

Integrated Rural Development in Poverty Regions of Laos (IRDP) under  
the Northern Upland Development Programme (NUDP)

## **Discussion Paper**

**on**

# **The Legal Framework of State Land Leases and Concessions in the Lao PDR**

Dominik Wellmann

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# The Legal Framework of State Land Leases and Concessions in the Lao PDR

Discussion paper developed under the GIZ NU-IRDP contribution  
to the NUDP as product of the land management component

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## **Acronyms and Abbreviations**

|         |   |
|---------|---|
| CDE     | Centre for Development and Environment, University of Bern  |
| GIZ     | Deutsche Gesellschaft für Internationale Zusammenarbeit   |
| LMRP    | Land Management and Registration Project  |
| LNRRIC  | Land and Natural Resources Research and Information Center  |
| MAF     | Ministry of Agriculture and Forestry  |
| MoEM    | Ministry of Energy and Mining   |
| MoIC    | Ministry of Industry and Commerce   |
| MoNRE   | Ministry of Natural Resources and Environment   |
| MPI     | Ministry of Planning and Investment   |
| NA      | National Assembly   |
| NLMA    | National Land Management Authority  |
| NREIC   | Natural Resources and Environment Information Center  |
| NTFP    | Non-timber Forest Products  |
| NU-IRDP | Northern Integrated Rural Development in Poverty Regions of Laos (IRDP)<br>under the Northern Upland Development Programme (NUDP) |
| NUDP    | Northern Uplands Development Programme  |
| PLMA    | Provincial Land Management Authority  |
| SDC     | Suisse Development Cooperation  |
| STEA    | Science Technology and Environment Agency   |
| WREA    | Water Resources and Environment Administration  |

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## Introduction

During the years 2009 – 2011 the former Land and Natural Resources Research and Information Center (LNRRIC) under the National Land Management Authority (NLMA), now the Natural Resources and Environment Information Center (NREIC) under the Ministry of Natural Resources and Environment (MoNRE<sup>1</sup>), supported by the GIZ – Land Management and Registration Project (LMRP), has carried out a spatially explicit national inventory of land concessions in Laos. Data updating, consolidation and analysis for the inventory are still ongoing with support provided by GIZ, the Centre of Development and Environment (CDE) and the Suisse Development Cooperation (SDC). When finalized, the inventory will potentially allow capturing, visualizing and analyzing the extent and dimensions of the concession phenomena for the entire Lao PDR. While the results of the inventory are not yet officially released, preliminary data was made available to the author<sup>2</sup>. It should therefore be noted that the following information on the current state of concessions should be regarded rather as an indication than definite data. The final results of the data analysis are expected for 2012.

Screening of the preliminary data of the concession inventory suggests that currently about five million hectares of Lao PDR are leased or conceded to either domestic or foreign parties. This area amounts to 21% of the total territory of the country. Roughly 13% of all villages in the Lao PDR have at least one concession within their village boundaries. The average poverty rate of these affected villages is slightly above the national average.

The largest share of conceded areas is related to mining (85%), consisting largely of exploration areas. While those exploration areas will only partly see changes in actual land use, issues like land tenure security and access to resources remain to be discussed.

The second largest type of land concessions is related to agricultural investments. Up-to-date these cover more than 330,000 hectares. Looked at from a global perspective this figure seems to be relatively small. Taking into account that almost 80% of Lao PDR consists of mountainous regions it quickly draws another picture and the future availability of favorable arable land may become an issue.

Only about 15% of these investments in agricultural concessions are domestic. 85% of all investment in agricultural concessions come from foreign investors, the five most important being China (~50%), Thailand, Vietnam, Korea and India.

Focused analysis of the data available for three target provinces of the Northern Uplands Development Programme (NUDP) suggests that concessions within Luang Prabang, Houaphan and Phongsaly currently amount to about 100,000 ha. About 81% of the total conceded area in NUDPs target provinces is granted to the mining sector. Agricultural concessions accumulate to a total of 16% (~16,000 ha), mirroring the distribution of

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<sup>1</sup> On 24th June 2011, the National Assembly endorsed the establishment of the Ministry of Natural Resources and Environment (MoNRE). The National Land Management Administration (NLMA), the Water Resources and Environment Administration (WREA) and the Geology Department have been merged into the newly established ministry. Since none of the legal documents cited in this paper was released after June 2011 the newly founded MoNRE is not mentioned in them. For the sake of clarity *this paper will therefore only refer to authorities originally mentioned in these documents.*

<sup>2</sup> Fenton, Lindelow, Heinemann and Thomas (2010). "The Socio-Geography of Mining and Hydro in Lao PDR: Technical Report on Analysis Combining GIS Information with Socioeconomic Data". Technical Note. *Unpublished*

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concessions at the national level. Of the area granted to agricultural concessions the vast majority (>95%) is used in context of rubber.

Within the three target provinces these results are not evenly shared. Remarkably there are no records of agricultural concessions in Houaphan. Luang Prabang and Phongsaly each have similarly sized areas of agriculture concessions. Regarding mining it should be noted, that Luang Prabang has by far the largest share of concessions amounting to 61%, leaving Phongsaly and Houaphan with 18% and 21%, respectively.

