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The Political Economy of **Land Governance in Lao PDR**

Philip Hirsch and Natalia Scurrah

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[Front cover photo: Swiss Agency for Development Cooperation SDC]

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ABBREVIATIONS

ADB	Asian Development Bank
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
CLMV	Cambodia, Laos, Myanmar and Viet Nam
CSOs	Civil Society Organisations
DoF	Department of Forestry
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
GMS	Greater Mekong Sub-region
LPRP	Lao People's Revolutionary Party
LURC	Land Use Right Certificate
MEM	Ministry of Energy and Mines
MRLG	Mekong Region Land Governance
NAFRI	National Agriculture and Forestry Research Institute
NGOs	Non-Government Organisations
NPA	Non-Profit Associations
SDC	Swiss Agency For Development Cooperation
SEZ	Special Economic Zone
SME	Small And Medium-Sized Enterprises
TFAP	Tropical Forestry Action Plan

INTRODUCTION

Land governance is an inherently political-economic issue. This report on Lao PDR[1] is one of a series of country reports on Cambodia, Laos, Myanmar and Viet Nam (CLMV) that seek to present country-level analyses of the political economy of land governance.

The country level analysis addresses land governance in Laos in two ways. First, it summarises what the existing body of knowledge tells us about power and configurations that shape access to and exclusion from land, particularly among smallholders, the rural poor, ethnic minorities and women. Second, it draws upon existing literature and expert assessment to provide a preliminary analysis of the openings for and obstacles to land governance reform afforded by the political economic structures and dynamics of each country.

The premise of this analysis is that existing configurations of social, political, administrative and economic power lead to unequal distribution of land and related resources. They also produce outcomes that are socially exclusionary, environmentally unsustainable and economically inefficient. Power imbalances at various levels of society result in growing insecurity of land tenure, loss of access to resources by smallholders, increasing food and livelihood insecurity, and human rights abuses. The first part of this analysis explains why, how and with what results for different groups these exclusionary arrangements and outcomes are occurring.

In recognition of the problems associated with existing land governance arrangements, a number of reform initiatives are underway in the Mekong Region. Most of these initiatives seek to enhance security of access to land by disadvantaged groups. All the initiatives work within existing structures of power, and the second part of the analysis discusses the potential opportunities and constraints afforded by the existing arrangements.

This country report commences with a brief identification of the political-economic context that sets the parameters for existing land governance and for reform in Laos. It then explores the political-economic dynamics of land relations and identifies key transitions in land relations that affect access to land and tenure security for smallholders. Finally, the report discusses key openings for, and constraints to, land governance reform.

Laos has experienced particularly rapid change from a country which was seen and promoted by its leaders as land-rich and capital-poor, and hence in need of investment, to one with growing land pressures. Among the Cambodia, Laos, Myanmar, Viet Nam (CLMV) group, Lao features as the country where land issues are most sensitive within the current political system. Openings for dialogue, establishment of effective grievance mechanisms and ground-based advocacy are most limited in Laos. Land pressures in Laos come from agro-industrial plantations and a large number of hydroelectric dams, mines and infrastructure projects that have been built, are under construction, or are planned. Together these are creating considerable land insecurity, not only among directly affected communities, but also in areas where resettlement schemes are established.

1. For the purpose of abbreviation, this report uses 'Laos' to refer to the Lao People's Democratic Republic.

THE POLITICAL-ECONOMIC CONTEXT OF LAND GOVERNANCE

HISTORY AND KEY TRANSITIONS IN LAND RELATIONS

Laos has historically been a country of land abundance relative to its population. It has also been a country in which the overwhelming majority of the population has been rural, producing primarily for subsistence based on small family holdings. Even though the monarch nominally owned all land, the pre-1975 elite was not a landed aristocracy, and at the village level, the distribution of landholdings was, for the most part, equitable. Land occupation and use was by usufruct rights and was governed by culturally and locally specific arrangements (Ducourtieux et al. 2005: 502). Colonial interests in land were limited to a few key fertile areas, notably the Boloven Plateau, where coffee plantations were established. There was no widespread dispossession of smallholders or large-scale importation of plantation workers.

The war between the US-supported royalist government and Pathet Lao revolutionary forces from 1964-1973 saw considerable displacement. By the end of the bombing and fighting, about one quarter of the population of Laos had become internal refugees. While some returned to farmland in their home villages, many settled elsewhere. After the Lao People's Revolutionary Party took power in 1975, up to 2,500 agricultural cooperatives were established in about a quarter of the country's villages (Evans 2002: 194), but often the collectivisation was only partial (Ducourtieux et al. 2005: 503). The failure of this experiment led to a rapid reversion to family farming, largely for subsistence until the late 1980s, and with strong government encouragement to achieve provincial self-sufficiency in rice. The country at this time was closely aligned to Viet Nam in terms of party policy. The Council for Mutual Economic Assistance (COMECON) countries of the Eastern bloc provided development assistance, but otherwise the country remained economically inwardly focused.

