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FIDH (International Federation for Human Rights)



Lao Movement for Human Rights (LMHR)

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FIDH (International Federation for Human Rights)

Address: 17, Passage de la Main-d'Or 75011 Paris, France; Tel.: +33 (0)1 43 55 25 18; Fax: +33 (01 43 55 18 80)
Website: <http://www.fidh.org/> Email: fidh@fidh.org

Lao Movement for Human Rights (LMHR)

Address: BP 123 - 77206 Torcy Cedex, France; Tel./Fax: +33 (0) 1 60 06 57 06
Website: <http://www.mldh-lao.org/> E-mail: mldh@mldh-lao.org

1. The FIDH-LMHR joint Universal Periodic Review (UPR) submission focuses on the situation of land rights in the Lao PDR. Information presented in this report has been collected from: 1) the analysis of publicly documents; 2) research using primary sources; and 3) second-hand information which is specifically referenced in footnotes.

Land rights policy inconsistent with previous UPR commitments

2. Land rights have become a key issue of concern in the Lao PDR. None of the 145 recommendations made by various States at its last UPR in May 2010 directly addressed land rights issues. However, out of the 115 recommendations the Lao PDR accepted, 14 called on the government to continue efforts to eradicate poverty, ensure sustainable development, and to improve the standard of living, particularly in rural and remote areas.
3. In this respect, the human rights implications of large-scale land leases and concessions are serious, far-reaching, and inconsistent with the Lao PDR's commitments at its last UPR. The ongoing award of long-term land leases and concessions to domestic and foreign investors has resulted in widespread land confiscation without adequate compensation. Whole communities have been forced from their land, which has negatively affected the livelihoods of its residents.
4. Research shows that upland communities suffered mortality rates which were 30% higher than the national average following poorly implemented resettlement procedures.¹ In addition, resettlement has made it extremely difficult for residents to continue traditional farming practices. This, coupled with the lack of other viable work skills, has pushed resettled communities into poverty. Displaced communities have also suffered from the lack of access to education and health facilities.
5. Over the past four years, the Lao PDR government has done little to address the serious land rights issues detailed in this joint submission. In addition, the government has harassed, intimidated, and arbitrarily detained those who expressed their grievances, including land and environmental rights defenders.
6. As of 2012, the government had granted at least 2,600 lease and concession agreements to investors involving a total land area of 1.1 million hectares.² This represents about 5% of the country's total land area. It is estimated that at least 13% of the 11,640 villages in the country are affected by a land concession within their boundaries.³ These figures are based on data that was readily available during the time of research. It is not a full account of all the government lease and concession agreements. In the absence of a comprehensive and publicly accessible database of land deals it is impossible to know how much land has been granted in concessions and where it is located. As such, this is a serious concern.
7. The overwhelming majority of land concessions were granted to the primary sector. Of the 1.1 million hectares that have been accounted for, 50% was allocated for mineral extraction (copper, zinc, and tin), 28% for forestry (rubber and eucalyptus plantations), and 13% for agriculture (sugarcane, livestock, and jatropha). In the

¹ Probe International, *Aiding or Abetting? Internal Resettlement and International Aid Agencies in the Lao PDR, August 2005*

² This number does not include the roughly one million hectares of land granted to investors for mining exploration and hydropower projects.

³ Oliver Schönweger, Andreas Heinemann, Michael Epprecht, Juliet Lu, Palikone Thalongsengchanh, *Concessions and Leases in the Lao PDR: Taking Stock of Land Investments – 2012*

second and tertiary sectors, tourism and manufacturing-related projects accounted for 2 and 7% respectively.⁴

8. Most of the land was allocated for large-scale, foreign-run projects. Projects run by foreign investors (mostly Chinese, Thai, and Vietnamese) account for 72% of the allocated land. The average size of foreign-run projects is 1,167 hectares, which is 10 times the average size of domestic investment projects.⁵

