

## Problems and Challenges in Turning Land into Capital in Lao PDR

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### Abstract

The large-scale of economic land concessions resulted in significant alternations, landscapes, ecological processes, greatly reduced local access to natural resource, and led to massive changes in the livelihoods of large number of indigenous people as many of them have lost their agricultural and forest land, or conditions of production, which made it difficult to maintain their former semi-subsistence livelihood and to live in the areas. This paper investigates problems and challenges on turning land into capital in Lao People's Democratic Republic (Lao PDR) by conducting qualitative research among people implementing national land use planning and land allocation programmes and local indigenous people affected by large-scale land concession projects.

It was found that having no master blueprints on turning land into capital in Lao PDR, delay on land titling and over-concession of land needed were the major problems of turning land into capital.

Whereas, the challenges were the farmers' situation and land use, processes and legal enforcement and compensation references between the owners and the project implementation officials.

**Keywords:** Problems and Challenges, Land Concession, Turning Land into Capital

### Introduction

Karl Marx's (1976) description of "Primitive Accumulation from Feudalism to Neoliberalism," continues to be critical as primitive accumulation involves the direct expropriation of people's conditions of production, the purposeful forcing of people into wage labour, and the intentional manipulation of the social division of labour. However, such conditions are met very often in the contemporary economy, one ominous exception is expropriation." In the United States of America, for example, much of the population has long been highly integrated into a wage-labour economy (Perelman, 2007) as it is considered the role of multinational corporations in taking control over resources, including water, forests, and land for mining in ways that the links to primitive accumulation practice on the ways that privatization has facilitated expropriation of resources.

The large-scale economic land concessions are impacting on the rural people, and particularly 'indigenous people in Lao PDR. In particular, it is highlighted that one of main motivations of the Government of Lao PDR in granting large-scale land concessions is to remove peasants from shifting cultivation, from the conditions of production because they are seen as making unproductive use of resources and as being resistant to fully integrating into the market economy. Indeed, in the Lao PDR, most indigenous peoples have been heavily reliant on mixed subsistence and semi-subsistence agriculture in which a large portion of the food consumed has been obtained through family farm agriculture, and hunting, fishing, and

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the gathering of a wide variety of non-timber forest products (NTFPs) from the common land.

Crucially, these peoples have not become embedded in the wage-labour economy like most rural populations in the USA, Western Europe or other industrialized parts of the world. This does not mean that indigenous peoples in Lao PDR do not depend on wage labour, especially during the agricultural off-season. Moreover, as Rigg (2005) and Shoemaker et al. (2001) have pointed out, wage-labour is becoming increasingly important in rural Lao PDR, even without the introduction of large-scale economic land concessions. The degree of importance is, however, geographically uneven, with some regions, villages and peoples engaging much more in wage-labour than others, and indigenous peoples tending to rely less on it than others. Thus, while the role of subsistence agriculture in rural Lao PDR should not be overemphasized or romanticized as well as ignorance of its continued importance of subsistence and semi-subsistence agriculture for large portions of the population, at least for the time-being, and especially for upland indigenous peoples whose livelihoods are particularly linked to the land. The policy of the Government of Lao PDR 'turning land into capital' is crucially intertwined with another important aspect, 'turning people into labour', even if it is not directly referred to as such. Thus, the system of issuing large-scale economic land concessions to foreign investors from other Asian countries such as Vietnam, China, Thailand and others, constitutes, it is believed to be a much more comprehensive form of primitive accumulation than what Perelman (2007) argued is occurring in the USA. It not only involves the expropriation and enclosure of land and resources but also driving semi-subsistence farmers into labour markets. This transformation of semi-subsistence farmers into people highly dependent on wage-labour is sometimes important to the investors themselves. However, drawing the Lao labour force into the market economy is one of the key justifications in Laos for the present land concession system.

### **Objective of the Study**

The purpose of the study is to examine problems and challenges on turning land into capital in Lao PDR.

