



Lao PDR

by:

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BASELINE REPORT: Lao PDR¹**SNAPSHOT BOX**

Number of Multinational Business Enterprises operating in the country	N/A.
Number of Micro, Small and Medium Business Enterprises operating in the country per 1,000 people	As of June 2009, 78,461 enterprises were registered with the Tax Departments in Laos ² . About 90 per cent are SMEs. ³
Number of State-owned Enterprises and the industries in which they operate	30, in sensitive and / or important sectors such as banking. ⁴
Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)	US\$ 228 million (2008), US\$ 319 million (2009), US\$ 333 million (2010), US\$ 450 million (2011). ⁵
Main industries in the country	Mining (copper, tin, gold, and gypsum); timber, electric power, agricultural processing, rubber, construction, garments, cement, tourism. ⁶
Number of cases involving business-related human rights violations reported to (i) NHRIs, (ii) other national human rights bodies (e.g. ombudsmen) , and/or (iii) international human rights bodies	N/A.
Have the Framework and/or the Guiding Principles been translated into the country's languages and published in the country?	No.

1 Note: Amounts in USD converted from Kip are accurate as of 6th October 2012, and rounded up to the nearest dollar.

2 Lao-German Programme on Human Resource Development for a Market Economy, Enterprise Survey 2011, Volume 1: Main Report, November 2012, 39, accessed 3 March 2013, <http://www.investlaos.gov.la/files/giz2012-human-resource-development-laos-en.pdf>

3 "SMEs in Laos," Lao National Chamber of Commerce and Industry, accessed August 4, 2012, http://www.laocci.com/index.php?option=com_content&view=article&id=62&Itemid=66&lang=en.

4 Bertelsmann Stiftung, "BTI 2012 — Laos Country Report," (Gütersloh: Bertelsmann Stiftung, 2012)

5 UNCTAD, World Investment Report 2012, 170.

6 Central Intelligence Agency (CIA), "The World Factbook Laos," accessed August 3, 2012, <https://www.cia.gov/library/publications/the-world-factbook/geos/la.html>.

Types of Business Enterprises in the Country

<p>Name of the Type of Business Enterprise</p> <p><i>E.g. company, partnership, business trust etc.</i></p>	<p>Description of the Legal structure of the Type of Business Enterprise</p>	<p>Does incorporation of the business enterprise require any recognition of a duty to society, including human rights responsibility?</p>	<p>Any legislation specifically applicable to the Type of Business Enterprise</p> <p><i>(E.g. Corporations Law)</i></p>
<p>Private Enterprises</p> <p>Enterprises are classified in three forms:</p> <p>(i). Sole-trader enterprise</p> <p>(ii). Partnership enterprise</p> <p>(iii). Company</p>	<p>There is no definition that describes the legal structure of private enterprise per se, however, Art. 9 of the Law on Enterprise states that: "A private enterprise may elect to use any form or category of enterprise stipulated in Article 10⁷ and Article 11 of this law for the establishment and operation of its enterprise."</p>	<p>Yes, Article 5 of the Law on Enterprises, 2005 states that: "enterprises have the obligation to conduct their business operations in accordance with their business purposes, to keep accounting books, to perform fiscal obligations towards the government, to protect the workers' legitimate rights and interests, to preserve the environment, and to uphold other relevant laws and regulations of the Lao PDR. "</p> <p>Further, Article 6 of the same Law also states that: "The State encourages and promotes domestic and foreign persons and organisations to establish enterprises or to participate in business activities in all non-restricted sectors by issuing customs and tax policies, regulations, [and] measures, [and by] providing information, services and other facilities to enterprises to contribute to socio-economic development. The legitimate rights and interests of enterprises, namely their capital and property, are protected by laws".</p>	<p>Law on Enterprises 2005</p>

⁷ The form of an enterprise [refers to] the business organisation that is the basis for the establishment and business operations of all types of enterprises.

(i)Sole-trader enterprise	<p>"...[A] form of enterprise owned by an individual. A sole-trader enterprise operates under the name of its owner who holds unlimited liability for the debts of the enterprise."</p>		Article 2, Law on Enterprises 2005
<p>(ii)Partnership enterprise</p> <p>Partnership enterprises are classified in two categories:</p> <ul style="list-style-type: none"> • General partnership enterprise; • Limited partnership enterprise 	<p>Article 2 of the Law on Enterprises states that:</p> <p>"...form of enterprise established on the basis of a contract between at least two investors who contribute capital to joint business operations for the purpose of sharing profits."</p> <p>Article 2 of the Law on Enterprise states that:</p> <p>"... form of partnership enterprise which is jointly operated by the partners primarily based on mutual trust and where all partners have joint and unlimited liability for the debts of the enterprise."</p> <p>Article 2 of the Law on Enterprise states that:</p> <p>"...form of partnership enterprise in which some of the partners have unlimited liability for the debts of the enterprise and are referred to as "general partners", and the other partners have limited liability and are referred to as "limited partners".</p>		
<p>(iii). Company</p> <p>Companies are classified in two categories:</p> <ul style="list-style-type: none"> • Limited company, including one-person limited company; • Public company. 	<p>Article 2 of the Law on Enterprises states that:</p> <p>"...form of enterprise established through the division of its capital into shares, each share having equal value. A shareholder is only liable for the company's debts up to an amount not exceeding the unpaid portion of [such shareholder's] shares."</p>		Law on Enterprises 2005

Limited Company	<p>Article 2 of the Law on Enterprises states that:</p> <p>"...form of company with at least two and no more than thirty shareholders, except in the cases described in paragraph one, Article 85 of this law, and a limited company with a single shareholder is called a "one-person limited company."</p>		Article 2 of the Law on Enterprises
Public Company	<p>Article 2 of the Law on Enterprises states that:</p> <p>"...a form of company with at least nine shareholders who are the promoters, and the company's shares can be freely transferred and openly offered to the public."</p>		
State enterprises	<p>Article 2 of the Law on Enterprise states that:</p> <p>"...established by the State and managed under rules applicable to companies and it shall not sell more than forty-nine per cent of its shares."</p>		Law on Enterprises 2005
Joint enterprises	<p>Article 2 of the Law on Enterprise:</p> <p>"a company jointly established between the State and another sector, whether domestic or foreign, in which each party holds fifty per cent of the shares."</p>		Law on Enterprises 2005
Collective enterprises	No definition is provided for this.		

OVERVIEW OF THE COUNTRY'S BUSINESS AND HUMAN RIGHTS LANDSCAPE

Background

Lao PDR is among the Least Developed Countries (LDC) in the world, ranking 138⁸ of 187 countries, according to the UNDP's Global Human Development Index (HDI) of 2011.⁸ It is a land-locked country, sharing its borders with five countries. Its population of 6.25 million people is divided into 49 ethnic groups.⁹ About 67% of its population is Buddhist.¹⁰ In 1975, the previous monarchy ended and Laos became a socialist regime.¹¹ It started to accept foreign investment and establishment of private enterprise in 1988, and Laos became a member of ASEAN in 1997.¹² Currently Laos is ruled by the Lao People's Revolutionary Party (LPRP), the country's only political party. The State Party is directed by a Politburo of 11 men, and a Central Committee of 53 members.¹³

Domestic and International Legal Framework

Laos adopted its Constitution in 1991 and amended it in 2003.¹⁴ Laos' legal system has a civil law system similar in form to that of the French.¹⁵ Lao has adopted legislation covering several key areas of business and human rights such as land, labour and environment. Subordinate legislation such as decrees and ordinances supplement and define the implementation of state legislation. Additionally, customary law, or traditionally unwritten practices

⁸ United Nations Development Programme, International Human Development Report 2011, Geneva 2012, 127.

⁹ United Nations Development Programme, "Laos PDR Universal Periodic Review to Human Rights Council," UN Doc A/HRC/WG.6/8/LAO/1, May 2010, paras. 5-6.

¹⁰ United Nations, "Lao UPR Review," paras. 5-6.

¹¹ CIA, "World Factbook."

¹² Ibid.

¹³ Lao Movement for Human Rights, "Situation in Lao People's Democratic Republic," Forum Asia Democracy Hearing on Cambodia, Laos & Vietnam, European Parliament, Subcommittee on Human Rights, Brussels, September 12, 2005, 11.

¹⁴ United Nations, "Lao UPR Review," ¶ 8.

¹⁵ CIA, "World Factbook."

that have evolved over time, provides an important basis, especially for Lao's many ethnic groups.¹⁶

Lao PDR is a party to six core human rights conventions and two optional protocols: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Child (CRC) and the latter's two Optional Protocols regarding the Sale of Children, Child Prostitution and Child Pornography, and the Involvement of Children in Armed Conflict. Laos has also signed the Convention for the Protection of All Persons from Enforced Disappearance. Laos has a dualist legal system, which requires international treaty obligations to be incorporated into domestic law in order to be invoked before domestic courts. In principle, the provisions of these human rights treaties have been largely incorporated into the Lao PDR's national laws and regulations.¹⁷ In addition, Laos is also a party to eight ILO conventions (Conventions No. 4, 6, 13, 29, 100, 111, 138, 182).¹⁸ The Laos government also received training in UN human rights conventions from international donors, and cooperated with the International Committee of the Red Cross in the implementation of international humanitarian law.¹⁹

Economy

According to a Bertelsmann Stiftung (BTI) Report Laos has a "distorted market economy marked by weak financial institutions, uneven competition, poor transparency and political interference, and

¹⁶ United Nations Development Programme, "People's Perspective on Access to Justice Survey in Four Provinces of Lao PDR," (Vientiane: UNDP, 2011).

¹⁷ United Nations, "Lao UPR Review," ¶ 17.

¹⁸ Ibid., ¶ 18.

¹⁹ U.S. Department of State, "2011 Country Reports on Human Rights Practices: Laos," <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, 14-15.

sapped by pervasive corruption.”²⁰ Commercial risk ratings rate Lao as one of the highest risk countries for investment, and the World Bank ranked Lao 163 out of 185 for ease of doing business in 2013.²¹ Despite this, foreign direct investment in Lao has increased from US \$187 million in 2003 to US\$450 million in 2011.²²

Laos’ growth rate increased from 4.38% in 1998 to 8.041% in 2011.²³ While overall number of people living below the poverty line declined substantially from 33.5% in 2002 to 27.6% in 2008,²⁴ it is still almost twice as high in rural areas than in urban areas.²⁵ Especially in the rural areas which account for the largest part of the country. Most households in Lao still depend on subsistence agriculture.²⁶ An important development is the structural shift from agriculture to natural resource based industry. While the contribution of agriculture to GDP constantly declined over the last decade, natural resources have been growing very rapidly, resulting in share in GDP almost tripling between 1998 and 2010 with 16% by 2010 compared to 5.9% in 1998.²⁷

Backed by the World Bank and ADB, the government is committed to a poverty-reduction program that will raise Lao from Least Developed Country status by 2020.²⁸ The Laos government is driven by its commitments under the ASEAN Free Trade Agreement and became a member of the WTO on 2 February 2013. Laos opened its first

securities exchange in 2011 with a view to attract capital.²⁹

Labour

Urbanization is increasing, with the urban population rising from 15.4% to 34% between 1990 and 2011.³⁰ The ILO estimates that 67,000 workers enter the workforce annually, and Lao will have a workforce of 4 million by 2020.³¹ This should place even more demands on employment, and increase the demand for migration with its inherent risk of trafficking. Women comprise the majority of workers in SMEs, but there are few women workers in larger enterprises.³² The poorly skilled workforce is cited as the third biggest problem of doing business in Laos.³³

High levels of unexploded ordnance contamination remain a threat to around 25% of villages, which result in approximately 300 injuries and deaths annually, most of them related to farming.³⁴

There is a right to organise collectively or form labour unions in Laos, yet all labour unions need to be affiliated with the government sanctioned.³⁵ All forms of forced labour are prohibited by law. The Lao Government has expressed its intention to ratify the ILO Convention No. 105 on the prohibition of forced labour.

Laos is particularly exposed to trafficking both as a transit and a destination country. Tens of thousands of young people migrate from Laos to Thailand,

20 Bertelsmann Stiftung, “Laos Country Report,” 3.

21 “Ease of Doing Business in Laos,” World Bank, accessed February 1, 2013, <http://www.doingbusiness.org/data/exploreconomies/lao-pdr/>.

22 UNCTAD, World Investment Report 2012, 170.

23 IMF, World Economic Outlook 2012, 194 and IMF World Economic Outlook Database, October 2012.

24 World Bank, World Development Report 2012, Washington D.C. 2012, 394.

25 Lao PDR, Ministry of Foreign Affairs, Accelerating Progress towards the MDGs: Innovative options for reaching the unreached, September 2010, 38.

26 International Development Association and International Finance Corporation, Country Partnership Strategy for Lao PDR for the Period FY12-FY-16, Report No. 66692-LA, 25 January 2012, para. 7.

27 Ibid., para. 13.

28 Bertelsmann Stiftung, “Laos Country Report,” 13.

29 Lao Securities Exchange, History of LSX, <http://www.lsx.com.la/en/about/history.jsp>.

30 UNDP, International Human Development Indicators, urban population, <http://hdrstats.undp.org/en/indicators/45106.html>.

31 ILO, “Report: Lao PDR 2006-09”, 7.

32 Ibid., 8.

33 Ibid.

34 Ibid., 7.

35 2012 Annual Review under the 1998 ILO Declaration, Compilation of Baseline Tables, Country Baseline Lao People’s Democratic Republic, Freedom of Association and the Effective Recognition of the Right to Collective Bargaining, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_091262.pdf.

typically on a seasonal basis.³⁶ Although initially many of them are voluntary migrants, a large number of them become victims of trafficking³⁷. Many children are also found exploited as child labour in various industries.

Strong demand in Thailand for cheap labour and the need for alternate means of livelihood for rural youth fuels the demand for illegal migrants, who are smuggled across difficult to police borders by middlemen and corrupt officials.³⁸ The ILO estimates that 200,000 Lao workers are currently in Thailand, mostly low-skilled, generating annual remittances of US\$100 million.³⁹ However, due to the global economic situation, the ILO reports that 2,000 documented migrant workers returned from Thailand to Laos from garment factories that closed.⁴⁰

Environment

Lao PDR is blessed with considerable natural resources, including minerals such as gold, lignite and copper. The country depends on its natural resources for most of its economy. The Lao government has targeted tourism, especially ecotourism, as a major area of future growth.⁴¹ This could potentially lead to concern for maintaining the environment and the country's natural resources.

36 International Labour Organization, "Meeting the challenge: Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-region," October 29, 2008, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro_bangkok/documents/publication/wcms_099806.pdf.

37 ILO, "Meeting the challenge."

38 Anne T. Gallagher, "A Shadow Report on Human Trafficking in Lao PDR: The U.S. Approach v. International Law," *Asian and Pacific Migration Journal* 16.1 (2007), available at: http://works.bepress.com/anne_gallagher/4; also Inthasone Phetsiriseng, "Preliminary Assessment on Trafficking of Children and Women for Labour Exploitation in Lao PDR," Mekong Sub-Regional Project to Combat Trafficking in Children and Women, (Bangkok: International Labour Organisation, 2003).

39 ILO, "Report: Lao PDR 2006-09", 9.

40 Ibid., 34.

41 Lao PDR, Ministry of Foreign Affairs, Accelerating Progress towards the MDGs: Innovative options for reaching the unreachd, September 2010, 45.

Deforestation of the extensive forest cover is a pressing environmental concern.⁴² This is reportedly reduced from 70% in 1940.⁴³ The rich biodiversity of the country is also under threat. Agricultural land is also compromised due to the large areas of land rendered unusable by the presence of cluster munitions and unexploded ordnance.⁴⁴

There is a flourishing trade in illegal timber between Vietnam and Laos.⁴⁵ Laos' law prohibits timber trade, however it continues unabated. Illegal logging threatens Laos' forest cover as well as the livelihood of 4.2 million of the rural population of Laos who depend on the forests.

Hydropower is one of the primary earners of foreign income for development in Laos.⁴⁶ A significant business and human rights concern is the development of hydropower projects in the Mekong river basin. The Mekong River runs through six countries and is home to 65 million people. There are 9 proposed dams in Laos itself, part of a larger proposed development of the entire region. The rural population rely on the wild fish stocks and small subsistence farming is a dominant way of life in many communities that live near the Mekong river.⁴⁷ There are concerns that the hydropower projects would impact the food security of the communities living in the area, as well as create negative environmental impacts.⁴⁸ The World Bank

42 World Bank, "Lao PDR Environment Monitor," (Washington DC: World Bank, 2005).

43 World Bank, "Environment Monitor."

44 See generally United Nations Development Programme, "Hazardous Ground: Cluster Munitions and UXO in the Lao PDR," (UNDP, 2008).

