

Timber Legality Risk Assessment Laos

Version 1.1 | May 2017



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FSC™ A000535

This risk assessment has been developed by NEPCon with support from the LIFE programme of the European Union, UK aid from the UK government and FSC™.



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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. NEPCon has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

In that time, NEPCon has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.

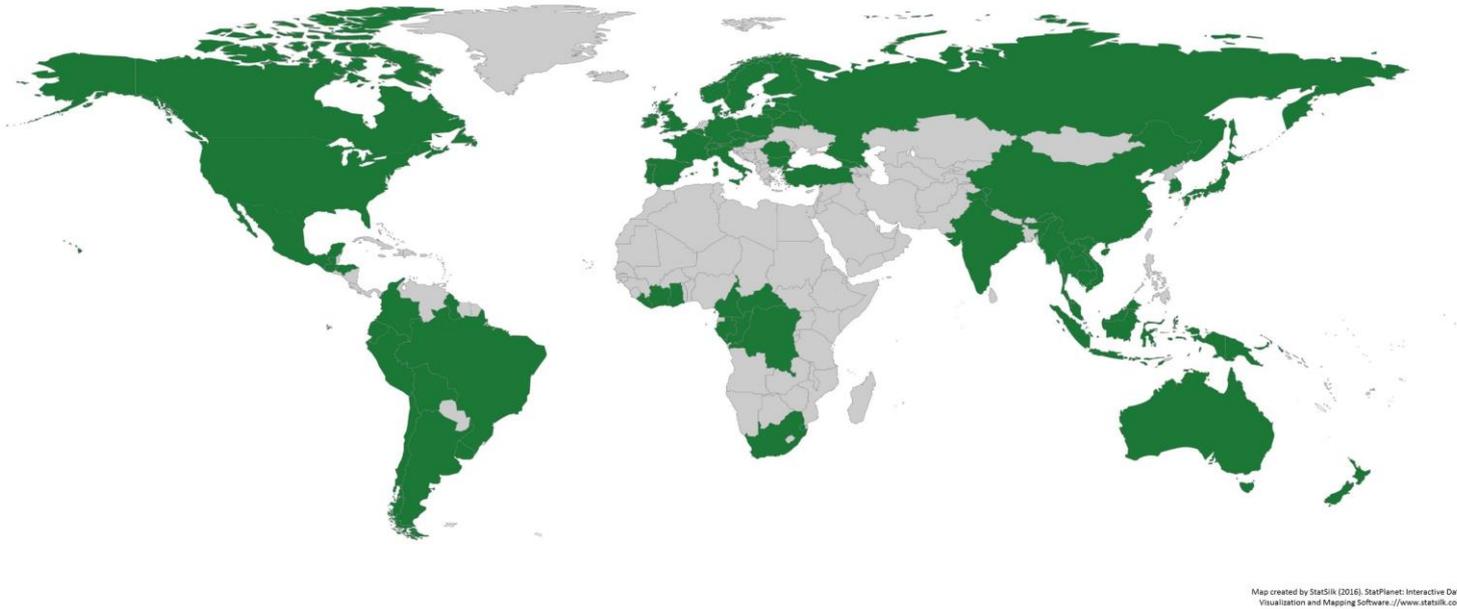


Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on NEPCon's website.

B. Overview of legality risks

Timber Risk Score: 0 / 100 in 2017

This report contains an evaluation of the risk of illegality in Laos for five categories and 21 sub-categories of law. We found:

- Specified risk for 16 sub-categories.
- No legal requirements for 5 sub-categories.

The Timber Risk Score for Laos is 0 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities, third parties rights and trade and transport.

For **Legal rights to harvest**, there is a risk of:

- Conflict over land tenure, and a lack of business registration specifically for plantations (Sub-category 1.1)
- Forest concessions being granted in violation of regulations (1.2)
- Annual Logging Quotas being based on inadequate inventories and requests from districts, prepared in the office without conducting actual field surveys, leading to approvals for logging not reflecting the resources available on the ground (1.3).
- Corruption, lack of certification and stamping procedures for harvesting permits and other documents, resulting in harvesting outside areas approved by the government, clearance of greater areas than areas granted for projects, and permits issued despite lack of documentation (1.4).

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

- Inconsistent application of taxes and fees at the provincial level (1.5)
- Risk of high corruption levels regarding payment of tax, the high amount of illegal logging indicates that issues might be present in relation to tax payment (1.5)
- Risk that smallholders lack business registration, and don't pay taxes (1.5)

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

- Risk that the implementation of harvesting regulation is lacking, a 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 with their desired wood (1.8)
- Risk of legal requirements covering protected tree species being ignored and protected species being harvested without authorization document (1.9)
- Risk of non-compliance with health and safety rules, logging crews do not have safety equipment or protective gear, and live under very basic conditions (1.11)
- Risk that workers do not have a contract or do not receive their salary (1.12)

Third Parties' Rights: Regarding Customary rights (1.13) there is a risk of conflicts on tenure rights, the government maintains a highly centralized system of forest governance with inadequate recognition of customary tenure rights, communal lands are not compensated for when re-allocated to a company

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

- A lack of, or falsification of the registration of harvested logs (1.16)
- Risk of timber being transported without required documents (1.17)
- Risk of violation of the ban on export of logs and timber (1.17)

Timber source types and risks

There are four timber source types found in Laos. An additional source is seen in Laos, timber from natural forests harvested under *Special logging quotas*. However, the legal framework for special quotas is vague and principles of allocation of special logging quotas are inconsistent with main notions of forest legislation. 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.

