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**Lao PDR
Investment and Access to Land and Natural Resources: Challenges in
Promoting Sustainable Development**

**A Think Piece
(A basis for dialogue)**

A discussion paper prepared by the World Bank Group.

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Executive Summary

Background

Land, labor and capital are the three key factors of production in any country. Lao People's Democratic Republic (Lao PDR), is a Low Income Country (LIC), whose most abundant resource is land. Since 2001, the GoL has established policies and strategies to promote the land and natural resources sector as one of the "engines" for economic growth and development. The top priorities of the Government of Laos's (GoL) Socio-Economic Development Strategy to 2020 are addressing poverty, improving the living standards of the population, and exiting the LIC status through economic growth based on the sustainable use of the country's natural resource base.

For Laos to achieve its annual economic growth objective of 7.5%, the non-exploitation of land is not an option for the government. Since 2001, the agriculture and natural resources sector, comprising of mining/extractive industries, hydropower and plantations, has seen a rapid expansion of activities in Lao PDR. It is estimated that around 10-15% of the land area of Lao PDR has been awarded for economic development purposes, including mining, hydropower and plantations. It has resulted in growing interest and demand for land by international, joint venture or domestic investors.

There is emerging evidence that many land areas under concession are operated in a management vacuum and are under increasing threat of conversion to alternative uses or even abandonment, resulting in a loss of anticipated revenues to GoL negative impacts on the environment and the erosion of livelihoods among affected local communities. The government has often been quite inactive in dealing with non-performing concessions.

As expected, land concessions have accumulated their fair share of criticisms and challenges, and achieving sustainability requires striking a delicate balance between disparate interests. On the one hand, economic development will always impact on land, environment and society; and on the other, the cost of any such development should not be too great in human terms, merely because it contributes to the economy.

The May 2007 moratorium on concessions, announced by the Prime Minister of the GoL, was intended to be stop-gap measure to review existing policies and legal framework to overcome shortcomings and poor utilization of land and inadequate revenue generation for the state. Prior to and after the moratorium of 2007, international development institutions, agencies and organizations, including international NGOs, have raised concerns that land concessions would negatively impact on livelihood sources of ethnic groups and could end up changing their traditional cultural associations these communities have with land. They also point out that these land concessions are contrary to the GoL policy objectives on economic development. Transparency and weak governance have also been raised as key concerns.

This “think piece” was prepared by the World Bank, based on a request from GoL’s Ministry of Planning and Investment (MPI). It has been prepared in consultation with key stakeholders including the National Land Management Authority (NLMA), Ministry of Finance (MOF), Ministry of Agriculture and Forestry, Ministry of Energy and Mines (MEM), and others.

The aim of this “think piece” is to: (a) ascertain GoL’s current practices in negotiating, awarding and managing land concessions; (b) enhance GoL understanding and commitments to develop national capacities targeting improved land management that will generate revenues for GoL and ensure sustainable development as an urgent priority; and (c) provide a basis for dialogue within the government to enable its determination of priorities to better address land development issues in Laos, to enable the achievement of sustainable, responsible economic development. The think piece also discusses key issues revolving around the sustainable utilization of land and the mechanisms through an examination of GoL’s policy statements such as the “Sixth National Socio Economic Development Plan (2006-2010)” and “Regulations for Implementing Decree 192/PM on the Compensation and Resettlement of People Affected by Development Projects” (No. 2432/STEA, Vientiane, November 2005).

Major Findings

- 1. Limited Availability of Comprehensive, Reliable Data.** The first part of the think piece reviews the availability of data on land concessions and concludes that available data on size, location, and nature of concessions awarded is limited. There is no organized methodology to coordinate data sharing or its management at district and provincial through to national levels. It also appraised the computation of land prices paid and concluded that there is no evidence of allocative efficiency in the awarding of land concessions.
- 2. Concession Management.** The second part of the think piece discusses the nuances and challenges faced by the GoL in enforcing the May 2007 moratorium on land concessions. It summarizes the existing reality that land concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts (e.g., the details on fee payments required and made, revenue-sharing; labour requirements and actual inputs; and social, economic and environmental impact considerations). Evidence on the performance of overall investments actually made to date is patchy as, beyond nominal sums, investors are reluctant to invest on land beyond these sums. As a consequence, few concessions have generated expected revenue streams for GoL.
- 3. Impact of Concessions on Communities and Livelihoods.** The third part of this think piece examines the impacts of land concessions on the livelihoods of affected communities as well as the damages caused to existing economic patterns among them. It summarizes the consequence of the insufficient and poorly conceived compensation and other service packages and the resultant failure to rebuild livelihoods which is further impoverishing the majority of impacted

families. With regard to job opportunities, concessionaires usually offered to recruit laborers based either on need or by procurement/contract approaches, this has been found unsuitable for many rural communities, in particular ethnic groups. Apart from skills levels, these communities are not used to this way of life as they are often seeking livelihood inputs on a day to day basis. They thus cannot afford to wait to work when they need some income, as they often have to meet their immediate needs for livelihoods.

- 4. Weak Governance and Institutional Capacity.** The last part of the think piece discusses the governance issues such as weak institutional capacities leading to: (a) lack of transparency; (b) erroneous interpretations of laws and regulations in awarding contracts; (c) uneven application of laws and regulations; (d) non-reporting of abuses; (e) unclear expropriation in terms of the misuse and abuse of public powers to support private developments; (f) issues related to the provision of adequate compensation; and (g) communications by and the accountability of decision making agencies and individuals.

Taken together all these factors have resulted in a large number of non-performing and/or poorly performing concessions. Critical challenges remain in areas such as GoL's capacity to: (a) effectively screen proposals; (b) provide social protection measures; (c) enforce sanctions against weak and/or inconsistently performing concessions, as well as for data management, clarify and harmonise mandates, improve coordination; and (d) to increase communication and civic engagement at all levels.

Key Elements of the Lao Experience with Land Concessions

A brief review and analysis of land concession experiences in Lao PDR over the last decade shows that GoL should commit itself to creating an enabling environment for sustainable land management systems in which more accountability is shared between different participants and stakeholders. This process is currently evolving through discussions at national levels between concern ministries and stakeholders with MPI coordinating the dialogue. The progress, however, is slow and needs to be supported continuously to enable GoL find suitable local and national solutions. In the process, however, it will be important to focus much more on exploring transparent and accountable methods to manage land areas to enhance local benefits from concessions (and do no harm) and meet the national economic development priorities.

Conclusions: The critical barriers to realizing the sustainable development in Lao PDR include:

- a. The limited capacities of responsible and involved institutions and their subordinate levels to effectively provide services for SLM, compounded by the lack of clear, transparent and coherent procedural systems;
- b. The current focus on sector-based agricultural and rural developments restrict the ability of GoL to identify innovative and inter-sectoral strategies;

- c. Fragmented institutional arrangements;
- d. A lack of awareness of the importance of SLM among land users, technicians, planners and politicians, and the ad-hoc land uses due to inadequate land information and the lack of appropriate land use planning tools and methodologies; and
- e. Land degradation impacts as a result of concessions not being mainstreamed into national development decisions resulting in the non-recognition on the part of politicians and decision makers that land development can be a significant barrier to sustained economic development.

Recommendations

As a starting point, GoL will have to establish a high-powered and active Inter-Ministerial Committee on Land Concessions (IMC) to secure critical political commitments and support and guide for implementing the following recommendations:

1. Undertake a comprehensive risk analysis (comprising an examination of the threats, root causes, barriers, and from the development of barrier removal strategies) of the likely and possible impacts from concessions and identify mitigating measures.
2. Undertake a thorough review of the available data/information on the land concessions; requiring the generation of and analysis of information on concessions at all levels (district, provincial, and national) to develop a comprehensive understanding of the scale, locations, uses and performance of concessions in Lao.
3. GOL requires a nationally complete and consistent system for the administration of land development which covers identification of land suitable for development investment, recording the allocation of land for development investment and monitoring the utilization of assigned lands. This requires:
 - Complete national inventory of land parcels, viz., the cadastre, which is geospatially referenced, which is the responsibility of the NLMA, with access provided to all agencies/.ministries awarding concessions,
 - A land use classification system,
 - An agreed set of criteria for recording and monitoring concessions,
 - A system for regular monitoring of concession impacts on a time-dependent basis, viz. periodic coverage by satellite imagery or other form of data coverage,
 - Agreed protocols under which agencies/ministries awarding concessions and leases are required to record and monitor concessions,
 - Annual reporting requirements, and
 - Protocols for public access.
4. GoL to review inactive and poorly performing (or non-performing) concessions, if any, and concern for cancellation or other action. In specific cases, GoL should suspend medium and large-scale activities on concessions that do not undertake to

- comply with the revised legal and regulatory framework and redefine the terms of their operations.
5. Undertake a comparative study of the existing Land Law, Investment Regulations and other instruments: To assist in reviewing and amending both the Land Law and land regulations to harmonised and streamline the current overlaps and responsibilities.
 6. Examine the social effects of land concessions in selected concessional areas to better inform GoL of the impacts of concessions.
 7. Develop procedures and later enact regulations on pre-concession criteria with compulsory land conversion measures including consideration of:
 - a. Securities and financial warranties to be made by the investor to compensate and/or cover the costs of proper resettlement of the people impacted by development activity;
 - b. Appropriate public disclosures (timing, nature and content of information to be defined in the relevant legislations and implementing procedures)
 - c. Support the period review and confirmation of the above requirements by an independent inter-governmental mechanism at the central level, on compliance and implementation with powers to enforce sanctions in case of deviation.
 8. Enhancing GoL's capacities in the Land Sector: To enable GoL make important political commitments on the award and supervision of land concessions and land management as a whole,
 - a. Institutional development and capacity building: While all ministries indicate a critical shortage of trained staff, it is also clear that no institution has done a systematic analysis of its staffing and skills requirements.
 - b. Investing in coherent land organizations and strengthening their organizational capacities.
 - c. Redefine GoL support to strengthening organizational capacities: The preparation of the strategy for institutional development should contain a redefinition of all management roles and responsibilities in the negotiation, awarding and monitoring of land concessions.
 - d. Learning from international best and worst practices.
 9. GoL should endeavour to pursue open consultations with the private sector and other stakeholders:

The recommendations, or points of guidance, of this think piece broadly rest on the four pillars of Land Governance i.e.,

 - Pillar 1: The availability of adequate and accurate information on which to make decisions on concessions;
 - Pillar 2: Adequate capacity within GoL agencies to determine, award and monitor/oversee the operation of concessions;

- Pillar 3: Governance over land and natural resources to be achieved through: (a) legislation and regulatory provisions and relevant institutional arrangements; (b) Enforcement of legislations and regulations in an even and transparent manner and reporting thereof; and
- Pillar 4: Sustainable development of land concessions and land areas in the longer-term.

The consultative efforts could explore new opportunities for partnerships with INGOs, community groups. This will provide the GoL a useful road-map for both intensifying and scaling up its focus on land development in a sustainable manner. It would include piloting of programmatic partnerships with INGOs and community groups, and increase joint training initiatives enhancing substantive dialogue at the grassroots level and building common grounds.

The above points of guidance are expected to contribute towards developing sustainable approaches for land administration and management programs in Lao PDR, and enabling GoL to adopt more rigorous oversight of the land and natural resources sector, as well to the political economy aspects of resource management.

Acronyms

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
CIDSE	<i>Cooperation Internationale pour le Developpement en la Solidarite</i>
CPI	Centre for Planning and Investment (predecessor of MPI)
DEPD	Department of Energy Promotion and Development
DIC	Department of International Cooperation (in MPI)
EIA	Environmental Impact Assessment
ESIA	Environment and Social Impact Assessment
FDI	Foreign Direct Investment
FIPD	Forest Inventory and Planning Division (of MAF)
GDP	Gross Domestic Product
GoL	Government of Lao Peoples Democratic Republic
IFAD	International Fund for Agricultural Development
IMCLC	Inter-Ministerial Committee on Land Concessions
INGO	International Non-Governmental Organization
IPD	Investment Promotion Department
LDC	Least Development Country
LGAF	Land Governance Advisory Framework
LMRP	Land Management and Registration Project
LIC	Low Income Country
LIWG	Land Information Working Group
Lao PDR	Lao People's Democratic Republic
MAF	Ministry of Agriculture and Forestry
MDG	Millennium Development Goal(s)
MEM	Ministry of Energy and Mines
MEPA	Mineral Exploration and Production Agreement
MIC	Middle Income Country
MPI	Ministry of Planning and Investment
NA	National Assembly
NAFRI	National Agriculture and Forestry Research Institute
NSEDP	National Social and Economic Development Plan
NGPES	National Growth and Poverty Eradication Strategy
NHDR	National Human Development Report

NLMA	National Land Management Authority
NUoL	National University of Laos
ODA	Official Development Assistance
PEI	Poverty Environment Initiative
PIP	Public Investment Plan
RECOFTC	Regional Community Forestry Training Center for Asia and the Pacific
RRI	Rights and Resources Initiative
SDC	Swiss Development Cooperation
SIA	Social Impact Assessment
SLM	Sustainable Land Management
STEA	Science Technology and Environment Agency
SUFORD	Sustainable Forestry for Rural Development Project
UNCTD	United Nations Center for Trade and Development
UNDP	United Nations Development Program
UN-WFP	United Nations World Food Program
WREA	Water Resource and Environment Administration

1. Background

Land, labor and capital are the three key factors of production in any country. Lao People's Democratic Republic (Lao PDR), is a Low Income Country (LIC), whose abundant resource is land that will have to be optimally and sustainably exploited to support economic growth. Government of Laos (GoL) is aware that robust growth is a major determinant to achieving socio-economic objectives and ambitious targets set in its vision that by the year 2020 Lao PDR will move from Low Income Country (LIC) to Middle Income Country (MIC) and work towards moving out of the Least Developed Country (LDC) status. It can only achieve the above by the year 2010 and MDG targets by 2015 by supporting land development investment and is keen to pursue this strategy in a sustainable manner.