45 Environmental Investigation Agency, "Crossroads: The Illicit Timber Trade between Laos and Vietnam," (UK: Emmerson Press, 2011).

46 World Bank, "Environment Monitor," viii.

47 Ian G. Baird and Mark S. Flaherty, "Mekong River Fish Conservation Zones in Southern Laos: Assessing Effectiveness Using Local Ecological Knowledge," *Environmental Management* 36 (2005): 440-441.

48 Earth Rights International, "I Want to Eat Fish, I Cannot Eat Electricity: Public Participation in Mekong Basin Development," (2009), accessed August 20, 2012, <https://www.earthrights.org/publication/i-want-eat-fish-i-cannot-eat-electricity-public-participation-mekong-basin-development>.

has withdrawn its financial support; however, four Thai banks continue to provide funding.⁴⁹ The Xayaburi dam project is the most controversial of these proposed projects.⁵⁰ However, there are problems with many of the other projects as well.⁵¹

Other challenges result from insufficient managing of waste and chemicals from plants, leading to problems for both the people situated around the plants as well as reduction in fish stocks.⁵²

Land

Approximately 5 million hectares of land in Laos is leased or conceded to domestic or foreign parties, corresponding to 21% of the land area of the country.⁵³ Of these, the largest types of concessions are mining and agricultural investments.⁵⁴

The granting of land concessions is a major area of concern in Laos. In 2007, the Prime Minister announced a moratorium on further land concessions, in order to review the policies and practices of government agencies in this area.⁵⁵ Figures estimate that 4% of Laos land has been given away in concessions, in order to attract FDI, improve

infrastructure and create employment.⁵⁶ Land concessions are not always granted with attention to comprehensive land surveys and Environmental and Social Impact Assessments.⁵⁷ These concessions may impact villagers adversely, by limiting access to farmland and therewith food security, by loss of income, jeopardizing of cultural and social values, amongst others.⁵⁸ The largest proportion of hotline calls to the National Assembly concerned problems related to livelihoods and poverty reduction, especially related to land concessions.⁵⁹ The NA Deputy Office Head Viseth Savengsuksa said that “while people do not always protest the deals, they ask for fair compensation to be issued quickly.”⁶⁰

A land titling program has been undertaken in the larger towns, and is being extended to the countryside.⁶¹ In rural areas, families possess user rights to agricultural land, which can be transferred and are heritable. Communities may also exercise traditional rights to non-agricultural land, including those ethnic minorities who practice shifting slash-and-burn agriculture.

Villagers in rural areas rely on forests for a large portion of their income, and the changing landscape creates several problems. Traditionally wild cardamom grows in mountainous regions of Laos, which provided the rural population with up to one-fifth of their income.⁶² Deforestation caused by rubber monocultures has led to forest loss and

49 Carl Middleton, “Thailand’s Commercial Banks’ Role in Financing Dams in Laos and the Case for Sustainable Banking,” *International Rivers*, December 2009.

50 Prashanth Parameswaran, “Laos Backtracks on Controversial Dam,” *The Diplomat*, July 16, 2012, accessed August 20, 2012, <http://thediplomat.com/asean-beat/2012/07/16/laos-backtracks-on-controversial-dam/>.

51 See generally Özgür Can and Sheldon Leade, “Nam Theun 2 Hydroelectric Project: Memorandum of Legal Issues In Relation to The Concession Agreement: An Analysis For Mekong Watch,” Human Rights Centre, UK: Essex University, 2005; Baird and Flaherty, “Mekong River Fish”; also see Earth Rights, “I Want to Eat Fish.”

52 Times Reporters, “Villagers cry foul over factory odours,” *Vientiane Times*, April 8, 2010.

53 Dominik Wellmann, “Discussion Paper on The Legal Framework of State Land Leases and Concessions in the Lao PDR,” *Integrated Rural Development in Poverty Regions of Laos under the Northern Upland Development Programme*, (GIZ, 2012), 3.

54 Wellmann, “Discussion Paper,” 3.

55 Bertelsmann Stiftung, “Laos Country Report,” 2.

56 Cor H. Hanssen, “Lao Land Concessions, Development for the People?” (paper presented at International Conference on Poverty Reduction and Forests: Tenure, Market and Policy Reforms, Regional Community Forestry Training Center for Asia and Pacific, Bangkok, September 3-7, 2007).

57 Miles Kenney-Lazar, “Land Concessions, Land Tenure, and Livelihood Change: Plantation Development in Attapeu Province, Southern Laos,” National University of Laos: 2011, 6.

58 Kenney-Lazar, “Land Concessions.”

59 Somxay Sengdara, “Assembly hotline calls focus on economic issues,” *Vientiane Times*, June 24, 2010, <http://laovoices.com/assembly-hotline-calls-focus-on-economic-issues/>

60 Sengdara, “Assembly hotline.”

61 World Bank, “Environment Monitor,” 17.

62 Chalathon et al., “Income Options for the Poorest of the Poor: The Case of Cardamom in Northern Laos,” *Small-scale Forestry* April (2012), doi 10.1007/s11842-012-9207-1, 18-19.

the loss of wild cardamom collection opportunities for villagers. However, it has been argued that the cultivation of cardamom has the potential to enhance rural livelihoods and promote sustainable land use in upland areas of northern Laos.⁶³

Corruption

Although Lao has a robust framework of anti-corruption law, international actors allege that this law isn't adequately implemented, and in practice, corruption is rampant.⁶⁴ The UN Office on Drugs and Crime identified three particular reasons for Laos to take measures against corruption: "(1) Misappropriation of public funds, taking of bribes, improper exercise or non-exercise of authority and neglect of official duties will deprive the Lao nation of their assets and opportunities for development; (2) Because Laos is substantially relying on assistance from international cooperation, such deprivation of assets and opportunities simultaneously occurs to the international community as well; (3) Unjust enrichment of corrupt officials and their business partners without any risk of prosecution and deprivation of their property will discourage civil society's aspiration for prosperity through legitimate business activities, or may even destabilize the Government by discrediting its legitimacy and capacity to govern."⁶⁵ Laos is currently undergoing the review procedure in the context of the United Nations Convention against Corruption (UNCAC). However, the 2012 BTI report states that as a result of international pressure, partly from its membership of ASEAN, and partly due to Laos' wish to join the WTO, the government has begun reforms in the economic and financial arena.⁶⁶

63 Chalathon et al., "The Case of Cardamom," 18.

64 United Nations Office on Drugs and Crime, <http://www.unodc.org/laopdr/>.

65 <http://www.unodc.org/laopdr/en/Overview/Rule-of-law/Anti-corruption.html>

66 World Bank, "Environment Monitor," 3.

Human Rights

The Constitution provides for equal treatment under the law for all citizens.⁶⁷ However, in reality ethnic minorities and those living in rural areas are often disadvantaged, due to lack of resources and access to public services.⁶⁸

All candidates are vetted by the Party before being allowed to participate in the elections and no elections take place at the local level.⁶⁹ There are no opposition parties, and all media organisations are controlled by the Party.⁷⁰

Civil society is weak in Laos as no interest groups are allowed to function outside the control of the ruling party.⁷¹ In 2009, the government agreed to allow the formation of Lao NGOs, which must apply to the government for registration.⁷² Estimates state that at the time there were about 100 informal organizations working in areas such as health, education and rural development, and around 80 international NGOs.⁷³ The decision to permit the formation of NGOs may encourage the creation of a stronger civil society in Laos.

Women and Children

Lao is mainly a source country for human trafficking, with Thailand being the most prominent destination country, for both sexual exploitation and labour.⁷⁴ Trafficking in persons is a problem across the Southeast Asian region, and it is difficult to regulate due to the problems presented by lack of implementing infrastructure, natural boundaries and the lack of employment opportunities in the rural regions.

67 Article 22 Constitution of the Lao People's Democratic Republic, August 13-15, 1991 (1991 Constitution)

68 Bertelsmann Stiftung, *Laos Country Report*, 8.

69 Ibid.

70 Ibid., 9.

71 World Bank, "Environment Monitor," 12.

72 Decree 115/PM on Associations, April 29, 2009.

73 Bertelsmann Stiftung, "Laos Country Report," 12.

74 United Nations Inter-Agency Project on Human Trafficking, SIREN Human Trafficking Data Sheet Lao PDR, March 2008, http://www.no-trafficking.org/reports_docs/laopdr/datasheet_laopdr_march08_ENG.pdf.

Girls receive lower levels of education than boys, and are therefore more vulnerable to trafficking.⁷⁵ Women also face greater challenges accessing justice due to traditional customary practises, lack of education and awareness and financial constraints.⁷⁶ CEDAW expressed serious concern at the disadvantaged position of women in rural and remote areas, facing poverty, illiteracy, difficulties in access to health, education and social services, and lack of participation in decision-making.⁷⁷

Corporate Social Responsibility

The International Law Forum “Corporate Social Responsibility (CSR) in Laos” brought together senior government officials, business representatives, experts and stakeholders in Vientiane on 12th March 2012 to exchange views and share ideas on the concept of CSR and its relevance to Laos.⁷⁸ Generally, Lao PDR companies do not participate in initiatives such as the Global Compact (only one Lao NGO is a participant).⁷⁹ This suggests that the concept of CSR is very new in Lao, but there is growing interest. This forum concluded that the next step for the Lao PDR is to study the possibility of establishing a National CSR Compact, which will assist in CSR work in the country and ensure that public and private sectors take into account CSR as well as environmental and social impact in development projects and investments.⁸⁰

75 Phetsiriseng, “Preliminary Assessment on Trafficking.”

76 See generally UNDP, “Access to Justice Survey.”

77 Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding observations of the Committee on the Elimination of Discrimination against Women: Lao PDR,” August 7, 2009, ¶ 21.

78 Times Reporters, “Corporate social responsibility vital for equitable development,” *Vientiane Times*, March 13, 2012, <http://laovoices.com/corporate-social-responsibility-vital-for-equitable-development/>.

79 See question 5.1 below.

80 Times Reporters, “CSR vital.”

I. How has the State reacted to the UN “Protect, Respect and Remedy” Framework (“Framework”)?

The Laos Government has not specifically reacted to the UN Framework.

II. Is the State duty to protect against human rights abuses by third parties, including businesses (“State Duty to Protect”), recognized in the country’s domestic legal system?

1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provide a basis for a State Duty to Protect ?

Lao law does not contain any specific reference to business and human rights, nor does it specifically use the language of the UN Framework. However, there is general language that can be interpreted as containing a duty to protect.

A) Constitution of Lao PDR

Lao PDR adopted a Constitution in 1991, which was amended it in 2003.⁸¹ Article 6 sets out that “the state protects the freedom and democratic rights of the people, which cannot be violated by anyone.”⁸² Unity and equality among all ethnic groups is also enshrined in the Constitution.⁸³ “All ethnic groups have the righ[t] to protect, preserve, and promote the fine customs and cultures of their own tribes and of the nation.” This article is important in the context of development projects, where the cultural practises of ethnic groups may be at risk. Freedom of religion is included in the amendment, and all acts that create a

81 Laos’ first, French-written and monarchical constitution was promulgated in 1947, as part of the French Union. The revised constitution of 1957 omitted reference to the French Union, though close ties persisted with the former colonial power. The 1957 document was abrogated on December 3, 1975, when a communist People’s Republic was proclaimed.

82 Article 6 in 1991 Constitution and maintained in the 2003 amendment.

83 1991 Constitution, Article 8.

division between religious groups are banned.⁸⁴ The “conservation of the unique culture and fine tradition of the nation” is also included in the amendment.⁸⁵

Article 19 specifically states that “all organizations and citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.”⁸⁶

Education for ethnic groups, women, children and those who live in remote areas is a state priority, and the state encourages the private sector to invest in the development of education of the nation.⁸⁷ The Constitution also includes a provision explicitly stating the need to “protect the legitimate rights and interests of the workers.”⁸⁸ The development and advancement of women, and the protection of mothers and children is another amendment included in the 2003 Constitution.⁸⁹

Article 41 grants access to remedies: “Lao citizens have the right to complaint, file petitions and propose comments to relevant state organizations in connection with issues pertaining to the rights and interests of collectives or of their individuals.”⁹⁰

B) Law on Labour 2006

Labour protections are a fundamental aspect of business and human rights. The Labour Law was enacted in 1994 by the Lao Government, and subsequently amended in 2007. The law requires employers to provide safe working conditions, payment of salary or fair compensation and to implement provision of social security for employees.⁹¹ Forced labour is unlawful.⁹² Employees are also allowed to participate as members of lawful mass organisations and social organisations.⁹³

84 2003 Constitution, Article 9.

85 Ibid., Article 23.

86 1991 Constitution, Article 19.

87 2003 Constitution, Article 22.

88 Ibid., Article 27.

89 Ibid., Article 29.

90 Ibid., Article 41.

91 Law on Labour 2006, Article 3.4.

92 Ibid., Article 3.10.

93 Ibid., Article 3.6.

Laos labour law purports to develop its workforce,⁹⁴ through requiring that employees hire local people, needing approval for employing foreign workers.⁹⁵ Additionally the law requires that people employed should be able to develop skills as a result of the work,⁹⁶ and the skill-building should be consistent with the demands of the market and the development plan of the country.⁹⁷ Employers have a direct obligation to train their labour force and build skills, using 1% of the employees’ salary or wages reserve fund to cover expenses.⁹⁸

C) Environmental Protection Law 1997

Article 4 of the Environmental Protection Law states that “[a]ll Lao people, resident aliens, stateless persons and residing foreigners, engaged in any production or service have a responsibility to protect the environment.”⁹⁹ According to this law, the duty of the state is restricted to providing relevant information, raising awareness and providing education on the importance of the environment.¹⁰⁰

Article 5 of this Law sets out the basic principles of protection¹⁰¹:

1. Environmental protection shall be the priority consideration, and environmental mitigation and restoration are considered to be less preferable, but also important activities;
2. The national socio-economic development plan shall include provisions to protect the environment and natural resources;
3. All persons and organizations residing in the Lao PDR shall have an obligation to protect the environment;
4. Whoever causes damage to the environment is responsible for the impact under the law;

94 Ibid., Article 4.

95 Ibid., Article 3.5.

96 Ibid., Article 3.11.

97 Law on Labour 2006, Article 3.12.

98 Ibid., Article 10.

99 Environmental Protection Law 1999, Article 4.

100 Ibid.

101 Ibid., Article 5.

5. Natural resources, raw materials and energy shall be used in an economical manner, which minimizes pollution and waste and allows for sustainable development.

Additionally, article 13 of the Law states that “[a]ll persons and organizations have an obligation to protect natural resources. Persons or organisations that witness any event which leads to losses of natural resources, have an obligation to report the event to the responsible agency for timely action and protection.”¹⁰²

Article 18 states that “[a]ll persons and organizations have an obligation to protect and take action against disasters... local authorities shall cooperate in order to determine methods to protect and take action against such disasters, and shall mobilize the population and other organizations to contribute initiative, labour, funds, transport vehicles and other necessary tools to protect and take action against such events in a timely manner.”

In 2005 an Environmental Protection Fund was launched with Prime Minister Decree 146 aiming at strengthening environmental protection, sustainable natural resources management, biodiversity conservation and community development.¹⁰³

D) Land Law 2003

The 2003 Land Law states that “the State protects the legal interests of the holder of land use rights... ”¹⁰⁴ The law also states that “[a]ll individuals and organisations shall have the obligation to protect the land to ensure that it is in a good condition in which there is no soil erosion, land subsidence, and soil degradation...”¹⁰⁵

¹⁰² Ibid., Article 13.

¹⁰³ UNDP, Case Study Report: Environmental Protection Fund in Lao PDR, 2012, <http://www.snap-undp.org/elibrary/default.aspx>

¹⁰⁴ Land Law 2003, Article 5.

¹⁰⁵ Ibid., Article 6.

Article 59 of the Land Law 2003 further states that State, political, mass, economic organisations, or the Lao National Front for National Construction that have the right to use land “only have the rights to protect and use such land and have no right to transfer, lease or grant concessions or to use land as a share contribution or guarantee.”

2. Has the State Duty to Protect been recognized by the State’s courts?

No information available.

III. Is the State taking steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication?

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done so?

