




# RESEARCH **STUDY**

## COMMUNITY **Access**

to information in forest areas  
planned for conversion to other uses



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# Acronyms

CSO	Civil Society Organisation
DOFI	Department of Forest inspection
ESIA	Environmental and Social Impact Assessment
ESMMP	Environmental and Social Management and Monitoring Plan
EU	European Union (EU)
FAO	Food and Agriculture Organisation
FLEGT	Forest Law Enforcement, Governance and Trade (FLEGT)
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
IEE	Initial Environmental Evaluation
LIWG	Land Information Working Group
MAF	Ministry of Agriculture and Forestry
MHP	Maeying Huamchai Phattana (Women Mobilising for Development)
MONRE	Ministry of Natural Resources and Environment
MPI	Ministry of Planning and Investment
NA	National Assembly
NPA	Non Profit Association
RRDPA	Rural Research and Development Promoting Knowledge Association
TLAS	Timber Legality Assurance System
VFI	Village Focus International
VGGT	Voluntary Guidelines on the responsible Governance of Tenure
VPA	Voluntary Partnership Agreements
WCA	Wildlife Conservation Association

# Introduction

## 1. Introduction

### 1.1 Background to this study

As Lao PDR develops, communities living in forest areas throughout Lao PDR have been and will continue to lose access to their natural resources as they are converted by large projects into hydropower dams, tree plantations, or other uses, and leading to social conflict and impoverishment (for examples see IUCN, 2011; Baird, 2011; McAllister, 2015).

In such instances, local communities using the forests rely on government agencies to provide them with information about the project, and how they are expected to continue their lives without such access. However, despite a legal requirement to provide these communities with such information in a transparent manner, this has rarely occurred. As Kenney Lazar et al. (2018:27) observe:

*When Turning Land into Capital-type projects are pursued, there is a lack of information available for the public concerning how the project will be developed, what will be the costs and benefits for affected persons, the Lao government, and society at large. Sometimes there is even a lack of information about the exact location of the project.*

Illegal logging and the illicit timber trade thrive when legal frameworks, rights and benefits are unclear and complex to enforce (Fern, 2018). As part of its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, the European Union (EU) is currently negotiating a Voluntary Partnership Agreements (VPAs) with Lao PDR. The VPA is a legally-binding bilateral trade agreement that aims to address illegal logging by improving forest governance and promoting legal trade in timber. It relies upon a Timber Legality Assurance System (TLAS), to be based upon the existing regulatory control mechanisms and legislative framework of Lao PDR, which in turn must be clear and based upon agreed international standards. The TLAS aims to identify, monitor and license legally-produced timber to ensure that only legal timber is exported to the EU. A commitment to transparency and access to information is therefore an essential component of the VPA. This is particularly so for communities affected by the types of forest conversion projects mentioned above, which have elevated the supply of illegal timber and increased the risk of this entering international markets.

The Lao-EU FLEGT process is committed to strengthening local civil society in Laos PDR so that they can participate meaningfully in the negotiations. This study is the outcome of a small grant given to one such organisation, Maeying Huamchai Phattana (MHP), to undertake research on the topic of transparency and community access to information in the forest sector.

<sup>1</sup> The “Turning Land into Capital (TLIC)” policy of the Lao government was designed to generate economic value from the commercialization of land and reduce state spending on infrastructure.

The grant was given through Fern, an organisation dedicated to protecting forests and the rights of people who depend on them. See <https://www.fern.org/about-us/>.



## **1.2 Objectives of this study**

The aims of the research, in accordance with MHP's terms of reference are:

- to conduct an exhaustive analysis of the legal framework on transparency and public disclosure of information in the forest sector, assess the gaps in the existing provisions by comparing them with international standards and good practices in investment projects affecting forests and challenges in the enforcement.
- to share the outcomes of the research to inform relevant stakeholders in the VPA discussions as well as community leaders, government counterparts, local CSO's and private companies in Lao PDR. The outcomes of the research will contribute to the development of a VPA annex on the public disclosure of information.

## **1.3 Defining transparency and access to information in the forest sector**

The Food and Agriculture Organisation (FAO, 2012), has developed Voluntary Guidelines on the responsible Governance of Tenure of land, fisheries and forests (VGGT), which recognises that the livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. These guidelines define transparency as:

clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.

To comply with these internationally endorsed guidelines, the Lao government needs to ensure that project developers undertake proper consultations with affected communities prior to any forest conversion. This includes conforming to the international best practice principle of Free, Prior and Informed Consent (FPIC), which is defined as “the right of people to make fully-informed decisions without coercion or pressure (‘freely’), and to give, withhold, withdraw or modify consent to projects that may affect them and their land” (VFI, 2018).

## **2. Methods**

The study was undertaken in two stages in April/May 2019 as follows:

1. A desk study to gather information on the existing legal framework regarding access to information in the forest sector, with a focus on communities affected by conversion projects.
2. Stakeholder interviews to identify standards and practices in investment projects, and main challenges in the implementation of the legal framework which impact or may impact forest communities in Lao PDR.

<sup>3</sup>The VGGT were endorsed by the Committee for World Food Security at a Special Session in May 2012 and since then implementation has been encouraged by G20, Rio+ 20, United Nations General Assembly and Francophone Assembly of Parliamentarians. See <http://www.fao.org/cfs/home/activities/vgg/en/>

## These two steps are detailed further below:

### 2.1 Stage One: Desk study

The desk study initially considered the experiences of countries which have already signed a VPA, with a focus on understanding how Indonesia and Vietnam were able to meet the EU requirements. This was followed by a review of the existing Lao legislation from multiple ministries, including the Ministry of Agriculture and Forestry (MAF), Ministry of Natural Resources and Environment (MONRE) and the Ministry of Planning and Investment (MPI) to ascertain the level of commitment within the legal framework to providing transparency and access to information, particularly regarding the requirements for Initial Environmental Evaluation (IEE), Environmental and Social Impact Assessment (ESIA) and Environmental and Social Management and Monitoring Plan (ESMMP). Finally, company and government websites were searched to see how easy it was to access relevant information (Annex 1), and compare the information available against a model VPA annex on public information (Annex 2).

### 2.2 Stage Two: Stakeholder Interviews

#### Identification of interviewees

A list of potential stakeholders for interview was identified following the desk study, and a schedule was presented to the Lao FLEGT Standing office for their approval and the issue of an official letter of introduction. The schedule included two case studies in two FLEGT focus provinces, being Xayaboury and Attapeu, with one case study (Burapha Agroforestry) selected to represent an example of best practise as identified in the desk study (use of FPIC principles, compliance with Lao legal requirements), while the other case study (Xekaman 1 Hydropower) has been described as being amongst the worst of Lao dams, “with no transparency and in violation of Lao law” (International Rivers, 2008).

#### Interview process and data gathering instruments

Prior to the interviews commencing, the research team met to agree on a process to gather data and the instruments to be used. Semi-structured interviews with government, civil society and company officials were held at their respective offices, and on most occasions, there were several officials present. Small focus group interviews were held with farmers in the villages who had been affected by development activities. The information from the interviews was recorded in notebooks for later analysis.

A breakdown of the stakeholder types interviewed is given in Table 1, while a more detailed list of those interviewed is given in Annex 1.

