



## Conversion timber and unclear land rights must be addressed to make EU-Laos VPA process effective and improve forest governance



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**The Government of Laos has adopted a strategy called “turning land into capital”, aimed at boosting private land investment and development. This strategy, designed to increase national revenue and generate sufficient capital to modernise rural land use, has intensified the pressure on forest resources. Over the past decade, Laos has become an important “resource frontier” for transnational capital and large-scale land investments, raising concerns about the rates of deforestation and forest degradation<sup>1</sup>.**

In 2012, the government expressed its interest in negotiating a Voluntary Partnership Agreement (VPA) with the European Union to address illegal logging trade and to improve forest governance. Illegal logging is an important driver of forest degradation and deforestation<sup>2</sup>. A study by Denis Smirnov for the World Wildlife Fund (WWF)<sup>3</sup> assessing the scale of illegal logging<sup>4</sup> in Laos and the associated trans-boundary timber trade concluded that the use of permits for harvesting “conversion<sup>5</sup>” timber during development projects has become a de-facto way of legitimising large-scale high-value logging in all types of forests, including conservation and protection forests<sup>6</sup>.

The WWF study found evidence, through case studies in the southern provinces of Laos, that actions on the ground around the timber trade are undermining the commitments expressed by the Government to enter VPA negotiations. The WWF report has not been officially released,<sup>7</sup> but has been talked about behind closed doors and seems to have been a catalyst. In the year since this study, various meetings have taken place in Laos to discuss the VPA, how to tackle illegal logging and improve forest governance.

This briefing note aims to present the key findings of the WWF study to a wider audience, highlight recent developments and recommendations by Fern that should be addressed within the VPA process to strengthen forest communities’ rights and improve forest governance in an effective manner.

1 Baird. 2011. Turning Land into Capital, Turning People into Labour: Primitive Accumulation and the Arrival of Large-Scale Economic Land Concessions in the Lao People’s Democratic Republic. *Journal of Marxism and Interdisciplinary Inquiry* Vol. 5, No. 1.

2 Documented examples come from XePian NPA (Baird 2010b), Nakai Nam Theun NPA (World Bank 2001) and other NPAs (EIA/Telapak 2008). Villagers also carry out small-scale illegal logging in all forest categories in Lestrelin, 2011

3 Denis Smirnov. 2015. Assessment of scope of illegal logging in Laos and associated trans-boundary timber trade. WWF

4 The WWF study determines illegal timber (or timber from unauthorized sources) as timber harvested in excess of issued quotas (or exceeding the timber volume registered in log landing II) and outside of official logging areas.

5 ‘Conversion’ timber is timber produced when forest land is cleared of trees in order to prepare that land for another use – for instance agricultural plantations, mines or dams.

6 The study was conducted from November 2012 to May 2015 as part of a REDD project funded mainly by Germany.

7 The study was leaked the 13th of October 2015 on LaoFab, an online forum for sharing information about agribusiness and rural livelihoods in Laos but was removed a few hours later from the LaoFab repository by the moderator at the request of WWF. The report has yet to be finalized, approved or officially released. However, the report is still available on MyLAFF, a forum for sharing information about Land, Agribusiness, Forestry issues in Myanmar.

## What is a VPA?

A Voluntary Partnership Agreement is a legally binding bilateral trade agreements which set out the commitments and action that the EU on behalf of all its Member States and timber exporting (and producing) countries will take to tackle illegal logging, including measures to increase participation of rights holders and non-state stakeholders; recognise communities' rights to the land; and address corruption. VPAs are required to have the buy-in of national stakeholders, including NGOs, local communities, indigenous peoples, and the timber industry.

VPAs are a central plank of the EU's Action Plan to address the illegal timber trade: the **Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan**.