Poor enforcement contravenes legal framework

9. In June 2012, the government announced a four-year moratorium on new land concessions for investment in the mining sector and for rubber and eucalyptus plantations. The government also said it would examine ongoing projects and review the environmental and social impact of major investment projects. Despite those announcements, many investment projects stemming from land leases and concessions continued to drive communities off their land without adequate consultation or compensation. In addition, the moratorium did not include projects that had already been approved, but had not yet started.
10. The legal framework governing land leases and concessions contains numerous provisions that require potentially affected communities to be consulted prior to the implementation of the project.
11. Article 8 of Decree 112, enacted in 2010, guarantees to individuals and communities affected by investment projects the right to: 1) receive information on the investment project and the benefits and environmental/social impacts during village meetings organized by the local administration and the project developer; 2) receive information on the project's impact and prevention/mitigation measures; 3) participate in consultation meetings organized by the authorities and the project developer at village, district, and province level to share their opinions and give comments on the project; 4) participate in discussions on compensation, resettlement, and restoration of the living conditions for affected communities.
12. Legislation also provides for resettlement and compensation packages for affected communities to ensure that their livelihoods are not undermined. Decree 192, enacted in 2005, requires investors to compensate and resettle villagers whose land has been confiscated for investment projects. Article 71 of the 2003 Land Law prescribes that the State must pay "appropriate compensation" whenever land confiscation is necessary "for public purposes." Article 72 of the same law empowers "a committee consisting of the representatives of concerned parties" to determine compensation rates.
13. Despite these legislative provisions, there exists a huge enforcement gap and the reality on the ground is a convoluted system that ignores the rule of law, facilitates corruption, and allows for the exploitation of natural resources at the expense of affected communities.
14. In contravention of the legal framework, investment projects have usually been implemented without the free, prior, and informed consent of affected communities. In addition, authorities have often evicted residents from their homes without providing adequate compensation. In cases where resettlement was promised,

⁴ Oliver Schönweger, Andreas Heinemann, Michael Epprecht, Juliet Lu, Palikone Thalongsengchanh, *Concessions and Leases in the Lao PDR: Taking Stock of Land Investments – 2012*

⁵ Oliver Schönweger, Andreas Heinemann, Michael Epprecht, Juliet Lu, Palikone Thalongsengchanh, *Concessions and Leases in the Lao PDR: Taking Stock of Land Investments – 2012*

relocation sites tended to be inadequate both in terms of location and infrastructure. In the vast majority of cases, the land at the resettlement site was non-arable and far from a reliable source of water for irrigation. As a result, rural communities suffered a loss of livelihood and food insecurity.

15. The mechanisms in place for approving, managing, and monitoring investment projects involving land leases and concessions remain inadequate. Responsibilities related to the granting of land, including land surveying, land allocation processing, and impact monitoring, are distributed across a number of different ministries and government agencies. As a result, investors have been able to take advantage of these institutional weaknesses to violate the land concession approval process as well as their contractual obligations once land has been granted. These violations have often led to serious socio-economic and environmental impacts.
16. In many cases, authorities at the provincial or district levels violated Decree 135 on Land Leases and Land Concessions enacted in 2009 by approving concessions which exceeded their authority. Decree 135 prescribes that land concessions for areas bigger than 15,000 hectares must be approved by the National Assembly. In some cases, provincial level authorities bypassed restrictions imposed by Decree 135 by dividing the land into small parcels and making the approvals in separate documents.
17. The government also granted many concessions on land where the planned activities violated land use regulations. For example, authorities approved land concessions in forest conservation areas in violation of the Forestry Law of 2007.
18. In many cases, investors used their concessions as an opportunity to exploit natural resources in the surrounding area to generate higher profits than its approved activities. For example, investors have regularly used agricultural concessions as a cover to illegally log in forest conservation areas. This has resulted in environmental degradation where communities lose the ability to gather medicinal herbs and other plants that both sustain them and supplement their income. This has disproportionately affected ethnic minority groups who mostly live in resource-rich areas targeted by land concessions.
19. Authorities have regularly failed to adequately consult local villagers before granting and allocating land to investors. In many cases, investors began activities before receiving - and sometimes even before requesting - authorization from the relevant government authorities.
20. Relevant government authorities have routinely failed to enforce agreements or obligations between impacted communities and investors to the detriment of local communities and the benefit of investors. In many cases, agreements between investors and impacted communities were often made orally, resulting in a clear disadvantage for local populations who lack the necessary skills in land negotiations and were not exposed to business-related standards and practices.
21. Monitoring of project implementation and land clearing activities is weak or often non-existent. In many cases, investors took advantage of this lack of administrative oversight and cleared an area much larger than that approved.
22. According to Article 80 of the 2003 Land Law, land disputes involving the use of land without authorization or the use of land "in contradiction with its objectives, laws, and regulations," fall under the sole jurisdiction of government-backed land management authorities at the national and local level. As a result, the law denies communities

access to judicial redress mechanisms whenever investors commit land rights violations.