**Table 1: Summary of Stakeholder Interviews**

STAKEHOLDER TYPE	NUMBER OF INTERVIEWS
Government officials from central level	5
Government officials from provincial level	2
Government officials from district level	2
Company officials	2
Civil society organisations	3
Farmer focus groups	3
<b>TOTAL</b>	<b>17</b>

## **Data analysis**

The data was analysed in Lao language by the research team using a whiteboard divided into four sections, being strengths (or good standards and practices), challenges, gaps in legislation or implementation, and possible solutions. These tables were translated into English and with further details added become the basis of this report.

## **Presentation and reporting**

The findings of this report were presented at two stakeholder workshops in Vientiane, and also used to publish a briefing note prior to the EU-Lao PDR VPA negotiations in Brussels in June, 2019 (along with the findings of the other two CSO studies presented in the Introduction). This report is prepared in both Lao and English.

## **3. Findings from Desk study: (Stage One)**

### **3.1 Legal framework in neighbouring countries to meet VPA requirements**

Indonesia was the first country to sign a VPA with the EU in 2013 (ratified in 2017), while Vietnam was the latest country to sign in December 2018. The experiences of these countries can provide useful lessons for Lao PDR.

#### **Indonesia**

Indonesian CSO's (with the support of international NGO's) were able play an active role in the VPA process. They participated in the development and testing of an auditable forest certification standard (Sistem Verifikasi Legalitas Kayu, or SVLK), which was adopted in 2009, and civil society monitors are empowered to assess compliance with the SVLK's requirements. Overdevest and Zeitlin (2016) conclude that the increased participation by civil society and other stakeholders in forest governance has resulted in greater transparency and accountability of forestry administration, and heightened recognition of community rights. The Indonesia VPA includes an Annex on the public disclosure of information that is made available to the CSO monitors. The EU-FLEGT website (2019) states:

During VPA negotiations, civil society representatives requested that the annex ensures that they have access to data that enables meaningful independent observation. Agreed requirements were later challenged in court, which decided in favour of civil society demands. In February 2016, the Ministry of Environment and Forestry made forest management documents public in their entirety for the first time.

## **Vietnam**

In contrast to Indonesia, the Vietnamese political system placed restrictions on the participation of local CSO's in the formal negotiations, although they were able to participate in stakeholder consultation workshops (Fern, 2018b)<sup>4</sup>.

As in Lao PDR, FPIC is not enshrined in the Vietnamese legal framework, and the guidelines for its implementation are therefore unclear. Pham et al. (2015) describe how the principles of FPIC were applied by three REDD+ projects in Vietnam. They concluded that with skilled facilitators, FPIC may be regarded as a useful learning process that empowers local communities and enhances their participation. However, the Vietnamese authorities make it clear that 'consent' can only be given when it does not conflict with projects that are regarded as in the national interest (Pham et al., 2015:6).

Vietnam has also committed itself to making data on investment and revenues in the forest sector publicly available under its VPA with the EU (Fern, 2018b:7). Its Annex on the public disclosure of information (see Annex 2), included a requirement to provide information that is currently difficult to access, such as:

- Forest land use planning and forest land allocation
- Forest management, (e.g. approved sustainable forest management plans, decisions on approving Environmental Impact Assessments (EIA); comments from the minister of Agriculture and Rural Development on EIA reports of projects impacting forest resources)
- Information on forest-related crimes and sanctions (e.g. number of violations of forest law related to forest destruction, illegal purchase and trafficking of forest products, and violations of forest product processing regulations, results of the legal response including administrative fines and criminal cases).

Such information is necessary to be made public if independent monitoring, which is an integral part of the TLAS and undertaken by CSO's in some instances, is to be successful. Fern (2018b:8) suggests that Vietnamese civil society needs to have greater freedom to scrutinize the implementation of the VPA and provide recommendations to improve forest governance.

### **3.2 Legal framework in Lao PDR regarding transparency in the forest sector**

The legal framework in Lao PDR is still relatively undeveloped, with the government acknowledging that the 'rule of law' is still not uniformly applied due to complex organisational structures, unclear roles and responsibilities and limited dissemination and legal knowledge (NSED, 2016). Table 2 summarises some key legal documents and indicates how they are relevant to transparency and access to public information in the forest sector. A more complete summary is given in Annex 3.

<sup>4</sup> This is in contrast to Lao PDR, which does have a CSO representative in the negotiating team.

<sup>5</sup> VPA's in other countries have specified up to three formal levels of monitoring to ensure their implementation, being Joint Implementation Committees (JICs), independent auditors, and independent monitors.





**Table 2: Key legal documents regarding transparency and access to information in Lao PDR**

LEGISLATION	RELEVANCE TO TRANSPARENCY AND PUBLIC INFORMATION
Forest Strategy to 2020	Committed to involving villagers in forest management and transparency in decision making
Land Law, 2003	While specific on the rights of local people to use land, it is not specific about the rights of local communities to receive information about land conversion. This Law was used as the basis for approving the land concessions and large projects which have now proven to be poorly implemented. It is now undergoing revision.
Forest Law, 2008	Not specific regarding transparency for local communities, being only concerned with transparency in relation to the inspection of timber by the Forestry Inspection Department. Now undergoing revision
Decree on Compensation and Resettlement Management in Development Projects No. 84, Vientiane Capital, Date: 05/04/2016	States that the people have the right to receive" information on the development project, benefits and effects, the progress in the implementation of the plan of compensation, resettlement, and rehabilitation of the livelihood", and attend consultations
Order No 15/PM on Enhancing Strictness on the Management and Inspection of Timber Exploitation, Timber Movement and Timber Business, 2016	This Order was issued in an attempt to reduce illegal logging, increase transparency and to encourage domestic processing. Phuc and Canby (2017) observe that total volumes of logs and sawnwood exported to Vietnam and China in 2016 dropped to only 11 percent and 25 percent of 2015 volumes respectively.
Law on Investment Promotion, No. 14 /NA, dated 17 November 2016	This law promotes "convenient, expeditious, transparent and proper investments"
Resolution No. 26, on the Enhancement of Land Management and Development in New Period, (Central Party Committee, 2017)	This resolution was issued in 2017 in response to concerns over the opaque processes used to manage land in Lao PDR, and committed to greater transparency in land management.
Decree No. 21/GOV on Environmental Impact Assessment (EIA), dated 31 January 2019	This decree replaces Decree of Environmental Impact Assessment (No. 112/PM, 16 February 2010), and includes a chapter on the "Rights and Obligation of the Affected Persons", which includes the right to participate in consultation processes and receive information. Information must be disclosed in Lao and English.

### 3.3 Transparency and access to information in practice

The ESIA legislative framework in Lao PDR is considered to be one of the best in the Mekong region, with only Lao PDR, for example, clearly extending “the role of Project Affected Persons (PAP) and community participation to the monitoring and compliance stage of the project (Baird and Frankel, 2015). However, even though it is made explicit in the legal framework that information on forest conversion must be made available to affected communities, in practice it is difficult to obtain such information, particularly in Lao language. At the time of writing, there is no government website that conveniently lists projects and their status: a webpage which previously listed the status of hydropower projects from the Ministry of Energy and Mines (<http://poweringprogress.org>) was removed some time ago and information is no longer available.