The legal background and framework for the granting of state land leases and concessions is in many cases not clear to every party involved, as well as the general development community. Reports of granted concessions that were approved on levels of government that are not mandated to do so by law underline this issue. In this context it seems reasonable to attempt an overview on the legal regulation regarding the process of concession approval. This paper will summarize the relevant laws and regulations and indicate contradictions in the legislation wherever such exist. It is beyond the scope of this paper to give insights on the actual implementation of the regulations summarized. While it is highly probable that many of the following procedures are not implemented to full extent in reality, this work tries to picture the concession approval process as it is stipulated in the law.

## General Legal Framework on State Land Leases and Concessions

### Core Authorities Involved

- **Ministry of Planning and Investment (MPI)**  
Leading agency in the process of approving concession business. Responsible for the inclusion of all relevant sectors in the decision-making process. Issues the concession registration certificates.
- **Ministry of Natural Resources and Environment (MoNRE), former National Land Management Authority (NLMA)**  
Technically in charge of approving all land concessions except mining concessions. Consent of involved line agencies (MPI, MAF, MoIC, MoEM, etc.) plus corresponding level of administrative authorities is required in all cases.
- **Ministry of Agriculture and Forestry (MAF)**  
Consent required for approving land concessions regarding agriculture and forestry.
- **Ministry of Industry and Commerce (MoIC)**  
Consent of the Department of Industry and Trade (DIT) required for approving land concessions regarding industrial plants and farms.
- **Ministry of Energy and Mining (MoEM)**  
In charge of approving concessions regarding mining.

### Main Related Legal Documents

- Decree on State Land Lease or Concession, No. 135/PM, (25/05/2009)
- Law on Investment Promotion (2009)
- Decree on the Implementation of the Land Law, No. 88/PM, (03/06/2008)
- Forestry Law (2007)
- Decree on the Compensation and Resettlement No. 192/PM (07/07/2005)
- Law on the Promotion of Foreign Investment (2004)
- Land Law (2003)
- Law on Agriculture (1998)

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- Law on Mining (1997)

## Investment in the Lao PDR

The *Law on Investment Promotion of 2009* stipulates principles, regulations and measures regarding the promotion and management of domestic and foreign investments in the Lao PDR. It promotes all sectors and business and all areas throughout the country, except areas and business operations which are related to national security; seriously harmful to environment either in short run or long term, or have negative effects to public health and/or the national culture. It aims at a centralized and uniformed management of investments, to increase the overall investment climate of the country and to be in line with national policy and existing rules and regulations. The law thereby sets the overarching framework for investment in land leases or land concessions.

All investment in the Lao PDR is divided into **three categories** by Article 8 of the *Law on Investment Promotion*:

### 1: Categories of Investment

| Category  | Definition   |
|---|--|
| <b>General Business</b>   | "[...] is an investment in general business sectors, including those stipulated in the list of controlled businesses (Negative list); however, <b>these shall not be concession business.</b> "  |
| <b>Concession Business</b>  | "[...] is investment activities authorized by the Government to [...] utilize ownership and other rights of the Government in compliance with rules [and] regulations to develop and do a business, <b>including rights on land concession, minerals</b> , electric power, airlines, telecommunication, insurance and financial institutions." |
| <b>Activities for development of Special Economic Zones<sup>3</sup> and Specific Economic Zones<sup>4</sup></b> | "Activities in the development of Special Economic Zones are investment activities in Special Economic Zones to develop a full range of infrastructures/facilities for urbanization as a new city."  |

Article 21 of the *Law on Investment Promotion* specifies the process of **applying for a concession business**. Investors interested in concession business shall submit the application to the one-stop-service of the Planning and Investment authority for consideration. The one-stop-service will then propose the application to the Government or provincial authorities for further consideration.

The Planning and Investment authorities are consequently responsible for processing any application for concession business by domestic or foreign investors. Article 23 of the *Investment Promotion Law* states further, that "The Planning and Investment authority and other relevant sectors are responsible in negotiations and draft the initial agreement" [sic]. Thus the role of the Planning and Investment authority is to facilitate the decision-making process in coordination with "relevant sectors". The **final decision** about the approval of an

<sup>3</sup> Special Economic Zone: Area determined by the Government to develop as a complex modernized urban area in order to attract domestic and foreign investments into areas that are larger than one thousand hectares. (See *Law on Investment Promotion*, 2009, Article 3 and Chapter 5 for details)

<sup>4</sup> Specific Economic Zone: Area determined by the Government as an industrial zone; export processing zone; touristic city; duty free zone; information and technology development zone; border trade zone; etc. (See *Law on Investment Promotion*, 2009, Article 3 and Chapter 5 for details)

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application will be made by the “Government or provincial authorities”. No single authority is named in the article as responsible for the final decision making. After the approval of an application for concession business, the Planning and Investment authority shall issue a **concession registration certificate** to the investors in accordance with existing regulations.

Article 26 of the *Law on Investment Promotion* states, that after the issuance of the concession registration certificate a **concession agreement** may be formulated. This agreement is “formulated on the voluntary basis and the consent between an investor and the Government or provincial authorities”. It shall “define objectives, value, terms, conditions, rights and obligations of contracting parties” and shall be certified by the Court’s Registration Notary Authority.