While there are no specific bodies mandated with business and human rights issues, there are some bodies that look at the wider area of human rights. Lao PDR has inter-agency mechanisms such as the National Steering Committee on the Preparations for the Ratification and Implementation of the International Covenants on Human Rights, and the National Steering Committee on the Preparations for the UPR, the National Steering Committee on reporting under and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the National Commission for the Advancement of Women, the National Commission for Mothers and Children, the National Committee for Disabled People, the National Committee for Rural Development and Poverty Alleviation, and the National Committee Against Human Trafficking.¹⁰⁶

¹⁰⁶ United Nations, “Lao UPR Review,” ¶ 19.

Environmental agencies may also take human rights into consideration. The Environmental Protection Law provides for the following bodies for Environment Management and Monitoring:¹⁰⁷

1. The Science, Technology and Environment Agency
2. Environment Management and Monitoring units at the ministerial level
3. Environment Management and Monitoring units at the provincial, municipal or special zone level
4. Environment Management and Monitoring units at the district level
5. The village administrations

Article 36. Rights and duties of the Science, Technology and Environment Agency

The Science, Technology and Environment Agency (STEA), being the environmental

management and monitoring organization at the central level, has the following rights and duties:

1. To act as a secretary to the Government in making and translating environment strategies and policies into plans, detailed projects and relevant regulations for the management and monitoring of the environment;
2. To implement management and monitoring activities, and to report the situation of the environment of the country regularly to the Government;
3. To act as the coordinating centre between the concerned sectors and local administrations for managing and monitoring any environment activities;
4. To conduct research and identify methods to protect, mitigate, and restore the environment by using appropriate advanced science and technology;

5. To monitor and control the implementation of strategic plans, programs, projects, regulations, and laws relating to the environment;
6. To issue or revoke licenses of any organization engaging in environment related services;
7. To instruct development projects and activities to prepare environment impact assessment reports according to the regulations on environmental impact assessment;
8. To receive and response petitions from the population and other parties regarding environmental issues;
9. To co-operate with authorized concerned sectors in giving orders to adjust, suspend, remove or close down any activities that cause adverse impacts to human health, life, animals, plants and the environment;
10. To train and upgrade the skills of the environment technical staff, and to educate and raise environmental awareness for all strata of the population in the country in close cooperation with the sectoral agencies and local administrations;
11. To disseminate, collect and analyse data concerning the environment and natural resources for use as inputs in the national socio-economic planning process;
12. To promote external relations and cooperation related to environmental issues;
13. To perform other rights and duties assigned by the Government, or as stipulated in the regulations and laws.

Article 37. Rights and Duties of Environment Management and Monitoring Units at the Ministerial Level.

If a ministry is required to establish its environment and monitoring unit, it has to

cooperate with the Science, Technology and Environment Agency.

¹⁰⁷ Environmental Protection Law, Article 35.

The environment management unit at the ministerial level has the following rights and duties for conducting its sectoral activities:

1. To make and implement plans and regulations about environmental protection concerning its sector based on the general plans and regulation issued by the Science, Technology and Environment Agency;
2. To research, analyses and identify methods to protect, mitigate, and restore environmental problems concerning its sector by using advanced science and technology;
3. To instruct the development projects and activities in its sector to prepare environment impact assessment reports;
4. To monitor the implementation of the environment protection regulations and law;
5. To recommend the authorized authority to issue orders to adjust, suspend, remove or close down any activities in its sector that have caused negative impacts to the human health, life, animals, plants and environment;
6. To report, participate in discussions and exchange experiences with the Science, Technology and Environment Agency, the local authorities, and other concerned parties for mitigating environmental impacts;
7. To train and upgrade the skills of its environmental technical staff and to educate as well as to raise the environmental awareness of all parties in its sector;
8. To disseminate, summarize, and analyse environmental and natural resource information;
9. To promote external relations and cooperation with international organizations on environmental protection issues;
10. To perform other rights and duties for protecting the environment, as assigned by the ministry or as stipulated in regulations and laws.

Article 38. Rights and duties of Environment Management and Monitoring

Units on Provincial, Municipal, and Special Zone Level.

Provinces, municipalities and special zones shall establish their own environmental

management and monitoring units in cooperation with the Science, Technology and

Environment Agency.

The provincial, municipal and special zone environment management and monitoring units have the following rights and duties to conduct activities in their areas:

1. To make and implement plans and regulations about environmental protection at the provincial, municipal or special zone level, in accordance with the national environmental protection plan;
2. To research, analyse, and identify methods to protect, mitigate and restore the environment in their respective area by using advanced science and technologies;
3. To report, participate in and exchange experiences on environmental activities with the Science, Technology and Environment Agency, local authorities and the sectoral agencies for mitigating environment impacts;
4. To monitor the implementation of laws, decrees, regulations, and rules on environmental protection;
5. To receive and consider the petitions of the population and other parties on environmental problems;
6. To recommend the authorized authorities to issue orders to adjust, suspend, remove and close down any activities in their areas that have caused negative impact to health and life of human, animals, plants, and the environment;

7. To collect, summarize, analyse, and disseminate environmental and natural resource information;
8. To train and upgrade the skills of the environment technical staff, and to educate as well as to raise the public awareness on environment protection issues;
9. To perform other rights and duties assigned by the Governor, Mayor, and the special zone chief, or as stipulated in regulations and law.

Article 39. Rights and duties of Environment Management and Monitoring

Units on District Level.

Districts shall establish their own environmental management and monitoring units in cooperation with the environmental management and monitoring units at the provincial, municipal and special zone level, in which they are located.

The district environment management and monitoring units have the following rights and duties to conduct activities in their district areas:

1. To make and implement plans and regulations about environmental protection at the district level, based on the provincial, municipal and special zone environmental protection plan;
2. To research, analyse and identify methods to protect, mitigate and restore the environment in their respective district by using advanced science and technologies;
3. To monitor the implementation of laws, decrees, regulations, and rules on environmental protection;
4. To report, participate in and exchange experiences on environmental activities with the provincial, municipal or special zone's environmental management and monitoring units, local authorities and district sectors for mitigating environment impacts;

5. To receive and consider complaints of the people and other parties concerning the environment;
6. To recommend authorized authority to issue orders to adjust, suspend, remove or close down any activities that have caused adverse impacts to the environment related to their area;
7. To collect, summarize, analyse, and disseminate environmental and natural resource information;
8. To train and upgrade the skills of its environment technical staff, and to educate as well as to raise the people's and other parties in their district awareness of environment protection issues;
9. To perform other rights and duties assigned by the district chiefs, and the environmental management and monitoring units of the province, municipality and special zone, or as stipulated in regulations and law.

Article 40. Rights and Duties of the Village Administration on Environmental

Management and Monitoring

The village administrations have the following rights and responsibilities with regard to environmental management and monitoring:

1. To make and implement plans and regulations on environmental protection based on plans, order, rules, and instructions of the district;
2. To disseminate, educate ,and raise public awareness and to direct the village people to participate in activities related to protection, mitigation and restoration of the village environment;
3. To monitor the implementation of plans, regulations, rules and instructions on environmental protection;
4. To report, participate in and exchange experiences on environmental activities with the district environmental management and

monitoring units, district authorities and other concerned parties for mitigating environment impacts;

5. To perform other rights and duties assigned by the district or the district environmental management and monitoring units or as stipulated in regulations and laws.

The National Environment Committee (NEC) was established in 2002 under PM Decree No.09/PM and revised by the Decree pertaining to the organization and functions of the National Environment Committee, No. 162/PM, dated 21 June 2009. Its main responsibilities are to coordinate and provide advice to the Government and its agencies regarding environmental management, strategies, regulations and plans. The NEC consists of management level officials from 14 key agencies, and is chaired by the Vice Prime Minister.¹⁰⁸

It is a non-standing committee at the central level, with the Department of Environment within the Environment and Water Resource Agency as its secretary (currently upgraded to Ministry of Natural Resources and Environment, MONRE). It has an important role in guiding legal framework in terms of natural resources and environment management and protection.

The Decree on Environmental Impact Assessments provides for the Water Resources and Environment Administration (WREA) to undertake the monitoring of both Category 1 and 2 projects, albeit with different responsibilities for each category.¹⁰⁹ The WREA has a duty to inspect the implementation of prevention and mitigation measures of social and environmental impacts.¹¹⁰ It also has a duty to provide technical advice, build capacity and provide training for environmental and social monitoring units.¹¹¹

108 World Bank, Lao PDR Environment Monitor, 2006, 43.

109 Article 23 Decree on Environmental Impact Assessment (EIA Decree) February 16, 2010 (Unofficial translation).

110 EIA Decree, Article 24.

111 Ibid.

The Land Law 2003 provides for a National Land Management Authority¹¹² to manage the land, with rights and duties including:

1. Study and develop policies, laws and regulations.
2. Undertaking surveys of the land, land classification and land use planning.
3. Coordinate with concerned sectors and local administration to plan, protect and develop land, define land areas for certain uses and monitor use.
4. Settle land disputes.
5. Manage State land and protect the environment.¹¹³

The Ministry of Agriculture and Forestry is tasked with managing forest land,¹¹⁴ which is land that is covered by forests or determined by the State to be forest land,¹¹⁵ as well as water area land.¹¹⁶ The Ministry of Industry and Handicrafts is tasked with managing industrial land.¹¹⁷ Communication land, part of roads, airports, railways, etc. is managed by the Ministry of Communications,¹¹⁸ while cultural land is managed by the Ministry of Information and Culture.¹¹⁹ The Ministry of National Defence and Ministry of Security manage land for national defence and security.¹²⁰

The Counter-Corruption Organisation is a State organization that has the mandate to “prevent and counter corruption” by assigning to the State Inspection Authority the task of implementation.¹²¹ This organization has powers of investigation. However, at the time of the UNDP translation of this

112 Land Law 2003, Article 8.

113 This is not an exhaustive list, please see Article 10 Land Law 2003 for a full list of rights and duties.

114 Land Law 2003, Article 20.

115 Ibid., Article 19.

116 Land Law 2003, Article 24.

117 Ibid., Article 28.

118 Ibid., Article 31.

119 Ibid., Article 34.

120 Ibid., Article 36.

121 Anti-Corruption Law 2005, Article 37.

law, in 2006, there existed no such organization.¹²²

2. Are there laws and/or regulations that hold business enterprises and individuals accountable for business-related human rights abuses, and are they being enforced?

2.1. To what extent do business enterprises and company organs face liability for breaches of laws by business enterprises?

2.1.1. Can business enterprises be held legally accountable as legal persons?

There are four types of enterprises under the Law on Enterprises 2005:¹²³

1. Private enterprise.
2. State enterprise.
3. Joint enterprise.
4. Collective enterprise.

Within private enterprises, sole-trader enterprises bear unlimited liability. Partnership enterprises and companies, the other types of private enterprise, have status as a legal entity.¹²⁴ As a legal entity, a partnership enterprise possesses “[t]he legal capacity to exercise rights and obligations, and to be a plaintiff or defendant [in legal proceedings] in the same manner as natural persons.”¹²⁵

2.1.2. Do organs of a business enterprise (e.g. owners - shareholders, partners, proprietors) face liability when their businesses breach laws?

Article 43 of the Law on Enterprises states that managers of partnerships, among other rights and duties, must act in “the best interests of

the general partnership enterprise.”¹²⁶ Partners bear unlimited liability for debts of the general partnership enterprise.¹²⁷ General partners in a limited partnership enterprise have unlimited liability for the debts of the limited partnership enterprise; while partners with limited liability in a limited partnership enterprise will be liable to an amount not exceeding the unpaid portion of their subscribed shares.¹²⁸

2.2. Do laws and/or regulations: (a) require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services, and (b) require individuals to ensure their business enterprises do so?

a) Labour

Working Period

Workers should not work beyond eight hours a day or forty-eight hours a week.¹²⁹ For certain hazardous work, such as exposure to radiation or harmful chemicals, the working hours shouldn't exceed thirty-six hours a week.¹³⁰

The following activities are included within time period of work:¹³¹

- Time spent on technical preparation at the start and end of work.
- Hourly breaks not exceeding 15 minutes, in certain shift work or differentiated tasks.
- A 45-minute meal break per shift.

122 See notes to Article 37 Anti-Corruption Law 2005, UNDP Draft Translation 2006

123 Law on Enterprises 2005, Article 9.

124 Ibid., Article 34 for partnership enterprises; Article 79 for companies.

125 Ibid., Article 34.

126 Law on Enterprises 2005, Article 43.

127 Ibid., Article 48.

128 Ibid., Article 69.

129 Law on Labour 2006, Article 16.

130 Ibid.

131 Ibid., Article 17.

The employer must also provide five to ten minutes rest every two hours of work.¹³² Employees can be asked to work overtime, with the consent of the union and the employees.¹³³ Overtime should not exceed forty-five hours a month, or three hours a day. It is also not allowed to work overtime every day, with the exception of a natural disaster or other dangerous accident.¹³⁴ Workers are also entitled to one day off a week.¹³⁵ Workers employed on an annual basis, are entitled to fifteen days of annual leave.¹³⁶

Trade Unions

The law states that the role of a trade union is to act as representatives of the workers, as well as to promote solidarity, educate, train and encourage workers to have labour discipline, and to successfully perform work in accordance with production plans; to protect and promote legitimate interests of workers; to encourage the employer and employees to implement the Labour Law and employment contract correctly and to participate in the settlement of labour disputes.¹³⁷ A trade union must be established in all labour units, and where there is no trade union, workers' representatives must be established.¹³⁸ Only official trade unions under party control are allowed in Laos.¹³⁹

Employment of Women

Women who are pregnant or caring for a new-born child cannot perform the following types of work:¹⁴⁰

- Lifting or carrying heavy loads.
- Work which entails standing continuously for long periods.
- Hazardous work specified above in Article 16.

132 Ibid.

133 Ibid., Article 18.

134 Ibid.

135 Ibid., Article 19.

136 Ibid., Article 21.

137 Law on Labour 2006, Article 5.

138 Ibid.

139 Bertelsmann Stiftung, "Laos Country Report," 12.

140 Law on Labour 2006, Article 38.

Pregnant women or women with children under twelve years cannot be employed to work overtime or during holidays.¹⁴¹

Women employees are entitled to at least ninety days of maternity leave, however at least forty-two days of such leave must be taken after giving birth.¹⁴² During the one-year period after giving birth, the worker has the right to one hour per day of rest in order to feed or take care of her child if she brings her child to a nursery and to take her child to immunisations.¹⁴³

A woman employee is entitled to maternity support; an allowance of at least sixty per cent of the minimum wages to be paid by the employer or by the social security fund, if contributions to the social security fund have been fully paid.¹⁴⁴ If she gives birth to two or more children at the same time, [she] will receive an additional allowance of fifty per cent of the maternity allowance. If she suffers from a certified miscarriage, she is still entitled to this allowance.¹⁴⁵

Child Labour

Children who are at least fourteen years of age and less than eighteen years of age, can be employed if they do not work for more than eight hours a day and are not employed in sectors involving heavy work or work that is dangerous to their health, such as:¹⁴⁶

- Mining,
- Activities that use chemicals, explosives or toxic substances,
- Work involving the handling of human corpses,
- Work in environment with excessive noise,
- Work in places serving alcohol or with gambling,

141 Ibid.

142 Ibid., Article 39.

143 Ibid.

144 Ibid., Article 40.

145 Ibid.

146 Ibid., Article 41.

- Work at night from 10 p.m. to 5 a.m. of the next day,
- Work specified in Article 16.

Disabled Workers

Approximately 70,000 people in Lao have a disability, corresponding to 13% of the population, contributed by the unexploded ordnance problem.¹⁴⁷ The definition of ‘disabled’ is unclear, and therefore ambiguous about whom the law protects.¹⁴⁸

Although there is no separate legislation covering disabled workers, the Labour Law specifies that “labour units shall give priority to disabled or handicapped persons to work in their units in accordance with their abilities and skills, and shall give them suitable positions with regular salary or wages as other general workers.”¹⁴⁹

PM’s Decree No. 18 in 1995 appointed the National Commission for Disabled Persons to protect the legal rights of disabled persons, develop policies, raise awareness about issues pertaining to disabled persons, and examine the laws relating to disabled persons, among other duties.¹⁵⁰

Protection of Workers

Employers need to be responsible for ensuring that the workplace, machinery, equipment, and production process, are safe and not dangerous to the health of workers.¹⁵¹

Necessary measures to ensure labour safety include:¹⁵²

- Installing appropriate lights or sufficient natural light, limitation of excessive noise,

[and] ventilation for air, dust and odours which are dangerous to health,

- A supply of clean drinking-water, showers, toilets, a cafeteria, and changing room for workers,
- A storage room where toxic substances can be kept safely without risk of leakage,
- The provision, free of charge, in a sector where necessary, of personal safety equipment and clothing required by workers,
- The installation of safety equipment or fencing around any dangerous machinery or other dangerous places, and other measures such as devices that warn against or prevent electric shocks, [and] fire and others, as necessary.

