acquired from elsewhere (including national protected areas) and then it is effectively laundered as legal (Baird, 2010).

It is a well-known practice that authorities at different levels (national, provincial, district) allocate various kinds of "special" logging plans in categorised forests over and above the harvestable volumes as per approved management plans in production forest areas and logging plans for clearance in areas with development projects. As timber resources are being deprived, this further undermines the inventory and management planning conducted for selective logging. According to Baird (2010), there are various kinds of "special" logging plans, including: for deadwood, debt repayment, barter-development, military logging, district and village construction etc. The specific terms for many of these logging plans vary, and the arrangements are often unclear, or at least not transparent to a large number of officials, let alone the general public, and the terms are not included in the management plan (see more about "Special logging plans" under section 1.4, Logging Permits). This practice also violates the Forestry Law, which allows timber logging only under the national annual logging plan.

All types of "special" quotas are difficult to control. Logging sites are allocated in areas with good forest stands with no regard for basic forestry practices. Allocation of special quotas in production forest areas places an additional burden on timber resources, undermining the expediency of forest management plans and depreciating production forest areas as a future source of commercial timber. In 2012, Agreement No. 32/PM Article 5 required authorities to approve special logging plans only in the areas of infrastructure development projects, clearance for tree and industrial crop plantation establishment which have already been approved by the Government, and with proper management. However, this is often not the case. It is quite likely that residual timber stock in production forest areas has already been significantly diminished compared to the volumes shown in surveys, as in reality timber extraction in production forest areas has continued unabated (Smirnov, 2015).

#### *Conversion:*

There is evidence that management and planning of logging in areas with development projects fail to comply even with basic requirements of the relevant legislation. The required total measurement of all trees of exploitable diameter is unfeasible under current conditions due to financial and technical restrictions, therefore the survey must be conducted in sampling plots representative of the main forest formations.

For road construction, rigorous documentation is typically lacking by the start of construction, and projection of the route after the beginning of construction is common practice. In such conditions it is

infeasible to estimate expected volumes and species composition prior to the beginning of the work (Smirnov, 2015).

Two detailed case studies on timber logging under quotas for road construction and limestone quarry conducted by the WWF (Smirnov, 2015) have revealed the following list of major non-compliances in relation to conversion of the area:

- There were no maps with correct borders of concessions for what forest land should be converted.
- In case of road construction, there were reasons to believe that a pre-felling inventory was not undertaken at all, and that documents included fictitious data ("ghost inventory").
- In case of limestone quarry pre-felling, an inventory was conducted only for a part of the territory, and the survey recorded only trees with a larger diameter (>30 cm) than is required by Law, meaning that many trees that should have been measured were not.
- This partial pre-felling inventory was completed more than two months after provincial the logging plan had received government approval. Thus, the approved national Annual Logging Plan included only indicative amounts, even though legislation requires provincial authorities to submit applications for approval with precise specification of expected volume and species composition based on results of pre-felling inventories. Moreover, pre-felling inventory was complete already after logging under this quota commenced.
- No logging plans were ever made.
- Border demarcation was not carried out.

According to the Tropical Rainforest Programme report of 2000, logging of flooding areas is often approved for conversion and starts well before the feasibility of proposed hydropower dams has been assessed. There has been criticism that in some cases dam proposals are nothing more than a front for logging. For instance, logging under the pretext of clearance of the area to be flooded for the Xekong 4 hydropower dam continued after the Lao government announced its decision to close the project due to inaction of the developer, and the commencement of coal mining within the proposed flooding areas (Smirnov, 2015).

The WWF report (2000) also questioned the practical necessity of conversion of many hundreds of thousands of hectares of forest for limestone quarrying given that the actual annual rate of expansion of limestone quarries was less than ten hectares (Smirnov, 2015).

In an interview with local mass media in June 2014, the Deputy Minister of Industry and Commerce, Mr. Bounmy Manivong, recognised the existence of loopholes which allow companies to legalise timber from unauthorised sources under the cover of conversion timber harvested during land clearance (mining, road and electricity grid construction projects, flooded water catchment areas with planned hydropower dam project constructions). The Deputy Director General of the Ministry of Agriculture and Forestry's Forest Inspection Department, Mr Paphakon Vongxay, gave examples of cases in which some companies that were involved in road construction began cutting down trees in an area larger than that which was necessary for the road (Vientiane Times, 24 July 2014). Usually a permit is issued, but these permits are issued based on ghost inventories.

For geological prospecting and exploration concessions, which usually cover vast areas, a lack of specific regulations on management and logging planning creates especially favourable opportunities for illegal logging. It is unclear whether reduction of timber stands resulting from logging in the course of land clearance for development projects is recorded and reflected in forest management plans with subsequent recalculation of annual allowable cut in cases where areas with development projects fall inside production forest areas. Otherwise, this unrecorded additional burden on timber resources undermines the principle of sustainability which underlies the forest management plans.

*Plantations:*

Regulations require plantation owners to undertake all operations (production and transport of seedlings, site preparation, planting, protection, maintenance and thinning activities, harvest of planted trees for commercial purposes etc.) in compliance with approved plantation management plans and the technical standards of the Ministry of Agriculture and Forestry (Regulation No. 196/2000 MAF, [Articles 9-11, 14](#)). However, these rules are not yet promulgated and often management plans are not developed for plantations.

In the absence of plantation management plans, evidence suggests that plantations are inadequately managed – silviculture practices, such as thinning, pruning and weeding, do not occur as required (Smith and Phengsopha, 2014).

Summary:

For the Annual Logging Plan, there is risk that the Annual Logging Plan is based on inadequate inventory and requests from districts, leading to approvals for logging not reflecting the resources available on the ground. This picture is further distorted by “special logging plans” that are issued without taking the annual logging plans into consideration.

For all source types, there is risk of or relating to:

- Wood quotas approved by officials without legal authority
- Lack of inventory survey, or documents which include fictitious data (“ghost inventory”)
- Lack of, or delay in, logging/management plans
- Lack of border demarcation

For Selective logging there is risk of:

- Lack of tree marking, or marking not done according to requirements (bad paint/unclear marking)

For Conversion there is risk of or relating to:

- Logging in areas with development projects fails to comply with basic requirements of relevant forest legislation
- Maps with no or incorrect borders of concessions for what forest land should be converted
- Conversion for road construction: lack of documentation by the start of construction, and projection of the route done after construction has begun

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified [Laws](#) are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.3.6. Risk designation and specification**

Specified risk

#### **1.3.7. Control measures and verifiers**

- Field visits: to verify that contractors have a Timber Extraction Contract
- National and provincial annual logging plans/quotas approved by the National Assembly and the Ministry of Agriculture and Forestry: relevant quota has to be included in Annual Logging Plan for current year.
- Forest management plan for production forest area endorsed by the Department of Forestry of the Ministry of Agriculture and Forestry: forest management plan must be approved for concerned production forest area; allows verification of information on location of logging sites, annual allowable cut, as well as composition of tree species available for logging.

- Pre-logging inventory and tree marking report approved by Provincial Agriculture and Forestry Office: must be undertaken in year preceding logging season, and must include maps in accordance with requirements; data from tree marking report (species, sizes, volumes) must match specification of timber on sale.
- Logging plan approved by the supervision committee responsible for logging management or by Provincial Agriculture and Forestry Offices (for conversion timber): must be undertaken in year preceding logging season and include maps in accordance with requirements; data from tree marking report (species, sizes, volumes) must match specification of timber on sale.
- Village Forest Management plan: includes information on areas allocated for smallholding tree plantations, age of plantations, planted tree species.
- Plantation management plan for registered plantation: includes information on location of parcels allocated for logging in current year, age structure and planted species.
- Field inspection: to confirm plans are in accordance with legal requirements, and that maps correspond to actual delineation on the ground.

## 1.4. Logging permits

*Legislation regulating the issuing of logging permits, licenses or other legal document required for specific logging operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of logging permits. Risk relates to situations where required logging is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain logging permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where logging permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, logging permits from sites other than the actual logging site may be provided as a false proof of legality with the harvested material.*

### 1.4.1. Applicable Laws and regulations

*General:*

- Vehicles, Machinery and associated equipment for logging, haulage and transportation is regulated under Article 38 of the Forestry Law (2019).
- Penal Code (2017) Chapter 10 defines corruption, the circumstances where it occurs, and the offences and penalties that apply.
- Decision No. 0080/2012 MAF on Procedures for Importation, Management and Utilization of Chainsaw (Wood-Cutting Machine), 19 June 2012, [Article 4](#), on requirement for import license, [Article 8](#) on registration and [Article 9](#) on notification of use. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=295>
- Notification No. 1440 / MOIC.DIMEX on Management of wood transport vehicle, wood extraction machinery, and wood processing machinery, 08 September 2008.
- Order No. 15/PM On Strengthening Strictness of Timber Harvest Management and Inspection, Timber Transport and Business, 13 May 2016, [Article 4.3](#). on prohibition for project developers or construction contractors to carry out logging in the infrastructure development projects and prohibition to carry out the direct trade or exchange of timber with the infrastructure development projects, [Article 9](#) on establishment of state logging units. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=1013> (in Lao)

#### *Selective logging:*

- [Law No. 06/2007 NA on Forestry](http://flegtlaos.com/resources/forestry-legality-compendium/), 24 December 2007, [Articles 49, 55](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Article 10](#) on promoting and investment in logging organizations/units. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Agreement No. 0182/2009 MAF on the Establishment and Management of Timber Harvest Units and Enterprises, 23 February 2009, [Articles 3, 4, 5, 6, and 7](#) on timber logging units, and [Articles 13, 14, 15, 16, and 17](#) on timber logging enterprises. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, [Article 5](#) on awarding contracts on logging. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest](#), 6 November 2006, Part IV on contents of logging plans, Part V on logging plan approval procedure, quota allocation and logging permit, Part X, on silvicultural system and operations, log marking requirements, documentation requirements and documentation requirements and Part XIII on restrictions. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### *Conversion:*

- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Article 5.2](#). Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Regulation 112/2008 MAF Regarding the Logging and Post-Logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Chapter III Section 1 on setting up committee for logging management and reservoir cleaning (incl. [Article 27](#) on issuing logging permit). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, [Article 5](#) on awarding contracts on logging. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### *Plantations:*

- [Law No. 06/2007 NA on Forestry](http://flegtlaos.com/resources/forestry-legality-compendium/), 24 December 2007, [Articles 48](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, [Article 14](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>

### **1.4.2. Legal authority**

- Selective logging: Provincial Agriculture and Forestry Offices.
- Conversion: Supervision committee responsible for logging management comprised of various relevant agencies as well as local authorities or specific taskforce.

- Plantations: District offices of Agriculture and Forestry.

#### 1.4.3. Legally required documents or records

- Selective logging: Logging contract on logging in production forest areas between Provincial Agriculture and Forestry Offices and operator and logging permit.
- Conversion: Logging contract on logging in areas with infrastructure development, mining, tree and industrial crop plantations between specially appointed committee responsible for logging management and operator, as well as logging permit issued by the supervision committee.
- Plantations (concessions): Approval of District office of Agriculture and Forestry or by Provincial or Vientiane Capital Agriculture and Forestry Offices via a request to District Agriculture and Forestry Offices for registered plantations.
- Plantations (smallholding): Approval of District office of Agriculture and Forestry or by Provincial or Vientiane Capital Agriculture and Forestry Offices via a request to District Agriculture and Forestry Offices.

#### 1.4.4. Sources of information

##### *Government sources*

- opendevlopmentmekong.net (2015). *35 percent of budget for debt repayment* [online]. Vientiane Times, October 28, 2015. Available at: <https://opendevlopmentmekong.net/news/35-percent-of-lao-budget-for-debt-repayment/#!/story=post-917995&loc=17.9640988,102.6133707,7>
- laolandissues.org (2012). *Govt postpones this year's logging plan*. [online]. Vientiane Times, 27 January 2012. Available at: <http://www.laolandissues.org/2012/01/27/govt-postpones-this-years-logging-quota/>
- laolandissues.org (2013). *Govt halts private involvement in office project*. [2013]. Vientiane Times, 17 Sep 2013. Available at: <http://www.laolandissues.org/2013/09/17/government-halts-private-involvement-in-office-project/>
- laolandissues.org (2015). *Log export prohibition to benefit furniture entrepreneurs*. [online]. Vientiane Times, 21 September 2015. Available at: <http://www.laolandissues.org/2015/09/21/log-export-prohibition-to-benefit-furniture-entrepreneurs/>
- Ministry to set up logging units / Vientiane Times, 16 June 2016
- ventiontimes.org (2016). *Province, district authorities have no right to approve logging*. [online]. Vientiane Times, 14 June 2016. Available at: <https://opendevlopmentmekong.net/news/province-district-authorities-have-no-right-to-approve-logging/#!/story=post-1858925&loc=17.9640988,102.6133707,7>

##### *Non-Government sources*

- Baird, I. (2010). Quotas, powers, patronage, and illegal rent-seeking. The political economy and the timber trade in southern Laos. [online]. Forest Trends, Washington D.C., U.S.A. Available at: [http://www.forest-trends.org/documents/files/doc\\_2421.pdf](http://www.forest-trends.org/documents/files/doc_2421.pdf)
- Jonsson, T. (2006). Control of Timber Production. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- Smirnov D. (2015). Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>

- Smith, H. and Phengsopha K. (2014). Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy\\_Brief\\_on\\_Smallholder\\_Plantations\\_in\\_Lao\\_PDR\\_Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy_Brief_on_Smallholder_Plantations_in_Lao_PDR_Eng.pdf)

#### 1.4.5. Risk determination

##### *Overview of Legal Requirements*

Logging permits are issued on the grounds, and upon receipt, of an approved forest plan (quota) and logging plan. The equipment used by logging companies (chainsaws, timber trucks, wood extraction machinery etc.) must be licensed.

##### *Selective logging:*

The issue of logging plans in production forest areas is suspended (2016). However, the Government can lift this suspension for any given logging season.

As legally required, the Provincial Agriculture and Forestry Offices and District Agriculture and Forestry Offices are to organise and monitor selective logging operations in production forest areas according to forest management plans and the annual logging plan. There are two fundamental documents that allow logging operations: a signed logging contract between Provincial Agriculture and Forestry Offices and the operator (comprised of duty, responsibility and instructions that logging contractors need to strictly follow), and a logging permit ([Guideline No. 2157/2006 DOF](#)).

On a formal level, timber logging in production forest areas (including logging and hauling logs to log yard II) shall be conducted by “using logging units that are officially established” by approval of the Ministry of Agriculture and Forestry under administration of the agriculture and forestry authorities, or are otherwise sub-contracted under supervision of Government staff with the participation of affected villagers ([Agreement No. 32/PM, 2012, Article 5](#)).

The necessity, and development, of specialised organisations and institutions to realise “complex forestry activity (including logging, tree planting, protection and rehabilitation) on [a] continuous and professional basis is under management responsibility of local authorities and related line agencies” is stressed in [Order No. 17/2008 PM, Article 10](#). PMO15 assigned the Ministry of Agriculture and Forestry to collaborate with local authorities on the establishment of logging units to regularly conduct timber harvest in conjunction with carrying out forest protection, and preservation activities under the supervision of the local authorities and relevant sectors ([Article 9](#)). Further details on logging units are specified in [Agreement No. 0182/2009 MAF on the Establishment and Management of Timber Harvest Units and Enterprises](#).

In reality, it is common practice for Provincial Agriculture and Forestry Offices to contract private companies for specific logging operations.

All approved logging must be within production forest area boundaries and subject to management plans; activities not included in the management plan, or otherwise in violation of Forestry [Law](#) and its implementing regulations, are prohibited.

##### *Conversion:*

Permission for wood extraction under development projects (logging contracts and logging permits) is granted by specially appointed supervision and management committees, or by “a specific taskforce to be responsible for the management” ([Order No. 17/2008 PM Articles 5.2](#); [Regulation 112/2008 MAF Article 27](#)). Contracts on logging in areas with infrastructure development, mining, tree and industrial crop plantations shall be awarded through bidding to companies which meet technical and capacity requirements ([Agreement No. 32/PM, 2012, Article 5](#)). [Article 4.3](#) states that it is prohibited “for project developers or construction contractors to carry out logging in infrastructure development projects and ... [on] carry[ing] out the direct trade or exchange of timber with infrastructure development projects.”

### *Plantations:*

Harvest of timber in a commercial tree plantation shall comply with that plantation's management plan and be approved by a permit issued by the District Agriculture and Forestry Office (Regulation No. 196/2000 MAF [Article 14](#)), which shall report to the Provincial Agriculture and Forestry Office on the permits issued. On the other hand, Forestry [Law \(2007\) Article 48](#) requires a permit to be obtained for felling of planted trees for commercial use from Provincial or Vientiane Capital Agriculture and Forestry Offices via a request to the relevant District Agriculture and Forestry Office. In the process of issuing logging permits for tree plantation, there is no difference between logging by smallholders for commercial use and large scale industrial concessions.

### *Description of Risk*

#### *Selective logging and Conversion:*

Formally, logging/timber logging in natural forests is separated from sales turnover of timber, since harvested timber is considered to be state property that must be sold via auction or by means of negotiation. Consequently, an operator/contractor (state logging unit or logging company) provides a logging service which is paid for by state agencies.

However, due to the absence of state logging capacity and funds to pay for logging services, in practice logging contracts are given to a company that is interested in the acquisition of the entire timber harvest or of its share. Payment for logging is by barter, i.e. the fee for logging services is taken from the money (royalties) paid by the company to the Government for harvested timber.

Timber is usually sold at the lowest price, which is many times lower than the market price. Besides this, in practice, logging companies and responsible state agencies view logging permits as permission to harvest some specific volume of timber, while other logging specifications, such as timber line, species composition etc., based on pre-felling inventory, are disregarded (Smirnov, 2015).

Given these conditions, companies are generally willing to pay substantial amounts of money in the form of bribes to relevant forestry authorities at the provincial or district level in order to gain logging permits (Baird, 2010).

The Ministry of Agriculture and Forestry has also admitted that some provincial and local authorities fail to enforce legally required timber logging regulations and certification and stamping procedures, and that a lack of coordination and enforcement is providing room for some companies to carry out illegal logging, which is facilitated by some officials exploiting loopholes in the permit issuing system (Vientiane Times, 27 January 2012). Laos' government-controlled media acknowledges that some government authorities are conspiring with timber businesses by forging documents to enable illegal logging (Vientiane Times, 21 September 2015).

Deputy Director General of Forestry Department of the Ministry of Agriculture and Forestry, Mr. Bualy Phameuang, has stressed that currently relevant government officials have not been involved in logging conducted by project developers (companies), and that consequently huge numbers of trees in various projects have been felled illegally outside areas approved by the government, including areas where expensive trees are available (Vientiane Times, 16 June 2016).

In light of this issue, Prime Minister Thongloun Sisoulith, on 13 of May 2016, issued Prime Ministerial Order No. 15, prohibiting project developers or construction contractors from carrying out logging in infrastructure development projects ([Article 4.3](#)) as this must be done by the state officials in charge.

Deputy Minister of Agriculture and Forestry Mr Thongphat Vongmany recently pointed out that the Forestry Law allows only the state officials in charge to carry out the logging and sale of lumber through a bidding process (Vientiane Times, 14 June 2016).

However, according to the Deputy Director General of the Forestry Department of the Ministry of Agriculture and Forestry, Mr Bualy Phameuang, at the moment, logging units have only been reported in Savannakhet province; logging units in other provinces are expected to be initiated next year. "If the

establishment of the units is not initially possible in all provinces, we can begin with some four or five provinces in the early stage,” he said (Vientiane Times, 16 June 2016).

*Selective logging:*

Jonsson (2006) noticed the lack of a standardised format and content for logging contracts specifying the key elements of the services to be provided, and references to guiding documents. Inspection of logging sites in the Don Situang production forest area has demonstrated that required documents (including maps, logging plans etc.) were scattered, and elements were missing (Jonsson, 2006). Permits were issued despite this lack of documents, which reflects a general problem at the national level.

Special logging plans

A number of different forms of quotas have been and are still being issued. There is a lack of a clear legal basis for the issuing of “selective logging” quotas.

Deadwood quotas usually do not specify locations for cutting (and sometimes do not specify quantity), and no tracking system exists to identify the origin of deadwood. These quotas, which can be for volumes of dozens of thousands of cubic metres, have been used to illegally cut healthy trees in any category of forest, including production forest areas (Jonsson, 2006).

For instance, inspection of log yards with timber harvested under deadwood quotas in the Don Situang production forest area, under a valid forest management plan and logging plans which have been formally approved in line with prescribed official procedures, has shown that at least one third of the timber cut was fresh (Jonsson, 2006). Besides this, logging of “deadwood” at sites with recent selective logging causes additional damage to remaining trees. Baird (2010) reports a case in which Champassak province authorities issued a deadwood quota for cutting unspecified quantity of Siamese rosewood (*Dalbergia cochinchinensis*), a species officially listed as prohibited for logging.

The Government of Laos acknowledges serious problems with deadwood logging plans in general, but especially in relation to conservation forests (National Protected Areas). Despite the lack of legal foundation, the practice was recognised and, since 2008,, sites for logging deadwood are required to be located and identified, although verification remains a problem (Baird, 2010).

Minister of Agriculture and Forestry Dr Lien Thikeyo pointed the finger at permission to collect dead or poisoned trees as one of the reasons for illegal logging: “...this process has never ended as people continue to poison the trees and use that as an excuse to cut them from the forests” (Vientiane Times, 14 June 2016).

Debt-repayment logging plans are designed to facilitate debt repayment to foreign countries, especially former or present-day socialist allies. The government of Laos issues these quotas to large logging and wood processing companies, and profits from selling wood products (after the company takes its cut) are paid to lending countries (Baird, 2010). Usually, no information on the origin and conditions of the debts is publicly available, and no such quotas are mentioned in available documentation. One of the concerns associated with debt-repayment quotas is that, allegedly, there is no restriction on the source of the timber, and contractors can cut virtually wherever they choose (Tropical Rainforest Programme, 2000). In 2012, Agreement No. 32/PM Article 2 called for termination of debt repayment by allocating logging plans directly to investors, but the practice has not been entirely prohibited, leaving room for debts to be settled through timber transactions “in cases of necessity”. In 2012, trucks were observed on the Lao-Thai border with timber harvested for repayment of a debt to Russia (author’s personal experience).

Barter-development logging plans involve timber being traded for investment in public projects, such as the building of infrastructure, especially public buildings and roads (Forestry Strategy to the Year 2020 of the Lao PDR, 2005).

For instance, provincial logging plans in Attapeu and Champassak provinces for the 2011-12 logging season allocated timber to a Vietnamese corporation (supposedly, for the construction of the 25th

Southeast Asian Games athletes' village in Vientiane), and for construction of road #14C correspondingly (Smirnov, 2015). According to a report of the Tropical Rainforest Programme (2000), this system has the unfortunate result that contractors are motivated to carry out construction at the lowest possible cost while extracting the maximum possible value of timber from forests. In 2012, Agreement No. 32/PM [Article 2](#) prohibited the granting of permits to barter for timber with any type of projects.

Despite being prohibited, the practice of bartering logging plans in exchange for investment in public projects is still used by local authorities. Deputy Minister of Agriculture and Forestry Mr Thongphat Vongmany stressed that most of the logging illegally approved by local authorities was in exchange for infrastructure development projects, including road construction in which the exchanged trees were used to finance construction. Such schemes were reportedly making use of a loophole for massive illegal loggings (Vientiane Times, 14 June 2016). In light of the issue, Prime Minister Thongloun Sisoulith, on 13 May 2016, issued Prime Ministerial Order No. 15, prohibiting all state bodies from exchanging wood with development projects. It is currently not possible to assess whether this new Order will be effectively implemented and enforced.

Military logging plans can be granted to military companies within their areas of interest (including the so-called "National Defence Strategic Zone" defined in [Decree](#) No. 111/PM 2011) to obtain wood for construction projects, or to raise money for various activities related to military infrastructure development (Baird, 2010). Logging operations of these companies are claimed to be outside the jurisdiction of the Ministry of Agriculture and Forestry, and information about their activities, including the volumes of timber harvested and where and how their products are marketed, is confidential (Moore et al., 2011; Tropical Rainforest Programme report, 2000).

District and village construction quotas are granted for communal constructions (village offices, meeting halls, schools, health centres, etc.) by approval of the district or municipal administrations on the recommendation of the District or Municipal Agriculture and Forestry Offices. [Article 40](#) of the Forestry Law (2007) stipulates that timber under these quotas is to be harvested only from village-use forests, and that these quotas are supposed to be approved by the central government as part of the provincial or capital city Annual Logging Plan (quota). Besides district and village construction quotas, villagers are entitled to harvest non-prohibited timber species in village-use forests for building and repairing their own house with the approval of the village administration and permission from the District or Municipal Agriculture and Forestry Offices (Forestry Law 2007, [Article 41](#)). Due to a lack of village forest management plans formulated and implemented by villagers, almost all villagers make extensive use of nearby forests regardless of the classification and rules on use (Forestry Strategy to the Year 2020 of the Lao PDR, 2005). While officially not a source of commercial timber, this timber often enters the commercial timber chain and causes deterioration of commercial timber resources.

Extra provincial quotas are designated to specific sawmills which are reported to be directly involved in operations over and above the harvestable volumes as approved in the logging plan under valid forest management plans. Inspection in an FSC-certified production forest area has shown that trees under these quotas were cut wherever loggers found attractive commercial timber, and that this included logging blocks allocated according to approved logging plans, thus imposing extra burden on available timber stands (Jonsson, 2006). Such quotas include permission for removal of logs "left over from earlier years' operations" from log yards. In practice, this permission is often used by loggers as a pretext to enter forests in order to harvest extra-timber (Jonsson, 2006).

#### *Conversion:*

Regardless of 2012 Agreement No. 32/PM [Article 2](#), which prohibits granting permits to barter timber for any type of public projects (construction of roads or public buildings), logging permits for logging conversion timber can be granted to the construction company responsible for upfront investment from its own resources against debt obligations to the authorities which have contracted the project. In such cases, debt obligations are considered by the contractor and controlling agencies to be an indulgence,

which allows the contractor to violate the [Law](#) and to harvest illegal timber as a debt service payment (Smirnov, 2015).

There is evidence that the cost of public construction is overestimated through “behaviourism” agreements between government officials and contractors. For instance, before making debt payments to contractors in 2016, the government ordered that an inspection be carried out “of those state investment projects [of] which implementation was completed if the investment cost was reasonable, before disbursing the money” (Vientiane Times, October 28, 2015).

In recent years, the government, being concerned with the scale of the debenture situation, has been trying to limit the number of public work contracts which are not attached to funds set aside in the budget (Vientiane Times, 17 Sep 2013; Vientiane Times, October 28, 2015).

Prime Ministerial Order No 15, issued on 13 of May 2016, reinstated the prohibition on carrying out the direct trade or exchange of timber with infrastructure development projects ([Article 4.3](#)).

Granting mining concessions in conservation and protection forests is in apparent contradiction to the [Law on Mining \(1997\) Article 16](#), which prohibits mining (prospecting, exploration, extraction) in “protected forest areas”, with the result that permits for conversion are issued under illegal conditions. Analysis conducted by Stenhouse R. and Bojö J. (2011) has revealed three mineral exploration concessions and numerous general survey concessions within national protected areas (including petroleum exploration concessions in six national protected areas). According to their estimates, up to 5% of the national protected areas is under some kind of mining concession, and up to 2.4 percent of the NPA system may become exploited for mining. The inventory of state land leases and concessions in Laos (Schönweger et al., 2012) found around 80,000 ha of mineral extraction concessions within conservation and protection forests.

In another case, a map for a clearance area of 1,172 ha was mistakenly attached to a contract which many times exceeded the size of an area granted for coffee plantation clearance (150 ha). In this case, the company made use of this “mistake” and cleared an area much larger than had been approved.

#### *Plantations:*

Legislation sets conflicting requirements as to which agencies are responsible for granting permits to log plantation timber for commercial purposes (Provincial or Vientiane Capital Agriculture and Forestry Offices or District Agriculture and Forestry Offices).

It is evident that the majority of smallholder plantations do not have registration and plantation management plans (see 1.3). This makes it impossible to get a legal permit for timber logging in accordance with the [Law](#). Many of the regulations for logging applied to plantations have been developed for natural forests, and large-scale plantations are overly complex, costly, and inappropriate to the scale of plantings when applied to smallholder plantations. There is evidence that some farmers “borrow plantation certificates” when they sell their timber in order to meet this legal requirement (Smith and Phengsopha, 2014).

#### Summary:

For Selective logging and Conversion, there is risk of or relating to:

- Bribes used to obtain logging permits (corruption)
- Lack of certification and stamping procedures
- Governmental authorities involved in forging of documents
- Logging outside areas approved by government

For Conversion, there is risk of:

- Conversion of areas within conservation/protection forests or development projects

- Clearance of areas greater than areas granted for development projects

For Selective logging, there is risk of:

- Permits issued despite lack of documentation

For Special logging plans, there risk of:

- Permits issued despite lack of legal basis to issue Special Logging Permits

For Plantations, there is risk of:

- Permits issued without required registration and management plans
- Farmers do not have Plantation Certificates, but instead borrow them when required

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.4.6. Risk designation and specification**

Specified risk

#### **1.4.7. Control measures and verifiers**

- Contract for logging in production forest areas between Provincial Agriculture and Forestry Offices and operator, and logging permit: the contractor shall be a state logging unit.
- Contract for logging in areas with infrastructure development, mining, tree and industrial crop plantations between specially appointed committee responsible for logging management and operator, and logging permit issued by the supervision committee: the contractor shall be a state logging unit. In cases where the contractor is a concession holder or its associate company, this can be indicative of illicit activities. Borders of logging (clearing) area must comply with project design (approved route of road, transmission line, maximum flooding level of reservoir etc.). Approval of District office of Agriculture and Forestry or by Provincial or Vientiane Capital Agriculture and Forestry Offices via a request to District Agriculture and Forestry Offices for verification of registered plantations is required.
- Government permission is required for logging of prohibited tree species (in case of forest conversion).

## TAXES AND FEES

### 1.5. Payment of royalties and logging fees

*Legislation covering payment of all legally required forest logging specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.5.1. Applicable Laws and regulations

*Selective logging and Conversion:*

- Decree No. 001/2012 PRO on Sharing of Revenue from Timber Harvests in Production Forest Areas, 31 December 2012, Articles 2 and 3 on the definition of timber revenue and scope of applications, and Articles 4 and 5 on the division of revenue. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 0092/2009 MoF for the Managing the Collection of Revenue from the Sale of Timber and NTFPs, 13 January 2009, Articles 1 and 4 on timber fee payment. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2297/2004 MoF on Bidding Regulations for Buying Timber and other Forest Products from State Standing Timbers, Infrastructural Areas and Production Forest Areas at Second Landings, 29 October 2004, Article 6 on payment. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Law No. 36/PO on Mining, 31 May 1997, Article 40 on rights in the mining area. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81056/87936/F-2117548536/LAO81056.pdf>

*Plantations:*

- Law No. 01/1994 NA on Foreign Investment, 14 March 1994, Article 16 on natural resources tax and royalties. Available at: <http://www.bol.gov.la/english/investmentLaws.html>
- Directive No. 1849/1999 MAF on Registration of Tree Plantations, 10 July 1999, Article 4 on tax and royalty exemptions. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, Article 20 on Resource Tax and Royalties Exemption. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### 1.5.2. Legal authority

- Selective logging: Provincial Agriculture and Forestry Offices, Ministry of Industry and Commerce, Ministry of Finance Department of Public Asset Management.
- Conversion: The supervision committee responsible for logging management comprised of various relevant agencies and local authorities or specific taskforce, Ministry of Industry and Commerce, Ministry of Finance Department of Public Asset Management.