Timber sourced via selective logging	Timber from the production forest, sourced via selective logging under the National logging quota for selective logging. A 15-20 year forest management plan, harvesting plan and logging permit are required.
Conversion timber	Can be sourced from Conservation forests/ National Protected Areas, Protection forests or Production forests under the national annual logging quota for conversion timber. A harvesting plan and Logging Permit for conversion timber harvested under development projects are required
Plantation timber – concessions	Timber from Plantation Production Forest concessions located on degraded forest or barren forestland. Registration required is required for areas of 1,600 m ² or more. For plantations larger than 5 ha also require a management plan.
Plantation timber – smallholders	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. Three-year temporary land use certificates for tree planting, the permission on logging from Provincial or Vientiane Capital Agriculture and Forestry Office.

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

Legal Category	Sub-Category	Source Type				
		Natural Forest			Tree plantations	
		Conversion	Selective Logging		Small holders	Concessions
				Special logging (no legal foundation)		
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified	N/A	Specified	Specified
	1.2 Concession licenses	N/A	N/A	N/A	Specified	Specified
	1.3 Management and harvesting planning	Specified	Specified	N/A	Specified	Specified
	1.4 Harvesting permits	Specified	Specified	N/A	Specified	Specified
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified	Specified	N/A	N/A	N/A
	1.6 Value added taxes and other sales taxes	Specified	Specified	N/A	N/A	N/A
	1.7 Income and profit taxes	Specified	Specified	N/A	Specified	Specified
Timber harvesting activities	1.8 Timber harvesting regulations	Specified	Specified	N/A	N/A	N/A
	1.9 Protected sites and species	Specified	Specified	N/A	Specified	Specified
	1.10 Environmental requirements	Specified	Specified	N/A	Specified	Specified
	1.11 Health and safety	Specified	Specified	N/A	Specified	Specified
	1.12 Legal employment	Specified	Specified	N/A	Specified	Specified
	1.13 Customary rights	Specified	Specified	N/A	Specified	Specified

Third parties' rights	1.14 Free prior and informed consent	N/A	N/A	N/A	N/A	N/A
	1.15 Indigenous/traditional peoples rights	N/A	N/A	N/A	N/A	N/A
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified	N/A	Specified	Specified
	1.17 Trade and transport	Specified	Specified	N/A	Specified	Specified
	1.18 Offshore trading and transfer pricing	N/A	N/A	N/A	N/A	N/A
	1.19 Custom regulations			N/A	Specified	Specified
	1.20 CITES			N/A	N/A	N/A
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A	N/A	N/A	N/A

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 2010 estimated forest cover in Laos to be 9.5 million hectares, or 40.3% of the total land area, down slightly from the 41.5% reported in the preceding assessment in 2002. At the end of 2015, the Department of Forestry reported an increase in forest cover to 47%, but there were no reasons provided for such a sudden increase.

Existing forest law recognises three forest categories: conservation (28%), protection (33%) and production (15%) 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.

All natural forests and forest land in Laos are state-owned and managed by state agencies at three levels of government (national, provincial, and district), while individuals and organisations are not permitted to own natural forest. According to official statistics, while forest cover is estimated at 9.5 million ha, the tree plantation area has reached 406,000 ha.

Households and individuals can be granted the right to use and inherit plots of degraded forest land for agriculture and tree planting, and can potentially obtain full property rights and title after an initial three-year trial period, but these may not be transferred or used as collateral.

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

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 406,000 ha in the 2012/2013 Lao Fiscal Year. At that time, rubber trees (*Hevea brasiliensis* for latex extraction) accounted for 79% and eucalyptus (*Eucalyptus* spp. for pulp and sawn wood) for 14%. Of the remainder, 7% is teak (*Tectona grandis*), which is considered the most important species.

Current legislation does not allow the allocation of concessions for commercial timber harvesting 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, or
- b) To clear-cut land (forest conversion) 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.

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.

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 considered to be a 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 on the basis of permits (quotas) for land clearances under government-approved development projects.

Harvest of plantation timber for commercial use may be conducted only in registered plantations, and shall comply with the plantation management plan, and have a permit issued by the agriculture and forestry authorities.

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.

The list of sources provided in FSC-PRO-60-002a, section 3.3.3, has been reviewed for relevance in regards to the national legality risk assessment of Laos. 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;
- 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) Public summaries of FSC forest management certification reports, published at info.fsc.org (information on legal areas where non-compliances have been identified during the certification process that are likely to be common for non-certified operations);

- g) Transparency International Corruption Perceptions Index:
http://www.transparency.org/policy_research/surveys_indices/cpi;
- h) World Bank Worldwide Governance Indicators:
<http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- i) In cases where other sources of information are not available, consultations with experts in the area shall be conducted.