Following the 1986 Party Congress, Laos began the shift toward a more outward-oriented and market-based economy, under the label of a socialist market economy. Initially this had relatively little impact on land use and tenure. From the early 1990's, various mapping exercises funded by external development assistance sought to regularise and stabilise settlement and associated farming. There was a strong push to reduce or eliminate shifting cultivation. The Land and Forest Allocation program sought to regularise village land territories and zone land uses within them. This was driven in part by forestry policy, reflecting the importance of timber exports to the country's economy at the time along with a concern over unsustainable and often illegal logging practices. Marking village boundaries also identified the national forest estate that could be zoned for protection and industrial forestry. This exercise was closely aligned with the Tropical Forestry Action Plan (TFAP), supported by the Asian Development Bank (ADB) in Laos under the aegis of the United Nation's (UN) Food and Agriculture Organisation (FAO). It attracted considerable criticism for supporting commercial forestry over community-based approaches and supporting the government's policy of eradicating shifting cultivation (Lohmann & Colchester 1990).

In line with the forest management program established under TFAP, Article 31 of Prime Ministerial Decree 169/1993 restricted shifting cultivation to rotational practice on land allocated by a Village Land and Forest Allocation Committee. Such land was allocated for the "sole purpose of meeting the requirements of their families", with an ultimate requirement that "local administrative authorities and concerned parties must encourage, assist and establish favorable conditions for the individuals, families or collectives still practicing shifting cultivation to convert to the appropriate sedentary agricultural-forestry-livestock production based on their willingness under a contract, such as the family forest management contract."

"LAO FEATURES AS THE COUNTRY WHERE LAND ISSUES ARE MOST SENSITIVE WITHIN THE CURRENT POLITICAL SYSTEM"

[PHOTO CREDIT: RAEWYN PORTER, MRLG]

As land took on commodity value in its own right, particularly in urban and peri-urban areas, the formalisation of landholding intensified. This was supported by the Land Titling Program, funded by the World Bank and the Australian Agency for International Development (AusAID), which ran from 1997 to 2009. An active land market developed in and around Vientiane. The notion of converting land into capital became part of official policy, and was enacted primarily by granting concessions to companies from neighbouring countries – namely China, Thailand and Viet Nam. This departed from the common association of such policy with neoliberal promotion of fungibility in land to build household wealth, since it was enacted mainly at a much larger scale of conversion and production which led to widespread dispossession of people from their land. At the same time, rapid expansion of hydropower and mining projects led to the displacement and resettlement of people away from their villages and farmlands, often to areas where there was pre-existing settlement. As a result, land pressures rose significantly and have become one of the most sensitive issues facing a country whose secure employment opportunities outside agriculture remain quite limited.

In summary, Laos has moved through several key transitions from the colonial period, to wartime, to a period of inwardly-focused socialist practice, to a more outwardly oriented market-based development, and ultimately to a neoliberal era characterised by regional cross-border investments in land for agricultural and other uses. Laos has transformed in a political-economic sense from a country where land was abundant to one where land scarcity is central to state-society relations and interactions between Laos and neighbouring countries. More than 70 per cent of Lao people continue to reside in the countryside and depend on land and other natural resources for significant parts of their livelihoods (Affeld 2014: 8). Lestrelin et al (2012: 584) have developed an elegant political-economic representation of these trends with specific reference to land use planning as an instrument in territorial management. They suggest a move from early concerns over national integration and use of abundant resources (post 1975), to an era of science-based rationalisation of land and resource use through technocratic means (1990's), to the current neoliberal period of increasing reliance on market forces and "turning land into capital" (post 2000). The current era has been associated with a growing number of conflicts over land that manifest themselves at various levels and are attributable to various causes. Analysis and management of conflict requires a nuanced understanding not only of the increased scarcity of land and associated value of land, but also of the different agendas and priorities of a wide range of actors involved in its governance (Mahaphonh et al. 2007).

GEOGRAPHICAL CONTEXT OF LAND USE AND LAND RELATIONS

Land use in Laos varies by topography and other geographical factors including accessibility, and proximity to borders. The local political economy of land use and agrarian relations is similarly shaped by context. Ethnicity is an important dimension of topographical conditions, as upland areas tend to be settled and farmed by ethnic minorities. Shifting cultivation has been circumscribed in upland areas, and land previously under forest or fallow has been allocated for commercial production (Higashi 2015).

