

Research Paper

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Illegal Logging and Related Trade The Response in Lao PDR

A Chatham House Assessment

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Executive Summary

The government of Lao PDR has taken a number of steps to reduce illegal logging and associated trade. Most notably, it has made progress towards negotiations with the EU on a voluntary partnership agreement (VPA). This has prompted the establishment of a multi-stakeholder steering committee and a technical working group and the revision of several land and forestry laws to include provisions related to the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

However, significant implementation and enforcement challenges remain. The legal framework is unclear and, at times, contradictory. Implementation by central and local governments is inconsistent, and internal mechanisms to oversee government decisions are limited. Moreover, enforcement capacity is weak and there is a lack of transparency. The available evidence suggests that illegal practices are widespread in the forest sector.

Awareness of the issue of illegal logging has improved, including in the private sector. The area of natural forest certified under the Forest Stewardship Council (FSC) scheme has been gradually increasing in recent years. However, a key challenge for the Lao forest sector is pressure on forest resources from agricultural plantations, mineral extraction and infrastructure development.

In order to make further progress in tackling illegal logging, the government should push ahead with preparations for the VPA negotiations, ensuring that the lead agencies are appropriately engaged and resourced to implement a credible dialogue process. Data on the allocation and management of forest resources should be systematically collected and made available to the public in order to enable effective forest monitoring. In addition, accountability mechanisms, including anti-corruption strategies, should be clearly defined and implemented by all relevant ministries to ensure that forest resources are exploited legally and for the benefit of the country.

Introduction

Illegal logging is a global problem that is both a result of and a contributing factor to poor forest governance. It undermines efforts to manage forests sustainably and equitably, resulting in deforestation, social conflict and the loss of government revenues. This is not just an issue for forest-rich countries; countries that import and consume wood-based products¹ from countries with high levels of illegal logging contribute to the problem if they import products without ensuring that they are legally sourced.

Chatham House has been engaged in research since 2006 to assess the level of illegality in the forest sector and the response by governments and the private sector to the problem. The aim of its work has been to monitor levels of illegal logging and the related trade and so enable an assessment of the effectiveness of efforts to tackle the problem in producer, consumer and processing countries.²

A methodology has been developed for this assessment based on a number of indicators. For producer countries, those indicators are derived from an examination of the national policy and legal framework and its implementation; analysis of enforcement and forest revenue data; a survey of experts; reviews of international and domestic media coverage; wood-balance analyses (to estimate illegal harvest volumes); analysis of discrepancies between trade data for exporting and for importing countries; and analysis of data on voluntary verification and certification by timber companies. By drawing on a variety of data sources, this approach provides the most rigorous means of assessing illicit practices. Further details of the methodology can be found in Annex 2 of this assessment.

Twelve countries were assessed in 2008–09 (the findings published in 2010³) and another six in 2013–14 (published in 2014⁴). In addition, Chatham House undertook a reassessment of the original 12 countries in 2013–14. Laos was added to the 2013-14 assessment because of its increasing importance in the timber industry.

This assessment presents the findings for Lao PDR as of 2013. The analysis, undertaken in June 2014, is based on data collected in 2013–14. Trade statistics and media data were compiled up to the end of 2013 and 2012, respectively; and the policy assessment was made on the basis of the situation as of December 2013, but some more recent developments have been noted as well.

¹ The following terminology has been used in this report: wood-based products – encompasses all timber-sector and paper-sector products; timber-sector products – includes logs, sawnwood, plywood, veneer, mouldings, joinery and furniture; paper-sector products – includes wood chips, pulp and paper.

² There is considerable overlap between these three categories; all the countries studied are engaged in production, processing and consumption to varying degrees. The indicators for consumer and processing countries are very similar, however, while those for producer countries are quite different, including a range of indicators relating to domestic illegal logging.

³ Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade: Indicators of the Global Response*. London: Chatham House. The countries assessed were: Brazil, Cameroon, Ghana, Indonesia and Malaysia (producers); China and Vietnam (processing countries); and France, Japan, the Netherlands, the UK and the US (consumers).

⁴ Lawson, S. (2014a), *Illegal Logging in Papua New Guinea*; Lawson, S. (2014b), *Illegal Logging in the Republic of Congo*; Lawson, S. (2014c), *Illegal Logging in the Democratic Republic of Congo*; and Lawson, S. (2014d), *Illegal Wood Import and Re-export: The Scale of the Problem and the Response in Thailand, South Korea and India*. London: Chatham House.

Background

Forest cover in Lao PDR has been declining since the 1940s and much of the remaining forest is seriously degraded and of limited biodiversity value. In 2002 the country reported just over 40 per cent closed canopy forest cover,⁵ while 25 per cent was classified as ‘under-stocked’. Thereafter the government announced its intention of regenerating up to 6 million hectares and planting another 500,000 ha in order to return forest cover to a level of around 70 per cent by 2020.⁶ However, on the basis of the current trajectory, it is estimated that forest cover will decline further – to around 30 per cent by 2020.⁷

Conversion of forests to other uses is the main cause of deforestation, and timber generated by clear cutting is estimated to be the predominant source of wood produced in Lao PDR.⁸ Around 60 per cent of timber extraction in 2008 took place under special quotas for hydroelectric dams and infrastructure projects; and it was reported that more than 1 million m³ were logged to build the Nam Theun 2 dam.⁹

The Lao PDR National Export Strategy (2011–15) emphasizes the allocation of large-scale agricultural concessions for cash crops, including forestry plantations, as well as the development of hydroelectric dams, mining exploration and road building.¹⁰ It targets foreign investors, who bring not only finance but also technology and access to new markets. However, it acknowledges that such projects can potentially have a negative impact on rural communities living within allocated concession areas. The strategy notes that the process of land allocation for the production of export commodities is unclear and that there are conflicts of interest between local communities and foreign investors.

The strategy for the agricultural sector is set out in the Agricultural Development Strategy (2011–20), which is underpinned by two implementation plans: the Agricultural Master Plan (AMP) and the Agricultural Investment Plan (AIP). Together, these provide a framework and objectives for attracting foreign direct investment into agriculture, which is mainly focused on contract farming in the north of the country and large land concessions in the south. Vietnamese companies dominate investment in land concessions. In theory, conversion activities are limited to ‘degraded’ land, but in practice the definition of ‘degradation’ remains a challenge;¹¹ and there is reportedly widespread failure to comply with relevant laws.¹² The Forestry Law¹³ and the Forestry Strategy 2020 both provide definitions of ‘degraded’ forests that are reflected in relevant legislation.¹⁴ However, those definitions are often inadequately applied, particularly as in many areas forest-land zoning has not yet been undertaken.

⁵ It is worth noting that the Lao PDR government definition of forest cover uses a minimum threshold of 20 per cent canopy cover; for this reason, national assessments report lower cover rates than does the FAO, which uses a 10 per cent threshold.

⁶ See the government’s ‘Forestry Strategy to 2020’.

⁷ UNEP (2006), *Lao PDR National Environmental Performance Assessment Report*, p. 10, at <http://www.gms-eoc.org/uploads/resources/21/attachment/Lao%20PDR%20EPA%20report.pdf>.

⁸ Forest Trends (2011), *Baseline Study 2, Lao PDR: Overview of Forest Governance, Markets and Trade*. Kuala Lumpur: FLEGT; and PROFOR (2011), ‘Improving forest governance in the Mekong Region: Options for regional activities in support of national programs’, Program on Forests (PROFOR) Working Paper. Vol. 1.

⁹ EIA (2011), *Crossroads: The Illicit Timber Trade Between Laos and Vietnam*.

¹⁰ Forest Trends (2011) and PROFOR (2011).

¹¹ EIA (2011).

¹² Global Witness (2013), *Rubber Barons: How Vietnamese Companies and International Financiers Are Driving a Land-Grabbing Crisis in Cambodia and Laos*. London: Global Witness.

¹³ Forestry Law No. 06/NA 2007, Article 3.

¹⁴ Instruction No. 20/PMO.NLMA on the implementation of Decree No. 135/PM on the leasing of or concessions for state land.

To improve the availability of data on land investments in Lao PDR, an inventory of land leases and concessions was undertaken by the former National Land Management Authority with German development funding. Drawing on the data compiled, in 2012 the Ministry of Natural Resources and the Environment and the University of Bern, Switzerland, published a review of land investments that was formally presented as a guide for promoting efficient, equitable and sustainable land management in line with Articles 77 and 78 of the 2003 Land Law.¹⁵ Also in 2012, the government issued Order No. 13/PM, which suspended the allocation of concessions for new mineral-ore exploration and surveying as well as for rubber and eucalyptus plantations, pending the development of new legislation. Although ‘pipeline’ projects covering a relatively large area of land were approved in the nine months that followed the order,¹⁶ it appears that the instruction is being largely respected.