A VPA includes three main elements:

- a) **Defining legality** or deciding which laws will be enforced for the purpose of the agreement
- b) Developing a **Legality Assurance System (LAS)** (including timber tracking, government legality controls, and systems to verify the legality of the timber). A FLEGT licence is issued to timber verified as legal, and this allows it to be shipped to the EU.
- c) **Independent audits of the whole system**, to ensure credibility of the export licenses

So far, six countries have signed VPAs with the EU and are currently developing the systems needed to control, verify and license legal timber. They are the Central African Republic, Cameroon, Ghana, Indonesia, Liberia and the Republic of Congo. Another nine are being negotiated in Democratic Republic of Congo, Gabon, Guyana, Honduras, Malaysia, Vietnam, Ivory Coast, Laos and Thailand.

Another central element of the FLEGT action plan is the EU Timber Regulation (EUTR) which came into force on 3 March 2013. It prohibits operators in Europe from placing illegally harvested timber and products derived from illegal timber on the EU market. All timber and timber products with a FLEGT licence automatically comply with the EU Timber Regulation. This means that when purchasing FLEGT-licensed timber, EU operators do not need to carry out additional due diligence checks. This demand-side measure provides an incentive for timber exporting countries to negotiate a VPA.

## Laos' missing millions – timber exports and imports

In line with its Forest Strategy to 2020, the Government of Laos has stated that it plans to use the VPA process to improve the forestry sector, by reducing the export of raw logs and primary wood products from natural forests and increasing intensively-managed plantations of industrial tree crops. Another objective is to diversify timber products, make it easier for the Lao timber industry to access the EU market and increase revenue from timber exports. Laos also aspires to help ensure the sustainable development of the forest sector and stop illegal logging, enhance transparency and good governance<sup>8</sup>.

In 1999 already, the Lao Government introduced a ban on exporting logs and sawn timber, in order to encourage more timber processing to develop within the country. But this ban has been circumvented by the use of government export permits issued in 'exceptional cases'<sup>9</sup>. The Lao Government issued a new ban in August 2015<sup>10</sup> but according to the WWF study, unprocessed and sawn logs almost always accounts for over 90% of the total recorded imports from Laos<sup>11</sup>.

There is a major discrepancy between the value of timber products officially exported from Laos, as recorded by the state authorities, and the value of Lao timber products entering

8 Laos intends to use the VPA process for forestry development. Vientiane Times, July 27, 2015.

9 Notification No. 1940/2011 MOIC.DIMEX, on Procedure to Issue Export and Import License for Timber, 30 September 2011, Article 1 (1.3.1,1.3.2) in Smirnov (2015), p. 70.

10 The Government prohibits log exports. Vientiane Times, September 18, 2015.

11 Smirnov (2015), p. 13



other countries, as reported by the importing countries. In 2013, the official export value of Lao timber products was just 8% of the total value recorded by importing countries, mainly China and Vietnam<sup>12</sup>. In 2014, the total value of Lao timber products reported by importing countries amounted to more than US\$ 1.7 billion, far outstripping the official value of timber leaving the country<sup>13</sup>. Forest plantations in Laos produce very limited volumes of wood. Therefore, almost all of this import value is likely to be generated by natural timber<sup>14</sup>.

## Conversion timber in Laos

The Lao Forestry Law<sup>15</sup> states that “the government allows logging and harvesting of forest products only in the production forest areas (PFAs) where inventory, surveys and sustainable management plans have been completed and only in the areas that the government permits the construction of infrastructure”<sup>16</sup>. As of 2015, sustainable forest management plans have been developed for only 16 of the 51 PFAs<sup>17</sup>. Thus, the official timber harvest in natural forests occurs mainly

in the framework of forest conversion for infrastructure and other development projects, as highlighted in the two case studies mentioned below, where a number of illegalities have been reported.

### A surge in demand for timber in neighbouring countries

In 2014, China and Vietnam were responsible for 96% of Lao wood exports in value terms. The wood processing industry of these countries, especially Vietnam, depends to a large extent on imported timber. Currently 80% of the raw materials for the wood processing industry in Vietnam is imported, while China’s estimated yearly demand for timber – between 350 and 410 million m<sup>3</sup> – exceeds its domestic production by 250 million m<sup>3</sup>. Almost all Chinese imports are raw materials such as logs, sawn wood and wood chips<sup>18</sup>.