Table 3 lists a range of projects which should have ESIA's under government legislation, and the language in which these were available on their project websites (for website details see Annex 1). Note that even though some projects started before the present ESIA regulation was promulgated (Decree No. 21/GOV), a regulation requiring large projects to undertake an EIA has been in place since the year 2000, and updated in 2010 with the Decree No. 112/PM noted earlier.

**Table 3: Selected large projects in Lao PDR and the status of their ESIA**

Project Name	Location	Main Developers	ESIA prepared	ESIA available on Project website
Nam Theun 2, 1070 MW	Khammuane	World Bank, Electricite du France (EdF)	Yes	Yes (English and Lao)
Nam Theun 1, 523 MW	Bolikhamxay	Phonesack Group (Lao)	No	No
Nam Ngiep 1, 290 MW	Xaysomboun	ADB, Kansai Japan	Yes	Yes (English only)
Nam Ou (1-7), 1146 MW	Luang Prabang	Sinohydro, China	One (out of seven dams)	No website in English or Lao
Xekaman 1, 322 MW	Attapeu	Songda (Vietnam)	No	N/A

<sup>6</sup> Projects were selected based on their large size, as well as their location in the FLEGT target provinces of Sayaboury, Khammouane and Attapeu.

Project Name	Location	Main Developers	ESIA prepared	ESIA available on Project website
Hongsa Power 1878MW	Sayaboury	Banphu, Ratchaburi (Thai)	Yes	No
Burapha Agroforestry	Sayaboury, Vientiane	Burapha Agroforestry	Yes	Under preparation (English and Lao)
Stora Enso	Savannakhet, Salavan	Stora Enso (Finland)	Yes	Yes (English only)

Table 3 indicates that the level of transparency and access to information for large-scale forest conversion projects in Lao PDR depends largely upon the transparency of the project backers rather than upon compliance with Lao legislation. Hydropower projects supported by international financial institutions such as the World Bank and Asian Development Bank (e.g. Nam Theun 2, Nam Ngiep 1) have updated websites in Lao and English, at which documents such as ESIA may be downloaded. There were also other documents relevant to public information, such as resettlement action plans, which specified how project affected persons (PAP's) and other stakeholders would be consulted during the construction and operation periods.

By contrast, only one (of seven) Chinese dam projects on the Nam Ou was reported to have completed an ESIA. There was no website for the company available in either English or Lao (it is not clear if there is one in Chinese). Likewise, there was no information available for the Xekaman 1 hydropower scheme, undertaken by the Vietnamese State Songda9 enterprise.

Two companies which were able to demonstrate transparency and provision of information are the eucalyptus plantation companies Stora Enso and Burapha. Stora Enso, for example, had engaged a local civil society organisation (Village Focus International) to undertake information sessions with villagers using an FPIC approach. The steps in the land acquisition process (in which Stora Enso rents village land for a fixed period) are given in Figure 2.

<sup>7</sup> The World Bank, for example, classifies its projects into one of four categories depending on type; location, sensitivity and the nature and magnitude of impacts on communities (such as indigenous communities); and the environment, which will determine the appropriate extent and type of ESIA to be undertaken.

International Rivers, <https://www.internationalrivers.org/campaigns/nam-ou-river>, accessed 5/2/19.





Figure 1: The land acquisition process of Stora Enso in Lao PDR

#### 4. Findings from stakeholder interviews (Stage Two)

##### 4.1 Government assessment of strengths and challenges in implementing the legal framework

Table 4 summarises the strengths (or good standards and practices) and challenges in implementing the existing legal framework according to government officials at central, provincial and district levels.

**Table 4: Strengths and challenges according to government officials**

STRENGTHS	RELATED CHALLENGES
1. Legal framework and policies promote transparency	<ul style="list-style-type: none"> <li>- government staff and the people don't fully understand the laws and policies</li> <li>- the responsibilities of each government department are not clear or overlapping</li> <li>- too many instructions issued by different departments which are not coherent</li> <li>- there are regular changes of responsible staff who don't understand the situation</li> <li>- government not capable of analysing financial health of potential investors</li> </ul>
2. Government is willing to promote greater awareness to the people	<ul style="list-style-type: none"> <li>- the techniques used to disseminate information are not appropriate - lack of skilled personnel and suitable tools for working with local communities</li> <li>- there are two hotlines which people can use to complain about government services, being to the National Assembly (156) and the government administration office (1516).</li> <li>- information given to the people emphasises only the positive aspects</li> <li>- there is no information management system (and a lack of skilled personnel and updated equipment to manage it)</li> <li>- there is a culture of producing 'flower reports' so that central government receives inaccurate information from lower levels</li> <li>- if the standards of the EU are too high, then Lao PDR will sell to other countries without standards at all</li> </ul>

Government officials identified two key strengths, being firstly that the Lao legal framework and policies promote transparency and secondly that they are willing to promote greater awareness to the people.

The assertion that the existing legal framework already promotes transparency was stated by all officials from central to district level, and is in accordance with the findings of the desk study. The Prime Ministers Order No.15 was quoted as a positive example by the Department of Forest inspection (DOFI), since each province has had to setup a committee to implement it. Unlike the 2007 Forest Law, which was general and open to interpretation, PM15 is specific and has succeeded in halting the illegal timber trade.

Officials from MONRE stated that in the past the government has had priority projects that were approved before EIA's were undertaken, and that they are trying to change this culture. There have been recent improvements to the laws, including Decree No. 21 on Environmental Impact Assessment (2019). They observed that it will be challenging to implement this decree however, firstly because it requires the cooperation of many sectors and secondly because it will be costly, especially for small businesses. They also expect some resistance from some provinces, who face the question of "how to balance the need for regulations with the need to streamline bureaucratic processes for investors."

Another challenge is in managing the sheer number of pieces of legislation at all levels of government. Senior officials often issue their own legislation haphazardly in response to a particular problem without proper consultation, leading to overlaps, inconsistencies and misunderstandings. Often, local government officials are not aware of new laws and decrees, and so continue to enforce old legislation. They may choose to interpret laws in a way that suits them: a district, for example, might be authorised to issue a concession for a maximum of 50 hectares, "but there is no limit to how many times this can be done." Authority is sometimes unclear: in Xayaboury for example, the harvesting of timber follows guidelines issued by the provincial governor, which is considered a higher authority than the guidelines issued by the Department of Forestry under MAF.

Implementation of laws and the level/quality of information provided to local communities is also affected by the numerous sectors involved. For a hydropower project affecting forest, "it is the responsibility of MAF to survey the forest, MONRE to assess the land, and the Ministry of Minerals and Energy to prepare the documents for submission to the National Assembly for approval."

Both MAF and MONRE stated that their websites were under improvement, and that once completed it would be easier for the public to find information. In MAF, there is already a unit responsible for building a website, but "they don't do their job." Another constraint is that any such website would only be able to provide information that was based on reports from the provinces and districts, and often this information is unreliable. These 'flower reports' always state that government targets have been met, even when they haven't been. Or they may report that they have not approved any new mines, for example, even when they have, because they know that such approvals are against central government policy.

While there is a general commitment to transparency, central level officials stated information released to the public needed to be controlled, since there is still some information that has to be kept secret, and that which is released needs to be approved by higher authorities. Provincial officials in Attapeu, however, were more open about the need to publicise information on law enforcement.