### **Literature Review**

In the 1980s and 1990s, the turning of land and asset practice had socio-economically and environmentally influence since there were no proper survey with measurable indicators complied with laws and regulations. Moreover, there is no definitions of land concession, land title and reserve forests. Therefore, shifting cultivation and logging were put into practice of local residents. Today this practice, however, is still similar to the practice of the 1980s and 1990s as many land areas are not well-studied for their socio-economic and environmental appropriateness. The urbanization of areas has encountered challenges and problems in terms of natural resource sustainability as it usually provides negative consequences to its physical existence and distinction.

The early land use planning activities in Lao PDR commenced in 1989. Land use planning at village level was identified as a tool to improve the protection and management of natural resources, to clarify boundaries between villages and to differentiate agricultural production and forest use areas from those areas in need of protection and conservation. Land use planning was seen as a precondition and a step leading to land allocation of residential areas and agricultural plots and would become a part of poverty alleviation efforts conducted by the Lao Government.

In 1993, the Lao Government formulated a National Land Use Planning and Land Allocation Programme (LUP/LAP) (Manivong and Sophathilath, 2009). It was mainly the Lao-Swedish Forestry Programme (LSFP) with a Sub-Component on Participatory Village Development and Sustainable Land Use', which assisted the Lao Government to develop and institutionalize the LUP/LAP approach and conducted extensive capacity building measures. Various other donor-funded projects also supported the LUP/LAP financially and technically. Based upon the experiences gained in the LSFP target provinces, a national LUP/LAP Manual was published in 1997 and revised in 2001. LSFP also produced numerous technical guidelines, working papers and brochures further describing the proposed LUP/LAP approach.

The land market study found that state land leases and concessions are increasing as a result of foreign direct investment with unproductive outcomes and cancellation of investors; there were many cases of excessive state land leases and concessions authorized by district authorities due to imprecise contracts and an unclear legal basis leading to low payment of leases or concessions of state land (Chanthalasy et al., 2005).

The practice of the past decade of turning land into capital was adopted in the form of joint ventures between the government and investors by giving the potential to channel not just land taxes and rental fees but also corporate profits into state revenue streams. However, there was a potential conflict of interest and economic risk since the regulatory role was sufficiently independent from investor's role and when the investment is not profitable on land concession. Therefore, in the literature review section, extensive review on land concession is carried out. This section is divided into four parts: land policy, mining, agriculture plantation, and tourism.

### **Mining Sector in Laos**

Knowledge about land concessions in the mining sector (Dwyer, 2007) is highly concentrated at the 'best practices' end of the spectrum. Most of the published material comes from the World Bank or the Sepon Mine, whose reports provide important windows into the industry but raise additional questions about the transparency and independence that many industry watchers and sustainability advocates. It is necessary for good governance and sustainable development. These sources also span the actors involved in international debates about sustainable development in the mining sector, ranging from industry-hired consultants, to sympathetic partners, to watchdog organizations without a formal presence in Laos. Of all the sectors reviewed, mining may be changing the most quickly from a regulatory perspective, as evidenced by the recent efforts at STEA and the creation of the NLMA, as well as by reports (in the Vientiane Times and informally) that the DGM is in the process of reviewing, and possibly cancelling, a number of existing mining concessions.

An investigation of community development and the Sepon Project (Jones, 2004) looked into Oxiana's local trust fund activities in the Sepon area; describing how the project has operationalized the concept of the social license to operate the Sepon mine. According to the (Nelsen and Scoble, 2006) the social license concept's critical component is 'implementation', because this is where the social license needs to be maintained against a changing local socio-economic and cultural baseline of improved knowledge, greater (and more unequal) wealth and rising expectations. The implications are clear: the project's social license requires continuous economic and social development if it is to keep pace with these changes and continue to be seen by those affected by it as 'a good and proper thing to do'. There is no such thing as a done deal. The report gives a number of lessons learned, including (1) despite some initial internal resistance to doing social and environmental planning when the project was still at the feasibility assessment stage, having to undertake comprehensive

and detailed social and environmental planning [early on]...benefited the Project repeatedly, and Oxiana would certainly adopt the same philosophy for all future projects; (2) absolute commitment to public consultation and involvement of the local community was a key aspect of the project's success in community development programs, which, due to the high costs of work stoppages that would result from labor unrest, are openly admitted to be not just altruistic but are also plainly good business; (3) a set of operating principles for dealing with local communities.