<sup>12</sup> Smirnov (2015), p. 11–14.

<sup>13</sup> For the purpose of the study, Smirnov compared data from Lao state customs statistics and data from the UN Commodity Trade statistics Database which reports data from importing countries.

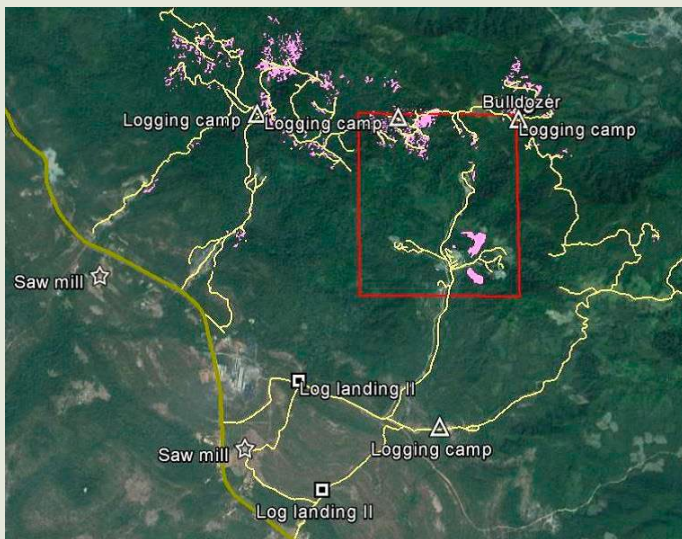
<sup>14</sup> Smirnov (2015), p. 13

<sup>15</sup> Lestrelin (2011).Article 49, Forest law (2007)

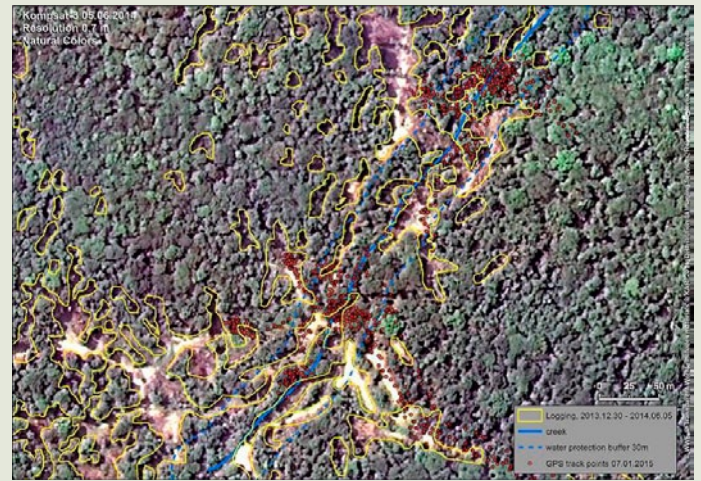
<sup>16</sup> Lestrelin (2011).

<sup>17</sup> According to «SUFORD-SU annual work plan : FY2014–2015» since 2008 to date the project has completed management plans for 16 PFAs (1,283 K ha – ca 41% of total area of Lao PFAs).

<sup>18</sup> Hugh Speechly, 2015.Scoping study on EU-China relationships in the forestry sector conducted for Fern.



Location of new logging and land clearances (purple outlined polygons) conducted in 2014 in area with limestone quarry concession (concession borders are highlighted in red).



Logging in the riparian zone of Houay Poun river.

## Case study 1

### The clearance of forest for a limestone quarry

In 2013, a logging quota was issued to allow forest clearance to make way for a limestone quarry in Saravan province, southern Laos<sup>19</sup>. This quarry is managed by the Zhongya-Yuxi Cement Lao Company, a Chinese company that started production there in 2012. The logging quota allowed for removal of “5,000 m<sup>3</sup> of timber in the limestone concession area within 1,500 hectares in Saravan Province” according to the notification issued by the Ministry of Agriculture and Forestry (MAF) and a decision from the Governor of the Province. However, the limestone quarry concession issued to the Zhongya Yuxi Cement Lao Company by the Department of Energy and Mining was for an area of only 505 hectares. This smaller concession area also corresponds to the concession borders reported in a map made available by the Provincial Agriculture and Forestry Office (PAFO), which outline an area of 504 or 505 ha.