We have worked hard to gather evidence and prosecute wrongdoers in our province, some of who are government officials. But even though their cases have been decided and they have been convicted by the courts, the government does not release their names because this could undermine the Party. Since there is no information on the progress of convictions, then local people think that we are not doing our jobs and public trust is undermined.

Monitoring and evaluation to ensure that laws and procedures are enforced is also weak. For example, MONRE has a specialist unit for monitoring ESIA's to ensure they are being complied with, but one of the issues is that there is insufficient punishment for companies that don't follow the law. The mechanisms for assessing the financial health of investors at central level were questioned by provincial staff in Attapeu, since there were many investments that either didn't even start (just land speculation) or promised farmers good prices but then didn't come to buy. The highest profile case is that of the Vietnamese company HAGL which ended up going bankrupt and leaving rubber and sugar farmers in debt.

When questioned about the need of a VPA annex to demonstrate greater transparency and access to public information, one central government respondent noted that:

If the standards of the EU are too high, it would mean that Lao PDR can't sell processed timber. Then we would be forced to sell to other countries with lower standards, which would in turn lead to a higher risk of illegal logging and corruption.

#### 4.2 Civil society assessment of strengths and challenges in implementing the legal framework

The research team interviewed two representatives of CSO's active in the land/forest sector (VFI and LIWG) and one Lao consultant who is assisting with forest policy (and is supported by a CSO). The strengths and challenges they identified are given in Table 5



**Table 5: Strengths and challenges according to civil society**

STRENGTHS	RELATED CHALLENGES
Some policies, regulations and laws are in place to promote transparency	<ul style="list-style-type: none"> <li>- it is difficult for rural people to access information, since government lacks the skills and budget to invest time in proper community consultations including FPIC</li> <li>- some ESIA's cannot be considered impartial, since the consultants are paid by the company and they do the company bidding</li> <li>- due to vested interests and corruption, government officials and village chiefs are paid bonuses to given away land</li> <li>- investments are approved not according to law, but according to personal relationships</li> <li>- the Media Law (including use of social media) is too restrictive and people are scared to report</li> <li>- laws are too detailed, making them difficult to update since have to pass the National Assembly</li> <li>- promises to villagers are broken due to a lack of monitoring</li> <li>- there is a conflict of interest in government between those wanting GDP and those wanting to limit damaging investments</li> </ul>

Like the government, civil society representatives generally considered that transparency and access to information problems were largely due to implementation issues rather than due to inadequate legislation. Insufficient government budgets, low staff capacity and a lack of proper extension materials (usually laws are just read out to a meeting) are all factors that make it difficult for rural people to receive reliable information. A weakness in the legal framework is that while consultation with local communities is considered important, it doesn't specify in detail that consultations should follow the principles of Free, Prior and Informed Consent (FPIC). Therefore, VFI and other members of the Responsible Agriculture Working Group have been working with local companies such as Stora Enso and Saffron Coffee to promote responsible agribusiness, and the Group's guidelines include specific sections on FPIC and transparency (VFI, 2018). It is hoped that the new versions of the Forest Law and Land Law (due to be passed in 2019) will contain specific clauses requiring FPIC, but whether this happens is not yet clear.

One of the problems faced by communities is that they receive biased information that does not allow them to take an informed decision. In banana plantations in Northern Lao, village heads and district officials receive a bonus to find land for Chinese investors on a per hectare basis, meaning that there is an incentive for them to avoid mentioning the negative impacts of an investment. In Oudomxay for example, the local Planning and Investment Office wanted to boost provincial GDP by continuing to plant bananas, even through local agricultural agencies wanted to limit the area of bananas due to environmental concerns. There are other cases where the village authority has rented out the collective village land or cut timber, without the approval of their communities. As VFI observed,



Therefore, the challenge is not in providing the information to farmers, but providing the information in an unbiased manner.

Even though laws may be adequate and include provisions for monitoring and evaluation, actual implementation is weak. The 2018 Law on Resettlement and Vocation states that inspection needs to be paid for by the investor and must include government officials. But what if the investor doesn't do this? There is no provision to involve local people or civil society in the inspection process to provide an independent viewpoint.

Laws may be difficult to implement because there are too many sectors responsible. The 2018 Law on Resettlement and Vocation names 18 different sectors involved on the committees at central, provincial and district level, which is unworkable. But this law cannot be changed without the approval of the National Assembly. Therefore, it was suggested that is better to have less detail in the law, and provide clear guidelines for its implementation which can then be readily updated.

Social media provides an opportunity for civil society and the people, because they can address decision-makers directly without needing to go through formal channels. If a villager sees illegal logging, this can be uploaded to Facebook, and then the responsible agency feels obliged to investigate immediately. As long as social media postings are done respectfully then they can be successful, so there is an opportunity to train local people in how to use social media effectively. Using official processes to inform the people of their rights is very slow. One CSO made a film about FLEGT “but before we could release it, we had to get approvals from the Ministry of Information and Culture and pay all their costs. It was a slow and expensive process.”

<sup>9</sup> Articles 60-62.





### 4.3 Case study 1: Burapha Agroforestry, Paklay district, Xayaboury



Burapha Agroforestry is a 95% Swedish and 5% Lao owned company based in Lao PDR that processes plantation timbers into furniture and plywood, but has plans to develop a pulpmill. To secure its resource, it has leased unused or degraded land from farmers over a 30 -year period in Xayaboury, Vientiane and Vientiane Municipalities to plant eucalyptus. These leased areas, now cover about 8,000 hectares, although only about half this area has been planted to date.

The research team spoke with company officials in Vientiane and Paklay, DAFO officials in Paklay, and visited two villages in which over 100 households have leased their land to grow trees with Burapha. The strengths and challenges arising from these interviews are given in Table 6.

**Table 6: Strengths and challenges of Burapha in transparency and access to information**

STRENGTHS	RELATED CHALLENGES
1. The company operates in accordance with the legal framework	<ul style="list-style-type: none"> <li>- it is very costly to follow all legal processes for a plantation company, and these are not fairly applied to all investors</li> <li>- there is overlap and misunderstanding over the roles of DAFO and DONRE on land issues</li> </ul>
2. FPIC is a core principle of the company, including when making land contracts with farmers (including peer to peer study tours)	<p>Understanding of some farmers over contracts is low, especially women</p> <ul style="list-style-type: none"> <li>- Many farmers in remote areas are illiterate</li> </ul>
3. There is a local field office which can deal with questions and grievances as they arise	<ul style="list-style-type: none"> <li>- Reaching local people can still be difficult due to low understanding and shyness</li> </ul>

The Swedish investors in Burapha have very high expectations about meeting sustainable development standards, and has a Corporate Social and Environmental Responsibility (CSER) unit to ensure these standards are met. To ensure that its products can be certified to meet Forestry Stewardship Council (FSC), it must follow all the laws and conditions imposed upon it by the Lao government, as well as its own due diligence procedures to ensure that only FSC compliant timber enters the supply chain. A plantation site development plan is developed for each site, which includes the checklist of actions needed to ensure compliance with these standards. Work is guided by FPIC principles to ensure that its plantations are fully compliant with community expectations. To assist farmers in understanding the costs/benefits of growing trees with Burapha, they are taken on exchange visits to discuss these issues with other farmers. A grievance procedure for farmers working with the company has been established.