Employers must arrange for workers to undergo a medical examination at least once a year, particularly those engaged in heavy work or dangerous work.¹⁵³ If a worker has an occupational disease derived from the workplace, the employer must be responsible for payment of his medical treatment in accordance with regulations.¹⁵⁴ In the case of a contagious occupational disease, [the employer] must give the worker leave to undertake treatment and afterwards reinstate him. All labour units must be equipped with a first-aid kit.¹⁵⁵ Units employing fifty or more workers should have a permanent medical staff to treat the health of the workers.¹⁵⁶

Employers must provide appropriate help to a worker suffering from a labour accident or occupational disease, as well as pay for the cost of treatment.¹⁵⁷ Alternately if an employee is a member, the social security organisation will bear the costs. In the event that the worker suffers from a serious labour accident or occupational disease or dies, the employer must report to the nearest labour

147 UNDP, “Access to Justice Survey,” 89.

148 Ibid.

149 Law on Labour 2006, Article 26

150 Article 2 of PM Decree No. 18, the Decree of Appointing the National Commission of Disabled Persons. This is not an exhaustive list, please see Article 2 for full list.

151 Law on Labour 2006, Article 42.

152 Ibid.

153 Ibid., Article 43.

154 Ibid.

155 Law on Labour 2006, Article 43.

156 Ibid.

157 Ibid., Article 55.

administration agency within forty-eight hours.¹⁵⁸ If the employee dies, the employer will be responsible for funeral expenses as appropriate but not less than six months' wages.¹⁵⁹

b) Environment

Environmental Protection Law

“The Environmental Protection Law specifies necessary principles, rules and measures for managing, monitoring, restoring and protecting the environment in order to protect public, natural resources and biodiversity, and to ensure the sustainable socioeconomic development of the nation.”¹⁶⁰

According to Article 8, environmental impact assessments are a process of estimating impacts on the environment by development projects and activities.¹⁶¹ It also identifies methods and standards for mitigating and reducing such anticipated impacts on the social and natural environment. Development projects and activities that have or will have the potential to affect the environment must submit an EIA report for an environment compliance certificate before starting the project.¹⁶² Development projects operating before the enactment of this Law, that have caused losses to the environment, must propose measures to mitigate such losses.¹⁶³ EIAs include the participation of the local administration, mass organizations, and the population likely to be affected by the development project.¹⁶⁴

Businesses have the obligation to use advanced technologies that reduce the harm to the environment, and comply with industry-specific technical standards.¹⁶⁵

158 Ibid.

159 Ibid.

160 Environmental Protection Law 1999, Article 1.

161 Ibid., Article 8.

162 Ibid., Article 8.3.

163 Ibid., Article 8.4.

164 Ibid., Article 8.5.

165 Ibid., Article 9.

Regarding restoration of the environment, the Law states that “[a]ny person or organization engaged in commercial production, service or other undertaking that causes a disaster is obligated to mitigate the damage and to restore the affected area under the supervision of the local authority or the concerned sectoral agency.”¹⁶⁶ The law states that persons and organizations have an obligation to actively participate in environmental restoration,¹⁶⁷ but it does not specify under what conditions these obligations are applied.

Breaches of these obligations carry the following sanctions under the Environmental Protection Law:

Article 44. Sanctions

Persons or organizations which have violated this law and related legislation on

environmental protection shall be subject to the following sanctions: warning, fines,

civil sanction, and criminal charges, according to the severity of their case.

Article 45. Warning

Persons or organizations that commit minor violations of this law and related legislation on environmental protection shall be warned and re-educated.

Article 46: Fines

Persons or organizations shall be fined if they:

1. Were warned and re-educated, but did not change their behaviour;
2. Littered or discharged waste causing pollution and affecting public order and beauty of the city;
3. Caused deterioration to water, air, and/or soil quality below the prescribed levels;

166 Ibid., Article 28.

167 Ibid., Article 27.

4. Used or discharged excessive amounts of vibrations, noise, colours, glare, odour, toxic chemicals or radioactive substances, thus violating established standards or other legislation and causing hazards to human health and life, to animals, plants and the environment;
5. Did not comply with the mitigation measures outlined in their respective Environmental Impact Assessment reports;
6. Denied or refused to cooperate with the concerned environmental inspection officers.

Article 47: Indemnity measures

Persons or organizations that have violated this law and related legislation on environmental protection, and so doing cause loss of state, communal or private property will be held financially responsible for such losses.

Article 48: Application of criminal charges

Persons found guilty of criminal violations of this law or other related environmental legislation by: forging environmental compliance certificates or other environmental documentation, or violating environmental standards or other environmental guidelines leading to loss of health and life, will be punished according to the criminal act.

Article 49: Additional punishment

Apart from regular punishment for applicable violations, mentioned under article 45, 46, 47, and 48, guilty persons or organizations may be charged with additional measures such as: suspension of activities, withdrawal of license, closing of enterprise and confiscation of equipment and vehicles that were used in the violation.

Decree on Environmental Impact Assessment

The Decree on Environmental Impact Assessment (EIA) issues further guidance on implementing Article 8 of the Environmental Protection Law on EIAs.¹⁶⁸ The additional objectives of the decree are (emphasis added):

1. To define principles and rules, and adopt measures on establishment, functions, management and monitoring of environmental impact assessment;
2. To ensure that all public and private investment projects, both domestic and foreign, operating in Lao PDR (hereafter called ‘investment projects’) which create or may **create adverse environmental and social impacts**, are designed with the correct and appropriate environmental and social impact prevention and mitigation measures or environmental management and monitoring plans (EMMP) and social management and monitoring plans (SMMP);
3. To effectively **prevent, minimise and resolve adverse environmental and social impacts** derived from investment projects;
4. To contribute to and make **national socio-economic development sustainable**.

The Decree is applicable to all investment projects, which are divided into two categories:

- 1) small-scale projects with minimum environmental and social impacts, which require an Initial Environmental Examination (IEE),¹⁶⁹ and 2) larger-scale projects with significant impacts, which require an Environmental Impact Assessment

¹⁶⁸ EIA Decree, Article 1.

¹⁶⁹ Article 3 EIA Decree defines Initial environmental examination (IEE) as “studying, surveying, researching and analysing data to estimate initial environmental and social impacts, including impacts on health which may arise from investment projects...as well as identify measures to prevent and mitigate possible environmental and social impacts.”

(EIA).¹⁷⁰

The Decree states that project developers are liable for the accuracy of the information contained in the reports, as well as the expenses in undertaking the IEE or EIA as required.¹⁷¹

Article 7 states that stakeholders and those affected by the project have the right to receive information on the development plan, IEE or EIA, the benefits they will receive if any, and the environmental and social impacts from the project.¹⁷² Additionally, they also have the duty to provide information on the local environment and society in the location and vicinity of the project, to assist the preparation of the IEE or EIA.¹⁷³ Stakeholders also have the right to participate in consultations at all levels, and to participate in discussions on compensation, resettlement and restoration of the environment.¹⁷⁴

The Decree gives detailed instruction on the process to be undertaken for EIAs,¹⁷⁵ screening of investment projects¹⁷⁶ and the participation process¹⁷⁷ for stakeholders. It further describes in detail the procedures and duties of the Water Resources and Environment Administration (WREA) for undergoing an IEE,¹⁷⁸ an EIA,¹⁷⁹ and an Environment Compliance Certificate,¹⁸⁰ which is issued by the WREA to approve the report on IEE

170 Article 3 EIA Decree defines Environmental impact assessment (EIA) as “studying, surveying, researching-analysing and estimating of possible positive and negative impacts on the environment and society, including short and long term impacts on health created by the investment projects... as well as offering appropriate alternatives, environmental management and monitoring plan (EMMP), and social management and monitoring plan (SMMP) to prevent and mitigate possible impacts which are likely to happen during construction and operation of the investment projects.”

171 EIA Decree, Article 4.5.

172 Ibid., Article 7.

173 Ibid.

174 Ibid.

175 Ibid., Article 5.

176 Ibid., Article 6.

177 Ibid., Article 8.

178 EIA Decree, Chapter 3.

179 Ibid., Chapter 4.

180 Ibid., Chapter 5.

or EIA.¹⁸¹

Mineral Law

The Mineral Law 2008 replaced the Mining Law 1997. The Law states that permission must be sought from the Ministry of Energy and Mines for undertaking i) the gathering of basic geological data; (ii) the analysis of mineral samples in the Lao PDR or overseas; (iii) the granting of licenses for prospecting, exploration and mining activities; and (iv) the establishment of mineral processing plants.¹⁸²

In order to acquire a mining license, the investor must conduct a feasibility study. This is also needed to negotiate a mining concession agreement.

The maximum initial term for a prospecting license is 2 years, with a possible renewal of 1 year; for an exploration license, 3 years, with a possible renewal of 2 years; and for a mining license 20 years, which may be renewed for 5 years.

Foreign investors wanting to enter this sector must negotiate an agreement with the Government, yet the terms of such an agreement are not specified within the Mineral Law.¹⁸³ The Government may additionally exercise its right to participate as a shareholder in mining companies; to do so it must notify the company within 120 days of receiving the feasibility study.¹⁸⁴

181 Ibid., Article 17.

182 This was summarized from the following document, as an English translation of the original law was not found: DFDL Mekong, “Legal Update: Laos Monthly Law Update,” February 2010, accessed January 29, 2013, <http://www.google.com.sg/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&sqi=2&ved=0CDUQFjAB&url=http%3A%2F%2Fwww.dfdl.com%2Fresources%2Flibrary%2Flegal-update-archives%2Fcategory%2F17-law-updates-laos%3Fdownload%3D128%253A1ao-law-update-feb-2010&ei=kIwLUf2SGIuMrg-e4zICQCw&usq=AFAQjCNEeXuEPRH-QCsYAiGzdEWjE-qio8Q&sig2=EGoAIME8Ik2Vo6qdJ-I8aQ&bvm=bv.41867550,d.bmk>.

183 DFDL Mekong, “Legal Update.”

184 Ibid.

Holders of an exploration license do not have an automatic right to exploit if a viable deposit is discovered.¹⁸⁵ Existing mining licenses under the 1997 Mining Law will continue in accordance with their agreements. Entities wanting their current agreements to come under the Mineral Law, would have to inform the Ministry of Energy and Mines within 120 days after the Mineral Law's entering into force. In fact, the law has been in force since 18 March 2009 but it was not published immediately and therefore not available to the public.¹⁸⁶

The Minerals Law makes it a requirement that investors contribute to community development funds, with the intention that these funds be used to compensate the community and provides local benefits.¹⁸⁷

c) Land

Land is the most abundant resource for Lao PDR and therefore an important “engine for economic growth.”¹⁸⁸ The country's key challenges are rooted both in deficient rules as well as in incorrect implementation of the policies and laws.¹⁸⁹

Land law in Laos is governed by the 1997 Land Law which was amended in 2003, and further instructions for implementation have been provided by several decrees. Of particular relevance is also the Law on the Promotion of Foreign Investment of 2001 which imposes a responsibility to prevent investment which causes a negative impact on the

environment on the respective ministries.¹⁹⁰

Land registration and use

Land registration certifies the land use rights of an individual or organisation.¹⁹¹ There are two forms of registration:¹⁹² (i) systematic land registration which is undertaken without request in a particular area, and (ii) land registration based on request, which is undertaken at the request of an individual or organisation. A land title is “the only document which is considered as the main evidence for permanent land use rights.”¹⁹³

The holder of land use rights has the following rights under Article 53:

- Right to protect land
- Right to use land
- Right of usufruct
- Right to transfer the land use right
- Right relating to inheritance of the land use right

These rights are further defined in Articles 54 – 58 of the Land Law 2003.

Persons who do have the right to use land have some obligations, including:¹⁹⁴

- to not cause damage to land quality and to not cause adverse impact to the natural or social environment;
- to not violate the rights and interest of other persons.

Foreign individuals and organisations have certain obligations for land use, including:¹⁹⁵

- To not cause damage to land quality and to not cause adverse impact to the natural or social environment.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ “Lao PDR: Government partners with the mining sector to support local communities,” World Bank, accessed January 29, 2013, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/0,,contentMDK:23007191~menuPK:208943~pagePK:2865106~piPK:2865128~theSitePK:226301,00.html>

¹⁸⁸ Ministry of Planning and Investment, Lao PDR World Bank Group, Lao PDR Investment and Access to Land and Natural Resources: Challenges in Promoting Sustainable Development - A Think Piece (A basis for dialogue), a jointly prepared report, November 2011, 1.

¹⁸⁹ Ibid., 7.

¹⁹⁰ Ibid., 15.

¹⁹¹ Land Law 2003, Article 43.

¹⁹² Ibid., Article 44.

¹⁹³ Ibid., Article 49.

¹⁹⁴ Ibid., Article 60. This is not an exhaustive list.

¹⁹⁵ Land Law 2003, Article 67.

- To not violate the rights and interest of other persons.

Communal Land

Community land registration and titling (CLRT) projects are being undertaken by the Land Issues Working Group (LIWG) in rural areas of Laos.¹⁹⁶ According to the LIWG 2012 report, the primary obstacle to widespread registration is that the procedures are not fully developed.¹⁹⁷ International donors have reviewed the procedures and created guidelines for CLRT programs.

Article 3, Decree 88/PM on the Implementation of the Land Law, 2008 provides a definition of state land and collective or communal land. Ministerial Direction No. 564/PM/NLMA, 2007 Paragraph 4.11 provides a definition of individual or private land. Ministerial Approval/Decision No. 0054/MAF 1998, relating to customary rights and the use of forest resources, provides that customary rights are respected in all dealings between users and third parties,¹⁹⁸ custom prevails in disputes, resolved in the village system¹⁹⁹ and compensation will be provided where the means of livelihood is affected.²⁰⁰

The objectives of communal land titling include ensuring equitable access to resources, poverty reduction, ensuring sustainable use of natural resources, and effectiveness and acceptance of formal land registration by reducing the gap between customary and statutory systems.²⁰¹ However, there are some challenges with this process. Customary mechanisms for land allocation are not in line with government goals of gender equity.²⁰² Also, demarcation of boundaries of communally held

196 Department of Lands, National Land Management Authority Land Issues Working Group (LIWG), "Draft Report On Policy Overview on Community Land Registration and Titling (CLRT)," February, 2012, 2.

197 LIWG, "Draft Report On CLRT," 2.

198 Ministerial Approval/Decision No. 0054/MAF, Article 7.

199 Ibid., Article 8.

200 Ibid., Article 9.

201 LIWG, "Draft Report On CLRT," 17.

202 Ibid.

lands may create inter-community conflicts, particularly when members of the communities have different access to resources as well as bargaining power.²⁰³

Collective land is defined by Instruction 564/NLMA, 2007 as "land that the State grants to a group or a collective. The group or collective has the right to protect and to use the land however, the group does not have the right to sell, transfer, lease, or use the land as collateral. The land must not be owned by an individual and the group or collective must consider the land communal land that each member of the group or collective may use. The land must be zoned as a type of land that is approved as communal land."