One of the foundations of Laotian economic growth, particularly since 2001, has been the investment-centric approaches to transform large tracts of land to gain higher economic development potential through production and extractive programs. This has included a focus on plantations, the extraction of mineral resources, and also the utilization of land for hydropower and irrigation, in an effort to contribute to and secure better socio-economic progress, living conditions and quality of life for its people, and thereby move away from Less Developed Countries (LDC) status¹ by 2020.

In order to realize these goals, the Government of Lao PDR (GoL)² has made a number of commitments, as stated and elaborated in the following key policies and strategies³: (a) the Government's Vision document on its path to socio-economic advancement by the year 2020, is consistent with the approach pursued by the Association of South East Asian Nations (ASEAN) 2020 Strategy; (b) the National Growth and Poverty Eradication Strategy and relevant policy papers; and (c) Sixth National Socio-Economic Development Plan (NSED 2006-2010). These policies and strategies, together with the Socio-Economic Development Plan of 2001, emphasize sustainable utilization of natural resources.

For the Lao People's Democratic Republic (Lao PDR), land being its greatest and most abundant resource, it naturally serves as one of the "engines" for economic growth. With

¹ The Lao Peoples' Democratic Republic (Lao PDR) continued to be categorized as one of the 8 least developed countries (LDC) in South East Asia of 49 in the World. It had an estimated GDP per capita income of \$ 630 in 2007 and is one of the poorest countries in East Asia. It has close to one-third of country's population living below the poverty line. (Lao PDR, Economic Monitor, the World Bank Office in Vientiane, November 2008, and the National Human Development Report for Lao PDR, 2008, UNCTD 2009).

² The term Lao PDR is generally used when referring to the country, its population, land mass, geography and socio-economic conditions. On the other hand, GoL is used when referring to government institutions, policies, strategies and its decisions.

³ These strategies have identified four goals: (a) increased food production; (b) a focus on the development of commodity production; (c) preventing/reducing slash and burn cultivation practices; and (d) the development of appropriate sustainable forest management methods to ensure a balance between exploitation, utilization, protection and conservation.

regard to the utilization of natural resources, GoL had also identified priority sectors as energy, hydropower, mining, agriculture and agro-forestry. This approach demands increased capital investment to enhance the productivity of land and natural resources estimated to be at least \$ 160-175⁴ million per annum over a period of 10-15 years⁵. This has resulted in growing interest by international investors and demand for land. In line with this approach, the natural resource sector, including; the mining/extractive industries, hydropower, agriculture and plantations, have seen a rapid expansion of activities since early 2001⁶. Although land may at this time seem to be abundant, it is in reality a finite resource, and its allocation must be planned and monitored. The current “patchwork” approach to land development investment policies and allocation of concessions is not sustainable, and unfortunately encourages and exacerbates the current issues.

Consequently, GoL entities at different levels have issued numerous land concessions for plantations and mining operations⁷. It is currently the most notable features of land use and management in the country, and one of the most significant challenges facing the sustainability of the national development process. It has now been reported that already about 15% of all Lao's land areas has been awarded to foreign or joint venture investors for periods of up to 70 years. These factors together underscore a clear need for more research and understanding on the subject of land concessions and their application to assist GoL make political commitments to better meet its development objectives, to understand the nature and scope of the current investment decisions made by national and sub-national levels, and to identify where regulatory and capacity building initiatives are required.

The aim of this “think piece” is to: (a) ascertain GoL’s current practices in negotiating, awarding and managing land concessions; (b) enhance GoL understanding and commitments to develop national capacities targeting improved land management that

⁴ Unless otherwise stated, all \$ amounts are in US dollars.

⁵ Government of Lao PDR, Socio-Economic Development Strategy, 2001; The World Bank’s Country Assistance Strategy, 2006.

⁶ Since 1990s, the country has seen large inflows of foreign direct investment (FDI) in the hydropower and mining sectors. However, increasing reliance on natural resources means that growth has become sensitive to the volatility of commodity prices and could impede development of other sectors. In this piece, due to time constraints, an analysis of the commodity price variations was not discussed.

⁷ Generally speaking, a land concession is the provision of a grant of a tract of land made by a government (or other controlling authority) in return for stipulated services or a promise that the land will be used for a specific purpose. The terms “land concession” or “lease” generally refers to arrangements where foreign, joint venture enterprises or fully/partially owned domestic enterprises are granted land areas, usually for a period not less than 30 years and up to 99 years, for investments in: (a) commercial production of cash crops or plantation forestry; (b) the range of mining and extractive industries sector land; and (c) hydropower generation. It does not include areas leased out under the “contract farming” arrangements between farmers and processing and/or marketing firms. However, in reality, there will be several overlaps and, in order to overcome the procedural hurdles, in Lao PDR even methodologies usually adopted for contract farming have been reportedly extended to cover large concessions for plantation or forestry. In case of mining and hydropower concessions, relevant clauses enshrined in the Mining Law, 1997 are often incorporated into Mineral Exploration and Production Agreement (MEPA).

will generate revenues for GoL and ensure sustainable development as an urgent priority; and (c) provide a basis for dialogue within the government to enable its determination of priorities to better address land development issues in Laos, to enable the achievement of sustainable, responsible economic development. The think piece also discusses key issues revolving around the sustainable utilization of land and the mechanisms through an examination of GoL's policy statements such as the "Sixth National Socio Economic Development Plan (2006-2010)" and "Regulations for Implementing Decree 192/PM on the Compensation and Resettlement of People Affected by Development Projects" (No. 2432/STEA, Vientiane, November 2005).

2. Scope and Methodology

The process of negotiating and awarding contracts for land concessions and their impact and outcomes so far have attracted considerable debate within and outside of Lao PDR. A growing wave of anecdotal evidences and media reports illustrate the magnitude of these trends and recent Bank documents refer to large tracts of land areas being considered for potential acquisition for agricultural production or other forms of natural-resource based uses. A combination of higher and more volatile global commodity prices, demand for bio-fuels, population growth and urbanization, as well as overall economic development is likely to imply that the impact of these land concessions will be of continued importance in the future. In order to better comprehend the nature and impacts of investments proposed to be made through land concessions, this "think piece" endeavors to explore some of the critical social-political issues within the context of changing economic and institutional contexts, and people's rights related to the access and use for land, and the need for enhanced GoL capacities in managing land resources in the country.

Given time constraints as well as the quasi-formal nature of this effort, this "think piece" is based on review of relevant available documents supplemented by interviews with senior government officials in relevant ministries to discuss key issues and concerns related to land concessions (e.g., contracting methods, institutional (including capacity development needs) and legal issues, coordination, experiences learnt from these concessions, etc) and their perceived levels of satisfaction with the results secured to-date. Informal discussions were carried out with representatives of International Non-Governmental Organizations (INGOs) and independent researchers. A quick scrutiny of, and discussions on the available inventories on land concessions held at the national Land Management Authority (NLMA), National Agriculture and Forestry Research Institute (NAFRI) of Ministry of Agriculture and Forestry (MAF), as well as at Ministry of Planning and Investment (MPI), and other GoL agencies were also pursued⁸.

This think piece highlights the institutional environment, local processes of socio-economic differentiation and examines the changing relationships between land, livelihoods and poverty in the current context of rural-urban change (including recently

⁸ A detailed review of all the concessions data base could not be pursued. Such a review, including those below 100 hectares of land per contract, is essential to develop a grasp of the situation to address the challenges.

observed and potential out migration from rural areas). This cross-sectoral piece concludes by stressing that sustainable development of land and natural resources can take a variety of forms, and their adequacy and effectiveness will depend on the capacity and the transparent functioning of the GoL entities, in particular relevant ministries and line agencies in and across the country.

3. An Overview of the Land Concessions and Related Issues

The potential locations for the likely awarding of the majority land concessions are primarily in areas where land tracts are available and/or crucial minerals are likely to be found. These areas are concentrated in the rural parts of the country – in regions with a preponderance of ethnic groups. It follows that the majority of those who face the risk of loss of access to traditional land holdings and livelihoods are these ethnic peoples. Along with other families the ethnic groups face common problems such as declining access to their traditional livelihoods. The situation becomes more complex with the simultaneous loss of influence and ability of the state institutions to protect these crucial economic sources.

The stated objectives of GoL’s strategies are to promote economic development by mobilizing foreign direct investments including investor proposals for the development of land and natural resources. For this purpose, generally the government enters into partnerships or joint ventures through a profit sharing arrangement⁹. Most of the investors originate from neighboring and regional countries with China and Vietnam forming the vast majority followed by those from Thailand, Japan and India. Of course, FDI access to for land for development continues to grow throughout the world, and investors from other regions including the Middle East and Europe are now seeking and gaining access to land in Laos. The investors prepare a business plan offering to make investments in land areas. In addition to their business outlays, the investors are also required to prepare social and environmental plans to protect and conserve the well-being of the communities and the ecology of the area and its neighborhood¹⁰. However, these plans are generally prepared without sufficient or adequate information on the land areas, habitats, current life and livelihood of the communities living in those areas etc. Frequently neither is the GoL in a position to provide such details for the investors to consider. In addition, GoL lacks sound instruments, tools or coherent procedures to verify the track record and capabilities of the potential investors. All of these have created a state of information asymmetry. As a result, in negotiating the land concessions, GoL is often prepared to accept, presumably in good faith, the business plans prepared by the investors. In turn, the investors will tend to make sub-optimal decisions and usually not only offer to pay land prices but also agree to invest on the land areas and provide assistance for the recreation of livelihoods for the affected families. Thus, all investors are, in theory,

⁹ The strategy emphasized, in other words, was on changing the production structure. And the mechanism for achieving it was a change in the pattern of investment pattern. Lao PDR saw this land-based development strategy as a means whereby it could exploit her comparative advantage in the long-run.

¹⁰ This could be loosely defined as a “safety net” component of the investment plan and is discussed at some length at a later part of this note.

expected to improve local infrastructure, provide jobs to local community members and compensate families for land lost.

As per current GoL regulations, for land concessions for agriculture and forestry, the agreements are required to include, as a minimum, essential information on: (a) project location; (b) extent/quantity of land area to be allocated; (c) an assessment of land suitability; (d) an inventory of current tree cover and other valuable immovable assets at the proposed site; (e) an inventory and survey of families living in the area, who are likely to be affected by the concession and who should be given a minimum package of services and support to recreate their livelihoods; and (f) total cost of the concession (payments to be made upfront, and over a period of time), profit-sharing and other financial/institutional arrangements. The contract should also include details such as current and permitted land uses for the region, expected investments, return arrangements for the land, environmental and social obligations. Taken together, these details form the investment proposal or plan that should be prepared by the investor in the first instance prior to the start of negotiations. However, within GoL there is no standardized contract form or format – leaving comparability impossible - and the completeness and accuracy of the investment proposals are also debatable. Therefore, it is difficult to assess the true value of these investments when weighed against social and environmental impacts of any of the on-going concessions.

Ever since GoL started awarding land concessions, serious concerns have been raised by various entities including from quarters within the government and party itself. In its review of land concessions in Vientiane province, GoL's NLMA¹¹ has acknowledged that the concession rate paid to the government was about US\$ 3 per hectare per annum, particularly for agricultural areas. The review reported that many concessionaires claimed they had paid the fees at the national level. However, it was difficult to verify whether these payments were actually made or not. It also found that the legal status of several concessions were questionable as they had violated some of the existing legislations or regulations (e.g., Forestry or Land Laws). Additionally, the review has reported, among others, the following concerns:

- Several concessions were found to have violated the contract clauses or Laotian laws;
- Activities of some of the concessionaires were not in line with the government's environmental policies and guidelines (e.g., Kolao Farm Co in Maed and Hinherb districts; Sengchan Rubber Plantation Co in Ban Konepuk of Hinherb district; Rai Farm Co's land areas meant for industrial crops in Ban Houai Pamak in Maed district);
- Some concessionaires had not invested on the land areas allocated (e.g., Border Trade Co in Ban Nam-thom in Hinherb district; Malinee Co in Ban Phonhang Viengkham district);

¹¹ GoL/National Land Management Authority, Findings of the State Land concession and Lease Inventory Project in the Pilot of Vientiane province, Phase II, Land and Natural Resources Research and Information Centre, April 2009.

- Social issues were not addressed in a few concessions (e.g., Lao-Jonghoui Rubber Plantation in Ban Nalao, Vangvieng district; Ray farm Agriculture Development Co in Ban Houai Pamak in Maed district). In some instances, it was found that the issues raised by the local communities were not looked into by the concessionaires; and
- Legal status of some of the land areas presumably allocated to some concessionaires remains uncertain. This has to be clarified and confirmed.

Several international non-government organizations (INGOs) have also been raising similar concerns and about the risks of negative impact of these investments as against intended outcomes. In discussions, GoL's senior officials argued that most land concessions were awarded for negligible values and payments made only with least-possible profit-sharing agreement both for the government and the communities. Concerns were also expressed with regard to: (a) GoL's stated justifications for *appropriating* land areas; and (b) weak provisioning of compensation for land areas *expropriated* to create public goods and there are likely abuses on both appropriation and expropriation of land areas.