The desk study identified Burapha as one of the few to have completed its ESIA in Lao language in accordance with Decree 21/GOV on EIA. A separate ESMMP is prepared for each plantation to reflect different conditions, which is an expensive process which is not followed by all investors.

The research team found that villagers interviewed (including women) generally had a good understanding of the operations of the company, and were satisfied with the level of participation. They were willing to work with the company because they had plentiful land, which they would not have been able to develop by themselves. Farmers were pleased to receive a land use certificate paid for by the company, which is part of their due diligence process. There were plentiful work opportunities for men and women in maintaining the trees. In terms of transparency, the only issue identified by the research team was that the provisions for land transfer (such as in the case of the owner's death) were not clearly spelt out in the contract.

#### 4.4 Case Study 2: Xekaman 1 Power Company, Sanxay district, Attapeu



According to their website<sup>10</sup>, the Viet Lao Power Joint Stock Company was established by the Vietnamese government in 2002 with the aim to provide energy security for Vietnam by developing 7,000 MW of power in Lao PDR. This includes hydropower projects on the Xekaman river and associated transmission lines. The Xekaman 1 Power Company is a subsidiary company of the Viet Lao Power Joint Stock Company, which is responsible for developing the Xekaman 1 hydropower complex with an installed capacity of 322MW in Attapeu province. The main shareholder is the

<sup>10</sup> <https://vietlaopower.com/en/gioi-thieu/about-us/general-introduction-799.html>.

Songda9 Joint Stock Company, which is responsible for dam construction. The Xekaman 1 complex includes a small dam (locally called Xekaman 0) which required the resettlement of three villages into an existing large village in 2017, which is now called Ban Chatsan Houay Lom (or Houay Lom resettlement village), and totals 138 households.

The research team was denied permission by local authorities to visit the Xekaman 1 Power Company once they arrived in Attapeu, on the basis that the original request did not follow correct procedures. However, they were allowed to meet with representatives of the resettled households, who were interviewed on 30/4/2019. The identified strengths and challenges arising from these interviews are given in Table 7.

**Table 7: Strengths and challenges of Xekaman 1 in transparency and access to information**

STRENGTHS	RELATED CHALLENGES
Farmers received information on how their lives would be rebuilt, including a contract for compensation	<ul style="list-style-type: none"> <li>- as a priority project with the backing of the Lao and Vietnamese governments it may not have to pass the same standards as other projects to receive approval. - only received positive information</li> <li>- Nobody to assist villagers with understanding their rights – they just accepted what they were offered</li> <li>- villagers promised free electricity for three years, but this didn't happen</li> <li>- land in the resettlement are is rocky and unsuited to agriculture</li> <li>- land insufficient (not the 3 ha. per family promised)</li> </ul>

The inability of the research team to talk directly to the company highlights the secrecy of some companies in Lao PDR and a key challenge for those seeking transparency and access to information. The desk study had raised the possibility that Xekaman 1 did not have to undertake an ESIA, since no records of one having been completed could be found. In their interview, MONRE noted that some projects undertook an ESIA after they had already been approved, if they were considered priority projects (Section 4.1). The website of Xekaman 1, quoting Vietnam News (2011) suggests that this might be the case:

*In his address at the groundbreaking ceremony, Deputy Prime Minister Hoang Trung Hai stressed that the project was one of Viet Nam's biggest overseas investment projects and was considered a symbol of co-operation between the two countries.*

*Lao Permanent Deputy Prime Minister Somsavat Lengsavat said the project played an important role in the socio-economic development of his country and would contribute to the traditional relations, comprehensive co-operation and special friendship between the two countries.*

Following the Attapeu field visit, in which local officials were unaware of an ESIA for this project, MONRE was contacted again to ask if they knew about any such document. Like their counterparts at provincial level, they were unsure if an ESIA had been completed for this project or not.

The resettled households from Xekaman 1 are all from ethnic minorities (Alak, Taliang and Nge), many of whom (and especially women) are not proficient in Lao language. While they reported having received some information prior to the project commencing, “it was all about the positive aspects such as the improvements to living conditions and new houses.” They stated that they didn’t have a choice whether they could move or not, and “just had to accept what was offered.” Each household received some compensation, but they do not know how it was calculated.

The three villages were resettled in 2017 inside another larger ethnic Lavae village, making four ethnic groups in the one village. All the suitable agriculture land was already taken, leaving the new residents with only small areas of rocky land, and far less than the three hectares per household which had been promised. Apart from one model house (which was always used as the example for official visitors), all houses were of sub-standard construction and already starting to fall apart. Free electricity was also promised to the resettled households for three years, but after several months the company meter was disconnected and individual meters were put on each house. These concerns were raised to a representative of the National Assembly who came to visit, but villagers have received no visits from provincial and district authorities to resolve their concerns as promised. Those interviewed reported that they intend to move back to their old fields inside the watershed if these issues are not resolved.

## **5. Analysis of gaps in legislation**

The research confirmed that while transparency, participation and access to information are often principles of the Lao PDR legal framework, they cannot always be implemented in practice. Gaps in the Lao legal framework, which could be resolved to improve the standards and practices of investment projects, are listed below.

### *5.1 FPIC should become a guiding principle of the Lao government Gap*

As noted in the desk study, Lao PDR has an opportunity to meet its international obligations by supporting the implementation of the Voluntary Guidelines on the responsible Governance of Tenure of land, fisheries and forests in the context of national food security (VGGT). The VGGT requires that investors who are planning to convert community land actually undertake proper consultations with affected communities prior to any forest conversion.

#### Suggestion:

Proper consultation includes conforming to the international best practice principle of Free, Prior and Informed Consent (FPIC), which is defined as “the right of people to make fully-informed

decisions without coercion or pressure ('freely'), and to give, withhold, withdraw or modify consent to projects that may affect them and their land" (VFI, 2018). FPIC principles should also guide the ongoing process of consultation and participation of local people.

The Land Law, for example, should clearly specify the use of FPIC principles. However, the Draft Land Law (December 2018 version) does not include a requirement for the involvement of the people who live in the area where a lease or concession is being issued. This law should be expanded to include an obligation on the state to consult with villagers before granting a lease or concession. Officials must use local languages in consultation and providing information. The state should obtain the "free, prior informed consent" (FPIC) of the villagers. In this way, their livelihoods and wellbeing will be better protected. Introducing this requirement would be consistent with the Resolution of the Central Committee on Land (2018) in paragraph III.6, which states:

The state may convert land into capital by granting lease, concession ... in ensuring national security, peace and public order, interests of the state, collectives and people.

### 5.2 The Draft Forest Law (April, 2019) is not specific on transparency or public access to information obligations

#### Gap

The need to collect information by government agencies is mentioned in the Draft Forest Law on numerous occasions, but there is no commitment in the Law to make it publicly available for the purpose of monitoring by outsiders, such as local CSO's or village organisations. Yet there are rewards for those who can provide information on the violation of the law (Article 171). A commitment to increasing the availability of public information will strengthen governance in the forest sector, as well as contribute to a VPA Annex on Public Information (Annex 2).

#### Suggestion

The new Forest Law should specifically include an Article which commits to the public disclosure of information, so that outside bodies (such as independent monitors or civil society organisations) are able to monitor forest operations and thereby strengthen governance in the forest sector.

