

# Joint Action and Collaboration for the Promotion of Responsible Tree Plantation Investments in National Production Forest Areas

Prepared by CDE on behalf of the Interlaken Group | February 2020

## Background and Purpose of the Document:

On November 5, 2019 the Interlaken Group<sup>i</sup> supported a dialogue between leaders from companies and development partners active in Laos' forestry sector, including from Stora Enso, Burapha, New Forests, Mekong Timber Plantations, CDE, ACIAR, RECOFTC, VFI, MRLG, GIZ, FAO, IFC and the World Bank. The purpose of the meeting was to discuss some of the emerging challenges and opportunities associated with the planned opening of degraded National Production Forest Areas (PFAs) for plantation forest investment, and to identify opportunities for collective action amongst progressive forestry sector stakeholders. The workshop yielded a set of consensus positions and priorities to help ensure that new forest investments in PFAs yield benefits for society, Government of Laos, and companies, alike. This brief presents the findings of that discussion and the opportunities for action identified by the group. It might be utilized as guidance to help coordinate workplans, strategies, and messaging among the stakeholders supporting sustainable plantation forestry in Laos.

## Context:

The Government of Lao PDR (GoL) has recently increased its commitment to promote tree plantations for achieving high-level socioeconomic development and forest conservation goals. Concretely, the GoL has opened an estimated 600,000 ha of “degraded” forest land inside the PFAs<sup>ii</sup>, issued a high-level directive to streamline and simplify investment procedures for tree plantation investments, indicated some flexibility with respect to plantation wood processing and exports, and indicated a willingness to reconsider and make more fit-for-purpose ESIA requirements for tree plantation investments inside the PFAs. These provisions represent a substantial shift in GoL policy and a potentially game-changing opportunity for investments in the tree plantation sector. The amount of land being opened for investment is greater than all existing tree plantation investment area in Laos combined.

Investments in *sustainably* designed and managed tree plantations represent a compelling opportunity for the achievement of diverse national development goals in Lao PDR. However, there are disincentives and regulatory contradictions in Laos that limit potential for the growth of plantation forestry. Further, past policies and regulatory conditions have fostered an uneven playing field, undermining and deterring sustainable investment and the achievement of positive social and environmental outcomes. These conditions also threaten industry profitability without which the plantation forestry sector cannot thrive, while also prompting concerns related to the smallholder tenure security and rural well-being. While private sector interests and those of development agencies, civil society actors and the Government of Lao PDR (GoL) are not always aligned, there are significant overlapping interests, goals and commitments. This suggests the need for joint-action toward common purposes and negotiated solutions.

There is a robust regional and global market for tree plantation products (esp. for pulp, building materials, furniture and veneer). In fact, market-demand considerably exceeds regional and global supply, and this gap is projected to widen in coming years. In Laos, the rapid expansion of transportation networks, especially in the relatively inaccessible northern provinces, are expected to significantly reduce transportation costs and increase profitability within the next 5-10 years.

For many companies, access to land has been identified as the single greatest obstacle to growth in this subsector. There is strong interest from plantation companies and local farmers in tree plantation investments but restrictive policies and procedures for accessing land and ensuring secure rights over these lands and the trees they plant critically limit opportunities. Another substantial obstacle to private sector investments in tree plantations is the poor fit of current Initial Environmental Examination (IEE) and Environmental and Social Impact Assessment (ESIA) requirements with the realities of tree plantation footprints. Current IEE and ESIA guidelines were developed based on the hydropower and mining sectors, which have relatively discrete project locations, unlike plantation investments which are typically more diffuse due to the constraints of land

availability and suitability, resulting in expansive environmental assessments and protracted local negotiations which are costly, though necessary.

The opportunities are thus clear, substantial, and near-term. There are also some risks: (1) The prospect of significantly reducing IEE and ESIA requirements, with implications for associated Free Prior and Informed Consent (FPIC) safeguards, presents a major risk for local social and environmental systems. Irresponsible corporate actors will certainly seek to take advantage of these opportunities to secure land in the PFAs<sup>iii</sup>. Differing political positions and legal interpretations of, for example, the rights of communities within the PFAs and the legitimacy of their legal tenure claims, as well as generally-weak regulatory oversight of existing IEE and ESIA requirements and associated safeguards have placed the onus on private sector actors for adherence to best-practice standards for investment. This results in a highly uneven playing field that works to the disadvantage of responsible corporate actors. (2) Labeling shifting cultivation landscapes as “degraded” forest lands is a mischaracterization of an important land use. A more holistic discussion is needed on rotational agriculture, sustainable agroforestry systems and multifunctional land and forest uses, and how these fit within state forest areas. Truncating this discussion risks undermining local decision-making, land use rights, food security and rural development. Coercive conversion from rotational shifting cultivation to tree plantation-based livelihoods, absent of true FPIC procedures and clear provisions for livelihood replacement, can be expected to have major, negative social implications for local communities. These may have flow-on detrimental environmental consequences through further deforestation associated with activity-shifting as local communities seek new forestland to cultivate (i.e. ‘leakage’) (3) The shift in policy toward promoting large-scale monocultures of non-native species<sup>iv</sup> within these complex rotational cultivation landscapes, without adequate safeguards and best practice performance standards, may be expected to have a net-negative impact on ecosystem service functions, such as (agro)biodiversity provision<sup>v</sup>.