Patterns of investment vary from one part of the country to another. In southern Laos, the largest recipients of land concessions are Viet Namese investors in rubber plantations. Most of these concessions have come from land earmarked as fallow (paa lao), but which in reality have been forested or have been part of fallow cycles important to farmers grazing livestock in nearby villages. Provincial and district authorities have been crucial in identifying land "available" for concessions. The larger concessions are signed off at the central government level prior to identification of specific areas of land to be allocated (Kenney-Lazar 2012).

In northern Laos, Chinese capital dominates the commercialisation of land mainly for rubber and, more recently, bananas (Friis 2015). While there are some plantations, these tend to be on a smaller scale than those in southern Laos. Contract farming arrangements mean that farmers in many cases continue to work their land. In other cases, Chinese entrepreneurs rent land from existing farmers, in deals often brokered by local authorities. Environmental concerns over the expansion of banana cultivation include the use of herbicides, insecticides and plastic bags. There are also concerns that Chinese nationals rather than Lao provide much of the labour and ancillary transport and other services. With low rents and taxes there is relatively little benefit for those people whose forests and agricultural lands have been converted.

Lowland farming has been much less susceptible to dispossession for industrial agriculture. This is partly because of government policy to maintain rice security and which encourage lowland farming practices done mainly by ethnic majority Lao.

Significant land dispossession and associated compensation issues have arisen in peri-urban areas, where land has been sequestered for roads, housing and other infrastructure projects. The 450 year road in Vientiane, housing development at That Luang Marsh and other high profile cases have seen expropriation with compensation at much lower than market rates (Ngaosrivathana & Rock 2007), and in some cases "land for land" compensation replaces the appropriated land with inferior and/or more remote land.

The geographical position of Laos relative to other countries in the Mekong Region is an important influence on patterns of investment. Chinese, Thai and Viet Namese companies have tended to invest in plantations in parts of the country closest to their shared borders. In many cases, cross-border deals have been done at the provincial level. Most hydropower projects also attract investment from these neighbouring countries, but their geographical distribution is less clearly governed by proximity to the relevant borders than industrial plantation investments.

STRUCTURES OF POWER AND PATRONAGE IN LAND RELATIONS

Laos is a one-party state. The Lao People's Revolutionary Party (LPRP) closely controls key ministerial and senior bureaucratic positions at national and provincial level, and land policy is made at the highest level with the involvement of the Politburo. In recent years, the National Assembly, while also dominated by LPRP members, has become a channel for discussion and even articulation of grievances related to land.

Laos has never been a country in which political authority has been based on landlordism. Land deals that dispossess smallholders involve party and government

officials as gatekeepers rather than as landholders. The gatekeepers include not only those responsible for negotiating land for plantations, but also those in the Ministry of Energy and Mines responsible for concession agreements for large hydropower and mining projects. In recent years, the security apparatus has become an important part of the exertion of state power in support of exclusionary land concessions by stifling dissent and expression of land-related grievances. In 2012 this came to a head at the Asia-Europe People's Forum when civil society meetings were shadowed by security staff and villagers were harassed for expressing grievances (FORUM-ASIA & AEPF-IOC 2014). Following the forum, a prominent foreign NGO project director was expelled from Laos and the forum organiser, a prominent Lao national, was subject to enforced disappearance. A hotline set up by the National Assembly was closed down.

Within the bureaucracy there are many individuals and some departments who work to improve transparency in land governance, for example, the Natural Resource and Environment Information Centre in the Ministry of Natural Resources and Environment. The National Assembly has been a significant voice in calling for greater transparency in land concessions in Laos, notably the Chair of the Committee for Economics, Planning and Finance (Vientiane Times, 29 April 2015). In some cases, they have been hampered in their work by autonomous actions of provincial and district level officials who conduct medium size land deals that do not require central government approval. The discord between provincial level territorial authority and line administration creates areas of ambiguity and mitigates against well-coordinated and consistent land administration.

The military in Laos has a longstanding interest in resource development, particularly in forestry. During the 1990s, three military owned logging companies controlled forestry in northern, central and southern Laos and they established a number of non-transparent joint ventures with foreign partners. While these were not land development companies per se, the reservation of state land for logging as part of their zoning has constrained upland cultivation and reduced the area of land available for farming, with significant implications for food security among the rural poor (Chamberlain 2007). In addition, the military has seized land for its own operational purposes (Giordano et al. 2015).

Some of the larger forestry, mining and hydropower concessions are associated with the influence of powerful individuals, but in a very non-transparent system of decision making with little firm documentation of such interests. Examples include developments in the special economic zone in the area of the Don Sahong hydropower dam, being developed with a Malaysian company, and the resort, casino and airport development on land near the Khonephapeng Falls.

A deeper political analysis of state-civil society relations with respect to land suggests that land is central to the establishment of state sovereignty over the national populace as well as over the national space (Lund 2011). In this analysis, property and labour are transformed with the turning of land into capital and farmers into labourers. Projects such as the Land and Forest Allocation Program devolve rights (but not ownership) over village lands, while taking the institutional control over land use practices from local to central and village to state level, fundamentally transforming the relationship between state and society.