Collective land can be registered by the village at no cost, cannot be sold, the state cannot grant land use rights to the land, which protects the villagers from illegal evictions, and it encourages security and tenure of the village.²⁰⁴ However, the state may requisition the land without compensation, and the collective may be dominated by some members with power.²⁰⁵ Agricultural land and village use forests can be deemed collective land, however the legislation is not clear on what is and is not eligible for collective land status, there seems to be some ambiguity about it in the literature.²⁰⁶

Concessions

State land is zoned and classified based on the geographical landscape and socio-economic situation in each zone by Article 50 of the Law on Investment. Incentives regarding taxes and custom duties are granted depending on the area and level of the investment.²⁰⁷

The Land Law states that land lease or concessions from the State to "aliens...or their organisations... [shall not] exceed thirty years, but may be extended

203 Ibid.

204 LIWG, "Draft Report On CLRT," 19.

205 Ibid.

206 Ibid., 19-21.

207 Wellmann, "Discussion Paper," 6.

on a case by case basis in accordance with the approval of the government.²⁰⁸ Lease of developed land by Lao citizens to foreigners cannot exceed twenty years, unless with the approval of the local administration.²⁰⁹ Article 65 of the Land Law states that state land lease or concessions can have a maximum duration of 50 years, but may be extended by the government on a case by case basis.²¹⁰ This contradicts Decree 135/PM giving 60 to 70 years for concessions.²¹¹ The process for granting a land concession should include, by statute, a land survey, a land map and a land use plan.²¹²

Moratorium 2007

As a response to escalating social, environmental and economic concerns expressed on land concessions, in May 2007, the Prime Minister announced an indefinite moratorium (Announcement No. 743) of land areas over 100 ha for industrial trees, perennial plants and mining purposes. The reason for the moratorium was twofold, the Government saw a need to improve its concession strategy with a view to concerns about the lack of financial returns from concessions as well as social and environmental problems related to concessions. Despite the moratorium, there was still considerable activity with some large projects being divided into smaller parts in order to circumvent the moratorium. A brief lift of the moratorium in 2009 was quickly withdrawn.²¹³

d) Economic Law

Investment Promotion Law

The Law on Investment Promotion of 2009 stipulates principles and regulations regarding

208 Land Law 2003, Article 65.

209 Ibid.

210 Ibid.

211 Wellmann, "Discussion Paper," 17.

212 Ibid., 7.

213 Ministry of Planning and Investment, Lao PDR World Bank Group, Lao PDR Investment and Access to Land and Natural Resources: Challenges in Promoting Sustainable Development - A Think Piece (A basis for dialogue), a jointly prepared report, November 2011, 16.

the promotion and management of domestic and foreign investments. Article 5 of the Law provides certain principles for investments to comply with:

1. To comply with the policy guideline, strategy, socio-economic development plan, development plan of the sector and region, the economic and social expansion in each period, the increase in the living condition of the peoples; and to comply with the laws and regulations;
2. To firmly link with the strengthening of the management of the State in a centralized and uniform manner throughout the country;
3. To ensure that the investment has received the services which are convenient, speedy, transparent, fair and equal before the law through the application of the investment's one-door-services;
4. To formulate the promotion policy in various fields which can attract and mobilize the investments;
5. To recognize and ensure the protection of lawful ownership, legitimate rights and interests of the investors from the State;
6. To ensure the protection and development of environment, peace and security in the society and in the investment area.

Article 8 of the Law divides investment in Laos into three categories: general business, concession business and activities for development of Special Economic Zones and Specific Economic Zones.

The Law further states that "the applicant for investment in concession activities shall be subjected to the selection made on case by case basis by using different methods, such as: comparison, bidding or evaluation which are performed by the concerned Planning and Investment sector in coordination with the concerned sectors and the local administrative organization in consistence with the laws and regulations. In the selection of investor, the transparency, openness and accountability shall be

ensured.”²¹⁴

Article 69, which states the obligations of investors, includes Clause 3:

“To introduce the **social insurance and social security system for the workers** in their enterprises in compliance with the relevant law; to promote the employment of Lao labour; give the emphasis on **labour skill development**, upgrading of specialized skill and transfer of technology to Lao workers.”

In addition, Clause 5 provides:

“To coordinate with the local administrative organization with regard to the business activities; pay the **compensation for the damages** which are caused by their business; make the contribution to the **eradication of poverty** of the peoples and to the **local development** in the area where their projects are located.”

Article 70 further states that investors have the obligation to protect the environment:²¹⁵

“The investors have the obligations to protect and develop the environment, ensure that the business operations have no significant negative impacts to the public, the security and social order or to the health of the labourers. In case of the occurrence of the environmental problems, the investors have the obligation to take necessary measures to solve such situation in a timely manner in accordance with the laws and regulations.”

Article 76, setting out the terms for termination of the investment, includes the following as Clause 1: “The organization issuing the license will be charged with issuing the notification of warning to the investor in case it is found that the business operations are **not in compliance with the concession agreement**, laws and regulations and have **harmful impact to the environment** in order to allow the investor to find the solutions and to make the improvement within a period of ninety days, commencing from

214 Law on Investment Promotion 2009, Article 22.

215 Ibid., Article 70.

the date of the notification, and a memorandum shall be made with the investor.”

Foreign Investment Law

The Law on the Promotion of Foreign Investment, 2004, states that foreign investors can invest in all sectors and industries except for those “activities that are detrimental to national security or cause a negative impact on the environment in the present or long term, or are detrimental to health...”²¹⁶

Foreign investors can invest in Lao through:²¹⁷

1. Business cooperation by contract,
2. Joint ventures between foreign and domestic investors, and
3. 100% foreign owned enterprises.

These forms are further defined in the Law.

Foreign investors have several rights and benefits which are set out in Article 12 of the Law, including:

1. The right to receive support from the government in establishing and operating their production.
2. To receive leases and concessions on land, and various rights arising from that.
3. The use of foreign labour, restricted to 10% of the labour force.

The obligations of foreign investors under Article 13 of the Law include:

1. The obligation to pay the necessary taxes, duties and other fees.
2. To give priority to recruiting Lao workers and to train and upgrade their skills.
3. To address matters of social security, health and safety of their employees.

216 Law on the Promotion of Foreign Investment 2004 (Foreign Investment Law), Article 3.

217 Ibid., Article 5.

4. To protect the environment and ensure that their activities do not severely impact the public, national security or public order.

The Law has determined 3 promoted zones for foreign investment based on geographical location and socio-economic conditions.²¹⁸ Each zone has different taxes and duties incentives.²¹⁹ The Committee for Promotion and Management of Investment (CPMI) is responsible for monitoring and managing foreign investment.²²⁰

Enterprise Law

The 2005 Enterprise Law is the primary law governing all enterprises. One of its primary provisions was to reduce the amount of time in incorporating a new business, which could take up to 219 working days.²²¹ The new Law changes the principle from requiring permission to notification and registration, with the exception for the “negative list” of certain important sectors, which undergo a slightly more detailed procedure.²²² The new EL also removed the need for minimum capital requirements.²²³ In keeping with the desire for transparency, the law allows anyone to access the registration documents of a business for a fee.²²⁴ The company registry is meant to be a single access point that brings together different agencies.²²⁵

Anti-Corruption Law 2005

The Anti-Corruption Law defines principles and measures to prevent and counter corruption.²²⁶ The Act defines corruption as “the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle [or] receive bribes

218 Ibid., Article 17.

219 Ibid., Article 18.

220 Ibid., Article 21.

221 LNCCI Business Centre, “The New Enterprise Law : A Major Step Towards Improving Business Environment in Lao PDR,” *Business Issues Bulletin* 3 (2006):1.

222 LNCCI, “The New Enterprise Law,” 1.

223 Ibid., 3.

224 Ibid., 4.

225 Ibid.

226 Anti-Corruption Law 2005, Article 1.

or any other act provided for in Article 10...to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens.”²²⁷

The Act is concerned with both preventing corruption from taking place as well as fighting and punishing corruption already taking place, which is termed as “countering” in the Act.²²⁸ The obligation to prevent and counter corruption rests with government organisations, social organisations, the media as well as citizens.²²⁹

The Act enumerates a number of actions that constitute corruption, such as:²³⁰

- Embezzlement of state property or collective property.
- Taking bribes.
- Abuse of position and power to take state, collective or individual property.
- Cheating or falsification of technical construction standards.
- Forging documents.
- Disclosure of state secrets for personal benefit.²³¹

These actions are further defined in the Law.²³²

The State has the following duties to prevent corruption:²³³

- Educate the public to respect and comply with the laws.
- Improve governance mechanisms to ensure transparency.
- Define and implement policies toward government staff at each level.

227 Ibid., Article 2.

228 Ibid., Article 4.

229 Ibid., Article 6.

230 Ibid., Article 10.

231 Article 10 for a full list.

232 Ibid., Articles 11 – 21.

233 Ibid., Article 23.

- Impose discipline and punishment on offenders.
- Promote public participation in preventing and countering corruption.²³⁴

Sanctions and Punishment:

For minor offences, willingly reported and where full restitution is made, the offender will be given a warning and “education measures.”²³⁵

For minor offences that were not willingly reported, the disciplinary measures include:²³⁶

- Criticism and a note in his file.
- Suspended from receiving a promotion or raise.
- Removal or transfer from the position.
- Dismissal from position.

All property that was taken must also be returned.

Where there is evidence, the counter-corruption organisation must send the case to the public prosecutor.²³⁷ If the public prosecutor fails to prosecute within 30 days, the counter-corruption organisation can submit to a higher level of prosecutor.

Actions enumerated under Article 10 are subject to penal sanctions.²³⁸ For cheating or falsifying technical standards, the offender will be subject to five years’ imprisonment and fined 1% of the damages.²³⁹ For falsifying “on a regular basis,” the punishment is five to fifteen years and fined 1% of the damage. When undertaking this as part of “an organised group and caus[ing] severe damage,” the punishment is fifteen to twenty years and fined 1% of the damage.²⁴⁰ For disclosure of state secrets, the punishment is 3 months to one year, with a 1,000,000 to 5,000,000 Kip fine (USD 126 – USD 628).²⁴¹

²³⁴ See Article 23 for full list

²³⁵ Anti-Corruption Law 2005, Article 32.

²³⁶ Ibid., Article 33.

²³⁷ Ibid., Article 34.

²³⁸ Ibid., Article 46.

²³⁹ Ibid., Article 47.

²⁴⁰ Ibid.

²⁴¹ Ibid., Article 50.

Additional regulations that relate to anti-corruption are the changes to the Penal Code to include specific penalties for corruption and money laundering which were approved in October 2005, as well as the Anti-Money Laundering Decree which was approved in May 2006. Lao PDR signed the UN Convention against Corruption in 2003. There are wide-ranging requirements imposed by the Convention, many of which Lao PDR doesn’t have the capacity to implement.²⁴² Lao PDR is also a party to the UN Convention against Trans-national Crime.

Additionally, the Law on Promotion of Investment contains the following provisions on prohibition of taking bribes:

Article 72. Prohibitions for Officials

The officials are prohibited to perform the following acts:

1. To abuse the power, functions, position for illegal personal benefits;
2. To accept the bribe from the investors or from the persons seeking personal interest from the investment;
3. To disclose the confidential documents of the nation, of the offices and of the investors;
4. To delay or extend [the] time to consider the documents of the investors without reason;
5. Perform other acts which are the prohibitions stipulated in the laws and regulations.

Article 73. Prohibitions for the Investors

The investors are prohibited to perform the following acts:

1. To give the bribe to State authority and officials in charge of the concerned works;

²⁴² United Nations Development Programme (UNDP), “Baseline Study for the preparation of a National Anti-Corruption Strategy,” (Bangkok: UNDP, 2006), 23.

2. To evade the fulfillment of the obligations; conceal the revenue, profits as well as the figures relating to the custom duties and taxes payment;
3. To make the false allegations or slandering propaganda against the State organization and the officials;
4. Perform other acts which are the prohibitions stipulated in the laws and regulations.

e) Women and Children

General Rights and Protection

The Law on the Development and Protection of Women 2004 aims to protect the rights of women, and outline the measures to be undertaken for developing and promoting their advancement in society. The Law specifically states that women in Laos play a role in all sectors of the country, including politics, the economy, national defence, and protection of the environment.²⁴³ The development of women refers to these aspects:²⁴⁴

- Physical development
- Mental development
- Educational development
- Professional and skills development

These aspects are further defined in the Law in Articles 9-12. The Law also states that men and women possess equal rights,²⁴⁵ equal political rights,²⁴⁶ equal economic rights,²⁴⁷ equal cultural and social rights²⁴⁸ and equal rights in the family.²⁴⁹ Women have the equal right to inherit property, and a wife has equal right to matrimonial property.²⁵⁰

²⁴³ Law on the Development and Protection of Women 2004 (Protection of Women Law), Article 2.

²⁴⁴ Ibid., Article 8.

²⁴⁵ Ibid., Article 13.

²⁴⁶ Ibid., Article 14.

²⁴⁷ Ibid., Article 15.

²⁴⁸ Ibid., Article 16.

²⁴⁹ Ibid., Article 17.

²⁵⁰ Ibid.

Women have the right to “work in safe conditions and environments, to social security, and to remuneration and other benefits...”²⁵¹

Trafficking of Women

Trafficking is defined in Laos Law as “the recruitment, hiding, moving, transportation, transfer, harbouring, [or] receipt of women, within or across national borders, by means of deception, the giving or receiving of bribes, threats, the use of force, [the use of] other forms of coercion, abduction, debt bondage or by other means, for forced labour, [for] prostitution, [for] publishing pornography and what is in contradiction to fine national culture, [for] the removal of various body parts, or for other unlawful purposes.”²⁵²

Victims have the right, among others, to request for compensation, to be rehabilitated, to receive protection and not to be prosecuted on any charge of trafficking.²⁵³ The law also makes provision for a national committee for prevention of trafficking in humans.²⁵⁴

In June 2000, the National Project Committee for the collaboration with the UN Inter-agency Project to Combat Trafficking in Women and Children in the Mekong Sub-region was established.²⁵⁵ In 2002, Lao PDR and Thailand concluded a bilateral agreement attempting to improve the management of labour migration between the two countries.²⁵⁶ In 2005, they concluded an MOU on Trafficking to combat human trafficking, especially women and children.²⁵⁷ Lao PDR has also concluded extradition agreements with Thailand, Vietnam,

²⁵¹ Ibid., Article 19.

²⁵² Protection of Women Law 2004, Article 24.

²⁵³ Ibid., Article 25.

²⁵⁴ Ibid., Article 26.

²⁵⁵ Phetsiriseng, “Preliminary Assessment on Trafficking,” 4.

²⁵⁶ “MOU between Lao PDR and Thailand (Thailand and Lao PDR) on Employment Cooperation,” October 18, 2002, http://www.no-trafficking.org/resources_laws_regional.html.

²⁵⁷ “MOU between Lao PDR and Thailand (Thailand and Lao PDR) on Cooperation to Combat Trafficking in Persons, Especially Women and Children,” July 13, 2005, http://www.no-trafficking.org/resources_laws_regional.html.

China and Cambodia which could potentially cover suspected traffickers.²⁵⁸ Laos is also a member of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) and signed the COMMIT Ministerial Declaration and corresponding MOU in 2004.

Children's Rights

The Law on the Protection of the Rights and Interests of Children 2006 defines a child as a person under 18 years of age.²⁵⁹ The rights provided by the law to children include the right to education, access to health care, participation in sports, artistic and literary activities, and protection from abuse.²⁶⁰ The Law states that the "best interests of the child" will be the deciding factor in decisions about the welfare of the child.²⁶¹ Article 6 states that "[a]ll children are equal in all aspects without discrimination..."²⁶²

The State will create conditions for access to health care for children,²⁶³ care of children affected by HIV,²⁶⁴ education for disabled children²⁶⁵ and education for children with HIV.²⁶⁶ Disclosure of the HIV / AIDs status of children is illegal.²⁶⁷

The law requires the Ministry of Labour and Social Welfare to establish a Committee for Protection and Assistance to Children, to monitor children who are at risk and need special protection and provide assistance and inspection of services provided.²⁶⁸ A Child Labour and Child Trafficking Office (CLCT Office) was set up within the Ministry of Labour and Social Welfare (MOLSW) in 2001 to coordinate interventions for confronting the child labour

problem, including the trafficking of children. Additionally, the Lao Government ratified ILO Conventions No. 138 and No. 182 in 2005.

Sanctions

Persons committing trafficking against women and children will be punished with five – fifteen years of imprisonment and fined 10,000,000 – 100,000,000 Kip (USD 1,257 – USD 12,566).²⁶⁹ With organised offenders, offending against multiple victims or child victims, the punishable term is fifteen – twenty years, with a fine of 100,000,000 – 500,000,000 Kip (USD 12,566 – USD 62,830). Where the victim is infected with HIV, incapacitated for life or killed, the offender will receive life imprisonment and fined 500,000,000 – 1000,000,000 Kip (USD 62,830 – USD 125,660). Accomplices will receive four-ten years and fined 5,000,000 – 50,000,000 Kip (USD 628 – USD 6283).²⁷⁰

Producing, distributing, selling any item of child pornography is punished by one – three years imprisonment and fine of 2,000,000 – 6,000,000 Kip (USD 251 – USD 754).²⁷¹ Using child labour in hazardous sectors is punishable by imprisonment of three months to a year, with a fine of 1,000,000 – 2,000,000 Kip (USD 126 – USD 251).²⁷² If the use of child labour causes disability or death, the term of imprisonment is three – seven years and 3,000,000 – 7,000,000 Kip (USD 377 – USD 880).²⁷³

258 Gallagher, "Shadow Report," 19.

259 Law on the Protection of the Rights and Interests of Children (Protection of Children Law) 2006, Article 2.

260 Ibid., Article 3.

261 Ibid., Article 4.

262 Ibid., Article 6.

263 Ibid., Article 15.

264 Ibid., Article 17.

265 Ibid., Article 30.

266 Ibid., Article 31.

267 Ibid.

268 Protection of Children Law 2006, Article 36.

269 Protection of Women Law 2004, Article 49.

270 Ibid.

271 Protection of Children Law 2006, Article 86.

272 Ibid., Article 87.

273 Ibid.

2.3. To what extent, how, and by whom have the laws and/or regulations identified in Question 2.3 above been enforced by the State?

a) Labour

General labour law

The ILO report states that the implementation of the 2006 labour law is patchy, and the ratification by Lao of certain ILO conventions would require changes to the current domestic law.²⁷⁴ The MOLSW is hampered in its effectiveness due to limited technical capacity, management capacity and information deficits.²⁷⁵

The establishment of an Occupational Safety and Health (OSH) Master Plan in 2005 by the MOLSW was an important step, however, implementation and enforcement remains a challenge.²⁷⁶ The use of new technologies and chemicals within industrial processes lead to risks unknown by workers or, in some cases, OSH inspectors.²⁷⁷ Lao PDR is currently coordinating the ASEAN Occupational Safety and Health Network (ASEAN-OSHNET).²⁷⁸

The LFTU, established in 1966, is the only national workers' organization, and it maintains the status of a ministry with subsidy support (both staff and activities) from the Government.²⁷⁹

The Lao National Chamber of Commerce and Industry (LNCCI) was established in 1989, and it provides the Government with views and comments on business operations as well as protecting the rights and interests of enterprises.²⁸⁰

274 ILO, "Report: Lao PDR 2006-09," 8; Equal Remuneration Labour Convention, 1952 (No. 100), and the Discrimination (Employment and Occupation) Labour Convention, 1958 (No. 111).

