

Land conversions in Laos : compensating and resettling those affected by infrastructure projects

To mitigate poverty and lift the country from its Least Developed Country status by 2020, the Government of the Lao People's Democratic Republic (PDR), has pursued a policy of developing infrastructure, including creating mines, hydropower dams, telecommunication networks, roads, transmission corridors and Special Economic Zones (SEZs). Large-scale development or infrastructure projects typically require land, and sometimes very large tracts of it. This need for land can lead to the displacement of those living on it. Even when people are not required to physically move, the project may still affect their livelihoods, either temporarily or permanently, or cause other environmental and social impacts that make living there untenable.



Many consultations were conducted with the PAPS prior to relocation (Nam Theun 2 Hydro-Power Project)

To fulfil its goal of Lao becoming the “battery of southeast Asia”, the Government has invested heavily in hydroelectric power in recent years. Consequently, electricity generated from hydropower accounts for around 30 per cent of the country's exports. What's more, the Government plans to double current energy production by 2020.

As in other parts of the world, people are frequently forced from their homes to make way for hydropower dams. So relocating and resettling them is a significant element in development projects. The dislocated are often compensated for their lost land and assets, or provided with a new property under a resettlement programme, either individually, as Project Affected Persons (PAPS), or collectively as households. The compensation programme's stated aim is to always improve the people's living conditions above their previous levels.



The Laos Government has adopted various measures to address hydropower dams' adverse social and environmental impacts. In 2012 it enacted the Law on the Protection of the Environment (amended), and one year later, the Ministry of Natural Resources and Environment (MoNRE) issued the Instruction on the Environment – Social and Natural Impact Assessment Process from Investment Projects and Activities, to facilitate implementing this law. In January 2019, the Government issued a Decree on Environment Impacts Assessments (EIA). This vital issue of compensating those affected by infrastructure projects, and restoring and developing their livelihoods, is being discussed within the Voluntary Partnership Agreement (VPA) negotiations between the Lao PDR and the European Union (EU).

VPAs are timber trade deals designed to improve forest governance and halt the illegal timber trade. Since conversion timber – meaning that which comes from forested areas which have been cleared for another purpose, such as hydropower dams- is one of Laos' main timber sources, it is crucial to address the illegalities and weak forest governance throughout its supply chain. This briefing synthesises the Government's legal documents relating to compensating PAPS for lost assets and restoring/developing their livelihoods. It seeks to understand whether these documents have weaknesses, gaps or inconsistencies, and if so, outlines recommendations for consideration of the relevant Government institutions.

Compensation and resettlement policy: a brief history

In the early 2000s, when the Laos Government began to develop Hydro-Power Projects by opening the sector to foreign investment, those whose lives would be affected by this expansion had no legal remedies for compensation or resettlement.

On July 22, 2002, the Committee for Planning and Cooperation (CPC) issued a Decision #1147/CPC on the Resettlement Policy of the Nam Theun 2 Hydro-Power Project, then the largest such project in the country.

Given the increasing need for hydropower development projects (as well as other infrastructure developments) in the country, and the lessons learned from this NT2 project, the Government subsequently issued a series of pieces of legislation to provide standard guidelines for mitigating the adverse social and environmental impacts of development projects.

These include:

- The Prime Minister Decree # 192/PM on the Compensation and Resettlement of People from Development Projects in 2005.
- This was superseded by the Government's Decree # 84/Gov, in May 2016.
- On June 15, 2018, the Government's National Assembly adopted a new law on the Stability of Settlement and Livelihoods that addresses compensating and relocating people, and developing their livelihoods.
- On January 31, 2019, the Government's Decree # 21/Gov. on EIA addresses the environment and Social Impact Assessment.