Trade data suggest that the vast majority of wood-based products are logs and sawnwood, which are exported to Vietnam, Thailand and China.¹⁷ According to international NGOs, a 1999 prohibition on log exports and a 2007 prohibition on both logs and sawnwood were ignored in practice.¹⁸ However, in 2012 the government announced further efforts to control the export of unprocessed logs with a view to supporting the development of the domestic processing sector. Indeed, it is reported that the Lao timber sector is currently in transition: namely, it is moving away from harvesting and the export of relatively low-value unfinished products towards the production of more value-added exports, while at the same time production is switching from natural forests to timber plantations.¹⁹ In the last half of the previous decade, harvest quotas for natural production forests were reduced; and since 2011/12 they have been suspended. While those quotas are slated to be reintroduced in 2015 or 2016, experts suggest the government’s long-term plan may be to close natural forests to industrial harvesting and focus on developing plantations as a source of timber for the wood-processing industry. Meanwhile, it is reported that the processing industry is being reformed. Nearly 1,000 mills have been closed in recent years (the total number of mills was 1,157 in 2012, down from 2,102 mills in 2007).

Production forest is managed by the Department of Forestry (DoF) with the support of harvesting companies. In addition, there are ‘independent’ small and medium-sized plantation operators as well as community resource users. While in practice there is limited direct engagement of smallholders and communities in commercial forestry in natural forest areas, the development of small-scale plantations is a priority under the government’s strategy to expand forest cover and tackle rural poverty. Related government initiatives include Directive No. 377/AF on the customary use of forest resources, which allows for commercial harvesting with the approval of the DoF, and government guidelines on the formation of village forest-management committees. In 2005 smallholder plantations accounted for an estimated 30 per cent of the total plantation area. This sector has recently been receiving support from various donors, including projects aimed at supporting rural livelihoods and establishing forest certification.²⁰

¹⁵ Schönweger, O. et al. (2012), *Concessions and Leases in the Lao PDR: Taking Stock of Land Investments*, at <http://www.cde.unibe.ch/Pages/Publication/2339/Concessions-and-leases-in-the-Lao-PDR-taking-stock-of-land-investments.aspx>.

¹⁶ Global Witness (2013).

¹⁷ Based on official trade statistics for the corresponding imports of partner countries – the General Administration of Customs of the People’s Republic of China, Customs Department of the Kingdom of Thailand, UN COMTRADE (for Vietnam trade statistics); with analysis by Chatham House.

¹⁸ *Ibid.*

¹⁹ Forest Trends (2011) and PROFOR (2011).

²⁰ These include the programme funded by the Australian Centre for International Agricultural Research (ACIAR) titled ‘Enhancing Key Elements of the Value Chains for Plantation-Grown Wood in Lao PDR’ – for details, see Smith, H. F. (2014), ‘Legal issues and legality barriers for smallholder plantation owners in Lao PDR’, presentation published by ACIAR, at <http://www.illegal-logging.info/sites/default/files/Hilary%20Smith%20Presentation.pdf>; the Luang Prabang Teak project of The Forest Trust (see <http://www.tft-forests.org/projects/project.asp?pr=31>); and the ForInfo project of the Center for People and Forests (<http://www.recoftc.org/project/forinfo>). In addition, the Forest Investment Program (FIP) of the International Finance Corporation has launched a pilot programme for smallholder forestry – see FIP (2013), ‘FIP Progress Update’, September 2013. <https://www.climateinvestmentfunds.org/cif/content/lao-pdr-fip-progress-update-september-2013>.

Illegal logging is reported to be a significant problem in Lao PDR. The main drivers are corruption, poor enforcement capacity and unclear legislation. It is estimated that bribes to officials and other unauthorized payments constitute 35–40 per cent of the overheads of logging companies. Meanwhile, the effectiveness of the Forestry Law is undermined by widespread exemptions for ad hoc government activities and decision-making.²¹ There have been recent efforts to tackle corruption in the forest sector,²² and in 2009 the government ratified the UN Convention against Corruption (UNCAC). However, implementation of such commitments is patchy.

In 2010 the government expressed its interest in negotiating a FLEGT VPA. Since then it has taken a number of preparatory steps towards this goal, supported by the European Forest Institute (EFI) and the German Federal Enterprise for International Cooperation (GIZ). These have included publishing a ‘baseline study’ of timber-sector legality and hosting stakeholder workshops. As of October 2014, formal negotiations had not yet started; however, a number of national laws, including the land and forestry laws, are being revised to include provisions related to FLEGT and clarify forest categories and zoning. In addition, bilateral negotiations with Vietnam are under way to ensure Lao PDR can meet Vietnam’s VPA requirements for imported timber.

²¹ Forest Trends (2011), PROFOR (2011) and EIA (2011).

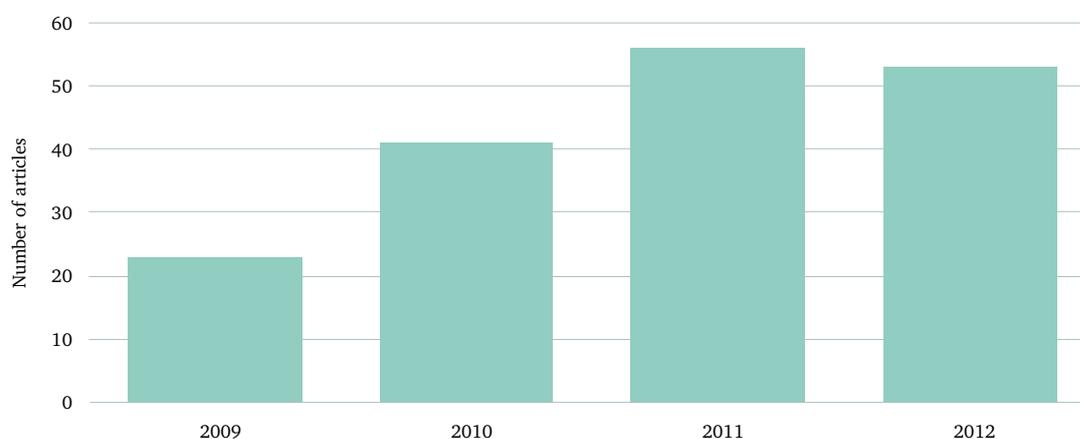
²² Notably, the passage of the Law on State Inspection No. 02/NA, 2007 and the establishment (in 2007) of an Anti-Corruption Inspection Department, which is subordinated to the State Inspection Authority.

Media Attention

Media coverage provides an insight into levels of public awareness of illegal logging and related trade. While such awareness may not always lead to action, it is important for bringing about change and is therefore useful to monitor. An assessment of the media can also give an indication of the approaches being taken within a country to address the issue. Both domestic media sources and the international media were reviewed for this assessment. International media coverage was assessed through the online media database Factiva using searches for English-language articles that referred to ‘illegal logging’ and ‘Lao PDR’. Domestic coverage was reviewed by searching for ‘illegal logging’ in national news sources. Three domestic newspapers were included in the search: *Vientiane Times* (English-language), *Paxason* and *Vientiane Mai* (both Lao-language).²³

International media coverage of illegal logging in Lao PDR between 2009 and 2012 was sparse: the average number of articles per year during this period was just 43, compared with 600 for Indonesia and 264 for Brazil. Coverage more than doubled between 2009 and 2011 to peak at 56 articles but then dipped slightly in 2012. The low totals are more likely to reflect the relatively insignificant media profile of Lao PDR in general than any specific perception of the country’s forestry sector.

Figure 1: International media coverage of illegal logging in Lao PDR, 2009–12

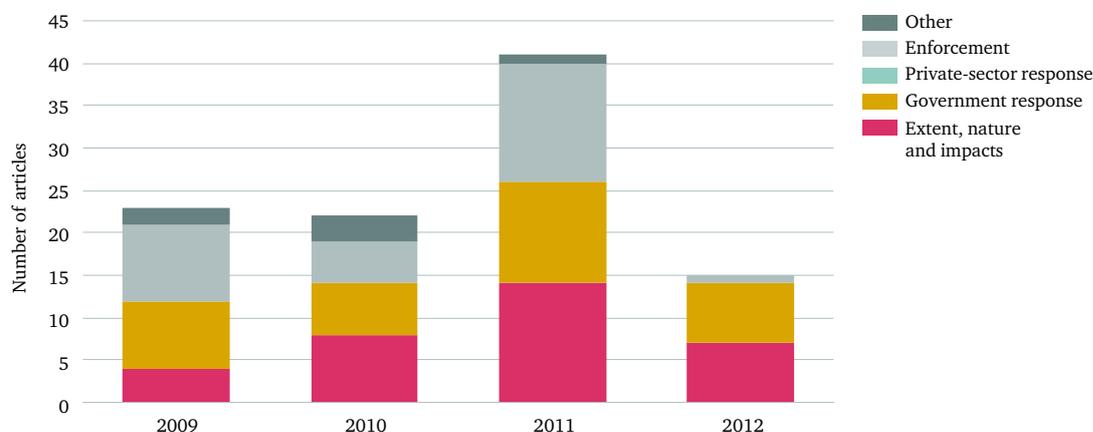


Source: Factiva.