At the start, a summary of the key steps in land allocation¹² for land concessions is necessary to better understanding the contexts and challenges confronting GoL.

Firstly, GoL has consistently maintained that all economic development is a public good and therefore, at least in theory, it should benefit all of Lao PDR and its citizenry. As a result, given the socialist principles on which GoL's policies and systems are developed, acquisition of land is considered as an appropriate instrument to encourage private investments¹³.

Secondly, in pursuing this, GoL has applied its powers to "requisition" private land utilizing its expropriation policies for the computation and disbursement of compensation. However, there is a lack of clarity within the government of the purpose of said compensation. At present, for land parcels expropriated through requisitioning, compensation is applicable only when the respective land parcel has been titled. This implies that only those families who could produce valid land titles will be eligible for compensation.

¹² Article no. 10 of Land Law (2003) under "Rights and Duties of Land Management Authorities" states that the land management authorities have rights and duties including, # 4, to allocate land use rights, to lease or grant concessions, and to withdraw the right to use land. In practice, the term "allocation" is applied when GoL acquires land areas and it included GoL taking back land parcels that were already titled or held by long possession by families.

¹³ Article 63 of Land Law (2003) states that the state can terminate land rights and take back land parcels earlier titled or allowed for use by families. Further, Article 3 states that the government has powers to *requisition* land areas for public purposes. Here, the term "requisition" has not been sufficiently defined.

Thirdly, the levels of compensation computed are based on simple unimproved or capital improved land value¹⁴, and such values rarely reflect the contemporary value of the land parcel, especially what it would be worth under the new land use (as per planned concessional activities).

GoL is of the view that compensation amount computed by the above process, seen within the national and community contexts are fair. The above rationale manifests itself in GoL applying its powers to requisition (expropriate) land areas that are currently used under communal or traditional practices. However, most land areas were not designated state lands that could be acquired and the methods used to declare these as state land may be legally and/or constitutionally doubtful. Additionally, with regard to compensation for those affected, critics have pointed out that benefits that accrued to the families were negligible and large numbers of households were and are deprived of their traditional holdings and livelihood sources.

Debate on both issues assumed significance when the National Assembly, in mid 2007, raised concerns on the loss of natural resources through land concessions. This resulted in the Prime Minister issuing an instruction to suspend any further award of land concessions over areas of 100 ha¹⁵. The moratorium was meant to give the government time to review its policies in granting large-scale concessions and to address the shortcomings of its previous land management strategy. The relative breadth of the issue, as well as the short period within which the subject of land concessions has assumed criticality, means that the current situation requires prompt and serious analysis from a number of perspectives and should be addressed by GoL in a systematic and inclusive manner. Manifestation of the negative impacts of land concessions awarded and the emerging challenges in the management of land and natural resources are obvious.

Most problems, as discussed later in this paper, might be caused as much by deficient rules as by incorrect implementation of the policies and laws and abuses of power by GoL officials at all levels, and it was commented upon by GoL officials interviewed both national and lower levels (especially at provincial and district levels, who directly benefit from award of such concessions¹⁶ such views are more vocally raised). It should also be noted that at present no comprehensive land concession information system¹⁷ exists to

¹⁴ The term “unimproved land value” refers to bare earth or land area while the term “improved land value” refers to the value of the bare land plus anything built/constructed viz., improvements. As a result, in ascertaining compensation, livelihoods and compensation for loss thereof are to be duly considered.

¹⁵ The Vientiane Times, “Date for resuming land concessions unsure”, July 6, 2007.

¹⁶ It is common for higher levels in a government to hold lower levels (typically national levels holding provincial or district) as responsible. In practice, lower levels in the higher hierarchy do not hold full decision-making powers. Of course, there are instances of officials at lower levels colluding to fabricate material facts for inducements provided by the investors.

¹⁷ A comprehensive data base, preferably a computerized one, will have to be based on cadastre with digitized land maps providing details on both state and private land parcels and the present ownership and/or use rights for it.

provide fundamental data including: location; extent and quality of land area that has been awarded, to whom; for what purpose and for what timeframe¹⁸. Consequently, GoL, is not in a position to determine whether or not a particular area would be suitable for a concession and if so, how to determine a fair land value and compensation to private land holders. Obviously, unscrupulous investors will take advantage of such a situation.

GoL has an evolving system of decentralized functions, tasks and responsibilities for institutional mandates and, as a result, numerous small to medium sized land concessions are typically granted by the respective provincial (or district) authorities with little engagement and oversight from central agencies. However, the pace of land concessions awarded by the provincial and district authorities has raised concerns on the limits of decentralized governance.

- All of these factors together underscore a clear need for the comprehensive understanding by and for GoL decision makers on the subject of land concessions to assist GoL make political commitments to better meet its development goals, to understand the nature and scope of the current investment decisions made by national and sub-national levels, and to identify where regulatory and capacity building initiatives are required. This will rest, broadly, on four pillars:
- Pillar 1: The availability of adequate and accurate information on which to make decisions on concessions;
- Pillar 2: Adequate capacity within GoL agencies to determine, award and monitor/oversee the operation of concessions;
- Pillar 3: Governance over land and natural resources to be achieved through: (a) legislation and regulatory provisions and relevant institutional arrangements; (b) Enforcement of legislations and regulations in an even and transparent manner and reporting thereof; and

Pillar 4: Sustainable development of land concessions and land areas in the longer-term.

4. A Review of the Currently Available Information on Land Concessions

The main purpose of this section is to summarize information currently available on large scale land concessions. It starts by identifying the key data sources and then describes the available data, collection methodologies, the main biases in the data, and the accuracy of the different data sources. Thereafter, it states some of the main issues with land concessions (e.g., poorly compiled inventories, discrepancies in data management, inconsistencies in methods and poor communication of information) and provides possible explanations for these issues.

¹⁸ During this brief review an attempt was made to study the available data bases at the National Agriculture and Forestry Policy Research Institute (NAFRI), MAF, Vientiane to secure a better understanding of the data sets available and monitored.

Within GoL, the key sources of data and information on land concessions are: MPI, Ministry of Energy and Mines (MEM), National Land Management Authority (NLMA), and MAF. The Water Resources and Environment Agency (WREA) also maintain information on concessions for which WREA through its Environmental and Social Impact Assessment (ESIA) Department had completed reviews of Social and Environmental Impact Assessments (SIA and EIA¹⁹) and issued required clearances. In addition to these sources, provincial and district governments are also supposed to maintain data on concessions allocated by them. Within these agencies, inventories on land concessions awarded for plantation and mining operations are maintained. They have also produced some reports on the land concessions. Despite their good intentions and valuable inputs, these inventories (and reports too) lack coherence and a serious analysis of the social impacts or political economy underlying the process of “land concessions” and the challenges confronted by the state-promoted development process. .

While there is currently a lack of a centralized database on land concessions, recently there have been a number of efforts by a range of GoL agencies often with support from other stakeholders to develop (either under way or proposed) area-specific or sector-specific databases. These included:

NLMA, supported by a GTZ Technical Cooperation has launched a multi-year program to with build a data-base on land concessions in Lao PDR. By 2009, this program has covered two provinces (Vientiane and Luang Namtha), gathered information on leases and concessions that exceeded 100 hectares²⁰. In its report on the two provinces, NLMA has also proposed the establishment of a comprehensive database at the Department of State Assets (Ministry of Finance). NLAM advised that with support from GTZ’s Land Management and Registration project, it would complete the process of building a data base covering other provinces by the end of 2011.

Ministry of Planning and Investment supported by UNDP under its Poverty Environment Initiative (PEI) program launched in 2009. Under Output 2.1 of this initiative is to strengthen capacity of national officials to minimize social and environment impacts through improved investment management (2.1.6) Support appropriate arrangements to populate, launch and maintain a publically accessible online database in Lao and English of concessions in Lao PDR (together with WREA NLMA and MAF).

The recently launched (2009) ADB supported *Sustainable Natural Resource Management and Productivity Enhancement Project* proposes for part of Output 1 Capacity building for Agriculture and Natural Resource Sector management implemented including a “public website established and a monitoring system instituted for assessing performance benchmarks for all land concessions”. Among the initiatives planned are

¹⁹ Social Impact Assessment (SIA) and Environmental Impact Assessment (EIA). A combined term ESIA has also been widely used to refer to both set of pre-assessment activities.

²⁰ GoL/NLMA, , *Findings of the state land concession and lease inventory project in the pilot of Vientiane province, Phase I and II*, NLMA/GoL, April 2009.

land database and investment appraisal system that will help agencies make informed decisions on foreign investments in the agricultural sector in the project provinces.

At present, MAF's Forest Inventory and Planning Division (FIPD), through the World Bank financed Sustainable Forestry for Rural Development Project (SUFORD), is building on the existing work of the GoL on forest cover surveys by training its personnel in forest cover monitoring based on newly available satellite imagery and point sampling interpretation to compare most recent changes for selected hot-spots in the country and the development of a comprehensive technical design for an integrated forest inventory and cover monitoring and data management system.

The Lao Land Info Google Group is a Forum that focuses on sharing and exchanging information on land and natural resources related matters (also known as Land Information Resource Centre). The group aims to support rural development in Lao PDR by providing different levels of decision-makers with better access to information and analysis.

Recently, Swiss Development Cooperation (SDC) has provided support for the work of an international NGO i.e., Village Focus International for a Right-LINK Lao (Rights-Land, Information, Networking and Knowledge) in Laos. The project objective for the Rights-LINK Lao is: "To improve stakeholders (government, civil society, private sector, local communities particularly women and ethnic groups) capacity, knowledge, and participation in decision-making on land-related issues so that rural communities can exercise their rights to manage the land they use in a sustainable and equitable manner". This will likely require the development of relational database to provide information on the location and types of concessions related to the project sectors of interest.

All of these approaches will need to be coordinated, unified and expanded to cover all provinces and all types of concessions and leases (both domestic and foreign direct investment) for the government to: (a) enable it to monitor the performance and impacts of and from the concessions (b) move towards a unified data base for the future. For this to happen, the GoL has to develop the cadastral database through NLMA, the mandated agency for this task. This should be based on agreed clear protocols for mandatory data entry, access, transparency and maintenance. In doing so, it is essential for the GoL to decide on: (a) a nationally complete and consistent inventory of all land parcels (both state and private) that is spatially referenced on a standard coordinate/map system; (b) periodic updating of the satellite imagery; and (c) unified database fields to provide sufficient information to support decision-making and monitoring and evaluation.

All of these approaches will have to be unified and expanded to cover all provinces and all types of concessions and leases (both domestic and foreign direct investment) for the government to monitor the performance of the concessionaires and move towards a unified data base for the future. For this to happen, the GoL has to develop the cadastre data base through NLMA, the mandated agency for this task. This should be based on agreed protocols for access and maintenance. In doing so, it is essential for the GoL to

decide on: (a) a common land parcel referencing; (b) periodic updating of the satellite imagery; and (c) unified data base fields.

In discussing data on land concessions, GoL has acknowledged that there is no structured framework for these inventories. In addition, such inventories should be spatially based and underpinned by cadastre. In order to prevent duplication of cadastre, NLMA, as the lead agency on land, should be the focal point for data, its collection, validation/accuracy and storage, to enable it to be ready with the details and make it available to all other GoL agencies for reference and make them transparent. It would be preferable if such inventories and basic information also be made available for public knowledge, to improve transparency and governance issues associated with land concessions. Public knowledge can help to prevent likely abuses. However, at present the cadastre is incomplete and all these inventories and information currently available on land concessions had following deficiencies:

- Most inventories provide only limited information and details, and were primarily based on information extracted from the respective agreements (or contracts) and therefore only provided documented details at the time of signing the land concession.
- There was no significant updating of data following award of concessions. All these inventories and information are not sufficiently linked, denying a possibility for data integration and systematic updating over time.
- The inventory lists maintained at the national and provincial/district levels are not synchronized. There is also no agreed method for correcting possible biases and errors detected at a later date. The inventory also denies an opportunity for analysis and reporting at an individual concession level or across concessions or at an aggregate level. As result, within the inventories maintained, numerous biases and inaccuracies have been reported and their reliability questioned. The overall accuracy of the available data could not be readily confirmed.
- The inventories were not assembled in an incremental manner. There are no area-based inventories or details to compare them with the adjoining non-concessional land.

Even the National Assembly in its debate questioned the existing inventories and concluded that it cannot be assumed as complete or close to acceptable margin of error. Therefore, in making an attempt to understand the nature and issues confronted by land concessions, the incompleteness of these inventories is an impediment and should be a serious concern.

Non-government sources²¹ have published reports usually based on participatory field studies, with anecdotal evidence and local testimonies. These studies provide some valuable insight and explanation for some of the reasons for the escalating concerns by

²¹ Important references in this category include Hanssen (2007), Dwyer (2007), Thongmanivong et al (2009).

raising key empirical questions and hypotheses that could contribute to driving future research and policy making.

Based on available inventories, it is possible to draw some generalizations, apart from investor profiles, such as: (a) in most instances the concessional land areas were located in forest zones; (c) legal basis on which concessions were signed differed from the national Law on Investment Promotion to local decrees on land management or even local authority instructions on rural development; (d) there was hardly any evidence of consultations with the affected communities before award of concessions; and (e) there was no evidence to illustrate clear flow of information at all levels of the government before or after negotiating the contract.