23. Land disputes between investors that received land concessions and local communities have been largely due to government mismanagement, corruption, and failure to adequately enforce laws and regulations. Investors have often acted in collusion with the country's economic, political, and military elites.
24. The most common practice by local government that leads to land disputes is granting concessions without carrying out prior adequate land surveys. Other practices include abuse of power by officials who are bribed to seize land from residents to lease to investors and the relocation of communities impacted by investment projects at significantly low compensation rates.
25. In January 2013, a senior State Inspection Agency official revealed that inspections conducted over the previous three years showed that: 1) bribery was a common practice among officials, and 2) threats and misrepresentation of existing laws were used to force residents from their land.⁶
26. The examination of four case studies involving large-scale investment project stemming from land concessions illustrate the gap between legislative provisions and their poor implementation on the ground.

Case study #1: Special Economic Zone in Bokeo Province

27. Since January 2014, rice farmers in Ban Tonpheung District, in the Northern Province of Bokeo, have defied armed police orders to vacate land seized by the government to make way for the construction of an airport and casino-driven Special Economic Zone (SEZ). The SEZ has been developed by the Chinese company King Romans (Dok Ngiew Kham), which obtained a 99-year concession for 10,000 hectares of land located along the Mekong River in the 'Golden Triangle' region in the north of the Lao PDR in 2007.
28. Plans for the airport project were not made public until early 2013, after the government signed an MoU with the company. King Romans originally wanted to seize 236 hectares from 46 families in six villages (Phonehom, Donmoun, Phiengyam, Mekkachok, Khouan, and Sibouheun) in return for compensation roughly three times below market value.
29. In April 2014, King Romans announced plans to extend the initial project area by an additional six hectares to add a golf course. Neither the government nor King Romans have made details of the project public and have failed to provide information to land owners. On the contrary, police threatened farmers and forced them to sign a letter to agree to the land seizure so the project can proceed.

Case study #2: Rubber plantations in Sekong Province

30. In 2006, the government granted a 50-year land concession totaling 9,485 hectares for rubber plantations to the Vietnamese company Cong Ty Cao Su Nghi Lao-Viet ("Lao-Viet Friendship Rubber") in Thateng and Daksing Districts in the Southern Province of Sekong. The project has affected as many as 25 villages between the two districts. Prior to the land concession, the authorities did not consult with villagers regarding the project and failed to inform them of their rights.

⁶ Radio Free Asia, *Vientiane Authorities Say That Luang Area Belongs to Investors*, 8 January 2013

31. The villagers in Ban Yup Village, Thateng District, which has a total land area of 183 hectares, initially agreed to the expropriation of 42 hectares of communal land for a rubber plantation. However, in 2012 Cong Ty Cao Su Nghi Lao-Viet unilaterally expanded the project area to 153 hectares without consulting with the villagers. Thirty-five households in Ban Yup Village were left without land for rice cultivation. To this day, those farmers have not been compensated. Plots of lands at a relocation site proposed by the government are not arable. Many have left their village and some have gone to Vientiane and other towns in search of work and have become homeless.

Case study #3: Hongsa lignite-fired power plant in Xayaburi Province

32. In the Hongsa District of the Northern Province of Xayaburi, the Hongsa lignite-fired power plant project was launched in 2010 and is scheduled for completion in 2015. The project comprises a large open pit lignite mine that will supply fuel for the Hongsa power plant. Once online, the plant is expected to generate 1.878 MW of electricity, most of which will be sold to Thailand.
33. The project, developed by the Thai-Lao joint venture Hongsa Power Company, has already resulted in the relocation of more than 2,000 villagers from 450 families and the confiscation of roughly 6,000 hectares of rice paddy fields. Many of the relocated villagers are from ethnic minority groups - such as Lue, Khmu, Prai, Hmongs, and Mian - whose livelihoods are tied to the land and natural resources, including rice fields and forest products.
34. There was no genuine consultation process prior to the implementation of the project. The authorities and Hongsa Power Company representatives failed to inform local residents about the impacts of mining and lignite-fired power plants. Local residents were unaware of the long term impact of the plant on the environment, such as air pollution, and the potentially harmful effects on health and the destruction of forested areas. Residents received only positive information from representatives of the Hongsa Power Company. Villagers who complained to district authorities were threatened with arrest because they were perceived as opposing to government projects. In early June 2014, local farmers complained about the progressively reduction of land for rice cultivation as a result of the project. Farmers said that out of the 60 hectares available before the project started only six hectares remained in 2014.