Additional sources:

- j) 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
- k) FAO, 2015, Global Forest Resources Assessment, <http://www.fao.org/forest-resources-assessment/en/>
- l) Sin Tong, P., 2009, Lao people's democratic republic forestry outlook study, FAO,
<http://www.fao.org/docrep/014/am612e/am612e00.pdf>
- m) Hoare, A., 2015. Tackling Illegal Logging and the Related Trade - What Progress and Where Next? London: Chatham House.
- n) 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>
- o) Seneca Creek Associates and Wood Resources International, 2004. "Illegal" Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry. Prepared for American Forest & Paper Association.
- p) World Bank, 2006. Strengthening Forest Law Enforcement and Governance: Assessing a Systematic Constraint to Sustainable Development. Washington, DC: World Bank.

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

The remaining sources were found not to be relevant for the legality risk assessment for Laos.

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>
- Law No. 06/2007 NA on Forestry, 24 December 2007, Article 4, 84-88 on ownership of forest and forestland, Article 82 and 83 on village forests, Article 15 and 16 on forest survey, classification and management, Article 43 on logging for commercial purpose, Article 44 on reclassification of forest categories, Article 72 and 73 on authorization of degraded and barren forestland. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- 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

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.
- Tree plantations (smallholding): District offices of Natural Resources and Environment or District Agriculture and Forestry Offices.
- Tree plantations (concessions): Ministry of Natural Resources and Environment (MONRE) and Provincial/City Offices of Natural Resources and Environment.

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.
- Tree 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.
- Tree 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.

1.1.4. 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
- 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 rational 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 (the Land Law, art. 12).

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

- a. National protection areas (conservation) (28% of current forests)
- b. National protection forests (33% of current forests), and
- c. National production forests (15% of current forests)

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 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 Laos, but are eligible as foreign investors to lease degraded land from the State for tree planting.

Current legislation does not allow the allocation of concessions for commercial timber harvesting in natural forests. 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 as a way to mitigate the costs of resettlement from the inundation zone.

Customary rights: Villages, as a community, can lease natural forest areas within the village boundary under a Village Forest Management Agreement with the state for exclusive customary use and protection rights with no tax obligations.

Within the village boundary, villagers are allowed to collect and sell NTFPs, and to harvest timber for domestic use. Customary use rights include harvesting of 5m³/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 (road-side, 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.

Plantation

Approval from the government is not required for individuals and organisations who plant trees on their private land which is not classified for agriculture development with their own funds and labour, but they may need to comply with planting standards and standards regarding harvest, transport and export (Regulation No. 196/2000 MAF, Article 5, 6). The government has clarified that the moratorium on establishing plantations above 100 ha does not apply to investments in tree plantations by companies operating on a 2+3 system, where farmers provide the labour and the land while the companies supply the saplings, technical assistance and marketing, without large land concessions from the government (*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.

Delineation of the three forest categories (national protection areas (conservation), national protection forests, and national production forests), 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.

According to the Forestry Strategy to the Year 2020 of the Lao PDR (2005), 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.

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 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 forest areas are classified into some or all of the five categories, including conservation village forests (sacred and cemetery forests), protection village forests (road-side, water resources, and river-side forests), and village-use forests. This categorisation is used for NTFP collection and felling of trees for domestic use (Art. 2, MAF Regulation No. 0535/2001). 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.

In addition, there are no clear criteria for delineation of agricultural areas and classification of village forests (Forestry Strategy to the Year 2020 of the Lao PDR, 2005).

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 Forestry Law 06/NA 2007 and the Law on Enterprise 11/NA 2005, business registration is required for all participants in the plantation value chain. Registration of plantations is a legal requirement for all plantation owners (both plantations under concession agreements and plantations under temporary land use certificates). 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 of forestry and wood-transport equipment, including harvesting machinery and chainsaws, although it appears that this is inconsistently enforced. These regulations potentially create barriers to the development of small-scale timber harvesting and processing operations.

Summary

There is a risk, for all sources of timber, of:

- A lack of detailed maps (showing accurate borders and zoning)
- 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

And for smallholder plantations specifically of:

- A common lack of business registration

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: confirms 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

Conversion, tree 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
- 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
- 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*)

Tree 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://theredddesk.org/sites/default/files/45_nlma_instructions_on_adjudications_pertaining_to_land_us_1.pdf

Tree 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/>

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>

1.2.2. Legal authority

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

1.2.3. Legally required documents or records

- Tree 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.
- 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.

1.2.4. Sources of information

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1.2.5. Risk determination

Overview of Legal Requirements

Natural forest Concession: N/A

According to Forestry Law (2007) Articles 43 and 49, commercial timber harvest in natural forest is only permitted:

- To selectively cut timber in production forest areas in which an inventory and survey have been conducted, and forest management plan developed on the basis of a pre-logging survey, or
- To clear-cut land concessions/leases granted by the state for hydropower dam construction, mining etc. on the basis of a thorough and complete pre-logging survey.