All of these, point out a critical issue i.e., the need for systematically developing a cadastre linked data base for all land concessions that would be amenable to updating and the creation of time-series information. To date, there are no adequate solutions to these issues and consequently GoL's ability to oversee the concessions and minimize the risks is being seriously hindered and impacted upon.

5. An Overview of the Land Concessions

One of the principle drivers for this think piece is the growing concern over the extent to which uncoordinated land development concessions are proliferating throughout the country without a clear mechanism for the negotiation, management, and monitoring of them and their impact on sustainable development. This section will review two types of concessions, their contexts and their relevance.

Plantation (and farming) concessions: These concessions are typically awarded by national or sub-national agencies (provincial or district governments), depending on size and location. At the national level, GoL's MPI²² is primarily responsible for the task. Despite incompleteness of the data base, the available inventory at MPI confirms that investments in the plantation sector have grown from about \$ 19 million in 2001, to investments currently estimated to be in the region of \$ 800 million²³. These investments are mainly made in lowland areas on the Mekong plain (southern provinces and portions of the western part of the country) and in some of the mountainous zones (along the eastern border areas) of Laos. Investors from Thailand, Malaysia and Vietnam dominate

²² Government of Lao PDR, Law on the Promotion of Foreign Investment, 2001.

²³ In discussions, officials at MPI and MAF acknowledged that organized and comparable data on land concessions awarded to plantation is limited and it is difficult to secure a disaggregated view of the terms and conditions, and progress made to date. In addition, there is no referable inventory maintained for investments below \$ 3 million or small or medium scale land concessions. On this, also refer to reports of Linkham (NAFRI and MAF, 2009) and Saykham Voladet (2009). Saykham (2009) had pursued an examination of the particular role of MPI with an emphasis on enhancing policy coherence and coordination on trade and environment by assessing gaps in institutional capacities and strengthening institutional ability to meet changing priorities within GoL.

investments in rubber, sugar and cassava plantations²⁴. In the northern provinces of the country, Chinese investors²⁵ dominate with investments made mainly in rice and rubber. Chinese investors have also acquired large tracts of land for other development projects including for the establishment of tourism and casinos centres. Throughout the central regions of Lao, investors from Japan, India and Scandinavian countries have been allocated and have acquired tracts of land to cultivate fast growing timbers comprised of non-native species such as eucalypts and acacias for pulp needed to produce paper and rayon (fibre).

With regard to land concessions, at national level, MPI and NAFRI maintain an inventory of plantation projects²⁶ and MEM on mining operations. All three inventories provide information on reported concessions only. Therefore, the inventories are incomplete. With regard to plantation concessions, available data indicated that by end 2009 at least 248,846 ha will have been awarded for 1,143 concessions (with it reported that at least 398 have been granted to foreign investors)²⁷. A quick scrutiny of the NAFRI's data base (2009) indicated that:

- The recent, rapid expansion of area under rubber plantations is driven by private investors, mostly from China and Vietnam;
- Most plantations have rubber only with other varieties of “boom” tree crops (e.g., teak, eucalyptus, acacia, agar wood) grown only marginally; and
- There is increasing competition for the production of other cash crops including *jatropha*, corn, and cassava or soya bean.

A quick reading of these inventories confirmed the escalating concerns that there continues to be a significant under-reporting of details on land concessions. This is largely due to: (a) fragmentation and lack of upstream reporting in the approval, reporting and regulating processes and procedures; and (b) an inability and the lack of accountability both within and across responsible state institutions. There is also a growing body of evidence that indicates that many awarded concessions since 2000 may not be performing and contributing to national economic development²⁸. Evidence from a

²⁴ National Economic Research Institute, Economic Review, 2008 claimed that nearly sixty percent of the investments were made in low land areas of central, southern and western parts of the country, while the remaining forty percent was made in the north and eastern areas of Laos.

²⁵ Several discussants acknowledged that geographical proximity and social-cultural ties of China serve as the critical factor in deciding award of land concessions to Chinese investors. Additionally, Chinese investors are able to secure interest-free loans and other subsidies from the Chinese government once the land concessions are signed. These incentives and subsidies are aimed at enhancing China's access to natural resources.

²⁶ In preparing this piece, a comparison between MPI and NAFRI was not made. GoL asserted that both MPI and NAFRI inventories are comparable. However, it was noticed that both inventories also suffer from deficiencies similar to those described earlier.

²⁷ Refer to "Laos: Land Concessions Cause Widespread Impacts on People", dated July 1, 2009. Also refer to <http://www.voanews.com/lao/archive/2009-07/2009-07-06-voa7.cfm>.

²⁸ For example, refer to Dwyer, 2007; Hanssen, 2007; Sayakham, 2009; Thongmanivong, Phengsopha et al, 2009.

recent study²⁹ indicated that only 13% of 33,969 ha across nine investment plantation projects approved between October 2003 and July 2007 in Oudomxay province had in fact been developed. Taken together, with lack of systematic procedures and processes, all of the currently available inventories on land concessions awarded for plantations remain imperfect. Therefore, any attempt to quantify and qualify the locations and uses of land concessions and thereby assess their performance will remain as a serious challenge.

Mining & Energy concessions: Mining has been singled out as a priority sector in GoL's *National Growth and Poverty Eradication Strategy* (NGPES) (2004) due to its potential for stimulating economic growth and increasing government revenues. Investments in mining could also have the potential to help to reduce poverty. In line with this strategy, despite constraints of high transport costs, skills shortages and persisting ambiguities in the mining law and regulations, the *Lao National Human Development Report* (NHDR) (CPI & UNDP 2006) noted that foreign investors are 'lining up' for the opportunity to operate in Lao PDR. Of the country's total land areas, only a third (30%) has been surveyed which confirmed significant deposits of gold, copper, zinc, gypsum, coal and lignite resources in the areas covered. The envisioned mining sector consists of five key groups: (1) metal minerals; (2) industrial minerals; (3) construction materials and dimension stones; (4) gems; and (5) fossil fuels³⁰.

The available inventories suggest that to-date (October 2008³¹) GoL has awarded at least 213 mining concessions/leases to some 127 companies (of whom 85 are foreign-owned and undertaking about 101 operations³² with Chinese and Australian companies to the fore in terms of investments and scale of their current or proposed operations).

By March 2009, GoL had also identified and entered into agreements to consider some 70 potential hydropower projects³³ mainly with foreign investors, which would enable the country to produce and export more than 20,000 megawatts of electricity to neighbouring countries. The land areas required for such proposals remains unclear, posing significant social and environmental risks.

29 Thongmanivong, S., Phengsopha K., Hounghet Chantavong, H., Dwyer, M., and Oberndorf. R 2009. "Concession or cooperation? Impacts of recent rubber investment on land tenure and livelihoods: A case study from Oudomxai Province, Lao PDR." National University of Laos (NUoL), Rights and Resources Initiative (RRI) and the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC). Bangkok.

³⁰ It is important to keep in mind that the demand for metals and minerals are being fuelled by the recent emergence of strong construction sectors in countries such as China and India, and speculative trading, due to fluctuations in metal prices too.

³¹ See Phouphet Kyophilvong, Mining Sector in Laos, Chp3 in Major Industries and Business Chances in CLMV Countries, July 2009?, BRC Research Report #2, Shuji Uchikawa (Ed) Institute for Developing Economies, Japan External Trade Organisation. For further details, refer to its website.

³² Data as available and reported in GoL documents and the details are cited in the References.

³³ Sourced from "Power Projects in Lao PDR (Update on 29/03/2009)" on "Powering Progress" the website of the Department of Energy Promotion and Development (DEPD), under the mantle of the Ministry of Energy and Mines, Lao PDR, with nine projects under construction, 17 at planning stages and 44 projects at feasibility stages, with at 11 other plants in operation. For details refer to website: http://www.edlaos.com/download/Electric_Power_Plants_in_Laos_as_of_March_2009.pdf

In discussions, senior officials of GoL readily conceded that land concessions have been negotiated and awarded in haphazard and inconsistent ways with negligible quantification and qualification of their impacts (the details on fee payments required and made, revenue-sharing, labour requirements and actual inputs and social-environmental impact considerations). The principal modalities of land concessions have gained even more public scrutiny and attention since May 2007 when the Prime Minister announced a moratorium on land concessions (see next section). Several independent observers and analysts have expressed concerns to highlight the actual and potential risk of impacts and displacement of communities (especially ethnic groups) and the irreparable damage to the environment. Additionally the risks of the possible loss of increasing quantities of productive agricultural land producing coffee and other crops is also on the rise, with growing anecdotal evidence and media reports that the public resentment of land concessions is visibly growing.

The numerous mining and large-scale plantation operations present very significant environmental and social challenges in Laos. Anecdotal evidence indicates that these projects will require and possibly impact on significant tracts of land and pose further substantial social and environmental risks. Under the Law on Promotion of Foreign Investment, the MPI and other entities have a responsibility to prevent investment which causes a negative impact on the environment. GoL's WREA is responsible for screening all investment proposals for their environmental impact. For this purpose, there is an inter-agency committee established, led by WREA, with MPI and others as members. WREA scrutinizes the investment proposal on environmental considerations and based on which it is authorized to issue a certificate of readiness and compliance and often containing mitigating conditions during operation, however, these clauses are reported as being seldom enforced³⁴. The environmental scrutiny of the investment proposals, both for mining and plantation concessions is seen as inadequate. GoL agencies also point out that environmental issues are interlinked with social issues (e.g., social security, compensation and support for sustainable livelihoods) and these are partly discussed later in this piece.

GoL has acknowledged that most concessionaires operate outside the active oversight of any government agencies and often import labour from outside. These concessions have begun to generate serious controversies because of conflicts over land use rights and access. Such concessions have in some instance also replaced subsistence agriculture with a migrant and/or wage labour economy with few other livelihood options available with the removal of access to lands and/or the conversion of the land, reducing or obliterating previous bio-diversity. Therefore, the sustainability of the existing Lao land concession system and the impacts on the bottom-line of the economy is clearly brought into question.

³⁴ Refer to Saykham Voladet (2009) for some details.

6. Moratorium on Land Concessions in 2007

In response to escalating social, environmental and economic concerns expressed on land concessions, in May 2007, Prime Minister Bouasone Bouphavanh announced an indefinite moratorium (Announcement No. 743) of land areas over 100 ha for industrial trees, perennial plants and mining purposes³⁵. Due to a widespread lack of attention to soil, topography, landownership and ecological zoning information, the need to “improve our strategy and address the shortcomings of our previous strategy” were cited as reasons for the moratorium. In imposing the moratorium, the Prime Minister explained that the key GoL’s concern was on the lack of financial returns from the concessions along with problems confronted in social, economic and ecological aspects too.

The moratorium was intended to allow the government time to review its policies on granting large-scale concessions and to address the shortcomings of its land management strategy. Despite this moratorium, along with the considerable areas of public "state" land already allocated for private gain, some public institutions continue to act as though there is still an over-abundance of state land under their control that is theirs to “sell off”.

New agreements were awarded under the guise of smaller scale operations (those less than 100 ha), in which neighbouring land parcels were secured with a later option of aggregation of blocks of land to one larger parcel of land. Hanssen (2007)³⁶ highlights a case study in one districts of Savannakhet province after the moratorium, where 6,500 ha of land across four sites (two for rubber, one for sugar and one for Jatropha) being converted from existing forested areas wherein at least in one instance the moratorium was flouted. These small scale concessions have further fuelled doubts on the efficacy of the 2007 moratorium. Confirming this trend and uncertainties, a majority of elected public representatives reiterated their apprehensions and disquiet over the awarding of such concessions at the recently concluded³⁷ National Assembly debates (July 2009). This year, the moratorium was lifted for the first time from April 2009; however, it was rapidly re-imposed in July 2009 as members of the National Assembly raised their objections questioning the efficacy of the revised procedures and systems. It has been reported by GoL and the media that during the suspension of the moratorium awards for a number of new large concessions (greater than 10,000 ha) were entered into and signed³⁸.

³⁵ Refer to The Vientiane Times, May 2007.

³⁶ Hanssen, C, (2007) Lao land concessions, development for the people? CIDSE

³⁷ Refer to the news items in the Vientiane Times dated July 3, 2009, news item "Concession periods up for debate at NA" and July 18, 2008 "Progress made on issue of land concessions". National Assembly was in session on June 22-July 9, 2009.

³⁸ With at least one mineral concession being awarded to Amanta Resources Ltd, (a Canadian company) with "exclusive rights over a 200 km2 concession area in Luang Namtha province" according to a press release from the company; refer to http://www.amantaresources.com/news/index.php?&content_id=82. It was also reported by the Vientiane Time in an article entitled: “Gum trees to fuel Savannakhet paper production” dated June 25, 2009 that Shandong Sun Paper Co. Ltd. were granted a 50 year concession over 30,000 Ha area to start a eucalyptus plantations in Savannakhet province. Also in the South (Khammuane and Savannakhet provinces) of the country, it was reported through the GoL Government E-portal that the Thai Mitr Phol Group have been

The growing concerns being expressed by the public representatives in Laos are not unique. Similar concerns are being expressed by the elected representatives and civil society across the developing world e.g., in Vietnam³⁹, Cambodia, the Philippines, Indonesia to cite a few in the region. In these nations, competition between communities and nationally and provincially awarded concessions are a growing issue with frequent disagreements reported between authorities and communities throughout. This situation can be attributed to the increasing demand for land by a number of economically “booming” nations (e.g., China, India, Japan, Vietnam, Gulf States) to source their primary raw materials and for a wide range of projects including agribusiness, tourism and other purposes. Several countries confronted with such challenges have developed a number of instruments and tools to appropriately manage the resources and these could be of relevance to GoL (e.g., Kenya).