The sector plan for the sustainable development of the mining sector in Lao PDR (World Bank, 2006) was prepared by the World Bank, including a set of eight documents - a summary report, six specialized reports (on geographic information systems, economic geology, institutions, infrastructure, international competitiveness, and macro-economy) and an action plan - and consists of over 500 pages of information, assessments, and recommendations about the Lao mining sector, ranging from physical to institutional resources, and domestic to international prospects for industry development. The findings include: (1) thirty-five mines are currently operating, of which only three (presumably Sepon and Phu Bia in two locations) have modern production systems; about half include foreign investment (Chinese, Thai, Vietnamese and Australian); the rest are operated by Ministry of Energy and Mines (MEM), 7 mines, Ministry of Defence (MOD), 5 mines and Ministry of Commerce (MOC), 1 mine; all mines are important providers of [employment] to their immediate communities. In the regulatory arena, (2) although the current state of mining activities, institutions and infrastructure is now well understood, it is very hard to evaluate the exact state of the Lao mining industry, because there is no relevant compiled information such as production and financial data emphasis added); (3) while the granting and documenting of mining concessions has been a primary activity of the Department of Geology and Minerals (DGM) since before 2003, problems with information provision about and within the larger investment process (including the legal framework), acts as a deterrent to foreign investors; (4) extremely limited organization and capacity of the Department of Geology and Minerals from 28 to 30 places the regulatory burden almost solely with Science Technology and Environment Agency (STEA), which, at the time of writing, was legally required to implement environmental management and monitoring activities but does not currently implement any environmental monitoring due to budgetary constraints. Regarding the future, (5) Laos is situated in a geologically favourable area of mineral resource potential and contains 572 known mineral deposits, including gold deposits at Sepon and Phu Bia, estimated national reserves of 500-600 tons, copper at Sepon and Phu Kham estimated national reserves of 8-10 million tons, zinc deposits at Kaiso and Puda, estimated national reserves of 2-3 million tons, potash approximately 50 billion tons, kaolin around 70 million tons, gypsum, somewhat 100 million tons, plus coal, barite, rock salt and precious stones; (6) infrastructure limits and minimum economic production levels for large scale metal production higher-volume copper or zinc mining requiring transport of 100,000tpy) or bulk mineral commodities: iron ore and potash mines must produce in excess of 500,000tpy. (7) gold, silver, gemstones, copper and zinc mining is nonetheless expected to continue increasing due to increasing commodity prices and expanding regional markets, especially China; nonetheless, (8) precise locations of future mine development are somewhat unpredictable because of confidentiality clauses in exploration contracts that give companies exclusive right to the geophysical data they collect within their concession areas. The report recommends that DGM carefully discuss ways to get better access to private geophysical data, but warns that extravagant measures of information disclosure might reduce mining development companies' will to invest.

## Agriculture Plantations Sector

The studies summarized in this section deal with the agriculture and plantation forestry sector, from which many voices and cases are involved in the ongoing discussion about land concessions have emerged. First, the large area - both of existing plantation projects and of expectations about land that is available for conversion to plantations - gives the agriculture and plantations sector special importance in discussions about development, investment and livelihoods because of Laos' rural agrarian character. Second, the importance of environmental degradation as a discourse through which agricultural and plantations-sector development is discussed means that questions of land availability and suitability for agriculture and plantations are more negotiated and contingent on interpretation than with resources like minerals or timber. Third, the existence of alternatives such as contract farming has arguably created more space for debate in the agriculture and plantations sector. Lastly, there is somewhat of a 'sampling bias': independent research has focused on the agriculture and plantations sector much more frequently than it has considered the mining, forestry, hydropower, industrial and tourism sectors, probably due to a combination of the first three reasons, as well as due to the relative physical isolation and political sensitivity in sectors like mining, hydropower and forestry, where enclave project configurations and the involvement of the military combine to discourage independent research.