Case study #4: Vientiane's Don Chan Island

35. Land confiscation and forced evictions as a result of investment projects also occurred in the Lao PDR's capital city. In Vientiane's Don Chan Island, the government leased 25 hectares of land for 50 years to a Lao-Sino joint venture, CAMCE, for the construction of luxurious villas for heads of States attending the ninth ASEM Summit in November 2012.
36. The project affected about 100 families, mainly residents belonging to a thriving farming community that produced up to five million tons of vegetables a year and played a key role in supplying the local food markets in Vientiane. Between 2010 and 2011, Don Chan residents were forced to relocate to Hua Siang Village, located 26 km outside Vientiane in Xaythani District. In their new location, the majority of villagers were unhappy about their living conditions because of the lack of economic opportunities. The soil at the resettlement site was unsuitable for farming, which resulted in the loss of the community's long devotion to agriculture as a source of income. In addition, the relocation site was three kilometers from the main road and

lacked public transport. Affected residents were neither informed nor consulted about the investment project. Compensation rates were based on unclear criteria. Only the few who had connections with the party or the government managed to negotiate an adequate compensation.

Case study #4: Vientiane's That Luang Marsh Special Economic Zone

37. In August 2013, authorities ordered the eviction of about 435 families from eight villages (Houa Khoua, Non Savang, Vangxay, Non Sanga, Nong Nieng, Chommany, Viengchaleun, and Phonephanao) in Vientiane's Xaysettha District to make way for the That Luang Marsh Special Economic Zone (SEZ). The SEZ is an urban development project on 365-hectares of land involving the Chinese company Shanghai Wan Feng. The MoU between Wai Feng Shanghai and the government was signed in December 2011. The project, which includes condominiums, luxury hotels, offices, shopping centers and entertainment complexes, broke ground in December 2012.
38. Families and residents affected by the project complain they had little say in the decision-making process about development. Although some residents initially refused to relocate because the compensation offered to them for their land was too low, many others agreed to relocate because they knew that if they did not accept the government's compensation offer the land would be confiscated anyway and they would receive nothing.

Villagers, activists, and human rights defenders targeted

39. The government's suppression of all expressions of dissent has targeted villagers and activists who protested against the negative impact of investment projects involving land leases and concessions. Authorities also harassed, threatened, and arbitrarily detained farmers and activists who sought justice and redress for land grabbing.
40. On 18 June 2012, authorities in Ban Yup Village, Thateng District, Sekong Province, arrested seven villagers after they returned from Vientiane to deliver a petition to the central government. The villagers had demanded adequate compensation for their community whose land had been confiscated to make way for a rubber plantation developed by the Vietnamese company Cong Ty Cao Su Nghi Lao-Viet [See above, *para. 31*]. They were detained overnight and questioned about who organized the protest. They had their hands and feet tied. Upon their release, authorities arrested and detained for two weeks Mr Souvan, the man whom they considered the key person in the community to draft the petitions protesting land confiscation and forced evictions. While in detention, Souvan was repeatedly tortured and his health deteriorated as a result of the beating and the mental trauma.
41. In October 2012, a young woman, Ms. Sivangxay Phommarath, led more than 20 people from Gnommalat District in the Southern Province of Khammouane to meet with an unknown person in Savannakhet Province. The group believed that the unknown person would help them obtain better compensation for land that had been confiscated to make way for a road expansion in Gnommalat District. On 19 November 2012, authorities arrested Sivangxay Phommarath, charged her with inciting social disorder, and detained her in Khammouane provincial prison. She was released in February 2013 after paying a 700,000-kip (US\$87) fine and on the condition that she and her husband would not break any laws and would not incite "unlawful acts."