### 5.3 Increase the role of a semi-autonomous government body to certify that Lao law is being complied with by investment projects

#### Gap

The existing legal framework in Lao PDR highlights the importance of inspection to ensure that laws are being complied with. However, inspection is invariably assigned to unwieldy committees of government officials (for example, see Section 4.2), who are likely to have been responsible for approving an investment project in the first instance and may be paid bonuses by the investor to

<sup>11</sup>The information in this section is based on a submission to the Land Law drafting committee by LIWG.



ensure its smooth implementation. This is a conflict of interest which means that they are not capable of providing impartial advice to local communities.

#### Suggestion

While having fully independent forest monitors may work in some countries, experience has shown that this is only successful when there is a functioning and legitimate legal framework (ODI, 2004). Further, local CSO's do not yet have the technical expertise to be effective independent monitors, and would have to rely on outside partners which may have an advocacy agenda (rather than strictly confining their work to monitoring). Therefore, at least in the short to medium term, it is suggested that a semi-autonomous government body (such as the State Audit Office) be given increased legislative powers and resources to undertake monitoring and inspection of investment projects instead of the existing committees of officials. CSO's and other members of the public should be able to provide information to this body.

## **6. Analysis of challenges in enforcement of the legal framework**

While the legal framework is clear in many instances, all respondents noted the challenges of actually implementing the framework. This document has highlighted many of these challenges and resolving these will not be easy, as there are some fundamental governance issues which need culturally appropriate solutions. Two challenges in enforcement in which progress could potentially be made to improve transparency/access to information are given below.

### 6.1 Establish a simple Compliance Checklist for investment projects which is included in the contract and can be used as the basis for inspection and enforcement

#### Challenge

While the existing legal framework is often specific about the need for transparency and access to information (Decree No.21/GOV, 2019 is a good example), the mechanisms to ensure its implementation is weak. The government inspection committees established for this purpose have not been fully effective due to the numerous and conflicting regulations, insufficient legal knowledge, inadequate budget and their other work commitments. It is easier to inspect and enforce a simple compliance checklist agreed prior to the investment starting rather than spending time interpreting the various laws and co-ordinating with numerous sectors once a breach of the law has been discovered.

#### Suggestion

MONRE (or its line agencies) should develop a simple compliance checklist which states the key management practices to be implemented by the investor prior to a project being approved. As well as environmental standards, it includes clauses about transparency and access to information.

<sup>12</sup>The State Audit Office is specifically mentioned as an agency that can be responsible for the inspection of EIA activities in Decree No. 21/GOV, 2019 (Article 80).



This checklist forms part of the contract and is then used as the basis for inspection and enforcement. Ideally, inspection and enforcement would be undertaken by a semi-autonomous agency with powers for prosecution (see proposal 5.3).

## 6.2 Improve the quality and access to information in Lao language using digital means

### Challenge

Civil society and other external actors face difficulties in accessing information which would allow them to understand and inspect forest conversion projects for compliance with the legal framework. For example, gaining access to and understanding ESIA documents was difficult since:

- Websites in the responsible Ministries (such as MONRE, MAF, MPI) are poorly organised. They do not include key documents (such as IEE/ESIA/ESMMP on their websites), nor do they include links as to where these documents may be located
- Many (if not most) companies do not include these documents on their websites (if they exist). Even when such documents are uploaded to company websites, they may not be in Lao language, making them largely inaccessible to Lao CSO's
- In any case, ESIA documents are usually long and in difficult technical language, making it difficult for non-native speakers. As Wells-Dang et al. (2016:36) point out, ESIA "is often viewed as an obstacle or a regulatory requirement, resulting in dry, technical reports that are inaccessible to non-experts and frequently not publicly available."
- It is not clear whether the copies available on company websites have been approved by the Lao government, or whether they are just drafts or internal company documents

### Suggestion

Given the technical and budgetary constraints, as well as a political culture of information control, overcoming this constraint will be a long-term and challenging task. As this research shows however, there is a willingness among many in government to improve transparency and access to information. This willingness needs to be nurtured and supported.

## **7. Concluding Remarks**

This research has demonstrated that Lao PDR has been making progress in improving its legal framework in order to improve transparency and access to information for the people, including those affected by forest conversion projects. The recent Decree No. 21/GOV on Environmental Impact Assessment (EIA), dated 31 January 2019, which clearly defines the requirements for public involvement and disclosure of information (see details in Annex 3) provides a good example of legislation for upcoming laws to be passed by the National Assembly, such as the Forest Law and the Land Law.

While this research has documented the improvement of the legal framework, it has also noted that the quality of implementation is variable. Government respondents were open about these weaknesses, and noted that there are many projects around the country being implemented which are not compliant with the law. The two case studies in this document, Burapha Agroforestry and Xekaman 1 Power Company, were found to apply different standards of transparency and access to information to their operations.

Burapha complied with all government requirements, including the preparation of an ESIA and monitoring plan, and villagers participating with the company reported that they understood the project well and were positive about their cooperation. However, Xekaman 1 appeared to have no ESIA or monitoring plan, with affected villagers reporting that there was a lack of consultation and information, and that their livelihoods were worse off than before.

A key reason for poor implementation of the law appears to be related to inspection and enforcement. The large committees established for this purpose by government are rarely successful, due to the numerous and conflicting regulations they are required to interpret, inadequate budget and their other work commitments. In many cases there appears to be a conflict of interest, since it is often the same senior officials inspecting a project who approved them in the first instance. Therefore, the recommendations of this study focus on how to achieve better enforcement, and include the use of firstly, independent monitors (such as from the State Audit Office) and secondly, simple and legally binding compliance checklists which are agreed to with the investor prior to the project being approved.

Allowing all stakeholders better access to information for development projects will reduce the possibility that illegal activities can take place, including illegal logging and forest conversion. An important outcome of this research was many government agencies appear to be committed to greater transparency, such as by improving Ministry websites and ensuring information is available in Lao language. In the forestry sector, it is to be hoped that this willingness will be followed up with positive action. Greater transparency will support the development of an Annex on the Public Disclosure of Information, which is one of the requirements of a VPA.

## 8. References

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## 8.2 Government And Company Websites

MINISTRY	WEBSITE
Ministry of Agriculture and Forestry	<a href="http://www.maf.gov.la">http://www.maf.gov.la</a>
Ministry of Natural Resources and Environment	<a href="http://www.monre.gov.la">http://www.monre.gov.la</a>
Ministry of Energy and Mines	<a href="http://poweringprogress.org">http://poweringprogress.org</a>
Ministry of Planning and Investment	<a href="http://investlaos.gov.la/">http://investlaos.gov.la/</a>

COMPANY NAME	LOCATION	WEBSITE
Nam Theun 2, 1070 MW	Khammuane	<a href="http://www.namtheun2.com/">http://www.namtheun2.com/</a>
Nam Theun 1, 523 MW	Bolikhamxay	Not available
Nam Ngiep 1, 290 MW	Xaysomboun	<a href="https://namngiep1.com/">https://namngiep1.com/</a>
Nam Ou (1-7), 1146 MW	Luang Prabang	Not available
Xekaman 1, 322 MW	Attapeu	<a href="http://songda9.com/xekaman-1-hydropower-plant-32372">songda9.com/xekaman-1-hydropower-plant-32372</a>
Hongsa Power 1878MW	Sayaboury	<a href="http://www.hongsapower.com/">http://www.hongsapower.com/</a>
Burapha Agroforestry	Sayaboury, Vientiane	<a href="http://www.buraphawood.com">http://www.buraphawood.com</a>
Stora Enso	Savannakhet, Salavan	<a href="https://www.storaenso.com">https://www.storaenso.com</a>

