

Briefing Note No 3 – Land leases and concessions by the state and collectives
Relevant to Articles 74,109-113 of the draft Land Law

Background

Granting state land leases and concessions to domestic and foreign investors is an important tool for the Lao Government to foster economic growth and development. Such land leases or concessions are granted by the responsible government authority at the appropriate administrative level according to the granted land area.

Acknowledging this authority and responsibility, it is important to recognize that state land lease or concessions can often be granted in, or close to, areas where people live. Experience both in Lao PDR and internationally has shown that the granting of long-term leases and concessions has the potential to adversely affect villagers through; limited access to land resources for food production, loss of access to forest or water resources and loss of biodiversity, which in turn can result in food insecurity and loss of livelihoods.

To avoid such adverse effects there should be an obligation for villagers to be consulted over planned state land leases or concessions providing them with an opportunity to raise any concerns that they may have and ultimately signal their consent.

Furthermore, and noting the potential economic significance and benefits associated with state land leases and concessions, communities themselves should also be able to benefit for themselves through the limited leasing of collective land resources. Something that is currently not provided for in the law.

Current issues in the draft Land Law

Regarding the background mentioned above, the draft Land Law presents considerable shortcomings in Part VII, Chapter 1 (Articles 109 to 113), which deals with land leases and concessions, as well as Article 74 on state land for collective purposes:

1. **No requirement of consent by villagers:** Granting of state land leases or concessions is specified in Articles 111 and 112 of the draft Land Law. Nowhere in the draft law is mention made of a requirement for the involvement of the people who live in the area where such state land leases or concession are being issued. This poses the risk of the state granting leases or concessions without consent, which has the potential to lead to the aforementioned adverse effects.
This shortcoming is also inconsistent with the Resolution of the Central Committee on Land Management (2017) in paragraph III.6, which states: “*The state may convert land into capital by granting lease, concession ... in ensuring [...] interests of the state, collectives and people.*”
2. **No possibility for villages to grant land leases on their collective land resources:** Article 74 of the draft land law specifies that state land for collective purpose does not include the right to lease. This unnecessarily limits the possibility for communities to create income opportunities for themselves by leasing out land for the collective benefit.

Proposal

1. Part VII, Chapter 1 of the draft Land Law should be expanded to include an obligation on the state to consult with affected villagers before granting a lease or concession. The state should obtain the “free, prior informed consent” (FPIC) of the villagers. This obligation could either be included in Articles 111 and 112 or be drafted in a separate new Article.

2. Part VII, Chapter 1 of the draft Land Law should be expanded with an Article allowing “Land Lease of state land for collective purpose”, which specifies the possibility for communities to lease specific land resources, through majority decision and on the basis of an approved change of land use (e.g. through an approved land use plan, or land use plan amendment). At the same time, Article 74 of the draft Land Law should specify that State land for collective purpose includes the right to lease.