7. Determining Land Values

The objective of determining land prices for the areas allocated is to contribute to compute compensation for land in a fair and transparent manner. Amounts thus mobilized are meant to form the core of upfront revenue for GoL. As the land market in Lao PDR is still evolving and emerging, the determination of land prices is a challenging task. In the past, GoL adopted a fixed market price norm. However, this fixed formula led to disagreement between GoL agencies themselves with the public increasingly resenting such an approach. For example, in case of land areas allocated for mining purposes, an annual rental fee of \$ 2 to 7 per hectare is charged along with royalty rates for outputs based on quality and quantity of the outputs. Officials acknowledged that there is a need to review the rates agreed earlier on a progressive basis so that revenue for the government is maintained at optimum levels that relate to land market value.

Therefore, since 2007, GoL has proposed a number of alternative methods to compute land prices with little success and public knowledge/understanding and acceptance of it to date. For example the recent issuance of Decree no. 135 in May 2009; defining one formula for fixing land prices and its immediate withdrawal for further consultations and rectification, clearly indicates that such processes are being poorly consulted and coordinated.

*Revenue mobilization*⁴⁰: The prices charged for land concessions, currently under review, was about \$ 6 per year per ha since 2001⁴¹, while reasonably computed market prices

granted (09/06/2009) a concession for sugar cane, "Thai sugar grower gets 10,000 hectare land concession" The Thai group representative also said that "they were conducting a feasibility study on another 10,000 hectares of land in the two provinces, hoping to sign a land concession agreement in the near future" quoting from the Vientiane Times (11/06/09).

30 In his criticism of the land concessions on proposed plans to offer land to Chinese firms for bauxite extraction, General Giap said that such an investment would impact on the environment and cultivation of key crops such as coffee and thereby livelihood of people living in the area. .

⁴⁰ Refer to National Economic Research Institute's periodic "Economic Review" reports. It is apparent that revenues from industrial crops did not register a significant increase since 2002.

would have fetched up to \$ 100 per ha⁴². Low prices for lands awarded combined with subsidies and other incentives given by GoL have likely led to a significant loss of revenue for the government, rendering socio-economic development benefits virtually non-existent. Officials also stated that a number of concessions are not performing and no investments were made after logging of the primary forest areas. Taken together, the economic performance of the land concessions has largely been unsatisfactory. There is a need to reassess the concession rates and revised values for each concession should reflect a fair rate of return for all sides involved⁴³.

8. Poverty⁴⁴ and Livelihoods: Impact of Land Concessions?

In terms of policy, land concessions are considered by GoL as a contributor poverty reduction measure and a tool to develop 'under-utilized' or 'unproductive' land areas⁴⁵. It is also reasoned (though unqualified in a Lao context) that land under concessions can no longer be used for swidden cultivation and hence rural families relying on swidden practices will gradually adopt modern farming methods⁴⁶ and that would result in conservation of the natural resources.

⁴¹ A recent media report (The Nation dated August 16, 2009) indicated that GoL was negotiating land concessions for contract farming to produce rice and sugar at a rate of \$ 8-9 per ha per annum. Even this tariff is low and will not yield fair returns to GoL.

⁴² Comparable prices in neighboring Vietnam and China are respectively cited as \$ 30 per year per ha and \$ 50 per year per ha. Such details are also cited in Hanssen (2007) and Saykham (2009). The World Bank's report titled: Lao PDR: Policy, market, and Agriculture Transition in the Northern Uplands, May 2008 makes a similar attempt to provide a quick comparison of prices for land areas allocated for contract farming.

⁴³ The Prime Minister's Decree no. 135 of 2009 was issued in May 2009 by an inter-ministerial committee with significant inputs from NLMA. Immediately upon its issuance the Ministry of Justice protested on low rates fixed by the decree and demanded a revision. Thereafter, the Prime Minister suspended the implementation of the Decree and asked the inter-ministerial committee to review and revise the rates. The discussions are currently in progress. This incident is illustrative of the issues confronted and emerging nature of the price fixation process itself. Despite the issuance of Decree 88, it is believed that WREA continues to pursue its tasks as earlier with no substantive modification to its approach.

⁴⁴ The UN-World Food Program's (UN-WFP) report entitled: Comprehensive Food Security and Vulnerability Analysis in Lao PDR, 2007 deduced that nearly two-thirds of Laos' rural population are food insecure, with close to one-quarter (26%) facing multiple risks (more than one food-related shock affecting a household simultaneously); while 40% of the rural population are at risk of becoming food insecure because of either the loss of access to natural resources, floods, droughts or due to a sudden increase in food prices. These rural populations have also the frequent victims of a series of poor farming seasons in that they have been unable to buffer their families in any way other than by the last resort moving off their land.

⁴⁵ It appears that GoL is using the terms "under-utilized" and "unproductive" subjectively, while in fact the land areas allocated to investors were found to be productive and provide valuable and life sustaining inputs to families living in the rural areas.

⁴⁶ Those opposing this policy argue that it would "de-culturize" the ethnic minority groups and their traditions. Ultimately, such a move will render ethnic minority groups dependent on market forces and urban commodities.

GoL, in principle, can only allocate unoccupied state land areas to a concessionaire. However, it is difficult to find suitable large tracts of unoccupied state land. Therefore, GoL has been and will have to acquire (requisition) tracts of 'common' and privately used land areas (parcels that had been titled) too for allocation. In these cases, communities and families depending on those land parcels will also have to be compensated. To resolve this problem the concessionaire should agree to provide, for immediate requirements and as part of the business plan and contractual agreements, some cash support and a package of services to families residing in acquired areas as well as assuring access to employment and income for the longer-term needs.⁴⁷ Therefore, in determining land prices upfront, GoL will have to clearly confirm such details⁴⁸.

Generally, GoL's policies and regulations for the resettlement of affected populations are based on direct approaches to recreate livelihoods for the communities residing in the concessional areas, including⁴⁹: (a) provision of assured jobs in the mine/plantation for a specified number of days; (b) providing replacement of land; and (c) cash support for investment by the dislocated families in own enterprises⁵⁰. In awarding land concessions, GoL has inferred that private investors provide both compensation in kind (improved physical infrastructure and other facilities) and cash (for the families to invest in an enterprise) though evidence of actual provision of such remains unclear and is often unreported.

A number of the 47 recognised ethnic minority groups in Laos have and will likely be impacted by the awarding of concession areas of Lao PDR. The majority of ethnic groups⁵¹ (non-Lao/*Tai*) are often characterized by a poorer level of literacy and little awareness of their rights and options, and therefore may not be ready and adaptable to alternate forms of livelihood and this issue has become more obvious in recent years. GoL has expressed concerns that after the award of a number of concessions since 2001, only a limited number of jobs in mines/mineral plants and plantations were given to former local residents and frequently only for a limited duration. Most likely, such job offers were proposed by investors as "bargaining chips" to get pre-concession agreement

⁴⁷ The assumption here is that when land use rights are transferred, the family not only loses merely its land holding (or access rights) but also source of livelihood. This is the reason why the objective of determining land values should include costs, in addition to fair land valuations, required for the resumption of livelihoods of the families which will lose access those land areas.

⁴⁸ There were instances where the concessionaire (e.g., golf course development plan in Luang Prabang by a Korean investor) was willing to pay market price for land parcels expropriated from private land holders. However, the GoL only allowed compensation as per pre-set regulations and only for those titled land parcels. Such instances illustrate examples of abuse of power or manipulation of the system by GoL entities.

⁴⁹ Dev Nathan (2008), Security, Compensation and Reconstruction of Livelihoods, seminar paper, Institute of Social Studies, The Hague, February, 2008.

⁵⁰ Sepone Mines has established a community fund with an initial deposit of \$ 500,000 in the district where the mine is located.

⁵¹ Refer to World Bank documents on social safeguards.

from those families. Invariably, if local claims are to be believed, jobs are either given to few middle men who claim to represent the communities or foreign investors simply imported labor from elsewhere including their own home countries. Such foreign migrant labor working on the concessions/mining operations and their impact on local communities are becoming a common trend in Lao PDR. Some sources even cited anecdotal evidences of migration of local families, forced out of traditional habitats from the concessional areas, to urban centres seeking livelihood and better living conditions but that remains to be verified.

In Lao LDR, evidence of and from the emerging land market is limited. Therefore, information available on land prices cannot be used as a basis for the calculation for awarding land concessions and for the computation of compensation. One possible interim approach for addressing revenue generation and compensation issues, until a uniform property valuation system⁵² can be developed, could be to calculate annual value output (expected income stream) from the anticipated and agreed land use plans for concessions over the lease period. Further, information on other factors such as the changes that usually take place in the intervening period and impact on land prices is also limited. All these, together mean that the payment of compensation on the basis of the replacement cost of land holdings is insufficient to achieve the objective of recreating livelihoods at the earlier level, leave alone improving livelihoods. On the other hand, there are also difficulties for the displaced communities buying replacement land. If these families suddenly come into the land market, it would push up prices well beyond their means (or compensation received). There is little consideration of such factors too.

Given the ample availability of land areas in the country, GoL tend to point to its policy on asset replacement (e.g., “land for land”, as adopted by several other countries), as an option for recreating the livelihoods of the families⁵³. This is a nuanced variation of the resettlement policy itself. It demands application of the principles of free, prior and informed consent of the land users and such guidelines are often the basis of every resettlement policy of any government. This option could only work if the new (resettlement) area has sufficient irrigation facilities, access to other support services etc for the households to immediately engage in some productive activities. Though such a measure is possible, there does not seem to be any significant example of such initiative. The shortcomings in providing cash support (capital) to families and leaving it to them to develop their own micro-enterprises is not a viable option (and numerous experiences have been well documented) as it is likely that ethnic minority families and communities,

⁵² A uniform property valuation system requires that all land parcels are regularly appraised in accordance with a set of standard procedures and criteria and that computed values are made available. Such a valuation is generally pursued with intervals of three to four year period. Some proponents recommend an annual property valuation system but that is resource intensive and demands extensive capacity within the government.

⁵³ The land value is based on a price fixed by GoL. However, in reality, the prices are negotiated at the lower levels. The final land price was found to be usually less than the market price. Further, the common bureaucratic hurdles and complexities mean that the money of money generated through such land concessions is substantially less than the price of the replacement land.

who often possess little experience of enterprises and cash management, will form a substantial segment of the concession impacted populations.

In the National Assembly, GoL has stated that the concessionaires have rarely provided⁵⁴ credit facilities, technical assistance, or other support to households who were displaced out of subsistence farming. Even the small holders, who were hoping to gain better access to markets through the concessionaires, have not received any significant benefit. In addition, GoL's dismal past record does not support this as an efficient and sustainable option.

The consequence of the insufficient and poorly conceived compensation and the resultant failure to rebuild livelihoods is further impoverishment of these families. Though no data is available for immediate reference, a recent study of the rubber plantations showed that some families coped with displacement by settling on relatives' land in other locations, working as wage-laborers⁵⁵.

Given the inadequacies in land prices and level of services and support provided to the families, it is generally suggested that a system of verifiable "safety nets" should be added to the contractual commitments of the investors, who are to be obligated to deliver these measures. Though such measures are possible, there does not seem to be any significant example of such initiative. The weaknesses of a system of providing just cash support (capital) to families and leaving it to them to develop is as mentioned unlikely to be a viable option. The question still remains as to whether such safety net measures would compensate for pre-concession levels of living, especially when taking into account the social, economic and cultural importance of land to these communities.

Loss of productive resources: In Laos, common property resources (or communal land areas) provide a significant proportion of food security to rural populations, particularly the poor. There is evidence that malnutrition and food insecurity in Laos is of chronic proportions because most rural household incomes are marginal. Anecdotal evidences show that because of the large number of land concessions awarded to date a significant numbers of Laotians in rural areas are beginning to rapidly lose access and use rights to their traditional land holdings (and communal lands too). This situation is relevant to any one of the 47 officially recognised ethnic groups distributed across the country, who try to maintain close ties with traditional lands. In addition, land areas used by ethnic groups are those that are and will be most frequently targeted for award of concessions. The compensation offered to communities for resettlement, including the possibility of wage-labour in the plantations will be insufficient to realistically maintain or improve household/community welfare and livelihoods. It is widely reported that increasing numbers of families from different parts of the country have had some or all of their land expropriated, mainly due to the lack of transparent governance and a weak rule of law

⁵⁴ An exception was the Korean investment in Luang Prabang where the investor offered to provide credit and financing facilities for communities to be displaced and resettled. However, GoL barred them from doing so and advised the investor to channel all inputs through the government machinery.

⁵⁵ Refer to Sithong Thongmanivong et al (2009).

and work culture of the local authorities. In the peri-urban areas, there are instances of land holders become the victims of land speculation that drives up the opportunity cost of holding on to their land.

Lack of livelihood support: For the large scale concessions to be sustainable, community level support and services will have to be provided at adequate levels and on a timely basis. In order to understand concessionaires' compliance with these requirements, a small sample of investment proposals and agreements were reviewed. It was found that while GoL has in fact taken into account the provision of supporting infrastructure and livelihood services as a critical factor in reducing impoverishment or potential migration of residents to other areas. However, it was found that these provisions were largely inadequate for either subsistence or poverty reduction. For example, as part of the general agreement, the concessionaire is obliged to provide wage employment to each family for a minimum of five work days (calculated to be around a sum of Kips 75,000 or about US\$ 8 per month⁵⁶).