Nonetheless, logging under the quota for 1,500 hectares began in January 2014 despite the fact that there were no maps available demarcating the 1,500 ha, and that the pre-felling inventory required by Lao law had not been completed (only 233 ha within the 505 ha concession area had been surveyed, and only the larger trees were recorded<sup>20</sup>).

A comparison of the concession maps with high resolution satellite images made before and after logging revealed that 76% of detected new logging sites were located beyond the 505 ha concession borders. Field investigation confirmed that all the logging sites detected through satellite imagery were genuine, and that the composition and volume of logs coming from these sites bore no relation to the partially completed pre-felling inventory<sup>21</sup>.

Evidence collected during field visits suggested that the logging activity was primarily targeting commercially valuable timber, with no obvious reference to clearing land for the limestone quarry. Timber was being harvested from areas where regulations prohibit logging, including slopes in excess of 35° and buffer zones along river and stream banks (environmentally sensitive areas), as well as within a PFA in which the government had suspended all logging permits until management plans were completed.

All harvested timber was registered in log landing II and sold to the Homsanaxay sawmill. The local authorities<sup>22</sup> did not detect any legal violations and in December 2014, they allowed the sawmill to export wooden products made of this timber to Thailand and China.

<sup>19</sup> Smirnov (2015), p. 32-38.

<sup>20</sup> Only big trees with diameter >30 cm were measured although regulations require measurement of all trees starting from 10-15 cm in cases of forest clearance.

<sup>21</sup> Field researchers reached this conclusion through examining logs stocked at log landing II. Log landing II is the place where logs are transported from the harvest site or where the tree is cut, once trees have been felled and before being sent to processing factories.

<sup>22</sup> The Provincial Agriculture and Forestry Office (PAFO) and the Provincial Office for Forestry Inspection (POFI)



## The EU-Vietnam VPA process

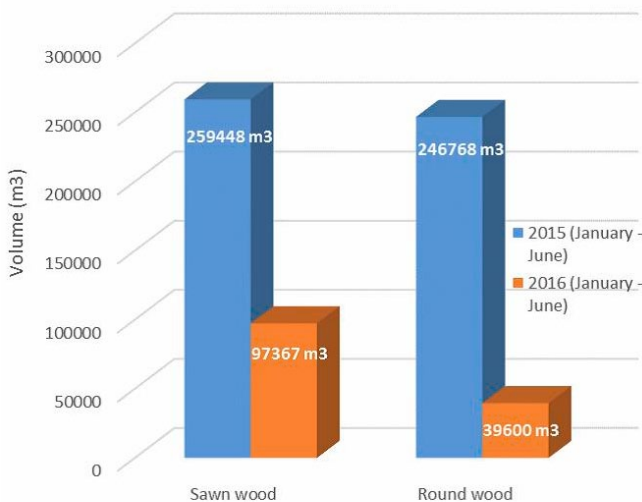
Vietnam and the EU formally started negotiating a VPA in November 2010. Both sides are committed to conclude the negotiations in 2016. However, the verification mechanisms for imported timber, the participation of civil society organisations in the implementation of the Agreement and in the independent evaluation mechanisms in particular, remain key challenges<sup>31</sup>.

and the Vietnamese customs data confirms that ban on export of unprocessed wood is now partially enforced. This trend is reflected in the FLEGT-VPA negotiations as the National Steering Committee on VPA recently emphasized that the FLEGT VPA is a key mechanism to implement the new Prime Minister Order No. 15 and the last draft structure of the Timber Legality Definition (TLD) includes conversion forest amongs timber sources<sup>34</sup>. It remains to be seen whether or not such positive steps will be pursued and constitute enabling factors to strengthen land tenure in Laos.