PUBLIC AND PRIVATE INTERESTS IN LAND

Under the Lao constitution, all land belongs to the people as a whole (as "national heritage") and gives the State the duty of ensuring rights to use, transfer and inherit it in accordance with the law. The 2003 Land Law interprets this as meaning that land is managed in trust by the State. The LPRP sets national policy, including policy over the use and management of the country's land and natural resources. Under the current situation where land has rapidly taken on value as an increasingly scarce resource, the question of private benefit derived from public decisions has become an important issue.

[PHOTO CREDIT: RAEWYN PORTER, MRLG]

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One particular modality of land seizure in the name of development raises questions about the line between public and private interests. In return for development of transport infrastructure and residential development, developers have been given land that they are then able to on-sell at greatly inflated prices. The seizure of land for "public interest" projects has also been associated with compensation at well below market values, often before the development has gone ahead, resulting in significant benefits for the developers at the cost of the community.

The configuration of state-business relations regarding land in Laos are largely between state officials in their gatekeeping role and foreign investors in plantations, dams and mines. Increasingly, the concession agreements that govern these deals are secret documents, and commercial-in-confidence claims reduce transparency in many areas of public interest. Particularly in the hydropower sector, the changing configuration of foreign investors from international public financing (World Bank, ADB) to entirely commercial projects funded by private capital, has had implications for transparency of contracts, extent of adoption and application of social and environmental standards, and space for civil society to make demands for greater accountability.

Civil society in Laos is weak in comparison with other countries in the region. Until 2012, no Lao non-governmental organisation (NGO) was permitted, although foreign NGOs were allowed to operate. Since 2012, non-profit associations (NPAs) have been allowed to operate, but as service delivery rather than policy advocacy organisations. The print and electronic media in Laos are tightly controlled by the government. There are few avenues for redress or policy advocacy over land issues beyond the grouping of foreign NGOs who work with the Land Issues Working Group. The single party state and the reluctance to challenge authority means that international governance principles associated with land and natural resource initiatives such as Free Prior Informed Consent are difficult to implement, as noted in the case of REDD projects in Laos (Baird 2014: 652-653). Nevertheless, resistance occurs, albeit in quiet "everyday" forms (McAllister 2015) by farmers, and in creative ways including the use of social media by urban and educated groups (http://wearesocial.net/blog/2012/11/social-digital-mobile-laos/).

POLITICAL-ECONOMIC DYNAMICS OF LAND RELATIONS

ACTOR DYNAMICS IN DECISION MAKING AND CONTESTATION AROUND LAND

There are several key ministries and agencies responsible for land governance and that make decisions with implications for land. The Department of Lands is responsible for land administration. It has come under a number of different ministries - the Ministry of Finance, then the National Land Management Authority, and now the Ministry of Natural Resources and Environment (since 2011), each with their own agendas.

The Ministry of Energy and Mines (MEM) is another important player in land issues. The hydropower and mining projects that come under its jurisdiction typically result in the resettlement of smallholders. Most of the negotiations for these lands are carried out between external investors and MEM with relatively little involvement of other concerned ministries.

The Department of Forestry (DoF) is an important land governance agency. During the 1990's, DoF was responsible for zoning and demarcating forestland, including the nationwide Land and Forest Allocation program that covered village land and farmland in upland areas that make up most of the country's territory.

In Laos there is relatively little transparency in decision making around the granting of large land concessions and the drafting of concession agreements with private sector investors for resource projects. A national land concessions inventory has been a positive step; however, this requires continual updating and access by relevant agencies and branches of local government. Following the 2007 concession moratorium, donors supported the development and publication of the inventory. The Lao database is heralded as a 'successful example' of improved transparency in land concessions, and it has been put forward as an initiative for countries such as Myanmar to emulate. The Swiss government has supported the initiative with public information such as http://www.decide.la/en/, and a new inventory is under way that responds to Lao government concerns for "quality" of investment (Hett 2015).

Provincial and district government are important players in land administration. For larger projects, district officials have often been required to "find" land for investors, either for plantations and other resource projects, or for resettlement zones for those affected by such projects. In other cases, medium size land deals have been done at provincial level without reference to central government, sometimes leading to overlapping authority.

Civil society has played a relatively small part in decision making and contestation around land. The Land Issues Working Group, dominated by foreign NGOs and Lao organisations, has in recent years been reluctant to speak out about land. On the other hand, in Lao language forums such as the National Research Forum held at the National University of Laos in December 2014, researchers were quite frank and outspoken about issues relating to land governance and social and environmental impacts.