Additionally, few of the concessionaires have assumed responsibility for providing critical infrastructure and transitional assistance (when the land is being prepared for the plantations or mining), while limited or no funding for community infrastructure, production and marketing support services have been made available⁵⁷. Within GoL (and in the agreement clauses too), there have been few or no provisions to monitor service and livelihood provisions, particularly during the first years of land development.

In conclusion, GoL is now faced with the challenge of monitoring the performance of the investors and the management of the contracts with regard to provision of compensation and livelihoods to affected families. The loss of access to common property resources is likely to result in increasing numbers of rural Laotians without enough farmland to survive. As the debates at the recent National Assembly showed, GoL has also recognized that its responsibilities related to land development were evolving quickly such that implementation of land concessions would have to adapt to these changes to better maintain the equity principles intact. With regard to pre-2007 concessions, GoL has also acknowledged that the May 2007 moratorium has yielded no better results.

9. Ethnic Groups and Gender Issues

For ethnic groups and women, it is assumed that GoL's resettlement policy and other approaches would cover matters like support for livelihoods and asset replacement. However, there is no clear evidence that in awarding land concessions attention is paid to the specific position of ethnic groups and women, their skill levels and capabilities. For example, ethnic groups usually do not cultivate a single parcel of land continuously. They may also have access to forest and other common properties which are also lost when the

⁵⁶ This rate is below the "monetarized" food poverty line of 16kg of rice per person per month, let alone the national poverty line (also refer to Prime Ministerial Instruction #010, June 2001).

⁵⁷ The district community fund created by MMG Sepone Mines was an exception to this general trend.

concessions are awarded. In most cases, these access and use rights are notionally valued and agreed to be provided by the investor. For the ethnic groups and rural communities, savings (or accumulation) is not the norm, and is even discouraged by practices of redistribution.

Plantation and mining operations recruit laborers based on need or procurement/contract approach. The rural communities, in particular ethnic groups, apart from skills levels, are not used to this way of life as they are often seeking livelihoods on a day to day basis. These families cannot afford to wait to work when they need some income as they often have to meet their immediate needs for livelihoods.

At the same time traditional systems based on subsistence production are breaking down as families from the ethnic groups find that these are insufficient to meet growing needs, such as education or modern health care, and new aspirations. In internalizing these new needs and aspirations, however, there is an observable difference between men and women, and between the old and the young. In public debates, the Prime Minister, the National Assembly and other GoL entities have acknowledged the potential of the land losses in the rural areas is triggering a migration to nearby urbanising centres often little able to cope even limited population increases in terms of adequate and functional infrastructure and services.

In sum, the gradual damages caused to rural communities' economic systems by the land concessions will force them into new economic systems often to the communities' detriment. As the populations are not familiar with the contract labor methods practiced by the concessionaires nor in some cases is the possible income provided sufficient to survive after their access to common property good and resources is removed or destroyed. This situation brings to the fore a question: "should rural communities have the right of review and refusal when land areas in the village or immediate livelihoods are allocated?" This is closely linked to another point: the right of refusal is necessary for the communities to bargain for a better deal, one that allows for an effective reconstruction of their livelihoods in an equal if not improved position. For the government, this would be an opportunity to enhance the commitments and performance of the concessionaires.

10. Governance and Institutions

The key GoL agencies engaged in the allocation of land concessions are MPI, WREA, NLMA, and MEM. Their respective tasks are defined primarily in the Law on the Promotion of Foreign Investment 2004 and MPI is mandated as the coordinating agency for the plantation concessions and MEM for mining. The Forestry Law prohibits allocation of primary and secondary forests for concessions purposes, as they demand clearing of the land areas. Therefore, GoL and its sub-national authorities at provincial and district levels can only allocate non-forest areas or degraded forest areas. In this sense, prior to allocation to concessionaires, GoL (or the agency signing the contract) is responsible for verifying and confirming the current land use and its productivity. In practice, such land assessments or verifications were rarely done.

The current set of Laws and regulations provide for: (a) district authorities to grant concessions of up to three ha; (b) provincial authorities up to 100 ha; (c) national authorities such as MAF and NLMA up to 10,000 ha, and (d) concessions greater than 10,000 ha, require the review and approval of the National Assembly. The current administration and management of land resources in Laos operates mainly under the revised Land Law (No. 04/NA, dated 21 October 2003). However, it seems that governmental authorities at all levels often do not follow the regulations and central government Authorities (in theory, NLMA) would seem unable to enforce compliance with the Laws and Regulations at sub-national levels.

Legal and regulatory frameworks: The current inconsistencies in Laws and Regulations and their lack of application as well the fragmented environment in policy making have been well debated in the country. In theory, concessions can be awarded only for “state land” and transfer of use rights to the investor should be in accordance with agreed and clearly defined terms and conditions. The Prime Minister, the National Assembly members and all other GoL agencies concede that the rules were largely flouted and that at times even privately held and used land areas were also awarded to concessionaires.

During discussions officials pointed out several instances wherein provincial officials had interpreted the investment laws to suit their convenience and awarded small-scale concessions that are later integrated into one unit for “operational” purposes. Such cases were reported in Savannakhet, Udomxai and other provinces where several concessionaires had acquired several small leases all of them adjacent to each other and at a later point either bought out the intervening pieces of land and/or aggregated all of the areas into one estate for operations (e.g., neighbouring land parcels were purchased and then joined together making it one piece)⁵⁸. Additionally, the Prime Minister himself stated an example of a land concession that was supposed to raise coconuts but was simply used for logging forest on the land and no further investments were made thereafter⁵⁹.

Institutional arrangements: Theoretically, the roles and responsibilities of each agency are well-described in several pieces of legislation and decrees. However, all GoL agencies do not have requisite capacity⁶⁰ to meet their obligations. Even a critical agency like MPI that is responsible for decision-making on investments in the country has so far

⁵⁸ One option could be that GoL impose a ceiling on land holdings by individual investors. However, given the weak capacity within GoL to oversee the performance of concessions, and reported abuses of legislations and powers by authorities at all levels, such an instrument is bound to be rendered ineffective (e.g., MPI and MAF officials cited particular instances of incorrect interpretation of the Investment Law by the provincial officials or errors made in calculating the proposal values).

⁵⁹ Refer to Vientiane Times, July 26, 2009.

⁶⁰ The components of capacity development areas are: ability of GoL personnel to develop, implement and manage a set of policies, procedures, standards to identify, negotiate, award and manage land concessions of various scale and scope; availability and assignment of skilled personnel at all levels; GoL instruments to provide incentives and sanctions for non-compliance by GoL personnel and sub-national authorities; recurrent budgetary support to employ sufficient personnel with adequate facilities and resources to carry out their assigned functions in an orderly manner.

only played a minor role⁶¹. For example, NLMA is responsible for proposing land prices for each proposal but it does not have concrete standards or criteria for examining the investors' plan against master land use plan and relevant cadastre. In Laos, despite escalating demands from private investors, governance in the land sector is too weak to support the pace of concessions awarded. In view of the decentralized nature of government functioning, concessions are largely in the domain of the district and provincial governments.

With regard to land concessions, it appears that GoL has developed a two-pronged mindset. On the one hand, GoL acknowledges its inability to negotiate the right contracts for concessions to ensure both a fair return and maintaining transparency and accountability and the need to develop these tools for good governance. On the other hand, GoL tend to believe that any type of development is good for the country and as part of that strategy land concessions were awarded without due diligence. In addition, the dispersed nature of the institutional arrangements does not make GoL's efforts transparent and user-friendly for independent oversights. The continued application of small-scale concessions (or leases), the non-reporting of these to higher levels and their accumulative social, economic and environmental impacts and the lack of efforts to plug these gaps are serious causes for concern. The uncertain political commitment is also making it difficult to enforce appropriately even the available laws and regulations.

Any effort to develop an effective policy regarding large scale plantation development in Lao PDR will primarily require a thorough baseline study focused on legal areas to assess what is currently in place, who is responsible for what, where there are gaps in legislation and regulation, and where there are law harmonization concerns. This is rarely done and has being recognized by GoL as one of the critical issues hampering any progress in governance. This situation has not only caused problems with implementation but also in appropriately negotiating future contracts. Assistance is required to put in place an effective policy, legal and regulatory framework; secondly, build up capacity to implement it; and lastly, GoL would need to commit to the actual implementation of the revised agenda on the management of land and natural resources.

Unclear interface between the provincial (and district) institutions and national agencies (or negative impacts of decentralized land management and award of land concessions?): The absence of a clear interface between national and sub-national institutions and authorities, particularly with respect to jurisdictional authority to negotiate, award, monitor land concessions has created legal ambiguity and opened up scope for rent-seeking and manipulation of the investment proposals. As evident in the plantations⁶², provincial officials pick and choose on how (and when) to award land concessions. This type of ambiguous application of existing laws and regulations leave the rural communities who are not adept at understanding or moving between the systems, exposed to abuse and exploitation.

⁶¹ Refer to Saykahm (2009) and Sithong Thongmanivong et al (2009).

⁶² Refer to Hanssen (2007), Dwyer (2007), and Sithong Thongmanivong et al (2009).

GoL's approach for the application of public powers of compulsory land acquisition over private land for concessions is widespread. No doubt, GoL has a set of procedures and policies for the rehabilitation and resettlement of communities affected by land acquired for concessions. These procedures and standards call for carefully assessment of the local context, including existing land uses and claims, securing land rights for rural communities, involving local people in negotiations, and proceeding with land acquisition only after their free, prior and informed consent. In cases of compulsory land acquisitions for private investors, the provisions for including and consulting local people were seldom used or poorly implemented.

The Prime Minister himself had advised that GoL did not have sufficient mechanisms to protect local rights and take account of local interests, livelihoods and welfare. A lack of transparency and checks and balance in contract negotiations has invariably promoted investment deals that fail to maximize the public interest. Insecure local land rights, inaccessible registration procedures, vaguely defined productive use requirements, numerous legislative gaps, and poor governance have altogether undermined the position of local populations. Under the guise of national socio-economic development, the local communities are nearly always side-lined. The absence of a clear right of appeal by the affected communities also undermines the accountability function of the state apparatus.

One could argue that if reasonably well-developed regional autonomy could be developed by GoL it would generally represents an opportunity to locally regulate land and natural resources including an ability to tackle community level concerns, enhance people's representation and address complex issues. However, the award of land concessions in Lao PDR presents a strong counter-argument to land-based economic development approaches pursued in nations like Lao PDR, where institutional reconfiguration required to ensure optimum management of land resources are not yet developed. Available information suggests that the decentralized methods (formal, quasi-formal and informal ones) currently adopted in negotiating and awarding land concessions by the provincial and district agencies is unlikely to tackle the major problems that have emerged in recent years and reverse the social-economic-ecological damages caused to date. This situation unfortunately demands for a reverse of the current decentralized institutional arrangements on land until such time when capacities at sub-national levels could be enhanced throughout the decision-making process and they have the ability to monitor contract implementation.

When available information (e.g., inventories at MEM, MPI or NAFRI) is extrapolated with particulars secured through other sources, one can deduce a handful of concerns: (a) there is no monitoring or reporting mechanism for tracking inputs or their quality (e.g., varieties of rubber planted or mining area details); (b) assured level of labor for each family per quarter remains unclear, leaving them further vulnerable; (c) rarely were efforts made to replace loss of common/communal land areas; (d) difficulties in managing the influx of migrant labor from China and Vietnam; (e) lack of standardized contract arrangements; and (d) a lack of communication between the officials working for the concessionaire and local communities (or even district authorities).

Land acquisition and allocation of areas for plantations (including in some cases contract farms) and mining have become a principal objective of the provincial and national governments as they clamber over each other to seek the graces and benefits of foreign investors. The investment regulations allow for the issuance of concession contracts but are organised in such a way that there is little or no scope for the situation of the rural poor and other disadvantaged groups to be effectively considered. These communities are finding it dauntingly complicated to obtain information about, let alone to continue access to, their land areas and holdings or to raise the subject of certification of their land rights. Some provincial and national entities of GoL appear to be exploiting this situation, by expropriating both titled and untitled property. GoL's procedures and standards for compensation apply only to those holding a land title. This policy is not only inequitable but also deprives hundreds and thousands of families, as experiences indicate, vulnerable. Compensation and resettlement procedures should only be applied for land areas expropriated for public purposes and not allocated for private investments. Concessionaires should negotiate and pay at fair and reasonably higher market prices for privately held lands.

Taken together, the growing crisis of land disputes and the displacement of communities and families to acquire land for economic development purposes in Laos has acquired great political significance, primarily because of the modus operandi adopted (read governance issues) and the speed with which some of the agreements have been entered into. Foreign investors frequently prefer "easy" countries, where it is undemanding to do business, where governance is weak, taxes and their collection are low, and there is a lot of autonomy to do what one wants with no checks and limited accountability. Efforts need to be targeted towards convincing GoL that developing an enabling and transparent working environment may not defer real and worthy foreign investors and development partners.

11. Conclusions and the Key Messages

The objective of this "briefing note" was to document the workings of concessions, with a particular focus on the land sector, examining the management of the investment proposals, their impacts on the livelihoods of the local communities, social inclusion, environmental considerations, and the perspectives on governance and institutional capacities. This piece also sought to understand the shortcomings of land management in Lao PDR as a whole.