Article 28 specifies **the terms of any concession business** in the Lao PDR: These depend on the type, size, investment value and the condition of activities and **must be based on laws and regulations of concerned authorities**. The article nevertheless limits the maximum duration of any concession business in the country to a ninety-nine year period, but with a possible extension by the concerned authorities. This ceiling does not contradict any of the regulations regarding the lease or concession of state land in context of agriculture, forestry or mining. The regulations determining the terms of concessions for these businesses will be elaborated on in the following chapters.

## Zoning and Classification of State Land

Articles 5 of the *Decree on State Land Lease and Concession No. 135/PM, dated 25th of May 2009*, as well as Article 50 of the *Law on Investment Promotion*, divide land for possible investment in three distinct zones. The zoning and classification is based on geographical landscape and the socio-economic situation in each zone.

- **Area 1:** Upland area, plateau area, plain area where the economic infrastructure is **not convenient for the investment**.  
→ **Top level** of investment promotion
- **Area 2:** Upland area, plateau area, plain area where the economic infrastructure **can partly facilitate the investment**.  
→ **Medium level** of investment promotion
- **Area 3:** Upland area, plateau area, plain area where the economic infrastructure **can fully support the investment**.  
→ **Low level** of investment promotion

Depending on the area and the level of promotion of the business of the investment, several incentives regarding profit taxes, custom duty and other taxes are granted by the *Law on Investment Promotion*. However, Article 51 of the *Investment Promotion Law* states specifically, that concessions regarding mining, hydropower and tree plantation shall comply with concerned laws. Please refer to part IV, chapter 1 of the *Investment Promotion Law* for details on tax incentives.

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## State Land Leases and Concessions

Article 2 of *Decree 135/PM* defines land leases and land concessions as follows.

### 2: Definitions of Land Leases and Concessions

| Term                   | Definition  |
|------------------------|---|
| <b>Land lease</b>      | Land lease refers to the process of giving authorization to organizations, individuals or juridical entities to have rights to utilize state land based on the conditions and time period specified legally in the terms of the contract. <b>No minimum duration</b> shall apply.   |
| <b>Land concession</b> | Land concession refers to the process of giving authorization to individuals or juridical entities to operate business with the right to use state land based on the conditions and time limit specified legally in the terms of contract. The <b>minimum duration</b> of granted concessions must not be less than <b>five years</b> . |

Furthermore Article 7 of *Decree 135/PM* divides state land leases and concession into administrative and commercial types.

### 3: Types of Land Leases and Concessions

| Term  | Definition  |
|---|---|
| <b>Administrative</b><br>land leases and<br>concessions | Electricity, water supply, construction, telecommunication, public park, school, hospital, market, playground, bus station, transportation station, health rehabilitation center, etc.          |
| <b>Commercial</b><br>land leases and<br>concessions     | Plantation land, agricultural land, hydropower land, mining land and other types of land as allocated by the state for business operation in accordance with the relevant laws and regulations. |

As this paper focuses on concessions regarding agriculture, plantation and mining, the following information will deal exclusively with commercial land leases and concessions.

## General Requirements and Principles

Several requirements need to be met for granting leases or concessions of state land. Before determining the area to be leased or conceded it is necessary to

- do a land survey,
- prepare a land map and
- prepare a land use plan

based on land zoning and land classification (as specified above) for any land lease or land concession requests to be considered by the authorities.

If the area to be leased or conceded extends into the land of the people or individual land, the land use rights of the corresponding parties should be maintained by advising the lessee or concessionaire to conclude contracts with the land owners, or to give such land into a share. In any case the process must be in compliance with Articles 56 and 67 of the *Land Law*:

Article 56 of the *Land Law* secures the right of usufruct or any generated income from land to the holder of land use rights. Article 67 of the *Land Law* specifies obligations of "Aliens,



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Apatrids<sup>5</sup>, Foreign Individuals and their Organisations Relating to the Lease or Concession of Land”. These parties are under the following obligations:

1. To use the land in conformity with its objectives
2. To not cause damage to land quality and to not cause adverse impact to the natural or social environment
3. To not violate the rights and interest of other persons
4. To comply with unavoidable circumstances in accordance with the laws
5. To fully pay lease and concession fees and other fees relating to the land
6. To fully comply with land regulations and the conditions of the land lease or concession

*Decree 135/PM* further states that if compensation is required the project’s owner must compensate for the loss to the land use right holders.

## Compensation

Compensation is defined by *Decree 192/PM* Article 3 as “payment in cash or in kind for an asset to be acquired or affected by projects at replacement cost”, whereby replacement cost is “the amount in cash or in kind needed to replace lands, houses, infrastructure or assets on the lands (crops, fruit trees) and other assets (income) affected by the development projects”. Article 4 and 15 of the Decree state that if “responsible government authorities” conclude that a development project potentially causes adverse socio-economic impacts, the **project owners have the following responsibilities:**

- Carry out necessary surveys and field investigations to identify impacts, determine mitigation measures and prepare detailed plans in collaboration with and to be approved by concerned government agencies<sup>6</sup>
- Make every attempt to avoid displacement and minimize the impact of projects
- Timely provision of budget for all aspects of planning, implementing, monitoring and evaluating all resettlement and compensation activities
- Pay particular attention to the needs of the “poorest affected people and vulnerable groups”<sup>7</sup>
- Ensure a meaningful involvement of project-affected communities, and their existing social and cultural institutions in the resettlement process