275 ILO, "Report: Lao PDR 2006-09," 35.

276 Ibid., 9.

277 ILO, "Report: Lao PDR 2006-09," 9.

278 Ibid.

279 Ibid., 35.

280 Ibid.

Trafficking

A National Plan of Action against Trafficking in Persons (2007–2012) was developed in consultation with the ILO, although it wasn't officially inaugurated.²⁸¹ Through the project, village funds were established to provide alternative economic opportunities and reduce migration.²⁸² This initiative is reported to have reduced migration levels. Additionally, a public awareness campaign of the risks of migration through radio, TV and print media has reportedly reached an estimated 1.4 million persons.²⁸³

b) Environment

The Lao government has many laws and regulations governing environmental issues, such as requiring Environmental Impact Assessments (EIAs), requiring the negative impact on the environment to be minimised, and ensuring that those affected by projects are adequately compensated. However, most of these regulations are implemented patchily at best, and lack of adequate data renders the level of implementation unclear.²⁸⁴

Strategic Environmental Assessments (SEA) is a systematic processes to evaluate the environmental consequences of policies, plans and programs.²⁸⁵ SEAs provide information beyond just a single project, and are thus useful for regional level planning.²⁸⁶ Lao doesn't have a policy for conducting SEAs, however some have been conducted, such as one commissioned by the Mekong River Commission.²⁸⁷

281 Ibid., 24-25.

282 Ibid., 25.

283 Ibid.

284 See generally Earth Rights, "I Want to Eat Fish"; Environmental Investigation Agency, "Crossroads."

285 UNDP, "Economic, social and environmental impacts of investments in mining," Poverty-Environment Initiative Lao PDR Issues Brief, 2010, 3.

286 Ibid., 4.

287 Ibid.

Hydropower Projects

Spatial data can be helpful to determine more accurately the extent of impact from mining and hydropower projects on the vulnerable populations in the vicinity; however, there is no database in Laos that combines such data for these projects.²⁸⁸ A preliminary analysis conducted on the available data suggests that with the information available at the time of the study, 293 villages would be affected by the proposed hydropower projects,²⁸⁹ affecting around 100,000 people.²⁹⁰ Around 49,000 people live within an hour's walk of a current or planned reservoir, many of whom will be affected by direct or indirect effects.²⁹¹

The biggest hydropower project in the country's history is currently being realised: the Nam Theun II project. A pre-feasibility and environmental study conducted on the Ban Kum Hydropower project illustrated the negative impacts that the project would have on the people living in villages in the vicinity. It would flood four villages, on both sides of the Mekong River, and have a negative impact on fisheries on the river, impacting the food security of villages dependant on that income.²⁹² The report also found that the EIA conducted previously was inadequate, and ignored the potential impacts on the villages' ecosystem.²⁹³ Another report states that villagers are not consulted on dam projects, but informed of the location of the dam once the agreements are signed.²⁹⁴

288 Nina Fenton and Magnus Lindelow, "The socio-geography of mining and hydro in Lao PDR: Analysis Combining GIS Information with Socioeconomic Data," Lao PDR Development Report 2010, Natural Resource Management for Sustainable Development, (World Bank, 2010), 3.

289 Fenton and Lindelow, "Socio-geography of mining and hydro," 6. The study only took into account those projects which had concluded a Memorandum of Understanding, and the projects for which GIS data was available, which was 42 out of 90 current or planned hydropower projects. According to the Ministry of Energy and Mines, there are 63 projects for which there is no MOU and these were not included in the analysis.

290 Ibid., 7.

291 Ibid.

292 Earth Rights, "I Want To Eat Fish," 113.

293 Ibid., 117.

294 Ibid., 124.

On another project, the French company EDF has been accused of violating OECD Guidelines regarding their services to the Nam Theun 2 hydropower project, and a coalition of 62 NGOs referred the issue to the French National Contact Point.²⁹⁵ Members of the Lao diaspora are deeply opposed to the project, fearing that the economic benefits wouldn't trickle down to the poor, and the costs would have to borne disproportionately by the disadvantaged.²⁹⁶

Mining

According to the MEM, by November 2010, there were 263 mining projects in Lao,²⁹⁷ although 16 mining concessions have been revoked by the Government.²⁹⁸ According to a Vientiane Times article, the Mines Department Deputy Director General stated that "the ministry was inspecting the operations of mining projects around the country, aiming to complete a full assessment by early 2013. Several officials at the Mines Department admitted their capacity for managing mining operations is limited as the government had approved too many mining projects."²⁹⁹ It is difficult to estimate the numbers affected by mining concessions, but the study estimates that around 114,000 people are living in mining exploitation areas and would be potentially affected.³⁰⁰ As many mining projects are small and medium-sized, they are less likely to implement environmental standards.³⁰¹ Artisanal and informal mining are also contributing to pollution and erosion problems.³⁰² In addition, mining projects also require access to infrastructure, which often needs to be subsidised by the Lao government.³⁰³

295 Lao Movement for Human Rights, "Situation in Lao PDR," 12.

296 Ibid.

297 UNDP, "Impact of investments in mining," 2.

298 Ibid., 3. This data is accurate as of December 2010.

299 Times Reporters, "Lao Govt to close mines that flout the rules," *Vientiane Times*, 8 December 2010.

300 Fenton and Lindelow, "Socio-geography of mining and hydro," 8.

301 UNDP, "Impact of investments in mining," 2.

302 Ibid.

303 Ibid., 3.

Data collected from the 2005 Census, and other available data suggest that those affected by the hydropower and mining concessions are among the poorest households in Laos; they are also disproportionately likely to be illiterate and belong to an ethnic minority group.³⁰⁴ The areas targeted are generally remote and lack access to health and education.³⁰⁵ When the mining and hydropower projects have negative impacts on society and the environment therefore, they disproportionately impact the poorest, and those from the minority communities; causing the costs of development to be borne by those who can least afford it.

Investments and concessions

There is evidence to suggest that the government, in its zeal to acquire investment, is failing to secure the most economic advantages for its people. Perera argues that the Lao government is under the mistaken assumption that unless financial incentives are offered, foreign investors will not be interested in investing in Laos.³⁰⁶ The Government offers tax holidays for up to 10 years for certain sectors, exempt import and export duties and income tax for public sector investments.³⁰⁷ Incentives for concession investments are negotiated on a case-by-case basis, and the final details are not released to the public, thus blocking transparency.³⁰⁸

Ideally, natural resource wealth can be used to promote better governance rather than, potentially, exacerbating poor governance and corruption (resource curse).³⁰⁹ Yet, in the case of hydropower investments, often land conversion fees are waived, unlimited foreign labour is permitted, and various other waivers and tax exemptions, which make the

304 Fenton and Lindelow, "Socio-geography of mining and hydro," 8.

305 Ibid.

306 Oshani Perera, "Investment incentives for sustainable development: The case of Lao PDR," Poverty-Environment Initiative, (UNDP, 2011), 3.

307 Perera, "Investment incentives," 3.

308 Ibid., 4.

309 Ian C. Porter and Jayasankar Shivakumar (eds), *Doing a Dam Better: The Lao People's Democratic Republic and the Story of Nam Theun 2*, World Bank 2011, 34.

State reliant on royalties for revenue, and reduce the resources available for development of the country.³¹⁰ The World Bank performed an extensive review of the Nam Theun II Project in order to draw lessons for "turning the resource curse on its head" in future projects.³¹¹

Deforestation and illegal logging

There is a flourishing trade in illegal timber between Vietnam and Laos.³¹² Laos' law prohibits timber trade, however it continues unabated. Illegal logging threatens Laos' forest cover as well as the livelihood of 4.2 million of the rural population of Laos who depend on the forests. A UN study found that non-timber forest products account for 90% of income for the poorest families in Laos.³¹³ An order by the Prime Minister explicitly stated that raw logs are banned from export and that only finished timber products can be exported.³¹⁴ The laws are however not enforced due to problems of corruption and poor governance within Laos.³¹⁵

In 2005, the World Bank Environment Monitor estimated that 41.5% of the country was under forest cover.³¹⁶ This is reportedly reduced from 70% in 1940.³¹⁷ The rich biodiversity of the country is also under threat. Soil erosion and 'slash-and-burn' agriculture further compounded environmental problems.³¹⁸

310 Perera, "Investment incentives," 4.

311 Ian C. Porter and Jayasankar Shivakumar (eds), *Doing a Dam Better: The Lao People's Democratic Republic and the Story of Nam Theun 2*, World Bank 2011, 34, 163.

312 Environmental Investigation Agency, "Crossroads."

313 Pei Sin Tong, "Lao People's Democratic Republic Forestry Outlook Study," (United Nations Food and Agriculture Organization, 2009).

314 Lao PDR Prime Minister Order No. 18 on Forest Management Policy, 2002

315 Environmental Investigation Agency, "Crossroads," 3.

316 World Bank, "Environment Monitor," viii.

317 Ibid.

318 Ibid.

c) Land

Land resettlement programs

Government resettlement programs of ethnic minorities has led to land shortages and conflicts, as the new land is of poor quality, forcing the community to travel to their old land for economic reasons.³¹⁹ Government policy to replace shifting cultivation has resulted in the movement away from upland rice to annual cash crops, which has negatively impacted the soil quality and environment, and has implications for food security.³²⁰

The Land and Forest Allocation (LFA) Policy, 1996, was meant to encourage productive use of land in rural areas and halt environmental degradation by controlling the expansion of shifting cultivation, especially in the upland areas.³²¹ However, Fujita and Phanvilay argue that LFA has instead contributed to unexpected social and environmental problems.³²² The LFA was credited with being a progressive land management policy, with the government recognising the customary resource use practises of the local population, as well as collective and private use of land.³²³ LFA allowed villages to draw up a resource use policy together with local officials, and by 2003, more than 5,000 villages were stated to have completed this procedure.³²⁴

However, Fujita and Phanvilay argue that the LFA reduced the villager's access to swidden and fallow lands, adversely impacting their income.³²⁵ The government reportedly ignored the customary use of the land, and the reclassification resulted

in shortening the fallow period, lower rice production and soil erosion.³²⁶ The authors argue that the government's zoning simplified a complex relationship between the people and the land, which negatively impacted both.³²⁷ This was partly due to dwindling funds allocated for the implementation of the program resulting in an inadequate monitoring system.³²⁸

Land registration and titling

On average, an agricultural household has between 0.5 – 3 hectares of land for private use, aside from access to village and communal land.³²⁹ Deforestation is a significant concern, with the forest cover having reduced from 41.5% in 2002 to 35% in 2007.³³⁰ It is estimated that land concessions count for up to 13% of total land area of Lao, between 2 – 3 million hectares.³³¹ According to Wellmann, often the legal background and framework for granting state land leases are unclear to the parties involved.³³² A GTZ report states that concessions are even granted twice on the same land, contributing to land conflicts.³³³

There are 6 types of legal documents related to land ownership and land use: land title, land survey certificate, temporary land use certificate, land tax declaration, land tax receipts and village heads certificate on land ownership.³³⁴ The need for multiple documentation reduces transparency and due to the various fees may foster corruption.³³⁵ Even a completed documentation does not guarantee protection when conflicts related to land concessions arise.³³⁶

319 Oliver Schoenweger and Alfons Üllenberg, "Foreign Direct Investment in Land in the Lao PDR," (Germany: GTZ, 2009), 8.

320 Ministry of Agriculture and Forestry, "Policy Brief #2: Rural Land Management and Land Administration," The Sub-Working Group on Uplands Development, August 28, 2008, 1-2.

321 Yayoi Fujita and Khamla Phanvilay, "Land and Forest Allocation in Lao People's Democratic Republic: Comparison of Case Studies from Community-Based Natural Resource Management Research," *Society and Natural Resources* 21 (2008): 121

322 Ibid.

323 Ibid., 122.

324 Ibid., 123.

325 Ibid., 124.

326 Fujita and Phanvilay, "Land and Forest Allocation in Lao PDR," 124.

327 Ibid., 130.

328 Ibid.

329 Schoenweger and Üllenberg, "Foreign Direct Investment in Land," 6.

330 Ibid.

331 Ibid., 6-7.

332 Wellmann, "Discussion Paper," 4.

333 Schoenweger and Üllenberg, "Foreign Direct Investment in Land," 7.

334 Ibid., 10-11.

335 Ibid., 14.

336 Ibid., 11.

In 2010, the National Assembly urged the government to complete the formulation of a national master plan for land survey and allocation as a way to resolve land disputes.³³⁷ According to the *Vientiane Times*, the deputy head of the NA's Economic, Planning and Finance Committee, Dr Souvanpheng Bouphanouvong, said that without specific land allocation, land disputes would be impossible to settle.³³⁸

Land management

Current land management strategy in Laos is characterised by high levels of local and foreign investment in agriculture, mining and hydropower.³³⁹ Despite positive regulatory action on the part of the government, such as the moratorium on new land concessions, the effectiveness of the programs is hampered by the lack clear definitions of roles and responsibilities for the different agencies.³⁴⁰ Often the various agencies duplicate tasks and even compete with each other.³⁴¹ This problem is compounded by the fact that provincial authorities often exceed and improperly execute their mandate with regard to new projects, and fail to carry out proper environmental assessments.³⁴²

Table summarising key issues and policy options³⁴³

337 Times Reporters, "Assembly urges govt to accelerate land master plan," *Vientiane Times*, November 17, 2010.

338 Ibid.

339 Ministry of Agriculture and Forestry, "Policy Brief #2," 1.

340 Ibid.

341 Ibid.

342 Ministry of Agriculture and Forestry, "Policy Brief #2," 1.

343 Ibid., 3.

Table 2: Summary of key issues and policy options

Areas	Issues
Agriculture land concessions & Contract farming	Concessions <ul style="list-style-type: none"> ▪ No accurate information on extent of land concessions ▪ Lack of provincial capacity to manage ▪ Insufficient capacity to manage ▪ Poor investor-village relationships ▪ Reduces village land use options ▪ Lack of coordination between sectors
	Contract Farming <ul style="list-style-type: none"> ▪ Lack of clear and models and guidelines ▪ Increasing land disputes and land grabbing ▪ Unclear contract arrangements; villagers not well informed ▪ Unclear marketing arrangements
Land Classification and Land Zoning	<ul style="list-style-type: none"> ▪ Duplication and competition between NLMA and MAF ▪ Land suitability maps and soil surveys are inadequate land use planning tools; need more socio-economic input ▪ No evaluations of zoning methods
Land and forest allocation	<ul style="list-style-type: none"> ▪ Reduction and access to agriculture land ▪ Systems for data record keeping inadequate ▪ Land certificates not adequate for registration purposes ▪ Monitoring focused on enforcement ▪ Programme under-resourced financially and staff wise
Shifting Cultivation Stabilisation-Elimination	<ul style="list-style-type: none"> ▪ Inadequate guidelines and planning procedures ▪ Misinterpretation of policy intentions ▪ Inadequate extension support ▪ Increased degradation of lands due to permanent agriculture
Rural Land Tenure	<ul style="list-style-type: none"> ▪ Temporary land use certificates did not provide adequate security ▪ Land titling programs have not assisted rural poor to date ▪ Communal land agreements are not recognized when approving land concessions
Village Re-location and Consolidation	<ul style="list-style-type: none"> ▪ Inequities in land distribution among different ethnic groups ▪ Village land conflicts and boundary disputes increased ▪ Out migrations of original residents
Land Information Systems	<ul style="list-style-type: none"> ▪ Inadequate land information systems for effective management ▪ Information scattered between various agencies and levels ▪ Lack of staff capacity to develop and utilize land information systems
Institutional Relationships Between MAF and NLMA	<ul style="list-style-type: none"> ▪ Unclear roles and responsibilities and duplication of effort ▪ Technical agencies being under utilized in making decisions on land investments by administrative authorities

d) Economic Law

Anti-Corruption

The government of Mr. Bouasone Bouphavanh stressed their commitment to addressing issues of corruption by creating more transparency.³⁴⁴ Over the past 5 years there has been more delineation between the responsibilities of the Party and the role of the government.³⁴⁵