There is no evidence of allocative efficiency on land (i.e., the right type of land areas allocated at right costs, for the right purposes and providing benefits to right people). In every case, concessions were awarded on a specific condition that investments will be made. However, the overall investments actually made and recorded so far is patchy as the investors are reluctant to invest on land beyond nominal sums and consequently few concessions have generated anticipated revenue. In addition, as GoL is explicitly committed to socialist principles, it has a bound duty to ensure equity and social justice in its development programs and initiatives. In awarding land concessions, GoL should have

taken – and should be seen to have taken – sufficient measures to protect the livelihoods of the affected communities.

The reported adverse impacts on the families included the degradation and fragmentation of their traditional habitats, their declining access to land and livelihood resources. The discussions highlighted that the people who are paying for GoL's growth strategy are the very people who the government intends to assist. Additionally, local communities are not familiar with the contract labor methods largely practiced by the concessionaires and these approaches are likely to force them to relate to new ways of economic systems in a way different from earlier for which they may not be ready. For the government, it will be an opportunity to enhance the commitments and performance of the concessionaires. Not only are land concessions failing to generate projected revenues to GoL but also beginning to cause gradual damages to the rural communities' economic systems. GoL is now seen as badly managing the country's land and natural resources.

Despite the stated objectives and claims, the land concessions are bound to transfer crucial land resources into the control by the private sector, which may or may not be accountable to the government. Further concerns exist in relation to declining land productivity, livelihood stability and employment and social relations. The positive picture portrayed by GoL's economic growth strategy is a misrepresentation. It is true that not all is well with the current policies and procedures for managing land and natural resources. Clearly changes are required, but land concessions will not bring about those changes. Fundamental changes can only take place with political commitments and instruments to promote change. Meantime, GoL's commitments and policy steps are required, both to mitigate the problems generated by the current set of land concessions, thereby restrict the damaged caused by expansion of investments on land, and to develop appropriate instruments for managing land resources in the future. Some of the critical issues and possibilities are summarized below.

Land concessions are negotiated, awarded and managed in a haphazard manner with no systematic or unified monitoring and evaluation procedures in place, leading to serious loss of valuable natural resources. The investment-centric, “all development is good” approach to land and natural resources management in Lao PDR are proving to be grossly inadequate and that the focus of land concessions is not always at the national level but also scattered at the provincial and district authorities too with poor coordination. Additionally, there is no methodology for monitoring performance of the concessions so that sanctions could be imposed on inactive or irregularly functioning concessions. The combination of weak institutional capacities dispersed contracting procedures and absence of performance audits have all led to inefficient and ineffective management of the concessions awarded to date. This calls for an immediate politically mandated agenda for reforming land management in Lao PDR. Resultant political risks for inaction are immense.

Land administration and management systems and procedures have not changed to incorporate the significance of formal land markets, leading to corruption in land administration, speculation and the development of a parallel land market

characterised by a lack of security. The cases documented so far have confirmed families are losing access to land and natural resources, evidences of significant social and economic losses.

Governance issues such as lack of transparency, incorrect interpretation of laws and regulations in the award of contracts, uneven application of laws and regulations, reporting abuses, unclear expropriation in terms of the misuse and abuse of public powers to support private developments, inequity, issues related to compensation, communication, accountability of decision making agencies and individuals have all resulted in large number of non-performing and/or poorly performing concessions. This has resulted in not only the passing away of state control over natural resources (as land areas are already under concessional arrangements) but also negatively impacted on intended outcomes and loss of state revenue. The critical challenges remain in areas such as screening methodology for reviewing business plans/proposals received for land concessions/leases, valuation, social protection measures, and public disclosures.

Institutional issues (overlapping with legal and policy concerns) such as lack of comprehensive institutional frameworks and principles required to promote an integrated and accountable approach to land administration and land use management are currently not in place. For this to happen, legal provisions governing the allocation of land areas needs further reviewing. It will have to cover weak and/or inconsistent enforcement, poor coordination, unclear mandates, and increased communication and civic engagement at all levels.

Absence of reliable land information systems. The registry or inventory of all land is incomplete along with lack of an audit of land areas in terms of social and environmental aspects and preparation of basic land use plans. This has resulted in GoL not being able to consider proposals received for award of land concessions with appropriate information on hand, and subsequent non-performance of the concessions and loss of state revenue and productive livelihood for the families.

Lack of an open dialogue with the investors. There is a need to clarify and define the role and responsibilities of the corporate bodies and investors. In addition, the absence of a framework to monitor the application and enforcement of the available instruments, as well as to guide sectoral and cross-sectoral reforms continues to be a major hurdle. GoL should have mechanisms to promote an open dialogue with the investors. Such a dialogue should be based on thorough and verifiable information in the hands of GoL and that they are shared with the potential investors before hand to build a cooperative program of land development that is not only productive, but fair and equitable.

It is currently felt that civil society expressions in Laos are essentially from and through the donor community (and INGOs), which have been attempting to highlight the inconsistencies and opacity of current concession practices and processes⁶³. It is also important for GoL to engage in an open dialogue with the INGOs working in the country.

⁶³ The recent passage of a national Decree allowing the establishment of local non-profit organizations and associations should allow opportunities for local civil society groups to emerge in due

The last message highlights the lack of appropriate instruments to promote sustainable investments in land. There are areas in the administration, delivery, development and management of land which continue to remain uncertain and even contentious (e.g., at sub-national level the issue of district/provincial versus national mandates).

12. Recommendations: Moving Forward⁶⁴

In this think piece several points have been examined to assess the capacity development needs of GoL in sustainably managing the land concessions and its natural resources. The discussion has demonstrated the adverse effect of the current way land concessions have been negotiated, awarded and overseen. Broadly put, the proper management of land concessions is a crucial issue for Lao PDR's current and future economic growth and development agenda.

In this regard, developing a well-functioning land management system is essential for promoting economic growth with social equity and for establishing sustainable livelihood options. It highlights a clear need for the comprehensive understanding by and for GoL decision makers on the subject of land concessions. It will encourage GoL to make political commitments to better meet its development objectives, to understand the nature and scope of the current investment decisions made at national and sub-national levels, and to identify where regulatory and capacity building initiatives are required.

In terms of implementation, this will rest, broadly, on five pillars: (a) the availability of adequate and accurate information on which to make decisions on concessions; (b) adequate capacity within GoL agencies to determine, aware and monitor/oversee the implementation concessions; (c) legislation and regulations and relevant institutional arrangements; (d) enforcement of land governance in an even and transparent manner and reporting thereof; and (e) sustainability of land concessions and land areas in the longer-term.

In order to build up GoL's capacity in the five areas identified above, as a first step, GoL will have to establish a high-powered Inter-Ministerial Committee on Land Concessions (IMCLC) to secure critical political commitment and support for implementing the recommendations. The IMC's first task would be to review and respond to this report, with due consideration given to actions, and any requests for donor assistance. This Committee should consider the following vital tasks as a priority:

1. **Undertake a comprehensive risk analysis:** there is a priority need for GoL to undertake a comprehensive risk analysis and develop mitigation measures to

course. Until such time, inevitably international organizations (including multilaterals and bilateral) will continue to compensate for that limitation.

64 It is important to summarize "political risks" involved in implementing the recommendations (or not implementing them). This part will have to be prepared in a consultative manner so that is reasonably explained of its importance to capacity building.

immediately address the negative impact caused by the concessions to date. Some of the risks include geo-political risks, environment and climate related impacts, reserves and resource risk. This should also include an analysis of political risks that may be relevant in land concessions.

2. Undertake a thorough review of the available data/information on the land concessions:

Firstly, this review should commence with an examination as to how concessions are being currently monitored and who is responsible for such tasks.

Secondly, the review should gather recent data on land concessions already awarded and these will have to be reviewed in a systematic manner, focusing on concessions granted at the national and provincial levels, as well as those granted by different ministries and departments, including agriculture, forestry, and tourism, for plantations, contract farms and mineral resources. The qualitative part of this review should include questions relating to land conflicts, problems with processes of land management and concession-granting, and the role of traditional leaders and local authorities in the distribution and management of natural resources. This may initially require a rapid analysis of land areas allocated so far based on reported data and information available. Such an analysis should also identify the gaps and absence of information for further investigation and follow up.

In order to address the serious concerns, some countries have made an attempt to build an information/data-base that is reasonably accurate, comprehensive and verifiable. This is generally known as a "regulatory validation" of all concessions issued by various GoL entities, at national, provincial and district levels, to-date. An effort of this nature will necessarily commence with the issuance of an Instruction by the highest offices of the Government of Lao (the Prime Minister's Office) assigning a mandate, work schedule and tasks to be completed with a clear timeframe (say about six months) covering all villages, districts, and provincial agencies and authorities to provide a consolidated list of concessions awarded with minimum information on each. The information could be gathered on the following items:

- (i) Total concession area (ha) awarded
- (ii) Spatial/geographic location of each concession Map/s of location of the concessions awarded,
- (iii) Information on the concessionaires (concession awarded to whom),
- (iv) Date of issuance of the concession and its duration of validity
- (v) GoL entity that authorized (or signed) the concession agreement.
- (vi) The objectives of the concessions (main operations and secondary ones).
- (vii) Conditions applicable to the awarding and operation of the concessions.

- (viii) Performance of the concession to-date (a brief progress report).
- (ix) Information on past or on-going disputes (or conflicts) over the land areas allocated and/or benefits assured to the communities and such others.
- (x) Who in GOL is monitoring. Frequency of supervision, reports etc.
- (xi) Action taken/remediation for underperforming concession
- (xii) Environmental and social monitoring reports, if any

The Instruction to be issued for this purpose will have to express the need for the private sector to ensure that information relevant to their concessions is accurate and up-to date. The Government Instruction should also state that following the regulatory validation that, any concessions found in-breach of the Constitution, Law Land or Law on the Promotion and Management of Foreign Investment in Lao PDR, could be invalidated and cancelled by GoL. An initiative of this nature will also assist GoL in gradually building up the capacity of the civil servants and institutions to manage land concessions.

An assessment of the real values of these allocations will need to be computed and compared with the leases' commitments and actual undertakings (performances to date). It will assist in quantifying and qualifying what Laotians have lost from these allocations to date and highlight political and policy options for GoL.

3. **GoL to review inactive and poorly performing (or non-performing) concessions, if any, and declare those below an agreed threshold as void:** Following a review of the existing concessions, the idle, inactive and poorly performing concessions should be declared as “void”. Upon cancellation of the idle concession areas, GoL may consider agreeing to turn over these areas to local small holders (priority) and others for investment and production. In specific cases, GoL should suspend medium and large-scale activities on concessions that do not undertake to comply with the revised legal and regulatory framework and redefine the terms of their operations.
4. **Undertake a comparative study of the existing Land Law, Investment Regulations and other instruments:** With the help of legal experts and land professionals, this review will have to examine important laws (regulations and implementation instructions), including the Land Law of 2003, the Environment Law, Investment Regulations, and their accompanying regulations, to determine the inconsistencies, gaps and overlaps. This effort should assist in reviewing and amending both the Land Law and land regulations. In addition, it should identify opportunities that these legal instruments could create as GoL moves forward with streamlining existing regulations and implementing procedures.
5. **Undertake a study on the social effects of land concessions in randomly selected project sites.** The majority of the presently available reports and

information on land concessions were prepared by non-government sources including INGOs. It is important that GoL supports an assessment of this nature in understanding social effects of the investments (beyond a pre-concession assessment of the direct impact on people living on or from affected land). A review of this nature will examine the efficacy of the current approaches and explore the need and options for building a safety system as a coping mechanism for the displaced families. It should also provide guidance as to how investments could impact relations and structured in Lao PDR and potential social risks could be mitigated.

6. **Develop procedures and later enact regulations on pre-concession criteria with compulsory land conversion measures⁶⁵**: If the land acquired for concessions/leases is based on an approved land use plan, it will be advantageous in encouraging initiatives with an in-built requirement for transparently evaluating the current land use status, compatible land recovery prices, profit sharing arrangements, and compensation for the affected families. The Investment Law should be amended to ensure that land intended to be acquired for concessions must undergo a set of compulsory land use conversion measures. These procedures may be administration processes and decisions in order to recover land areas from the current users prior to their allocation for investment projects. It could include:

- Securities and financial warranties to be made by the investor computed so as to compensate and/or cover the costs of proper resettlement of the people impacted by development activity;
- Appropriate public disclosures (timing, nature and content of information to be defined in the relevant legislations and implementing procedures) to be made and relevant methodologies to be applied in assessments; and
- Scrutiny and confirmation of the above requirements by an independent inter-governmental mechanism at the central level, on compliance and implementation with powers to enforce sanctions in case of deviation. This approach will replace the current method that fixes land prices based on locations rather than current use and productivity⁶⁶.

Enhancing GoL's Capacities in the Land Sector: As GoL makes important political commitments on the management of land concessions and land management as a whole, it should also express its willingness and desire to move from policy to action. Efforts to build up GoL's capacities should focus beyond building organizations and individual skills to strengthening institutions and the delivery of improved public services. GoL should better customize its capacity building approaches by developing sector-specific

⁶⁵ This implies that land areas identified to be allocated to a concessionaire will be formally notified, public disclosures completed and upfront payments and support to local communities agreed to and their compliance confirmed before signing the contract.