#### 1.5.3. Legally required documents or records

- Selective logging and Conversion: Log list, contract on sale-purchase, royalty payment receipt (certificate).

#### 1.5.4. Sources of information

#### *Government sources*

- pressreader.com (2016). *Ministry to set up logging units*. [online]. Vientiane Times, 16 June 2016. Available at: <https://www.pressreader.com/thailand/the-nation/20160617/281599534784557>
- rightslinklao.org (2016). *Nation losing more forests than it gains, minister says*. [online]. Vientiane Times, 14 June 2016. Available at: <https://rightslinklao.org/?p=7359>
- Laolandissues.org (2015). *Poor accounting hollows out timber revenues*. [online]. Vientiane Times, 08 July 2015. Available at: <http://www.laolandissues.org/2015/07/08/poor-accounting-hollows-out-timber-revenues/>
- opendevelopmentmekong.net (2016). *Revenue gain not equal to forestry losses*. [online]. Govt / Vientiane Times, 04 July 2016. Available at: <https://opendevelopmentmekong.net/news/revenue-gain-not-equal-to-forestry-losses-govt/>

#### *Non-Government sources*

- EU FLEGT Facility (2012). *Study for Understanding Timber Flows and Control in Lao PDR*. [online]. LTS International. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>
- Forest Sector Performance Indicators 2014, Review report. Part III. September 2014.
- rfa.org (2016). *Lao Tax Collectors Pay to Play*. [online]. RFA - Radio Free Asia. 19 January 2016. Available at: <http://www.rfa.org/english/news/laos/Lao-corruption-01192016150712.html>
- Smirnov D. (2015). *Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation*. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>
- Sigaty, T. (2003). *Report on Legal Framework of Forestry Sector for Forestry Strategy 2020 Lao PDR*. SIDA. Vientiane. Laos.
- Smith, H. and Phengsopha K. (2014). *Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR*. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy Brief on Smallholder Plantations in Lao PDR Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy%20Brief%20on%20Smallholder%20Plantations%20in%20Lao%20PDR%20Eng.pdf)

#### **1.5.5. Risk determination**

##### *Overview of Legal Requirements*

##### *Selective logging and Conversion:*

Buyers (firms and individuals) shall pay log royalties, or stumpage rates per cubic metre of timber removed (bought) from second log yard. Royalties are set and updated periodically by the Ministry of Industry and Commerce according to species and grades. Amongst other considerations, rates are primarily based on international market data. Royalties act as a floor price, ensuring a minimum level of revenue is collected at the provincial level, while the Government of Laos encourages the use of bidding to secure prices above those set by the Ministry of Industry and Commerce to maximise revenue for the Government, forest management units, and participating villagers.

In addition to national-level royalties, wood processing industries and private logging companies may also be required to pay provincial, district and village development levies and fees.

To help sustain current forest cover, the government has also instigated the collection of Reforestation Fees, charged for sale of both timber and non-timber forest products, to finance reforestation activities. The wood processing companies which have been allocated logs from the government have

to pay the reforestation fee at different rates, fixed for each species category (protected timber species category I or II; controlled timber species category I, II or III).

Timber revenue is transferred to the state treasury and divided according to the timber sharing [Decree](#).

The [Law](#) on Mining (1997) stipulates that the use of wood in mining lease areas requires approval and compensation for the wood ([Article 40](#)).

#### *Plantations:*

Plantation timber is exempted from resource tax and royalties (Regulation No. 196/2000 MAF [Article 20](#), [Directive No. 1849/1999 MAF Article](#)). The Forestry and Tax [Laws](#) and Prime Ministerial [Decree 150/2000 on Land Tax](#), exempt tree plantations from land taxes and fees. Exemptions from land tax have been used to encourage plantation registration, as plantations eligible for tax exemptions must be registered under the [Directive 1849/AF.99](#) to be granted exempt status.

However, there are inconsistencies in the rules as to the quality indicators of plantations that are eligible for tax exemptions. For instance, according to [Decree No. 01/PO on Land Tax \(2007\)](#), registered plantations are exempt from land taxes after three years if they consist of 1,100 trees per ha, while Regulation No. 196/2000 MAF requires an 80% survival rate and more than 800 trees/ha in lowland area, and 600 trees/ha in upland areas ([Article 19](#)).

Temporary land use certificates are only valid for three years, and land tax exemptions are not available within this period because registration as a tree plantation cannot occur until three years after planting.

Scattered plantings are not eligible for land tax exemption.

There is also conflicting information about which government agencies can grant land tax exemptions.

Foreign investors in natural resource exploitation (including investors in tree plantations) shall pay resource/land taxes as stated in a project (concession) agreement with the Government of Laos ([Law on Foreign Investment, 1994, Article 16](#)). According to Sigaty (2003), these requirements have been waived in existing agreements.

#### *Description of Risk*

##### *Selective logging and Conversion:*

Negotiation/bargaining with buyers remains the standard system for sale of logs, contrary to regulations which encourage provincial authorities to maximise revenue from timber and secure prices above those set by the Ministry of Commerce through the use of bidding.

Even prior to logging, rights for buying timber are usually informally reserved for a contractor that bankrolls logging and timber transportation to log yard II. Timber is usually sold by the government at the lowest prices (equal to or slightly above royalties), much lower than market prices.

There is evidence that documents (log lists) specify timber as being of lower grade and smaller size than is accurate as a possible result of informal agreements between buyers and the state agencies responsible for timber sale. This is done to subsequently understate payments/charges in the process of selling and paying taxes to the state on the Lao side (Smirnov, 2015). In some cases, such a deliberate undervaluation may also be a result of the concealed barter of timber in exchange for the construction of public roads and buildings, which is prohibited by the government.

The wood product flow is poorly monitored; the many discrepancies in statistics suggest significant leakages in national revenue (Forest sector performance indicators, 2014).

Only the smaller part of harvested timber is officially registered in log yards as legally required. According to the Study for Understanding Timber Flows and Control in the Lao PDR (2012), only 34%

of the total recorded harvested timber volume from four provinces in the 2010-11 logging season was registered at log yard II, which could suggest significant potential loss of revenue.

The comparison of official data on volumes of issued quotas and the officially registered volume of timber harvested in Laos' four southern provinces in the 2011-12 logging season with data on export of wood products from this area has found that >50% of timber products exported were from undocumented sources. In monetary terms, the value of this undocumented timber could exceed the Lao national budget income from timber sales planned for the 2013-14 fiscal year threefold (Smirnov, 2015).

Regulatory fees and service charges are potentially substantial, and in many cases are not articulated in regulatory guidance. Logging taxes and fees are inconsistently applied, and provincial variations create an incentive for wood to be transported to provinces with more favourable tax treatment (Smith, Phengsopha, 2014).

Consequently, there are inconsistencies in the collection of fees and service charges, causing uncertainty, and also creating the opportunity for unofficial fees to be charged (Smith, Phengsopha, 2014).

According to sources, the tax department is perceived as one of the most corrupt state agency in the country, and the practice of bribing tax officers in return for tax deductions is common (RFA - Radio Free Asia, 19 January 2016).

The embedded problem of corruption in the logging sector has been acknowledged by many, including the Government of Laos.

The Ministry of Finance has identified numerous loopholes in the accounting of timber sold by local authorities, meaning that the government has been missing out on much-needed revenue. For instance, the government has set a revenue target of 100 billion kip from the sale of its timbers for the 2014-15 fiscal year, but in the first six months of this fiscal year only 13 billion kip was collected (Vientiane Times, 08 July 2015).

Forestry officials have admitted that financial leaks have been reported in this sector in past years, causing great losses to the national budget (Vientiane Times, 14 June 2016). Forestry officials said losses in revenue from the timber industry were triggered by several factors, including corruption on the part of officials, and illegal logging (Vientiane Times / 04 July, 2016).

Transparency International has ranked Laos 139<sup>th</sup> out of 168 countries in their latest Corruption Perception Index report (2015), with a score of 25 (far below FSC's threshold for low risk, which is 50 points).

As a way to ensure transparency, and to generate more income from the sale of timber for the national budget, the Government of Laos wants state logging units to be solely responsible for felling trees for the government (Vientiane Times, 16 June 2016). The felled timber must then be sold through a bidding process so the government can maximise revenue from this natural resource.

Summary:

For Selective logging and Conversion, there is risk of or relating to:

- Timber of lower grade and smaller size is recorded on log lists in order to subsequently understate payments/charges in the process of selling and paying taxes to the state;
- Unofficial sale, and lack of harvested timber being registered in log yards as required for tax registration;
- Logging taxes and fees are inconsistently applied at the provincial level. Variations create an incentive for wood to be transported to provinces with more favourable tax treatment; and
- Bribing of tax officers in return for tax deductions is not uncommon.

*Plantations*

N/A

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.5.6. Risk designation and specification**

Specified risk

**1.5.7. Control measures and verifiers**

- Log list: made at log yard II. Volumes, composition of species, and sizes in log list shall match characteristics of timber on sale.
- Contract on sale-purchase: proves that timber was officially sold by government agency, and that royalties were paid.
- Royalty payment receipt (certificate): to be compared with market prices and minimum prices set by the Ministry of Industry and Commerce for current year. This information may provide an indication as to whether timber was auctioned or sold via negotiations at the lowest price (which can be indicative of conspiracy between officials and buyer).

**1.6. Value added taxes and other sales taxes**

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

**1.6.1. Applicable Laws and regulations**

- Law No. 04/ NA 2006 on Value Added Tax, 26 December 2006, Article 5, 6, 10, 16, 17,19, 40 and 41. Available at: [http://vientiane.thaiembassy.org/upload/pdf/Law/02-economy/35\\_value\\_added\\_tax.pdf](http://vientiane.thaiembassy.org/upload/pdf/Law/02-economy/35_value_added_tax.pdf)
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, Article 9 on restriction to collect additional taxes from sale of timber. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

**1.6.2. Legal authority**

- Ministry of Finance, Tax Department

**1.6.3. Legally required documents or records**

- Bank deposit slip, payment receipt (certificate).

**1.6.4. Sources of information**

*Non-Government sources*

- Transparency Internationals Corruption Perception Index 2015. [online]. Available at: <http://www.transparency.org/cpi2015>
- Info.worldbank.org (N.Y.). World Bank Worldwide Governance Indicator. [Online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports>

### 1.6.5. Risk determination

#### *Overview of Legal Requirements*

VAT is to be paid in full to the state treasury for the preceding month by the 15<sup>th</sup> of each month, or at the time of import of goods. VAT is to be overseen and collected by the Tax Department of the Ministry of Finance and district- and provincial-level tax divisions.

Exempt from value-added tax are goods and services for export, and activities of sapling nurseries, afforestation, and operations relating to industrial plantations (Law No. 04/ NA 2006 on Value Added Tax, Articles 10 and 19).

Local authorities are prohibited from deriving any additional taxes from sale of logs, timber products, timber transport and export which are not stipulated in the national legislation (Agreement No. 32/PM, 2012, Article 9).

#### *Description of Risk*

Little information has been found on the payment of VAT in Laos. However, in 2015 Laos had a CPI of 25 (below the threshold of 50), and, according to the World Bank Worldwide Governance Indicators – on a scale of -2.5 to 2.5 in 2014 – received a score of -0.39 for Government Effectiveness, -0.71 on Rule of Law, and -0.76 on Control of Corruption, indicating that the country has high corruption levels and a low degree of legal compliance. Furthermore, the specified risk on royalty payment, as well as the high amount of illegal logging, also indicate that issues might be present in relation to the payment of taxes.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk, based on a precautionary approach.

### 1.6.6. Risk designation and specification

Specified risk

### 1.6.7. Control measures and verifiers

- Bank deposit slip
- Payment receipt (certificate)

## 1.7. Income and profit taxes

*Legislation covering income and profit taxes related to the profit derived from sale of forest products and logging activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.*

### 1.7.1. Applicable Laws and regulations

- Law No. 01/1994 NA on Foreign Investment, 14 March 1994, Article 12 on income tax, Article 16 on profit tax. Available at: <http://www.bol.gov.la/english/investmentLaws.html>; <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Law No 11/NA on the Promotion of Foreign Investment, 22 October 2004. Amended 11 November 2016. Available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/lao\\_e/WTACCLAO5A1\\_LEG\\_2.pdf](https://www.wto.org/english/thewto_e/acc_e/lao_e/WTACCLAO5A1_LEG_2.pdf). Amendment: <https://data.opendevelopmentmekong.net/en/dataset/investment-promotion-law-lao-pdr-2016/resource/0cb5adac-389d-453b-a8fd-cc860bf21a62>

- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, [Article 20 on Resource Tax and Royalties Exemption](#). Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Law No. 05/2011 NA on Taxes \(amended\)](#), 20 December 2011, [Articles 54, 55, and 56](#) on scope, application and calculation of rates for contract tax, [Articles 26, 27, 28, 29, 30, 31, 32, 36 and 38](#) on the scope, application, calculation and declaration of income and profit tax rates, [Article 34](#) on exemptions from profit tax, and [Article 33 and 34](#) on deductible and non-deductible expenses, Section 2, [Articles 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53](#), on the scope, application, calculation and declaration of income tax 2011. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>.
- For forest and associated resources, Article 5 of the Forestry Law provides for incentive policies such as credit and exemption or reduction of taxes and duties in accordance to laws for environmental and plantation development activities on degraded or barren forestlands. Other exemptions or reductions provisions are extended for forest and wood products imported and transited through Lao (Article 99), and provisions note the requirement for taxes, fees and duties to be paid in association with transport (Article 35 and 37), imports and transit (Article 99); users of products (Article 127).

#### 1.7.2. Legal authority

- Ministry of Finance, Tax Department
- Customs is the agency responsible for determining and collecting the duties on goods exported from Laos PDR
- Provincial Office of Finance is to make a book for monitoring and inspecting the implementation of contracts at Log Landing II in collaboration with POIC
- Provincial Office of Finance (State Asset Management Office) issues certificates for the payment of tax
- For contracts for the purchase of timber from Production forests contracts must be reported to Finance and are used for tracking the sale of timber volumes against annual volumes and quotas. There is no similar obligation for the sale of plantation timber

#### 1.7.3. Legally required documents or records

- Bank deposit slip, payment receipt (certificate).

#### 1.7.4. Sources of information

##### *Non-Government sources*

- Sigaty, T. (2003). Report on Legal Framework of Forestry Sector for Forestry Strategy 2020 Lao PDR. SIDA. Vientiane.
- Smith, H. (2014). *Legal issues and legality barriers for smallholder plantation owners in Lao PDR* [online]. Presentation published by ACIAR. Available at: <http://www.illegal-logging.info/sites/default/files/Hilary%20Smith%20Presentation.pdf> / [http://teaknet.org/download/teaknet2014/Session%20III/conf\\_1.pdf](http://teaknet.org/download/teaknet2014/Session%20III/conf_1.pdf)
- Smith, H. and Phengsopha K. (2014). *Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR*. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy\\_Brief\\_on\\_Smallholder\\_Plantations\\_in\\_Lao\\_PDR\\_Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy_Brief_on_Smallholder_Plantations_in_Lao_PDR_Eng.pdf)

- Info.worldbank.org (N.Y.). World Bank Worldwide Governance Indicator. [Online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports>

#### **1.7.6. Risk designation and specification**

Specified risk, based on a precautionary approach for all parties liable for tax payment.

#### **1.7.7. Control measures and verifiers**

- Bank deposit slip
- Payment receipt (certificate)

## TIMBER HARVESTING ACTIVITIES

### 1.8. Timber harvesting regulations

*Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.*

#### 1.8.1. Applicable Laws and regulations

*General:*

- Forestry law No. 08/NA, (25 May 2019), Article 28 (natural forests) and 29 (forest conversion areas), and Article 62 (use for public benefits) and 63 (use for households).
- Guideline No. 0105/MAF concerning the Implementation of the Prime Minister’s Order No. 17/PM, dated 22/09/2008 on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 07 November 2008, Article 3.8 on logging season.
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 11 on logging season, Article 20 on approval documentation requirements for logging equipment.
- Decision No. 0116/2007 MAF on the regulation of timber log scaling and grading, 17 May 2007.
- Decision No. 0080/2012 MAF on Procedures for Importation, Management and Utilization of Chainsaw (Wood-Cutting Machine), 19 June 2012, Article 4, on requirement for import license, Article 8 on registration and Article 9 on notification of use.
- Instruction No. 0142/2009 MAF on the Inspection of Forest, Forest Products, Forest Land, Non-Timber Forest Products (NTFPs), Aquatic Animal and Wildlife, 7 October 2009, Article III on inspection procedures, Article III.3 on summary and reporting requirements on inspection, and Article IV on inspection procedure for each type of forest management and forest product manufacture.

*Selective logging:*

- Forestry law No. 08/NA, (25 May 2019), Article 28 (natural forests) and 29 (forest conversion areas), Article 62 (use for public benefits) and 63 (use for households).
- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, Part II, Article 8 on production forest inventory and timber logging system. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2157/2006 DOF on Timber Logging in Production Forest, 6 November 2006, Part IV, on harvest plans and maps, Part VI on forest road construction, Part VII on selection of log yard site, Part VIII on construction of logging camps, Part X, on principles of logging operations, felling technique, log records and marking requirements, skidding and transportation to log yard II, log scaling, post-logging activities aimed at facilitation of natural regeneration, Part XI on post-harvest assessment, and Part XIII (or XIV?) on restrictions. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 60/MAF.03, 24 February 2003, on minimum diameters.

- Guideline No. 2155/2006 DOF on Participatory Forest Inventory, Part VII. Available at: <http://forestindustries.eu/sites/default/files/userfiles/1file/21.-DOF-Guideline-on-Participatory-Forest-Inventory.pdf>
- Guideline No. 0396/208 DOF on Monitoring the Implementation of Production Forest Management, 11 March 2008, Article 4 on monitoring procedure. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

*Conversion:*

- Forestry law No. 08/NA, (25 May 2019), 29 (logging from forestland conversion areas)
- Regulation 112/2008 MAF Regarding the Logging and Post-Logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Section 2 on the guidelines for pre-logging preparations, Article 16 on clear-cutting, Article 19 and 21 on log marking, Article 34 on an evaluation of the actual logging compared to the strategic plan and technical instructions, Section 2 on the guidelines for pre-logging preparations, Section 3 on the guidelines for logging operation. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

*Plantations:*

- Forestry law No. 08/NA, (25 May 2019), Article 30 (felling of planted trees) states owners do not require a survey or apply for permits before logging, however they do need to provide a plantation forest registration document to prove ownership, and also provide details (location, species, number) to District Agriculture and Forestry Office (this requirements also exists for domestic transport under Article 36). Plantations harvested for households and public use are exempt from fees but still need to report timber weight to the village administration.
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, Articles 9-11, 14. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 7 specifies that MAF is to issue specific rules to manage plantation timber, particularly to survey and register tree plantations by individuals and juridical entities in each locality; to establish regulations on logging and the preparation of annual logging plans. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>

#### **1.8.2. Legal authority**

- Selective logging: Provincial and District Agriculture and Forestry Offices.
- Conversion: The supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce.
- Plantations: District offices of Agriculture and Forestry.

#### **1.8.3. Legally required documents or records**

- Selective logging: Logging contract and logging permit, forest management plan for production forest area, pre-logging inventory and tree marking report.
- Conversion: Logging plan.
- Plantations: Plantation management plan for registered plantations.

#### **1.8.4. Sources of Information**

#### *Government sources*

- pressreader.com (2016). *Ministry to set up logging units*. [online] Vientiane Times, 16 June 2016. Available at: <https://www.pressreader.com/thailand/the-nation/20160617/281599534784557>
- opendevlopmentmekong.net (2016). *Province, district authorities have no right to approve logging*. [online] Vientiane Times, 14 June 2016. Available at: <https://opendevlopmentmekong.net/news/province-district-authorities-have-no-right-to-approve-logging/>

#### *Non-Government sources*

- Hodgdon, B. (2010) *Community Forestry in Laos*. [online]. Journal of Sustainable Forestry, 29: 1, 50 –78. Available at: <http://dx.doi.org/10.1080/10549810903463452>
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- rfa.org (2016). *Lao Prime Minister Doesn't Want Business as Usual for the Timber Industry*. [online]. Radio Free Asia, 20 June 2016. Available at: <http://www.rfa.org/english/news/laos/lao-prime-minister-06202016163156.html>
- Phengsopha, K. (2015). Presentation on Study for Understanding Timber Flows & Control in Khammoune, Sayaboury Provinces. [online]. Vientiane, 7th of April 2015. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>
- Smirnov D. (2015). Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>

### **1.8.5. Risk determination**

#### *Overview of Legal Requirements*

##### *General:*

Logging and transportation of logs to log yard II in production forest areas and areas with infrastructure projects must be stopped by 31<sup>st</sup> of May, and are prohibited from 1<sup>st</sup> June to 31<sup>st</sup> October due to the rainy season, even if the logging plan was not fully completed (Order No. 17/2008 PM [Article 11](#) and [Guideline No. 0105/MAF, 2008, Article 3](#)). Logging and timber transportation can be allowed to proceed during the rainy season only in special cases based on government approval in areas with infrastructure projects where it is necessary to ensure timely completion of the construction. In this case it is required to use specific routes for timber transportation to prevent negative impact on the environment, and on national and public roads.

##### *Selective logging:*

NOTE: The issuing of logging plans in production forest areas are temporarily suspended (2016). The government can lift the suspension at any time, for instance, for the forthcoming logging season.

The main principles of logging in production forest areas require applying selective cutting systems as key to ensuring natural regeneration, minimising negative impacts on the natural environment and society, and limiting damage to surrounding trees ([Law No. 06/2007 NA on Forestry, 24 December 2007, Article 49](#)).

The allowable volume for harvest is limited to 25% of the total volume of trees that have a DBH equal to or greater than 20 cm in a forest compartment (Regulation No. 0108/2005 MAF, [Article 8](#)).

The list of requirements for selective logging intended to ensure timber supply on a regular and sustained basis includes, but is not limited to, ([Guideline No. 2157/2006 DOF](#)):

- Presence of minimal standing volume;
- Felling to be done according to the approved logging plan;
- Logging only within logging block;
- Felling only marked trees included in the pre-felling-survey list;
- Felling to be done according to the prescribed techniques and logging season, and felled tree to be extracted and utilised;
- Damage to surrounding trees to be minimised, as well as negative impact on areas with conservation, social and environmental values;
- Skidding to be by the determined routes in order to prevent negative environmental impact;
- After logging is completed, artificial regeneration to supplement in places where natural regeneration is not satisfactory;
- Each log to be marked with indications of the PFA, sub-PFA, compartment, base line, strip line, tree number and log number;
- Forestry officers to supervise logging activities, making thorough record of species, number of trees, number of logs and branches in order to provide information that can be followed up in the second log yard;
- Health protection equipment should be provided during logging operation.

The Provincial and District Agriculture and Forestry Offices supervises logging and is required to record log information to cross-check the logs against the logging plan, and subsequent stamping. District Agriculture and Forestry Offices are responsible for organizing the district Forest Management Units who actually implement the logging plans.

Provincial Agriculture and Forestry Office conducts an evaluation to measure actual harvest vs. harvest design. It certifies that monitoring of implementation during logging and after logging have been done and actual logging has been compared to the harvest plan and any issues with logging outside designated.

Post-logging assessment shall be done no later than one month after logging operation are completed and cover about 15% of the total number of felled trees ([Guideline No. 2155/2006, Part VII](#)).

#### *Conversion:*

Logging under permits for infrastructure construction is subject to specific management regulations ([Law No. 06/2007 NA on Forestry, Article 49](#)).

Regulations on timber logging in course of permits (quotas) for land clearances is almost non-existent. For instance, there are no regulations on logging for construction of road and electric transmission lines and for clearance of degraded or barren forest land for purpose of industrial crop plantations. At present almost all permitted timber logging in Lao PDR is conducted on the ground of this type of quotas. Legislation covers only one type of forest conversion related to clearance of reservoir areas during construction hydropower dams (Regulation 112/2008 MAF) and involves following basic principles for logging activities:

- Logging area in a reservoir is defined as the area 5-10 m below designed flood level;
- Two types of logging - clear cut and selective (salvage)- are envisaged;
- Clear cut stipulates logging of all trees with diameter over 15 cm;

- Selective logging stipulates cutting of only marked trees selected during pre-felling survey;
- Logging is prohibited outside the allocated reservoir (marked flooding area);
- Preparation of road and log yard construction plan;
- Marking the felling trees (code number of felling groups, sub-logging area and tree number);
- Forestry officers supervising logging activities makes thorough daily record of species, number of trees, number of logs and branches in order to provide information that can follow up in the second log yard;
- Measuring, grading and making log list in log yard II;
- Marking logs in log yard II including: unique sequential number, length and diameter;
- Cleaning must be conducted simultaneously with logging including chopping of logging waste.

Logging activities are managed and inspected by relevant units of the committee responsible for logging management and reservoir cleaning.

#### *Plantations:*

Plantation owners are required to undertake all tree plantation activities in compliance with approved plantation management plan and technical standards of the Ministry of Agriculture and Forestry (Regulation No. 196/2000 MAF, [Articles 9-11](#)), though it is unclear whether these rules have been promulgated. Harvest of planted trees for commercial purposes by a registered plantation shall be consistent with a plantation management plan (Regulation No. 196/2000 MAF, [Article 14](#)), although no technical requirements exist on the preparation of this document and thus are not enforced.

### *Description of Risk*

#### *Selective logging:*

Before the moratorium on selective logging was established in 2012, Jonsson (2006) inspected selective logging in an FSC-certified production forest area (the Thapangtong districts of Savannakhet province) with valid forest management plans and approved logging plans. Jonsson concluded that logging plans were seen as providing “quotas” – as giving the right to cut a certain volume – rather than as directing logging to specific marked trees, which are selected to ensure low impact, low intensity logging, and, as a consequence, the desired stand structure and long-term growth was jeopardised.

In the inspected areas, only in parts did logging adhere to the plans and guidelines, while logging practice was still driven by the needs to supply sawmills with their desired wood (preferred species composition, log sizes, and total volumes).

Significant and commonly occurring breaches of plans/prescriptions were encountered, such as:

- Cutting of unmarked trees (including important NTFP trees) in all inspected harvest blocks, but in some more than in others;
- Fresh, dead and dying trees had been cut in the harvest blocks over and above the harvest plan as part of fulfilling the quota for sawmills:
- In spite of the previous point, some good and large logs were left in the felling area and not extracted to log yard II;
- Marked trees had been left standing with the explanation that the lower part of the trunk was affected by rot, or that the quota for the block and for that species had been filled; and
- Where skid trails were marked on the map, they were not followed during operations.

The organisational control structure was weak, monitoring on all levels was unclear, and lines of command were disorganised. At the district and village levels, there were no forest staff who had

control as their main task. No FMU or provincial logging company staff were present at the logging sites, leaving Village Forest Organisation personnel to be used as tree spotters. Loggers were Vietnamese nationals which hampered communication with Village Forestry Organisation personnel. The logging crew had no copy of a map or plan, and no instructions apart from what tree to cut.

According to Hodgdon's observations (2010), state foresters are routinely reassigned to work with companies that are illegally removing timber from production forest areas. Middle and low-level state foresters were all part of this "black market" system as well. Their payoffs, while considerably less than what the top-level officials make, are still far more than they could hope to earn in almost any other endeavour.

#### *Conversion:*

Logging permits for conversion are seen as providing "quota" – as giving the right to cut a certain volume, regardless of the area allocated for clearance, and results of the pre-felling survey.

WWF's study on timber logging under logging permits for mining, road construction and reservoir clearances (Smirnov, 2015) revealed that timber logging in the framework of these permits does not meet even basic legal requirements, and accordingly almost the entire volume of harvested timber must be deemed illegal.

These contradictions between the practice of logging "conversion" timber and relevant forest legislation were as follows:

- Logging was carried out on the principle of creaming for the most valuable trees, regardless of concession borders and the stated objectives of logging activities (removal of timber from development project areas);
- Administrative district borders apparently become the only spatial reference for such "concessions" (even this limit is ruled out in some cases). A majority of logging sites (and even all sites in some cases) were located beyond concession areas;
- Accordingly, the composition and volume of harvested timber had no relation to the pre-felling inventory in practice, the maximum volume of harvested timber allowed by quota can be the only limitation on loggers (although this limit can be disregarded as well);
- Even basic forestry and environmental requirements had been ignored: logging took place in areas with complete restriction on logging (on slopes over 35 degrees and within riparian forests), including hauling along and across streams.

Neither foresters of Provincial and District Agriculture and Forestry Offices, nor the specially assigned supervision committee responsible for logging management, is in control of the compliance of logging operations in forests.

Lao Prime Minister Thongloun Sisoulith was strongly critical of the timber logging done for Lao public works projects, like dams, roads, and power transmission facilities, as this logging is conducted far beyond designated areas. "In the past we were lied to, with timber harvests starting with trees for dam catchment beginning at the top of the mountains and then cutting their way down," he said.

"Cutting trees for electric lines covers many metres of jungle on each side of the right-of-way," he added. "After the logs were cleared, the project developers would say they went the wrong way, so that they would then clear the jungle in another direction" (Radio Free Asia, 20 June 2016).

Senior authorities of the Ministry of Agriculture and Forestry recently pointed a finger at businesses that funded road construction under a scheme in which the trees felled to make way for a new road were used to finance construction. They admitted that such schemes were leaving a loophole for massive illegal logging, and that more trees than necessary were reportedly felled. In many cases most of the trees cut down to make way for a new road through a natural forest appeared to be the most expensive trees.

Minister of Agriculture and Forestry Dr Lien Thikeyo gave one example of a road construction project in which the construction company was allowed to log trees only within 10 or 20m of the route, but the company in fact cut trees up to 50m from the route on both sides (Vientiane Times, 16 June, 2016).

Deputy Minister of Agriculture and Forestry Mr Thongphat Vongmany “stated it was an unbelievable coincidence that only expensive trees, such as Mai Dou (*Pterocarpus indicus*), grew where these new roads were planned, saying the trees grew randomly in natural forest and not in a plantation. This indicated it was a tactic applied by logging businesses” (Vientiane Times, 14 June 2016).

#### *Plantations:*

In the absence of standards, evidence suggests that plantations are inadequately managed (Smith and Phengsopha, 2014). It is not possible to make an evaluation of the legal implementation, as there are no specific regulations. However, there is a risk of a lack of management plans (see 1.3), which is why the risk must be considered specified.

#### Summary:

For Selective logging, there is risk of or relating to:

- Logging not adhering to plans and regulations;
- Cutting of unmarked trees (including important NTFP trees);
- Harvest occurring above the level specified in harvest plans;
- Skid trails being marked on maps but not being followed during operations; and
- Illegal removal of timber from production forest areas.

For Conversion, there is risk of or relating to:

- Cutting of timber volume regardless of area allocated for clearance and results of pre-felling survey;
- Composition and volume of harvested timber having no relation to the pre-felling inventory in practice; and
- Logging in areas with complete restriction on logging (on slopes over 35 degrees, and within riparian forests), including hauling along and across streams.

For Plantations, there is risk of:

- Lack of management plans with which logging is to be comply.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.8.6. Risk designation and specification**

Specified risk

#### **1.8.7. Control measures and verifiers**

- Logging contract and logging permit, forest management plan for production forest area, pre-logging inventory and tree marking report.
- Logging contract and logging plan (for conversion timber): borders of logging area must comply with project design (route of road or transmission line, maximum flooding level of reservoir etc.)
- Plantation management plan for registered plantations.
- Government approval for prohibited tree species.

- On-site verification of legal management practices.