## Proposed Collective Actions

Collective, broad-based action is needed to leverage responsible tree plantation investments in the PFAs to contribute to the achievement of high-level sustainable development goals in Lao PDR. In particular, actions are needed to reduce undue and inappropriate barriers to investment, ensuring proper safeguards and procedures, and an overall leveling of the investment playing field that works to the comparative advantage of responsible actors. While in the near-term, the actions proposed below focus on the specific opportunity afforded by the opening of the PFAs, the envisioned outcomes relate to core issues in the tree plantation subsector generally and will thus have system-wide effects. Efforts should focus on the following actions:

1. **Provisions to ensure and promote local tenure claims within the PFAs:** While the 2018 Politburo Resolution on Land, the 2019 draft Revised Land Law and the 2019 Revised Forestry Law contain some provisions for customary tenure claims, including in forest areas, the legitimacy of these claims within the PFAs (and state forest areas more generally) remains unclear and inadequately protected. While new legal provisions proscribe the issuance of land titles within these areas<sup>vi</sup>, there are alternative mechanisms to establish and defend the rights of resident communities to use and benefit from their resources. In particular, rights over trees and benefits deriving from tree investment may support local claims, even without titles. This can be promoted through, for example, smallholder arrangements. A lack of legal clarity on land claims through smallholder plantations needs to be rectified, including potential differentiation between claims on planted trees versus land.
2. **Approaches for the identification of ‘degraded forest land’.** While an initial survey of degraded land potentially available for tree plantation investments has been carried out by MAF, further clarification is needed on how these areas are defined and demarcated, to avoid and mitigate potential environmental impacts like those arising from the clearance of high-value agriculture and forest land.
3. **A clear process for allocating lands in the PFAs and selecting investors:** While PMO/09 and MAF/1758 provide overall direction, at present there is no clear guidance on how the 600,000 ha opening process will be rolled out in practice (related to the above), nor how selections will be made with respect to investors. This lack of clarity risks placing irresponsible investors in an advantageous

position and undermines overall investor confidence. The elaboration of clear and transparent procedures built around globally recognized principles<sup>vii</sup> that promote high-quality investments is necessary to ensure positive environmental and social outcomes.

4. **The revision of current IEE and ESIA requirements for tree plantation investments:** It is generally recognized that existing IEE and ESIA requirements for the tree plantation subsector may not be appropriate in all circumstances, potentially creating unnecessary expense and delay that do not substantively contribute to better, more responsible investment. Revised requirements and processes are thus needed to streamline investment opportunities while ensuring that necessary requirements and safeguards—including FPIC, but also others—are clearly mandated, consistently applied across all tree plantation investments, and regulated in a transparent matter. These reformulated requirements need to be legally binding on all, properly monitored and enforced by MONRE and MAF and, potentially, independently monitored<sup>viii</sup>. It is understood that investors should not be financially responsible for additional costs associated with duplicative monitoring carried out by both government agencies and independent entities.
5. **Rectification of other onerous and unnecessary procedural and regulatory requirements, and inappropriate obstacles,** including: (1) rectification of non-standard restrictions on accessing land bound up in mineral survey and exploration concessions<sup>ix</sup> (2) commitment that legally-assured incentives indicated in the Investment Promotion Law will be followed, to benefit responsible investors<sup>x</sup> (3) revision and restructuring of fees and taxes for areas reforested with native tree species<sup>xi</sup> (4) standardization of benefit-sharing arrangements across tree plantation investments<sup>xii</sup>, and (6) standardization and enforcement of regeneration practices and requirements prior to project closure<sup>xiii</sup>.
6. **A more informed understanding of rotational agriculture and other forms of agroforestry, and their role in rural development, food security and environmental conservation:** There is a wide diversity of perspectives on the costs and benefits of rotational agricultural practices, particularly with respect to environmental and social outcomes<sup>xiv</sup>. Within state forest areas, this divergence of perspective is particularly critical, evinced by the characterization of rotational cultivation fields as “degraded forests”. While there is certainly room for differing viewpoints on this issue, misinformation has fostered and legitimized actions to coercively restrict rotational cultivation systems, undermining local well-being and the achievement of poverty-eradication and food security targets.
7. **Engagement of other private sector actors:** All private sector actors in the tree plantation subsector have struggled, to varying degrees, to gain access to land for investment. The actions proposed here are intended explicitly to promote investment, albeit alongside efforts to ensure adequate social and environmental provisions. The benefits that might be achieved from these actions (such as access to land, reduced regulatory requirements, etc.) will benefit all investors and thus may attract support from those actors that have not yet adopted international standards of best practice. Efforts to bring these actors into more direct discussion and collaborative action are needed. The pathway through which this may be achieved remains unclear, and thus options are needed, including those involving the VPA licensing process under FLEGT and the levers related to the Ministry of Industry and Commerce’s (MOIC) requirements for processors to invest in planting trees and to demonstrate chain of custody for the timber they purchase, to ensure sustainable supply<sup>xv</sup>. It may also be possible to engage directly with policy makers in investment source countries as well, to promote enhanced regulation of their outgoing investments. The Government of China, for example, has expressed commitments to social and environmental sustainability in its outgoing investments, and thus there may be some space for engagement with the Chinese public sector, potentially creating traction with Chinese companies receiving or benefitting from state subsidy, import quotas, etc. The International Tropic Timber Organization (ITTO), in partnership with FAO, is partnering with the Global Green Supply Chain initiative, which includes many leading wood trading and processing enterprises to support the sustainable sourcing of wood materials.
8. **Exploration of other incentives and levers for promoting responsible investments:** In addition to the opening of land and the streamlining and reduction of unnecessary procedural and regulatory obstacles, there are other potential levers that can be used to promote responsible tree plantation investments including, for example, carbon payments and mechanisms to foster deforestation-free