The domestic media review found that 101 articles referring to illegal logging in Lao PDR had been published between 2009 and 2012. The highest number of such articles appeared in 2011, mirroring the increase in international news coverage in the same year. This may be attributable to several recent developments, including the publication of the country’s Readiness Preparation Proposal (R-PP), the establishment of initial contacts between the EU and Lao PDR to discuss FLEGT VPA actions and the enactment of legislation such as Decree No. 333/PM on the protection of forests in 2010.

²³ There are no readily accessible archives that include the other major newspaper in Lao PDR, *Khaosan Pathet Laos*.

Figure 2: National media coverage of illegal logging, 2009–12*



* Figures are for the year from 1 October to 30 September.

It is worth noting that all domestic media organizations in Lao PDR are controlled by the state through the Ministry of Information, Culture and Tourism. While coverage of forest law enforcement appears to be limited to specific issues (as described below), it could be argued that the existence of any articles on the subject in state-controlled media suggests that the problem of illegal logging is acknowledged at least to some extent and that messages are being sent about the importance of respect for forest law. It should also be noted that literacy rates in Lao PDR are low, so newspaper coverage almost certainly does not reflect the opinions or level of knowledge of the general population.

Analysis of the content of the 101 articles mentioned above reveals a bias towards coverage of illegal activities on the part of individuals or relatively small organizations and against those of state-owned logging enterprises, the military, Vietnamese logging companies or larger private companies. However, anecdotal evidence suggests there have been some significant enforcement actions against those groups.²⁴ At the same time, there is a focus on the importance of the government response, particularly through enforcement and seizures. The confiscation of illegal timber was by far the most commonly reported story; a total of 18 articles concentrated on this subject. Corruption is not widely reported, however; local analysts note that recently some lawmakers have called for greater media coverage of corruption to expose its role in the loss of revenues. Whether media organizations will respond to such calls remains to be seen. Moreover, coverage in the period under review failed to address illegal logging in relation to competing land-use sectors, such as infrastructure and agricultural plantations.

Finally, while Lao-language publications focused on effective government enforcement and policy responses, their English-language counterparts (which are more likely to be read by donors and elite groups within Lao PDR) included broader discussions about forest management and the timber trade.

²⁴ For example, the Department of Forest Inspection (DoFI) is reported to have impounded army vehicles. Author's personal communication with Aiden Flanagan, independent consultant.

Government Response

A coherent and transparent policy framework that is effectively and consistently enforced is a prerequisite for tackling illegal logging and the trade in illegal timber. This section assesses the design and effectiveness of the Lao government’s policies and regulations. The data are derived from an assessment of the policy framework that is based on a standard set of questions and scoring for the existence of policies, their design and the level of implementation. In addition, data on enforcement and revenue collection were compiled, and a perceptions survey conducted among experts to gauge their views on the government’s response.

It should be noted that the number of responses to the expert perceptions survey was very low in Lao PDR compared with that in other countries included in this assessment. Local researchers saw this as reflecting the fact that without a memorandum of understanding (MoU) with the government, it is very difficult to communicate directly with officials. Furthermore, some international workers in the country were unwilling to cooperate for fear of repercussions if their anonymous input to the survey were to become public. Such views reinforce the generally negative assessment of the accountability and transparency of forest governance in Lao PDR.

Policy assessment

In an overall assessment of Lao policies on illegal logging, the country scores poorly in most areas (Table 1). These shortcomings are discussed in more detail in the following sections, and the policy scores for each area are explained in Annex 1. But given the difficulties experienced in obtaining information on the policy framework and its implementation, these scores should be considered provisional only.

Table 1: Summary policy scores for 2013 (as % of maximum score)*

	High-level policy	Legislative framework	Checks and balances	International trade cooperation	Regulating demand for timber	Tenure and use rights
2013						
	Timber-tracking systems	Transparency	Allocation and management of rights to harvest	Law enforcement	Information management	Financial management
2013						

* To establish the percentage figures, existence, design and implementation have been weighted equally, as has each sub-question under each major heading. Those policy areas for which only a few questions were formulated (information and financial management) are more likely to show change than are the other areas. Shading has been allocated according to the total score under each major heading as a percentage of the possible maximum – scores of 25% or below are red, those between 25% and 50% orange, those between 51% and 75% yellow and those above 75% green.

High-level policy

There are no high-level policies in Lao PDR addressing illegal logging, nor is there any high-level coordination between the relevant government agencies to deal with the issue. However, both the VPA and REDD+ processes are in the early stages of being developed. Eventually, they should result in progress in these areas – for example, through reviewing forest governance challenges, establishing multi-stakeholder platforms and developing strategies for meeting REDD+ safeguards.

Legislative framework

The overall legislative framework for the forest sector is fairly coherent. But many laws are drafted in a way that is ambiguous, and both legal interpretations and practical implementation can vary widely. In particular, there are problems related to a number of broad ad hoc exemptions that allow government actors to bypass or otherwise undermine the intent and integrity of existing legal processes. Moreover, inconsistencies exist between the legal requirements set by the Ministry of Agriculture and Forestry, within which the DoF is situated, and those established by the Ministry of Industry and Commerce (MOIC) related to the transport, measurement and processing of timber in the supply chain.

In addition, there is a crucial lack of legislation on large-scale agriculture. Approvals for agricultural concessions are not the sole responsibility of the Department of Agriculture, and it is unclear whether the interdepartmental processes that allow for concession approvals are implemented or effective.

Competition between the central and provincial governments also causes problems: provincial authorities ignore central directives and enforce their own rules on resource allocation and taxation. The media regularly report on central government officials criticizing provincial governments for continuing to allocate agricultural concessions despite the moratorium or for failing to enforce a particular national law or regulation.

Most fundamentally, there is a contradiction between the Forestry Law and the Land Law²⁵ – specifically, between Article 4 of the Forestry Law, which states that all forest and forest land belongs to the state, and Decree No. 88/PM on the implementation of the Land Law, which states that communities or other entities with permanent title are the owners of the land in question. Thus, under the latter, once an individual, community or other legal entity receives a legitimate land title conferring permanent land-use rights, that land ceases to be state land. Land titles can, in theory, be issued for all forest land except protected, conservation or unexploited forest. Thus, if issued for eligible natural forest land, such titles would seem to contradict Article 4 of the Forest Law. That contradiction has been raised in submissions made during the on-going Forestry Law revision process and is expected to be addressed. What remains uncertain, however, is whether land titles can, in fact, be permanent or whether the state can revoke them, reclassify the land or curtail some of the rights associated with the title.

Another contradiction appears to exist between the Land Law Decree's prohibition on land titles in protected or conservation forests and the Forest Law's provision for villages' use of protection forest and conservation forest. This results from unclear land classification at the state and village levels. However, it is hoped that the contradiction will be removed during the current legislative revisions.

²⁵ Law No. 04/NA 2003.

Lao PDR currently requires that imports of wood be accompanied by an export licence from the source country as well as a Letter of Intent and a certificate of origin.²⁶ But it is unclear if those requirements are interpreted by customs authorities in a way that credibly precludes the import or subsequent sale of illegally harvested wood.

Checks and balances

There are few formal mechanisms to oversee the actions of government agencies and officials in Lao PDR. While there are legal provisions enabling the public to challenge forest-management decisions and practices or the government's failure to apply forest law – for example by appealing to the law courts or the National Assembly – access to those institutions is limited. As a result they are not used widely and examples of equitable redress are rare. The discretionary powers of relevant ministers are broad, and the political system does not allow for effective parliamentary oversight of government actions related to the forest sector.

There is limited systematic internal oversight within the Ministry of Agriculture and Forestry, although the remit of the Department of Forest Inspection (DoFI) is to some extent independent. As established by Decree No. 262/PM, the DoFI is mandated to implement measures on preventing illegal logging and the illegal trade in non-timber forest products and wildlife and to conduct investigations into breaches of forestry, aquatic and wildlife legislation. Its independence is often highlighted at meetings where it is reported that the DoFI is represented separately from the DoF. However it has limited resources and capacity. Currently there is no civil society organization that acts as an independent forest monitor or observer in Lao PDR.

There is a law stipulating penalties for government staff found guilty of accepting bribes, and those fines are moderately dissuasive. But there is little evidence of the law being systematically enforced by the State Inspection Committee – the agency responsible for monitoring corruption.