## 1.9. Protected sites and species

*International, national, and sub national treaties, Laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal logging within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

### 1.9.1. Applicable Laws and regulations

- Forestry law No. 08/NA, (25 May 2019), Article 16 stipulates the category of Conservation Forestlands whose main purpose are for the purposes of conserving nature, preserving and propagating plant species, aquatic and wild animal species, forest ecosystems and other sites of natural, historical, cultural, tourism, environmental and educational values and scientific research experiments. Article 48 and 40 provides for the preservation of specific rare, prohibited and high extinction risk species and associated ecosystems ( ) and stipulates processes for their identification, documenting, mapping and planning, demarcation, and monitoring, inspection and evaluation. Article 51 specifies requirement to protect lands and resources from pests, diseases and weeds. These processes are applied to identified 'total protected', 'controlled use' and 'buffer' zones in conservation forestlands (Article 71). Article 98 requires exports, and Article 99 for imports, of timber species to abide by international conventions and treaties.
- Law No. 02/1999 NA on Environmental Protection, 3 April 1999, [Article 15](#) outlining the obligation to ensure biodiversity protection. Available at: [http://theredddesk.org/sites/default/files/1999\\_environmental\\_protection\\_Law\\_eng\\_1.pdf](http://theredddesk.org/sites/default/files/1999_environmental_protection_Law_eng_1.pdf)
- Law No. 29/2012 NA on Environmental Protection, 18 December 2012. Available at: <http://faolex.fao.org/docs/pdf/lao151747.pdf>
- Decree No. 164/PM on the Establishment of National Forest Reserves, 29 October 1993, [Article 1](#) on establishment of 18 national forest reserves, Article 3 on main purpose of forest reserves, Article 4 on restricted activities in forest reserves.
- Law No. 36/PO on Mining, 31 May 1997, Article 16. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81056/87936/F-2117548536/LAO81056.pdf>
- Law No. 06/2007 NA on Forestry, Article 11 on purposes of conservation forests, Article 12 on zoning of conservation forests, Article 24 on zoning of conservation forests, Article 27 and Article 101 on prohibition to destroy and encroach forest and forest resources in the totally protected zone and corridor zone, Article 101 and 102 on prohibition to use (cut, sell, purchase and transport) prohibited and special tree species. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Decree No. 134/G on Protected Areas, 13 May 2015, Article 1 on purposes of conservation forests, Article 8 on zones in protected areas, Articles 25-28 on use of protected areas. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Table No. 0008/2012 MAF of Prohibited, Special and Controlled Timber Species. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0360/2003 MAF on the management of NBCAs and Aquatic & wild Animals Conservation.

- Law No. 07/2007 NA on Wildlife, 24 December 2007, Section II, defining the three management categories of wildlife and aquatic species, Section V describing prohibitions regarding wildlife and aquatic species. Available at: <http://faolex.fao.org/docs/pdf/lao89478.pdf>
- Guideline No. 2155/2006 DOF on Participatory Forest Inventory, Part V on Pre-logging Inventory. Available at: <http://forestindustries.eu/sites/default/files/userfiles/1file/21.-DOF-Guideline-on-Participatory-Forest-Inventory.pdf>
- Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest, 6 November 2006, Part IV, Article 3 on determination of exclusion areas for timber logging. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 0896/2008 MAF List of Prohibited Species.
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 20 on prohibited timber species. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Regulation 112/2008 MAF Regarding the Logging and Post-Logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Article 16 on clear-cutting, Article 19 and 21 on log marking, Article 34 on an evaluation of the actual logging compared to the strategic plan and technical instructions, Section 2 on the guidelines for pre-logging preparations, Section 3 on the guidelines for logging operation. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Decree No. 333/PM on Protection Forests, 19 July 2010. Available at: <http://faolex.fao.org/docs/pdf/lao141141.pdf>
- Decision No. 0116/2007 MAF on the regulation of timber log scaling and grading, 17 May 2007. Lao version.

#### **1.9.2. Legal authority**

- Selective logging: Provincial and District Agriculture and Forestry Offices.
- Conversion: The supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce.
- Plantations: District offices of Agriculture and Forestry.

#### **1.9.3. Legally required documents or records**

- Selective logging: Logging contract and logging permit, forest management plan for production forest area, pre-logging inventory and tree marking report.
- Conversion: Logging plan.
- Plantations: Plantation management plan for registered plantations.

#### **1.9.4. Sources of Information**

##### *Government sources*

- Govt to halt protected area encroachment. Vientiane Times, 05 April 2013

##### *Non-Government sources*

- Baird, I. (2010). *Quotas, powers, patronage, and illegal rent-seeking. The political economy and the timber trade in southern Laos*. [online]. Forest Trends, Washington D.C., U.S.A. Available at: [http://www.forest-trends.org/documents/files/doc\\_2421.pdf](http://www.forest-trends.org/documents/files/doc_2421.pdf)
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- Schönweger, O., Heinemann, A., Epprecht, M., Lu, J., Thalongsechanh, P. (2012). *Concessions and Leases in the Lao PDR – Taking Stock of Land Investments*. [online]. Geographica Bernensia. Available at: <https://landportal.info/library/resources/concessions-and-leases-lao-pdr>
- Smith, H. and Phengsopha K. (2014). *Enhancing Key Elements of the Value Chain for Plantation Grown Wood in Lao PDR*. [online]. Policy Brief on Legal barriers and legality issues for smallholder plantation owners and their wood. July 2014. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy\\_Brief\\_on\\_Smallholder\\_Plantations\\_in\\_Lao\\_PDR\\_Eng.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2015/11/Policy_Brief_on_Smallholder_Plantations_in_Lao_PDR_Eng.pdf)
- Sea-globe.com (2015). *State companies accept rosewood as legal tender in Laos*. [online]. Southeast Asia Globe, 8 December 2015. Available at: <http://sea-globe.com/rosewood-electricite-du-laos-southeast-asia-globe/>
- Stenhouse R. and Bojö J. (2011). *An environmental perspective on hydropower and mining development in the Lao PDR*. [online]. Background Paper for Lao PDR Development Report 2010: Natural Resource Management for Sustainable Development. Washington, D.C.: World Bank. Available at: [http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010\\_Environment.pdf](http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010_Environment.pdf)
- Smirnov D. (2015). *Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation*. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>

### 1.9.5. Risk determination

#### *Overview of Legal Requirements*

Conservation forests are defined as forest and forest land designated for the purposes of biological conservation, forest ecosystems, historical and cultural value, maintenance of ecological stability, recreation and tourism, or education and science research (Decree No. 164/PM, 1993 Article 3, Decree No. 134/G, 2015 Article 1).

It is forbidden to exploit any species of tree, except if authorised by the Government of the Lao PDR, for scientific research” (Decree No. 164/PM, 1993).

Legislation provides the list of zones delineated within conservation forests and sets specific restrictions for each of them (Law No. 06/2007 NA on Forestry [Article 24](#) and [Decree No. 134/G, 2015 Article 8](#)).

For instance, it is strictly prohibited to harvest any forest product in totally protected zones, and to conduct timber logging in corridor zones. The regime of controlled use zones is distinct from the regime of totally protected zones in that local people are allowed to use timber and forest products based on the regulations and the management plan.

Besides this, restrictions on mining concessions in “protected forest areas” are imposed by the Law on Mining (1997) Article 17, and thus no conversion for mining can take place.

The general principles of planning management in production forest areas include setting aside, and prohibition of timber logging in, areas with high biodiversity (Regulation No. 0108/2005 MAF, Article 8).

Six special tree species from natural forests are prohibited for cutting, selling, purchasing and transportation without permission from the government (Law No. 06/2007 NA on Forestry, Article 101 and 102).

Order No. 17/2008 PM, Article 20, includes twelve protected tree species which are under threat of extinction, and reaffirms the prohibition on their being harvested in natural forests. A full list can be found in table 0008/2012 MAF of Prohibited, Special and Controlled Species (Listed on ProFLEGT website: <http://flegtlaos.com/resources/forestry-legality-compendium/>).

Rare tree species must not be selected for cutting during pre-logging inventory (Guideline No. 2155/2006 Part V), and habitats of rare wildlife species are excluded from logging areas (Guideline No. 2157/2006 Part IV, Article 3).

#### *Description of Risk*

##### *General:*

Legal requirements for obtaining government permits for logging protected tree species are routinely disregarded.

Evidence of the logging of prohibited tree species such as Mai Champa Pa and Mai Pa Dong without authorisation under the cover of quotas for clearance of new roads is provided in a WWF report (Smirnov, 2015). Moreover, in this case, logging took place far from the planned road route and only for the purpose of high-grading, and had no connection with clearance of the road route and/or its buffer zone.

Cases of even more blatant disregard of regulations on restricted tree species were highlighted by the mass-media in Bolikhamxay province, where Électricité du Laos, the state-owned national energy company, forced villagers to pay for a connection to the electricity grid with timber from endangered rosewood species (Southeast Asia Globe, 8 December 2015).

Baird (2010) reports a case in which Champassak province authorities issued a so-called "deadwood quota" for cutting an unspecified quantity of *Dalbergia cochinchinensis* (Siamese rosewood), which is officially listed as a tree species which it is prohibited to harvest.

Military logging plans can be granted to military companies within their area of interest regardless of the protected status of forests and without the oversight of the Ministry of Agriculture and Forestry, or of the Ministry of Natural Resources and Environment.

##### *Selective logging:*

Before the moratorium on selective logging in natural forest was in place, Jonsson (2006) undertook field inspection of selective logging in an FSC-certified production forest area (the Thapangtong districts of Savannaket province) where valid forest management plans and approved logging plans were in place. This field visit showed that the conservation and non-timber aspects of forest use had been down-played, and the timber logging aspects being treated as the only thing of importance. The Vietnamese loggers were given no instructions apart from the location of trees to be cut. There are no indications of this case being unique. Highly biodiverse production forest areas were not set aside during planning of timber logging. If the moratorium is lifted, there is a risk that these issues will again prevail. However, a final assessment will only be possible if and when the practice of selective logging is reinstated.

##### *Conversion in protected areas:*

Quotas for timber logging under logging permits for mining, road construction and reservoir clearances are being allocated in national protected areas and protection forests regardless of the status of these areas – national protected areas and protection forests usually lack management plans and zoning.

Granting mining concessions in conservation and protection forests is in apparent violation of the [Law on Mining \(1997\)](#), [Article 16](#) of which prohibits mining (prospecting, exploration, extraction) in “protected forest areas”.

An analysis conducted by R. Stenhouse and J. Bojö (2011) has revealed three mineral exploration concessions and numerous general survey concessions within national protected areas (including petroleum exploration concessions in six national protected areas). According to their estimates, up to 5% of national protected areas are under some kind of mining concession, and up to 2.4 percent of the NPA system may become exploited by mining in the future.

The inventory of state land leases and concessions in Laos (Schönweger et al., 2012) has found approximately 80,000 ha of mineral extraction concessions within conservation and protection forests. Just as these mines are established in conflict with legislation, the conversion of land has also been allowed on false premises.

#### *Plantations:*

In numerous cases, tree concessions have been issued or extended into conservation and protection forest where establishment of commercial tree plantations is not legally allowed, leading to subsequent encroachment into natural forests. The inventory of state land leases and concessions in Laos (Schönweger et al., 2012) revealed that a significant part of tree plantation areas falls within protection (42,257 ha) and conservation (10,127 ha) forests. For example, concession areas allocated near several rubber plantations were found to fall within the Dong Hua Sao National Protected Area in Champasak Province. The real extent of the tree plantations in conservation forests seems to be far greater the official data suggests. The government revealed that allocation of rubber plantations has contributed to 39,000 ha of encroachment into the Phou Phanang and Phou Khao Khoay National Protected Areas in Vientiane and Borikhamxay provinces. The government had intended to confiscate illegally planted lands and incorporate them into protected areas as national property (Vientiane Times, 05 April 2013), but it is not possible to verify whether this has in fact been done.

Teak, which is a protected species (Decision 0116/2007) occurs naturally in the forests of the Lao PDR, and there is a risk of illegal logging and export of naturally grown teak in consignments of plantation timber. There are specific rules in place for natural teak, but these rules are not consistently implemented, as in some provinces, plantation grown teak is a “special timber” (Smith, Phengsopha, 2014).

#### Summary:

For all source types, there is risk of:

- Disregard for the legal requirements covering protected tree species, and
- Misuse of deadwood quotas is common.

For Conversion, there is risk of:

- Conversion of protected areas for development projects established in conflict with legislation.

For Plantations, there is risk of:

- Concessions located within concession/protection forest; and
- Illegal sale of natural-grown timber through teak plantations.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified [Laws](#) are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.9.6. Risk designation and specification**

Specified risk

#### 1.9.7. Control measures and verifiers

- Map of national forest categories: to find out whether timber sources are situated within protection or conservation forests.
- Village Forest Management Plan and map with zoning of village forests: to find out whether plantation or area with forest conversion falls within village conservation or protection forests.
- Management plans for National Protected Areas, protection, and production forest areas: allocation of logging areas shall comply with management plans, and protection sites (habitats of rare wildlife species, areas with high biodiversity) shall be set aside.
- Logging contract and logging permit, forest management plan for production forest area, pre-logging inventory, and tree marking report: protection sites (habitats of rare wildlife species, areas with high biodiversity) and trees of prohibited species shall be mapped and set aside.
- Logging contract and logging plan (for conversion timber): to find out whether logging area falls within protection or conservation forests.
- Maps of tree plantation, plantation management plan for registered plantations: to find out whether plantation falls within conservation or protection forests.
- Government approval for prohibited tree species: can be allowed only in case of forest conversion.

### 1.10. Environmental requirements

*National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by logging, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of logging time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.*

#### 1.10.1. Applicable Laws and regulations

*General:*

- Forestry law No. 08/NA, (25 May 2019), Article 15 stipulates the category of Protected Forestlands whose prime objectives are the maintaining water resources, river banks, road sides, preventing soil erosion, protecting soil quality, strategic areas for national defense and peace, protection from natural disasters, and environmental protection. Article 22 and 70 provides for the establishment of 'total protected', 'controlled-use' and 'buffer' zones, with prescriptions for their identification, documenting, mapping and planning, demarcation, and monitoring, inspection and evaluation (Article 47).
- Law on Water and Water Resources (amended) No 010/NA dated 11 May 2017.

*Selective logging:*

- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, Part II, [Article 8](#) on prohibition of timber logging in production forest areas in areas with high biodiversity and environmentally sensitive areas. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- [Guideline](#) No. 2155/2006 DOF on Participatory Forest Inventory, Part V on Pre-logging Inventory. Available at: <http://forestindustries.eu/sites/default/files/userfiles/1file/21.-DOF-Guideline-on-Participatory-Forest-Inventory.pdf>
- [Guideline](#) No. 2157/2006 DOF [Guideline](#) on Timber Logging in Production Forest, 6 November 2006, Part IV, [Article 3](#) on determination of exclusion areas for timber logging, Part VI on forest road construction, Part X, [Article 8](#) on post-logging practices to prevent soil erosion, and Part XIII on operation restrictions, Part IX on forest fire prevention, Part XIV [Article 2](#) on training. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

*Conversion and Plantations:*

- [Decree](#) No. 135/2009 PM on State Land Lease or Concession, 25 May 2009, [Article 27](#) on requirements for environmental and social impact assessment and operational plan. Available at: [http://rightslinklao.org/eng/index.php?option=com\\_docman&task=doc\\_download&gid=100&Itemid=70](http://rightslinklao.org/eng/index.php?option=com_docman&task=doc_download&gid=100&Itemid=70)
- [Law](#) No. 02/1999 NA on Environmental Protection, 3 April 1999, Part III describing obligations for pollution management control, [Article 8](#) on the obligation for environmental assessments. Available at: [http://theredddesk.org/sites/default/files/1999\\_environmental\\_protection\\_Law\\_eng\\_1.pdf](http://theredddesk.org/sites/default/files/1999_environmental_protection_Law_eng_1.pdf)
- [Law](#) No. 29/2012 NA on Environmental Protection, 18 December 2012. Available at: <http://faolex.fao.org/docs/pdf/lao151747.pdf>
- [Decree](#) No. 112/2010 PM on Environmental Impact Assessment, 18 February 2010, describes obligations and procedures in detail. Available at: <http://www.laolandissues.org/wp-content/uploads/2011/12/EIA-Decree-112-PM-2010-Inofficial-transl.-Eng.pdf>

*Conversion:*

- Regulation No. 0112/2008 MAF on the Logging and Post-logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, [Article 7](#) on demarcation of buffer zones, [Articles 8, 9, 11](#) on the guidelines for management of soil erosion in construction of roads, bridges and log yards, and management of pollutants in logging operations on proposed reservoir areas, [Article 12](#) on the prevention of fires in logging operations on proposed hydropower reservoir areas, [Article 13](#) on management of wastes and pollutants, [Article 15](#) on management of wildlife, [Article 35](#) on prohibitions. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

*Plantations:*

- Regulation No. 2860/2010 MAF on the Control of Pesticides in Lao PDR, 11 June 2010, [Articles 20, 21, 23 and 24](#), detailing transportation, storage, use and disposal rules for pesticides. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=96>
- Agreement No. 0538/2011 MAF on Good Agricultural Practices for Environmental Management Standards, 9 September, 2011, [Articles 5, 6, 7, 8, 9, 10 and 12](#), detailing proper management of site, planting material, soil, fertilizer, water, chemicals and biodiversity. [Articles 15 and 16](#) detailing record keeping and yearly review of practices and resolution of complaints. Available at: <http://faolex.fao.org/docs/pdf/lao141128.pdf>

**1.10.2. Legal authority**

- Selective logging: Provincial and District Agriculture and Forestry Offices.

- Conversion: The supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce, Ministry of Nature Resources and Environment, Provincial Agriculture and Forestry Office.
- Plantations: The Department of Agriculture of Ministry of Agriculture and Forestry, District offices of Agriculture and Forestry.

### 1.10.3. Legally required documents or records

- Selective logging: Forest management plan, logging plan.
- Conversion/Plantations: Report on environmental impact assessment, logging plan, management and environmental monitoring plan, summary report of actual implementation of measures to mitigate and minimize impacts, records of good agricultural practices, and records of complaints and actions taken to resolve complaints are reviewed by the Department of Agriculture once a year.

### 1.10.4. Sources of information

#### *Non-Government sources*

- straitstimes.com (2016). *Chemicals are killing Laos' farmlands*. [online]. The Strait Times, 16 April 2016. Available at: <http://www.straitstimes.com/asia/se-asia/chemicals-are-killing-laos-farmlands>
- Rfa.org (2016). *Chinese Banana Plantations Lose Their Appeal in Laos as Pollution Concerns Grow*. [online]. RFA – Radio Free Asia, 14 April 2016. Available at: <http://www.rfa.org/english/news/laos/chinese-banana-plantations-04142016151133.html>
- Kenney-Lazar, M. (2010). *Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos*. [online]. Vientiane: Faculty of Forestry, National University of Laos. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/3-Land-Concessions-Land-Tenure-and-Livelihood-Change-Plantation-Development-in-Attapeu-Province-Southern-Laos.pdf>
- Kenney-Lazar, M. (2015). *Authoritarian Resource Governance and Emerging Peasant Resistance in the Context of Sino-Vietnamese Tree Plantations, Southeastern Laos*. BRICS Initiative for Critical Agrarian Studies Working Paper, No. 1. The Hague: The International Institute for Social Studies.
- rfa.org (2016). *Laos' Paraquat Problem*. [online]. RFA – Radio Free Asia, 06 May 2016. Available at: <http://www.rfa.org/english/news/laos/laos-paraquat-problem-05062016131002.html>
- rightslinklao.org (2016). *The toxic landscape*. [online]. LURAS Discussion paper, February 2016. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2016/03/Bartlett\\_The\\_toxic\\_landscape\\_28Feb16-copy.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2016/03/Bartlett_The_toxic_landscape_28Feb16-copy.pdf)
- FAO (2015). *Proceedings of the Asia regional workshop on the implementation, monitoring and observance of the international code of conduct on the distribution and use of pesticides*. Bangkok, Thailand, 26-28 July 2005. FAO, Bangkok, 2005. Available at: <http://www.fao.org/docrep/008/af340e/af340e00.htm#Contents>
- Smirnov D. (2015). *Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation*. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>
- Vázquez, C. (2012). *Illegal Pesticide Trade in the Mekong Countries: Case of Lao PDR*. [online]. Vientiane Capital and Provinces of Louang Namtha and Xiengkhouang. SAEDA, PAN AP. Available at: <http://panap.net/2013/12/illegal-pesticide-trade-mekong-countries-case-studies-cambodia-lao-pdr/>

### 1.10.5. Risk determination

#### *Overview of Legal Requirements*

#### *Selective logging:*

The general principles of logging management in production forest areas include setting aside of, and prohibition of timber logging in, highly biodiverse or environmentally sensitive areas.

Preparation of a logging plan requires delineation of areas excluded from timber logging, including:

- Areas determined by villagers as village buffer zones,
- Wildlife corridors determined in the management plan,
- Slopes exceeding 35 degrees, and
- Buffer zones along river banks, watersheds, habitats of rare wildlife etc.

Trees that are used for traditional medicine are marked both on tree maps and on the ground, and together with mother and NTFP trees are excluded from logging ([Guideline No. 2157/2006](#), Part IV, [Articles 3, 5 and 6](#)).

Areas of particular scenic beauty and biodiversity are also set aside from logging (Regulation No. 0108/2005 MAF, [Article 8](#)).

Regulations require the taking of a wide array of measures to mitigate negative environmental impact of logging in production forest areas ([Guideline No. 2157/2006](#) DOF), such as:

- Measures related to road construction (including limitations on road width, avoidance of construction on steep slopes and inside of buffer zones along river banks, minimisation of the number of stream crossings etc.);
- Clearances of log yards/log yards I and II (including optimal selection of sites at a distance from streams, limitation of area to no more than 0.5 ha); and
- Forest fire prevention (including minimisation of wood residuals on logging sites, prevention of fire incidents caused by expansion of fires from logging camps, equipping logging machinery with fire extinguishers etc.).

Training should be conducted to upgrade the knowledge and skill of workers on environment and biodiversity protection.

#### *Conversion and Plantations:*

Holders of state land concessions or leases must submit and obtain approval for the following documents from the Water Resources and Environment Administration (a part of the Ministry of Nature Resources and Environment since 2011):

- Report on initial environmental examination, amended based on comments of the Water Resources and Environment Administration/Ministry of Natural Resources and Environment if needed;
- Report on environmental impact assessment;
- Management and environmental monitoring plan;
- Logging plan, including definitions for stream buffer zones. Compliance is monitored by the Forest Management Units and Provincial Agriculture and Forestry Office;
- Environmental compliance certificate, including compliance with any conditions listed in the certificate;
- Summary report of actual implementation of measures to mitigate and minimise impacts; and,

- Records of good agricultural practices, and records of complaints and actions taken to resolve them are reviewed by the Department of Agriculture once a year.

Requirements on pesticide use are detailed in Regulation No. 2860/2010 MAF on the Control of Pesticides in the Lao PDR, which includes rules on registration, import, export, distribution, transportation, storage, disposal and transport of pesticides; and on packaging, labelling and advertising. These regulations contain a list of banned pesticides, and provisions on pesticide labelling in Lao and/or English.

All kinds of pesticides imported and used in the Lao PDR are under the responsibility and control of the Department of Agriculture of the Ministry of Agriculture and Forestry, which is responsible for legislation on imported pesticides and oversees the implementation of pesticide regulations at the national level. The Provincial Agriculture and Forestry Offices are in charge of implementing the regulations at the provincial level, such as import and distribution of pesticides and agricultural products, license approval, and inspection of pesticide shops (Regulation No. 2860/2010 MAF [Articles 31 and 32](#)).

Timber harvesting activities related to clearance of reservoirs of hydropower dams must also implement a set of measures to prevent and reduce specific negative impacts (Regulation No. 0112/2008 MAF, [Article 7-13, 15 and 35](#)). These measures include:

- Determining corridor zones for nearby logging (reservoir) which can be used by wildlife as a passage to migrate from the flooding area;
- Determining and demarcating buffer zones to serve as substitute habitats for wildlife that has escaped from the flooding area;
- Designing the forest road and hauling track network in such a way as to prevent soil erosion, and siltation of streams, and to limit the number of river crossings;
- Constructing temporary bridges over perennial streams;
- Prohibiting the hauling and transportation of logs during heavy rains;
- Preparing forest fire prevention troughs to act as fire breaks surrounding the logging (reservoir) area and logging camps;
- Managing waste and dangerous materials;
- Prohibiting hunting of wildlife, including aquatic animals.

#### *Description of Risk*

##### *Selective logging:*

According to Jonsson (2006), inspection of the Don Situang production forest area tree maps for all inspected harvest blocks revealed that mother trees had not been marked as per requirements, and that no information on conservation features had been noted on the maps. Village Forest Organisation personnel were not aware of "mother trees", and they were not marked on the tree maps. The proposed felling direction was not marked on the trees. Unmarked Mai Nganag trees of importance for NTFP use (resin) had been cut, and villagers were unhappy about this fact. No further information was available on the implementation of environmental requirements, however, the disregard for forest management regulation (see. 1.8), could indicate a risk of the environmental regulations being violated.

##### *Conversion and Plantations:*

Two detailed case studies on timber logging under quotas for road construction and limestone quarrying conducted by the WWF (Smirnov, 2015) revealed that logging of "conversion" timber was carried out under the principle of creaming for the most valuable trees, regardless of concession

borders, including logging in environmentally sensitive areas such as slopes of more than 35 degrees, and within 30-50 m buffer zones along the banks of rivers and streams.

Numerous researchers have provided evidence that companies have failed to meet requirements for having an Environmental Impact Assessment for development projects undertaken before commencement of project activities, or had not conducted this assessment at all.

For instance, according to Kenney-Lazar (2015), a Vietnamese company had cleared land in Savannakhet province to establish a eucalyptus plantation before detailed surveys of what land was available had been conducted, and they had usually only conducted surveys if there was a conflict with villages concerning the land cleared. Another Vietnamese corporation did not conduct any environmental or social impact assessments prior to getting a concession in Attapeu province for the establishment of a rubber plantation. The required assessments were made only after the project had been running for two years (Kenney-Lazar, 2010).

#### *Fertiliser and pesticides in plantations*

Overuse of fertilisers and pesticides, as well as use of banned pesticides in plantations, is a widely acknowledged problem. Questions about the impact of chemicals on the environment, and the government's ability to control their use have been raised in numerous publications (RFA – Radio Free Asia, 14 April 2016; RFA – Radio Free Asia, 06 May 2016).

According to the report "Illegal Pesticide Trade in the Mekong Countries: The Case of the Lao PDR" (Vázquez, 2012), the expansion of rubber plantations has greatly increased inputs of herbicides into the ecosystem, especially glyphosate and paraquat, even though the latter is on the list of banned pesticides in Laos (Regulation No. 2860/2010 MAF, Annex 1).

Nearly all pesticides sold and used in Laos originate in Thailand and China, and to some extent from Vietnam, and are sold under Thai and Chinese labels, which makes it difficult to identify the types of chemicals used (Vázquez, 2012); this is contrary to a regulation stipulating that pesticide formulations should bear labels written in Lao and/or English (Regulation No. 2860/2010 MAF, [Article 26](#)).

Laos' long, porous borders, and the ease of movement of pesticides with little oversight, make enforcement of pesticide regulations and bans a challenge, as was admitted by the Lao authorities responsible (including the Department of Agriculture's deputy director, the head of the Pesticides Regulatory Division). Besides the formal import of pesticides, there are also pesticides illegally traded along the border (through forest trails across the Laos-China border, and across the Mekong River from Thailand by means of small private boats), including those that are prohibited (Vázquez, 2012; RFA – Radio Free Asia, 06 May 2016; RFA – Radio Free Asia, 14 April 2016; The Straits times, 16 April 2016).

Vongpaphan Manivong, a researcher with the Lao National Agriculture and Forestry Research Institute, found that chemical counterfeiting was rampant, as banned chemicals are imported with new labels attached to fool Lao customs officers. Researchers have found nearly 50 different chemicals bound for plantations, chemicals that were either banned or faked to look like they were approved (RFA – Radio Free Asia, 14 April 2016), a direct violation of Regulation No. 2860/2010 MAF, [Article 25](#) and [27](#), which require that pesticides be kept in their original packaging during importation, transportation, storage and distribution, and which prohibit false statements.

In 2011, most officials in charge of inspecting pesticides were not familiar with these chemicals, and few knew about Laos' new regulations enacted in 2010. Inspection of pesticides and detection of banned agricultural chemicals were not an important aspect of the daily routine of officers at the traditional checkpoints in the districts along the Mekong River. They were not aware of pesticide regulations, nor that imported pesticides must be cross-checked with the Ministry of Agriculture and Forestry's list of registered and banned pesticides (Vázquez, 2012).

Officials of District Agriculture and Forestry offices did not inspect farms (which includes smallholders of teak and rubber plantations), or monitor pesticide use, and inspection was limited to retail shops.

A field assessment in July 2011 indicated that most of the pesticides sold and used in Laos were technically illegal, because imports and sales tended to take place largely without a government license, outside government regulations. Most retail shop owners were unaware of pesticide regulations and banned pesticides, and reported that purchases were not scrutinised for banned or illegal pesticides (Vázquez, 2012).

The Lao Upland Rural Advisory Service (LURAS) discussion paper claimed that: "The use of herbicides, such as paraquat, has brought about a transformation of the landscape in upland provinces such as Xieng Khuang", and that "these chemicals are a serious threat to human health and a contributing factor in the loss of biodiversity and declining soil fertility" (2016). Laos, as with most non-industrialised countries, lacks the technology to dispose of pesticides safely. Plantation owners do not manage their waste, and are blamed for throwing that waste, including fertiliser and plastic bags, plastic bottles of pesticides and insecticides, into rivers and near houses (Vazquez, 2012). These practices contaminate the soil, plants, water, fish, and the air, and increase the health risks to rural communities. One case showed that pesticides were thrown into a stream used by the local people. The chemicals leached into the ground water, causing concerns about contamination, and, in at least one case, a death was linked to the pollution (RFA – Radio Free Asia, 14 April 2016). Media reports say that locals in Bokeo province are now afraid to collect forest food like mushrooms near plantations, and quoted the governor of Bokeo as saying that the "impact on the environment and nearby communities partly results from the fact that relevant government authorities failed to carry out proper management and monitoring" of chemical fertilisers, harmful herbicides and pesticides, which "have been used by foreign investors" (The Straits Times, 16 April 2016). Vongpaphan Manivong, a researcher with the Lao National Agriculture and Forestry Research Institute, told mass media that the dearth of enforcement allows unscrupulous plantation owners to use banned chemicals (RFA – Radio Free Asia, 14 April 2016).

Xiangkhouang officials admitted that they are unable to control the use of banned herbicides, and farmers in the province can easily buy these chemicals (RFA – Radio Free Asia, 06 May 2016).

There is no mechanism in place in the region to send illegal pesticides back to their country of origin. Thus, enforcing pesticide regulations, for example by confiscating illegal pesticides, becomes a challenge in the absence of adequate technology to dispose of hazardous products. Cases have been recorded in which inspectors of District Agriculture and Forestry Offices did not confiscate illegal pesticides because of the difficulty of disposing of them in a safe manner (Vázquez, 2012).

#### Summary:

For all source types there is a general disregard of environmental requirements.

For Selective logging, there is risk of:

- Lack of marking of mother trees;
- No mapping of conservation features; and
- Logging of important NTFP trees.

For Conversion and Plantations, there is risk of:

- Logging in environmentally sensitive areas (slopes, buffer zones and stream banks);
- Lack of Environmental Impact Assessments; and
- Misuse of fertilisers and other chemicals (overuse and use of banned pesticides).