## Annex 1: Schedule of stakeholder Interviews

**Note:** To protect the identify of informants, the names of individuals are not included in this report

DATE	ORGANISATION
3/4/19	Policy and Legislation Division, Department of Forest Inspection, MAF
3/4/19	Community Forestry Division, Department of Forestry, MAF
3/4/19	Village Focus International (CSO)
3/4/19	Forest Survey Division, Department of Forestry, MAF
4/4/19	Burapha Agroforestry CSER unit
4/4/19	Independent Consultant to 2030 Forest Strategy, MAF (classed as CSO)
5/4/19	Land Issues Working Group (CSO)
5/4/19	DAFO Paklay, Xayaboury
6/4/19	Burapha Agroforestry Field team, Ban Meuang Pa, Paklay
6/4/19	Burapha growers from Meuang Pa and Nakhan villages, Paklay
8/4/19	Policy and Environmental Inspection Division, MONRE
8/4/19	Document Evaluation for Infrastructure and Energy, MONRE
29/4/19	PAFO Attapeu
29/4/19	PONRE Attapeu
30/4/19	DAFO Sanxay district, Attapeu
30/4/19	Farmers affected by Xekaman 1 from Hin Tam, Deuan Khene and Tangker villages, Sansay District, Attapeu

## Annex 2: VPA annex on public information

[http://euflegt.efi.int/en/web/guest/latest-news-and-press-releases/-/asset\\_publisher/m7xVxsMTvxUv/content/vpa-annex-on-public-information?](http://euflegt.efi.int/en/web/guest/latest-news-and-press-releases/-/asset_publisher/m7xVxsMTvxUv/content/vpa-annex-on-public-information?)

An annex on public information describes the documents and information stakeholders think should be made publicly available to strengthen governance in the forest sector and enable monitoring of implementation of a Voluntary Partnership Agreement (VPA).

Transparency and access to information about a country's forest sector are important to national stakeholders and to international markets, which need to understand the systems a country has in place. VPAs create an opportunity for countries that already make information about the forest sector public to demonstrate this transparency to domestic and international audiences.

In some VPA partner countries, civil society organisations with roles as independent observers have taken the lead on public information in VPA negotiations because access to information is critical to their work as observers.

In Indonesia, for instance, the VPA annex on public information builds on the requirements of independent observers as well as the country's freedom of information act.

### Content of the annex

There are often two main classes of information in VPA annexes on public information signed to date. First, information to be published as it becomes available, such as legal documents, procedures or institutional arrangements for governing the forest sector. Second, information to be published regularly, such as data and reports of forest activities.

However, additional sets of information to be disclosed may be included if parties to a VPA wish.

In VPAs signed to date, the lists of information in annexes on public information often include:

**Legal information.** Including, but not limited to, the texts of relevant laws and regulations that relate to a country's forest sector. For instance, the forest law, forest code, tax code and aspects of the regulatory framework referred to in the legality definition.

### **Information on procedures for allocating forests, such as information relating to:**

- Tender procedures and notice of calls for tenders relating to permit allocations
- Documents related to competitive bidding
- Lists and maps of valid concessions with names of beneficiary individuals and/or companies
- Contracts
- Social agreements between forest communities and permit/contract holders

**Information on forest planning**, such as environmental assessment reports, land-use planning documents, maps, lists and total area of concessions.

**Information on production**, such as volumes of timber felled and processed by species, concession and company.

**Information on processing**, such as lists and locations of approved processors.

Information on imports and exports, such as volume of timber by species, company and destination country, and information on timber in transit.

**Information on the legality assurance system.**

- A full description of the system
- Procedures for FLEGT licensing
- Inspection reports
- Reports of independent observers
- Information on FLEGT licences issued
- Cases of non-compliance with the FLEGT licensing scheme
- Actions taken to resolve non-compliance

**Information on the independent audit**, such as auditor's terms of reference, summaries of reports and procedures for challenging audits.

**Information on the payment of forest taxes and fees**, such as rents, felling taxes, reforestation fees and any other charges.

**Information on law enforcement**, such as information on violations, arrests, penalties and convictions.

**Information on institutional structures and government procedures**, such as the composition and function of national implementation structures.

### **Communication channels**

Annexes on public information also describe channels for making information public. Channels can include:

- Active channels of communication through which the country will provide information. Examples include stakeholder meetings, published and distributed reports or media announcements
- Passive channels of communication, through which the country makes information available, such as websites, document centres or responses to freedom of information requests

### **Annex 3. Legal Framework in Lao PDR regarding transparency in the forest sector**

#### **1 Forest Strategy to 2020**

The 2005 Forest Strategy to 2020 committed to involving villagers in forest management, as well as committing to greater transparency in decision-making within the forestry-related legal framework (p. 51).

#### **2. Land Law, 2003**

The 2003 Land Law is specific on the rights of local people to use land, but is not specific about the rights of local communities to receive information about land conversion. This Law was used as the basis for approving the land concessions and large projects which have now proven to be poorly implemented (Chapter 2). It is now undergoing revision.

#### **3 Forest Law, 2008**

The 2008 Forest Law is not specific regarding transparency for local communities, being only concerned with transparency in relation to the inspection of timber by the Forestry Inspection Department. It, along with the 2003 Land Law, are now being revised and are expected to pass the National Assembly in 2019. A recent draft (dated January, 2019) includes a requirement for businesses to conduct an ESIA prior to receiving a forest lease or concession (Article 86) and a requirement to “public dissemination and education of policies, laws, strategies, international conventions and treaties which Lao PDR is a signatory country, relating to forest and forestland activities (Article 154, Point 3). It is now undergoing revision.

#### **4 Guidelines No. 707/MONRE: on the Adoption and Promulgation of the Guidelines for Public Participation in the Environmental Impact Assessment Process, 5th February 2013**

This document (only available in Lao) describes in detail (29 pages) how to ensure adequate participation in IEE, ESIA, ESMMP processes. Its procedures are designed to ensure participation at all stages of a project, from data collection through to implementation and monitoring, and includes the type of dissemination to be used (such as consultation meetings, notices) and the roles of the various stakeholders.

#### **5. Ministerial Instruction on The Process of Initial Environmental Examination of the Investment Projects and Activities No. 8029/MONRE Vientiane Capital, dated 17 December 2013**

This document is based upon the Article 21 of the Law on Environmental Protection (Amended) No. 29/NA, dated 18 December 2012. Part 1.1 states that the objective of this Instruction is to ensure the:

<sup>13</sup> This strategy is now being revised by the Department of Forestry with support from JICA (to the Year 2030), and is expected to be completed by early 2020.



uniformity in the conductance of the Initial Environmental Examination by every Investment Projects and Activities of a public and private both domestic and foreign enterprises which operate business in Lao PDR that cause or are likely to cause environmental and social impacts.