The National Assembly has played a progressive voice in land issues. In particular, the Economic, Planning and Finance Committee has raised concerns over inequitable compensation, non-transparent land deals and poor coordination in land management.

Private sector investment in land is heavily dominated by foreign capital. In the 2011 inventory Lao developers made the largest number of investments, but these concessions were generally smaller in size. Chinese, Thai and Viet Namese investments accounted for only 23 per cent of all land investment projects, but covered a much larger size – 53 per cent of the land area (Schönweger et al. 2012: 9).

AGRICULTURAL MODERNISATION

The overwhelming political imperative in Laos relative to land is the unreconstructed modernism of moving from what the country's leaders refer to as the natural economy toward a (socialist) market economy. This entails the modernisation of what the authorities see as a backward and primitive agriculture and the source of poverty and underdevelopment in Laos. In particular, eradicating shifting cultivation has been the object of government policy since the early 1990s. There is scant attention paid by policy makers to the many studies that have shown shifting cultivation to be an adaptive response to particular agro-ecological conditions and constraints (Higashi 2015). The campaign against this practice and against forest dependence as a significant basis for livelihood more generally, has intensified with the conservation imperative. Restriction of shifting cultivation to three year cycles has led to significantly reduced fallow cycles, with severe impact on soil fertility (Ducourtieux et al. 2005: 504).

While the Land and Forest Allocation Project has been a key policy plank in "stabilising" shifting cultivation, it has gone further by providing a basis for the state to allocate land outside village territories for more "modern" forms of production. In particular, the advent of large scale rubber planting in response to the boom in rubber prices during the mid-2000s took advantage of this policy. Provincial and district authorities have played an important part in brokering – and often in coercing – these sorts of arrangements, for example in allocating land to Chinese investors despite opposition by villagers whose lands were being appropriated (see Thongmanivong et al. 2009).

Village consolidation has been associated with suppression of shifting cultivation, and the impacts of such policy have been severe. Some villages have seen up to 30 per cent mortality, mostly due to malaria. In 2000, the ADB-sponsored Participatory Poverty Assessment (PPA) revealed that many villagers believe their poverty is newly created and due in large part to two programs: Land and Forest Allocation and Village Consolidation (Goudineau 1999; Evrard & Goudineau 2004; Baird & Shoemaker 2007; Chamberlain 2007).

FOREIGN DIRECT INVESTMENT, LAND GRABBING AND DISPOSSESSION

Large areas of Laos have been allocated to land concessions and leases in recent years. The total area under concessions and leases is estimated to be at least 1.1 million hectares, or 5 per cent of the country's land area and an area greater than that planted to paddy (Schönweger et al. 2012). About 13 per cent of all villages in the country are affected by these concessions and leases (Global Witness 2013: 3). They involve more than 2,600 land deals (Schönweger et al. 2012). However, nearly 90 per cent of the area under concessions and leases is held by just five per cent of the largest projects exceeding 1,000 hectares in area (Schönweger et al. 2012: 20). While foreign direct investment (FDI) accounts for only 35 per cent of the total number of land deals, it accounts for a great majority of the land under concession. Viet Namese, then Chinese, then Thai investors control the largest areas under concession (Affeld 2014: 23).

The privately-owned Viet Namese company, Hoang Anh Gia Lai (HAGL), and the state-owned Viet Nam Rubber Group (VRG) are particularly influential. They have invested heavily in rubber cultivation in southern Laos. HAGL assisted the Lao government to build the Southeast Asian Games facilities and received large land concessions (Kenney-Lazar 2012). Some reports suggest that up to 300,000 cubic meters of timber were included in the deal, with a value four times that of the assistance given (Global Witness 2013: 23). The company works partly through subsidiaries and is estimated to have 26,549 hectares under rubber in southern Laos. VRG owns more than 38,000 hectares of rubber in Laos. There are reports that it has worked closely with provincial officials and military personnel to clear land that encroached on villagers' farmland in Bachieng District (Global Witness 2013: 25; 31). Both these companies are backed by international public and private financial institutions, including the World Bank's International Finance Corporation and Deutsche Bank (Global Witness 2013).

The system of concessions has been poorly coordinated and is non-transparent. This is in part due to the multiple government agencies at central, provincial and district level doing land deals without reference to one another. In principle, the level of authority at which concessions are granted is determined by project size (see diagram in Affeld 2014: 9). Many projects fail to follow legislation on, for example, the maximum slope of land that can be cleared, and many also fail to identify the boundaries of the concession that has been granted. Revenue paid to the state has been low. Some authorities have granted concessions beyond their legal power to do so. Consultation with communities has been poor. Evidence that concessionaires are clearing beyond their designated areas is not being matched with careful monitoring or fines (Affeld 2014: 24).