If it is confirmed by “responsible government authorities” that the development of a project will have adverse impact on affected people, Article 6 of the *Decree 192/PM* regulates the **compensation principles.**

- The project owner shall compensate lost rights to use land and assets, affected in full or in part, at replacement cost
- Where significantly large areas of land are affected by a project (i.e. agriculture, residential or commercial land), the compensation shall be through the provision of

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<sup>5</sup> An “apatrid” is an individual residing in the territory of the Lao PDR, who is not a Lao citizen and who is unable to certify his nationality. (Source: Article 7 of the *Law on Nationality*, 2004)

<sup>6</sup> These include the Initial Social Assessment (ISA) / Land Acquisition Assessment, Social (Impact) Assessment, Land Acquisition and Compensation Report, Resettlement Plan (RP) and the Ethnic Minority Development Plan (EMDP) as stipulated in *Decree 192/PM* Article 15

<sup>7</sup> See *Decree 192/PM*, Article 3 (i) for the definition of vulnerable groups

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“land for land”. This land must be of equivalent size and productivity and must be located at a location acceptable for the affected people and the project owners

- If houses or structures are partially affected by a project, but render the remaining structures unviable to use, the affected people shall be compensated for the entire structure at full replacement costs; if the remaining structure is still viable for use project owners shall compensate for the lost portion in cash or material
- Affected people whose land or assets are temporarily rendered unusable by the works under the projects shall be compensated fully for their net loss of income, damaged assets, crops and trees. The project owner needs to ensure that the land and structures are returned in its pre-project state
- Tenants who have leased any structure and are affected by the project, shall be provided with cash assistance equivalent to three month rental allowance and shall be assisted in finding alternatives
- Affected people living in rural or remote areas, who do not have any legal Land Use Certificate or other acceptable proof indicating land use rights, shall be compensated for their lost assets at replacement cost and provided assistance “to ensure that they are not worse-off due to the project”
- All affected people, regardless of land use rights, are entitled to compensation for lost assets, assistance during the transition period<sup>8</sup> and economic rehabilitation assistance
- All claims and unresolved issues relating to the tenure status and ownership of land or assets affected by a project must be resolved prior to any new land acquisition measures
- Before provision of compensation, project owners shall establish a joint committee with representatives of all stakeholders to assess the loss to affected people
- The compensation and resettlement measures must be in place prior to the commencement of the project construction; rehabilitation measures must already be in place, although not necessarily completed yet

Article 43 of *Decree 135/PM* regulates compensation in case that an area of state land lease and concession covers land of people who have a legitimate land use right. The article is in accordance with the *Decree on the Compensation and Resettlement, No. 192/PM*. If the mentioned prerequisites are given, **compensation for the following types of land use** should be calculated based on each case as follows:

- Agricultural land for **growing rice or annual crops** must be preserved for the farmers. Exceptions can be made in a “necessary case”. If so, compensation should be paid to the farmers by adding the estimated value of the land to the estimated value of crops in a normal year, and then multiply by 10.
- The same calculation applies for agricultural land for **orchard tree plantation**.
- In the case of agricultural land for **planting industrial trees and medicinal plants**, compensation must be calculated and paid by adding the estimated value of the land to the estimated value of the trees or other plants planted on such a plot of land.
- In the case of agricultural land for **livestock**, compensation must be calculated and paid by adding the estimated value of the land to the estimated value of animals being raised in a normal year, and then multiply by 3.

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<sup>8</sup> Includes transport allowance or assistance in kind to resettlement site, food allowance in cash or in kind and suitable development assistance after displacement until affected people are able to restore their incomes or living standards

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- **Paddy land** area must not be allowed to use for other purposes. If necessary the authorization from the Land Management Authority and the Agricultural and Forestry Sector must be obtained.
- In case of **construction land**, the compensation must be calculated by adding the estimated value of the land to the value of the structures and crops that exist in the specific plot of land.
- If it is necessary to use land in an area being granted for lease and concession for the public interest as specified in the Law on Investment Promotion, the state shall appropriately compensate to the investor for the loss of property associated with such land.
- The estimation of compensation must be done with the participation of line agencies, local administrative authorities, naiban and villagers being involved, by preparing a written memo which must be signed by all participants.

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

To summarize, the project owners are responsible for the assessment of impact, the provision of all required studies, plans and budgets, the short-term implementation, the long-term assistance and economic rehabilitation of affected people, as well as the monitoring and evaluation of the compensation process. Project owners are required to collaborate with “concerned local governmental authorities” and need the approval of “concerned agencies” for all submitted plans and surveys. Yet none of the available decrees or guidelines indicates which specific agencies must be involved in the process or is mandated to oversee it.

The *Decree 192/PM* does mandate “ministries and government agencies” to reward projects which have “high achievements” in the compensation process, as well as to sanction any projects that do not comply with the regulations defined above. Sanctions may include warnings, fines and punishments. However it is again unstipulated which authority is responsible to carry out any penalizing measures or the required monitoring to do so.