Thus, there is no legal basis for the state to issue concessions for natural timber harvest on state-owned land (Forestry Law (2007), Article 43). Timber harvesting for commercial purposes in natural forests is only allowed under annual national logging quotas for selective logging in production forest areas, or in the course of land clearance for development projects (see sub-category 1.4 for more information on the selective logging quota).

Tree plantation concessions:

According to the Forestry Law, Articles 33 and 69, concessions for tree plantation are restricted to degraded and barren forest lands outside the three forest categories where stands of commercial timber are almost non-existent, as per the definition in the Forestry

Law Article 3 (degraded forest land: forest land areas where forests have been heavily and continually damaged and degraded causing a loss of balance in organic matter, which may not be able to regenerate naturally or become a rich forest again; barren forest lands: forest land areas without trees as a result of natural or human destruction). In line with the Forestry Law, Decree 135/PM Article 26 specifies that on state land granted as a concession for industrial tree plantations, cash crops etc. such activities should be carried out in waste land or denuded land areas, both of which are types of degraded forest land that cannot rejuvenate naturally.

Only degraded forest lands may be allocated for plantation forest purposes in village (Regulation No. 535/2001 MAF, Article 2).

Thus, the legal framework does not allow timber harvesting for the purpose of converting forest land in order to establish tree plantations.

The Ministry of Natural Resources and Environment, formerly the National Land Management Authority, is technically in charge of approving all land concessions, except mining concessions. The consent of the involved line agencies (the Ministry of Planning and Investment, the Ministry of Agriculture and Forestry, the Ministry of Industry and Commerce, the Ministry of Energy and Mines etc.) plus the corresponding level of administrative authorities is required in all cases.

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 forest land (Regulation No. 196/2000 MAF Article 2).

Plantations eligible for registration must have an area of 1,600m², and legislation recognises different planting systems, some of which imply fewer than 1,100 trees/ha (MAF Directive 1849/AF.99).

The state, as land manager, may lease land to individuals or organisations for the purpose of establishing a tree plantation (Land Law, 2003, Article 8).

Plantation (Villagers):

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 139th of 168 countries in their latest Corruption Perception Index (CPI) report (2015), with score a 25 (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 2015 inspection authorities uncovered 50 people involved in illegal cases of corruption: 27 state officials, 18 Lao and foreign business people, and five village authority members.

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 (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 harvesting 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 300,000m³ 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.

Tree plantation concessions:

There is a risk of plantation forest concessions being granted in violation of regulations, such as;

- 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

Plantations; Smallholders / farmers,

- 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 harvesting 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 Harvesting in Production Forest, 6 November 2006, Part IV, on harvesting plan and approval. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
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- 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 harvesting timber in infrastructure development areas, Article 3 on preparation of annual logging quota and logging plan, Article 4 on the requirement for compliance with annual logging quota 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 quota 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-harvesting Inventory, Part VI on tree marking and coding, Part VII on post-harvesting 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 quota and government annual logging plan, Articles 5 on permission and supervision requirements for harvesting timber in infrastructure development areas. Available at: <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/>

Tree 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 harvesting 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>

1.3.2. 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.
- Tree plantations (smallholding): District offices of Natural Resources and Environment.
- Tree plantations (concessions): Ministry of Natural Resources and Environment (MONRE) and Provincial / City 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-harvesting 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.
- Tree 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.
- Tree plantations (concessions): Approved plantation management plan.

1.3.4. Sources of information

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1.3.5. Risk determination

Overview of Legal Requirements

General - Annual logging plan:

According to the Forestry Law (2007) Article 49, the main document allowing logging in natural and plantation forests is the (national) annual logging plan approved by the National Assembly. Approval should be made in July of each year, and the approval of additional quotas is strictly prohibited (Agreement No. 32/PM, 2012 Article 5). An example of government approval of the annual logging quota is Notice No. 135/2013 GO on the Implementation of the Tree Plantation & Forest Regeneration Plan and the Timber Logging and NTFP Harvesting Plan for the Year 2012 ± 2013, 30 January 2013, Article 1 on timber quotas, and associated tables.

There are some inconsistencies in the legislation, as areas to be cleared for tree and industrial crop plantations are listed among sources of timber to be included in the annual logging quota (Agreement No. 32/PM 2012, Article 5), while other regulations do not include timber harvesting for conversion of land for establishment of tree plantations and planting agriculture commodities.

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 (Order No. 17/2008 PM Article 4).

Provincial and Capital City Agriculture and Forestry Offices summarise annual harvesting plans, which include the results of pre-harvesting 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. These findings are submitted to the Ministry of Agriculture and Forestry (Guideline 0105/MAF 2008, Article 3).

After the government and the National Assembly approve the annual logging quota for the country, the Ministry of Agriculture and Forestry issues the national annual logging quota and then designates harvesting volumes for each province based on the proposed harvesting plans for each province.