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### 1.10.6. Risk designation and specification

Specified risk

### 1.10.7. Control measures and verifiers

- Village Forest Management Plan and map with zoning of village forests.
- Management plans for National Protected Areas, protection and production forest areas: shall set environmental limitations for logging activities.
- Logging plan: shall contain measures on environmental protection (forest roads shall not cross steep slopes or go along river banks, temporary bridges shall be built over streams).
- Plantation management plan for registered plantations: to find out whether plantation is situated outside of conservation and protection forests, whether plan provides standards for application of pesticides and fertilisers, procedures on storing of chemicals and disposal of empty containers, whether list of banned pesticides is available.
- Environmental impact assessment: must be undertaken and approved before granting concession; to check whether irreversible negative impact on environmental value was considered, and what measures were taken to mitigate and compensate negative impact.
- Operational plan on protection of water resources and environment: for development projects and tree plantations.
- Summary report of actual implementation of measures to mitigate and minimise impacts.
- Plantations:
  - Records of good agricultural practices, and records of complaints and actions taken to resolve them, are reviewed by the Department of Agriculture once a year.
  - License on import of pesticides.
  - Records on pesticides turnover.
  - Pesticide registration certificate.

## 1.11. Health and safety

*Legally required personnel protection equipment for persons involved in logging activities, use of safe felling and transport practice, establishment of protection zones around logging sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.*

### 1.11.1. Applicable Laws and regulations

- Law No. 43/ NA on Labour, 24 December 2013 Article 43 on employer obligations to facilitate medical examinations of employees, Article 97 on the employment of pregnant women or women caring for newborns, Article 119 describing employer obligations on working conditions, health and safety measures for labour, Article 102 on restriction to use youth employees in activities that are unsafe, dangerous to the health, Article 122 on risk assessment, [Article 123](#) on person responsible for the safety and health of employees. Available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96369/113864/F1488869173/LAO96369%20Eng.pdf>

- Instruction No. 1035/2010 MAF of the Provincial Forestry Sector for Implementing the Enforcement of the Labour Law and Paying Attention to Guide Company/Timber Exploitation Division to Strictly Implement, 23 April 2010, Article 3 on safety measures, internal regulations regarding labour and health, yearly medical examinations. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest, 6 November 2006, Part VIII Article 2 on prevention of spreading malaria, Part X Article 1 on principles of logging operations, Article 2 on protective equipment, Article 3 on felling technique, Part XI on personal qualification and performance, Part XIII on prohibitions, Part XIV Article 2 on training. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0112/2008 MAF on the Logging and Post-logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Article 10 on prevention of spreading diseases, Article 18 on felling technique. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Notification #093 of the National Regulatory Authority for UXO/Mine Action Sector in Lao PDR on UXO clearance for socio-economic development projects in the Lao PDR, 19 November 2012, Clause 1.
- Announcement No. 004/NRAB of the National Regulatory Authority for UXO/Mine Action Sector in Lao PDR on national standards for evidence-based survey, 21 January 2015.

#### 1.11.2. Legal authority

- Selective logging: Provincial Agriculture and Forestry Offices.
- Conversion: The supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce, the National Regulatory Authority for UXO/Mine Action Sector.
- Plantations: Provincial Agriculture and Forestry Offices, the Department of Agriculture of the Ministry of Agriculture and Forestry, District offices of Agriculture and Forestry, the National Regulatory Authority for UXO/Mine Action Sector.

#### 1.11.3. Legally required documents or records

- Selective logging: company's specific regulations for workers.
- Conversion: company's specific regulations for workers, report on completion of UXO (unexploded ordinance) survey or UXO clearance and release of land for use (combined with the handover certificate).
- Plantations: company's specific regulations for workers, report on completion of UXO survey or UXO clearance and release of land for use (combined with the handover certificate).

#### 1.11.4. Sources of information

##### *Non-Government sources*

- straitstimes.com (2016). *Chemicals are killing Laos' farmlands*. [online]. The Strait Times, 16 April 2016. Available at: <http://www.straitstimes.com/asia/se-asia/chemicals-are-killing-laos-farmlands>
- Rfa.org (2016). *Chinese Banana Plantations Lose Their Appeal in Laos as Pollution Concerns Grow*. [online]. RFA – Radio Free Asia, 14 April 2016. Available at: <http://www.rfa.org/english/news/laos/chinese-banana-plantations-04142016151133.html>
- Forest Trends (2010). *Timber Markets and Trade between Laos and Vietnam: A Commodity Chain Analysis of Vietnamese-Driven Timber Flows* [online]. Available at: [http://www.forest-trends.org/documents/files/doc\\_2365.pdf](http://www.forest-trends.org/documents/files/doc_2365.pdf)

- Hunt, G. (2014). *An Analysis of FSC Certification of Oji LPFL*. [online]. Plantation Watch. Available at: <http://plantation-watch.org/wp-content/uploads/2015/06/Analysis-of-FSC-Certification-of-Oji-LPFL-2014.pdf>
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- rightslinklao.org (2016). *The toxic landscape*. [online]. LURAS Discussion paper, February 2016. Available at: [http://rightslinklao.org/wp-content/uploads/downloads/2016/03/Bartlett\\_The\\_toxic\\_landscape\\_28Feb16-copy.pdf](http://rightslinklao.org/wp-content/uploads/downloads/2016/03/Bartlett_The_toxic_landscape_28Feb16-copy.pdf)
- mineactionreview.org (2015). *Clearing Cluster Munition Remnants*. [online]. A Report for the First Review Conference of the Convention on Cluster Munitions. Available at: [http://www.mineactionreview.org/assets/downloads/Mine\\_Action\\_Monitor\\_Clearing\\_Cluster\\_Munition\\_Remnants\\_FINALISED.pdf](http://www.mineactionreview.org/assets/downloads/Mine_Action_Monitor_Clearing_Cluster_Munition_Remnants_FINALISED.pdf)
- FAO (2015). Proceedings of the Asia regional workshop on the implementation, monitoring and observance of the international code of conduct on the distribution and use of pesticides. Bangkok, Thailand, 26-28 July 2005. FAO, Bangkok, 2005. Available at: <http://www.fao.org/docrep/008/af340e/af340e00.htm#Contents>
- Vázquez, C. (2012). *Illegal Pesticide Trade in the Mekong Countries: Case of Lao PDR*. [online]. Vientiane Capital and Provinces of Louang Namtha and Xiengkhouang. SAEDA, PAN AP. Available at: <http://panap.net/2013/12/illegal-pesticide-trade-mekong-countries-case-studies-cambodia-lao-pdr/>

#### 1.11.5. Risk determination

##### *Overview of Legal Requirements*

##### *General*

The employer must inspect and assess risks to safety and health within the labour unit and workplace regularly, and must report the results of the risk assessment to the Labour Inspection Agency at least once per year ([Law No. 43/ NA on Labour 2013, Articles 119 and 122](#)).

The employer is obliged to supply individual safety gear to employees in full and in good condition according to international standards; to ensure working conditions are safe, and that there is appropriate lighting, supply of drinking water and washing water, showers, toilets etc., a room set aside for the storage of toxic substances, and other measures against electric shocks, fire, etc.; to facilitate medical examinations of employees at least once a year, and to provide an on-site first aid kit ([Law No. 43/ NA on Labour 2013, Articles 43 and 119](#)).

Workplaces with 100 employees or fewer must appoint a person responsible for the safety and health of employees; workplaces with more than 100 employees must establish a health and safety unit or committee. Remote workplaces with at least 50 employees must hire one medical officer; for fewer than 50 employees, the workplace must include a first aid kit and have a person trained in first aid on site ([Law No. 43/ NA on Labour 2013, Article 123](#)).

Legislation prohibits the employment of minors in activities that are unsafe, or dangerous to health ([Law No. 43/ NA on Labour 2013, Article 102](#)). An employer cannot require a pregnant woman or woman with a child younger than one year old to undertake dangerous work ([Law No. 43/ NA on Labour 2013, Article 97](#)).

The employer must record accidents within a labour unit in detail, including the cause, and report it to the Labour Administration Agency ([Law No. 43/NA 2013 on Labour, Article 125](#)).

Companies shall provide assistance to victims of labour accidents and workers who suffer from occupational diseases (including the cost of treatment as determined in the [Law on Social Insurance](#)),

and payment of normal salary or wages during medical treatment and rehabilitation for up to 6 months ([Law No. 43/NA 2013 on Labour, Article 128](#)).

The employer (logging company) shall provide yearly medical examinations for all workers. Logging companies are required to submit specific regulations for workers to the Provincial Agriculture and Forestry Office, the Provincial Forestry Sector, and Timber Exploitation Unit for acknowledgment (Instruction No. 1035/2010 MAF, [Article 3](#)).

Safety equipment should be provided to workers for logging in production forest areas ([Guideline No. 2157/2006 DOF Part X Article 1](#)). Chainsaws should be equipped with protective features ([Guideline No. 2157/2006 DOF Part X, Article 2](#)).

Requirements of qualifications of personnel include safety competence and first aid skills ([Guideline No. 2157/2006 DOF Part XI](#)). Training should be conducted to upgrade knowledge and skills of workers on the use of safety devices (including protective clothing), first aid, and precautions against accidents ([Guideline No. 2157/2006 DOF Part XIV](#)). Use of unregistered logging machinery is prohibited ([Guideline No. 2157/2006 DOF Part XIII](#)).

Water tanks in logging camps must be kept clean and covered as a preventive measure against the breeding of mosquitoes that may cause the spread of diseases (Regulation No. 0112/2008 MAF [Article 10](#)).

#### *Plantations*

The Lao PDR is the most heavily bombed country, per capita, in history. It is heavily contaminated with cluster munitions and other explosive remnants of the Indochina War of the 1960s and 1970s, as well as landmines to a lesser extent. Fourteen of the Lao PDR's 17 provinces suffer from unexploded ordnance (UXO) contamination; put another way, 98 districts are contaminated, covering an area of about 87,000 km<sup>2</sup>.

Development projects (which include commercial development projects such as plantation operations and infrastructure construction) are required to survey and clear UXO before commencing work in accordance with the national standards, and must also allocate funding to cover the cost (Notification #093 of the National Regulatory Authority for UXO/Mine Action Sector in the Lao PDR, 19 November 2012, Clause 1; NRA Announcement No. 004/NRAB, 21 January 2015).

Completion surveys are to be carried out for all areas of land released for use, either through clearance or technical survey. Information from the completion survey is to be reported in a "Completion Survey Report", which is to be combined with the handover certificate and other task documentation and submitted to the National Regulatory Authority.

Requirements of pesticide use are detailed in Regulation No. 2860/2010 MAF on the Control of Pesticides in the Lao PDR. These regulations contain a list of banned pesticides (55 kinds), and providers of pesticides should possess safety instructions for their correct handling and use to ensure that they are not causing negative effects to people and the environment ([Articles 19 and 21](#)).

Applying pesticides requires farmers to wear protective equipment and to properly follow label instructions to minimise the negative impacts of pesticide exposure ([Article 23](#)). Employers should provide employees with proper equipment and training in pesticide application ([Article 23](#)).

Employment of child labour in sectors that pose a threat to health, including activities involving the application of chemicals, is prohibited ([Law No. 06/2006 NA on Labour Article 41](#)).

#### *Description of Risk*

Often logging crews do not have safety equipment and live in very basic conditions in forest camps. This was recorded by Jonsson (2006) during an inspection of a forest site where the logging crew had neither safety equipment nor protective gear, and where conditions at the camp were very rudimentary (their shelter was a tarpaulin with no hygiene/sanitation facilities). Usually, Vietnamese

loggers use their own hauling/winch trucks brought from Vietnam (apparently these are not certified/licensed as required by Lao regulations).

According to Forest Trends' 2010 report, almost all loggers in the southern Lao province of Attapeu are Vietnamese seasonal workers. Logging companies and tree plantation holders prefer to employ temporary/seasonal workers instead of full-time workers to avoid liability in case of accidents. Logging jobs in Laos are risky business, and injuries and deaths are not uncommon. Vietnamese interviewees told Forest Trends that injured workers or families of victims receive only minimum compensation from companies (Forest Trends, 2010).

### *Plantations*

Hunt's report (2014) also raised questions regarding the welfare of workers engaged in Acacia and Eucalyptus plantations due to the presence of unexploded ordnance (UXO) in plantation areas, and a lack of evidence that concession holders had surveyed and cleared UXO before commencing work as required by Notification #093 of the National Regulatory Authority for the UXO/Mine Action Sector in the Lao PDR, 19 November 2012. This report presented a case study of a company's employees having been exposed to extreme danger in the workplace through failure to clear unexploded ordnance from plantation sites before plantation operations began.

The Lao Upland Rural Advisory Service (LURAS) states that the government has made no effort to enforce the ban on chemicals of which all uses have been prohibited in Laos under MAF regulation 2860 (2016). Two rounds of nationwide inspections in 2012, conducted by FAO and the Department of Agriculture, found that banned pesticides, such as paraquat and methomyl, were readily available (Vázquez, 2012).

Researchers pointed out that officials of Provincial and District Agriculture and Forestry offices do not have any records of fertilisers and chemical substances used on plantations, and do not inspect farms or monitor pesticide use (RFA – Radio Free Asia, 14 April 2016; Vázquez, 2012).

While paraquat is banned in Laos, farmers (including plantation owners) have become accustomed to using it. While its toxicity is low when sprayed in recommended doses, it poses serious health issues to anyone who handles the chemical. A small, undiluted dose can kill a human, and paraquat is blamed for a large number of pesticide-related deaths. It is a major method of suicide in many developing countries, is easily absorbed through the skin, and has been linked with Parkinson's syndrome in farm workers (RFA – Radio Free Asia, 06 May 2016).

Reports of illness and death from pesticide poisoning are widespread in Xiangkhuang. Nevertheless, farmers, including smallholders of tree plantations, keep spraying with minimal precautions (LURAS, 2016). It has been reported that farmers in Xiangkhouang, an epicentre of rubber plantation, are using about 25 times the amount recommended by the manufacturer (RFA – Radio Free Asia, 06 May 2016).

Officials of District Agriculture and Forestry Offices, in charge of teaching farmers the appropriate use of pesticides, are not aware of the negative impacts of pesticide exposure, nor of the correct use of pesticides (Vázquez, 2012).

According to government officials and researchers, pesticide application is often done with a pump sprayer by women and even children, the latter in contravention of labour legislation which prohibits the employment of minors in activities that are dangerous to health ([Law](#) No. 43/NA 2013 on Labour, [Article 102](#)).

Adequate personal protective equipment for pesticide applicators is lacking, and even if it were available, farmers may not be able to afford it, and thus, highly hazardous pesticides are used by farmers wearing little or no protection (Vázquez, 2012; LURAS, 2016). When mixing pesticides, the mixing tank was frequently placed in a river with children playing nearby. Some farmers reported buying and splitting pesticides with other farmers, a dangerous practice which increases exposure risks.

Despite the requirement that pesticide storage facilities be located at least 100m from housing and domestic animal farms (if pesticides are stored in amounts of more than 10 litres or kilograms), some farmers store pesticides inside or under their houses.

Summary:

For all source types, there is risk of:

- Lack of safety equipment and protective gear;
- Very basic forest camp facilities; and
- Use of non-certified hauling/winch trucks.

For Plantations there is risk of:

- Failure to clear unexploded ordinance (UXO)/mines; and
- Health issues from handling pesticides.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.11.6. Risk designation and specification**

Specified risk

#### **1.11.7. Control measures and verifiers**

- Companies shall enforce specific regulations for workers.
- Companies shall report to the Labour Inspection Agency on assessment of risks to safety and health within the labour units, and to the Labour Inspection Agency on accidents.
- Plantations:
  - Pesticide registration certificate.
  - List of banned pesticides.
  - Instructions on the correct use of pesticides, and with information on the negative impacts of pesticide exposure.
- For Conversion and Plantations:
  - Report on completion of UXO survey or UXO clearance and release of land for use (combined with the handover certificate).
  - UXO/Mine Accident/Victim Reports (check whether there were accidents, detail victims and circumstances).

### **1.12. Legal employment**

*Legal requirements for employment of personnel involved in logging activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment Laws. The objective is to*

*identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

#### **1.12.1. Applicable Laws and regulations**

- Law No. 43/ NA on Labour, 24 December 2013 Article 122 on internal regulations. Available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96369/113864/F1488869173/LAO96369%20Eng.pdf>
- Law No. 12/2007 NA on Trade Unions, 25 December 2007, Articles 5 and 10 on the role of trade unions in representing workers, Article 11 on the rights and duties of trade unions, and Article 31 on the obligation of labour units to allow trade union activity, Articles 30 and 31 on the prohibitions for trade unions and labour units, Articles 38, 39 and 40 on the role of trade unions to coordinate labour disputes and conclude labour contracts, and Articles 44, 45, and 46 on dispute resolution mechanisms. Available at: [http://asean.org/storage/2016/06/L1\\_Law-on-Lao-Trade-Unions-2007.pdf](http://asean.org/storage/2016/06/L1_Law-on-Lao-Trade-Unions-2007.pdf)
- Law No. 05/2006 NA on Child Protection, 27 December 2006, Article 87 on fines for using child labour in hazardous sectors. Available at: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=81057&p\\_country=LAO&p\\_count=58](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=81057&p_country=LAO&p_count=58)
- Instruction No. 1035/2010 MAF of the Provincial Forestry Sector for Implementing the Enforcement of the Labour Law and Paying Attention to Guide Company/Timber Exploitation Division to Strictly Implement, 23 April 2010, Article 2 on written contract, Article 3 on internal regulations regarding labour and health. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest, 6 November 2006, Part XIII on restrictions. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### **1.12.2. Legal authority**

- Selective logging: labour and social welfare divisions in provinces and districts, Provincial Agriculture and Forestry Offices.
- Conversion: labour and social welfare divisions in provinces and districts, the supervision committee responsible for logging management comprised of various relevant agencies and local authorities, or specific taskforce.
- Plantations: labour and social welfare divisions in provinces and districts, the Department of Agriculture of the Ministry of Agriculture and Forestry, Provincial Agriculture and Forestry Offices, District offices of Agriculture and Forestry.

#### **1.12.3. Legally required documents or records**

- Selective logging: Employment contracts, company's internal regulations on labour practices
- Conversion: Employment contracts, company's internal regulations on labour practices
- Plantations: Employment contracts, company's internal regulations on labour practices, operational plan on participation of local people, study on socio-economic information

#### **1.12.4. Sources of information**

*Non-Government sources*

- Barney, K. (2009). *Laos: the Making of a 'Relational Resource Frontier'*. [online]. Geographical Journal 175 (2): 146-159. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4959.2009.00323.x/abstract>
- Forest Trends (2010). *Timber Markets and Trade between Laos and Vietnam: A Commodity Chain Analysis of Vietnamese-Driven Timber Flows* [online]. Available at: [http://www.forest-trends.org/documents/files/doc\\_2365.pdf](http://www.forest-trends.org/documents/files/doc_2365.pdf)
- Fry, S. (2008). *Three Transformations of Industrial Relations in Laos*. [online]. Journal of Industrial Relations 50 (5): 779-795. Available at: <http://journals.sagepub.com/doi/pdf/10.1177/0022185608094117>
- Hunt, G. (2014). *An Analysis of FSC Certification of Oji LPFL*. [online]. Plantation Watch. Available at: <http://plantation-watch.org/wp-content/uploads/2015/06/Analysis-of-FSC-Certification-of-Oji-LPFL-2014.pdf>
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- Kenney-Lazar, M. (2010). *Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos*. [online]. Vientiane: Faculty of Forestry, National University of Laos. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/3-Land-Concessions-Land-Tenure-and-Livelihood-Change-Plantation-Development-in-Attapeu-Province-Southern-Laos.pdf>
- Shi, W. (2008). *Rubber boom in Luang Namtha: A transnational perspective*. [online]. GTZ Report. Available at: <http://lad.nafri.org.la/fulltext/2072-0.pdf>

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

Law No. 43/NA 2013 on Labour is the cornerstone of the legal framework on employment in Laos and covers the following areas:

- General principles and employer obligations;
- Internal working conditions;
- Weekly rest, public holidays, annual and sick leave, maternity leave and maternity allowance;
- Working hours and overtime;
- Salary and payment of wages
- Form and duration of employment contracts;
- Termination of contracts and severance pay;
- Rights and obligations of foreign labour;
- Employment of women and children;
- Social insurance and retirement;
- Employment of minors and forced labour;
- Resolution of labour disputes;
- Employer or social insurance implementation agency responsibility for care of victims of labour accidents and occupational diseases, and the obligation to pay an allowance to such victims.

Foreign investors shall give priority to Lao citizens in recruiting and hiring employees, yet reserving the right to employ skilled and expert foreign personnel when necessary with the approval of the relevant government authority ([Law No. 43/NA 2013 on Labour, Article 68](#); [Law on Foreign Investment, Article 11](#)).

Approval must be obtained from the Ministry of Labour and Social Welfare to employ foreign workers ([Law No. 43/NA 2013 on Labour, Article 156](#)).

The acceptable ratio for foreign labour within a labour unit must be as follows: 15% percent of the total number of Lao labourers within a labour unit for manual workers, and up to 25% for skilled employees. For large government projects lasting up to five years, the use of foreign labour is in accordance with the agreement between the government and the project owner.

Foreign employees must meet several requirements to be employed in the Lao PDR, including being over the age of 20 years, possessing the skills and professional level required for the position, having no criminal record, and being in good health). Foreign employees may work under a contract for 12 months, which may be extended by 12 months up to a maximum of five years in total ([Law No. 43/NA 2013 on Labour, Article 45](#)).

The employment of unauthorised foreign workers for logging in production forests is prohibited ([Guideline No. 2157/2006 DOF Part XIII](#)). Agreement No. 32/PM (2002), [Article 5](#) calls for an “[i]ncrease [in] the effectiveness of [the] controlling of foreign labour, logging vehicles and machineries, timber hauling and transport by which there must be strict rules and measures of controlling”.

The workplace must have its own internal regulations, and these must not conflict with the [Labour Law](#). These regulations must be approved by the Labour Administration Authority. The Labour Administration Authority has a template of the Internal Regulations that companies are encouraged to use ([Law No. 43/NA on Labour 2013, Article 122](#)).

The employer is obliged to provide training to develop their employees’ skills and knowledge ([Law No. 43/NA 2013 on Labour, Article 28](#)).

‘Youth labour’ means employees older than 12 but younger than 18. Employers are prohibited from employing persons under the age of twelve years. Children of ages 12 and 13 may be employed for “light work”, provided that they are not required to undertake work that is unsafe, interferes with their schooling or vocational training, or is dangerous to their bodily or psychological health.

Employees under the age of eighteen years are prohibited from working overtime ([Law No. 43/NA 2013 on Labour Articles 101 and 141](#)). Employers must keep records of youth employees, and these must be supplied to the labour inspection authorities ([Law No. 43/NA 2013 on Labour Articles 102 and 141](#)).

A woman is entitled to at least 105 calendar days of fully paid maternity leave, at least 45 days of which must be after the birth. During the year after birth, the woman is entitled to have one hour a day of rest in order to feed and take care of the child. If a woman suffers a miscarriage, she is entitled to leave on full pay for a period determined by a doctor. On the birth of her baby, a woman is entitled to an allowance as specified in the Social Security [Law](#) ([Law No. 43/NA 2013 on Labour, Article 98](#)).

An employer cannot require a pregnant woman or woman with a child younger than one year old to carry heavy loads, stand for long periods, undertake dangerous work or work at night, nor to work overtime or on a day of rest. If necessary, the employer shall temporarily assign the employee to more suitable work during this period, but must pay her the normal salary ([Law No. 43/NA 2013 on Labour Article 97](#)).

The employer must pay at least the minimum wage set by the government ([Law No. 43/NA 2013 on Labour, Article 105](#)).

Wages are to be paid at least once per month ([Law No. 43/NA 2013 on Labour, Article 110](#)).

Deductions from an employee's salary are permissible to compensate for damage to the property of the employer to the value of the item damaged. If the employee is not able to repay the amount owing, the compensation must be deducted from the employee's salary or wage over time, but these deductions must not exceed 20% of the employee's salary or wage.

The employer has the duty to declare the income which is paid to the employee to the Tax Department to deduct personal income tax ([Law No. 43/NA 2013 on Labour, Article 113](#)).

Every employer shall make payments to the National Social Security System with respect to their employees in accordance with the Social Security [Law](#) governing social security payments ([Law No. 43/NA 2013 on Labour, Article 71](#)).

Normal hours of work are 6 days a week, no longer than 8 hours a day, or 48 hours a week ([Law No. 43/NA 2013 on Labour, Articles 51 and 52](#)).

The employer may request an employee to work overtime. When overtime is necessary for more than 45 hours per month, or 3 hours per day, the employer must request particular authorisation from the Labour Administration Agency, and either the trade union, worker's representative, or the majority of employees in the labour unit. Overtime cannot be worked for more than 4 consecutive days (except in the case of natural disaster) ([Law No. 43/NA 2013 on Labour, Article 53](#)).

Employment contracts must be made in writing in cases where one or both parties are a legal entity or organisation ([Law No. 43/NA 2013 on Labour Article 77](#)). The contract can either be for a fixed term or an indefinite period. If a fixed term contract, including any extensions, is longer than three years, the contract shall be deemed to be an indefinite employment contract.

If the parties wish to extend the term of a fixed term employment contract, they must notify each other 15 days before its expiry, with the extension commencing within 60 days of the date of expiration of the contract ([Law No. 43/NA 2013 on Labour, Article 76](#)).

The contract must stipulate the place of work, the work to be performed, the level of wages, the duration of the contract, the commencement date, the expiry date and any probationary period, workings days, rest days and holidays, any welfare entitlements of the worker, the benefits the employee will receive at the expiration of the employment contract, and any other matters agreed between the parties ([Law No. 43/NA 2013 on Labour, Article 78](#)).

Employee representatives are allowed to participate in labour dispute resolution, collective bargaining, the creation of employment contracts and internal regulations of labour units, recommend improvements to wages, work conditions, and social insurance systems ([Law No. 43/NA 2013 on Labour, Article 167](#)). In case a labour dispute cannot be resolved, strikes can be organised based on the [Law](#) and regulations ([Law No. 43/NA 2013, Article 154](#)).

For labour units that include grassroots trade union groups, it is held that the head of the grassroots trade union group shall be the employees' representative. In cases where a labour unit has not yet established a grassroots labour trade union, the employees may appoint their own representative. Workplaces with 10 to 50 employees must have an employees' representative; workplaces with 51 to 100 employees must appoint two representatives, and one additional representative for every further 100 employees ([Law No. 43/NA 2013 on Labour, Article 166](#)).

#### *Description of Risk*

It is common for plantation workers not to have a valid, signed labour contract, and for salaries not to be paid on time.

In his research paper on the expansion of the rubber plantations of a Vietnamese corporation (HAGL) in Attapeu province, Kenney-Lazar (2010) concludes that work on rubber plantations is so demanding and unfair in the eyes of the villagers that they will only work when they have to, usually only two or three times per year. The villagers complained that the work was too difficult and that the duration of the working day was too long for such low wages. Some even suspected that the company was

making the work so difficult for the villagers on purpose in order to prevent them from coming to work, as this would then give the company an excuse to evade Lao labour Laws requiring priority be given to Lao citizens in recruiting and hiring employees, thus allowing them to import Vietnamese labour.

The biggest complaint of villagers was concerning the payment process. The company usually pays the supervisor (usually a Vietnamese employee of the company, rarely Lao, and never a member of a local minority) for all of the group members' wages, and the supervisor was then responsible for paying each worker. Since such payments are not regulated, this opens up a significant space for corruption on the part of the supervisor. Sometimes the supervisor would pay late. There were also cases of employees not getting paid at all.

Similar cases in which a Chinese rubber company paid nothing to local workers were also reported in a study on the rubber plantation boom in Luang Namtha. The company manager explained that it was agreed with the villagers that payment would be given in a lump sum at the end of the year, so it was all a big misunderstanding. The district government, in response to the villagers complaints, ordered the villagers to pay to have their case addressed (Shi, 2008).

A Forest Trends' report (2010) stressed that Lao villagers are largely excluded from employment opportunities in Vietnamese companies. Vietnamese companies do not want to employ Lao labourers, particularly ethnic minority villagers, because Lao workers are considered unskilled, ineffective, less diligent than Vietnamese workers, and unable to communicate with Vietnamese managers. As a result, almost all the loggers are Vietnamese people brought from Vietnam during the dry season (October to May). Those who have a labour contract are eligible for social benefits, such as social and health insurance, as stipulated in Vietnamese labour Law. However, some loggers do not have a labour contract, and thus are not eligible for benefits other than payment for their work. The President of the Vietnamese-Lao Association in Attapeu province, cited in the Forest Trends' report (2010), stated that there were about 5,000 Vietnamese workers in Attapeu, many of whom had entered Laos illegally.

The Lao PDR has not ratified International Labour Organisation Conventions 87 and 98 covering trade union rights on freedom of association and collective bargaining. According to Fry (2008) the lack of democratisation has created a vulnerable situation for employees in Laos. Wages in Laos are very low, putting the majority of workers in a difficult position. There are legal rights to organise, but in reality there are extremely limited possibilities for associations, labour unions and collective bargaining.

Summary:

For all source types, there is risk of:

- Lack of salary payment or payment on time;
- Lack of labour contracts; and
- Risk of priority not being giving to local Lao citizens.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.12.6. Risk designation and specification**

Specified risk

#### **1.12.7. Control measures and verifiers**

- For development projects and tree plantations:
  - Study on socio-economic information.

- Operational plan on participation of local people.
- Employment contracts shall comply with basic legal requirements.
- Company's shall follow internal regulations on labour practices.
- Company's reports on youth and foreign employees shall be used to check the number of foreign and youth workers.