## VPA, timber legality definition and land tenure in Laos

Each VPA must agree a legality definition through a multi-stakeholder process including NGOs and local communities as well as the government and the timber industry. "Legality" is based on the laws and procedures of the timber producing country in question and must include laws addressing social, environmental and economic issues. There are several ways in which VPAs draw in community land tenure rights and land tenure reform issues. In particular, issues raised in negotiations can provide an explicit mandate in the VPA text for land tenure reforms. This becomes part of the broader implementation of the VPA agreement and subject to accountability to VPA stakeholders including the EU. It is also an opportunity for promoting the legal reforms necessary to implement a country's international human rights 'law commitments.

Wood Exports from Lao PDR to Vietnam



Source: Forest Trends, August 2016

## Has the situation evolved since the release of the study?

Last May 2016, the Lao Government issued the Prime Minister Order No 15 on *Strengthening Strictness of Timber Harvest Management and Inspection, Timber Transport and Business* to address illegal logging and improve domestic timber business operations. The order bans the export of all types of unfinished wooden products including timber and logs<sup>32</sup>. An analysis by Forest Trends of Vietnamese customs data released in August 2016 shows that exports of round wood from Lao PDR to Vietnam dropped by 84% in the first six months of 2016 (compared to first six months of 2015). For the same periods exports of sawn timber from Lao PDR to Vietnam went down by 62.5%<sup>33</sup>. For some observers, this clearly indicates some commitment from Lao top leadership to fight illegal logging

According to the newly amended (December 2015) Lao Constitution and the Land and Forest laws, ultimate ownership rights over village forest land<sup>35</sup> and the resources on those lands, including timber, are maintained by the Lao state. These laws are currently under revision and a National Land Policy (NLP) is being developed. The current legal framework still allows the government to expropriate land from individual people, villages or investors for the purpose of new investment projects. To date, land and forest tenure rights have not been secured and customary rights are not recognised, including communal land rights.

31 Statement issued in December 2015 by Fern and the Vietnamese NGO FLEGT Network which has called for civil society organisations to have a clearly defined role in the VPA process to ensure credibility though independent monitoring from the ground.

32 The Government of Laos takes action to address illegal logging, Vientiane Times, June 6, 2016.

33 Lao EU-FLEGT newsletter. Issue 5/2016.

34 FLEGT Timber Legality Definition Strengthens Implementation of Forestry Legislation, July 2016.

35 The 2007 Lao Forest Law distinguishes between three different types of forest: "production" (natural and planted forests that serve the purpose of production of timber and other forest), "protection" (to protect the environment; prevention of soil erosion; protection of water resources) and "conservation" (for conserving plant and animal species). More details in table 2. Forest categories in Laos, according to 2007 Forestry Law. Lestrelin, 2011.

## Recommendations by Fern for improving forest governance in Laos

Most tropical timber does not come from logging concessions but from land converted to other uses. Conversion of forest land for other uses, often illegally cleared, has now become a major problem as highlighted in Fern's report "Catching it all"<sup>36</sup>. This briefing shows that the problem is also seen in Laos. The VPA negotiation between the EU and Laos must be used to address this reality and tackle illegal conversion timber:

- The VPA should ensure that the necessary steps that proceed the granting of particular permits to log should be explicitly incorporated into the legality grid<sup>37</sup>.
- Stakeholders engaged in law reforms taking place as part of a VPA implementation process should ensure that existing loopholes for commercial export of conversion timber will be closed. Of particular relevance are provisions for strong social and environmental impact assessments, forest inventories, and community consent.
- The VPA currently being negotiated should include international law and customary law provisions into the legality grid to ensure that communities' customary rights to land and resources are being formally recognised.

It is also crucial that the Timber Legality Definition (TLD) is developed by consensus with the full and informed consent of all stakeholders, including capable Lao civil society organisations, and rights holders.

<sup>36</sup> Fern, *Catching it all*, 2015.

<sup>37</sup> Matrix which defines the regulatory references that justify the requirement, as well as indicators and verifiers to clarify the laws whose enforcement will be monitored within the context of a VPA. The legality grid is the transcription of the VPA Legality Definition, and it is outlined in one of the annexes of the VPA.



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Pictures & maps: Denis Smirnov