The Department of Forestry of the Ministry of Agriculture and Forestry and the Provincial and Capital City Provincial Forest Offices are the only organisations allowed to conduct any type of forest inventory. In exceptional cases, the Ministry of Agriculture and Forestry can grant other organisations permission to do an inventory, with monitoring of, and certifying by, the Department of Forestry (Regulation No. 0108/2005 MAF, Article 12).

Selective logging:

Commercial timber harvesting in natural production forest areas is only permitted where a forest inventory, survey and forest management plan have been conducted and developed, and on the basis of a pre-logging inventory (Forestry Law, 2007, Article 49).

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 (Guideline No. 2156/2006 DOF Part IV).

The template of management plans and general principles of planning, the pre-harvesting 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 harvesting in production forest areas, District Agriculture and Forestry Offices prepare a harvesting plan based on the forest management plan and pre-harvesting inventory report approved by the Department of Forestry.

The main requirements of the pre-harvest inventory in production forest areas are listed in Article 18 of the Forestry Law (2007).

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 landings I and II.

All boundaries of licensed harvesting areas for natural forests shall be clearly demarcated on maps of an appropriate scale, and on the ground. Harvesting 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 harvesting planning do not cover harvesting in the course of clearance of an area for mining.

A special committee consisting of concerned agencies and local authorities is to be established to provide guidance and to supervise the logging in infrastructure development areas (Order No. 17/2008 PM, Article 5).

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-harvesting 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 harvesting 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).

Tree 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 quota, 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 Thikeo, 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 Forest 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 harvesting 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 quota 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 harvesting 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

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 quotas in categorised forests over and above the harvestable volumes as per approved management plans in production forest areas and harvesting 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 quotas, including: for deadwood, debt repayment, barter-development, military logging, district and village construction etc. The specific terms for many of these logging quotas 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 quotas” under section 1.4, Harvesting Permits). This practice also violates the Forestry Law, which allows timber harvesting 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 quotas 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 forestry 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 harvesting 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 quota 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 harvesting 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.

Tree 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

It can be stated that the annual logging quota 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 quotas” that are issued without taking the annual logging quotas into consideration.

The risk is as follows:

For all timber sources:

- 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:

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

For conversion:

- 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

Based on these issues, the risk is considered specified.

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 harvesting.
- Pre-harvesting 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. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting 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 harvesting 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 harvesting 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, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

General:

- 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)

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://fleglaos.com/resources/forestry-legality-compendium/>

Selective logging:

- Law No. 06/2007 NA on Forestry, 24 December 2007, Articles 49, 55. Available at: <http://fleglaos.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 harvesting units, and Articles 13, 14, 15, 16, and 17 on timber harvesting enterprises. Available at: <http://fleglaos.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://fleglaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2157/2006 DOF Guideline on Timber Harvesting in Production Forest, 6 November 2006, Part IV on contents of harvesting plans, Part V on harvesting 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://fleglaos.com/resources/forestry-legality-compendium/>

Tree plantations:

- Law No. 06/2007 NA on Forestry, 24 December 2007, Articles 48. Available at: <http://fleglaos.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://fleglaos.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.
- Tree 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.
- Tree 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.
- Tree 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.

1.4.4. Sources of information

Government sources

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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 harvesting plan. The equipment used by logging companies (chainsaws, timber trucks, wood extraction machinery etc.) must be licensed.

Selective logging:

The issue of logging quotas in production forest areas is temporarily suspended (2016). 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 harvesting in production forest areas (including logging and hauling logs to log landing 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 (Articles 49 and 55 of Law No. 06/2007 NA on Forestry) 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. Prime Ministerial Order No 15 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."

Tree 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 harvesting permits for tree plantation, there is no difference between harvesting by smallholders for commercial use and large scale industrial concessions.

"Special logging quotas"

There is no legislation covering permits for special logging quotas.

Description of Risk

Natural forest (Selective logging and conversion)

Formally, logging/timber harvesting 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 harvesting 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 Forest 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).

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 harvesting 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.

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 quotas

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 harvesting 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, harvesting 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 harvesting.

The Government of Laos acknowledges serious problems with deadwood logging quotas 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 quotas 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 quotas 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 quotas 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 quotas 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 quotas 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 quotas 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 harvesting 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 harvesting blocks allocated according to approved harvesting 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).

Tree 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 harvesting in accordance with the law. Many of the regulations for harvesting 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

Selective logging and conversion timber:

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

Conversion:

- Conversion of areas within conservation/protection forests or development projects
- Clearance of areas greater than areas granted for development projects

Selective logging:

- Permits issued despite lack of documentation

Special logging quotas:

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

Tree plantations:

- 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 harvesting of prohibited tree species (in case of forest conversion).