## Administrative Land Conflict Resolution

There are two main characteristics of land conflicts. The first are **administrative land conflict** cases. Article 80 of the *Land Law* defines administrative land cases as cases about “using land without authorization, using land in contradiction of its objectives, laws, and regulations, not using land within the determined time period after being allocated, not paying taxes or fees on land as determined by regulations, and other problems having administrative characteristics.”

The second main land conflicts are **civil land conflicts**. These are defined by Article 81 of the *Land Law* as cases about “inheritance of developed land, transfer of land use rights, and [disputes under] other civil contracts relating to land”. Since land **conflicts relating to state land leases or concessions** will, by the nature of it, have administrative characteristics, the focus here will lie on those<sup>9</sup>.

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<sup>9</sup> For the resolution of civil land conflicts, please refer to Article 81 of the *Land Law* and Article 45 of the *Decree 135/PM*.

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Articles 78-82 of the *Law on Investment Promotion* regulate that in the case of a conflict related to investment, the involved parties should make all efforts to solve the conflict by consultation and mediation, to reach a mutually beneficial agreement. If the attempt of mediation fails, investors have “the right to require the Planning and Investment authority or the Industry and Commerce authority or other relevant sectors to address this conflict as an administrative dispute resolution in accordance with their role and duties”. Hence, the *Investment Promotion Law* specifies neither the responsible authority nor does it define a process to resolve conflicts. The details of administrative land conflict resolution are specified in the *Land Law*, the *Decree 88/PM on the Implementation of the Land Law* and the *Decree 135/PM*.

Both the *Land Law* (Article 80) and the *Decree 88/PM* (Article 31) mandate the NLMA, on the level where the conflict arises, to be responsible for resolving administrative land conflicts in coordination with the administration on that level. If, for example, the land conflict relates to a case that needs to be settled on the provincial level of NLMA (PLMA), PLMA needs to coordinate with the provincial administration. The *Land Law* allows that, if one of the conflicting parties is not content with the decision taken by the NLMA, they “request the next higher authority to settle the problem”. The *Decree 88/PM* states that if the NLMA is “unable to solve the dispute, the case shall be settled through the justice process.”

The *Decree 135/PM* specifies the land conflict resolution process further and states that NLMA needs to involve “line agencies involved” at the level of administrative conflict and prioritises the method of mediation (as is the *Law on Investment Promotion*, see above) “in order to reach a compromise” before any attempt to actively settle the case in compliance with the laws and regulations. In **contradiction** to the *Land Law* and *Decree 88/PM* it specifies that cases of conflict “related to the implementation of contract on state land concession” may only be handled by “the state organization or the government agencies assigned as contract parties”.

If the case cannot be amicably settled in the administrative conflict resolution process, both parties have, according to Article 81 of the *Investment Promotion Law*, the right to request the Committee for Economic Dispute Resolution for resolution in accordance with the laws and the consent of both parties.

Thus the responsible authority for resolving any given administrative land conflict case is either determined by the location of the conflict area or the contracting parties of the concession contract. Since **the determination of a responsible authority for any given case is not clearly specified in the relevant laws**, the following table should be regarded as an indication.

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## 4: Types of Land Conflicts

| Type of land conflict  | Responsibility and process   |
|--|--|
| <b>General Administrative Cases</b>  | <b>NLMA at level of conflict</b><br>In collaboration with local administrative authorities, line agencies concerned and the conflict parties at the level of conflict (see above). Mediation should be attempted to reach a compromise. If unsuccessful a settlement in compliance with laws and regulations shall be conducted. |
| <b>Administrative Cases</b> regarding the implementation of concession contracts | <b>State organizations or government agencies assigned as contract parties</b><br>Cases related to implementation of contract on state land concession may only be handled by state organizations and government agencies assigned as contract parties.  |
| <b>Civil Cases</b>   | <b>Responsibility of NLMA</b><br>Mandated to conduct mediation between the conflicting parties. If unsuccessful conflict parties may submit request for mediation to the Economic Arbitration Authority or to transfer the case to the people's court.   |

### Concession Fees

When a concession is successfully granted, the investor is obligated to “fully pay lease and concession fees and other fees relating to the land” according to Article 67 of the *Land Law*. Article 7 of *Decree 135/PM* specifies further that in addition to concession fees a “concessionaire who uses land in combination with the use of natural resources must pay for fee for natural resources (royalties), tax, custom fees, and other fees as specified in the law.” [sic]

Article 42 of *Decree 135/PM* regulates timeframes for the payment of fees for state land lease and concession. Concession fees must be paid at least one year in advance of starting the service or harvesting the crop. After the first advanced payment the fees shall be paid regularly as specified in the contract.

Mining concessions are an exception from this regulation. Concession fees for the mining business have to be paid immediately after the contract has been signed. Furthermore Article 31 of *Decree 135/PM* specifies that no exemption of concession fees in granting state land for mining business must be made.

According to Article 42 of the *Decree 135/PM* the National Land Management Authority (NLMA) is in charge of the collection of fees for state land lease and concessions. NLMA must forward these to the National Treasury in accordance with the *Law on State Budget* and the *Decree 88/PM on the Implementation of the Land Law*. It also specifically states that the use of such fees “for other illigal purposes must be strictly prohibited”.