Environmental and Social Impact Assessment

Development projects usually create both positive and negative impacts on the natural and social environment. To provide guidelines on mitigating or remedying these negative impacts, or to avoid them altogether where possible, the Government issued the Law on Protection of the Environment (amended) in 2012. One year later, in December 2013, the Ministry of Natural Resources and Environment facilitated implementing the law, by developing 2 Instructions: the Instruction on Initial Environment Examination Process #8029/MoNRE, and the Instruction on the Environment – Social and Natural Impact Assessment Process #8030/MoNRE for Investment Projects and Activities.

On 31st January 2019, the Government issued a Decree #21/Gov on Environment and Social Impacts Assessment, the contents of which cover all of those in the Instructions referred to above.

¹ The then Committee for Planning and Cooperation (CPC, now Ministry of Planning and Investment) was a Ministry equivalent body within the organigram of the Government of Lao PDR. CPC was assigned by the Government of Lao PDR to sign the Concession Agreement, on behalf of the Government, with the Nam Theun 2 Power Company.

² Nam Theun 2 Hydro-Power Project is located in the central part of the Country, in Khammouane province. It has the capacity for generating electricity of 1,070 MW, of which, about 95% is exported to Thailand and the remaining is used domestically. In the early 2000s, Nam Theun 2 Hydro-Power Project was the biggest hydro-power in the Country. In 2035, the Project will be handed over to the Government free of charge. During the concession period (2010 - 2035), the Government will receive the total income of about US\$ 2 billion from this Project. For more detail, see www.namtheun2.com

Legal documents

The key legal documents described here are the Law on Stability of Settlement and Livelihoods (2018), and the Government's Decree #21/Gov on Environmental Impact Assessment (2019). It is obvious from studying these documents, that the Government has been trying to improve the existing legal documents in keeping with the reality of the nation's socio-economic status. Despite those documents helping mitigate the adverse social impacts of the infrastructure development projects rather well, there are still some gaps and ambiguities in both documents that need to be improved. At the same time, building the capacity of Government staff at all levels, is urgently needed if they are to be implemented effectively.



Compensation for lost land with hand tractor at replacement value and accepted by PAPs

Implementation

Specific committees (with their own secretariats) have been established at village, district and provincial levels, who - working with project developers - assist PAPs with resettlement, developing their livelihoods and compensation for their lost assets. At the same time, the company establishes an Environmental and Social Division to work with the Government. The rights and responsibilities of each party are well defined in the contract or concession agreement of each project.

The Ministry of Agriculture and its line agencies are responsible, on behalf of the Government, for compensating and resettling the displaced, as well as developing their livelihoods. They are also responsible for working with the project developers on these areas, according to the new Law on Stability of Settlement and Livelihoods.

The Ministry of Natural Resources and Environment is the main coordinator for facilitating implementing the Environment and Social Impact Assessment, as stipulated In the Government's Decree # 21/Gov. on EIA issued on 31 January 2019.

Issues or gaps to be addressed

- In both the Law and the Decree there is no clear definition of the terms used. Among the key words that are open to interpretation, are “stable livelihood”. For example, if we consider that raising poultry is a “stable livelihood”, and it is introduced to the PAPs as such, but after some time, all the poultry die because of a disease, the PAPs may question how stable this livelihood actually is. So it should instead be defined as an “occupation that is acceptable, agreeable and able to be implemented by PAPs themselves”, which can be defined above the poverty line set by the government policy. Another example is the definitions around compensating people for their lost land, specifically the terminology “whole or partial land”. In the case of partially lost land, there is no clear explanation outlining the amount of lost land (in percentage terms) required for it be considered “partial”. While the PAPs can be compensated for their entire land – the definition of “partial land” should be defined in percentage of the total.



³ Replacement value means the value estimated in kind, in cash or on land that needs to be used for replacement of land, infrastructure, crops, domestic animals or income affected by the stabilization of settlement and estimated or identified in place and time when the compensation or replacement is made. In the event the project developers cannot provide its in due time to the PAPs, then this value needs to be re-estimated again to fit with the real situation.