In addition to concessions, since the mid-2000s the Lao government has promoted contract farming. This policy was formulated to take advantage of respective factor endowments. Lao farmers had their land and their labour, which policy makers believed would be enhanced by the capital, knowhow and markets that foreign investors could bring. The policy was sold publicly in a rather simplistic way as the "3+2" model (with investors providing knowhow, capital and market access; while local farmers provide land and labour). In many cases, however, external capital interests secured control over land and/or labour in their own right, marginalising smallholders. In southern Laos, for example, the granting of rubber concessions on village land came with an expectation that villagers would work as paid labourers on the plantations, in part legitimising their separation from and control over land since they would be able to find regular waged employment in the "modern" industrial plantation sector. In northern Laos, there are still many instances of farmers leasing out their land to Chinese companies for banana cultivation, which is carried out in part by imported labour, leaving farmers with little more than the rents for their land (Friis 2015). In the case of some hydropower dams, for example, the Xekaman 1 in southern Laos, there is an expectation that rubber plantations will absorb labour resettled from the reservoir area (Khouangvichit et al. 2014). In extreme cases of complete dispossession, village farmland was allocated and labour imported.

The political response to problems with land concessions has been mixed. On the one hand a moratorium on plan-tation concessions was announced by the Prime Minister in 2007 (Rutherford et al. 2008: 15; Guttal 2011: 93), and a second moratorium announced in 2012 following the completion of the national inventory and concerns issued through the National Assembly. A limit was placed on rubber concessions, with a ceiling of 300,000 hectares nationwide, to stem their rapid expansion amidst concerns about land limitations and imported labour once the trees were ready for tapping (Affeld 2014: 25). On the other hand, there have been numerous instances of dispossession of smallholders that remain unaddressed. There have been allegations, with some associated prosecutions, that officials were enriching themselves through their position as gatekeepers in the concession allocation process (ibid).

FORMALISATION, TITLING AND TENURE SECURITY

Land and forest allocation during the 1990's and more recent initiatives in participatory land use planning such as the Northern Uplands Development Program (nudplao.org) have been double-edged swords with regard to tenure security and land access by smallholders. On the one hand, such programs have been designed to regularise and empower smallholders in working collectively to delineate village territory and designate areas of land for agriculture, settlement, forestry, forest protection and other uses. For farmers, these programs appeared to give an element of security of tenure over village lands. On the other, they have been a means of circumscribing smallholders' use of land, and by making it more legible, facilitating the granting of concessions on areas outside such land (Vandergeest 2003). Overall, while the process has given a degree of security through formalisation via temporary land use certificates, land and forest allocation has reduced the area available for smallholder agriculture in the uplands (Soulivanh et al. 2004: vi).

On a wider scale, land use planning exercises have been a means for the state to reorganise people and resources through territorial means, in ways that can disempower and dispossess smallholders and remove them from accessing land and other resources (Lestrelin et al. 2012: 582). Discrepancies between declared land and actual resource domains occur for a variety of reasons, including the reluctance to declare fallows for tax purposes (Bourgoin 2012). One of the most troublesome consequences of the Land and Forest Allocation Program has been its reduction of fallow cycles, with impacts on food security and a tendency to widen economic disparities at a village level (Ducourtieux et al. 2005; Chamberlain 2007). The fact that it continues suggests that such allocation is in part a device of state control and "fixing" of land uses and users, part of what Dwyer refers to in the Cambodian context as the "formalization fix" (Dwyer 2015).

In 1997, the first phase of the Lao Land Titling Program (LLTP) commenced with support from the World Bank and AusAID. The first phase of the project was overwhelmingly in urban and peri-urban areas, but the second phase 2003-2009 extended to some rural areas on a pilot basis. The project met with significant obstacles, some of which were operational, but others which were essentially of a political-economic nature in that the principles and objectives of the project were out of line with the thrust of political imperatives around land in Laos. One of the governance tensions was over the close association the socialist state wished to maintain between land use and land tenure, whereas the neoliberal thrust of LLTP was to separate these. The reservation of state land for concessions was also at odds with LLTP's principle of basing land title on pre-existing de facto recognised use.

[PHOTO CREDIT: RAEWYN PORTER, MRLG]

Communal land titling is in its infancy in Laos. There is a pilot project in Sangthong District of Vientiane Province, and another at Nakai in association with the Nam Theun 2 project (Schneider 2013). Unlike communal land title in Cambodia, such titles in Laos are not associated with indigenous status. However, it is unclear whether the pilot will extend to other areas, and also the extent to which the State will relinquish its control over such land (Baird 2013). It works under a "delegated management" rather than full ownership tenure model (IFAD 2013: 6).