### Land Management and Monitoring

NLMA is mandated with the tasks of management and monitoring of state land leases and concessions, as specified in Articles 9, 78 and 79 of the *Land Law* (2003). Within NLMA the Department of Land Policy and Inspection is responsible for **land inspection**. Depending on

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assignment by the national level, the provincial or the district levels of the NLMA are in charge of the actual management and monitoring of state land leases and concessions.

Article 30 of the *Decree on the Implementation of the Land Law, No. 88/PM* states that inspections by the NLMA shall be comprised of three types:

1. Systematic and regular inspection
2. Inspection after issuing advance notification
3. Inspection without advance notification

Article 47 of the *Decree 135/PM* also mandates the NLMA with the tasks of managing and monitoring state land leases and concessions. Articles 48 of the decree include the responsibility of NLMA to **review state land lease or concessions contracts** to be in accordance with all relevant laws and regulations. In the case that the contract would have “critical impacts to the state or society” it must be annulled, as specified in Article 14 of the *Law on Contractual Obligation*.

Article 49 regulates the cancellation of a contract in case of violation of the law and regulations or the provisions of the *Decree 135/PM* by the lessee or the concessionaire. Noncompliances, such as the use of land contrary to the objectives and scope for use, or failing to pay fees, shall result in the cancellation of the contract. If any loss or damage was inflicted upon the natural resources, the environment or the society, the lessee or concessionaire must compensate for the losses to the state.

## Terms of State Land Leases and Concessions

### State Land Leases

Leases can be acquired for several (business) sectors: “Industrial Plants and Industrial Farm Business”, “House Construction and Service Provision”, “Tourism Business”, “Sport Business” and “Lease for Diplomatic or International Organization Purpose”. In the following the focus will lie on “Industrial Plants and Farm Business”<sup>10</sup>.

Article 35 of the *Decree 135/PM* specifies that the **minimum duration** of state land leases or concessions for investment in “infrastructure development, industry, plantation, mining and so on” shall be **15 years**.

According to the type of use and the size of the land to be leased, the following levels of government authorities are mandated to approve any requests of state land leases, as stipulated in *Decree No. 135/PM*, Article 10.

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<sup>10</sup> See *Decree 135/PM*, Part II, Section 2 ff. for details on the other sectors

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## Responsible Authorities for State Land Leases

For Industrial Plants and Farm Business

| Land size <sup>11</sup>  | Duration   | Authority  |
|--------------------------|--|--|
| <b>Industrial plants</b> |  |  |
| < 50 ha                  | <b>15 - 30 years</b><br>with the possibility to extend on a case-by-case basis       | <b>NLMA at provincial or city level</b><br>based on the consent of the “Department of Industry and Trade” <sup>12</sup> , line agencies within the province/city and with the approval of the provincial/city administrative authority |
| 50 - 50,000 ha           | <b>15 - 30 to 50 years</b><br>with the possibility to extend on a case-by-case basis | <b>NLMA at national level</b><br>based on the consent of the “Ministry of Industry and Trade” <sup>13</sup> , line agencies and local administrative authority as approved by the Government   |
| > 10,000 ha              |  | <b>National Assembly</b><br>Additional authorization required  |
| <b>Industrial farms</b>  |  |  |
| < 150 ha                 | <b>15 - 40 years</b><br>with the possibility to extend on a case-by-case basis       | <b>NLMA at provincial or city level</b><br>based on the consent of the “Department of Industry and Trade”, line agencies within the province/city and with the approval of the provincial/city administrative authority                |
| ≥ 150 ha                 | <b>40 - 70 years</b><br>with the possibility to extend on a case-by-case basis       | <b>NLMA at national level</b><br>based on the consent of the “Ministry of Industry and Trade”, line agencies within the province/city and with the approval of the provincial/city administrative authority                            |
| > 10,000 ha              |  | <b>National Assembly</b><br>Additional authorization required  |

Article 11 of *Decree No. 135/PM* further states that any party applying for a state land lease must create a business feasibility study and a social and environmental impact assessment<sup>14</sup> certified by the concerned sectors. Furthermore the investment license must be issued by the Investment Management Committee before submitting the land lease request to the National Land Management Authority or the Land Management Authority at provincial or city level. After submitting the request the authorities will consider it based on principles mentioned above.

## State Land Concessions

*Decree 135/PM* regulates that if any state land is to be conceded, apart from the before mentioned general principles, the following conditions and requirements are to be met. Concessions for agricultural business and tree plantations can only be granted in areas specifically allocated for this purpose by the state and thus defined through land zoning

<sup>11</sup> Per business unit

<sup>12</sup> The unofficial translation of Decree 135/PM specifies the “Department [...]” and the “Ministry of Industry and Trade” as responsible authorities. This is most probably a translation error and stands for the Ministry of Industry and Commerce, as well as the corresponding department.

<sup>13</sup> See footnote 8.

<sup>14</sup> Detailed information about environmental impact assessments (EIA) can be found in *Decree No. 112/PM* dated February 16<sup>th</sup> 2010 on Environmental Impact Assessment

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activities. Industrial tree plantations should only be granted concessions in areas of degraded forest land (definition below). In general, agricultural concessions must be given out in suburban and rural areas only.