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest logging activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable Laws and regulations

- Forestry law No. 08/NA, (25 May 2019), Article 164 provides for customary use of forests, timber and NTFP for festivals and religious ceremonies that are undertaken in accordance with allocation plans and laws.
- Law No. 29/2012 NA on Environmental Protection Law, December 18, 2012, chapter 5 on public participation <http://faolex.fao.org/docs/pdf/lao151747.pdf>
- Law No. 04/2003 NA on Land, 21 October 2003, Articles 71 on compensation for land used for public purposes <http://extwprlegs1.fao.org/docs/pdf/lao77471.pdf>
- Decree No. 192/2005 on Compensation and Resettlement of Development Project, 7 July 2005, PM, Part I, Article 2, describing the scope of application for resettlement and compensation in development projects, Part III, Article 6, outlining compensation principles, and Part IV, Article 13 on grievance mechanisms, and Article 15 on the reporting and documentation requirements for development projects <http://www.laolandissues.org/wp-content/uploads/2012/03/Regulations-for-Implementing-Decree-192-on-Compensation-Eng-2005.pdf>
- Regulation No. 2432/2005 PM.STEA for Implementing Decree 192/PM, 11 November 2005, Part III, Article 4, on resettlement planning, documentation and reporting, Article 5 on Initial Social Assessment, Article 9 on Social Assessment, Article 11 on Land Acquisition and Compensation Report, Article 12 on Resettlement Plan, and Article 17 on Ethnic Minority Development Plan <http://www.laolandissues.org/wp-content/uploads/2012/03/Regulations-for-Implementing-Decree-192-on-Compensation-Eng-2005.pdf>
- Decree No. 135/2009 PM on State Land Lease or Concession, 25 May 2009, Articles 6 and 43 outlining compensation requirements for concessions on people's or individual lands [http://rightslinklao.org/eng/index.php?option=com\\_docman&task=doc\\_download&gid=100&Itemid=70](http://rightslinklao.org/eng/index.php?option=com_docman&task=doc_download&gid=100&Itemid=70)
- Decree No. 192/2005 PM on Compensation and Resettlement of Development Project, 7 July 2005 Articles 3, 4, 6, 15. <http://www.laolandissues.org/wp-content/uploads/2011/12/Approved-Resettlement-Decree-192-PM-Eng-2005.pdf>
- Order 13/2012 PM on Halting Investment Projects Related to Mining, Rubber, Eucalyptus, 11 June 2012. <http://www.laolandissues.org/wp-content/uploads/2012/03/Prime-Minister-Order-No13NA-on-halting-concessions-June-2012.pdf> (in Lao)
- Instruction No. 20/2010 NLMA on Implementation of Decree of State-owned Land for Concession, Article 5 on calculation of people's land repayment under the lease and concession area <http://www.laolandissues.org/wp-content/uploads/2012/03/NLMA-Concession-Instruction-2010-April-Eng.doc>
- Decree No. 59/2002 On Sustainable Management Of Production Forest Areas, 22 May 2002 <http://theredddesk.org/countries/Laws/decreed-sustainable-management-production-forest-areas-no-592002>
- Instruction 822/1996 MAF On Forestland Allocation for Management and Use, 2 August 1996 with guidelines on how to conduct FLUPLA and identify forest zones within a village boundary <http://flegtlaos.com/resources/forestry-legality-compendium/>

- Regulation No. 0112/2008 MAF on the Logging and Post-logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, [Article 31](#) on dissemination of information <http://fleglaos.com/resources/forestry-legality-compendium/>
- Technical Guidelines of Science Technology and Environment Agency (STEA) on Compensation and Resettlement in Development Projects, November 2005 <http://www.prflaos.org/sites/default/files/policy/43.%20Technical%20Guidelines%20on%20Compensation%20and%20Resettlement%20in.pdf>

#### 1.13.2. Legal authority

- Selective logging: Provincial and District Offices of Agriculture and Forestry, Village Forestry Organisations
- Conversion: Ministry of Natural Resources and Environment, joint committee of representatives of all stakeholders.
- Plantations: Ministry of Natural Resources and Environment, joint committee of representatives of all stakeholders.

#### 1.13.3. Legally required documents or records

- Selective logging: Forest management plan, Village Forest Management Agreement, map with zoning of village land/forests.
- Conversion: Village Forest Management Agreement, map with zoning of village land/forests, land acquisition and compensation report, resettlement plan, memorandum containing estimate of compensation signed by all stakeholders.
- Plantations: Village Forest Management Agreement, map with zoning of village land/ forests, land acquisition and compensation report, resettlement plan, memorandum containing estimate of compensation signed by all stakeholders.

#### 1.13.4. Sources of information

##### *Government sources*

- [vientianetimes.org](http://www.vientianetimes.org) (2015). *Govt reopens for new mining investment*. [online]. 25 December 2015, Vientiane Times. Available at: [http://www.vientianetimes.org.la/FreeContent/FreeConten\\_Govt\\_reopens.htm](http://www.vientianetimes.org.la/FreeContent/FreeConten_Govt_reopens.htm)
- [laolandissues.org](http://www.laolandissues.org) (2012). *Govt urged to review land compensation* [online]. Land Issues Working Group. Vientiane Times, 18 August 2012. Available at: <http://www.laolandissues.org/2012/08/20/govt-urged-to-review-land-compensation/>
- [b2bdirectory.pk](http://www.b2bdirectory.pk) (N.Y.) *National Export Strategy (NES) for the period of 2011-2015*. [online] Summary. Available at: <http://www.b2bdirectory.pk/Lao-Republic-Exports/National%20Export%20Strategy%202011-2015%20Lao%20Republic.pdf>

##### *Non-Government sources*

- Global Witness (2013). *Rubber barons: How Vietnamese companies and international financiers are driving a land grabbing crisis in Cambodia and Laos*. [online]. Global Witness. London. Available at: <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/>
- Hodgdon, B. (2010) *Community Forestry in Laos*. [online]. Journal of Sustainable Forestry, 29: 1, 50 –78. Available at: <http://dx.doi.org/10.1080/10549810903463452>

- Hunt, G. (2014). *An Analysis of FSC Certification of Oji LPFL*. [online]. Plantation Watch. Available at: <http://plantation-watch.org/wp-content/uploads/2015/06/Analysis-of-FSC-Certification-of-Oji-LPFL-2014.pdf>
- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- Irinnews.org (2014). *Laos "land grabs" drive subsistence farmers into deeper poverty*. [online]. IRIN, 22 May 2014. Available at: <http://www.irinnews.org/report/100116/laos-%E2%80%9Cland-grabs%E2%80%9D-drive-subsistence-farmers-deeper-poverty>
- Kenney-Lazar, M. (2010). *Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos*. [online]. Vientiane: Faculty of Forestry, National University of Laos. Available at: <http://rightslinklao.org/wp-content/uploads/downloads/2014/05/3-Land-Concessions-Land-Tenure-and-Livelihood-Change-Plantation-Development-in-Attapeu-Province-Southern-Laos.pdf>
- Kenney-Lazar, M. (2015). *Authoritarian Resource Governance and Emerging Peasant Resistance in the Context of Sino-Vietnamese Tree Plantations, Southeastern Laos*. BRICS Initiative for Critical Agrarian Studies Working Paper, No. 1. The Hague: The International Institute for Social Studies.
- Stenhouse R. and Bojö J. (2011). *An environmental perspective on hydropower and mining development in the Lao PDR*. [online]. Background Paper for Lao PDR Development Report 2010: Natural Resource Management for Sustainable Development. Washington, D.C.: World Bank. Available at: [http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010\\_Environment.pdf](http://siteresources.worldbank.org/LAOPRDEXTN/Resources/293683-1301084874098/LDR2010_Environment.pdf)
- Wellmann, D. (2012). *The legal framework of state land leases and concessions in the Lao PDR*. [online]. Discussion paper developed under the GIZ NU-IRDP contribution to the NUDP as product of the land management component. Available at: <http://www.laolandissues.org/wp-content/uploads/2012/03/Legal-Framework-of-Concessions-in-the-Lao-PDR-Discussion-paper-GIZ-Wellmann.pdf>

### 1.13.5. Risk determination

#### *Overview of Legal Requirements*

Villages in the Lao PDR have open access to, and exclusive use of, forest land and resources within their village boundaries.

Customary forest rights are defined in [Article 42](#) of the 2007 Forestry Law, with all rural communities having these rights:

“Customary utilisation of forest is the use of forest and forest products that has been carried out for a long time in accordance with [Laws](#) and regulations. The State allows the use of trees and the harvest of non-protected species of forest products for household consumption with the condition that such customary use shall not cause adverse impacts on forests, forest resources, the environment, nor impinge upon rights and benefits of other individuals or organisations.”

Villagers may be allocated land for tree planting and regeneration, and ownership of the resulting trees is guaranteed upon registration.

A village, as a community, can lease natural forest areas within the village boundary under a Village Forest Management Agreement from the state for exclusive customary use and protection rights with no tax obligations. The [Law](#) does not specify the duration or terms of these agreements, but Prime Ministerial [Decree 59 2002](#) sets a minimum of 10 years.

In addition to these customary rights under the [Law](#), most villages have already gone through the Lao government’s Land Use Planning and Land Allocation programme (as stipulated by “MAF Guidelines on

Land Use Planning and Allocation for Management and Use, No. 0822/MAF 1996) that formally allocates land and forest to villagers for legal recognition.

Organisations and people who are directly or indirectly affected by investment projects or activities in development shall be involved in development of an integrated spatial plan, strategic environmental assessment, environmental action plan, social and natural environmental impact assessment, environmental management and monitoring plan, pollution control and other measures (Environmental Protection [Law No. 29/NA](#), [Article 48](#)).

*Selective logging:*

To strengthen the role of forestry in poverty eradication, the government has established a policy that villagers in production forest areas, organised into Village Forestry Organisations, should participate in forestry planning and operations in the field and should share in the derived proceeds.

The role of Village Forestry Organisations is to organise villagers' participation in implementation of forest management activities under a Village Forest Management Agreement signed by the VFO and the relevant FMU. This agreement specifies the rights and responsibilities of signatories, the scope of village participation, and the arrangements for sharing of revenue from commercial timber harvests.

*Conversion and Plantations:*

The right of usufruct or any generated income from land is secured to the holder of land use rights by [Article 56](#) of the Land [Law No. 04/2003 NA](#). The parties related to the lease or concession of land (aliens, apatrids, foreign Individuals and their organisations) are under an obligation "to not violate the rights and interests of other persons" (the Land [Law No. 04/2003 NA](#), [Article 67](#)).

In case of acquisition of land for public purposes or development projects, the state entity or company shall conduct assessments and receive approval from the relevant government agencies for the following documents, where required by [Law \(Decree 192/PM 2005, Article 15\)](#):

- Initial social assessment;
- Social impact assessment;
- Land acquisition and compensation report;
- Resettlement plan; and
- Ethnic minority development plan.

For government-financed projects, these documents should be submitted to the central-level agency (Ministry of Natural Resources and Environment). In case of a foreign or domestic private or joint venture, the documents should be submitted to the ministry in charge of the project, and the relevant local authority. The ministry shall forward these documents to the Ministry of Natural Resources and Environment for final approval.

Owners of state land concessions are also responsible for providing budgets, short-term implementation, long-term assistance, and economic rehabilitation of affected people, as well as monitoring and evaluation of the compensation process. They are required:

- To pay particular attention to the needs of the "poorest affected people and vulnerable groups";
- To ensure the meaningful involvement of project-affected communities and their existing social and cultural institutions in the resettlement process;
- To collaborate with "concerned local governmental authorities", and to get the approval of "concerned agencies" for all submitted plans and surveys.

If it is confirmed by the "responsible government authorities" that the development of a project will have adverse impact on affected people, [Article 6](#) of the [Decree 192/PM 2005](#) regulates the principles of compensation.

Compensation is defined as “payment in cash or in kind for an asset to be acquired or affected by projects at replacement cost”, where replacement cost is “the amount in cash or in kind needed to replace lands, houses, infrastructure or assets on the lands (crops, fruit trees) and other assets (income) affected by the development projects” ([Decree 192/PM 2005, Article 3](#)).

The project’s owner shall compensate losses to the holders of legitimate rights for different types of land use by calculating the value of production, or the value received from land development as the basis for determining the amount of compensation ([Decree No. 135/2009 PM Article 6 and 43](#)).

Affected people living in rural or remote areas who do not have any legal Land Use Certificate or other acceptable proof indicating land use rights, shall be compensated for their lost assets at replacement cost and provided assistance “to ensure that they are not worse-off due to the project”.

Where significantly large areas of land are affected by a project (i.e. agriculture, residential or commercial land), the compensation shall be through the provision of “land for land”. This land must be of equivalent size and productivity and must be located at a location acceptable to the affected people and the project owners ([Decree 192/PM 2005 Article 6](#)).

Before compensation is provided, the project owners shall establish a joint committee with representatives of all stakeholders to assess the loss to affected people. The estimation of compensation must be done with the participation of line agencies, local administrative authorities, village administration and villagers by preparing a written memo which must be signed by all participants.

The compensation and resettlement measures must be in place prior to the commencement of the project; rehabilitation measures must already be in place, although they need not have been completed.

Detailed information on the resettlement and compensation process regarding procedures, planning and implementation can be found in the Technical Guidelines on Compensation and Resettlement in Development Projects (prepared by the Science Technology and Environment Agency (STEA) in 2005).

Regulation No. 0112/2008 MAF ([Article 31](#)) requires dissemination of information about logging and reservoir area cleaning among all interested parties, including local people.

#### *Description of Risk*

For the majority of rural citizens of the 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 most forest land, maintaining a highly centralised system of forest governance with inadequate recognition of customary tenure rights, leaving millions of forest-dependent communities vulnerable to land expropriation. State views often conflict with villagers’ notions of customary rights and authority.

The National Export Strategy (2011-2015) prioritises 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. This approach is best illustrated by the shift from reliance on small-scale, local production and the logging of natural forests and lower-value products, to the establishment of commoditised export-oriented industrial agriculture and forestry plantations.

It is worth specific note 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.

Consequently, the 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 National Export Strategy.

Screening of the concession inventory data suggests that currently about five million hectares of the Lao PDR are leased or conceded to either domestic or foreign parties (Wellmann, 2012). This area amounts to 21% of the total territory of the country. Roughly 13% of all villages in the Lao PDR have at least one concession within their village boundaries (these concessions can relate to plantations, but also to mini natural gas and hydropower where forest conversion would have occurred). Eighty-five percent of all investment in agricultural concessions comes from foreign investors. In 2012, the International Food Policy Research Institute listed Laos among seven countries in the world in which international land deals account for more than 10 percent of the total agricultural area (IRIN, 22 May 2014).

Most of the concessions (tree plantations, hydropower dams, mining and geological prospecting) are granted within forest areas, which results in a high rate of forest conversion, and deprivation of non-timber forest products critically important to the subsistence of the rural population.

Laos has about 1.6 million land plots, and so far about 620,000 of these plots have been titled. Of these, 300,000 are owned by the State, while the rest is land belonging to villagers. The government had planned to complete a land survey and allocation of lands to villagers, as well as a land title project by 2015 (Vientiane Times, 21 August 2012).

Rights to manage village forests are often not secured to villagers. Commonly, borders of village lands are drawn on a single "hard copy" – a billboard in a village – and if/when this is lost or damaged, the village loses its only source of information on village forests (Kenney-Lazar, 2010).

Despite the allocation of use rights over forest and other communal lands, communal lands are not compensated for when re-allocated to companies, despite legislation requiring compensation to ensure that people are not left worse off due to a project. Communal lands have no land title and are considered to be within the realm of state ownership. Public or state ownership means that such lands can be easily given away without any sort of payment for the loss of resource entitlements (Kenney-Lazar, 2010). The lack of statutory recognition of traditional land rights before land is opened up to investors often means that local communities have little or no political recourse to defend their rights and to prevent the loss of both non-legally tenured communal and legally tenured individual land in the face of land concessions.

Accordingly, land use plans and associated formal use rights are often totally ignored by concessionaries, and researchers have reported cases of conversion of every type of allocated forest (conservation, production, protection, regeneration, and cemetery forests) and land category (agriculture, grazing, and industrial tree land) (Hunt, 2014; Kenney-Lazar, 2010).

Land concessions have come under criticism for ignoring village customary forest and land tenure rights, and for depleting the resources of forest-dependent communities. Land disputes were the top issue of concern raised by members of the public who called the National Assembly hotline during the session of the National Assembly in June 2012 (Vientiane Times, 21 August 2012).

Researchers and activists point out that land deals in Laos, despite decent Laws, are carried out with little transparency or accountability, and with a lack of equitable consultation with affected local communities (Kenney-Lazar, 2010, 2015; Hunt, 2014). Conflicts often arise due to limited, inadequate, or non-existent compensation for acquired land being paid by project owners to the land use right holders.

Many villagers in Laos have a high degree of dependency on NTFP and still practice shifting cultivation, which requires large plots of land to allow some soil to lie fallow to regenerate while other sections are planted – a system that is "completely different" from the settled farming of the lowland areas where displaced villagers are resettled. When the government relocates farmers to consolidated villages near

towns and cities, families in some cases have been given as little as 0.75 hectares of land – roughly half what they traditionally use for farming (IRIN, 22 May 2014).

Kenney-Lazar (2010) reported cases of farmers accepting the low price that a Vietnamese rubber corporation offered out of fear that if they refused they would not receive any money at all.

Government officials often fail to formalise the tenure complaints of villagers as they are involved in the acquisition of village land (through bribes from concessionaries).

The typical grievance process in Laos is that the headman of a village raises any complaint of the villagers with the district government. However, these are usually the same district government officials who brought the company to the community in the first place. As such, it is highly likely that government officials will hesitate to formalise the tenure complaints of villagers when they themselves have been involved in the acquisition of village land. For instance, a company was accused of making monthly payments to both district and provincial government officials, ostensibly as a per-diem payment, for being on the company committee; this creates a serious conflict of interest, and it is entirely predictable under such circumstances that any grievance mechanism would be corrupted (Hunt, 2014).

Villagers in Attapeu told Global Witness that armed soldiers, hired by a Vietnamese rubber corporation, regularly prevent them from entering the forest in at least one concession, and threaten them with arrest. These soldiers also protected logging operations inside the concession area, where luxury timber, including rosewood, was being cleared and trucked across the border to Vietnam as round logs (Global Witness, 2013). Along with force and pressure, the company used material incentives to influence the decisions of the headmen of a village, as well as government officials (Kenney-Lazar, 2010).

In an attempt to properly regulate the existing mining and tree plantation investment projects, in June 2012 the government issued Order No 13/PM 2012 ceasing consideration and approval of new investment in mining exploration and surveys, and rubber and eucalyptus plantations throughout the country.

This moratorium on new rubber and eucalyptus plantation projects was extended in December 2015 by the Prime Minister's cabinet decision, while the Government has reopened consideration of new mining projects (Vientiane Times, 25 December 2015).

However, researchers say, murky land deals continue to drive ethnic communities off their land without adequate consultation or compensation (IRIN, 22 May 2014).

Hodgdon (2010) pointed out a central contradiction in Lao [Law](#) that hinders local communities from participating in forest management activities. On the one hand, basic legal documents like the Constitution and the Forestry [Law](#) cite the central role of the state as sole land owner and ultimate decision maker over forest resource use. On the other hand, legislation entitles local communities to certain rights in forest management, and to benefit sharing. When conflicts arise between communities and state agencies, it is easy for officials to simply cite the Constitution or the Forestry [Law](#) to deny communities any meaningful role in decision making.

According to Jonsson (2006) villagers did not understand forest management plans for production forest areas, indicative of a lack of participation of the villagers in forest management.

Summary:

For all source types, there is risk of:

- Conflicts over land rights and tenure;
- Lack of compensation to villagers when relocated;
- Lack of formalisation of complaints from villagers due to corruption; and

- Villagers not being allowed to enter forest concessions.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.13.6. Risk designation and specification**

Specified risk

**1.13.7. Control measures and verifiers**

- Concession/lease agreement granted by the state for hydropower dam construction, mining etc.: to find out whether concession overlaps village areas; contract considers right of local population, and terms require mitigation of damage and compensation for damage, relocation expenses (including provision of appropriate source of subsistence).
- Concession/lease agreement for tree plantation by Ministry of Natural Resources and Environment or Provincial/City Offices of Natural Resources and Environment: to find out whether concession overlaps village areas; contract considers right of local population, and terms require mitigation of damage and compensation for damage, relocation expenses (including provision of appropriate source of subsistence).
- Village Forest Management Plan and map with zoning of village land/forests: to find out whether forest management plans for production forest areas reckon with these documents; in case of conversion, mitigation and compensation measures must be commensurate with type and value of converted lands.
- Forest management plan for production forest area endorsed by the Department of Forestry of the Ministry of Agriculture and Forestry: to find out whether village forestry organisations were involved in planning.
- For development projects and forest plantations:
  - Social impact assessment.
  - Resettlement plan.
  - Land acquisition assessment.
  - Land acquisition and compensation report.
  - Ethnic minority development plan.
  - Memo with the estimation of compensation signed by all stakeholders.

**1.14. Free prior and informed consent**

*Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the logging operation.*

**1.14.1. Applicable Laws and regulations**

Legislation does not cover Free, Prior and Informed Consent

**1.14.2. Legal authority**

NA

**1.14.3. Legally required documents or records**

NA

**1.14.4. Sources of information**

NA

**1.14.5. Risk determination**

NA

**1.14.6. Risk designation and specification**

NA

**1.14.7. Control measures and verifiers**

NA

**1.15. Indigenous/traditional peoples' rights**

*Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.*

**1.15.1. Applicable Laws and regulations**

N/A – Legislation does not recognise indigenous people, although 33% of the country's population is estimated to comprise ethnic minorities, many of whom cannot speak or read Lao, and who maintain a spiritual connection to their land and forests.

Multilateral donors, such as the ADB and the World Bank, apply indigenous safeguards on many of their projects, as they consider many of the ethnic groups in Laos to fit their organisational concepts of "indigenous people". It is recommended that Indigenous Peoples Rights be considered under HCV 2.

**1.15.2. Legal authority**

NA

**1.15.3. Legally required documents or records**

NA

**1.15.4. Sources of information**

NA

**1.15.5. Risk determination**

NA

**1.15.6. Risk designation and specification**

NA

**1.15.7. Control measures and verifiers**

NA

## TRADE AND TRANSPORT

### 1.16. Classification of species, quantities, qualities

*Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).*

#### 1.16.1. Applicable Laws and regulations

- Forestry law No. 08/NA, (25 May 2019), surveying is a major activity under Article 19 and involves data collection, assessment of forest conditions and forest cover, change of forest and forest resource use, tree species, wood volume, biomass, carbon sequestration amount in forest, regenerating trees and NTFPs. Different surveys for forestlands and purposes are covered under separate regulations. Timber at log yards are required to be measured and classified (Article 28 and 29) and in accordance with specifications under Article 32.
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, Article 16 on agency responsibilities and documentation requirements and on hand over of log lists made in log yard II, Article 20 on prohibited timber species and Article 25 on confiscated timber. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest, 6 November 2006, Part X on log records, log marking, scaling and documentation requirements. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 0112/2008 MAF on the Logging and Post-logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008, Articles 19 and 21 on log recording and measuring. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, Article 14 on transport permit for plantation timber. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Table No. 0008/2012 MAF of Prohibited, Special and Controlled Timber Species. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Decision No. 0116/2007 MAF on the regulation of timber log scaling and grading, 17 May 2007. Agreement on measurement of logs, stumps, knots and log grade classification. Annex 1. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 0396/208 DOF on Monitoring the Implementation of Production Forest Management, 11 March 2008, Article 4 on monitoring procedure. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>

#### 1.16.2. Legal authority

- Selective logging: District and Provincial Agriculture and Forestry Offices.
- Conversion: the supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce, District and Provincial Agriculture and Forestry Offices.
- Plantations: Village Forest Organisation, District and Provincial Agriculture and Forestry Offices.

#### 1.16.4. Sources of information

##### *Non-Government sources*

- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- EU FLEGT Facility (2012). *Study for Understanding Timber Flows and Control in Lao PDR*. [online]. LTS International. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>
- Smirnov D. (2015). Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>

#### 1.16.5. Risk determination

##### *Overview of Legal Requirements*

A log list, which is used to calculate timber values and to generate transport and/or export permits, is created at log yard II, where all logs are to be measured and graded. [Law](#) on Forestry (2007) [Article 21](#) stipulates that logs stored at log yard II shall be thoroughly measured, graded and recorded in a log list according to MAF regulations. Provincial and District Agriculture and Forestry Offices staff are responsible for making log lists at log yard II, and for handover of log lists to the Provincial Office of Industry and Commerce (Order No. 17/2008 PM [Article 16](#)). Measurement, scaling and registering of logs at log yard II is used for valuation, payment of fees, royalties etc., and is undertaken in accordance with Decision No. 0116/2007 MAF Annex 1 governing measurement of logs, stumps, knots and classification of log grades.

In addition to this, according to [Guideline No. 2157/2006](#) DOF Part X and Regulation No. 0112/2008 MAF [Articles 19](#) and [21](#), forestry officers (Provincial and District Agriculture and Forestry Offices) supervising logging activities in compartment/logging zone are required to record logs already at log yard I (the species, number of trees, number of logs), including log markings which indicate the logging site. This list is to be used as a transport document to bring the material to log yard II.

In cases in which timber was harvested in production forest areas, assigned forestry officers must check that all logs are derived from marked trees in the harvested blocks according to logging plan ([Guideline No. 2157/2006](#) DOF Part X) before scaling and grading of the logs at log yard II.

After completion of a log list, foresters of Provincial Agriculture and Forestry Offices shall make a release-mark on every recorded log using a special hammer-stamp: a F-mark (ຸມ) for logs taken from log yard II to log yard III or a timber processing factory, an LF-mark (ຸມລຳ) for logs intended for export in special cases approved by the GoL (Order No. 17/2008 PM [Article 16](#)).

Transport permits are required for plantation timber and shall contain the relevant required information on quantity and quality (Regulation 196/AF, 2000 [Article 14](#)). The tier of government body approving transportation depends on the point of shipment. Transportation of plantation timber within the same province can be approved by a Village Forest Organisation, while transportation of plantation timber out of a province is to be approved by a District Agriculture and Forestry Office and reported to a Provincial

Agriculture and Forestry Office. Permits for export abroad are issued by a Provincial Agriculture and Forestry Office.

Foresters of Provincial and District Agriculture and Forestry Offices may inspect log yard II and check that the volume harvested is consistent with the logging permit.

#### *Description of Risk*

The flow of wood products is poorly monitored, and only the smaller part of harvested timber is officially registered at log yards as required. According to the Study for Understanding Timber Flows and Control in the Lao PDR (2012), only 34% of the total recorded harvested timber volume from four provinces in the 2010-11 logging season was registered at log yard II.

There is evidence that documents (log lists) specify timber of lower grade and smaller size than is accurate, possibly because of an informal agreement between the buyer and the state agencies responsible for timber sale. The control measurement of logs at log yards II in the Don Situang production forest area revealed that volumes were up to 30% higher than documented on log lists (Jonsson, 2006).

The WWF's analysis of timber movement under quotas for road construction (Smirnov, 2015) has revealed significant disparities between records of quantities, composition and quality of harvested timber at different stages of the chain of custody (from pre-felling inventory and accounting at log yard II, to the stage at which custom documents are prepared), supposedly in order to conceal illegally harvested timber and to understate payments/charges in the process of selling and paying taxes to the state on the Lao side:

- Evidence that some valuable restricted species (Burma padauk and Burmese rosewood) went unrecorded at log yard II;
- Significant underreporting of quantity – the volume of exported timber (as it was reported to Vietnamese customs) exceeded the entire volume of timber officially documented at log yard II more than threefold;
- The average volume of logs as reported by the importer at Vietnamese customs was 1.7-2.6 times higher than in log lists and sale-purchase contracts for the same species on the Lao side. Subsequently, the average price increased many fold from the contract between the Lao buyer and the Provincial Office of Industry and Commerce to the contract between the exporter and the importer.

It is obvious that most of the wood harvested in smallholding tree plantations is shipped without notice to, and approval of, relevant government bodies due to a lack of business registration of plantations, and a reluctance of holders to follow ambiguous procedures and pay substantial regulatory fees and service charges (Smith, Phengsopha, 2014).

#### Summary:

For all source types there is risk of:

- Lack of registering of harvested logs at log yard II; and
- Disparities between records of quantities, composition and quality of harvested timber at different stages of the chain of custody (from pre-felling inventory, to log list and custom documents).

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.16.6. Risk designation and specification**

Specified risk

### 1.16.7. Control measures and verifiers

- Logging contract and logging permit: basic information on permitted timber for logging for comparison with log list and checking of its validity.
- Pre-logging inventory and tree marking report: basic information on permitted timber for logging for comparison with log list and checking of its validity.
- Records from log yard I: basic information on permitted timber for logging for comparison with log list and checking of its validity.
- Log list.
- Transport permits as required for plantation timber: this is the only official document for plantation timber that specifies composition, quantity and quality.

## 1.17. Trade and transport

*All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the logging site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual logging site are often provided as a fake proof of legality with the harvested material.*

### 1.17.1. Applicable Laws and regulations

- Forestry law No. 08/NA, (25 May 2019) stipulates that legal wood and wood products are those that are harvested, transported, imported, processes and traded in accordance with Gol laws and international treaties to which it is a signatory to (Article 3.40). the development and implementation of a TLAS system is a legal requirement under Article 43 and will apply to all forests and forest products including infrastructure areas where forest management certification is not applicable (Article 5).
- Instruction on the Development TLAS, No. 0076 MAF dated 12/10/18 assigned the secretariat responsibilities to the Department of Forest Inspection for this and through cooperation with technical departments within MAF, MoIC, MRNE, and MoF, MoL & SW.
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Article 6](#) on sale of timber harvested from production forests and infrastructure development projects, [Article 11](#) on seasonal requirements for timber transport, [Article 16](#) on agency responsibilities and documentation requirements, [Article 22](#) on approval to import, register and use logging and timber transport vehicles. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012, [Article 5.7](#) on issuing domestic transport permits. Available at: <http://flegvlaos.com/resources/forestry-legality-compendium/>
- [Guideline No. 2297/2004 MOF](#) on Bidding Regulations for Buying Timber and Other Forest Resources from State Standing Timbers, Infrastructural Areas and Production Forest Areas at Second Landings, 29 October 2004, [Articles 2](#) and [6](#) on timber sale by bidding. Available at: <http://flegvlaos.com/resources/forestry-legality-compendium/>
- [Law No. 03/1997 NA](#) on Transportation, 12 April 1997, [Article 10](#) on requirements for vehicle drivers, [Articles 11, 16, 17](#) and [18](#) on vehicle requirements, [Articles 13, 14](#) and [15](#) on establishment

of transport enterprise and licence, [Article 25](#) on international and cross-border transport. Available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/lao\\_e/WTACCLAO3A1\\_LEG\\_44.pdf](https://www.wto.org/english/thewto_e/acc_e/lao_e/WTACCLAO3A1_LEG_44.pdf)

- Agreement No. 0019/2008 MAF and No. 2139/2008 MPWT, 14 February 2008 between Minister of Agriculture and Forestry And Minister of Public Works and Transport on the Transportation of logs, sawn timber, stumps, wood galls and wood products. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Notification No. 1440/2008 MOIC.DIMEX on Management of Wood Transport Vehicle, Wood Extraction Machinery, and Wood Processing Machinery in Consistency with the [Laws](#) and Regulations, 4 September 2008, [Articles 1](#) and [3](#) on approval for importing and registration of wood extraction and transport vehicles. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Agreement No. 0182/2009 MAF on the Establishment and Management of Timber Harvest Units and Enterprises, 23 February 2009, [Articles 11](#) and [21](#) on vehicles, [Article 26](#) on timber logging unit and timber logging enterprise stamp and [Article 27](#) on import permission requirements for timber cutting and transport machinery. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Order No. 1765/2013 MOF on paying more attention in timber exports to collect revenue for the government budget in an accurate and timely manner, 4 July 2013, [Article 1](#) on shipment inspection and sealing. Available at: <http://www.laotradeportal.net/kcfinder/upload/files/wood%20export%20Inform.pdf> (in Lao)

#### 1.17.2. Legal authority

- Selective logging: Provincial Agriculture and Forestry Offices, Provincial Office of Industry and Commerce
- Conversion: the supervision committee responsible for logging management, comprised of various relevant agencies and local authorities, or specific taskforce, Provincial Agriculture and Forestry Offices, Provincial Office of Industry and Commerce.
- Plantations: Village Forest Organisation, District and Provincial Agriculture and Forestry Offices.

#### 1.17.3. Legally required documents or records

- Selective logging and Conversion: log list, hand-over memorandum between Provincial Agriculture and Forestry Office and Provincial Office of Industry and Commerce, sale contract and calculation of timber royalties to be paid, receipt of sale and collection of revenue from timber sale, removal permit from log yard II, transportation permit for timber commodities.
- Plantations: transport permit.