Para rubber plantation has been introduced and expanded quickly in the Lao PDR recently. A study was conducted in Sing district (Luangnamtha), northeast Thailand and Yunnan, and on additional research in Vientiane rubber plantation to describe the gap between what is known about the social, economic, technical, environmental and legal issues associated with rubber development and what is actually happening on the ground (Alton, 2005). The findings concluded that (1) Para rubber planting and rumors of planting are rampant in the Lao PDR. The situation with rubber is changing so fast that the Ministry of Agriculture and Forestry does not have even an estimate of the area planted (2) the area planted in rubber in 2005 was probably about 50,000 hectares nationally; (3) Chinese, Vietnamese, Thai investors (and perhaps others) are exploring investing in rubber production in the Lao PDR, and they are seeking land concessions and other arrangements; (4) in contrast to the story of ad hoc development, land suitability studies seem to be a prerequisite for Vietnamese rubber companies to decide to invest in Laos (6), although the methodology used - in particular, mapping areas that are suitable versus mapping areas that are unsuitable - demands further investigation; (5) the need for land by outsiders and the...desire [of some communities] to plant rubber combine to create a situation where [villagers] may be willing to sacrifice some of their land base in exchange for capital or support to plant rubber; (6) the investment procedure is well-described although involved; (7) the quality of the four contracts reviewed left much to be desired, from the perspective of both clarity and company advantage. Perhaps most importantly for the land concessions debate, (8) in discussing rubber companies' desire for large land concessions, the study implicitly points out that the absence of large concessions in Luangnamtha is not the result of ecological factors (like mountainous terrain), but rather of decisions by provincial government.

Socio-economic dynamics of rubber in the borderlands of Laos was reported by Diana (2006) during a year-long fieldwork period for a doctoral study on the China-Lao border economy. This report was written to complement Alton et al.'s (2005) report with a more detailed analysis of the social intricacies fostering the 'transplanting of the rubber dream' in northern Laos, against the background of the cross-border links with China. As with Alton et al., Diana's focus is on smallholder production. Her findings include: (1) the land use planning system implemented by local DAFO and PAFO contrasts with national-level de facto policies allowing big rubber land concessions to Chinese businessmen, (2) the local

system is nonetheless causing problems for villagers who want to plant more rubber than there is zoned as agricultural land, and who claim the zoning system is too confusing. Perhaps most importantly for the concessions debate, (3) rubber-growing agreements based on familial ties and other social networks, rather than on contractual precision, guarantee more security to the farmers in terms of capital and land use rights, as they rely on family or friendship trust; in contrast, (4) concession type contracts are more ambiguous in terms of labor input and remuneration, marketing of latex, and duration of land lease and are, moreover, riskier because they involve larger land areas and reduce land availability to the farmers for the whole duration of the contract (30-40 years).

Forests and common lands are key components of the livelihood systems of rural Lao communities, and especially so for the poorest villagers who are the most dependent on forests for the livelihoods (Lang, 2006). It was argued that industrial tree plantation was based on a false premise - that there are large areas of unused or underused 'degraded' forest of little or no current value to local communities. Based on analysis of ADB documents, it was concluded that (1) the ADB evaluated its Industrial Tree Plantations Project (1993-2003) (Hanssen, 2007) as unsuccessful and its own performance as unsatisfactory; (2) as shown by multiple pieces of documentary evidence, there has been an ongoing fundamental difference in perception of how land is used and valued between outsiders (the ADB staff and central government officials) versus local villagers, in many cases expressed that they have no degraded forest land and use forest for growing rice, raising livestock, and for collecting timber, firewood, bamboo and other NTFPs; and (3) this empirical evidence either contradicts (if one focuses on the word no in the quote below) - or, more interestingly, raises questions about economic valuation processes (if one focuses on the word little) referred to in - the ADB's assertion that plantations will be established on degraded forestlands that have little or no alternative economic value.