⁶⁶ In general, Laos has reported, compared to other countries in the region, reasonable levels of land productivity. Therefore, computation of compensation for land areas acquired should take into account those factors. However, in practice, this is reportedly seldom pursued.

guidance and it should capture cross-sectoral issues and opportunities, and serve as a forum for learning across GoL agencies at national and sub-national levels. Moreover, all efforts should be monitored for their quality at the design and implementation stages. The following general recommendations and frameworks are intended to support the effectiveness of GoL's approaches aimed at improving capacity and performance and thereby enhance understanding of the interrelationships among capacity, change and performance the land and natural resources sector and their management in a sustainable manner.

- *Institutional development and capacity building:* While all ministries indicate a critical shortage of trained staff, it is also clear that no institution has done a systematic analysis of its staffing and skills requirements. The demand for land for development has put an additional burden on staff responsibilities with little training to address these issues. As the working group develops guidelines and protocols for dealing with land development issues, so must ministries undertake staff development and training programs for these guidelines and protocols to be effectively implemented. Training program will have to be developed to address:
 - (a) Project screening;
 - (b) Project proposal evaluation (including business plans, EIAs, and SIAs);
 - (c) Public information and disclosure;
 - (d) Handling objections;
 - (e) Project monitoring - and supervision; and
 - (f) The handling of project documentation.
- *Investing in land organizations and strengthening organizational capacities:* GoL has been continuously reorganizing the institutional structures governing land. While some of the mandates are gradually getting rationalized, there is a need to strengthen the organizational capital, in land and concessions management, so that staff can break away from established patterns and provide sufficient leadership role. It is important to set clear and measure goals and objectives in accordance with the GoL's National Development Strategic Plan and objectives.
- *Redefine GoL support to strengthening organizational capacities:* The preparation of the strategy for institutional development should contain a redefinition of all management roles and responsibilities in the negotiation, awarding and monitoring of land concessions. It should include recasting national, provincial and district level functions and support to the land sector will have to be consistent with the new core strategy. This effort should also assist to clarify the respective roles and responsibilities of the central government relative to provincial and district administration. This is crucial to maintain future control over the concession situation. In addition, the GoL should also be able to define reporting mechanisms, monitoring mechanisms, and performance analyses.
- *Learning from international best and worst practices.* More than ever before, with the increasing demand for land and natural resources throughout the region and globally, Laos can learn from abroad. This is arguably even more important where foreign companies, seeking concessions, may try to replicate their investments, in multiple countries.

GOL will have to develop and manage a nationally complete and consistent management information system (MIS) for the administration of land development investment. This should cover: (a) identification of land suitable for development investment; (b) recording the allocation of land for development investment; and (c) monitoring the utilization of assigned lands. The MISs requires:

- Complete national inventory of land parcels, viz., the cadastre, which is geospatially referenced, which is the responsibility of the NLMA, with access provided to all agencies/.ministries awarding concessions,
- A land use classification system,
- An agreed set of criteria for recording and monitoring concessions,
- A system for regular monitoring of concession impacts on a time-dependent basis, viz. periodic coverage by satellite imagery or other form of data coverage,
- Agreed protocols under which agencies/ministries awarding concessions and leases are required to record and monitor concessions,
- Annual reporting requirements, and
- Protocols for public access to approved layers of data.

Pursue consultations with the private sector with participation of all stakeholders:

GoL should build up its in-house capacity to undertake coordinated consultations with a range of concessionaires to identify issues from their perspective(s), as frequently concessions have been awarded with the expectation that the land is 'unencumbered' but in reality the identified land is not due to the presence of rural communities. This could contribute to developing an appropriate code of practice tying in with improving Government procedures and practices.

The consultative efforts could explore new opportunities for partnerships with INGOs, community groups. This will provide the GoL a useful road-map for both intensifying and scaling up its focus on land development in a sustainable manner. It would include piloting of programmatic partnerships with INGOs and community groups, and increase joint training initiatives enhancing substantive dialogue at the grassroots level and building common grounds.

The above efforts should contribute towards developing a workable approach to reform the current Land Law and implement a new land administration and management program. It matters a lot in two senses. First, it will help GoL to rescue itself from the current challenges confronted in the management of land concessions. Second, GoL will be able to acknowledge and explore the less obvious risk factors in land and resource management and thereby able to start paying more rigorous attention to it as well to the political economy of resource management. It will be a vital, positive sign of GoL's engagement in political accountability and governance.

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Summary Report of NLMA Concession Inventory Pilots

Table 1: Areas of land lease/concession projects in Vientiane and Luang Namtha Provinces, 2009.

Vientiane Province (Total area: 1,852,600 ha)			Luang Namtha (Total area: 961,200 ha)	
	Number of Projects	Area (ha)	Number of Projects	Area (ha)
Total	237	391,709	107	25,366
Concessions	198	390,374	23	19,291
Lease	34	177	61	126
Contract Farming	5	546	23	5,949
Sector				
Agriculture	114	62,551	43	18,140
Rubber	48	25,104	36	18,110
Mining	55	326,944	5	5,502
Industry	30	714	12	48
Investors are	1 Lao (149) 2 Chinese (25) 3 South Korean (24)		1 Lao (58) 2 Chinese (45) 3 Thai (1)	

Source: GTZ, Lao PDR, 2009.

The above table is a summarized version of data aggregated that is presented in the NLMA Report (GoL, 2009) on GTZ-supported Pilot Phase 2 which covers Vientiane Province. It also contains the data aggregated from the Luang Namtha GTZ-supported pilot undertaken by NLMA.

Principles for Responsible Agri-Investment

Agreement was reached in September-October of 2009 among the main international agencies (World Bank, FAO, UNCTD, and IFAD) that a set of principles for responsible agricultural investment involving significant acquisition of resource rights is warranted, and that the seven principles contained herein are essentially the right ones (although certain details will continue to be refined). These principles are based on preliminary evidence from this ongoing work, as well as the accumulated experience of a broad set of informed observers and partners within and outside the World Bank Group, including FAO, IFAD, and UNCTAD. Considerable consultation has also occurred with all other relevant international agencies.

Table 2: Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

RESPECTING LAND AND RESOURCE RIGHTS

Principle 1: *Existing rights to land and associated natural resources are recognized and respected.*

Existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected. This requires: (i) the identification of all rights holders; (ii) legal recognition of all rights and uses, together with options for their demarcation and registration or recording; (iii) negotiation with land holders/users, based on informed and free choice, in order to identify the types of rights to be transferred and modalities for doing so; (iv) fair and prompt payment for all acquired rights; and (v) independent avenues for resolving disputes or grievances. While a countrywide systematic identification and registration of rights is desirable in the long run, countries with limited resources may do well to initially focus efforts on areas with high agro-ecological and infrastructure potential and expand from there.

Many investments requiring access to land on a large-scale focus on areas that outsiders have often considered to be ‘empty’ or ‘marginal’. Yet it is important to recognize that there are few areas truly ‘unoccupied’ or “unclaimed”, and that frequently land classified as such is in fact subject to long-standing rights of use, access and management based on custom. Failure to recognize such rights, including secondary ones, will deprive locals of key resources on which their wealth and livelihoods depend. Lands that have been abandoned by internally displaced persons or which could be used by them pose particular challenges. It is important that efforts to make land available to investors not undermine current or future livelihood opportunities for those displaced involuntarily.

Recognition of rights to land and associated natural resources, together with the power to negotiate their uses, can greatly empower local communities and such recognition should be viewed as a precondition for direct negotiation with investors. Specific attention to land rights by herders, women, and indigenous groups that have often been neglected in past attempts is critical to achieving a fair, inclusive outcome.

ENSURING FOOD SECURITY

Principle 2: *Investments do not jeopardize food security but rather strengthen it.*

Whenever there are potential adverse effects on any of aspect of food security (availability, access, utilization or stability), policy-makers should make provisions for the local or directly affected populations certain such that: (i) equivalent access to food is assured; (ii) opportunities for outgrower involvement and off-farm employment are expanded to protect livelihoods and raise incomes; (iii) dietary preferences are taken into account if the mix of products grown may change; and (iv) strategies to reduce potential instability of supply are adopted. Moreover, whenever the proposed project is large enough to affect food security at the national level, project design and approval should also consider these four kinds of aggregate impact.

ENSURING TRANSPARENCY, GOOD GOVERNANCE, AND A PROPER ENABLING ENVIRONMENT

Principle 3: *Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.*

Lack of transparency creates distrust and deprives relevant actors of the possibility to resolve minor problems before they escalate into large conflicts. On the other hand, greater transparency will also reduce transaction costs for all involved, thus benefiting host countries and investors alike through more efficient competition. Clarity in the regulations governing investment incentives and the way in which they are applied also makes it more likely that host countries can attract investors who will make tangible contributions to long-term development.

To create a proper enabling environment, policies, laws, and regulations affecting the investment climate should be benchmarked against and brought into line with globally accepted best practices, even as institutions responsible for implementing them are strengthened. Specific steps worth mentioning in this regard include: (i) ensuring that all relevant information, including land potential and availability, core elements of prospective investments, and resource flows or tax revenues, be publicly available; (ii) helping institutions that handle investment selection, land transfers and incentives to follow principles of good governance, develop the capacity to operate efficiently and transparently, and be regularly audited; and (iii) making sure that an independent system to monitor progress towards a better investment climate is in place.

CONSULTATION AND PARTICIPATION

Principle 4: *All those materially affected are consulted, and agreements from consultations are recorded and enforced.*

Sustainability of investments and realization of synergies from allocation of public assets to major projects as well as provision of complementary public goods by the investor require that such investments be designed in a participatory manner, consistent with local people's vision of development. Even in countries that already require local consultations as a precondition for project approval, the impact of such requirements is often limited by

a lack of clarity on process, the nature and recording of outcomes, and ways to enforce agreements reached in the course of consultations.

To make consultative processes more effective: (i) definitional and procedural requirements in terms of who represents land holders and what is a quorum for local attendance need to be clarified; (ii) the content of agreements reached in such consultations (e.g. by providing model agreements/contracts) should be documented and signed off by all parties; and (iii) methods for enforcement and sanctions for non-compliance should be specified. Incentives to adopt such a process can be greatly enhanced if taxes to be paid by investors are clearly specified, independently monitored, and accrue at least in part to local governments responsible for making available local public goods.

RESPONSIBLE AGRO-ENTERPRISE INVESTING

Principle 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

As key players in this sensitive arena, investors have a special responsibility to apply high standards in the design and execution of their projects. Economic viability, which in turn rests on technical feasibility, is a precondition for the generation of benefits that can then be distributed among shareholders and cooperating stakeholders. Fairly assessing likely viability, and then taking steps to make sure it is achieved, are both in the interest of all involved, not just the private investor. Where the resources in question are publicly owned, or if other public assets such as tax breaks and complementary infrastructure are being offered as incentives, cognizant governmental agencies have an obligation to carefully check the feasibility analysis to ensure that host countries, affected communities, and local stakeholders are all likely to benefit. National or regional bodies may have to assist states, provinces or municipalities that are technically unable to review major projects proposed within their jurisdiction. On the recipient country side there is also a need to integrate the proposed enterprise into broader strategies.

As far as the investors are concerned, aside from conducting proper due diligence and project analysis, they should be expected to: (i) comply with laws, regulations, and policies applicable in the host country (and ideally with all relevant international treaties and conventions); (ii) adhere to global best practices for transparency, accountability and corporate responsibility in all sensitive areas; and (iii) strive not only to increase shareholder value but also to generate significant and tangible benefits for the project area, affected communities, and host country.

SOCIAL SUSTAINABILITY

Principle 6: Investments generate desirable social and distributional impacts and do not increase vulnerability

Even economically viable and sustainable projects may have undesirable social consequences if they involve uncompensated displacement or if benefits bypass vulnerable groups or are captured by local elites. A thorough understanding of cultural

context, sources of vulnerability, potential for conflict, and livelihood and food security strategies, can help identify design options to reduce risks and maximize positive impacts at the project level.

Social sustainability can be enhanced if: (i) relevant social issues and risks, as well as strategies to mitigate these and increase social benefits, are identified during project preparation and adequately addressed by government and investors; (ii) the interests of vulnerable groups and women are considered explicitly; and (iii) generation of local employment, transfer of technology, and direct or indirect (e.g. via taxes) provision of local public goods is part of project design.

ENVIRONMENTAL SUSTAINABILITY

Principle 7: Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them.

Despite the potential importance of possible negative impacts on availability or quality of key natural and environmental resources outside the immediate project area or beyond the project's lifespan, investors have little incentive to take such impacts into account. Thus, regulation at the level (i.e. either local, national, or global) where externalities arise will be desirable to ensure that such goods, which may include local access to forest products, water, or soil quality, are not jeopardized. This will need to include impacts on natural resources that may be located far from the project site, such as river basin impacts or social dislocation resulting from the project causing deforestation elsewhere. Capacity to monitor will be particularly important due to the fact that such effects will materialize only in the course of project implementation and investors may renege on previous agreements.

Investors and government need to collaborate to ensure that: (i) independent environmental impact analysis to identify potential loss of public goods, such as biodiversity or forests, is conducted prior to approval; (ii) preference be given to reclaiming or increasing productivity on areas already used rather than clear new land; (iii) the most appropriate production system is selected to enhance the efficiency of resource utilization while preserving the future availability of current resources; (iv) good practices in agriculture, processing and manufacture are followed; (v) provision of desirable ecosystem services is encouraged; and (vi) negative impacts are addressed through regularly monitored environmental management plans and compensated where appropriate.