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting 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

Conversion, selective logging:

- 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>

Tree 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, 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/>
- opendevlopmentmekong.net (2016). *Revenue gain not equal to forestry losses*. [online]. Govt / Vientiane Times, 04 July 2016. Available at: <https://opendevlopmentmekong.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

1.5.5. Risk determination

Overview of Legal Requirements

Selective logging, conversion:

Buyers (firms and individuals) shall pay log royalties, or stumpage rates per cubic metre of timber removed (bought) from second log landing. Royalties are set and updated periodically by the Ministry of Industry and Commerce (MOIC) 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 MOIC 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.

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

Tree 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, 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 landing 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 in order 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 landings 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 landing 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. Harvesting 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 139th 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.

Risk is considered specified for selective logging and conversion based on evidence provided above. These findings are summarised as follows:

- 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 landings as required for tax registration;
- Harvesting 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.

Plantation: Not applicable.

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 landing 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
- 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 15th 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 harvesting 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://fleglaos.com/resources/forestry-legality-compendium/>
- Law No 11/NA on the Promotion of Foreign Investment, 22 October 2004. Available at: https://www.wto.org/english/thewto_e/acc_e/lao_e/WTACCLA05A1_LEG_2.pdf
- 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://fleglaos.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://fleglaos.com/resources/forestry-legality-compendium/>

1.7.2. Legal authority

- Ministry of Finance, Tax Department

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
- 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
- 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>

1.7.5. Risk determination

Overview of Legal Requirements

Businesses and individuals can be liable to pay contract taxes (a direct tax levied on businesses and individuals not under the VAT system paid to the Tax Administration in a lump sum), profit taxes (paid quarterly to the Tax Administration), income taxes (a direct tax collected on the basis of income paid by an employer by withholding, or by the individual to the Tax Administration on a monthly or yearly basis) (Law No. 05/2011 NA on Taxes).

Profit tax for forestry business is set at 20%, but foreign investors may receive exemption or discount (Law No. 05/2011 NA on Taxes Articles 27, 31 and 38) pursuant to a concession agreement with the Government of Laos (Foreign Investment Law No. 01/1994 NA, Article 16). Certain agreements have provided a 4-year tax holiday, then a scaled rate thereafter (Sigaty, 2003).

Income tax applies for corporate tree plantations under private investment (Regulation No. 196/2000 MAF Article 20). Villagers are exempt from income tax for household or customary use, customary use of forest products, but must pay income tax for sale of planted trees.

Foreign citizens making profit in the Lao PDR are to be subject to income tax (Law No. 05/2011 NA on Taxes Articles 29 and 30). Foreign investors and personnel who spend over 180 days/year in the Lao PDR shall pay income tax at a flat rate of 10% of income earned in the Lao PDR (Foreign Investment Law No. 01/1994 NA Article 12).

Description of Risk

As most smallholder plantations do not have business registration, taxes cannot be collected from them (see 1.1.) (Smith, 2014; Smith and Phengsopha, 2014).

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 the country has high corruption levels, and a low degree of legal compliance. Not much information can be found on tax payment and tax issues, but as Laos has a high level of corruption, and low score on governance, the risk is considered specified based on a precautionary approach for all parties liable for tax payment.

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.

1.7.6. 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

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- 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:

- 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:

- Law No. 06/2007 NA on Forestry 24 December 2007, Article 49 on main principles of logging. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, Part II, Article 8 on production forest inventory and timber harvesting system. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>
- Guideline No. 2157/2006 DOF on Timber Harvesting 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 landing 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 landing II, log scaling, post-harvesting 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:

- 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/>

Tree plantations:

- 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 harvesting 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.
- Tree 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-harvesting inventory and tree marking report.
- Conversion: Logging plan.
- Tree 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>
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Non-Government sources

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1.8.5. Risk determination

Overview of Legal Requirements

General:

Logging and transportation of logs to log landing II in production forest areas and areas with infrastructure projects must be stopped by 31st of May, and are prohibited from 1st June to 31st 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 3.8). 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 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:

The issuing of logging quotas 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 harvesting plan;
- Logging only within harvesting 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 harvesting 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 landing;
- Health protection equipment should be provided during logging operation.

The forestry sector (Provincial and District Agriculture and Forestry Offices) supervises harvesting and is required to record log information to cross-check the logs against the harvesting plan, and subsequent stamping. District Agriculture and Forestry Offices are

responsible for organizing the district Forest Management Units (FMU) 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-harvesting assessment shall be done no later than one month after harvesting 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 harvesting 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 harvesting 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 landing;
- Measuring, grading and making log list in log landing II;
- Marking logs in log landing 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.

Tree 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 Savannaket province) with valid forest management plans and approved harvesting plans. Jonsson concluded that logging plans were seen as providing "quotas" – as giving the right to cut a certain volume – rather than as directing harvesting 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 harvesting 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 landing 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 harvesting under logging permits for mining, road construction and reservoir clearances (Smirnov, 2015) revealed that timber harvesting 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 harvesting "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 harvesting 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 Thikeo 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).

Tree 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;

There is a general lack of implementation of harvesting regulation, both for present day conversion timber, and when selective logging was allowed in natural forest.