Furthermore any land concessions for cash crop plantation, forest rejuvenation, reforestation, industrial and economic tree plantation and Non-timber Forest Product (NTFP) collection must follow conditions specified in Article 74 of the *Forestry Law, 2007*:

1. Study on socio-economic information and appropriateness to natural conditions
2. Business feasibility study
3. Social and environmental impact assessment
4. Operational plan
5. Implement laws and concerned regulations

The thresholds for size and duration of concessions for agriculture and forestry business are specified according to the quality of land to be conceded. According to the *Forestry Law, Articles 75 and 76*, concessions can be given out on two types of forestland.

## 5: Definitions of Forestlands

| Type of Forestland         |   |
|----------------------------|---|
| <b>Degraded Forestland</b> | Forestland areas where forests have been heavily and continually damaged and degraded causing a loss of balance in organic matter, which may not be able to regenerate naturally or become a rich forest again. |
| <b>Barren Forestland</b>   | Forestland areas without trees caused by natural or human destruction.  |

These types of forestlands may be conceded for agricultural business and tree plantation. The *Decree 135/PM* specifies that state land granted as concession for industrial tree plantation, cash crop or NTFPs should be carried out in the area of waste land or denuded land. Both of which are types of degraded forest land that cannot rejuvenate naturally. The *Decree 135/PM* is therefore in line with the *Forestry Law*.

As for state land leases the mandated authorities to approve any request of land concessions are specified according to the type of use and the size of the land by Article 28 of the *Decree 135/PM*. Any requests must therefore lie within the given limitations.



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## Responsible Authorities for State Land Concessions

For Agricultural Business and Tree Plantation, according to *Decree 135/PM*.

| Land size                  | Duration  | Authority   |
|----------------------------|---|---|
| <b>Degraded forestland</b> |   |   |
| ≤ 150 ha                   | <b>15 - 30 years</b><br>with the possibility to extend on a case-by-case basis              | <b>NLMA at provincial or city level</b><br>based on the consent of the Provincial/City Agriculture and Forestry Office (PAFO) and the agreement of the provincial/city administrative authority |
| <b>150 - 15,000 ha</b>     | <b>30 - 40 years</b><br>with the possibility to extend on a case-by-case basis              | <b>NLMA at national level</b><br>based on the consent of the Ministry of Agriculture and Forestry (MAF) and local administrative authority in accordance with the Government's agreement        |
| > 15,000 ha                |   | <b>National Assembly</b><br>Additional authorization required   |
| <b>Barren forestland</b>   |   |   |
| ≤ 500 ha                   | <b>15 - 40 years</b><br>with the possibility to extend on a case-by-case basis              | <b>NLMA at provincial or city level</b><br>based on the consent of the Provincial/City Agriculture and Forestry Office (PAFO) and the agreement of the provincial/city administrative authority |
| <b>500 - 30,000 ha</b>     | <b>40 - 60<sup>15</sup> years</b><br>with the possibility to extend on a case-by-case basis | <b>NLMA at national level</b><br>based on the consent of the Ministry of Agriculture and Forestry (MAF) and the Government's agreement  |
| > 30,000 ha                |   | <b>National Assembly</b><br>Additional authorization required   |

These specifications are in line with Articles 75 and 76 of the *Forestry Law*.

### Legal Contradictions

The limits regarding the duration of a state land lease given in *Decree 135/PM* differ from the *Land Law* of 2003. Article 65 of the *Land Law* defines the maximum duration of state land lease or state land concessions to investors to be 50 years. It therefore contradicts the *Decree 135/PM* regarding the possible 60 or even 70 years concessions for barren forestlands larger than 500ha. The *Land Law* states however that this limitation to 50 years may be extended on a case by case basis "as decided by the government". The actual authority deciding on such cases is not mentioned in the article.

The maximum duration of state land leases and concessions is specified further in Article 65 of the *Land Law* for specific economic zones and special economic zones. In these zones the maximum duration is lifted up to 75 years. The *Decree 135/PM* gives no information on duration of concession in these zones, whereas Article 42 of the *Law on Investment Promotion* limits the maximum duration within zones to 99 years. The possibility of a case-by-case-extension applies for the *Land Law* as well as the *Investment Promotion Law*. The

<sup>15</sup> In "rural and remote areas" the duration can be up to 70 years with the possibility to extend on a case-by-case basis.

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Land Law requires the approval of the National Assembly for any extension, whereas the *Investment Promotion Law* specifies that the approval of “the Government” is needed.

Article 28 of the *Law on Investment Promotion* limits the maximum duration of general concession business in the country to a 99 year period, again with a possible extension by the concerned authorities. It specifically states that this threshold shall not be interfering with laws and regulations in the relevant sectors. In fact it is not contradicting regulation regarding agriculture and mining, as they allow far shorter durations and Article 28 stresses that it will not have effect on existing legislation. However, it states another maximum duration which may be relevant in certain cases.

These contradictions between laws and decrees point out a decisive issue of the concession approval process. Since the consent of line agencies or other government entities is needed for most decisions it is of paramount importance to know if regulation should follow laws or decrees in case of contradictions. To be able to give conclusive answers further research is needed to **clarify the legal hierarchy** these two types of legal documents in the Lao PDR. If the hierarchy of laws and decrees is not defined, the terms of state land leases and concessions are subject to legal interpretation by the concerned agencies.