#### 1.17.4. Sources of information

##### *Government sources*

- [laolandissues.org](http://www.laolandissues.org) (2015). *Eight trucks caught in Vietnam with suspected smuggled timber*. [online]. Vientiane Times, 20 April 2015. Available at: <http://www.laolandissues.org/2015/04/20/eight-trucks-caught-in-vietnam-with-suspected-smuggled-timber/>
- [laolandissues.org](http://www.laolandissues.org) (2015). *Overloaded trucks fined 161m in Vietnam*. [online]. Vientiane Times, 22 April 2015. Available at: <http://www.laolandissues.org/2015/04/22/overloaded-trucks-fined-161m-in-vietnam/>

##### *Non-Government sources*

- Jonsson, T. (2006). *Control of Timber Production*. [online] Technical report. Sustainable Forestry and Rural Development Project – Lao PDR. Available at: <https://pulpinc.files.wordpress.com/2006/10/logginginlaos.pdf>
- EU FLEGT Facility (2012). *Study for Understanding Timber Flows and Control in Lao PDR*. [online]. LTS International. Available at: <http://www.euflegt.efi.int/documents/10180/23308/Study%20for%20understanding%20timber%20flows%20and%20control%20in%20Lao%20PDR>
- Smirnov D. (2015). Assessment of Scope of Illegal Logging in Laos and Associated Trans-boundary Timber Trade: As Baseline for International Leakage Estimation. [online]. WWF. Available at: <https://wildleaks.org/wp-content/uploads/2016/07/CarBi-assessment-of-scope2.pdf>
- Smith, H. (2014). *Legal issues and legality barriers for smallholder plantation owners in Lao PDR* [online]. Presentation published by ACIAR. Available at: <http://www.illegal-logging.info/sites/default/files/Hilary%20Smith%20Presentation.pdf> / [http://teaknet.org/download/teaknet2014/Session%20III/conf\\_1.pdf](http://teaknet.org/download/teaknet2014/Session%20III/conf_1.pdf)

#### 1.17.5. Risk determination

##### *Overview of Legal Requirements*

##### *Selective logging and Conversion:*

Timber harvested in production forests and areas with infrastructure development projects may be sold through bidding or price consultation (applying the price set by the Ministry of Industry and Commerce) or allocation in a higher efficiency priority order to processing factories which meet the standards required by the National Wood Processing Industry Association (Order No. 17/2008 PM [Article 6](#)).

The Provincial Office of Industry and Commerce (POIC) accepts logs stored at log yard II after checking the log list and signing a hand-over memorandum with the Provincial Agriculture and Forestry Office. The POIC is responsible for setting the sale price for each timber category and species based on government-fixed prices, for arranging the sale of timber and monitoring of market prices to derive maximum profit for the state, and signs purchase-sale contracts with buyers (Order No. 17/2008 PM [Article 16](#)).

Transportation of logs to log yard II in production forest areas and areas with infrastructure projects must be stopped by 31 May and is prohibited from 1 June to 31 October because of the rainy season, even when the logging plan has not been fully completed (Order No. 17/2008 PM [Article 11](#) and [Guideline No. 0105/MAF, 2008, Article 3.8](#)). Logging and timber transportation can be allowed to proceed during the rainy season only in special cases based on government approval in areas with infrastructure projects where the continuation is necessary to ensure completion of the construction in time. In such circumstances, specific routes must be used for timber transportation to prevent negative effects on the environment, or on national and public roads.

A log transport permit is required for the movement of logs from log yard II, and the Provincial Agriculture and Forestry Office is responsible for issuing domestic transport permits (Decision 32/PM 2012 [Article 5.7](#)), although the regulations regarding the approval of, and responsibility for, the transport of logs from log yard II to log yard III are not clear; the responsibility for issuing log movement permits has been transferred between agencies several times.

The Provincial Agriculture and Forestry Offices shall make release-marks on every recorded log by means of a special hammer-stamp: a F-mark (ຸມ) for timber transported within the country, and a LF-mark (ຸມລ) for logs intended for export in special cases approved by the Government of Laos ([Law No. 06/2007 NA on Forestry Article 53](#); Order No. 17/2008 PM [Article 16](#)).

Shipments of logs and wood products must be transported on pre-determined routes, equipped with weighing stations, during the right season and time, and with declarations made at prescribed check-points.

Every shipment containing timber shall be accompanied by a set of documents issued by the relevant authority, including:

- A sale contract and calculation of timber royalties to be paid, registered by the Ministry of Finance;
- A receipt of sale and of collection of revenue from timber sale (by the Ministry of Finance);
- A permit for removal of timber from log yard II (Provincial Agriculture and Forestry Office); and
- A transportation permit for timber commodities, for finished and semi-finished timber products within the country, and for export (Provincial Office of Industry and Commerce).

Cargo trucks transporting timber products shall also have a valid transport enterprise license approved for import, and registration for use for logging and timber transport from the Ministry of Agriculture and Forestry and the Ministry of Public Works and Transport (Order No. 17/2008 PM [Article 22](#)).

#### *Plantations:*

Only a transport permit is required for plantation timber (Regulation 196/AF, 2000 [Article 14](#)). The tier of the government body approving transportation depends on the point of shipment. Transportation of plantation timber within a province can be approved by a Village Forest Organisation, while transportation of plantation timber between provinces shall be approved by the District Agriculture and Forestry Office and reported to the Provincial Agriculture and Forestry Office. A permit for export abroad is issued by the Provincial Agriculture and Forestry Office.

Foresters of Provincial and District Agriculture and Forestry Offices may inspect log yard II and check that the volume actually harvested is consistent with the logging permit.

#### *Description of Risk*

The procedures for documenting timber movement from logging sites and log yards are inadequately enforced. The WWF's analysis of data on timber movement in the southern provinces of Laos provides sufficient grounds to believe that most timber is shipped without the required documentation (Smirnov, 2015).

A comparison of official data on issued quota volumes and the officially registered volume of timber harvested in Laos' four southern provinces in the 2011-12 logging season with data on export of wood products from this area has found that >50% of timber products exported were from undocumented sources. Not less than 50% (most likely more than 60%) of wood products exported in the 2010-11 logging season from Sekong province were from undocumented sources. Results of the analysis also suggest that documented timber may comprise only a quarter of raw timber used by local wood processing factories in the Sekong province in 2010-11 (Smirnov, 2015).

According to Jonsson (2006), during the inspection of two sawmills in Savannaket province it was found that none of the logs in the log-yard had been numbered (marked) as per regulations (only their dimensions and number had been marked), and that no log lists for any contracts were available.

Vietnamese traffic police in the central province of Nghe An have detained eight Lao-registered trucks carrying timber without accompanying documents. According to the police, the trucks had brought the timber from Laos to Vietnam via the Nam Can border gate, i.e. the trucks had gone through formal customs control (Vientiane Times, 20 April 2015).

Timber trucks are known to carry timber in excess of the amount specified in the accompanying documents. For example, of the 200 trucks carrying timber from Laos into Vietnam that were checked at weigh stations in Vietnam's Nghe An Province, twenty five trucks were reportedly carrying between five and 30 percent more than their allowed capacity (Vientiane Times, 22 April 2015).

It is obvious that most of the wood harvested in smallholding tree plantations is shipped without notice to, or approval of, relevant government bodies due to a lack of business registration of plantations and the reluctance of smallholders to follow challenging and costly procedures. In the absence of transport permits, it is unclear how the source of timber can be tracked (Smith, Phengsopha, 2014).

*Summary:*

For all source types there is risk of:

- Timber being transported without required documents; and
- Transport documents carrying incorrect information.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.17.6. Risk designation and specification**

Specified risk

**1.17.7. Control measures and verifiers**

- Sale contract: the sale contract with the government (for natural timber) is the key document which provides legitimate grounds for issuing all other permissions.
- Removal permit from log yard II.
- Transportation permit for timber commodities.
- Receipt of sale and collection of revenue from timber sale – for natural timber.

**1.18. Offshore trading and transfer pricing**

*Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the logging operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.*

**1.18.1. Applicable Laws and regulations**

There is no legislation covering transfer pricing in Laos.

**1.18.2. Legal authority**

NA

**1.18.3. Legally required documents or records**

NA

**1.18.4. Sources of information**

NA

#### 1.18.5. Risk determination

NA

#### 1.18.6. Risk designation and specification

NA

#### 1.18.7. Control measures and verifiers

NA

### 1.19. Custom regulations

*Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).*

#### 1.19.1. Applicable Laws and regulations

*General:*

- Forestry law No. 08/NA, (25 May 2019) considers the import and exports of forest products to be major activities (Article 19); exporting of plantation products do not require a licence or permit from MAF (Article 36), but businesses exporting any timber products are classified as a 'forestry business' (Article 92), which include wood processors (Article 95), charcoal producers (Article 96), and those directly involved in exporting (Article 98) other than prohibited products that include 'logs, flitches, processed timber, sawn wood, tree root, stumps, galls, branches and standing trees or decoration wood which is harvested from natural forests including black charcoal using wood from natural forests'.
- Law No. 04/NA on Customs, 20 December 2011 Articles 6 on customs duty, Article 12 on the customs value of exported goods, Article 23 on The documents required for detailed customs declaration, Article 59 on abolishment of export tax duties for certain agricultural products. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=247>
- Instruction No. 1696/CD on the implementation of the ASEAN harmonized custom declaration form. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=177>
- Decree No 229/PO, 31 May 2012 on Implementation of the Law on Plant Protection, Article 26 on inspection and certification for export. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=254>
- Notification No. 1601/MOIC.DIMEX on Management and movement of timber, timber products and non-timber products in domestic and for exportation, 26 September 2008, Part II on approval of export of timber products and Part IV on documents for export of finished wood products. Available at: <http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%20No.1601.pdf>
- Notification No. 0094/MOF.DPAM on Implementation of the Notification of Finance Minister No. 1765/MOF, dated 04 June 2013 on Paying Attention on Income Collection from Timber Export to the National Budget in a Correct, Accurate and Timely Manner, 22 October 2013, Article 3 on obligation to have sales contract with foreign company and use of banking system. Available at: [http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%20of%20MoF%20No%200094%20\(OK\).pdf](http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%20of%20MoF%20No%200094%20(OK).pdf)

- Notification No. 0076/2012 MOIC.DIMEX on Goods Subject to Automatic and Non-Automatic Import and Export Licensing, 13 January 2012, Annex A and B on goods requiring licensing. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=76>

*Selection Logging and Conversion:*

- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Article 23](#) on special cases of approval of logs, sawn timber and semi-finished products for export. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- PM Announcement No. 1360 on log and sawn wood export ban, 08 August 2015.
- Order No. 15/PM On Strengthening Strictness of Timber Harvest Management and Inspection, Timber Transport and Business, 13 May 2016, [Article 2](#) prohibiting export of logs and sawn wood products without exception, [Article 14](#) prohibiting border checkpoints to approve or facilitate the export of logs and sawn wood products. Available at: <http://www.laotradeportal.gov.la/index.php?r=site/display&id=1013> (in Lao)
- Notification No. 1940/2011 MOIC.DIMEX, on Procedure to Issue Export and Import License for Timber, 30 September 2011, [Article 1](#) and 4, on export documents and license on import and export license for raw timber. Available at: [http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%201904%20\[ENG\].pdf](http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%201904%20[ENG].pdf)
- Notification No. 1324/2010 MoF.CD on Exportation of Round Wood, Sawn Wood, Semi-Finished Wood Products Shall Be Consolidated at the Customs Department to Issue Order of Implementation, 13 April 2010, [Article 1](#) on requirement for centralized approval.

*Plantations:*

- Notification No. 1791/2011 MOIC.DIMEX on the licensing procedure of the import and export of planted timbers, 30 September 2011, [Articles 1](#) on the procedures for export of plantation timber, [Article 3](#) on documents attached to request, [Article 7](#) on validity of license and renewal of license. Available at: [http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%201791%20\[ENG\].pdf](http://www.laotradeportal.gov.la/kcfinder/upload/files/Notification%201791%20[ENG].pdf)
- Additional Notification No. 1135/MOIC.DIMEX Authorizing Provinces and Capital City to be in charge of studying and deciding on the approval for exporting of wood from plantations (Teak, Para Rubber, Eaglewood, Eucalyptus and Acacias), 06 May 2014. Available at: [http://www.laotradeportal.gov.la/kcfinder/upload/files/\\_1135Notification\\_Plantation\\_Wood%20Export\\_Eng-1.pdf](http://www.laotradeportal.gov.la/kcfinder/upload/files/_1135Notification_Plantation_Wood%20Export_Eng-1.pdf)
- Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000, [Article 14](#) on permit for export of plantation timber, [Article 22](#) about payment of export duties for plantation timber. Available at: <http://flegtlaos.com/resources/forestry-legality-compendum/>
- Decision No. 41/PM on authorization to province and the capital for making decision of licensing exportation of the plantation timber for round wood (logs) and sawed wood (processed), 26 March 2014 [Article 1](#) on procedure to request permission to export plantation timber. Available at: <http://www.laotradeportal.gov.la/kcfinder/upload/files/PMs%20Decision%20no%2041%20on%20planted%20timber.pdf>
- Instruction no. 1812/MoIC.DIMEX, 4 September 2015 to further implement notifications of the government office no. 790/GO.SD, dated 21 May 2015 and 1360/GO.ED, dated 4 September 2015. Available at: <http://laotradeportal.gov.la/index.php?r=site/display&id=911> (in Lao)

**1.19.2. Legal authority**

- Customs Department of the Ministry of Finance
- Department of Import and Export of the Ministry of Industry and Commerce, Provincial office of Industry and Commerce
- Department of Forestry of the Ministry of Agriculture and Forestry, Provincial Agriculture and Forestry Office
- Department of Public Asset Management of the Ministry of Finance

#### 1.19.3. Legally required documents or records

- Export license
- Certificate of origin
- Copy of Enterprise Registration Certificate authorised to exercise timber business
- Packing list
- Customs declaration form
- Copy of sale-purchase contract
- Copy of payment receipt through the Bank of Laos
- Bank slip on payment of export tariffs and royalties

#### 1.19.4. Sources of information

##### *Government sources*

- Govt tightens illegal timber inspections at border. Vientiane Times, 22 June 2016.
- opendevdevelopmentmekong.net (2016). Govt widens ban on timber exports, tightens wood business. [online] Vientiane Times, 18 May 2016. Available at: <https://opendevdevelopmentmekong.net/news/govt-widens-ban-on-timber-exports-tightens-wood-business/>
- Laolandissues.org (2015). Log export prohibition to benefit furniture entrepreneurs [online] Vientiane Times, 21 September 2015. Available at: <http://www.laolandissues.org/2015/09/21/log-export-prohibition-to-benefit-furniture-entrepreneurs/>
- rightslinklao.org [2016] Nation losing more forests than it gains, minister says. [online]. Vientiane Times, 14 June 2016. Available at: <https://rightslinklao.org/?p=7359>
- annx.asianews.network (2015). Plantations open loophole for timber export provincial governor says [online]. Vientiane Times, 25 June 2015. Available at: <http://annx.asianews.network/content/plantations-open-loophole-timber-export-despite-ban-lao-govt-20726>
- opendevdevelopmentmekong.net (2016). *Province, district authorities have no right to approve logging*. [online] Vientiane Times, 14 June 2016. Available at: <https://opendevdevelopmentmekong.net/news/province-district-authorities-have-no-right-to-approve-logging/>
- wwflaos.org (2016). *Provinces instructed to inspect log movements to address illegal trade*. [online]. Vientiane Times, 13 June 2016. Available at: <http://www.wwflaos.org/?272790/Provinces-instructed-to-inspect-log-movements-to-address-illegal-trade>

##### *Non-Government sources*

- laolandissues.org (2015). Eight trucks caught in Vietnam with suspected smuggled timber. [online]. Vientiane Times, 20 April 2015. Available at: <http://www.laolandissues.org/2015/04/20/eight-trucks-caught-in-vietnam-with-suspected-smuggled-timber/>
- rfa.org (2015). Civil Sector Workers in Laos Lose Out to Corruption And Rising Cost of Living. [online]. RFA - Radio Free Asia, 23 July 2015. Available at: <http://www.rfa.org/english/news/laos/civil-sector-workers-lose-out-to-corruption-and-rising-cost-of-living-07232015164600.html>
- rfa.org (2015). Convoy of Lao Trucks Transports Logs to Vietnam, Despite Ban on Timber Exports [online]. RFA - Radio Free Asia, 30 December 2015. Available at: <http://www.rfa.org/english/news/laos/convoy-of-lao-trucks-transport-logs-to-vietnam-despite-ban-on-timber-exports-12302015130649.html>
- rfa.org (2014). 'Corrupt' Officials in Laos Blamed Over Illegal Timber Trade with Vietnam [online]. RFA - Radio Free Asia, 26 November 2014. Available at: <http://www.rfa.org/english/news/laos/timber-smuggling-11262014170709.html>
- Forest Sector Performance Indicators 2014, Review report. Part III. September 2014.
- Forest Trends (2010). Timber Markets and Trade between Laos and Vietnam: A Commodity Chain Analysis of Vietnamese-Driven Timber Flows [online]. Available at: [http://www.forest-trends.org/documents/files/doc\\_2365.pdf](http://www.forest-trends.org/documents/files/doc_2365.pdf)
- Flegtlaos.com (2016). Importation of timber materials from Laos into Vietnam. Present status and future trends. [online]. Available at: <https://flegtlaos.com/download/importation-timber-materials-laos-vietnam-present-status-future-trends/>
- rfa.org (2015). Lao Officials Fail to Enforce Government Ban on Timber Exports. [online]. RFA - Radio Free Asia, 23 September 2015. Available at: <http://www.rfa.org/english/news/laos/lao-officials-fail-to-enforce-government-ban-on-timber-exports-09232015170812.html>
- rfa.org (2016). Lao Tax Collectors Pay to Play. [online]. RFA - Radio Free Asia, 19 January 2016. Available at: <http://www.rfa.org/english/news/laos/Lao-corruption-01192016150712.html>
- Sigaty, T. (2003). Report on Legal Framework of Forestry Sector for Forestry Strategy 2020 Lao PDR. SIDA. Vientiane. Laos.
- Xuan To, P., Dressler, W., Mahanty, S. (2014). Social Networks of Corruption in the Vietnamese and Lao Cross-Border Timber Trade. [online]. Anthropological Forum, Issue 2, Pages 154-174. Available at: [https://www.researchgate.net/publication/262010050\\_Social\\_Networks\\_of\\_Corruption\\_in\\_the\\_Vietnamese\\_and\\_Lao\\_Cross-Border\\_Timber\\_Trade](https://www.researchgate.net/publication/262010050_Social_Networks_of_Corruption_in_the_Vietnamese_and_Lao_Cross-Border_Timber_Trade)

#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

##### *General:*

For all kinds of wood products, export companies must have a sales contract with a foreign company, and must transact money via the banking system of the Lao PDR (Notification No. 0094/MOF.DPAM 2013 [Article 1](#)).

Export phytosanitary certificates are issued by the Plant Protection Authority in Provincial and Vientiane Capital Agriculture and Forestry Offices in accordance with [Decree](#) No 229/PO, 31 May 2012 [Article 26](#).

Wood products from natural forest (logs, trunk, bark, rough-processed timber, and semi-finished timber) are subject to non-automatic export licencing, while wood products from plantations are generally subject to automatic export licencing under Notification No 0076/MOIC.DIMEX.

The documents required for a detailed customs declaration are as follows ([Law](#) No. 04/NA 2011 on Customs [Article 23](#)):

- Invoice;
- Manifest;
- Packaging list;
- Certificates of origin; and
- Export permit.

Laos is currently modernising its customs service according to ASEAN standards, therefore the declarant is required to lodge an ASEAN Customs Declaration Document with the following supporting documents attached (Instruction No. 1696/CD 2010):

1. Original copies of:

- Invoice;
- Certificate of Origin;
- Sale Contracts;
- Packing List; and
- Permits from concerned agency (for controlled commodities).

2. Photocopies of:

- Business Registration License;
- Tax License (officially valid); and
- Other relevant documents.

Wood products are subject to customs duty, and the customs value of exported goods is defined as the actual value of goods, including transportation costs delivered to the customs border checkpoint of export ([Law](#) No. 04/NA 2011 on Customs [Articles 6, 12](#)). Products from tree plantations shall not be exempt from export duties (Regulation No. 196/2000 MAF [Article 22](#)), although legislation provides for the exemption from export tax duties of certain agricultural products derived from plantations ([Law](#) No. 04/NA 2011 on Customs [Article 59](#)). However, in practice, concession agreements with certain companies waive export duties for plantation timber, and customs officials and industry operators have verified that export duties are not collected (Sigaty, 2003).

*Selective Logging and Conversion:*

In order to promote the export of semi-finished and finished products, the Government of Laos has introduced numerous bans on the export of logs and sawn timber (PM Orders No. 11/1999, 10/2000, 15/2001, 18/2002, 25/2004, with Decision No.1415/MOIC.DOI, 2008 providing clarification on types of that timber products prohibited for export).

The government is the only body authorised to consider and agree on specific cases in regard to the grant of permission to export unfinished products (logs, sawn timber, stumps, wood galls and semi-finished timber products) made of natural timber. The specific considerations depend on the purpose, quantity and actual logging situation, and on the use of the timber ([Law](#) No. 6/2007 NA on Forestry, [Article 52](#); Order No. 17/2008 PM [Article 23](#)).

Notification No. 1940/2011 MOIC.DIMEX [Article 1.3](#) describes in detail the procedure for application for approval of export of logs, sawn wood and semi-finished wood products through the Department of Import and Export of the Ministry of Industry and Commerce. Regarding obtaining government approval

on exportation (as a special case), the Department of Industry and Commerce of POIC is empowered to issue export monitoring permits.

A copy of the notification to the Government of Laos shall be provided to the Customs Department, which, in its turn, provides notices to customs at all international checkpoints where the exportation of relevant timber products takes place. Export without such notification is not allowed (Notification No. 1324/2010, [Article 1](#)).

Logs intended for export in special cases approved by the Government of Laos shall have an LF-mark (ຸລຸລຸ), which is made by means of a special hammer-stamp by PAFO foresters at log yard II (Order No. 17/2008 PM, [Article 23](#)).

PM Announcement No. 1360 2015 excluded the possibility of the export of logs and sawn wood without exception. It states: "Export is not allowed for logs, timber, or sawn timber in any case, these logs and sawn timbers must be processed into finished wood products in order to be exported".

A recent Prime Ministerial order confirmed the suspension of the export of logs, sawn wood (large sawn timbers, sawn timbers, split wood), roots, stumps, knots, branches and standing trees, or decorative trees that are harvested from natural forest, and extended it to special cases defined by the Government that have not yet been implemented. All border checkpoints are prohibited to approve or facilitate the export of logs and sawn timber (Order No. 15/PM 13 May 2016 [Article 2, 14](#)).

For export of finished wooden products to comply with the standards of the Ministry of Industry and Commerce, the exporter must obtain permission for export issued by the Department of Industry and Commerce (No. 1601/MOIC.DIMEX 2008 Part IV). The package of documents for export shall comprise:

- Copy of Enterprise Registration Certificate authorising carrying on of a timber business;
- Export-controlling license issued by the Department of Industry and Commerce, attached to the packing list;
- Customs declaration forms;
- Letter of duties exemption (export duties), for finished timber products;
- Copy of sale-purchase contract with foreign buyer;
- Copy of payment receipt through the relevant bank (company must pay export tariffs and royalties as required, including special export royalties for controlled wood).

#### *Plantations:*

Domestic processing of wood from plantations is also encouraged, but such wood may be exported as logs or sawn wood if it cannot be processed domestically (Notice No 1812/MOIC 2015).

Provincial Offices of Industry and Commerce are authorised to issue export permits for non-prohibited, special or controlled species of planted timber (Teak, Rubber, Agar wood, Eucalyptus, Acacia auriculiformis and Acacia mangnium) in the form of logs and sawn timber based on a certificate of origin of timber certified by a Provincial and Capital Agriculture and Forestry Office (Decision 41/PM 2014 [Articles 1](#); Additional Notification 1135/PSO.DIMEX 2014). Provincial and Capital Agriculture and Forestry Offices are responsible for managing, inspecting and monitoring the transportation of planted timber to be exported abroad, in order to avoid opportunities for smuggling natural timber and other planted timber other than that mentioned in [Article 1](#) (Decision 41/PM 2014, [Article 3](#)).

The exporter must apply to the Department of Import and Export of the Ministry of Industry and Commerce for an export licence for species not listed in Decision 41/PM 2014. For prohibited, special and controlled species, the exporter is required, by a letter from the Permanent Office of the Ministry of Agriculture and Forestry, to verify the origin of timber.

For all plantation species the exporter is to submit an application, as well as the following documents (Notification No 1791/MOIC.DIMEX, 2011 [Article 3](#)):

- Certificate of origin
- Enterprise registration which allows a timber business
- Tax registration
- Log list acknowledged by the Provincial Agriculture and Forestry Office
- Document releasing the timber from the Provincial Agriculture and Forestry sector (record of logs marked/stamped)
- Tax payment
- Fee receipt

Export licenses are valid for 90 days and shall expire automatically if such period has elapsed (Notification No 1791/MOIC.DIMEX, 2011 [Article 7](#)).

After receiving an export permit/license, wood exporters shall be inspected by the Department of Public Asset Management of the Ministry of Finance in cooperation with the Provincial Office of Industry and Commerce and the Provincial Agriculture and Forestry Office (Notification No. 0094/MOF.DPAM 2013), which shall:

- Recheck and register payments of timber taxes and other royalties;
- Examine and register purchase orders between foreign buyers and sellers, which must envisage payment via a legitimate bank in Laos; and
- Check, record and seal wood shipments.

#### *Description of Risk*

The WWF's report (Smirnov, 2015) concludes that the legal status of much of the timber exported by Laos is doubtful. Flow of timber export is poorly monitored, and the Government of Laos lacks reliable information on export of wood products. There are substantial discrepancies in trade statistics with importing countries. For example, Lao wood exports to China and Vietnam from 2012-14 as reported by importing countries exceeded total annual logging plans many-fold, and the officially registered volume of timber by an order of magnitude. The total value of Lao wood products as reported by importing countries exceeded the value of exported wood products. according to analysis of data from Lao state customs statistics, many-fold, and the disparity between these two data sets is increasing. In 2013, the official export value was only 8% of the total value of Lao timber imported as reported by destination countries (Smirnov, 2015).

According to Deputy Minister of Agriculture and Forestry Thongphat Vongmany, "on average, the government approved only about 200,000 cubic metres of logs to be cut annually, but statistics provided by customs officials of neighbouring countries showed that as high as one million cubic metres of wood was exported from Laos in a year" (Vientiane Times, 13 June 2016).

These discrepancies imply irregular or unofficial timber exports, and the corresponding leakages from national revenue (Forest Sector Performance Indicators 2014). WWF research indicates that a significant part of shipments containing wood cross the Lao border without being declared at border gates, i.e. these shipments are smuggled (Smirnov, 2015). Traffic of large amounts of undocumented timber via official Laos-Vietnam border crossings is reported by Vietnamese mass-media. As of the beginning of April 2015, traffic police in Chuong Duong District (Nghe An province) have seized eight Laos-registered trucks on National Highway No. 7, allegedly laden with smuggled timber (no documents were provided by the trucks' drivers). According to the police, dozens of Laotian timber trucks are hiding from police on small roads off National Highway 7, and timber is brought to Vietnam via the Nam Can Border Gate situated between Xiang Khouand and Nghe An provinces (Thanh Nien News, 10 April 2015).

Dual contracting between exporters and importers may also take place when one contract with an underestimated price is presented on the Lao side (in order to understate payments/charges in the process of selling and paying taxes to the Lao state), and another with the real price is presented to customs in the importing country (Smirnov, 2015).

There are indications that some contracts may be made with dummy ("ghost") companies (Smirnov, 2015).

Investigation of the seizure of a large shipment of rosewood from Laos conducted by Vietnamese Customs found no evidence that the wood was legally procured in Laos prior to its import to Vietnam, as the Lao export company specified in the contract denied trading the timber (Xuan To et al., 2014). Furthermore, the investigation found evidence that only six trucks out of the original 13 had legally crossed the border.

Provincial branches of the Customs Department of the Ministry of Finance do not disclose full records of timber export to higher authorities. As was acknowledged by government-controlled media, "information regarding the amount of wood exported is not available as the government has been unable to collect the information from local authorities" (Vientiane Times, September 18, 2015).

According to sources, the Customs Department is perceived as one of the most corrupted state agencies in the country. According to a finance official in a government office: "It is well-known that officials in the tax and customs sectors in Laos earn extra income somehow by getting involved in corruption, so they can have big houses and luxurious cars. This causes money to leak from tax collection" (RFA - Radio Free Asia, 23 July 2015).

Another source from the Ministry of Finance told mass media that: "The people who will be accepted to work at the tax and customs department must pay under the table at least 50 million kip (about U.S. \$6,100)", and "if they are accepted to work at an international border checkpoint, they must pay at least 100 million (about U.S. \$12,000), because they can easily earn more money for two years" (RFA - Radio Free Asia, 19 January 2016). According to a Forest Trends' report (2010), "facilitation" payments made to Lao officials overseeing the export procedure on site at various levels, amounted to about US\$13/m<sup>3</sup> of timber exported to Vietnam.

Almost all export of wooden products from Laos is still comprised of logs and sawn wood (Smirnov, 2015). The share of these products in total exports from Laos in monetary terms almost always exceeded 90% in the period between 2000 and 2014, reaching 95% in 2011-13, and nearly 98% in 2014. From the mid-2000s, the share of logs in exports has been increasing steadily, and reached 56% in 2014, while in 2002 logs accounted for only 14% of the total (further, the export value of logs doubled in 2014 compared to 2013).

The ban on the export of logs and sawn timber from natural forests imposed by the Government of Laos from 1999 is either not enforced, or is circumvented due to numerous permissions issued in "exceptional cases" backed by high ranking national and provincial officials who share an interest in the timber trade. Sources quoted in mass media reports have linked Lao national leaders to the flourishing illegal log trade, and have claimed that they pressure enforcement officials not to take action against smuggling activities (RFA - Radio Free Asia, 26 November 2014; 23 September 2015).

The Deputy Minister of Agriculture and Forestry admitted that many local authorities breached the Law in the past by permitting export of wood from natural forests (Vientiane Times, 14 June 2016). This includes first-hand evidence and analysis of systemic corruption in government authorisations for cross-border trade in illegal logs between Laos and Vietnam, (including in Attapeu Province, South Laos) involving officials of both countries, and senior timber trade representatives in Vietnam.

Recently, the Government of Laos reaffirmed its strong commitment to enforcing the ban on the export of all types of unfinished wooden products, and new regulations (PM Announcement No. 1360 on 08 August 2015 and Order No. 15/PM on 13 May 2016) exclude the possibility of export of natural timber logs and sawn wood without exception, including suspending special cases approved by Government that have not yet been implemented. Prime Minister Thongloun Sisoulith announced that any

government official involved in illegal logging will be penalised without exception (Vientiane Times, 16 June, 2016).

Deep Involvement of high-ranking politicians with illegal export of unfinished wood products challenges recent measures taken by the Lao government to crack down on the implementation and enforcement of the ban.

Based on analysis of Vietnamese customs data, Forest Trends (2016) reported that in 2015 Vietnamese import of logs from Laos increased by 4% compared to 2014 (321,700m<sup>3</sup> in 2015, against 308,600m<sup>3</sup> in 2014), while import of sawn wood decreased by 23% (383,100m<sup>3</sup> in 2015, against 495,100m<sup>3</sup> in 2014).

According to local sources, hundreds of trucks in Champasak, Salavan, Sekong and Attapue provinces were continuing to transport logs to neighbouring Vietnam, around the clock, months after on the Prime Ministerial [Decree](#) of August 8, 2015 prohibited export of unfinished wood products without exception (RFA - Radio Free Asia, 23 September 2015).

A hundred large trucks laden with logs were seen on 15 December 2015 at the Lao Bao-Dansavanh international border checkpoint in the Sepon district of Savannakhet province transporting timber to Vietnam. The convoy was directed by traffic policemen on motorcycles, and export of logs was allegedly permitted by a "Lao national leader" (RFA - Radio Free Asia, 30 December 2015).