**Section 2.16** of this Instruction is clear about public disclosure of information, including the following passages:

- The Project Owner shall publicly disclose the information relating to the Project Owner; the social and environmental impacts; the obligations and mitigation measures of environmental and social impacts ; the IEE Plans and ESMMP; other reports that the Project Owner preparing and submitting to the Governmental Agencies; the monitoring result of implementation of measures; budget provided for the Initial Environmental Examination and budget for the implementation of mitigation measures of the environmental and social impacts as specified under the ESMMP; any breach of any obligation or any measure committed by the Project Owner; and other information requested to be disclosed by the Governmental Organizations to the public.
- The information that the Project Owner shall disclose to the public shall be prepared in Lao and local languages as much as possible.

The Timber Legality Definition 2 (TLD2: v4.0: 25-05-2018) , prepared by stakeholders participating in the VPA process, makes reference to this Instruction and Instruction 8030 below. See Annex 3 for the section of TLD2 relevant to transparency and the public disclosure of information.

**6. Ministerial Instruction on Environmental and Social Impact Assessment Process of the Investment Projects and Activities No. 8030/MONRE Vientiane Capital, dated 17 December 2013**

Like Instruction 8029, above, this Instruction refers to the Law on Environmental Protection (Article 22).

Section 2.20 of this Instruction is worded in a similar manner to Section 2.16 of Instruction 8029, above, except that it refers to the disclosure of information related to ESIA plans. It also states that the ESIA report must be prepared in Lao language.

**7. Decree on Compensation and Resettlement Management in Development Projects No. 84, Vientiane Capital, Date: 05 / 04 / 2016**

This document replaces the Decree on Compensation and Resettlement No.192PM, of 2005, which was considered by some to be overly generous and a barrier to large scale investments such as the Lao-China railway. Article 1 states that the aim of the decree is to:

<sup>14</sup> Note that this is the most recent version available, since further updates were awaiting the update to the Forest Law (See section 4.2).

ensure that the affected people are compensated, resettled and are assisted with permanent livelihood alternatives leading to improving of living conditions.

**Points related to transparency for affected persons include:**

Article 5: Compensation and resettlement shall be carried out in order to 1) protect the rights and legitimate benefits of affected persons; and 2) Ensure equality, correctness, transparency, disclosure and fairness;

Articles 7-9: Refer to the need for a compensation plan to identify affected persons, and provides guidance on the implementation of this plan including the level of compensation to be paid

Article 18: Regarding compensation and for the resettlement, the rights and obligations of those affected includes:

1. Receive the information on the development project, benefits and effects, the progress in the implementation of the plan of compensation, resettlement, and rehabilitation of the livelihood of people throughout the implementation of the development project;
2. Attend consultations at different levels, make comments to the plan of compensation, resettlement, and rehabilitation of their livelihood;

Article 20: Covers the rights and duties of a provincial, city committee for compensation and resettlement, which includes Point 8:

8. Provide information for the affected and other stakeholders concerning the development project, benefits and impacts, progress in the implementation of the plan for compensation, resettlement and rehabilitation of people's livelihood throughout the implementation of the development project;

Article 22: Similar to Article 20 above except that it covers the rights and duties of a provincial or city committee for compensation and resettlement,

- Supply to the affected and other stakeholders information on the development project, benefits, and impacts, progress in the implementation of the plan for compensation, resettlement and rehabilitation of people's livelihood throughout the implementation of the development project;

**8. Order No 15/PM on Enhancing Strictness on the Management and Inspection of Timber Exploitation, Timber Movement and Timber Business, 2016**

This Order was issued in an attempt to reduce illegal logging, increase transparency and to encourage domestic processing. Phuc and Canby (2017) observe that total volumes of logs and sawnwood exported to Vietnam and China in 2016 dropped to only 11 percent and 25 percent of 2015 volumes respectively.

**9. Law on Investment Promotion, No. 14 /NA, dated 17 November 2016**

This Law emphasises the principle of transparency in Article 1:

- This Law defines principles, regulations and measures regarding the domestic and foreign investment promotion and administration in order to enable convenient, expeditious, transparent and proper investments



10. Resolution No. 26, on the Enhancement of Land Management and Development in New Period, (Central Party Committee, 2017):

In 2017, in response to concerns over the opaque processes used to manage land in Lao PDR, the Central Party Committee committed to greater transparency in land management.

The Government manages land in a centralized and consistent manner across the country by assigning the Ministry of Natural Resources and Environment to act as focal point of management with delegation of more responsibilities to local authorities to ensure land management and administration by using a modern and highly effective system in line with best practices, scientific principles and transparency.

11. Decree No. 21/GOV on Environmental Impact Assessment (EIA), dated 31 January 2019

This Decree replaces the Decree No. 112/PM on Environmental Impact Assessment (16 February 2010). This document incorporates changes to the laws made since 2010, including the Environment Law (2012) and the Civil Law (2016). There is a commitment to transparency in the first article, along with a stated desire to reduce and resolve negative impacts on the environment, and pursue a strategy of green and sustainable growth.

Other key articles include:

Article 36: Public Involvement

Public involvement is the process of consultation, provision of data and information and gathering opinions of all sectors of society on investment projects and activities during preparation and reviewing the preliminary environmental impact assessment report, the comprehensive environmental impact assessment report and environmental management and monitoring plan, including inspecting the implementation of environmental management in each phase of investment projects and activities to ensure transparency, justice and efficiency.

Article 42: Conditions for Issuance of Environmental Certificate for Preliminary Environmental Impact Assessment Report

Conditions for issuance of a certificate [approving] a preliminary environmental impact assessment report are as follows:

1. Must complete all processes of preliminary environmental impact assessment with participation of society;
2. Have sufficient, correct and accurate data and information and already disclosed to the affected people and other stakeholders;

#### Article 64: Disclosure of Environmental Data and Information

In an environmental impact assessment, the following data and information must be disclosed

1. The natural resources and environment sector and the project owner must disclose and provide access to the data and information related to the project owner, environmental impact, the obligations and measures to mitigate impacts on environment, preliminary environmental impact assessment report, the comprehensive environmental impact assessment report and the environmental management and monitoring plan, including the outcomes of monitoring implementation and other data;
2. Periodical disclosure to the public of the data and information of the project must be made in both Lao and English languages [and must be done] through newspaper, television, speaker, radios, website, online and other printed materials;
3. In the event the project owner does not want to disclose a data and information stated above, the project owner must submit to the natural resources and environment sector a request attached with such data and information. The natural resources and environment sector must determine whether or not such data and information is confidential data and information within twenty-five working days. If [it is determined that] the data and information is confidential data and information, it must be kept confidential within a period mutually agreed by the natural resources and environment sector and the project owner;
4. For the complicated project, the project owner must set up database centers in the project area and the nearby districts.

#### Article 80: Agencies Responsible for Inspection of Environmental Impact Assessment Activities

The [governmental] agencies that are in charge of inspection of environmental impact assessment are:

1. Internal inspectors are the [governmental] agencies that are in charge of environmental impact assessment listed in Article 74 of this Decree
2. External inspectors are the provincial people council, the Governmental Inspector, each level-State inspector, the State Auditor, the National Front for National Construction, the Veteran Association, Civil Organization, Mass Media and citizen.



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