Lao customs authorities are mandated to check whether wood-based products designated for export have the necessary legal documentation from the relevant ministries and, according to Regulation No. 1324/CD (2010), are required to issue a notification before products can be exported. Anecdotal evidence suggests that customs officials do implement this mandate relatively systematically, but there have been cases in which notifications of legal export have been issued without the necessary paperwork. Nonetheless, the World Bank ranks Lao PDR 160th out of 185 countries for ease of trading across borders, while identifying a range of unnecessary or excessive licensing requirements – including forms that contain the same or overlapping information – as a deterrent to foreign direct investment. There are plans to simplify export and import procedures.²⁷

International trade cooperation

International cooperation focusing on illegal logging is taking place. Preparations for a FLEGT VPA process are under way, but formal negotiations are not expected to begin until late 2014. Lao PDR and Vietnam have concluded several bilateral agreements to cooperate on forest law enforcement and forestry development, including a ministerial-level agreement reached in October 2008 and renewed

²⁶ These requirements were established in 2011 in Notifications Nos 1940/MOIC.DIMEX and 1791/MOIC.DIMEX. A definition of 'origin' is provided in Decree No. 228/PM on the origin of import and export goods.

²⁷ For a preliminary assessment of the impact of simplifying export licensing requirements for plantation timber, see <http://www.laoftpd.com/attachments/article/204/1.%20MOIC%20PIA%20-%20Plantation%20Timber%20Export%20Licensing.English.pdf>.

in October 2011 as well as a departmental-level accord signed in May 2009 and renewed in July 2012. Another bilateral agreement was signed in August 2011 to cooperate on tackling illegal cross-border trade. In addition, the two countries are conducting a regular dialogue on the FLEGT VPA process.

Lao PDR has no free trade agreements with its timber-trading partners that include provisions related to forest law enforcement or governance. It is, however, a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and undertakes the necessary border checks for relevant species. There have also been a number of bilateral agreements and initiatives. These include the 1993 Border Contract between the People's Republic of China and Lao PDR, under which the two countries agreed to cooperate to protect border-area forests and to refrain from cross-border logging. SUFORD, a project involving the World Bank and the governments of Lao PDR and Finland, has supported the promotion of certification and verifiable, sustainable forestry practices since 2003. And the Sustainable Forest Management programme in northern Lao PDR was launched in 2014, with funding provided by the Chinese government under the auspices of its Asia-Pacific Network for Sustainable Forest Management and Rehabilitation.

At the regional level, Lao PDR was a signatory to the ASEAN Vientiane Action Programme 2004–10, whose objectives included eradicating unsustainable forest practices. It also signed the ASEAN Declaration on Environmental Sustainability in 2007, which committed it to combating illegal logging and associated trade. As a follow-up to the declaration, it has taken part in the ASEAN regional Forest Law Enforcement and Governance (FLEG) work plan and in the working group on a Pan-ASEAN Timber Certification Initiative.

Regulating demand for timber

One driver of illegal logging may be the insufficient legal supply of timber to meet demand from a country's processing industry. Governments can address this problem by restricting the issuance or renewal of licences to mills that cannot demonstrate that they have a sufficient supply of timber from legal sources.

In Lao PDR, there is currently minimal coordination between the process for issuing permits for primary processors and that for planning harvest quotas. Existing facilities have to apply for new quotas every year, and forest legislation provides for the cancellation of permits if wood-processing factories have failed to meet reform standards.²⁸ Moreover, new foreign investment licences for wood-processing facilities whose raw material is derived from natural forests are prohibited.²⁹ Some facilities have been closed down to ensure wood quotas are in line with processing capacity, but this law has not been systematically implemented.

Tenure and use rights

Although the Lao Constitution provides for the protection of property rights in Articles 16³⁰ and 17,³¹ tenure and use rights are neither clearly defined nor documented; nor are they secure. There are no legal requirements for such rights to be set out on publicly accessible maps or demarcated at ground

²⁸ Notice No. 175/MAF, Instruction No. 267/MAF and Order No. 18/PM.

²⁹ Decree No. 46/PM Article 2.17.

³⁰ 'The State protects and promotes all forms of property right: state, collective, private domestic and foreign investment.'

³¹ 'The State protects the property rights (such as the rights of possession, use, usufruct and disposition) and the inheritance rights of organisations and individuals. Land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws.'

level. In addition, while customary use of land is mentioned throughout land and forestry legislation, no formalized mechanism is in place for determining use rights based on customary arrangements or for accommodating customary rights in either the development or the implementation of laws and regulations. However, Decree No. 88/PM (2006) on land titling provides for the issuing of communal land titles, while the Forestry Law specifies the allocation of land based on family units. Moreover, the ‘harmonization’ of customary and formal legal frameworks is identified as a key objective of the Legal Sector Master Plan, adopted by the government in September 2009 by Decree No. 265/PM. According to that plan, by 2020 Lao PDR aims ‘to become a state that secures legal responsibility toward its citizens and [ensures] that the citizens fundamentally perform their legal obligations toward the state’.³²

In the case of disputes over land ownership and use rights in relation to land held by individuals in possession of a land certificate or land title, moderately clear and effective mechanisms are in place to resolve such disputes. Many are dealt with by local-level and customary institutions, which are the first preference for the resolution of village disputes. More formal avenues are pursued when conflicts involve third parties, including the state. Articles 80 and 81 of the Land Law require that administrative conflicts be resolved through the land authorities and civil conflicts through the People’s Court. Instruction No. 564/NLMA (on ‘Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling’) provides guidance on appropriate processes and compensation. However, particularly in the case of rights being ‘acquired’ by the state for public developments, it appears that compliance with requirements established by law is sporadic.

It is reported that the government has responded to growing popular unrest, particularly over land issues, by increased repression of civil society. Following a number of incidents in 2012,³³ additional restrictions and formal authorization requirements were imposed on international NGOs and local non-profit associations, including their engagement with local communities and participation in political processes. Subsequently, civil-society organizations have become extremely reluctant to undertake targeted political advocacy or any interventions focused on poverty alleviation, human rights or equitable land use. Furthermore, consultation on the drafting of new legislation relating to land use has been extremely limited.

Timber-tracking systems

There is no fully operational system to detect illegal timber entering the domestic supply chain and no national traceability mechanism, although limited private-sector initiatives do exist. However, the majority of laws and regulations related to timber harvesting require the use of log lists at harvesting, at log landings and on transfer to processing facilities. Furthermore, ‘Guidelines on Chain of Custody Control of Timber Harvesting and Transport in Production Forest’ have been drafted (No. 1097/DoF) although it is unclear if they have been approved or are currently being implemented. Should the country enter formal VPA negotiations, the existing regulations and guidelines are likely to form the basis of a timber legality assurance system (TLAS).

³² Law Research and International Cooperation Institute of the Ministry of Justice (2011), ‘Customary Law and Practice in Lao PDR’, at http://www.la.undp.org/content/dam/laopdr/docs/Reports%20and%20publications/Customary_Law_Laos2011_english_master1.pdf.

³³ In December 2012 the country director of HELVETAS Swiss Intercooperation (an international NGO with an ambitious natural-resource management programme in Lao PDR) was expelled from the country after making a statement that the one-party regime stifles debate and creates a hostile environment for aid groups. Several weeks later, a high-profile Lao human rights activist, Sombath Somphone, disappeared while driving home.

Transparency

Legal requirements to ensure government transparency in relation to the allocation of forest resources and their management are generally absent in Lao PDR. It appears that information is neither collated nor made public in a systematic manner. The DoF produces reports on timber quotas, the Department of Import and Export of the Ministry of Industry and Commerce (DIMEX) on trade, the Ministry of Finance on revenue and the Department of Transport on licences and approvals. However, the process whereby information is released remains unclear; and there appears to be no systematic cross-checking of information.

A number of regulatory instruments have been introduced to clarify the roles and responsibilities of the relevant ministries, such as the Ministry of Natural Resources and the Environment, the MOIC and the Ministry of Agriculture and Forestry; but there is no overarching document. Furthermore, the extent to which those bodies have achieved their aims is unclear, in part because they have limited resources with which to fulfil their respective functions.

Allocation and management of rights to harvest

Resource allocation procedures set out in Order No. 17/PM (2008) require competitive bidding or allocation to local processors. However, there is little information available about whether those procedures are applied in practice.