Apart from such brazen violations, perpetrators also hide timber and partially processed logs in containers of under-finished wood products. According to Deputy Minister of Finance Mr Bounchom Ubonpaseuth, businessmen are attempting a number of approaches to ensure that their undocumented logs are able to cross the border, and consequently more thorough inspections by the relevant authorities are required (Vientiane Times, 22 June 2016).

Officials also voiced concerns that traders could export unfinished wood products made from natural timber under the guise of timber coming from plantations (Vientiane Times, 25 June 2016).

Summary:

For all source types there is risk of:

- Export of illegal harvested timber;
- Dual contracting between exporters and importers, with underestimated prices on the Laos side and real prices invoiced in the receiving country;
- Contracts may be made with dummy ("ghost") companies with no proof of the timber's origin; and
- Violation of the ban on export of logs and sawn timber from natural forests.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified [Laws](#) are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.19.6. Risk designation and specification**

Specified risk

#### **1.19.7. Control measures and verifiers**

- Export license.
- Certificate of origin.
- Copy of Enterprise Registration Certificate authorised to exercise timber business.
- Packing list.
- Customs declaration form.

- Copy of sale-purchase contract.
- Copy of payment receipt through Bank of Laos.
- Bank slip on payment of export tariffs and royalties.

## 1.20. CITES

*CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).*

### 1.20.1. Applicable laws and regulations

- Forestry law No. 08/NA, (25 May 2019) notes that a list of timber species in List I must align with defined Annexes under CITES (Article 3.20), while Article 3.40 links the definition of legality with international obligations. Requirements to meet such obligations are also stated under Articles 5 (policy), 6 (principles), 8 (enforcement), 9 (international cooperation), 36 (domestic transport and export planted trees), 43 (TLAS requirements), 101 (distribution wood products), and obligations (Articles 127).
- Order No. 05/PM on Strengthening strictness of the management and inspection of prohibited wild fauna and flora (dated 8 May 2018)
- Law No. 07/NA on Aquatic and Wildlife Law (24 December 2007)
- Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008, [Article 20.3](#) on prohibition to extract some protected tree species including *Dalbergia cochinchinensis* and *D. cultrate*. Available at: <http://www.prflaos.org/sites/default/files/policy/9.%20PM%20Order%20no%20Strengthening%20the%20Forest%20Management%20,%20Protect.pdf>
- Instruction No. 0142/2009 MAF on the Inspection of Forest, Forest Products, Forest Land, Non-Timber Forest Products (NTFPs), Aquatic Animal and Wildlife, 7 October 2009, [Article IV.9.2.2](#) on CITES documentation requirements and inspection.
- Consideration of proposals for amendment of Appendices I and II, *Dalbergia cochinchinensis*. 16th meeting of Sixteenth meeting of the Conference of the Parties Bangkok (Thailand), 3-14 March 2013. Available at: <https://cites.org/sites/default/files/eng/cop/16/prop/E-CoP16-Prop-60.pdf>

### 1.20.2. Legal authority

- Department of Forestry of the Ministry of Agriculture and Forestry (CITES management authorities in Lao PDR)

### 1.20.3. Legally required documents or records

- CITES export permit

### 1.20.4. Sources of information

#### *Non-Government sources*

- EIA (2014). Routes of Extinction: The corruption and violence destroying Siamese rosewood in the Mekong. [online]. Available at: <https://eia-international.org/report/routes-of-extinction-the-corruption-and-violence-destroying-siamese-rosewood-in-the-mekong-2>

- Flegtlaos.com (2016). Importation of timber materials from Laos into Vietnam. Present status and future trends. [online]. Available at: <https://flegtlaos.com/download/importation-timber-materials-laos-vietnam-present-status-future-trends/>
- EIA (2015a). Time for ASEAN to act to end illegal, violent rosewood trade. [online]. 5th May, 2015. Available at: <https://eia-international.org/time-for-asean-to-act-to-end-illegal-violent-rosewood-trade>
- EIA (2015b). Addressing ASEAN's Regional Rosewood Crisis: An Urgent Call to Action. [online]. Available at: <https://eia-international.org/report/addressing-aseans-regional-rosewood-crisis-an-urgent-call-to-action>
- EIA (2016a). Red Alert: How fraudulent Siamese rosewood exports from Laos and Cambodia are undermining CITES protection. [online]. Available at: <https://eia-international.org/wp-content/uploads/EIA-Red-Alert-FINAL.pdf>
- EIA (2016b). Laos & Cambodia rosewood exports violate UN treaty, 24th June, 2016. [online]. Available at: <https://eia-international.org/laos-cambodia-violate-un-treaty-with-illegitimate-exports-of-endangered-timber>
- EIA (2016c). The Hongmu Challenge: an EIA Briefing for 66th CITES Standing Committee. [online]. Available at: <https://eia-global.org/reports/the-hongmu-challenge-an-eia-briefing-for-66th-cites-standing-committee>
- Xuan To, P., Dressler, W., Mahanty, S. (2014). Social Networks of Corruption in the Vietnamese and Lao Cross-Border Timber Trade. [online]. Anthropological Forum, Issue 2, Pages 154-174. Available at: [https://www.researchgate.net/publication/262010050\\_Social\\_Networks\\_of\\_Corruption\\_in\\_the\\_Vietnamese\\_and\\_Lao\\_Cross-Border\\_Timber\\_Trade](https://www.researchgate.net/publication/262010050_Social_Networks_of_Corruption_in_the_Vietnamese_and_Lao_Cross-Border_Timber_Trade)

#### 1.20.5. Risk determination

##### *Overview of Legal Requirements*

Lao PDR became a signatory on May 30, 2004 to The International Convention on Trade in Endangered Species of wild Flora and Fauna (CITES). Lao PDR has an obligation to enforce its commitments under CITES.

The Law on Making Legislation (No 19/NA 2012), Article 9: Contradiction of Legislation, states that "...If the provisions of existing legislation and newly adopted legislation are inconsistent with the provisions of international conventions or treaties that Lao PDR is party to, the provisions of the international convention or treaty prevail and [the provisions of] existing legislation or newly adopted legislation shall be revised in due time".

On 13 May 2016, PMO 15 (On intensifying strictness in the management and inspection of wood exploitation, timber removal and wood related businesses) was issued by the Prime Minister of Lao PDR, Mr. Thongloun Sisoulith

On 9 June 2016, Instruction No. 0054/MAF (The expansion and implementation of the Order of the Prime Minister No. 15) was issued by the Minister of Agriculture and Forestry, Dr. Lien Thikeyo.

Strictly prevent hunting, transport, merchandise in local market, import-export and transit of aquatic and wild animals and their parts through Laos to the third countries. Commercial farming of aquatic and wild animals in the list I of CITES which is the list for merchandise prohibition is prohibited.

On 19 December 2016 Notice No: 1990/PMO.ED, issued by the Prime Ministers Office included the following:

- ...understand and raise awareness in participation against and to prevent all forms of illegal wildlife trading

- ... protection of national conservation areas and national protection areas from all aspects of damage and encroachment.
- ... reduce hunting and illegal wildlife trading as well as promote biodiversity trade.
- Study suitable measures to completely resolve the prohibited animal farming issue (tiger and bear farms) for trading proposes in the country, which does not comply with international conventions.

These initiatives were further strengthened under Order No. 05/PM on Strengthening strictness of the management and inspection of prohibited wild fauna and flora (dated 8 May 2018) which restricts trade in CITES Appendix 1 species, including timber. Also, in March 2017, the Lao PDR signed a cooperation agreement with China's State Forestry and Grasslands Administration to cooperate on CITES implementation. As a result, the Lao PDR enforcement agencies are now better equipped and obliged to combat illegal wildlife trade, such as by controlling shops and retail hotel facilities, including in its Special Economic Zones.

The proclamation of the new Penal Code (No. 26/NA Vientiane Capital, 17 May 2017: *Officially endorsed by the Lao National Assembly on 17 October 2018*) and the new Forestry Law in 2019 provides clarity in regards to the extent of allowable activities, responsibilities and accountability for such activities, and enforcement and sanctions related to breaches of these requirements.

The Penal Code codifies penalties and sanctions across the majority of Lao PDR laws, and replaces previous provisions under lower laws ([Article 425: Effectiveness](#)). However, it does not replace those penalties and sanctions under Customs Law, although it codifies these in regard to specific actions related to the export or import of specified goods (such as forest products).

The new Penal Law simplifies the decision making process relating to the imposition of penalties (for goods whose value is more than 1 million KIP) compared to education (for goods whose value is less than 1 million KIP); broadens and increases fines and imprisonment penalties relating to crime; and creates a two tiered system of offences where serious or organised (more than 3 people) crime is automatically considered a Major Offence and associated penalties are significantly higher than those for individuals acting in isolation. There are also penalties for Breaching Regulations on Forest Management, and for [Offences relating to Breach of Civil Servants' Responsibilities](#) or [Offences relating to Breach of the Administration and Judiciary Regulations](#). Chapter 10 details provisions relating to Corruption.

Classified as vulnerable on the IUCN Red List, *Dalbergia cochinchinensis* (Siamese rosewood) was listed in Appendix II of CITES at the 16<sup>th</sup> meeting of the Conference of Parties (CoP16) in Bangkok in March 2013, following a proposal by Thailand and Vietnam. The restrictions on endangered *Dalbergia cochinchinensis* Siamese rosewood came into effect from June 12, 2013.

As logging is banned in all range states, the listing should prohibit international trade in Siamese rosewood logs, sawn timber, and veneers.

Under CITES Appendix II, species cannot be exported from range state producer countries without CITES export permits issued by relevant management authorities, with these being issued, in turn, on the basis of scientific authorities confirmation that such trade will not be detrimental to the survival of the species. Range states are also obliged to pre-notify the CITES Secretariat regarding quotas for harvest and trade before any CITES export permits can be issued. For Siamese rosewood, these export obligations apply to Thailand, Laos, Cambodia and Vietnam – all of which have experienced rampant illegal exports in recent years.

Importing countries also have clear obligations to ensure imports of Siamese rosewood are not accepted unless accompanied by valid CITES export permits.

CITES requires that export permits should not be issued without "legality acquisition" (verified legality), and that imports should not be accepted where illegal acquisition in the country of harvest is suspected.

*Description of Risk*

The EIA's analysis of the impact of the CITES listing for Siamese rosewood concluded that it has largely failed, because the actions of Laos and Cambodia – Parties to CITES and key range states for the species – have fundamentally undermined efforts to curb trade (EIA, 2016a).

Laos was registered as the origin of 63,530m<sup>3</sup>, or 83% of Siamese rosewood imports reported to the CITES trade database during the first 18 months of the species' Appendix II listing (from June 2013 to December 2014).

EIA's report (2016a) stresses that Laos has no credible inventories of remaining populations of Siamese rosewood to justify any exports at all, or likely any evidence of legality, as required under the Convention. The lack of any credible inventory or survey data on populations or stocks in Laos excludes the possibility that a Non-Detriment Findings system could have been devised in the country.

Field surveys carried out in two central Lao provinces in 2012 have confirmed that natural populations of *Dalbergia cochinchinensis* in the Lao PDR are under severe and continuing threat from illegal logging. No mature individuals were found, and all trees with a DBH (diameter at breast height) greater than 15cm had been logged. This trend was observed for all surveyed populations, even within strictly protected areas.

According to experts interviewed by EIA (2016), the current amount of Siamese rosewood logging and export in Laos cannot be considered non-detrimental and represents a severe threat to the future survival of the species.

At the December 2014 Regional Rosewood Dialogue in Bangkok, representatives from Laos acknowledged their CITES Management Authorities neither knew what standing stocks of Siamese rosewood remained in Laos, nor conducted Non-Detriment Findings. It was formally recommended that Laos develop a Non-Detriment Findings system during 2015, and that all range states party to the Rosewood Dialogue must "provide NDF when issuing export CITES permit (and export license depending on countries)". It appears that neither recommendation has been implemented. EIA believes that no CITES-certified exports from Laos since 2013 have been justified by Non-Detriment Findings, nor will they be in future. Consequently, without significant reform, all on-going exports are in violation of CITES (EIA, 2016a).

The complicity of government officials has been a key factor in the failure to enforce legal controls over the harvest and export of Siamese rosewood in Laos (EIA, 2014), and it is highly unlikely that much of the volume of *D. cochinchinensis* exported from Laos under CITES permits in 2013 and 2014 was legally harvested.

There is also evidence of the illegitimate issuance of CITES export permits by Laos. In March 2014, a rosewood trader in China offered to sell EIA undercover investigators numerous export permits issued by Laos' CITES Management Authority, covering thousands of cubic metres of rosewood logs. This constitutes a glaring violation of CITES procedures and principles, and suggests the CITES authority in Laos is culpable (EIA, 2016a).

EIA stressed that Laos has systemically disregarded the most basic legal safeguards of UN trade rules for endangered species in ways that seriously undermine the credibility of CITES.

EIA is calling for an immediate suspension of all trade in Siamese rosewood from Laos until they demonstrate that trade levels are not detrimental to the survival of the species in the wild and that the timber is legal (EIA, 2016b).

EIA is advocating strengthening protection for Siamese rosewood by removing a loophole in the CITES Appendix II listing – Annotation 5 – which exempts semi-finished and finished products from CITES protection (2015a, 2015b, 2016c). This approach is adopted by a Thai Proposal to the CITES Conference of the Parties in September 2016, which suggests extending the product coverage of Appendix II.

Based on analysis of Vietnamese customs data, Forest Trends (2016) reported that import of Siamese rosewood from Laos to Vietnam declined dramatically from 26,400m<sup>3</sup> in 2014 to around 3,000m<sup>3</sup> in

2015 (Forest Trends, 2016). This decline could be partly due to the impact of a Vietnamese Ministry of Industry and Trade Circular 37 dated October 24, 2014, which temporarily suspended re-export of logs and sawn wood from Lao and Cambodian natural forests, and due to restrictions on import of Siamese rosewood from Laos imposed by the CITES authority in Vietnam.

The Vietnamese Customs Department investigated a case in which Siamese rosewood (*Dalbergia cochinchinensis*) imported from Laos to Vietnam was fraudulently mis-declared in import-export documents as *Dalbergia Cambodiana*. The importer falsified the name of the wood species in an attempt to limit the company's tax liability and, more significantly, to change the timber from a prohibited to a permitted species (Xuan To et al., 2014).

Summary:

For all source types there is risk of or related to:

- Illegal harvest and export of Siamese rosewood under CITES export permits; and
- Illegal issuance of CITES export permits.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.20.6. Risk designation and specification**

Specified risk

#### **1.20.7. Control measures and verifiers**

- Government approval for prohibited tree species (for conversion timber); prerequisite document to justify application for CITES certificate.

### **1.21. Legislation requiring due diligence/due care procedures**

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

#### **1.21.1. Applicable Laws and regulations**

There is no legislation covering Due Diligence/due care procedures in relation to timber in Laos.

#### **1.21.2. Legal authority**

NA

#### **1.21.3. Legally required documents or records**

NA

#### **1.21.4. Sources of information**

NA

#### **1.21.5. Risk determination**

NA

#### **1.21.6. Risk designation and specification**

NA

**1.21.7. Control measures and verifiers**

NA

**PROCESSING**

**1.22. Legal Registration of business**

*Legislation regulating the registration of business and approval of scope of business and processing. The risk is that companies are operating without being in conformance with legal requirements with regards to legal obligations on business registration (business/sawmill license, operation visas, tax payment cards, approvals, etc.).*

**1.22.1. Applicable Laws and regulations**

- Forestry law No. 08/NA, (25 May 2019) requires businesses to be registered (Article 41 and issues as separate regulations) and operate in accordance with the Law on Enterprise and other related laws (Article 80), for mining businesses approved by the National assembly (Article 91), and details requirements and associated operations in Chapter VI, which also defines the types of approved businesses (Section 1) and operation, suspension and cancelation requirements (Section 2). Chapter X prescribes prohibited activities.
- Law on Enterprise No 46/NA (2013) for the registration of enterprises (Article 14), capital requirements (Article 25)
- Law on Investment Promotion, number 14/N.A., dated 17 November 2016
- Law No: 011/N.A (dated 21 December 2011) on the promotion of small and medium sized enterprises. This requires the registration of businesses operating in the areas of processing industry, handicraft, agriculture production, commercial goods
- Tax Law (Amended) No. 019/na (28 January 2016)

**1.22.2. Legal authority**

- The Ministry and Agriculture and Forestry (MAF) which has regulatory responsibility for forest or forest product reliant based enterprises using such products
- The Ministry of Industry and Commerce (MoIC) which has regulatory responsibility for business regulation and export permits
- The Ministry of Planning and Investment (MoPI) which has regulatory responsibility for approving foreign investments
- Special Economic Zones may possess the authority to issue business licences independently of government or government agency authorisations.

**1.22.3. Legally required documents or records**

- Business registration certificate for organisations, including those involved in the for the importation and selling of forestry and wood-transport equipment (Article 38, 134, and 136).

**1.22.4. Sources of information**

*Government sources*

*Non-Government sources*

### 1.22.5. Risk determination

#### *Overview of Legal Requirements*

New laws have been developed and introduced which seek to address some of the confusion, omissions, duplications, inconsistencies, and vagrancies that existed within and across previous laws. However, the application of the laws has not yet been undertaken and many rely on older sub-regulatory instruments being updated to reflect these new laws.

#### *Description of Risk*

Due to the changes currently being undertaken to revisions of law in Laos, it is difficult to evaluate the risk that the laws are being violated.

There exists a high potential for technical non-compliance while new laws are being implemented and support regulations are being developed. However, existing regulations may be adequate to minimise this in the short term.

Various legal instruments assign responsibility for project 'proposal', 'endorsement' and 'approval' to different agencies at different administrative levels without clearly articulating the process or the extent of consultation required

Many key legislative documents relevant to the Lao forestry sector contain imprecise clauses such as: "unless approved by the government", "on a case by case basis as approved by the government", or "determined in special cases to be in the interest of the national community" which leaves room for selective interpretations in granting of concessions.

The issuing of business licenses by Special Economic Zones concessional holders may establish enterprises that are outside the direct control, and monitoring authority of GoL agencies. Such businesses may be based on illegal or unauthorized exploitation of timber and provide avenues for the domestic or export of such products.

There remains a potential for provincial authorities to issue business licence independently of national knowledge or approval processes, and such enterprises may assist in the laundering of illegal forest-based products. However, as Customs is a central agency, the capacity for such enterprises to directly export non-approved products is minimised.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### 1.22.6. Risk designation and specification

Specified risk

### 1.22.7. Control measures and verifiers

- Verify the business registration certificate for organisations, including those involved in the for the importation and selling of forestry and wood-transport equipment

## 1.23. Environmental requirements for processing

*Legislation regulating environmental requirements for the timber processing industry, such as air quality, water and waste-water management, use of chemicals, and other requirements relevant for the environment and eco-system services.*

### 1.23.1. Applicable Laws and regulations

- Forestry law No. 08/NA, (25 May 2019) contain provisions for the protection of environmental values (Article 7), minimizing impacts associated with the use of forest products (Article 62) and land (Article 67, 77, 78, 81), as well as requirements for ESIA's (Article 87), and suspension of license which cause environmental harm (Article 106-7).
- Law on Enterprise No 46/NA (2013) for the issuing of registration requirements, standards and obligations for enterprises (Article 14).
- Law on Investment Promotion, number 14/N.A., dated 17 November 2016 which also includes provisions for ESIA's and the issuing of approval standards or requirements.
- Law No: 011/N.A (dated 21 December 2011) on the promotion of small and medium sized enterprises. This requires the registration of businesses operating in the areas of processing industry, handicraft, agriculture production, commercial goods
- Law on Land No. 70/NA dated 21 June 2019 which provides the framework for the registration of land, approval of land-uses (and associated conditions for the protection of environmental values), and rights of such land.
- *Law on Environmental Protection (Amended) No. 29/NA*, dated 18 December 2012 (Environment Protection Law). Article 52 provides specific obligations on the users of natural resources, and prohibited actions/impacts (Article 68).
- Law on Water and Water Resources (amended) No 010/NA dated 11 May 2017.
- PMO 15 assigns the MAF as the lead agency for monitoring and reporting log warehouses, sawmills, wood processing and furniture factories, other factories using timber as a main source of energy and other relevant locations.
- Ministerial instructions on pollution control No. 0745/MoNRE, dated 11 February 2015.
- *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*, dated 17 December 2013
- *Ministerial Instruction on Environmental and Social Impact Assessment of the Investment Projects and Activities*, No. 8030/MONRE, dated 17 December 2013
- *Ministerial Instruction on Initial Environmental Examination of the Investment Projects and Activities* No. 8029/MONRE, dated 17 December 2013
- Regulation on Environmental Assessment No. 1770/STEA, dated 3 October 2000
- Regulations for Implementing Decree on Compensation and Resettlement of People Affected by Development Projects No. 2432/STEA dated 11 November 2005
- *Ministerial Instruction on Adjudication Pertaining to Land Use and Occupation for Land Registration and Titling*, No. 564/NLMA, dated 6 August 2007.
- Agreement on Good Agricultural Practices for Worker Health, Safety and Welfare No. 0540/AF, dated 9 February 2011
- Regulation on the Control of Pesticides No. 2860/MAF
- National Pollution Control Standards, No. 0538/MAF
- Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, ratified in 2010
- Basel Convention on the Control of Trans-boundary Movements of the Hazardous Wastes and Their Disposal, ratified in 2010
- Stockholm Convention on Persistent Organic Pollutants. Stockholm, ratified in 2006

- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), 1998
- Regulations for Implementing Decree on Compensation and Resettlement of People Affected by Development Projects No. 2432/STEA dated 11 November 2005

#### 1.23.2. Legal authority

- The Ministry and Agriculture and Forestry (MAF) which has regulatory responsibility for standards associated with land it manages
- The Ministry of Industry and Commerce (MoIC) which has regulatory responsibility for business regulation
- The Ministry of Planning and Investment (MoPI) which has regulatory responsibility for approving foreign investments
- Ministry of Natural Resources and Environment which has regulatory pollution and other environmental harm emissions.
- Special Economic Zones may possess the authority to issue business licenses independently of government or government agency authorizations.
- Environment Police are the lead agency for monitoring and enforcing environmental standards, irrespective of the processor.

#### 1.23.3. Legally required documents or records

- ESIA certificate

#### 1.23.4. Sources of information

##### *Government sources*

- MAF, 2019. Environment and Social Impact Assessment (ESIA). Available at: <http://documents.worldbank.org/curated/en/334111572326178619/pdf/Environment-and-Social-Impact-Assessment.pdf>

##### *Non-Government sources*

- World Bank, 2019. Sustaining Forest Landscapes and Livelihoods- Available at: <http://documents.worldbank.org/curated/en/706711560546421547/pdf/Partnerships-and-Opportunities-for-a-New-Green-Forest-Economy-in-Lao-PDR-SustainingForest-Landscapes-and-Livelihoods.pdf>

#### 1.23.5. Risk determination

##### *Overview of Legal Requirements*

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.

The duties and responsibilities of the Project developer are defined under s.2.8 of Ministerial Instruction No. 8029/MONRE when undertaking an IEE, and under s.2.12 of Ministerial Instruction No. 8030/MONRE for an ESIA. Both instructions set out clear timelines, the roles, responsibilities and

authority of GoL agencies, public engagement and disclosure expectations, funding and fee payment requirements, and reporting and monitoring obligations<sup>9</sup>.

Ministerial Agreement No. 8056/MONRE; Ministerial Instruction No. 8029/MONRE; and Ministerial Instruction No. 8030/MONRE approved and established the framework requirements for investment projects which are classified into two groups:

- Group 1 Investment Projects and Activities that are anticipated to cause insignificant or minimal environmental and social impacts; therefore, generally required to conduct an Initial Environmental Examination;
- Group 2 Investment Projects and Activities that are anticipated to cause significant or major environmental and social impacts; therefore, generally required to conduct an Environmental and Social Impact Assessment.

It should be noted that while an IEE is generally only required for Group 1 developments, *Ministerial Agreement* No. 8056/MONRE states that an EIA is required "if these investment projects and activities are located in socially and environmentally valuable sites" as defined in an approval agreement. Therefore, all project developers are required to assess impacts under an EIA where project-related activities negatively impact on socially and environmentally valuable sites (also referred to as High Conservation Value (HCV) sites

The ESIA requirements are specified but rarely applied or undertaken to a reasonable (let alone high) standard. In any case, many concession projects have progressed to the implementation phase without any apparent submission of an ESIA document

Established and establishing business are not monitored with many agencies unclear of their regulatory responsibilities due to poorly issued approvals where such conditions are deficient, political interference, threats of violence from foreign nationals, lack of capacity, or unclear inter-agency authority.

#### *Description of Risk*

For all source types there is risk of or relating to:

- Lack of land survey prior to activities commencing;
- Lack of ESIA's or feasibility studies or quality studies; and
- Lack of appropriate buffers or protection zones.
- Encroachment on natural forest or protected area;
- Clearing outside permitted land;
- Erosion via planting on steep slopes;
- Exploitation of watersheds;
- Use of chemicals threatening water sources;
- Increased sedimentation of water sources;
- Fragmentation to habitats;
- Loss of habitat and biodiversity;
- Compensation payments to affected people are often ignored, or corruption results in reduced payments; and

<sup>9</sup> Monitoring and reporting will include conditions under the Environmental Compliance Certificate.

- Commencing work before authority granted

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.23.6. Risk designation and specification**

Specified risk

**1.23.7. Control measures and verifiers**

- *Internal checklists assessment by the* EIA Division of the MoNRE, as required under the Environmental Management Standard for Environmental Impact Assessment guidelines (as amended). This checklist is referenced within the: Guidelines on Environmental Impact Assessment.

**1.24. Processing requirements**

*Legislation regulation processing of the timber processing industry, such as transformation process thresholds, location of processing, conformance of processing equipment, processing quota, etc).*

**1.24.1. Applicable laws and regulations**

- Forestry law No. 08/NA, (25 May 2019) requires businesses to be registered (Article 41 and issues as separate regulations) and operate in accordance with the Law on Enterprise and other related laws (Article 80), for mining businesses approved by the National assembly (Article 91), and details requirements and associated operations in Chapter VI, which also defines the types of approved businesses (Section 1) and operation, suspension and cancelation requirements (Section 2). Chapter X prescribes prohibited activities.
- Law on Enterprise No 46/NA (2013) for the registration of enterprises (Article 14), capital requirements (Article 25)
- Law on Investment Promotion, number 14/N.A., dated 17 November 2016
- Law No: 011/N.A (dated 21 December 2011) on the promotion of small and medium sized enterprises. This requires the registration of businesses operating in the areas of processing industry, handicraft, agriculture production, commercial goods
- Law on Land No. 70/NA dated 21 June 2019 which provides the framework for the registration of land, approval of land-uses, and rights of such land.
- Tax Law (Amended) No. 019/na (28 January 2016)

**1.24.2. Legal authority**

- The Ministry and Agriculture and Forestry (MAF) which has regulatory responsibility for forest or forest product reliant based enterprises using such products
- The Ministry of Industry and Commerce (MoIC) which has regulatory responsibility for business regulation and export permits

**1.24.3. Legally required documents or records**

- Factory operation certificate

**1.24.4. Sources of information**

*Government sources*

*Non-Government sources*

#### **1.24.5. Risk determination**

*Overview of Legal Requirements*

New laws have been developed and introduced which seek to address some of the confusion, omissions, duplications, inconsistencies, and vagrancies that existed within and across previous laws.

However, the full assessment of the laws has not yet been undertaken and many rely on older sub-regulatory instruments being updated to reflect these new laws.

*Description of Risk*

Agency priorities do not always align across legislation or ministries at the national and provincial level. The Lao government prioritizes development activities that contribute to the national agenda on poverty reduction. Hence, investment proposals are rarely rejected, or enforceable conditions applied. For example, MoIP plays the primary role in investment promotion by co-operating with land management agencies, and project proponents, to supply land for an investment; Ministry of Industry and Commerce have monitoring responsibilities but no powers to enforce provisions; the Environment Police have powers to enforce laws but have no directive to do so, and while the Forestry Department has only the right to comment on and endorse an investment proposal, and have limited power to oppose the activities even though they may result in the destruction of natural forest.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified Laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.24.6. Risk designation and specification**

Specified risk

#### **1.24.7. Control measures and verifiers**

- Onsite evaluation of processing facilities
- Evaluation of Enterprise Registration certificate

### **1.25. Health and Safety in the timber processing sector**

*Legally required personnel protection equipment for persons involved in the timber processing sector. The health and safety requirements that shall be considered relating to the processing/factory (not office work, or other activities less related to the actual processing). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of workers at significant risk at any step of the primary and secondary processing.*

#### **1.25.1. Applicable Laws and regulations**

- *Labour Law No. 43/NA (2013)*; Determine principles, regulations and measures on labour, building and development of worker skills, job placement, use of labour, adjustment of labour relationships, and administration of labour in order to increase the quality and productivity of the workforce in the society.
- *Law No. 05/NA 2007 on Child Protection*: Defines principles, rules and measures relating to the administration, monitoring and inspection of the implementation of the protection of the rights and interest of multi-ethnic children, including measures against committing offences towards children

- Law on Lao Trade Unions (Amended) No. 71/NA (dated 15-11-2017): Defines principles, rules and measures on the organization and activities of the Trade Union Federation.
- *Law No. 12/NA 2007 on Trade Union Agreement on Good Agricultural Practices for Worker Health, Safety and Welfare* No. 0540/AF, dated 9 February 2011: Describes the requirements for workers in order to protect rights and benefits, safety and social welfare of workers in Lao PDR in order to be certified for Good Agricultural Practices.
- Decision on the Authorization of Foreign Labour Import to Work in Lao PDR, No. 5418/MLSW (dated 10-12-2007)
- Decree on Labour Dispute Resolution No.76 /MLSW (dated 28-2-2018)

#### **1.25.2. Legal authority**

Ministry of Labour and Social Welfare

#### **1.25.3. Legally required documents or records**

- Labour contracts

#### **1.25.4. Sources of information**

*Government sources*

*Non-Government sources*

- ILO. [http://ilo.ch/safework/areasofwork/national-occupational-safety-and-health-systems-and-programmes/WCMS\\_187981/lang--en/index.htm](http://ilo.ch/safework/areasofwork/national-occupational-safety-and-health-systems-and-programmes/WCMS_187981/lang--en/index.htm)
- DFDL, 2019. <https://www.dfdl.com/resources/legal-and-tax-updates/lao-pdr-labor-law-important-update/> <http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=LAO>
- Vientiane Times, 2019. [http://www.vientianetimes.org.la/freeContent/FreeContent\\_New\\_decree\\_50.php](http://www.vientianetimes.org.la/freeContent/FreeContent_New_decree_50.php)

#### **1.25.5. Risk determination**

*Overview of Legal Requirements*

Understanding of labour laws is difficult as many regulations and documents are not available in English, there is limited or no access to records or reports.

*Description of Risk*

Description of Risk reflects a knowledge of the laws and then a combination of observations made by technical experts employed in the country who have direct knowledge, and dialogue with both government and non-government sources.

The unregulated use of foreign workers and poor regulatory compliance capacity means that labour conditions are variable, with standards inconsistently applied and workers often underpaid and exploited. Child labour is often used.

The humid and hot conditions, combined with a lack of air-condition and personal protective equipment means that regulated standards are not enforced, or when provided are often disregarded by workers who see limited value in such items.

Organised union representation is often limited, or unduly influenced by external officials who have no, or limited, direct association with a business.

Knowledge of, and compliance with, limited wages and entitlements, and taxation obligations can result in exploitation and an avoidance of laundering of tax obligations.