## Methodology

Qualitative research approaches were employed. Hence, many qualitative research instruments were employed: group discussion among people implementing national land use planning and land allocation programmes and local indigenous people affected by large-scale economic land concession projects as well as doing participative observation.

As qualitative data were gathered, the content analysis was employed by transcribing all data recorded and from note-taking and finally interpretation of the data.

## Results and Discussion

### Problems

#### TLC Master Blueprints

The turning land into capital (TLC) practice in Lao PDR currently has no blueprints which means that there are no certain standards and procedures including systems and process. The people affected from large-scale economic land concession were confused about TLC compensation and policy including the resettlement of indigenous people and transition from own subsistent farming practice to labour force or wage workers for TLC project of foreign investors.

#### Land titling

The delay in land titling is an important root cause of insecure land tenure leading to increasing inequality in land ownership. The majority of subsistence farmers do not have legal certification of ownership of their land, but a de facto accumulated land use right, based on mutual understanding with village authorities, leaving them particularly vulnerable to

appropriation, with limited compensation. It means that rural households face difficulties to sell their land or to turn it into capital, to invest in better inputs, such as tools, seeds, and fertilizer. There is also a lack of community ownership or tenure over common land, and these become vulnerable to concessions. Families in rural Laos have not yet had the capacities to navigate the transition from their agrarian present to a modern, market-based agricultural economy. Agricultural workers have few opportunities of joining the formal sector. Nor are government services adequately equipped to help manage the process.

Due to lack of other opportunities after their land lost, many of them are compelled to take up employment with the same companies that displaced them, despite frequently having to work for low wages and under poor and irregular conditions. In comparison to concession, land management and market engagement through contract farming and open market arrangements do not involve physical displacement like some of the concessions, but they do replace traditional food security systems, cause environmental degradation, and in worst cases putting people into unsustainable debt.

### **Over-concession of Land**

The large-scale economic land concession for foreign direct investment is to diversify export products. However, from the observation, it is found that large-scale economic land concession was not fully used in accordance with project requirement. The land concession was still unproductive in comparison with the indigenous people as subsistent farming practice. Approximately 75- 80% of the country's population is rural, equivalent to around 5 million people rely on forests not only for their food but also fuel, building materials and medicine. Non-timber forest products (NTFP) are also an important source of cash income for families. There are growing competing interests over land and natural resources between large-scale investment projects and local communities since the large land areas have been left without any activities but preventing people in the communities from collecting NTFP.

## **Challenges**

### **Farmers' Situation in Lao PDR**

Since the policy of turning land into capital is the transition from unproductive and shifting cultivation practice. The farmers with low productivity are vulnerable to large-scale land concession. As it can be seen that Most Lao farmers produce just enough to support their food and non-food needs. Per capita income in the agrarian economy is less than half the national average, and increasing yields come mainly from expanded cultivation, rather than intensification and innovation. As a result of this, the indigenous people are vulnerable to wage labour due to land cost. The landless rural household subsist below the poverty line.

### **Process and Legal Enforcement**

According to the Land Law (2003) different authorities are in charge of granting land leases, concessions or developing contract farming, depending on the land size: district authority: 3 ha, provincial authority 3-100 ha, central government (Prime Minister) 100 - 10,000 ha, and the national assembly over 10,000 ha. Concessions are typically granted by provincial authorities with little involvement and monitoring at the central government level. Concessions are also granted by the central level without sufficient consultation at the local levels to ensure that land in an appointed area is actually available. Sometimes concession companies have cleared village agricultural land that was not agreed to in concession agreements.