Requirements for prior informed consent procedures are set out in Decree No 112/PM (Articles 7 and 8) on environmental impact assessment (EIA) and the revised Environmental Protection Law, No. 29/NA (Article 6) of 18 December 2012; the latter provides for the ‘active participation and consultation of individuals and organizations into protection of social and natural environment’. There are no systematic contractual procedures for protecting and developing forest-based livelihood opportunities for local communities within concession areas, although under the Law on Investment Promotion Article 69.3, investors are obliged ‘to promote and employ Lao citizens; to develop labour skills; to improve technical capacity; and to transfer technology to Lao workers’. Village mediation units, which, established in 1997 under Minister of Justice Decision No. 304/MoJ, are empowered to resolve civil and minor criminal cases and provide a forum for the negotiation of relevant conflicts and redress. In addition, in 2012 Lao PDR drew up ‘Participatory Land Use Planning Guidelines’;³⁴ however, once again, the extent to which these are implemented in practice is unclear.

Recently, efforts have been made to move away from quota allocations based on budgetary needs and domestic consumption of raw material for processing, to those based on inventories and surveys. The new approach is established in Decree 59/PM (2002) on the sustainable management of production forest areas and Order 17/PM (Articles 3.3.4 and 4.1).

Law enforcement

The collection of enforcement data was hampered by government officials’ reluctance to engage with the research undertaken for this assessment. Data presented below are taken from the policy assessment, the expert perceptions survey, media reports and various secondary sources. As a result, there is considerable variation in the data, and thus they should be considered indicative.

³⁴ For more information, see <http://www.cifor.org/library/3922/participatory-land-use-planning-handbook-and-toolbox/>.

The DoFI and the Provincial Offices of Forest Inspection are responsible for enforcement, particularly the seizure of illegally logged wood. There are some systems in place to ensure coordination between the relevant ministries and agencies for enforcement, and penalties are proportionate and dissuasive; fines are based on the market price of the illegal timber identified, and media reports show that they are issued quite frequently. However, as detailed below, national data on the collection of fines are not available to the public. The capacity of enforcement officials is very limited, as are the resources available to them. Forest-sector training is not systematically provided to judicial staff or customs officials, nor do enforcement agencies make use of information-gathering technology to identify illegal logging, such as remote sensing systems or material flow analyses.

In 2012 the DoFI reported that since it was established in 2008, more than 70,000 m³ of logs have been confiscated. During field visits to various regions of the country, DoFI officials provided widely diverging assessments of their success rates in capturing illegal timber – from 30 per cent to 100 per cent – suggesting that the total volume of illegal wood produced in the country is likely to be significantly higher than the volume confiscated.³⁵ Table 2 below presents data from the DoFI for the period 2009–11: it should be noted that the authors highlighted that the collection and reporting of data were not consistent.

Table 2: Confiscated timber (m³), 2009–11

	2009	2010	2011
Logs	n/a	34,422	n/a
Sawn timber	n/a	11,165	n/a
Stumps	n/a	347	n/a
Total	26,069	43,934	9,249

n/a = Not available.

Source: Grace et al. (2012), Table 27, p. 68.

Media reports detail 19 enforcement activities during the period 2008–11. While that information is inevitably partial and anecdotal, the following was revealed:

- In January 2009 the DoFI investigated 164 cases of illegal forest activities, including some that involved animal-trafficking (presumably in 2008, although this was not specified), of which 75 were sent to court. A total of 31 cases resulted in ‘education’, while another 58 were under investigation.
- During the period October 2010 – March 2011, government agencies issued fines totalling K1,214,646,005 (\$54,173). No figure is available for the percentage of those fines that was paid, nor is that information available for any other period covered by this assessment.
- During the period October 2010 – March 2011, the DoFI investigated 159 cases of illegal forest activities, as a result of which 31 offenders were reported to have been ‘educated’ and 21 fined.
- The media reported no national-level data on how many custodial sentences were handed down each year, the number of fines collected, the number of harvesting licences revoked for illegal logging or annual revenue capture.

³⁵ Grace, K. et al. (2012), ‘Study for understanding timber flows and control in Lao PDR’, at http://www.euflegt.efi.int/news/-/asset_publisher/VoA92AEdZlro/content/study-for-understanding-timber-flows-and-control-in-lao-pdr-published.

However, illegal logging topped the list of economic crimes in Lao PDR in 2013, according to the *Vientiane Times*.³⁶ In a 2014 article it was reported that illegal logging and trade losses total ‘hundreds of millions of dollars per year’ and far exceed taxes and tariffs on exports, which bring in only some \$20 million annually.³⁷

Information management

Both annual logging quotas and any special quotas issued during the year are recorded. The system is managed by the relevant agencies within the Ministry of Agriculture and Forestry. However, it is considered minimally functional, recording provincial-level quotas only and failing to specify the origin of the timber or harvest volumes.

Financial management

Mechanisms are in place for reporting on and sharing revenues.³⁸ Provincial-level financial departments are required to report all revenue derived from logging quotas to the national DoF, and all revenues are reported and collected by the Ministry of Finance. There is little evidence to determine whether the information gathered is complete or accurate, nor is there systematic auditing of the information.

Expert perceptions survey

The 2013 assessment of the Lao government’s response to illegal logging included an expert perceptions survey in which representatives from the government, the private sector, civil society, academia and the donor community were asked to evaluate the government’s performance. The effectiveness of the government’s response, how that response had changed over the previous year and the factors impeding it were all evaluated.

The number of respondents to the survey was low – 14 out of a total of 50 people contacted; the findings presented below should be viewed with this in mind. In addition, the share of respondents from the NGO/international NGO sector was disproportionately high, since it was not possible to request information from government sources without a formal MoU for the research. Only one industry representative responded. Thus the survey inevitably paints a somewhat unbalanced and negative picture of the government’s capacity and willingness to tackle illegal logging.

All respondents who answered the question about the effectiveness of the government’s response to the problem of illegal logging deemed it to be ‘low’ (eight responses) or ‘not effective’ (three). The failure to combat corruption and promote transparency and accountability was deemed the most important impediment to an effective government response (11 respondents said it was ‘highly important’ or ‘most important’); the second most important factor was identified as insufficient political will. The capacity and effectiveness of enforcement activities was considered of average to high importance. Most respondents regarded the quality of legislation and the availability of good-quality data as factors of minor importance. Additional comments made in response to these

³⁶ ‘Illegal logging in Phouphanang stems from lack of forest patrols’, *Vientiane Times*, 25 July 2014, at http://www.vientianetimes.org.la/FreeContent/freeCont_Illegal.htm.

³⁷ ‘Illegal Logging Tops Economic Crime In Laos Last Year’, *Bernama*, 18 February 2014, at <http://www.bernama.com.my/bernama/v7/wn/newsworld.php?id=1015385>.

³⁸ These are specified in the Decree No. 001/PM (2012) on sharing revenue from the sale of logs from production forests and the Law on the State Budget.

questions highlighted the role that financial flows from illegal forest activities play in making up shortfalls in state finances and supplementing the low, irregular income of forest rangers. And the historical involvement of the armies of Lao PDR and Vietnam in the illegal timber trade was noted as a significant barrier to tackling illegal logging.

Despite the overall negative picture, four respondents said they believed there had been a slight improvement in the government's response to the problem of illegal logging. Another four considered that there had been no change and one said that the situation had worsened slightly. Improvements noted in additional comments focused on change in government rhetoric and increased official acknowledgment of the problem. But it was also noted that very little appeared to have changed in practical terms – that is, in the level of illegal logging and trade.

The findings on whether various aspects of the government's overall response had improved or worsened were largely inconclusive. The strength and coherence of laws and policies, as well as the quality of information management, were deemed by a majority of respondents to have improved slightly. Most considered that enforcement efforts and attempts to tackle corruption remained at the same level, and opinions were varied as to whether 'political will' had improved.

Progress by the Private Sector

In addition to examining government measures to tackle the problem of illegal logging, the current assessment evaluates the degree and effectiveness of the response by the private sector, based on the expert perceptions survey, an assessment of private-sector certification schemes and trade data analysis.

Expert perceptions survey

As noted above, the number of responses to the survey was relatively low – 14, of which only one was from the private sector. No respondent considered that there has been widespread action in the Lao private sector to combat illegal logging in recent years. Some limited actions on the part of manufacturers or exporters supplying sensitive markets were noted by three respondents. Respondents considered that there is awareness among manufacturers, exporters and large-scale concessionaires that illegal logging is a problem. By contrast, the level of awareness among smaller-scale harvesting companies was considered to be much lower. Few respondents saw any change in the performance of the various private-sector groups in relation to illegal logging and associated trade. And only two respondents saw some improvement – and this was among large-scale harvesting companies.