344 UNDP, "Anti-corruption Baseline Study," 1.

345 Ibid., 7.

The factors that contribute to corruption are the extent of government involvement in the economy, the quality of governing institutions, the lack of economic and political competition, the prevalence of poverty and inequality, and the lack of media freedom to provide checks and balances.³⁴⁶ Laos' abundant natural resources also create opportunities for rent-seeking activities leading to the natural resource curse.³⁴⁷ It has also been argued that international aid agencies may unknowingly

346 UNDP, "Anti-corruption Baseline Study," 8.

347 Ibid.

contribute to the culture of corruption.³⁴⁸

The UNDP Baseline Study on Corruption groups the factors affecting corruption in Laos into five categories: political, economic, developmental, institutional and legal.³⁴⁹ Transition of government from a command economy to a market economy, and the opening up of the country created an impetus for demand for material goods, and the desire for corrupt practises.³⁵⁰ Also, some elite groups are influential enough to control policy decisions, and benefit themselves.³⁵¹

The State is involved at every level of decision-making, and can interfere in cases of corruption. The Baseline Study postulates that this explains why no high-level official has been prosecuted for corruption; the political will to implement the law against corruption is lacking.³⁵² Politicisation in appointments, the entrenched patronage system, low government salaries and a culture of secrecy compound the problem.³⁵³ Smuggling of natural resources, especially illegal timber logging takes place not only with official knowledge but also collusion, as members of the military are said to own timber companies.³⁵⁴

The prevalence of corruption reduces the available funds for public services due to the reduced revenue collections, and contributes to widening the gap between the rich and poor.³⁵⁵ In the longer run, it also impacts the credibility of the government and foreign donors' support.³⁵⁶ Domestically, there are political, economic and social effects that impact the stability and security of the country.³⁵⁷

348 Ibid.

349 Ibid.

350 Ibid.

351 Ibid., 9.

352 Ibid., 9-10; also see Bertelsmann Stiftung, *Laos Country Report*, 5.

353 UNDP, "Anti-corruption Baseline Study," 11-12.

354 Ibid., 16; also Environmental Investigation Agency, "Crossroads," 3.

355 UNDP, "Anti-corruption Baseline Study," 17.

356 Ibid., 18.

357 Ibid.

e) Women and Children

Trafficking and Migration

The UN Protocol on Trafficking³⁵⁸ adopted a definition of trafficking: "the buying, selling and movement of persons within or between countries through (in the case of adults) a range of means such as coercion and deception, for the express purpose of exploiting them."³⁵⁹ Lao's law against trafficking contains a similar definition, but does not include the trafficking of men, although many of whom are vulnerable.³⁶⁰

There are no official statistics on the number of trafficked persons in Laos available. In 2011 the Lao Government reported investigating 49 cases of trafficking, and convicting 37 offenders.³⁶¹ However, weak institutions, bureaucratic inefficiencies, lack of resources, and the inability of the government to identify victims of trafficking were cited as reasons for slow positive progress.³⁶²

Laos' definition of trafficking in children is consistent with the UN Trafficking Protocol.³⁶³ According to official Lao figures, between 1997 and 2000 90 children were rescued from Thailand and sent back to Laos; however, the ILO report stated that many returnees were undocumented by the ministry.³⁶⁴ Most illegal labourers returned to Laos are between the age of 14 and 24, and 60% of them are women and girls.³⁶⁵ Many of them have been repeatedly arrested and sent back by Thai authorities.³⁶⁶

358 United Nations, "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol)," November 15, 2000, <http://www2.ohchr.org/english/law/protocoltraffic.htm>.

359 Trafficking Protocol, Article 3.

360 Article 24 of the Law on Development and Protection of Women (No. 70/PO, 2004) protects women and children; Article 90 of the Law on the Protection of the Rights and Interests of Children (No. 04/PO, 2007) protects children.

361 US Dept of State, "Trafficking in Persons Report 2012," 216.

362 Ibid., 216-7.

363 Law on the Protection of the Rights and Interests of Children (No. 04/PO, 2007), Article 90.

364 Phetsiriseng, "Preliminary Assessment on Trafficking," 4.

365 Ibid., 16.

366 Ibid.

There is a greater tendency for girls to drop out of school than boys.³⁶⁷ Girls represent 40% of students completing primary school, but also 77% of those dropping out early.³⁶⁸

Due to its situation at the hub of the Greater Mekong Subregion and its shared borders with Cambodia, China, Myanmar, Thailand and Viet Nam Lao PDR is – in the words of the World Bank – “extremely vulnerable” to trafficking.³⁶⁹ Trafficking networks exist in villages close to the border areas that recruit illegal migrants for border crossings.³⁷⁰ The high number of school drop outs, resulting low level of education, lack of vocational opportunities, high level of dropouts among girls, a narrow industrial base and organised trafficking networks are the primary factors that lead to the high levels of trafficking in Laos.³⁷¹

In addition, the Mekong River creates a natural border between parts of Lao and Thailand, and creates additional challenges for monitoring trafficking across the border, especially as border crossings for social and economic purposes is common.³⁷²

The judicial system in Laos is ill-equipped to prosecute crimes of trafficking that are complex and difficult to prove.³⁷³ The Lao Anti-People Trafficking Unit (LAPTU) receives complaints regarding trafficking and is the primary agency responsible for investigating trafficking. In order to strengthen the criminal justice response to human trafficking, UNFOC launched a three-year project in partnership with the Ministry of Justice in 2011 and is making available US\$750,000.³⁷⁴

367 Ibid., 20.

368 Ibid., 21.

369 Yury Fedotov, UNODC Executive Director, 6 December 2012, <http://www.unodc.org/unodc/en/frontpage/2012/December/lao-pdr-extremely-vulnerable-to-trafficking-by-transnational-organized-crime-groups-says-unodc-executive-director.html>.

370 Phetsiriseng, “Preliminary Assessment on Trafficking,” 32.

371 Ibid., 52-54.

372 Ibid., 16.

373 Gallagher, “Shadow Report,” 12.

374 <http://www.unodc.org/laopdr/en/stories/new-project-to-fight-human-trafficking.html>

While the law provides for support such as medical treatment, counselling³⁷⁵ and protection and assistance from the Lao embassy to victims of trafficking abroad,³⁷⁶ implementation is difficult. Several countries noted that Lao PDR made progress in combatting trafficking during the last UPR but nevertheless called for additional efforts.³⁷⁷

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

A number of the relevant laws detailed above have been enacted after 2000, and the Constitution of Lao itself was amended in 2003. This might be a sign that the Government, which is keen to attract foreign investment and is cooperating with international organisations such as UNDP, is open to address gaps in the existing laws. However, it appears that enforcement of laws is a bigger challenge, especially where enforcement mechanisms lack the capacity for enforcement of laws.³⁷⁸

4. Is the State using corporate governance measures to require or encourage respect for human rights?

Article 5 of the Law on Enterprises states that business enterprises “have the obligation to conduct their business operations in accordance with their business purposes, to keep accounting books, to perform fiscal obligations towards the government, to protect the workers’ legitimate rights and interests, to preserve the environment, and to uphold other relevant laws and regulations of the Lao PDR.” This article suggests that at the very least, protecting the rights of workers and the protection

375 Protection and Development of Women Law, Article 33.

376 Ibid., Article 28.

377 Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic Lao UPR, A/HRC/15/5, 15 June 2010, paras. 24, 35, 46, 61, 68, 81, 82, 86, 96.11-13, 96.28, 96.47, 98.21.

378 See generally UNDP, “Access to Justice Survey,” and UNDP, “Anti-corruption Baseline Study.”

of the environment are obligations that businesses must fulfil.

4.1. Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?

4.1.1. What are the general legal due diligence obligations that directors have to comply with?

The Law on Enterprises states that a director will be liable for the following acts:³⁷⁹

1. Acting outside the scope of the limited company's business purpose specified in its bylaws or in the contract of incorporation;
2. Breaching the bylaws of the limited company;
3. Exercising rights and performing duties beyond the assigned scope of power;
4. Failing to exercise assigned rights or perform assigned duties.

Directors can be held liable for breach of duties towards third parties and can be held liable by limited companies.³⁸⁰ However, this liability is only for breach of their duties. The Law states that the duties of directors include:³⁸¹

1. Administering the business of the limited company in compliance with the contract of incorporation, the bylaws of the limited company and the resolutions of the shareholders' meeting;
2. Calling and collecting payments for shares at the determined amount and at the defined time;
3. Managing and using the capital of the limited company in accordance with the defined purpose and goal;

4. Establishing the accounting system, maintaining and filing all documents of the limited company;
5. Cooperating with the auditors by providing clarifications on the source and accuracy of numbers and information appearing in the balance sheets before submitting them to the shareholders' meeting for adoption;
6. Sending copies of the balance sheet to the shareholders and keeping copies for review by holders of bearer shares when required;
7. Properly distributing the profits;
8. Administering and deploying officers or employees of the limited company;
9. Informing the company of their direct or indirect involvement in transactions of the limited company that could benefit them or of any increase or reduction of their shareholding in the limited company or in the company's subsidiaries within the accounting year.

The above duties cannot be interpreted easily to include obligations to consider the human rights impacts of their businesses.

4.1.2. Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?

See above answer.

³⁷⁹ Law on Enterprises 2005, Article 121.

³⁸⁰ Ibid., Article 122.

³⁸¹ Ibid., Article 124.

4.1.3. Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

4.1.4. Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?

No information available

4.1.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

4.2. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?

Not to our knowledge.

4.3. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

The Lao Stock Exchange was established in 2010 as part of the 5 year plan adopted by the 6th Session of the National Assembly.³⁸² There is a paucity of information on the fledgling stock exchange. In its Disclosure Regulation, the LSX has a provision for voluntary disclosure for companies:³⁸³

382 "The History of LSX," last accessed January 29, 2013, <http://www.lsx.com.la/en/about/history.jsp>

383 Article 9, Disclosure Regulation, Lao Securities Exchange, January 7, 2011.

"In addition to the material business matters prescribed in [Article 7], if the matters which may have material influence on the decisions of investors or about which the investors must be informed, have taken place, the concerned stock-listed corporation may report the details of such matters or decisions. In this case, the report shall be made by the next day after the concerned cause occurred."

This could be interpreted to include voluntary human rights reporting.

5. Has the State adopted other non-binding measures to foster corporate cultures respectful of human rights?

Laos is a member of the Kimberley Process Certification Scheme. The Kimberley Process is an initiative between States and companies that currently has 51 participants, both countries and business representatives.³⁸⁴ The Process regulates the diamond industry, to ensure that the sale of diamonds is not financing rebel movements. It is implemented through national legislation by its participants. The certification scheme requires its members to take stringent steps to ensure legitimate shipments, and only trade with other members. If a member fails to adhere, they lose membership and are no longer able to trade with members of the Process.³⁸⁵ However, recently there have been some doubts about the efficacy of the scheme, with Global Witness, one of the primary movers behind the creation of the Process, leaving the Kimberley Process.³⁸⁶

384 "Basics," Kimberley Process, last accessed January 29, 2013, <http://www.kimberleyprocess.com/web/kimberley-process/kp-basics>.

385 "Basics."

386 Global Witness, "Global Witness leaves Kimberley Process, calls for diamond trade to be held accountable," December 5, 2011, <http://www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable>.

5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

One Lao PDR NGO, the Greater Mekong Sub-region Business Forum (GMS-BF) is an active participant of the Global Compact since 2005.³⁸⁷ The GMS-BF is the only participant of the Global Compact from Lao PDR.

5.2. Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

No official information is available.

6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

Laos has a decentralised system of public expenditure, giving provincial administrations extensive discretion over the use of resources.³⁸⁸ There is very little transparency over the budget process, and the budget cycle is limited, leaving no room for consultation.³⁸⁹

6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

Between 1989 and 1997, Laos privatised most of its State-owned enterprises, with the exception of 20 enterprises that were deemed to be ‘strategic’, and a few that were difficult to sell.³⁹⁰ Some resource extraction companies are also said to be controlled by senior members of the military.³⁹¹ There not seem to be a specific human rights policy in place for state-owned or controlled enterprises.

387 “Participants and Stakeholders,” UN Global Compact, last accessed January 29, 2013, <http://www.unglobalcompact.org/participant/4401-GMS-Business-Forum-GMS-BF->

388 UNDP, “Anti-corruption Baseline Study,” 34.

389 Ibid.

390 Bertelsmann Stiftung, “Laos Country Report,” 4.

391 Ibid., 15.

6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies (“beneficiary enterprises”) to respect human rights?

The government-owned banks had to be restructured and refinanced due to non-performing loans made to state-owned enterprises and politically well-connected persons.³⁹² However, the World Bank has reported that the level of new loans is still too high, an indicator that the policies have not been changed.³⁹³ There is no indication that support has been linked to any human rights policy or commitment.

6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?

No information available.

6.4. Does the State require or encourage respect for human rights in carrying out public procurement?

According to the Baseline Study on corruption, public procurement in Lao is subject to interference, both explicit and implicit, in terms of openly promoting a company with ties to the government, and reduced competition, arbitrary pre-qualification of bids and breaching confidentiality of bids.³⁹⁴

In 1997, the Government established a Procurement Management Office to clarify procurement procedures.³⁹⁵ This office was closed in 2000, but re-established in 2003.³⁹⁶ It revised the Procurement Decree, developed new rules and regulations and drafted a manual for district officials.³⁹⁷ Human

392 Ibid., 16.

393 Bertelsmann Stiftung, “Laos Country Report,” 16.

394 UNDP, “Anti-corruption Baseline Study,” 43.

395 Ibid.

396 Ibid., 43-44.

397 Ibid., 44.

rights are not explicitly mentioned in these documents.

Aid agencies like the World Bank and ADB are interested in ensuring that public procurement becomes as transparent as possible, as that improves the distribution of aid funds. The World Bank prepares Country Procurement Assessment Reports (CPAR) “intended to be an analytical tool to diagnose the health of the existing system in a country.”³⁹⁸

Where specific procurement procedures are prescribed by multilateral and foreign donors in their loan, credit or grant agreements with the Government, these take precedence over national procedures.³⁹⁹ Approximately 80% of Government capital expenditure is currently assisted by multilateral credits or grants from donors.⁴⁰⁰

The 2003 World Bank CPAR found that many government officials were unaware of the existing procurement legislation’s provisions, due to lack of training and frequent turnover of staff.⁴⁰¹

7. Is the State taking steps to support business respect for human rights in conflict-affected and high-risk areas?

Officially Laos does not have any conflict-affected areas within the country. However, until recently there was an armed conflict between the government and the Hmong people. The plight of the Hmong people has only been brought to light recently, not least during the last UPR in 2010.⁴⁰²

398 “Procurement,” World Bank, accessed Sep 22, 2012, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:20108359~menuPK:84285~pagePK:84269~piPK:60001558~theSitePK:84266,00.html>.

399 UNDP, “Anti-corruption Baseline Study,” 44.

400 Ibid.

401 World Bank, “Lao PDR Country Procurement Assessment Report,” (Bangkok: World Bank, 2002), 24.

402 Report of the Working Group on the Universal Periodic Review: Lao People’s Democratic Republic Lao UPR, A/HRC/15/5, 15 June 2010, paras. 34-35, 64, 69, 71, 76.

While numerous human rights violations have been listed with regard to the Hmong people, there does not seem to be a considerable amount of business involvement.

It seems that the passing away of former Hmong leader General Vang Pao in 2011 eventually ended the conflict. Hmong members now serve on the LPRP Central Committee, as ministers in the government, and as governors of provinces.⁴⁰³

7.1. Is the State engaging with business enterprises operating in conflict-affected and high-risk areas in relation to identifying, preventing and mitigating the human rights-related risks of their activities and business relationships?