Job security is not a common right, with many employment contracts informal and subject to termination without recourse. This places woman and other vulnerable groups at higher risk of exploitation.

Health risks to works is often not monitored, with knowledge of hazardous material often limited or absent. Many chemicals used in Lao are unregistered and unregulated.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

**1.25.6. Risk designation and specification**

Specified risk

**1.25.7. Control measures and verifiers**

- On-site evaluation of compliance with legal requirements.

**1.26. Legal employment in the timber processing sector**

*Legal requirements for employment of personnel involved in the timber processing sector including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale non-compliance with labour and/or employment Laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

**1.26.1. Applicable Laws and regulations**

- Labour Law No. 43/NA (2013); Determine principles, regulations and measures on labour, building and development of worker skills, job placement, use of labour, adjustment of labour relationships, and administration of labour in order to increase the quality and productivity of the workforce in the society.
- Decree on Labour Dispute Resolution (No. 76 of 2018)
- Law No. 05/NA 2007 on Child Protection: Defines principles, rules and measures relating to the administration, monitoring and inspection of the implementation of the protection of the rights and interest of multi-ethnic children, including measures against committing offences towards children

**1.26.2. Legal authority**

- Ministry of Labour and Social Welfare

**1.26.3. Legally required documents or records**

- Labour contracts

#### **1.26.4. Sources of information**

*Government sources*

*Non-Government sources*

#### **1.26.5. Risk determination**

*Overview of Legal Requirements*

Description of Risk reflects a knowledge of the laws and then a combination of observations made by technical experts employed in the country who have direct knowledge, and dialogue with both government and non-government sources. Understanding of labour laws is difficult as many regulations and documents are not available in English, there is limited or no access to records or reports

The National Assembly adopted an amended Labour Law (No. 43/NA, 24 December 2013) which was published in the Lao Gazette on 14 October 2014 and became effective on 29 October 2014. The 2013 Labour Law repeals the Labour Law (No. 06/NA, 27 December 2006) and applies to Lao and foreign employees working in the private sector or for international organizations, embassies and non-governmental organizations.

The employer is obliged to:

- provide training to develop employees' skills and knowledge;
- ensure working conditions are safe, and ensure there is appropriate lighting, supply of drinking water and washing water, showers, toilets etc., a storage room for the storage of toxic substances and other measures against electric shocks and fire.;
- facilitate medical examinations of employees once a year and provide a first aid kit on site.

The workplace must have its own Internal Regulations, and they must not conflict with the Labour Law. They must be approved by the Labour Administration Authority. The Labour Administration Authority has a template of the Internal Regulations that companies are encouraged to use.

Normal hours of work are 6 days a week, no longer than 8 hours a day or 48 hours a week.

*Description of Risk*

In general, it is concluded that the implementation of labour laws are often weak and not enforced by the authorities.

*Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.26.6. Risk designation and specification**

Specified risk

#### **1.26.7. Control measures and verifiers**

- To verify legal employment it is recommended to conduct on-site evaluation of processing facilities to observe practices and assess the availability of relevant legal documentation and permits.

## Annex I. Timber source types

The table **Timber Source Types in Laos** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- a. Forest type - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- b. Spatial scale (Region/Area) - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- c. Legal land/forest classification - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- d. Ownership - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- e. Management regime - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- f. License type - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

## TIMBER SOURCE TYPES IN LAOS

Forest type	Region / Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural Forest	National	Conservation forests aka National Protected Areas, Protection forests or Production forests	State	Ministry of Agriculture and Forestry, provincial and district offices,	National Annual Logging Plan – for conversion timber	Conversion timber - Logging plan, logging permit for conversion timber harvested under development projects (geological prospection, mining, road and hydropower dam construction, establishment of agriculture plantations)
		Production Forest	State	Ministry of Agriculture and Forestry, provincial and district offices,	National Annual Logging Plan - for selective logging	Selective logging under the National logging plan for selective logging - 15-20 year forest management plans, logging plan, logging permit
		Village forests with protection, conservation and village use forests)	State	Village Forestry Unit	National Annual Logging Plan - for selective logging.	Only for non-commercial use Village construction quota in village use forests. – Village forest management plan
		Different categories of natural forests	State		Special logging plans	Special logging plans (No legal foundation) –

						<p>Special logging plans for deadwood, debt repayment, development, military and plantation preparation.</p> <p>Legal framework for special quotas is vague and principles of allocation of special logging plans are inconsistent with main notions of forest legislation. Government approval is needed. Shall be included in the National annual logging plan</p>
Plantation forest	National	Degraded forest land	State	Private – companies	Concession agreement	<p>Plantation Production Forest -</p> <p>Restricted to degraded forest or barren forestland. Can be located within every category of forest. Registration required: area 1,600 m<sup>2</sup> or more. More than 5 ha: Management plan required.</p>
		Village agriculture land allocated within state forest land	State	Smallholders Private – individuals (up to 3 ha per labour/household)	Three-year temporary land use certificates for tree planting, the permission on logging from Provincial or Vientiane Capital Agriculture and Forestry Office.	Plantation Production Forest

## Annex II: Overview of new legal instruments

Laos is currently in a process of legal reform. Several critical laws and other legal instruments have been developed recently. However, the implementation and enforcement of the new provisions is lacking behind and existing enforcement measures and systems improvements are yet to be fully implemented as they still refer to old provisions. This creates a challenging situation with regulations referencing old and obsolete laws. This means that these regulations continue to be used with provisions contrary to new laws and undermining or diluting enforcement requirements and capacity.

The following table indicates the legal instruments being used in this risk assessment as well as outlining new laws and regulations that have been developed, but where the process of enforcement is uncertain.

Regulatory instrument referenced in the Assessment	Known status of referenced instrument, omitted instruments and updates.
<b>PRIME MINISTER ORDER</b>	
PMO15 (2016) On Strengthening Strictness of Timber Harvest Management and Inspection, Timber Transport and Business, 13 May 2016	Current
PMO 05	Order No. 05/PM on Strengthening strictness of the management and inspection of prohibited wild fauna and flora (dated 8 May 2018)
<b>LAWS</b>	
	Law on the promotion of small and medium sized enterprises, NO: 011/N.A 21 December 2011
	Enterprise Law, No. 46/NA dated 26 December 2013
	Law on Making Legislation (No 19/NA 2012)
	Law on Anti-Money Laundering and Counter-Financing of Terrorists (no. 012/po dated 4/2/15.
<i>Criminal Procedure Law NA No.17, 2012</i>	<i>Criminal Procedure Law NA No.17, 2012 (Amended 2017)</i>

Law No. 02/1996 NA on Water and Water Resources, 11 October 1996	Law on Water and Water Resources (amended) No 010/NA dated 11 May 2017.
Law No. 02/1999 NA on Environmental Protection, 3 April 1999	Law No. 29/2012 NA on Environmental Protection, 18 December 2012
Law No. 03/1997 NA on Transportation, 12 April 1997	Law No. 24/NA on Land Transportation dated 12 December 2012 and/or Law No. 28 on Multi Transportation 18 December 2012
Law No. 04/2003 NA on Land, 21 October 2003	Law on Land No. 70/NA dated 21 June 2019
Law No. 04/NA on Customs, 20 December 2011	Customs Law (Amended) No. 57 dated 24 December 2014
Law No. 05/2006 NA on Child Protection, 27 December 2006	Correct title is Law on Child Rights Protection and benefit
Law No. 05/2011 NA on Taxes (amended), 20 December 2011	Tax Law (Amended) No. 019/na (28 January 2016)
Law No. 06/2007 NA on Forestry, 24 December 2007	Forestry law No. 08/NA, (25 May 2019)
Law No. 07/2007 NA on Wildlife, 24 December 2007	current
Law No. 12/2007 NA on Trade Unions, 25 December 2007, Articles 5 and 10 on the role of trade unions in representing workers	Amended Law on Lao Trade Unions No 71, 15/11/2017 as Instructions on Establishment of Workers' Representatives or Institution-based Trade Union and Strengthening the Organization of the Trade Union
Law No. 43/ NA on Labour, 24 December 2013	current
Law on Minerals (04/NA)	Law on Minerals (291/NA 2017)
Law on Mining No. 36/PO, 31 May 1997	
Law on plant protection	Law on Plant Protection and Plant Quarantine. No.13/NA, dated 15 November 2017
Penal Law No.142/PO 2005	Penal Code, NA No. 118, 2017 (Proclaimed November 2018)

The Law No. 02/2009 NA on Investment Promotion, 08 July 2009	Investment and Promotion Law was amended on 16.12/2016
<b>DECREES</b>	
	Decree No. 31/PM 2013 on temporary stop for logging at the National Production Forest
	Decree No. 247/pm on Decree on Plantation Promotion tree planting for commercialization (dated 20 August 2019)
	Decree No. 96/pm on Plantation Promotion for Commercial and Environmental Protection Purposes (dated January 2019)
Decree 32/PM on adoption Meeting Minute for National Forest Conference on Forest management, Forest Inspection and Forest business on 25th-26th January 2012	
Decree No 229/PO, 31 May 2012 on Implementation of the Law on Plant Protection	
Decree No. 001/2012 PRO on Sharing of Revenue from Timber Harvests in Production Forest Areas, 31 December 2012	
Decree No. 111/PM on National Defense Strategic Zone, 24 March 2011	
Decree No. 112/2010 PM on Environmental Impact Assessment, 18 February 2010	Decree No. 21/GOL on Environmental Impact Assessment, 31 January 2019
Decree No. 134/G on Protected Areas, 13 May 2015, Article 1 on purposes of conservation forests	
Decree No. 135/2009 PM on State Land Lease or Concession, 25 May 2009	
Decree No. 164/PM on the Establishment of National Forest Reserves, 29 October 1993	

Decree No. 192/2005 on Compensation and Resettlement of Development Project, 7 July 2005, PM	Decree on Compensation and Resettlement of People Affected by Development Project No 84/NA dated 5 April 2016
Decree No. 192/2005 PM on Compensation and Resettlement of Development Project, 7 July 2005	
Decree No. 333/PM on Protection Forests, 19 July 2010	
Decree No. 59/2002 On Sustainable Management Of Production Forest Areas, 22 May 2002.	
Decree No. 88/2008 PM on the Implementation of the Land Law, 3 June 2008	
Prime Ministerial Decree 150/2000 on Land Tax	
<b>ORDER</b>	
	Order No. 57/PM, on Income Collection Management of Sales of Timber and Non-timber Forest Products (NTFP) (16 Dec 2014)
	Order No.09/PM, on enhancement of the management and use of land areas for concession of industrial tree plantation and planting other crops (dated 02 July 2018)
Order 13/2012 PM on Halting Investment Projects Related to Mining, Rubber, Eucalyptus	
Order No. 17/2008 PM on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 22 September 2008	
Order No. 1765/2013 MOF on paying more attention in timber exports to collect revenue for the government budget in an accurate and timely manner, 4 July 2013	

PM Announcement No. 1360 on log and sawn wood export ban, 08 August 2015	
<b>DECISION</b>	
	Decision 0023/MoIC on Enterprise Registration (09-01-2019)
	Decision of the Prime Minister No. 2196/PM on developing the villages of labour and social welfare (20 June 2016)
	Decision No. 0939/MOIC, on List of eligible products for export (dated 1 August 2019)
	Decision use of CoC certification in the supply chain MOIC
	Regulation of Sale and Purchase of Timber (2nd Log Landing)/MOIC
Decision No. 0080/2012 MAF on Procedures for Importation, Management and Utilization of Chainsaw (Wood-Cutting Machine), 19 June 2012	
Decision No. 0116/2007 MAF on the regulation of timber log scaling and grading, 17 May 2007	
	Decision No. 3121/ 2012 MONRE regarding the Organization and Activities of the Department of Forest Resource Management
Decision No. 41/PM on authorization to province and the capital for making decision of licensing exportation of the plantation timber for round wood (logs) and sawed wood (processed), 26 March 2014	
	Decision No. 0719/MOIC, Timber Processing Manufacture Standards (03 April 2009)

	Decision No.2005 /MOIC, on the Wood / Timber Products (28-09-2015)
<b>DIRECTIVE</b>	
Directive No. 1849/1999 MAF on Registration of Tree Plantations, 10 July 1999	
<b>AGREEMENTS</b>	
	Agreement No-:0141/MAF, Of the Minister On Forest and Forest resources Inspection and Case Action (Date 18 Nov 2010)
Agreement No. 0019/2008 MAF and No. 2139/2008 MPWT, 14 February 2008 between Minister of Agriculture and Forestry And Minister of Public Works and Transport on the Transportation of logs, sawn timber, stumps, wood galls and wood products	
Agreement No. 0182/2009 MAF on the Establishment and Management of Timber Harvest Units and Enterprises, 23 February 2009	
Agreement No. 0538/2011 MAF on Good Agricultural Practices for Environmental Management Standards, 9 September, 2011	
Agreement No. 32/PM on Resolution of Forest Conference on Forest Management, Forest Inspection and Wood Business held on 25-26 January 2012, 06 March 2012	
<b>ANNOUNCEMENTS</b>	

Announcement No. 004/NRAB of the National Regulatory Authority for UXO/Mine Action Sector in Lao PDR on national standards for evidence-based survey, 21 January 2015	
<b>GUIDELINE</b>	
	Guideline Number 0962/DOF, Concerning the management of timber log transport from cutting areas to Log yard II (date 09 April 2010)
Guideline 0105/ MAF of the Minister of Agriculture and Forestry Concerning Implementation of the Prime Minister's Order No. 17/PM, dated 22/09/2008 on Strengthening the Forest Management, Protection and Coordination of Forest Management and Forestry Business, 07 November 2008	
Guideline No. 0092/2009 MoF for the Managing the Collection of Revenue from the Sale of Timber and NTFPs, 13 January 2009	
Guideline No. 0396/208 DOF on Monitoring the Implementation of Production Forest Management, 11 March 2008	
Guideline No. 0896/2008 MAF List of Prohibited Species.	
Guideline No. 2155/2006 DOF on Participatory Forest Inventory, Part V on Pre-logging Inventory	
Guideline No. 2156/2006 DOF, on Sustainable Production Forest Management Planning, 6 November 2006	
Guideline No. 2157/2006 DOF Guideline on Timber Logging in Production Forest, 6 November 2006	
Guideline No. 2297/2004 MOF on Bidding Regulations for Buying Timber and Other Forest Resources from State	

Standing Timbers, Infrastructural Areas and Production Forest Areas at Second Landings, 29 October 2004	
<b>INSTRUCTION</b>	
	Instruction No. 0054/MAF, The expansion and implementation of the Order of the Prime Minister No. 15 (9 June 2016)
	Instruction No. 0076/MAF On the development of a timber legality assurance system (12/10/18)
	Instruction No. 1758/MAF, on The implementation of Order No. 09/PM, dated 02 July 2018, on the enhancement of management and use of land areas for concession of industrial tree plantation and planting other crops nationwide (30.07.2018)
Instruction 822/1996 MAF On Forestland Allocation for Management and Use, 2 August 1996	
Instruction No. 0142/2009 MAF on the Inspection of Forest, Forest Products, Forest Land, Non-Timber Forest Products (NTFPs), Aquatic Animal and Wildlife, 7 October 2009	
Instruction No. 03/1996 PM for Expansion of Land Management and Land & Forest Allocation, 12 July 1996	
Instruction No. 1035/2010 MAF of the Provincial Forestry Sector for Implementing the Enforcement of the Labour Law and Paying Attention to Guide Company/Timber Exploitation Division to Strictly Implement, 23 April 2010	
Instruction No. 1668/2008 NLMA.CAB on the Use of New Formats of Land Titles and New Registration Book, 29 April 2008	
Instruction No. 1696/CD on the implementation of the ASEAN harmonized custom declaration form	

Instruction no. 1812/MoIC.DIMEX, 4 September 2015 to further implement notifications of the government office no. 790/GO.SD, dated 21 May 2015 and 1360/GO.ED, dated 4 September 2015	
Instruction No. 20/2010 NLMA, on Implementation of Decree of State-owned Land for Concession, 9 April 2010	
Instruction No. 564/2007 NLMA on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, 6 August 2007	
<b>NOTIFICATION</b>	
	Notice No: 1990/PMO.ED (19 December 2016)
Notification #093 of the National Regulatory Authority for UXO/Mine Action Sector in Lao PDR on UXO clearance for socio-economic development projects in the Lao PDR, 19 November 2012	
Notification No. 0076/2012 MOIC.DIMEX on Goods Subject to Automatic and Non-Automatic Import and Export Licensing, 13 January 2012	
Notification No. 0094/MOF.DPAM on Implementation of the Notification of Finance Minister No. 1765/MOF, dated 04 June 2013 on Paying Attention on Income Collection from Timber Export to the National Budget in a Correct, Accurate and Timely Manner, 22 October 2013	
Notification No. 1135/MOIC.DIMEX Authorizing Provinces and Capital City to be in charge of studying and deciding on the approval for exporting of wood from plantations (Teak, Para Rubber, Eaglewood, Eucalyptus and Acacias), 06 May 2014	

Notification No. 1324/2010 MoF.CD on Exportation of Round Wood, Sawn Wood, Semi-Finished Wood Products Shall Be Consolidated at the Customs Department to Issue Order of Implementation, 13 April 2010	
Notification No. 1374/2010 MAF.MC on the Application for Registering Tree Planting Parcels and Grown Timber Certificate, 24 August 2010,	
Notification No. 1440/2008 MOIC.DIMEX on Management of Wood Transport Vehicle, Wood Extraction Machinery, and Wood Processing Machinery in Consistency with the Laws and Regulations, 4 September 2008	
Notification No. 1601/MOIC.DIMEX on Management and movement of timber, timber products and non-timber products in domestic and for exportation, 26 September 2008	
Notification No. 1791/2011 MOIC.DIMEX on the licensing procedure of the import and export of planted timbers, 30 September 2011	
Notification No. 1940/2011 MOIC.DIMEX, on Procedure to Issue Export and Import License for Timber, 30 September 2011	
<b>REGULATION</b>	
	Regulation No. 1726/MoIC, Regulations on the Sale and Purchase of Timber (date 23 August 2012)
Regulation 112/2008 MAF Regarding the Logging and Post-Logging Cleaning in the Reservoir Area of a Hydropower Dam, 25 November 2008	
Regulation 535/2001 MAF On Management of Village Forests, 18 June 2001	

Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005	
Regulation No. 0360/2003 MAF on the management of NBCAs and Aquatic & wild Animals Conservation.	
Regulation No. 196/2000 MAF on Long-term Development and Promotion of Tree Planting, 15 August 2000	
Regulation No. 2432/2005 PM.STEA for Implementing Decree 192/PM, 11 November 2005	
Regulation No. 2860/2010 MAF on the Control of Pesticides in Lao PDR, 11 June 2010	
Regulation No. 360/2003 MAF on National Protected Area Management, Aquatic Animals and Wildlife, 8 December 2003	
Regulation No. 535/2001 MAF on Management of Village Forests, 18 June 2001	
Regulation No. 60/MAF.03, 24 February 2003 on minimum cutting diameters	
<b>OTHER</b>	
	Recommendation No. 1855/OPM on the implementation of CITES for year 2019 (17.10.2019).
Table No. 0008/2012 MAF of Prohibited, Special and Controlled Timber Species	
Technical Guidelines of Science Technology and Environment Agency (STEA) on Compensation and Resettlement in Development Projects, November 2005	

## Annex III: Laos Hierarchy of Laws and enforcement

The issuing of PMO 15 (2016) and the funding and redirection of resource to its implementation was a clear demonstration of commitment to address existing shortfalls and provide time to establish more robust regulatory instruments as well as more effective enforcement and compliance responses.

The GoL has developed legislation and policies that assign specific roles and responsibilities related to combatting forest based crime, including distinct authority to manage, monitor, investigate and enforce laws and regulations, to various ministries and departments, including Agriculture and Forestry (MAF), Natural Resources and Environment (MoNRE), Industry and Commerce (MOIC), Finance (MOF), Public Security (MOPS), Health (MOH), and the Ministry of Transport (MOT). Within these Ministries, individual departments, both at the national, provincial and district levels, have specific functions as defined in terms of reference. The roles of these departments are devolved to the provincial, district and village levels through the local administration.

Agencies with a role in the enforcement of forest and wildlife crime include the Department of Forest Inspection (DoFI), the Environmental and Economic Police, the Anti-Corruption Agency, Customs, and the Armed Forces. The DoFI, established in 2008, falls under the MAF. It is the GoL's lead agency for enforcement activities under the Forestry Law 2019, and the Wildlife and Aquatic Law 2007 No07/NA.

Further to PMO15, the GoL has enacted important legal changes under the Criminal Procure Law in October 2018 (broadened and clarified authority to act for law enforcement agencies), instituted Prime Minister Order #5 and adopted a new Penal Code which enhanced penalties that includes provisions targeting transnational and organized criminal networks and the individuals who support them. The new Penal Code also address many previous inconsistencies and gaps under laws, including international agreements such as CITES and the objectives of the Asia/Pacific Group on Money Laundering (APG).

This improved regulatory framework demonstrates the GoL's commitment to protect its forests and wildlife resources and to meet its international obligations under CITES, the UN Convention Against Organized Crime, and the UN Convention Against Corruption. Donor organizations have also started to provide support to the Department of Forest Inspection (DoFI), Lao Wildlife Enforcement Network (Lao-WEN) and its partners. This support has resulted in the establishment of centralized investigation and enforcement systems to combat illegal forest-based trade.

The GoL has operationalized a risk-based approach to law enforcement activities, referred to as the Strategic and Tactical Enforcement Patrol Program (STEPP), and is improving coordinated, multi-agency operational responses at a provincial, national or international level. However, these systems and processes are not, and practical experience is limited and disjointed.

Despite these advances, forest management and law enforcement agencies, for the most part, still lack the expertise to fully implemented sustainable approaches, effectively monitor and investigate criminal networks and locate illegal forest products. They are also deficient in capacity to identify and properly distinguish certain products, especially at border crossings, and don't have sufficient resources to undertake sustained enforcement actions.

The following section provides further information on the hierarchy of laws and the interactions of various regulatory instruments and related authorities in Lao PDR and is designed to assist a reader in interpreting a particular instruments relationship in regard to other such instruments, whether higher, lower or similar.

### Hierarchy of Law

The Lao PDR the hierarchy of Laws is implied in the Law on Making Legislation No 19/NA 2012 and consists includes the issuing of specific administrative instruments relevant to specific laws and responsible ministries, departments, organisations or individuals. The general level of hierarchy is:

- The Constitution
- Laws
- Resolutions of the National Assembly
- Resolutions of the Standing Committee of the National Assembly
- Ordinances of the President of the Republic
- Decrees of the Government
- Resolutions of the Government
- Orders and Decisions of the Prime Minister
- Orders, Decisions and Instructions of the Minister and Head of a Government Authority
- Orders, Decisions and Instructions of the Provincial Governors and City Governors
- Orders, Decisions and Instructions of the District and Municipality Chiefs
- Village Regulations

The Law on Making Legislation requires legislation be published in the Official Lao Gazette (<https://laoofficialgazette.gov.la/>) in order to be Effective (Article 80). This is the official source for all legally enforceable primary and subsidiary legislation of general application for Lao PDR at the national, provincial and capital levels. Districts / Municipalities and villages have the option to publish legislation on the Official Gazette and/or in other local media or post it in a way that people can access it easily.

Note: The Lao PDR Trade Portal (<https://www.laotradeportal.gov.la/>) website provides information regarding importing/exporting goods into/from Lao, including information related to import/export process, regulations for specific products, and relevant laws.

*The [Guide for Import-Export](#)*, on the right of this page provides a comprehensive set of information and guidelines in plain language, and the database is also designed for convenient search by topic.

Importantly, [Article 9. Contradiction of Legislation](#) of the Law on Making Legislation states: "Legislation being developed shall be consistent with higher legislation."

Where a contradiction exists, legislation of the higher level shall be applied. If a contradiction of legislation at the same level exists, the later legislation shall be applied. If legislations at the same level contradict each other, the provisions of specific legislation shall prevail.

However, contradictions may continue to exist after legislative changes and undermine the effectiveness of enforcement.

The new 2017 Penal Code (Article 333) makes reference to CITES ("Any person importing, exporting, re-exporting, transshipping or transiting aquatic and wildlife including parts, organs and products of such aquatic and wildlife unlawfully with regulations relating to CITES, shall be punished by three months to five years of imprisonment and shall be fined not exceeding 10,000,000 Kip" as well as making it illegal to import, export, transport such items (Article 274, 282, 284 and 335).

## Authority

Authority is defined under the Constitution, vested under laws, and codified under regulatory instruments issued via different administrative authorities. Administrative authority applies to those officials under direct responsibility chains.

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Under Article 5 of the Constitution, The National Assembly and other state organisations are established and function in accordance with the principle of democratic centralism: a term applied to policy defined by a ruling party.

Importantly, Under the Constitution, Article 69, The government is the executive branch of the State. Under Article 73, the Prime Minister appoints senior government officials, including provincial Governors, which is why

*Table 1: Overview of overview of how authority is vested in Laos. Adopted from the work of Smith, 2016.*

Regulatory Instrument	Regulatory Instrument	Issuing Authority	Scope	Note
Binding policy instrument	Prime Minister's Order	Prime Minister of Lao PDR	Importantly, this is the only instrument that is binding on all officials and levels of government and sectors of society, and requires strict implementation.  This can negate existing legal rights.	This is an instrument to implement a policy of the Lao People's Revolutionary Party
Limited policy instruments	Prime Minister's Office	Office of the Prime Minister of Lao PDR	Binding on national agencies.  Other levels are expected to implement such Orders through Provincial instruments.	These can reflect objectives of the Lao People's Revolutionary Party
Primary Laws	Primary laws, such as:  Law on Making Legislation  Criminal Procedure Law  Penal Code	National Assembly	These define roles, responsibilities, authority and obligations.  They are generally high level and limited in detail.  Primary laws apply to all agencies, but require clarification to define scope.	A law is legislation that is developed by the authorized authority, adopted by the National Assembly and promulgated by the President of the Republic that defines principles, regulations and measures governing social relationships in many areas or in
Specific laws	Specific laws such as:  Forestry Law 2019	National Assembly	These define the scope of authority.	

	<p>Customs Law 2012 (amended 2014)</p> <p>Anti-corruption Law 2012</p>		<p>They usually apply to specific areas and agencies.</p> <p>They are binding on all national agencies defined under these laws.</p>	<p>a specific area, and is effective nationwide and is long lasting.</p>
	<p>Resolution/Directive of the Standing Committee of the National Assembly</p>	<p>National Assembly Standing Committee</p>	<p>Resolution on any matter brought into a meeting of the Standing Committee of the National Assembly on the implementation of a resolution of the National Assembly, the inspection of the implementation of the Constitution, laws including interpretation of the Constitution, and laws and other matters under the rights and duties of the Standing Committee of the National Assembly.</p>	<p>Resolution on any matter brought into a meeting of the Standing Committee of the National Assembly on the implementation of a resolution of the National Assembly, the inspection of the implementation of the Constitution, laws including interpretation of the Constitution, and laws and other matters under the rights and duties of the Standing Committee of the National Assembly.</p>
<p>Presidential Ordinance</p>	<p>Implementing instrument</p>	<p>President</p>	<p>A President Ordinance is legislation that defines principles, regulations and measures for governing social relationships or amending selected articles of a law issued by the President of Lao PDR</p>	<p>Made in accordance with the proposal of the Standing Committee of the National Assembly.</p>
<p>Decrees of the Government</p>		<p>President</p>	<p>A Government Decree is legislation</p>	<p>It is responsible for issuing a decree to instruct</p>

			<p>of the Government issued to:</p> <ol style="list-style-type: none"> <li>1. Implement a resolution of the National Assembly, resolution of the Standing Committee of the National Assembly, social-economic development plan and a strategic plan</li> <li>2. Govern social relationships in a certain area to meet the needs for State management and social-economic management where conditions to make a law is lacking</li> <li>3. Establish the organization and activities of a ministry [and] a Government agency.</li> </ol>	<p>the implementation of a law by elaborating and providing detailed explanations to certain articles of the law to make it easier to understand and to ensure uniform implementation of the law or in case that the law required that specific regulations shall be developed.</p>
Resolution of the Government	Directive	Government	A Resolution of the Government is a decision under the mandate of the Government	<p>The Government is the implementing instrument of the Lao People’s Revolutionary Party and is responsible to implement policy issues of national importance or national goals or objectives (such as a National Social-Economic Development Plan, Budget, defence and other matters</p>

<p>Instruments of the Minister or Head of Government Authority or the Provincial or City Governor</p>	<p>Implementing instrument: Order Decision Instruction Guidelines</p>	<p>Heads of Relevant Ministries or Provincial or City Governor</p>	<p><b>An Order</b> requires individuals or organizations to implement a plan, laws, Presidential Decree and other instruments and other matters under their scope of rights and duties.</p> <p><b>A Decision</b> is issued to clarify and implement rights and duties specified under higher instruments.</p> <p><b>An Instruction</b> is to implement the specific plans (such as National Social-Economic Development Plan) or strategies (such as the Forestry Strategy 2020), ministerial budgets and work plans, or other instruments.</p> <p>It is designed to provide a general understanding, methods, procedures and the use of resources, staff, and timeframe for the implementation, coordination, monitoring, reporting and enforcement of the instrument.</p>	<p>Defines terms of references and objectives for the implementation, monitoring, reporting, and enforcement roles, responsibilities and authorities.</p> <p>Binding on those officials under direct control of issuing authority.</p>
<p>Instruments of the head of Central Government agency or Department</p>	<p>Implementing instrument: Instructions Guidelines</p>	<p>Heads of relevant ministerial or provincial offices or departments</p>	<p>Operational clarification of roles, responsibilities, obligations and authority.</p> <p>Binding on those ministries or departments or provincial offices under direct control of issuing authority.</p>	

or Provincial Unit			
Instruments of Central or Provincial units, or District or Municipal Chief	Operational implementing instructions	Heads of central or provincial units or District or Municipal Chief	Operational clarification of roles, responsibilities, obligations and authority Binding on those units under direct control of issuing authority.
Village Regulation	Operational implementing instructions	Village Authorities	An implementing instrument to operationalise higher level regulations or to manage the security and public order under its jurisdiction.

## Authority to Enforce regulatory instruments

Authority to investigate and enforce is confirmed under the Article 46: Investigation-Interrogation Organisations of the *Criminal Procedure Law NA No.17, 2012*. This vests ministries and departments with distinct authority to investigate and enforce laws. The separation of roles, responsibilities and authority:

- encourages collaborative approaches to law enforcement activities, and
- minimises areas of conflict or duplication of effort.

There are 5 prime agencies vested such authority: Police, Customs, Anti-corruption, Forest Inspection, and the military. These departments support the Office of Public Prosecutions, Ministry of Justice, in promoting and enforcing the rule of law.

*Table 2: Overview of where and how authority is vested, and the rights to exercise such authority. Adopted from the work of Smith, 2016.*

Authority to Investigate	Criminal Procedure Law (2012)
Authority to take Action (Penalties)	New Penal Law (2017)
Scope of Authority	Specific laws: Forestry Law 2007 (DoFI) Wildlife and Aquatic Law 2007 (DoFI) Customs Law 2012(Customs) Anti-corruption Law 2012 (anti-corruption) Police (Various) Army (various)
Scope of Operational roles	Ministerial Issued Instructions Terms of Reference Directives
Clarification of Roles	DG/Director Instructions Guidelines
Operational activities	Director (Provinces)

*Source: The extensive work carried out by Dr Hilary Smith, Director Latitude Forest Services, has been used in the preparation of this document.*

## About

# LIFE Legal Wood

[LIFE Legal Wood](#) is an initiative that aims at supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The initiative is funded by the LIFE Programme of the European Union.



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