Levels of forest certification and legality verification

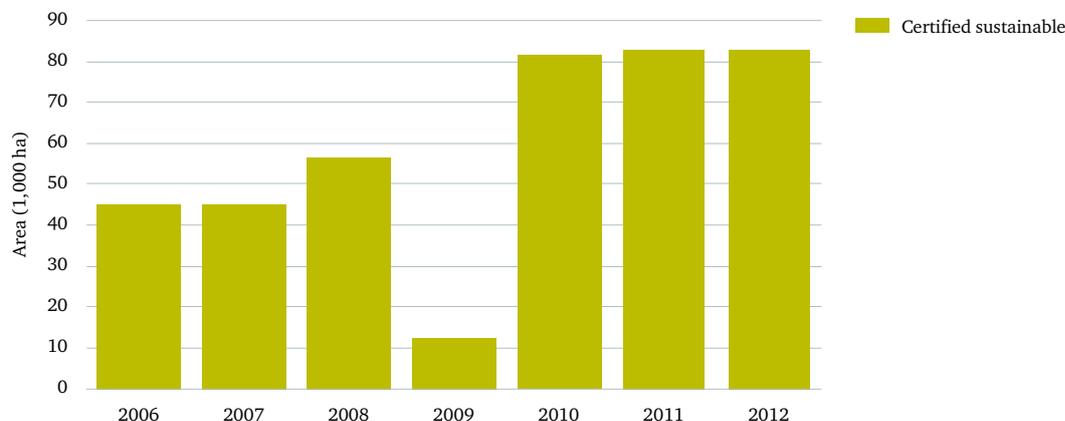
Private-sector uptake of voluntary legality verification and sustainability certification standards is a useful indicator of attitudes towards illegal logging and the sustainable management of forests. Data on levels of certification and verification were assessed, and the expert perceptions survey included a number of questions on this issue for private-sector respondents.

Certification data

Statistics show that there has been some progress in achieving certification of forest management in Lao PDR. However, as is evident from Figure 3 below, the total area of certified forest (excluding controlled wood) in the country is small – just over 2 per cent of the total area of production forest in 2012. Nevertheless, this is still relatively high compared with other countries in the region.³⁹

³⁹ The drop in 2009 was due to the termination of a certificate covering 44,217 ha held by the Savannakhet Provincial Forestry Section in 2009 (see <http://info.fsc.org/details.php?id=a0240000005sRD6AAM&type=certificate&return=certificate.php>). However, in 2010 this area was re-certified, with additional forest areas, under the DoF (see <http://info.fsc.org/details.php?id=a0240000005sS1MAAU&type=certificate&return=certificate.php>).

Figure 3: Total forest area under voluntary verification or certification schemes, 2006–12



Source: FSC FM.

In 1996 investment in building capacity for FSC certification of natural production forest areas in Lao PDR that are co-managed by local community associations began with a project jointly funded by the World Bank and the Finnish International Development Agency (FINNIDA). Under the auspices of that project, a group of seven village forest associations (VFAs) in Savannakhet province sought to achieve FSC certification in 1999 but failed to do so. In 2002–03 the same donors supported a second attempt at certification, this time by two groups of six VFAs in Savannakhet and one group of five in Khammouane province, which co-managed a total of almost 50,000 ha of production forest. Assessed by the Rainforest Alliance’s Smartwood programme in 2003, they achieved certification in December 2005. Over the past nine years, the total area of certified production forest has increased to 82,670 ha under the group certification scheme of the DoF. Currently, it comprises 10 forests:

- Two co-managed production forests in Khammouane province totalling 23,193 ha;
- Four co-managed production forests in Savannakhet province totalling 58,425 ha; and
- Four village rattan forests totalling 1,142 ha in Bolikhamxay province (certified in 2011).

Another area of 4,585 ha in two villages in Bolikhamxay has been audited for inclusion in the group certification scheme, and field inventories are either under way or planned to expand the total area of certified village rattan forests in Bolikhamxay to 25,000 ha by 2016 with support from the WWF.⁴⁰

In addition to the natural production forest areas certified under the DoF group certification scheme, a small number of plantations have been certified in Lao PDR: they include smallholder teak plantations in Luang Prabang province (with the support of The Forest Trust⁴¹) and (since 2013) a much larger block of plantations in Bolikhamxay and Khammouane provinces managed by the Oji Lao Plantation Forest Company.

Documents leaked in 2006 reportedly identified failures to implement management plans in certified production forest areas, as well as unmarked logs, logging in excess of permitted volumes and a

⁴⁰ ‘World Premiere: First FSC certified rattan forest in Laos’, WWF press release, 31 August 2011, at <http://www.panda.org/?201497/World-Premiere-First-FSC-certified-rattan-forest-in-Laos>.

⁴¹ For more information, see <http://www.tft-forests.org/projects/project.asp?pr=31>.

generally low level of capacity of village forest staff.⁴² Those problems were reported to have occurred during the preparatory phase – that is, prior to certified timber being sold; however, continued lack of capacity in management and monitoring led to the suspension of FSC-controlled wood certification for 242,995 ha of production forest in southern Lao PDR in 2013.

Lao PDR currently has three chain of custody (CoC) certificates for five wood-processing mills:

- Souphi and Pouthon, which are located in *Savannakhet* province. Both produce natural timber flooring, while Pouthon also produces furniture.
- Lao Industry Furniture and Burapha (Vientiane). Both produce furniture, but Burapha uses only plantation timber (teak and eucalypt) and also produces flooring.
- Thinnakhon Factory (Luang Prabang), which produces furniture from plantation teak.

Sensitive market share

In order to gauge the response of the private sector to illegal logging and the growing demand for legal timber in many major consumer countries, shifts in trade between sensitive and non-sensitive markets⁴³ were assessed. Both trade data and responses from the private sector to the perceptions survey were analysed. The quantitative data are based on estimates of RWE volume.

Trade data

Exports of timber-sector products by Lao PDR have increased significantly since 2009, having remained virtually unchanged during the previous decade. Sensitive markets account for a negligible share of total exports – less than one per cent by RWE volume. Sawnwood and, to a lesser extent, logs account for the bulk of exports. The main export destinations are neighbouring countries – China, Thailand and Vietnam.

Expert perceptions survey

The impact of demand from ‘sensitive’ markets on illegal logging or the domestic price of logs was deemed virtually non-existent by respondents. This is not surprising, given that the primary destinations for exported logs and sawnwood are China, Thailand and Vietnam. While all of those countries are likely to process some wood from Lao PDR into products (such as flooring and furniture) for export to the EU, the US and Australia, the survey responses suggests that legislation in these countries has not yet had any significant impact on Lao exporters. Three respondents noted that those companies that are supplying sensitive markets have taken individual actions to tackle illegal logging but that they constitute a very small niche of the broader Lao forest sector.

⁴² Lang, C. (2006), ‘FSC certified timber is illegal’, *World Rainforest Movement Bulletin* No. 110 (see <http://www.wrm.org.uy/bulletin/110/viewpoint.html#Laos>).

⁴³ In this assessment sensitive markets are considered to be: EU, USA, Australia, Canada, New Zealand, Norway and Switzerland. Non-sensitive markets are considered to be all other markets.

Levels of Illegal Logging and Associated Trade

To measure the extent of illegal logging and the trade in illegal wood-based products, a number of methods were used. These normally included a wood-balance analysis and an assessment of discrepancies between exports from Lao PDR reported by that country and imports of Lao timber reported by consumer countries. The expert perceptions survey included several questions about the nature and extent of the problem.

Expert perceptions survey

Just over half the respondents (five out of eight) estimated that illegal logging accounted for more than 90 per cent of the total harvest. NGO estimates ranged from 50–60 per cent (two respondents) to more than 90 per cent (four). Notably, the single private-sector respondent estimated the level at more than 90 per cent. All but one of the respondents deemed the situation to have worsened in the last five years.

Illegal logging was regarded by the majority of respondents as a major contributor to forest degradation and natural forest loss, as well as the cause of significant negative social impacts. Illegal logging associated with mining and illegal conversion for commercial plantations were also considered significant factors. By contrast, most respondents considered legal industrial logging to play only a minor role in degradation, forest loss and negative social impacts.

Respondents were also asked whether there had been any change in the various types of illegal activity over the previous year. Corruption and illegal activities by concessionaires were considered to have become more widespread by half the respondents, while the other half thought there had been no change. With regard to other types of illegal activity – including the illegal issuance of licences, logging by unauthorized companies, illegal artisanal logging and illegal processing – the views of the respondents were mixed, but most considered that they remained at the same level.

Wood-balance analysis

Wood-balance analysis for Lao PDR was not undertaken for this assessment because of the lack of reliable data for the country. The few government statistics that are made available to the public are not robust. Furthermore, record-keeping and the provision of data by mills and factories are extremely limited.⁴⁴ For example, a study of four provinces that compared the recorded volume of harvested timber with that registered at log landing facilities found that only 34 per cent of logs were declared at those facilities.⁴⁵ Furthermore, the recorded log landings accounted for only 13 per cent of the volume of roundwood estimated to be necessary to produce the volume of finished goods reported.

⁴⁴ Barney, K. and Canby, K. (2011), *EU FLEGT Facility, Baseline Study 2, Lao PDR: Overview of Forest Governance, Markets and Trade*. Washington, DC: Forest Trends; and Grace et al. (2012).