LAND CONCENTRATION, LANDLESSNESS AND DISTRIBUTION

As the Lao economy has undergone rapid growth in recent years, the level of absolute poverty has fallen. However, the level of income and wealth inequality has widened sharply, and this is in part based on the "new poverty" associated with loss of land (Chamberlain 2007; Rigg 2005). In the more extreme cases of concessions that have overlapped with village lands, farmers have been entirely dispossessed. Far more common are cases where the de facto use of land has been reduced by granting concessions on fallow lands, and the loss of forested land to concessions in the vicinity of villages where non-timber forest products, grazing and other uses of common property have been expropriated by concessions. This has had the effect of concentrating land away from the poor in favour of business investors.

Because of the incomplete register of lands in Laos, and the recent advent of land registration and titling, there is no data set that can be used to determine overall trends in land concentration and landlessness. Instead, most existing studies document instances of land alienation that are indicative of processes occurring with increasing ubiquity across the country.

CONSTRAINTS AND OPENINGS IN LAND GOVERNANCE

LAND AND RELATED POLICY AND LAW REFORM

Land policy, law and land use planning in Laos have been subject to many influences and tensions, reflecting the multitude of interests within the bureaucracy, between donor and government priorities, and between policy seeking to maximise large-scale foreign investment in land, on the one hand, and security of tenure for smallholders on the other (Lestrelin et al. 2012). Under its international obligations, notably through the World Trade Organisation (WTO) accession, Laos has committed to becoming a "rule of law state".

The evolving institutional framework for land administration in Laos over the past quarter century is well represented in diagrammatic form by Dwyer and Ingalls (2015: 9). The current Land Law was passed in 2003. Since that time, there has been much concern over the impact of large-scale concessions on smallholders whose land and related resources have been given to developers. At the same time, the issuance of land titles has slowed down considerably since the cessation of World Bank and AusAID support for the Lao Land Titling Program at the end of its second phase in 2009. A National Land Use Policy has been drawn up in anticipation of a revised Land Law, but its adoption awaits politburo decisions on constitutional amendments, including those relating to the ownership of land.

Land law reform remains a sensitive area of public discussion. The Land Issues Working Group continues to bring together state and non-state actors and has been active in providing comments on drafts of the National Land Use Policy, but there is a reluctance to raise thornier questions around smallholder grievances in public. There is also a more fundamental question of the status of law in Laos, which has a public culture of solidarity and compromise rather than adversarial relations (LRICI 2011: 6). In this context, law often serves as a basis for negotiation of outcomes rather than for implementation or challenge, and in an increasingly economically polarised society this leads to quite unequal outcomes.

POSITIONS, AGENDAS AND INTERESTS BEHIND LAND GOVERNANCE REFORM

Openings in negotiation for tenure rights over land and associated resources are patchy in Laos. However, there are some notable examples of innovative projects. A Japanese supported REDD project in Luang Prabang has shown potential in giving local communities stronger tenure rights over, and ability to secure revenue streams from, local forests (Baird 2014). District recognition of community rights to manage fisheries have been negotiated by the active development and management of wetlands by local communities (Tubtim & Hirsch 2005). Other experiments include improvement in the participatory land use planning (PLUP) process that seeks to match declared land uses more closely with actual practices within the complex landscape mosaic. This has sought to avoid the simplified outcomes of previous PLUP projects where land was under-declared and hence land and resource users were left with greatly circumscribed formal recognition of their land and resource base (Bourgoin 2012). These examples of local initiatives suggest that context specific innovation may be more productive, at least in the short term and through its demonstration effect, than large-scale policy reform under prevailing political-economic conditions.

GOVERNMENT

While Laos is a one-party state and there are severe limits to the extent that state policy and practice can be challenged, there nevertheless remain multiple interests and different levels at which land is governed. The top level is the Politburo, which sets the ideological direction and has ultimate say over constitutional matters. There is longstanding tension around ownership of land in Laos, reflected in an ongoing debate within the Politburo over the constitutional vesting of rights in land as "national heritage" owned by "the people" as a whole, versus the state as manager and de facto owner. This discussion is currently stalling the National Land Use Policy process. The Constitution stipulates that "the State ensures the rights to use, transfer and inherit it in accordance with the laws". The 2003 Land Law vests considerable power in state agencies to manage land.

In 2007, the National Land Management Authority established the State Land Leases and Concessions Inventory Project, which provides technical assistance in geo-referencing existing concessions through the establishment of a large database assembled from information provided by numerous government departments and from ground surveys. This inventory is being updated, and includes assessment not only of areas under concession but also of the quality of investments including the social and environmental implications of projects. This reflects concern within government, supported by the donor community, over the limited public benefits derived from concessions so far. Land management is now vested within two departments in the Ministry of Natural Resources and Environment, but activities under the jurisdiction of other ministries and departments including MEM and MAF continue to have an important bearing on land governance.