Selective logging:

There is a general risk that logging does not adhering to plans and regulations. For example:

- 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.

Conversion:

There is a general risk that logging does not adhering to plans and regulations. For example:

- 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.

Tree Plantation

- Lack of management plans with which harvesting 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-harvesting 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 harvesting 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

- 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
- 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-harvesting 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 Harvesting in Production Forest, 6 November 2006, Part IV, Article 3 on determination of exclusion areas for timber harvesting. 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 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>

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.
- Tree 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-harvesting inventory and tree marking report.
- Conversion: Logging plan.
- Tree 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
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- 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
- 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
- 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 (aka *national protected areas* and *national biodiversity conservation areas*) 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 and Law No. 06/2007 NA on Forestry Article 11).

In forest reserves (conservation forest) "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 harvesting 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 is allowed to take place.

The general principles of planning management in production forest areas include setting aside, and prohibition of timber harvesting 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://fleglaos.com/resources/forestry-legality-compendium/>).

Rare tree species must not be selected for cutting during pre-harvesting 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:

Protected species

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

Evidence of the harvesting 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 (EDL), 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 Siamese rosewood (*Dalbergia cochinchinensis*), which is officially listed as a tree species which it is prohibited to harvest.

Military logging quotas 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 harvesting 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 harvesting 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 harvesting. 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 harvesting 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.

Tree 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 occurs naturally in the forests of the Lao PDR, and there is a risk of illegal harvesting 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 considered to be a "special timber" (Smith, Phengsopha, 2014).

Summary

For all timber sources:

- There is a general disregard for the legal requirements covering protected tree species, and
- Misuse of deadwood quotas is common.

Conversion specifically:

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

Tree plantation specifically:

- 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-harvesting 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 harvesting, 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 harvesting 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:

- Law No. 06/2007 NA on Forestry, 24 December 2007, Chapter 3, Article 29 on prevention and control of forest fires forest fires. Available at:
<http://flegtlaos.com/resources/forestry-legality-compendium/>;
<http://www.laotradeportal.net/index.php?r=site/display&id=68>

- Law No. 02/1996 NA on Water and Water Resources, 11 October 1996, Chapter 5, stating the obligation to protect water sources from pollution and erosion, and Chapter 7, describing prohibitions. Available at: <http://extwprlegs1.fao.org/docs/pdf/lao7478.pdf>

Selective logging:

- Regulation No. 0108/2005 MAF on Forest Inventory, 20 April 2005, Part II, Article 8 on prohibition of timber harvesting 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-harvesting 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 Harvesting in Production Forest, 6 November 2006, Part IV, Article 3 on determination of exclusion areas for timber harvesting, Part VI on forest road construction, Part X, Article 8 on post-harvesting 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, tree 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
- 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://thereddesk.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 landings, 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/>

Tree 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.
- Tree 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, tree plantations: Report on environmental impact assessment, logging plan, management and environmental monitoring plan, summary report of actual implementation of measures to mitigate and minimise 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

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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 harvesting in, highly biodiverse or environmentally sensitive areas.

Preparation of a harvesting plan requires delineation of areas excluded from timber harvesting, 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, 6, Part XIII).

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 landings 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, tree 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;
- Harvesting 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 (55 kinds), 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, 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, 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, tree plantations:

Two detailed case studies on timber harvesting 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 (Vázquez, 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 sources of timber there is a general disregard of environmental requirements.

Selective logging:

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

Conversion and tree plantations:

- 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.
- For tree 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 harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting 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/LA096369%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 Harvesting 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.
- Tree 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).
- Tree 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

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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).

Tree 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 km² (37%).

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 (Article 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).

Tree 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 Xiangkuang. Nevertheless, farmers, including smallholders of tree plantations, keep spraying with minimal precautions (LURAS, 2016). It has been reported that farmers in Xianghouang, 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

All timber sources:

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

Three plantations especially:

- 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.
- For tree 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 development projects and tree 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 harvesting 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/LA096369%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
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- Guideline No. 2157/2006 DOF Guideline on Timber Harvesting 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.
- Tree 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
- Tree 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

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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 5.8 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, 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, 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 in order 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

- 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 harvesting activities including requirements covering sharing of benefits and indigenous rights.

1.13.1. Applicable laws and regulations

- 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>
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- 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/decrees-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://flegtlaos.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.
- Tree 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.
- Tree 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

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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 Forest 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, tree 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, 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 harvesting 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

There are general risks relating to:

- 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 harvesting 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

Not applicable – 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

- Law No. 06/2007 NA on Forestry, 24 December 2007, Article 21 on measuring and quality grading of logs in log landing II. 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 16 on agency responsibilities and documentation requirements and on hand over of log lists made in log landing 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 Harvesting 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.
- Tree plantations: Village Forest Organisation, District and Provincial Agriculture and Forestry Offices.

1.16.3. Legally required documents or records

- Selective logging: logging contract and logging permit, pre-harvesting inventory and tree marking report, records from log landing I, log list.
- Conversion: logging contract and logging permit, pre-harvesting inventory report, log list.
- Tree plantations: log list, transport permit.