As there is no conflict officially, there are no policies by the State concerning businesses operating in this area.

7.2. Is the State providing assistance to business enterprises operating in conflict-affected and high-risk areas to assess and address the heightened risks of human rights abuses, including gender-based and sexual violence?

7.3. Is the State denying access to public support and services for business enterprises operating in conflict-affected and high-risk areas that they are involved with human rights abuses and refuse to cooperate in addressing the situation? Are there laws, regulations and/or policies that have the effect of doing so?

See above.

403 Bertelsmann Stiftung, “Laos Country Report,” 7.

7.4. Has the State reviewed its policies, legislation, regulations and enforcement measures with a view to determining whether they effectively address the risk of business involvement in human rights abuses in conflict-affected and high-risk areas, and taken steps to address any gaps?

8. Is the State taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?

8.1. Is the State taking steps to ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates?

8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

Can and Leader argue that the Nam Theun II project Concession Agreement (CA), which has as much legal binding as a legal regulation, binds the Government in a way so as to potentially violate its international obligations.⁴⁰⁴ The CA combines two roles of the Government, as an investor and as protector of potential environmental and social concerns.⁴⁰⁵

According to the CA, the Government would have to compensate the investors if it enacts laws that negatively impact the profits from the project above

a certain, not disclosed threshold.⁴⁰⁶ On the other hand, the company would have to compensate the government for respective increases in profit or cost reduction.⁴⁰⁷ Since the thresholds have not been disclosed to the public, assessing the impact of the compensation clause is difficult. Generally, such clauses bear the risk of preventing a government from changing its social and environmental law due to the involved costs.

8.3. Is the State taking steps to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues?

The CEDAW report stated that the various government agencies mandated with responsibilities for women's issues were uncoordinated, lacking sufficient resources and clear mandates to be effective.⁴⁰⁸

The domestic status of the Convention on the Elimination of Discrimination against Women (CEDAW) is unclear.⁴⁰⁹ There is no definition of discrimination in any domestic legislation. The CEDAW report states that women are not aware of their rights under the Convention, especially in remote areas.⁴¹⁰

The CEDAW report recommended putting in place a comprehensive strategy to remove stereotypes and traditional practises that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention.⁴¹¹ The report also recommends ensuring equal opportunities for women in the labour market, in accordance with article 11 of the

⁴⁰⁶ Summary of the Concession Agreement (published by the World Bank), as of November 2005, para. 71, <http://siteresources.worldbank.org/INT/LAOPRD/Resources/293582-1092106399982/492430-1092106479653/SummaryofCA.pdf>.

⁴⁰⁷ Ibid., para. 72.

⁴⁰⁸ CEDAW, "Concluding observations," ¶ 17.

⁴⁰⁹ Ibid., ¶ 9.

⁴¹⁰ Ibid., ¶ 11.

⁴¹¹ Ibid., ¶ 22.

⁴⁰⁴ Can and Leader, "Memorandum Of Legal Issues," 2-3.

⁴⁰⁵ Ibid., 2.

Convention.⁴¹²

9. Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy?

In 2005, the Lao Government presented a policy paper indicating its intention to strengthen the Rule of Law to improve governance.⁴¹³ In 2006, a draft Legal Sector Master Plan (LSMP) was drafted, which evaluated the legal system.⁴¹⁴ The LSMP aims to co-ordinate legal system development between the various stakeholders, official and unofficial, in the sector and is based upon four ‘pillars’ of the system:

- i. The framework of laws, decrees and regulations;
- ii. The law-related institutions that implement the legal framework;
- iii. The means for educating and training officials on the use of the system; and
- iv. The means for ensuring that all laws and regulations are accessible to both state bodies and citizens.⁴¹⁵

The LSMP was officially endorsed by the government in 2009.⁴¹⁶

Among the key issues with regard to the justice system raised in a survey conducted by UNDP were land conflicts and especially for women labour issues.⁴¹⁷

412 CEDAW, “Concluding observations,” ¶ 36.

413 UNDP, “Access to Justice Survey,” 89.

414 Ibid.

415 Ibid., 90.

416 Ibid.

417 Ibid., 94-95. The data can be seen in the original report, this is a simplification of the results, for the purposes of an overview.

9.1. What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?

The Ministry of Justice (MoJ), aside from preparing draft legislation, is also tasked with, among others, the dissemination of legislation, administering lower courts, overseeing the legal profession, and monitoring the work of Village Mediation Units (VMUs).⁴¹⁸

There are four levels of courts: area, provincial, regional and People’s Supreme Court. In 2009, approximately 8,500 cases were brought to court throughout Laos.⁴¹⁹ Due to the type of cases they handle and their proximity to the people, area courts are most significant.⁴²⁰

The Office of the Public Prosecutor is also present at different levels. Aside from prosecutorial functions, the Office also serves to monitor general compliance with the law, as well as ensuring the fairness of dispute resolution mechanisms.⁴²¹

A Village Mediation Unit is a semi-formal mechanism under the supervision of the MoJ. A UNDP report stated that in 2011 there were 8,766 VMUs in Laos, dealing with 8,118 complaints.⁴²²

Petitions by Citizens

The Law on the Handling of Petitions “defines principles, regulations and measures relating to petitions and to dealing with the petitions of citizens or organisations.”⁴²³

418 “Ministry of Justice, Tasks and Powers,” accessed August 18, 2012, <http://moj.gov.vn/en/pages/tasks%20and%20powers.aspx>

419 UNDP, “Access to Justice Survey,” 81.

420 Ibid.

421 Law on the Office of the Public Prosecutor of the Lao PDR 2003, Article 3.

422 UNDP, “Access to Justice Survey,” 83.

423 Law on Handling Petitions 2005, Article 1.

Article 2 of the Law sets out three types of petitions:

1. A “request” presented to a State administrative authority
2. A “claim” presented to an investigation organisation, the Office of the Public Prosecutor or the People’s Courts
3. A “petition for justice” presented to the National Assembly.

These terms are defined in Articles 16, 21 and 23 of the Law.

Article 4 states that “[a] citizen or organisation has the right to present a petition to the organisation that has the right and duty to protect the interests of the State [and] collectives or [such citizen’s or organisation’s] own rights and legitimate benefits that have been infringed or that are subject to conflicting claims by [another] individual or organisation.”

Article 6 states that petitions will be dealt with in “a timely manner;”⁴²⁴ “comprehensively, completely and objectively;”⁴²⁵ and the petitioner must be informed in writing of the outcome of their petition.⁴²⁶ If the petitioner is not satisfied, he or she may make a claim in court or present a petition for justice to the National Assembly.⁴²⁷

A petitioner is prohibited from:

- Presenting a petition without actual facts;
- Misusing a petition to defame another person, or to cause public disorder;
- Giving bribes to, making threats against, or suppressing the person who has the right and duty to deal with the petition.⁴²⁸

⁴²⁴ Ibid., Clause 2 Article 6.

⁴²⁵ Ibid., Clause 3 Article 6.

⁴²⁶ Ibid., Clause 4 Article 6.

⁴²⁷ Ibid., Clause 6 Article 6.

⁴²⁸ Ibid., Article 31.

A person subject to a petition is prohibited from:

- Giving bribes to, making threats against, using force against, or suppressing the person who has the right and duty to deal with the petition [or] the petitioner;
- Concealing, hiding, or destroying information and evidence relating to the petition.⁴²⁹

Environmental Issues

Regarding environmental complaints, the Environmental Protection Law states that “[p]etition or complaint about any undertakings that cause negative impacts to the environment shall be sent to the local authority or the environmental management and monitoring unit of the area where the damage occurs, which shall consider the issue within 30 days from the date of receiving the complaint. Urgent issues shall be addressed immediately. When local authorities or responsible sectoral agencies cannot resolve the issues, they have to report the complaint to the next higher level in their chain of command or to the higher environment management and monitoring organisation within seven days. The responsible agency shall resolve the petition or complaint within 30 days, and shall notify the petitioner of the result.”⁴³⁰

The EIA Decree provides the following guidance:⁴³¹

In case the dispute is between a project developer and a project developer, they should first enter into negotiation. If they cannot reach an agreement, they may take the matter to the Economic Dispute Arbitration Organisation to arbitrate. If they are not satisfied with the arbitration, they may file a lawsuit with a People Court of Lao PDR, unless the terms of their contract stipulate otherwise.

In case the dispute is between a project developer and the people are (will be) affected by an investment project:

⁴²⁹ Ibid., Article 32.

⁴³⁰ Environmental Protection Law 1999, Article 25.

⁴³¹ EIA Decree, Article 35.

The project developer must consider the complaint and solve the environmental disputes through transparent consultation/discussion and with compromise to each other. If a compromised agreement cannot be reached, the parties can request the environmental management and monitoring agency and local administrations, at each level, to resolve. If the environmental management and monitoring agency and the local administration fail to resolve the dispute, the parties may take the matters to a People Court to adjudicate, in compliance with the laws.

The project developer must listen to the complaint/petition and solve social disputes by following the Prime Minister's Decree on Compensation and Resettlement of People Affected by Development Projects No. 192/PM, dated 7 July 2005 and Regulatory Provisions on Implementation of Decree on Compensation and Resettlement of People Affected by Development Projects No 1432/STEA, dated 11 November 2005, or other regulations which replace those regulations.

In case the dispute is between a project developer and a State organisation, a local administration or an international organisation, the dispute must be settled in compliance with the laws of Lao PDR or the conventions or treaties which Lao is a member party or a signatory (if any).

Land Conflicts

Land conflicts are of two types, administrative and civil. Administrative land cases are those about using land without authorization or in contradiction of its objectives and regulations. Civil cases relate to inheritance and transfer of land use rights.

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. The NLMA is mandated by the Land Law to resolve disputes arising from administrative land cases. NLMA is also mandated by Decree 135/

PM to review all state land leases or concessions for compliance with regulations.

Settlement of civil disputes will be brought to the village administration, and if not resolved, can be taken to the people's court. Individuals or organisations that violate the laws will be fined or punished "depending on the gravity of the case," and will include compensation for the losses caused. Individuals who have violated the laws including abuse of power, taking bribes and falsifying documents can be subject to criminal penalties, including compensation.

Where the State requisitions the land of an individual or organisation for public purposes, the State will pay "appropriate compensation" to the individual or organisation. A committee consisting of "representatives of concerned parties" will determine the value of the loss and decide compensation. Decree on State Land Lease or Concession, No. 135/PM, 2009, states that if compensation is required, the owner of the project must provide compensation to the land use holders.

Article 3 of Decree on the Compensation and Resettlement No. 192/PM 2005 defines compensation as "payment in cash or in kind for an asset to be acquired or affected by projects at replacement cost". "Replacement cost" is the "amount in cash or in kind needed to replace lands, houses, infrastructure or assets on the lands...and other assets...affected by the development projects". Compensation principles are further elucidated by Article 6 of 192/PM.

9.2. What barriers to access to remedy through these State-based grievance mechanisms have been reported?

Cultural factors affect the ways and means in which justice is sought by the people. A culture of deference to authority, acceptance of the status quo, values of non-confrontation and non-violence and respect of elders leads to reduced reliance of legal redress of

grievances.⁴³² People usually resolve disputes outside the legal process, and minor offenses are mostly solved through mediation by local authorities.⁴³³ At the same time, changing livelihoods, breaking down of traditional social structures and altering economic realities are fuelling the demand for access to justice mechanisms.⁴³⁴

There are very few lawyers practising in Lao PDR, and the status of lawyers is low in the country.⁴³⁵ Lawyers are not accorded the same status as other legal personnel in the court system.⁴³⁶ The situation is slowly changing, with increasing numbers of law graduates joining the Bar,⁴³⁷ however the lack of well-trained, professional legal advocates creates a serious barrier to justice.

Due to factors such as isolation and poverty, some ethnic groups reportedly find it difficult to access information on their rights under State law.⁴³⁸ Some customary practises are at odds with State law and even with Lao's international obligations.⁴³⁹

Women are generally more disadvantaged in access to resources and services, as well as in seeking remedy to conflict.⁴⁴⁰ They are under-represented in decision-making processes.⁴⁴¹ Children are also vulnerable, due to lack of knowledge of their rights, and a lack of basic education.⁴⁴² Here again, girls are more prone to problems, as they have even less years of schooling than boys.⁴⁴³

The UNDP survey also found that lack of legal awareness is the primary obstacle to accessing the justice system, and those who received education, were more likely to consider using the system.⁴⁴⁴

432 UNDP, "Access to Justice Survey," 86.

433 UNDP, "Anti-corruption Baseline Study," 37.

434 UNDP, "Access to Justice Survey," 86.

435 Ibid.

436 Ibid., 85.

437 Ibid.

438 Ibid., 87.

439 Ibid., 88.

440 UNDP, "Access to Justice Survey," 88.

441 Ibid.

442 Ibid., 89.

443 Phetsiriseng, "Preliminary Assessment on Trafficking."

444 UNDP, "Access to Justice Survey," 104.

Lack of enforcement of judgements was also a major concern.⁴⁴⁵ A cultural preference for non-confrontation also led to the favouring of semi-formal mechanisms like the naiban, a customary court.⁴⁴⁶ Women also prefer informal mechanisms to formal ones.⁴⁴⁷ Lack of legal aid and the poverty of the respondents, as well as the distance from rural areas to legal mechanisms were other significant barriers to access.⁴⁴⁸ To solve this problem, creation of mobile courts could help.⁴⁴⁹

The UNDP Baseline Study on corruption found that the judiciary is politicised and lacking independence, and the corruption within the judiciary further spreads the "culture of impunity" and erodes trust in the system,⁴⁵⁰ which can form a significant barrier to justice as well as the perception of justice. At the same time, the judiciary is understaffed and lacking in the technical skills necessary to fight corruption.⁴⁵¹ Few corruption cases are brought to the courts, and those that are involve lower ranking officials.⁴⁵²

9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

Not to our knowledge.

10. Is the State giving the country's National Human Rights Institution powers to enable it to contribute to the area of business and human rights?

Lao PDR does not have an NHRI.

445 Ibid.

446 Ibid., 113.

447 Ibid.

448 Ibid., 101-102.

449 Ibid., 112.

450 UNDP, "Anti-corruption Baseline Study," 37-38.

451 Ibid., 38.

452 Ibid., 37.

It has been stated that Lao lacks an effective mechanism for receiving complaints, especially from women from ethnic minorities.⁴⁵³ The CEDAW report calls for Lao to establish a national human rights institution in accordance with the Paris Principles.⁴⁵⁴ The report states that the institution should be given a broad mandate on human rights, as well as adequate financial, technical and human resources to function effectively.⁴⁵⁵ Further, the State should collect statistics on the number of complaints filed, types of complaints and their outcomes.⁴⁵⁶

11. What are the efforts that are being made by non-State actors to foster State engagement with the Framework and the Guiding Principles?

On 16-18 September 2011, Earth Rights International (ERI) hosted the fourth meeting of the Mekong Legal Network (MLN) in Chiang Mai, Thailand.⁴⁵⁷ The MLN is an independent group of experienced Mekong region legal professionals and civil society leaders from Burma, Cambodia, China, Lao PDR, Thailand, and Vietnam.⁴⁵⁸ MLN works to promote the rule of law in the Mekong and ASEAN regions, especially in relation to regional and cross-border development issues. They have studied the impact of the controversial hydropower projects in Laos, especially the environmental and social consequences.

The MLN discussed how to ensure current national, regional and international legal frameworks are utilized to ensure that planning decisions adequately consider the impacts of the projects and allow for greater public participation, as well as legal strategies to help ensure the 1995 Mekong Agreement governing the lower Mekong Basin is implemented.⁴⁵⁹

During the meeting, MLN representatives discussed CSR and human rights in ASEAN with reference to the Guiding Principles on Business and Human Rights.⁴⁶⁰ The MLN is also conducting a research study on CSR and human rights in ASEAN to complement a similar study to be conducted by the ASEAN Intergovernmental Commission on Human Rights (AICHR).⁴⁶¹

453 CEDAW, “Concluding observations,” ¶ 13.

454 Ibid., ¶ 14.

455 CEDAW, “Concluding observations,” ¶ 14.

456 Ibid.

457 Earth Rights International, “Mekong legal advocates’ network meets to discuss dams, corporate social responsibility, and other regional rule-of-law issues,” September 22, 2011, <http://www.earthrights.org/legal/mekong-legal-advocates-network-meets-discuss-dams-corporate-social-responsibility-and-other>

458 ERI, “Mekong legal advocates’ network.”

459 Ibid.

460 Ibid.

461 Ibid.