At the provincial and district level, there are openings in improving practices that link land allocation, resettlement, compensation, livelihood support and other programs oriented to smallholders through awareness and concern among more enlightened local government officers. Upscaling the isolated successes of local initiatives may provide a useful direction for longer term reform at higher levels.

PRIVATE SECTOR

There is little impetus for land governance reform by the private sector in Laos and there are few examples of Corporate Social Responsibility (CSR) initiatives. The hydropower and mining sectors have enacted some social and environmental standards but these are patchy and variable from one project to another under a weakly enforced regulatory regime. Even the projects promoted as standard-setters, such as Nam Theun 2, continue to attract significant criticism for their failure to live up to their promises. While grievance mechanisms have been established by some plantation companies such as the Viet Nam Rubber Group, it is difficult – and many feel risky – for villagers to avail themselves of such processes. The Finnish based paper, packaging and wood product producer, Stora Enso, has established social and environmental standards for its plantations in Laos that are geared toward livelihood promotion and community development (http://blog.cifor.org/4063/paper-company-demonstrates-environmental-and-social-responsibility-in-lao-pdr#.VZD4BxuqpBc).

DONORS

Donors have been involved in land issues in Laos for some time. Some of the donors take more conservative approaches that are mainly based around property rights in areas of low potential land conflict, while others push the envelope in seeking to promote progressive land governance reform among ethnic minorities in areas where land conflict potential is high. The World Bank and AusAID both supported the Lao Land Titling Program from 1997 to 2009, but differences with the national approach to land administration and concern over the reservation of land for concessions and for public infrastructure projects led to the demise of the program. Donors have been supporting various inventory exercises, which are designed to support more informed decision making in granting leases, taking into consideration their social, economic and environmental implications, and monitoring existing concessions (Affeld 2014: 5; Hett 2015). Swiss Agency for Development and Cooperation (SDC) and German International Cooperation (GIZ) are now among the main donors involved in the land sector, both at the policy support level and through ongoing innovation in participatory land use planning, building on experience in more conventional rural development through extension support in the 12-year LEAP program. Donors are also supporting legal education as an important area of progressive reform which is possible within the existing legal framework.

CIVIL SOCIETY

The Land Issues Working Group is a coalition of some 40 international non-governmental organisations working on land issues in Laos. Land Issues Working Group interacts with government and is involved in policy advocacy, for example, in consultation over the National Land Use Policy. A significant weakness in Laos is the relatively low profile of Lao nationals advocating for progressive land policy and law reform or advocating and providing legal advice for complainants in land disputes. In large part this is because of a climate of fear and uncertainty in raising sensitive issues around land, particularly in the wake of events surrounding and following the 2012 Asia-Europe People's Forum in Vientiane. If the notion of civil society is expanded beyond its institutionalised form as NGOs, then there is a great deal of quiet "frontline" activity, discussion and even quiet resistance among those for whom land issues are a part of everyday existence and interaction with authorities.

RESEARCH INSTITUTES

The National Agriculture and Forestry Research Institute (NAFRI) is the main research institute concerned with land related issues in Laos, but most of NAFRI's programs are concerned with production and environmental management rather than land tenure issues per se. The National Economic Research Institute and the National University of Laos also host important research projects concerned with land governance. In December 2014, the National Research Forum hosted by these three institutes saw much frank discussion around land-based research findings. One of the objectives of this research forum was to produce messages for policy makers to be communicated in a less public forum, in particular to inform those drafting the next National Economic and Social Development Plan. However, it is not clear whether this eventuated. The holding of the forum in Lao language and the high quality of presentations by Lao researchers was a breakthrough in putting a number of land issues into the public arena, and this suggests that the research-policy-action interface is a promising area for land governance reform in Laos.

CONCLUSION

"LOCAL ADMINISTRATIVE AUTHORITIES AND CONCERNED PARTIES MUST ENCOURAGE, ASSIST AND ESTABLISH FAVORABLE CONDITIONS FOR THE INDIVIDUALS, FAMILIES OR COLLECTIVES"

[PHOTO CREDIT: SDC]

Land issues in Laos continue to intensify with rising land pressures, simmering disputes and behind-the-scenes discussion, debate and disaffection with aspects of official policy. Large scale investments in land-demanding industries which are at the centre of the government's economic development strategy (namely plantations, mining and hydropower) continue to drive exclusionary land arrangements that affect the rural poor, smallholders, women and ethnic minorities disproportionately. These conform to the continuing policy of "turning land into capital", and the mainly unwritten and unspoken corollary of turning farmers into labour. In the absence of an open policy discussion, and with many key decisions made behind closed doors and sometimes hiding behind commercial-in-confidence rules for private resource concession agreements, it is expected that these pressures will continue to mount. Research and engagement in dialogue with progressive lawmakers and other public officials at both central and local level is an important potential opening for land governance reform.

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