The policy change at the central level does not necessarily result in a positive change at the local level. The greatest problem is that in reality the laws and regulations are widely subverted or ignored. Executive and legislative branches' capacity for reviewing and monitoring laws is far from sufficient and law enforcement is weak. Citizens are often not

aware of their rights and responsibilities, local authorities are under pressure and not informed of new regulations. Sanctions for companies, projects or individuals violating the laws are rarely imposed. Furthermore, the legal aid system is underequipped, and lacks capacity in both human and financial resources. Powerful interest groups take advantage and can largely benefit from the current situation.

### **Compensation Estimation**

The village-covering character of many land concessions is the questions of rights to compensation for assets taken by development projects. Although compensation for lost assets is guaranteed in law and is widely acknowledged by government at all levels, there are a range of land uses for which the legitimacy of compensation is not recognized either in law or in practice. The extensive, rotational and communally-managed resources in the case of forest and non-timber forest products, swidden lands, grazing lands, fisheries and wetlands, as well as sedentarized forms of agriculture which are conducted privately on land belonging to the state, as in 450 street of Vientiane Capital. Apart from that the land owners estimated to be compensated based upon the completion of the project while the officials had to estimate the compensation value based upon the prefeasibility study of the project at existing market price.

### **Discussion**

The problems and challenges found from the project officials and the indigenous people affected by the TLC projects are the common problems against the existing challenges in the Lao PDR. However, there is similar result to many authors research on turning land into capital, specifically Baird (2011) and Dwyer (2007). The different findings in this research are problems on master blueprint and land ownership practices while the challenges seemed to be market access of subsistent farmers, ignorance of land rules, regulations enforcement including the estimation of compensation references.

### **Conclusion**

The practice of land concession or turning land into capital in the Lao PDR has no certain standards and procedures which all projects do the same criteria. The indigenous people did not understand about TLC policy, which led to insecure in land tenure.

The majority of subsistence farmers do not have legal certificate of ownership of their land due to the delay in land titling, which led to vulnerable to appropriation or concession, limited compensation, and work for low wages and under poor and irregular conditions due to the lack of other opportunities in the areas after land lost.

The over-concession of land for domestic and foreign direct investors without any productive activity led to preventing communities in accessing natural resources as they rely on forests for food, fuel, building materials and medicines and their family cash income.

Agrarian economy is less than half the national average due to nonexistent market access or weak and poor linked transport.. Population growth in the last 20 years led to increased pressure on agricultural land as well as rapid privatization of land and forest and granting of land concessions to both foreign and domestic companies. The land contamination of unexploded ordinance is also one of the greatest challenges for farmers.

Laws and regulations are widely subverted or ignored. Sufficient and law enforcement is weak as citizens are often not aware of their rights and responsibilities and local authorities are under pressures and not informed of new regulations.

There were conflicts on land compensation estimation of value since the owners of land referred to the cost after completion of the project while the officials estimated cost of compensation according to existing market price.

### Recommendation

While turning land into capital, it is critical to also consider turning people into wage labour. Hence, before turning land into capital, it crucial for the domestic and foreign direct companies as well as the government official to work together on human resource development to meet the needs of the projects.

It is recommended that the master blueprint for turning into capital or land concession so that all projects have certain criteria to follow and implement accordingly.

As the delay in land titling causes difficulty in turning land into capital, it is important to refer to the land laws No 04/NA dated 21 October 2003: chapter II article 18 and chapter II article 22 that people with land tenure with at least 3 years without any conflict should have rights to own the land.

The land granted for domestic and foreign direct investment companies shall regularly be assessed every three years for their utility. The unproductive land use of land concession project shall be withdrawn from the prior land granted.

The land concession grant shall also consider about the infrastructure development so that the indigenous people can also gain benefits.

The law enforcement shall be strongly implemented anywhere throughout the Lao PDR and there shall be public awareness on land laws, rules and regulation for citizens and local authorities.

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