approaches. Options are currently being explored through various development projects that would benefit from further support and consultation.

The above actions—collective efforts to rectify unclear and unreasonable procedural obstacles to responsible investment while establishing and ensuring adequate social and environmental protections, alongside the promotion of appropriate incentives—are reasonable in principle and will benefit private sector investors, local communities and the natural environment, while also contributing to the overall promotion of tree plantation expansion in Laos and thus the achievement of high-level political goals of the GoL.

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<sup>i</sup> The [Interlaken Group](#) is an informal network of individual leaders from influential companies, investors, CSOs, government and international organizations. The purpose of the Group is to expand and leverage private sector action to secure community land rights. Together they develop, adopt and disseminate new tools and advance new “pre-competitive” mechanisms to accelerate private sector learning on responsible land rights practices. The Interlaken Group was jointly catalyzed and is coordinated by leaders from the Rights and Resources Initiative and the IFC.

<sup>ii</sup> MAF Ministerial Instruction 1758 (2019).

<sup>iii</sup> Irresponsible investor behaviors have, in the past, been largely to blame for the issuance of various moratoria in land investments, which have had system-wide impacts for all investors.

<sup>iv</sup> The GoL previously did not allow the plantation of non-native species within PFAs. Current directions under PMO/09 and MAF/1758 suggest that such species will be allowed as part of a broader mix of native and non-native species under plantation investments, though the conditions of this have not been elaborated.

<sup>v</sup> Biodiversity and agrobiodiversity values are commonly higher in complex, rotational landscapes than in large-scale monocultures of non-native tree species.

<sup>vi</sup> Other than State land titles. Additionally, new legislation seems to leave open room for the registration, if not titling, of smallholder land within state forest areas. This needs to be clarified.

<sup>vii</sup> Such as the IFC Performance Standards, the FAO-supported *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT), the Equator Principles, etc.

<sup>viii</sup> Such as through forest certification bodies.

<sup>ix</sup> Private sector actors indicate that project approvals have been rejected in areas currently under mineral sector exploration and survey concessions. There is no legal basis for such a restriction. These concessions cover more than 44 percent of the national territory of Laos, and thus such restriction presents a major obstacle to investment

<sup>x</sup> Investors report that while such provisions are ensured in law, when it comes to negotiating contracts and the concession agreement, such provisions are sometimes disregarded.

<sup>xi</sup> The opening of plantation areas for non-native tree species plantation within the PFAs is contingent upon parallel, private-sector financed restoration with native species. There is no clear standard on this, but pilot provisions have included the allocation of 10 percent of the plantation area for such restoration. Currently, these areas are taxed at the same rate, even though the trees will not be harvested. It may be reasonable to negotiate the reduction or waiver of these and other fees, particularly taking into consideration that the costs for native forest plantation are borne by the company.

<sup>xii</sup> There is no clear standard for benefit-sharing from the revenues of tree plantation investments, placing the onus on the voluntary decisions of the private sector companies. This places responsible actors in a disadvantaged position relative to irresponsible companies. It will need to be discussed how different investment models will be treated with respect to benefit sharing, as smallholder investments differ greatly from those of investment companies.

<sup>xiii</sup> Prevailing legal frameworks indicate that investment companies are responsible for the restoration of plantation areas to pre-existing, or better, conditions. The costs of such restoration are substantial, but there are no clear provisions. Again, the onus is on the individual company, placing responsible investors in a disadvantaged position. These provisions need to be clarified and standardized, enforced across the whole sector. To date, there is no clear indication of what species, or mix of species, should be used for restoration, propagation arrangements, availability of germplasm silviculture, etc.

<sup>xiv</sup> For example, land valuation comparisons between rotational cultivation and tree plantations typically exclude values arising from NTFPs, which, in rotational systems, may exceed the value of rice itself, thus creating a false comparison.

<sup>xv</sup> MOIC regulation and guidance on this needs clarification. At present, it is not clear whether such provisions should apply to all processors (irrespective of size), or whether such replacement plantations need to be of the same species as processed, whether planted on land held by the processing company or through investments in land held by smallholders, etc.