## Mining Concessions

As shown in the introduction mining is an important factor when talking about state land concessions in the Northern provinces. About 81% of the total conceded area in NUDPs target provinces belongs to the mining sector. Of this area the largest part accounts for the excavation of antimony ore (60%) followed by copper (35%). The large areas covered by mining concessions consist to a large extent of exploration areas.

Exploration areas will only partly be affected by actual land use changes since the areas of exploration are much larger than the later areas of exploitation. Fewer villages will encounter land use changes due to excavation work than could be expected from the large surface area of exploration concessions. Nevertheless the fact that exploration concessions are issued for huge areas leave questions about the effect of them on land tenure security and access to resources. The concrete impact of mining concessions on local livelihoods especially in connection to their type needs to be assessed with care.

The *Decree 135/PM* specifies conditions for state land to be conceded for mining business. The approval of concession area for mining business must be granted in land areas allocated for mine exploitation only. It must follow the procedures specified in the relevant laws.<sup>16</sup> The right to authorize state land concessions for mining business lies on the national level only.

## Responsible Authorities for Mining Concessions

Regarding the conditions of state land concessions for the mining business conflicting information is given in the *Decree 135/PM* and in the *Law on Mining*, again pointing to the question of hierarchy of laws and decrees, discussed above. The following table therefore depicts both regulations equally.

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<sup>16</sup> The *Law on Mining*, the *Law on Investment Promotion*, the *Law on Environment Protection*, the *Forestry Law* and the *Land Law*.

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| Land size                                    | Duration   | Authority   |
|--|--|---|
| <b>According to Decree 135/PM (2009)</b>     |  |   |
| <b>Unspecified</b>                           | <b>15 - 20 years</b><br>with the possibility to extend<br>based on the case and volume of<br>minerals                                  | <b>Ministry of Energy and Mining</b><br>in consent with the National Land<br>Management Authority, Ministry of<br>Agriculture and Forestry, line agencies<br>and local administration |
| <b>According to the Law on Mining (1997)</b> |  |   |
| <b>Unspecified</b>                           | <b>15 - 30 years</b><br>with two possible extensions of<br>no more than ten years each;<br>based on the case and volume of<br>minerals | <b>“The government”</b><br>(no authority is specified)  |

## Division of Political Power

As elaborated above, the power to decide upon the approval of any state land lease or concession in the Lao PDR is divided between the national and provincial levels of authorities as well as the National Assembly. District authorities have no legal basis for the granting of any lease or concession. Provincial authorities have the legal basis to approve a maximum area of 500 ha in case of concession on barren forestland. National authorities can approve a maximum area of 30.000 ha in the same case. The table below shall give an overview on the division of political power according to the ability to approve certain sizes of state land leases and concessions.

**Table 6: Division of mandated authorities according to size of area**

| Type of lease or concession              | Political level of approval |                      |                   |
|--|-----------------------------|----------------------|-------------------|
|  | Province authorities        | National authorities | National Assembly |
| <b>Lease</b> for industrial plants       | <50 ha                      | ≤10.000 ha           | >10.000 ha        |
| <b>Lease</b> for industrial farms        | <150 ha                     | ≤10.000 ha           | >10.000 ha        |
| <b>Concession</b> on degraded forestland | ≤150 ha                     | ≤15.000 ha           | >15.000 ha        |
| <b>Concession</b> on barren forestland   | ≤500 ha                     | ≤30.000 ha           | >30.000 ha        |

Comparison to a GIZ study<sup>17</sup> conducted in 2009 shows that district authorities, which used to be able to grant concessions smaller than 3 ha, are no longer capable of approving any leases or concessions. Provincial authorities, formerly able to approve a maximum of 100 ha, have predominantly gained power. The central government, that, according to the study, was able to grant concessions up to 10,000 ha, also increased its authority to decide about concessions. Provincial authorities can approve up to 5 times larger concessions whereas national authorities are able to approve up to 3 times larger concession areas than in 2009. The influence of the National Assembly on the approval process has declined.

<sup>17</sup> Schoenweger and Uellenberg (2009). “Foreign Direct Investment (FDI) in Land in the Lao PDR”. Eschborn. GIZ. (p.11-12)

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## **Closing Remarks**

As mentioned above this paper attempts to summarize relevant legislation and regulation concerning the approval process of state land leases and state land concessions. It is beyond the scope of it to include statements about actual implementation of the legal framework in the real world. The information given in it should therefore not be regarded as an overview on how leases and concessions are granted in reality in the Lao PDR, but rather on how they should be granted if authorities followed the relevant laws and regulations. It is understood as a tool for interested parties to get a quick overview on the legal background of this specific topic and thereby be able to discuss the process of state land lease and state land concession approval in the Lao PDR.

Thus this paper also attempts to encourage dialogue about this topic and invite further feedback and opinions. If you would like to share your thoughts, disagree with anything said, or would like to point out certain topics that are underrepresented or even missing, please do so and contact the author at [dominik.wellmann@giz.de](mailto:dominik.wellmann@giz.de). Thank you very much for your feedback!