42. On 25 April 2014, security forces in Ban Tonpheung District, in the Northern Province of Bokeo, arrested Ms. Khankham, a 60-year-old woman, and detained her for several hours for protesting against soldiers, policemen, and technicians who attempted to survey land for the construction of a golf course. The project is part of the expansion of the airport and casino-driven Special Economic Zone, developed by the Chinese company King Romans (Dok Ngiew Kham) [*See above, para. 27*].
43. The government has also targeted human rights defenders who worked with communities affected by land concessions and have advocated for a more sustainable and all-inclusive form of socio-economic development.
44. On 7 December 2012, the government gave Ms. Anne-Sophie Gindroz, the Director of Swiss NGO Helvetas, 48 hours to leave the country. The government charged her with violating legislation on foreign aid workers for writing a private letter to donors to express her concern over the shrinking democratic space and the erosion of the rule of law in the Lao PDR. In her letter, Gindroz also mentioned the harassment of farmers who opposed land grabbing and called for a form of development that takes into account the people's meaningful participation "through a more enabling environment and better guarantees of basic rights."
45. A week after Gindroz's expulsion, prominent civil society leader and human rights defender Mr. Sombath Somphone disappeared. Sombath was last seen on the evening of 15 December 2012 in Vientiane. Closed-circuit television (CCTV) footage showed that police stopped Sombath's car at a police post. Within minutes after being stopped, unknown individuals forced him into another vehicle and drove away. Analysis of the CCTV footage showed that Sombath was taken away in the presence of police officers. This fact supports a finding of government complicity.
46. For over 30 years, Sombath had pushed tirelessly for expansion for civil society space and rights of the rural poor and young people to have a voice in the development of Lao society and governance. Shortly before his disappearance, Sombath played a key role in organizing the Asia-Europe People's Forum (AEPF), a civil society forum that preceded the official Asia-Europe Summit Meeting. At the forum, discussions on land and water issues, and poorly-regulated foreign investment projects which threatened people's livelihoods were discussed openly, which is extremely rare for the Lao PDR.
47. Despite the government's pledge to "thoroughly and seriously" investigate Sombath's disappearance, the authorities' probe has been inadequate and unproductive. The government's failure to undertake proper investigations into all these cases of enforced disappearances violates its obligations under Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), to which the Lao PDR is a State party. The ICCPR states that governments must provide an "effective remedy" for violations of rights guaranteed by the Covenant, including the right to liberty and security of person.
48. The disappearance of Sombath Somphone is not an isolated case. To this day, the whereabouts of 10 other activists who campaigned for respect of land and environmental rights remain unknown.
49. On 2 November 2009, security forces in various locations across the country arbitrarily detained nine people who had planned peaceful demonstrations calling for democracy, justice, and respect of their land rights. The government has consistently failed to disclose the fate or whereabouts of the nine (two women, Kingkeo

Phongsely and Somchit, as well as seven men, Soubinh, Souane, Sinpasong, Khamstone, Nou, Somkhit, and Sourigna).

50. Also unknown are the whereabouts of Mr. Somphone Khantisouk, the owner of an ecotourism guesthouse and an outspoken critic of Chinese-sponsored agricultural projects that were damaging the environment in the Northern Province of Luang Namtha. He disappeared after uniformed men abducted him in January 2007.

Recommendations

51. FIDH (International Federation for Human Rights) and the Lao Movement for Human Rights (LMHR) call on the Lao PDR government to:
52. Strictly enforce the moratorium on new land concessions announced in June 2012.
53. Thoroughly review all existing land concessions, release accurate information on all existing land concessions and cancel or sanction those found to be operating illegally.
54. Reform the current system for the approval and management of all land leases and concessions with a view to increasing transparency and accountability.
55. Establish a publicly accessible database that contains documents underlying the approval process for all existing and proposed land leases and concessions and lease and concession contracts.
56. Create an agency responsible for resolving grievances related to land issues in a swift, competent, independent, impartial, and effective way. This entity must be empowered to enforce implementation of relevant laws and regulations.
57. Make the ongoing review of laws related to the management of land, forest, and water resources, as well as the drafting of a National Land Policy a time-bound, transparent, inclusive, and participatory process.
58. Ensure that the National Land Policy draft clearly defines in detail the principles for land expropriation and states that ownership or use rights can only be revoked with the free, prior, and informed consent of the affected land right holders except for purposes that directly and primarily benefit the general public. This applies to individually and communally held land, be it land under customary ownership or with a formal title. For communally held land, a two-thirds majority defines consent.
59. Implement the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests and ensure that its provisions are incorporated in the revised land, water, and forest laws as well as the in the National Land Policy draft.
60. Stop the harassment of individuals, communities, and organizations that speak out about shortcomings related to the approval and management of land leases and concessions. Respect and protect the rights of all human rights defenders, activists, and members of civil society.
61. Establish a new commission tasked with carrying out a prompt, thorough, independent, and impartial investigation aimed at determining the fate or whereabouts of Sombath Somphone. Identify and hold accountable those responsible for Sombath's enforced disappearance.

62. Undertake a thorough, impartial, and effective investigation into all allegations of enforced disappearances, including those related to the nine activists arrested on 2 November 2009 in connection with planned peaceful demonstrations calling for democracy, justice, and respect of their land rights.
63. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
64. Issue a standing invitation to the United Nations' special procedures, to include: the Special Rapporteur on adequate housing; the Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to food; the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights defenders; and the Working Group on Enforced or Involuntary Disappearances.
65. Establish an independent national human rights institution in conformity with the Paris Principles.