- Among the other terms in the legal documents with no definition are: “customary right to use the land”. For instance, if villagers use places within their villages’ boundaries to promote tourism, e.g. to use the beach or nearby caves, or other specific places which attract tourists, to generate seasonal income, could this be considered as customary use of land? If these areas are then impacted by a development project, and need to be converted or cannot be used anymore as a result, should those affected receive compensation? MoNRE should be required to coordinate with other sectors regarding estimating the values in kind, cash or land (replacement medium value estimate) that PAPs are entitled to in these circumstances. Since identifying the replacement value for different commodities may be beyond the scope of MoNRE, other Ministries they should liaise with include, Agriculture and Forestry (for agricultural products), Public Works and Transport (for construction material), and Industry and Commerce (for diverse commodities). The value must be identified within the relevant place and time of the loss when awarding compensation or a replacement. Alternative income options that enable affected communities or households to replace the lost opportunities, need to be considered.
- There are currently no fair measures regarding responsibility for the social and environmental impacts of projects when the Project Owner hands over some of her/his investment projects or activities to another person, especially in mining activities. For example, if an investor/project developer creates damaging environmental and social impacts without mitigation or remediation, they are able to hand over the entire project or activities to the new investors/project developers and pass on the responsibility for mitigation.

Both the Law on Stability of Settlement and Livelihoods, and the Government’s Decree #21/Gov. still have gaps that need to be addressed by the authorities concerned. In addition, it is not clear whether the Law on Stability of Settlement and Livelihoods totally supersedes the PM Decree #84 or not, as it is not mentioned in any article, and the Article 85 of the law states that only regulations that contradict this law are void. Hence the provisions of PM Decree #84 that do not contradict this law might continue to apply, which in turn means those implementing this Law may face many difficulties regarding mis-interpretation.

The Government decree issued on 31 January 2019 #21/Gov. on the EIA is to be used in parallel with the Law on Stability of Settlement and Livelihoods in development projects. While considering these two documents, one can see that there are many ambiguities between the roles, rights and responsibilities of the Ministry of Agriculture and Forestry and the Ministry of Natural Resources and Environment.

Because of a high turn-over of staff in Government Ministries, especially at local level, staff need regular capacity building, which is likely to require greater financial and human resources.

Issues or gaps to be addressed in the conversion timber legality definition

- Consultations with PAPs are usually carried out over a limited time and the projects or activities are sometimes presented in a very technical manner, without sufficient translation or facilitation to help participants clearly understand the project’s objectives and activities;
- Some ethnic groups are more sensitive to the conversion of forest as they live close to the nature. When forests located within their village boundaries are converted into development projects, their livelihood may be changed completely and it may take time for them to be able to adapt to the new situation. So appropriate compensation shall be provided. Opportunities should be given to them to negotiate on the expected compensation which should include the proceeds from the timber cleared in forests allocated within their village boundaries.

Recommendations

- Additional official instructions should be developed to facilitate implementing the law on Stability of Settlement and Livelihoods;
- Terms used in legal documents should be defined or clarified appropriately and words that can be interpreted in many ways should be avoided;
- The role, rights and responsibilities between the Ministry of Agriculture, the Forestry and Ministry of Natural Resources, and Environment agencies should be clarified and closely coordinated;
- Independent third parties should carry out consultations to ensure the maximum participation of men, women as well as of vulnerable groups in the affected communities. Communities' inputs should be recorded and taken into account;
- Special programmes should be established to ensure support for vulnerable and marginalised individuals or households, following the closure of the stability of settlement and livelihood program. This support should continue until the time when these individuals or households are above the poverty line.
- Mass organizations such as Lao Women Union and Lao Front for National Construction should play a more important role in ensuring the transparency and effectiveness of the progress in implementing these two legal documents and documents related. Opportunities should be created to enable the participation of all stakeholders, especially independent monitors, such as CSOs, in monitoring and evaluating the implementation process.

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