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 landing II, where all logs are to be measured and graded. Law on Forestry (2007) Article 21 stipulates that logs stored at log landing 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 landing 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 landing 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 landing 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 landing 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 harvesting plan (Guideline No. 2157/2006 DOF Part X) before scaling and grading of the logs at log landing 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 (ຸ) for logs taken from log landing II to log landing III or a timber processing factory, an LF-mark (ຸລຸ) 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 landing II and check that the volume actually harvested is consistent with the harvesting 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 landings 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 landing II.

There is evidence that documents (log lists) specify timber of lower grade and smaller size than is accurate, possibly as a result of an informal agreement between the buyer and the state agencies responsible for timber sale. The control measurement of logs at log landings 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 landing 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 landing 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 landing 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

There is a general risk relating to:

- Lack of registering of harvested logs at log landing 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 harvesting for comparison with log list and checking of its validity.
- Pre-harvesting inventory and tree marking report: basic information on permitted timber for harvesting for comparison with log list and checking of its validity.
- Records from log landing I: basic information on permitted timber for harvesting 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 harvesting 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 harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Law No. 06/2007 NA on Forestry, 24 December 2007, Article 53 on transportation of logs and forest products. 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 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://flegtlaos.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://flegtlaos.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
- 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 harvesting unit and timber harvesting 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.
- Tree plantations: Village Forest Organisation, District and Provincial Agriculture and Forestry Offices.

1.17.3. Legally required documents or records

- Conversion, selective logging: 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 landing II, transportation permit for timber commodities.
- Tree plantations: transport permit.

1.17.4. Sources of information

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/>
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- 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>
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1.17.5. Risk determination

Overview of Legal Requirements

Conversion, selective logging

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 landing 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 landing 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 landing 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 landing II to log landing 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 (ຟມ) for timber transported within the country, and a LF-mark (ຟມລ) 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 landing 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).

Tree 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 landing II and check that the volume actually harvested is consistent with the harvesting permit.

Description of Risk

The procedures for documenting timber movement from logging sites and log landings 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

There is a general risk related to:

- 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 landing 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 harvesting 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:

- Law No. 6/2007 NA on Forestry, 24 December 2007, Article 52 on timber export. Available at: <http://flegtlaos.com/resources/forestry-legality-compendium/>; <http://www.laotradeportal.net/index.php?r=site/display&id=68>
- 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>

Conversion, selective logging:

- 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.

Tree 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
- 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-compendium/>
- 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

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1.19.5. Risk determination

Overview of Legal Requirements

Timber from natural forest

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 MOIC. 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 (ຮຸ້ງ), which is made by means of a special hammer-stamp by PAFO foresters at log landing 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).

Plantation timber

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 mangium) 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.

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).

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 quotas 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/m³ 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 (321,700m³ in 2015, against 308,600m³ in 2014), while import of sawn wood decreased by 23% (383,100m³ in 2015, against 495,100m³ 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).

A risk of timber smuggling exists for both natural forests and plantations.

Summary

There is a general risk relating to:

- 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

- 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>
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- 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

1.20.5. Risk determination

Overview of Legal Requirements

Laos' 2008 Prime Ministerial Order No17/PM explicitly prohibits harvesting of all domestic *Dalbergia* species, and this prohibition was reinforced by Prime Ministerial Order No-010/PM of 2011, banning the "exploitation, trading and export of endangered wood, including kayoung wood and *Dalbergia cochinchinensis*".

Classified as vulnerable on the IUCN Red List, Siamese rosewood (*Dalbergia cochinchinensis*) was listed in Appendix II of CITES at the 16th meeting of the Conference of Parties (CoP16) in Bangkok in March 2013, following a proposal by Thailand and Vietnam. The restrictions on endangered Siam rosewood (*Dalbergia cochinchinensis*) came into effect from June 12, 2013.

As harvesting 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 63,530m³, 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 *D. 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 26,400m³ in 2014 to around 3,000m³ 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

There is a risk relating 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

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:

- 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.
- 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.
- 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.
- 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.
- 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.
- 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 quota – for conversion timber	Conversion timber - Harvesting 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 quota - for selective logging	Selective logging under the National logging quota for selective logging - 15-20 year forest management plans, harvesting plan, logging permit
		Village forests with protection, conservation and village use forests)	State	Village Forestry Unit	National annual logging quota - 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 quotas	Special logging quotas (No legal foundation) – Special logging quotas for deadwood, debt repayment, development, military and plantation preparation. Legal framework for special quotas is vague and principles of allocation of special logging quotas are inconsistent with main notions of forest legislation. Government approval is needed. Shall be included in the National annual logging quota
Plantation forest	National	Degraded forest land	State	Private – companies	Concession agreement	Plantation Production Forest - Restricted to degraded forest or barren forestland. Can be located within every category of forest. Registration required: area 1,600 m ² or more. More than 5 ha: Management plan required.
		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



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About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCoN with the aim of 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 joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCoN (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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