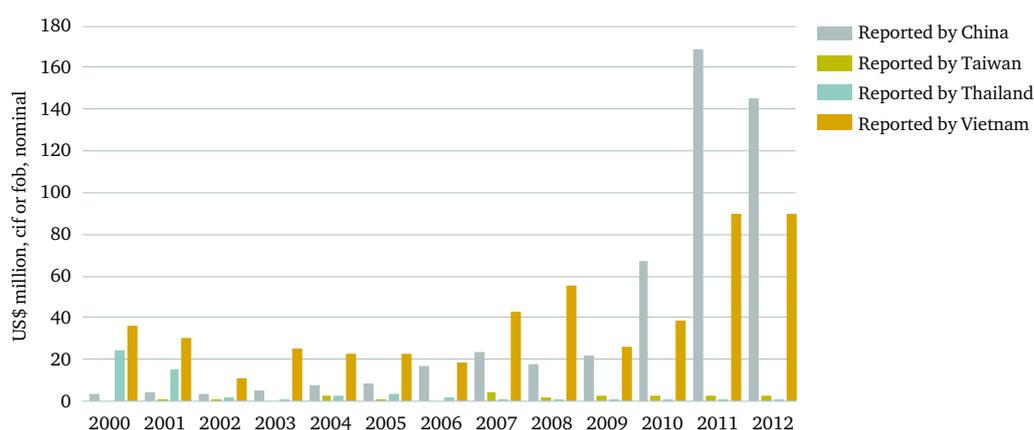
⁴⁵ Grace et al. (2012).

The extent to which these discrepancies reflect illegal activities is unclear, as poor record-keeping is a major factor. But they clearly demonstrate the limited capacity of existing systems to monitor or control timber production throughout the domestic supply chain.

Trade data discrepancies

The significance of discrepancies in export data collected by the relevant Lao authorities and reported imports of forest products from Lao PDR is difficult to assess, as the Lao government does not publish the relevant trade data or submit such data to COMTRADE. What is noteworthy is that although exports of certain products (logs, flitches and rough sawn timber) have been restricted in the past,⁴⁶ a number of legal instruments enable the government to make ad hoc exemptions to those restrictions – some in response to specific market drivers. Trade data from importing countries indicated that such exemptions are being widely employed.⁴⁷

Figure 4: Import value of logs from Lao PDR reported by destination countries



Source: Based on official trade statistics for the corresponding imports of partner countries – the General Administration of Customs of the People’s Republic of China, Directorate General of Customs (Taiwan), Customs Department of the Kingdom of Thailand, UN COMTRADE (for Vietnam trade statistics); with analysis by Chatham House.

Overview of estimates of illegal logging

The available evidence suggests that there is a high level of illegal activity in the forest sector of Lao PDR. According to the expert perceptions survey, illegal logging accounts for the bulk of production and that situation has worsened in recent years.

Those findings are borne out by NGO investigations that have been undertaken in the country⁴⁸ and by the work of agencies supporting small-scale producers in the country. Complex, unclear and at times contradictory legislation has been found to hinder legal compliance, particularly for such producers. Matters have been made worse by recent legal reforms, many of which aim to address illegal logging and respond to external drivers for legality along the timber supply chain.⁴⁹

⁴⁶ For example, Orders No. 11/PM (1999), 10/PM (2000), 15/PM (2001), 18/PM (2002), and 25/PM (2004).

⁴⁷ For example, Article 52 of the Forestry Law, Order No. 17/PM (2008), Notification No. 1601/MOIC.DIMEX (2008) (Article 2 – Approval for export of timber products).

⁴⁸ See, for example, EIA (2011), Forest Trends (2011) and Global Witness (2013).

⁴⁹ Smith (2014).

Challenges to compliance should be reduced as the legal reform process continues, with the review of the relevant legislation (such as the Forestry Law) and of the approval and regulatory processes for concessions and land development, including large-scale forestry plantation projects and the registration of smallholder plantations. It will also be important to ensure that the needs and priorities of small-scale and community-based producers are not overlooked if a legal, sustainable and equitable forest sector is to be established.

Conclusions and Recommendations

Compared with the other producer countries included in this assessment, the forest governance situation in Lao PDR is poor, with limited transparency and accountability. Statements about the types of challenges represented by illegal logging suggest that the public policy debate about the issue is inconsistent and relatively under-developed. In the absence of a more informed and open debate and in a political climate that does not foster accountability, it is unclear how the Lao government will tackle the problem of illegal logging and associated trade and if it can, ultimately, put forest management on a more sustainable footing.

However, there are signs that the government is becoming more open to acknowledging the forest governance challenges that it faces. These include, above all, its recent recognition of the need for more inclusive land-use planning procedures, its engagement with FLEGT and the possible imminent start to VPA negotiations. However, there has still been no large-scale impact on the level of illegal activity in the forest sector.

The launch of VPA negotiations would present an opportunity for the country to adopt a more inclusive approach to making decisions about the country's forests. Given that there is pressure on the country's forests from other sectors and that this pressure is likely to grow, it is important that representatives of all relevant ministries – not least those responsible for mining, infrastructure and agriculture – are included in this process. Moreover, the multi-stakeholder steering committee and technical working group established for the VPA negotiations will have to be given the political support, space for dialogue and sufficient resources to ensure a credible dialogue process if a robust national definition of 'legality' is to be developed.

In the light of the information presented above, the following recommendations are made:

- Data on the allocation and management of forest resources should be systematically collected, collated and published in a consistent format. They should include timber harvest volumes, processing capacity and production levels, as well as the import and export volumes of all wood-based products. Without robust data, the government will continue to be severely hampered in its ability to monitor the sector and to make strategic decisions to ensure the industry's long-term viability.
- Accountability mechanisms, including anti-corruption strategies, should be clearly defined and implemented by all relevant ministries to ensure that forest resources are exploited legally and for the benefit of the country.
- Priority should be given to making progress with VPA negotiations. This will require that the lead government agencies (the Ministry of Agriculture and Forestry, the Ministry of Industry and Commerce and the Ministry of Natural Resources and the Environment) are appropriately engaged and resourced to implement a credible dialogue process. Such a process would enable the development of a robust national definition of 'legality' and one that is supported by broad consensus. Particular consideration will need to be given to the incorporation of laws and compliance verifiers associated with land conversion (for example, timber and agricultural plantations, mining, hydro power and infrastructure) in the national timber legality assurance system.

Annex 1: Policy Assessment Scores for 2013*

	Existence (0–2)	Design (0–5)	Implementation (0–5)
High-level policy			
Official review of illegal logging	0	n/a	n/a
National action plan	0	n/a	n/a
Coordination between government departments	0	n/a	n/a
Multi-stakeholder consultations	0	n/a	n/a
Legislative framework			
Coherent and unambiguous forestry legislation		2	
Forestry legislation consistent with other laws affecting forests		2	
Enactment of additional legislation to prevent sale and import of illegal wood-based products	0	n/a	n/a
Checks and balances			
Right of public to make legal challenge	0		n/a
Penalties for official corruption	2	3	2
Limits to discretionary powers	0		n/a
Committee with oversight of forest agencies	0	n/a	n/a
Internal forestry agency audits whose results are made public	0	n/a	n/a
Independent forest-monitoring system	0	n/a	n/a
International trade cooperation			
Formalized trade or customs arrangements	1	n/a	n/a
Formalized system for sending and receiving enforcement alerts	0	n/a	n/a
Regulating demand for timber			
Sawmill permitting system that requires evidence of legal supply	1	3	2
Tenure and use rights			
Property, use rights and tenure arrangements designated on publicly available maps	0	n/a	n/a
Formalized mechanisms for resolving property rights issues	3	3	3
Formalized mechanisms for accommodating customary rights in law	0	n/a	n/a
Timber-tracking systems			
System to verify the origin of timber	0	n/a	n/a
System design	Independent monitoring procedures	0	0
	Reconciliation systems	0	n/a
	Tamper-resistant documentation procedures	0	n/a
	Computerized systems	0	n/a

Illegal Logging and Related Trade: The Response in Lao PDR

		Existence (0–2)	Design (0–5)	Implementation (0–5)
Transparency				
Public document describing roles, responsibility and controls of relevant agencies		1	n/a	n/a
Resource allocation	Rules for resource allocation processes	0		n/a
	Dates for resource allocation processes made publicly available	0	n/a	n/a
	Results of resource allocation processes made publicly available	0	n/a	n/a
	Summary data on harvest, processing and international trade published	0	n/a	n/a
Resource use	Location of concessions, ownership and contracts made publicly available	0	n/a	n/a
	Concession licences, inventories and harvest plans made publicly available	0	n/a	n/a
	Environmental and social impact assessments made publicly available	0	n/a	n/a
Enforcement	Data on forest crimes published	0	n/a	n/a
	Data on disposal of confiscated wood made publicly available	0	n/a	n/a
Allocation and management of rights to harvest				
Pre-qualification process to exclude inappropriate bidders		0	n/a	n/a
Competitive allocation process		2	4	n/a
FPIC or stakeholder consultations for affected local communities		0	n/a	n/a
Measures to protect and develop forest-based livelihoods		0	n/a	n/a
Law enforcement				
Proportionate and dissuasive penalties			4	3
Coordination systems in place for relevant agencies		2	3	4
Forestry/law enforcement officials sufficiently resourced			2	n/a
Training of	Judges and prosecutors			0
	Customs officials			0
Information gathering tools	Remote-sensing systems			0
	Field-based investigatory tools			1
	Material flow analyses			0
	Log-tracking and checkpoint systems			0
Policy scores for information management				
Up-to-date, accurate information management system		2	2	1
Policy scores for financial management				
System for monitoring revenue discrepancies		2	1	1
Forest administration audit		0	n/a	n/a

* The policy scores included in the 2010 report were based on an assessment of the situation at the end of 2008; and those for the current assessment on the situation at the end of 2013. A grey cell indicates that the answer to the question posed was not scored; an asterisk indicates that the question was not asked in 2010. Policies were assessed according to the following factors: existence (scoring between 0 and 2, whereby 1 indicates partial coverage or a policy under development); design (scoring between 1 and 5, whereby 5 indicates very well designed); and implementation (scoring between 1 and 5, whereby 5 indicates consistent and comprehensive implementation).

Annex 2: Methodology

The methodology employed to undertake the assessments of the 13 countries included in the 2014 Indicators of Illegal Logging and Associated Trade study is based on that developed by Chatham House for its 2010 assessment. Below is a brief overview of the data collection and analysis process. Further explanation of how the indicators were developed can be found in earlier reports.⁵⁰

The countries included in the study were selected on the basis of the significance of their role in the production and consumption of illegal wood-based products. Four years after the first assessment, the 12 original focus countries combined continue to account for the majority of exports and imports of such products. Lao PDR is included in the 2014 assessment owing to its increasing importance in the global trade in wood-based products.

Indicators of progress

Chatham House has developed a set of standardized indicators to allow a comparative evaluation to be undertaken. The indicators cover four areas:

- a) Media attention;
- b) Government response (assessment of the policy framework, expert perceptions survey and analysis of enforcement and revenue data);
- c) Progress by the private sector (assessment of levels of certification and legality verification, expert perceptions survey and analysis of trade data to assess shifts in trade with ‘sensitive’ and ‘non-sensitive’ markets);⁵¹ and
- d) Levels of illegal production and trade (expert perceptions survey, wood-balance analysis and analysis of trade data to assess discrepancies).

An outline of how these data were collected is provided below.

Media attention

The level of attention afforded to illegal logging and related trade in the domestic and international media was assessed, using both quantitative and qualitative methods. The volume of articles in the international media was measured through a search of online media archives (Factiva, Newsbank and LexisNexis) using the term ‘illegal logging’ and the country name. A similar approach was adopted with domestic media: the search term ‘illegal logging’ was used in English and/or the local language. Online archives were used where possible and physical archives where no such digital records were available. Country partners were asked to identify those newspapers, journals and media outlets that can be considered ‘major circulation’.

⁵⁰ Lawson, S. (2007), *Illegal Logging and Related Trade*; and Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade. Indicators of the Global Response*. London: Chatham House.

⁵¹ For this study, ‘sensitive’ markets are considered to be the EU, Norway, Switzerland, the US, Australia, Canada and New Zealand. Non-sensitive markets are considered to be all other markets.

The articles were then categorized according to their main focus: enforcement, private-sector response, government response, impacts or 'other'. The search period for domestic media coverage was the year from October to September, while that for international media was the calendar year.

Policy assessment

For each of the countries included in the assessment, an in-country partner was selected by Chatham House to assess the national policy and legal framework for tackling the issue of illegal logging and related trade.

For producer countries, the questions were grouped into 12 broad categories: high-level policy, legislative framework; checks and balances, international trade cooperation, policies to regulate demand for timber, tenure and use rights, timber-tracking systems, transparency, allocation and management of rights to harvest, law enforcement, information and financial management. In addition, data on enforcement and revenue collection were collected and incorporated into the policy assessment.

In-country partners were provided with an advisory framework on scoring as well as the scores from the 2010 assessment in order to maintain at least a degree of consistency across countries and between the two assessments. The scores were then reviewed by Chatham House researchers and peer reviewers and amended where necessary.

Expert perceptions survey

A survey of national experts asked respondents to estimate levels of illegal logging and associated trade and to evaluate the response by government and the private sector to the issue. The main part of the survey, which comprised 16 questions, was sent to all respondent groups – government officials, timber-industry representatives, NGOs and other experts. An addendum to the survey was sent to private-sector respondents, while a separate short survey was sent to industry associations.

Weighted-average perception scores have been calculated to account for slight variations in sample size among respondent groups and between the two survey periods. First, averages were calculated for each respondent group (government, private sector and NGO/other) and then the average of the three averages was calculated.

Third-party certification

Data were gathered on the total area of production forest in the producer countries that has been either verified legal or certified sustainable (plantation forests were excluded). All major independent certification schemes were included. Data were based on those provided by each of the schemes as well as on research undertaken by Chatham House staff. Various reports, including those by NGOs and trade associations, were consulted in order to calculate the total area of active production forest under certification at the end of each calendar year up to 31 December 2012; no areas certified after this date are included in the current assessment.

Analysis of trade data

Trade data were compiled and used to analyse shifts in trade between 'sensitive' and 'non-sensitive' markets and discrepancies in data on reported imports and exports between a producer country

and its export markets. Data were compiled from official national trade statistics and from the UN Comtrade database and converted to RWE volume. The following conversion factors were used:

- By volume (m³/ m³): sawnwood: 1.8; veneer and mouldings: 1.9; plywood: 2.3.
- By weight (m³/t): particleboard: 2.0; fibre board: 2.5; picture frames and wooden furniture: 2.8; joinery, ornaments and 'not elsewhere specified': 3.5; chips and residues: 1.6; paper: 3.5; and pulp: 4.5.

Wood-balance analysis

Where robust national data could be obtained, wood balance analyses were undertaken. These compared the legal supply of timber (from official records of harvest and imports) with consumption (based on domestic consumption and exports). The gap between supply and consumption can indicate the existence and extent of unreported and hence potentially illegal logging.

There are a number of limitations to such analyses. Most important, they cannot account for smuggling or illegalities related to legally sanctioned harvesting (e.g., the failure to pay taxes). Furthermore, statistics – particularly on domestic consumption – are unreliable or absent in many countries. For this reason, the methodology used varied from country to country, depending on the data available, while in many cases no such analysis could be undertaken owing to the lack of relevant data.

Glossary

ACIAR	Australian Centre for International Agricultural Research
AIP	Agricultural Investment Plan
AMP	Agricultural Master Plan
ASEAN	Association of Southeast Asian Nations
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of custody
DIMEX	Department of Import and Export of the Ministry of Industry and Commerce
DoF	Department of Forestry
DoFI	Department of Forest Inspection
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization
FINNIDA	Finnish International Development Agency
FIP	Forest Investment Program
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement Governance and Trade
GIZ	German Federal Enterprise for International Cooperation
MOIC	Ministry of Industry and Commerce
MoU	Memorandum of Understanding
PROFOR	Program on Forests
RAFT	Responsible Asia Forestry and Trade
R-PP	Readiness Preparation Proposal
RWE	Roundwood Equivalent
TLAS	timber legality assurance system
TRAFFIC	The Wildlife Trade Monitoring Network
UNCAC	UN Convention against Corruption
UNEP	United Nations Environment Programme
VFA	Village forest association
VPA	Voluntary Partnership Agreement

About the Author

Jade Saunders has been an associate fellow of the Energy, Environment and Resources Department at Chatham House since 2002, working extensively on forest governance and the FLEGT Agenda. She is currently a senior policy analyst at Forest Trends in Washington DC. Between 2007 and 2010 she was a policy analyst in the FLEGT Facility, responsible for policy analysis and strategic advice and support on governance and trade matters to the European Commission in the negotiation and implementation of FLEGT VPAs (a series of bilateral trade/aid agreements between the EU and timber-producing developing countries). She has also worked on environment, development and trade issues in a number of other sectors including global textile supply chains, natural resources and conflict, marine governance, the trade in illegal ozone-depleting substances, sustainable tourism in least developed states and climate change. She has degrees in international history and politics (BA, University of Leeds), and social anthropology (MSc, University College London)

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