March 2014

Policy Brief

LAOS

evidence for policy

Key messages

The current system to approve, manage and monitor investments as well as enforce investment obligations is ineffective and in many instances creates a loophole for investors to be noncompliant. This can lead to a proliferation of social, economic and environmental problems including but by no means limited to food security issues, loss of government revenues, and the depletion of environmental resources such as water and soil

- Government responsibilities and investment procedures according to national legislation need to be aligned
- Coordination between institutions responsible for investment management needs to be improved
- Procedures to be undertaken by investors need to clearly align to responsible authorities

The quality of rubber investments need to be regularly assessed against national development goals. This can only be achieved by strengthening the existing monitoring frameworks and establishing data management tools that incorporate measurable indicators

Is existing concession approval and monitoring system adequate to promote quality rubber investments in Lao PDR?

A study undertaken by the National Economic Research Institute (NERI) broadly examines the quality of randomly selected rubber concessions. The research examined investor compliance to obligations set forth in legally binding agreements and the ability of officials to manage the investment approval process. The study showed that investors often fail to meet their obligations, a direct result of less than perfect government mechanisms in the form of investment approvals, data management tools and limited extent of monitoring and enforcement. These institutional inconsistencies have allowed many businesses to bypass important commitments that are essential for delivering quality investments. This brief aims to pinpoint deficiencies in the approval process and makes some general observations on how these issues can lead to environmental and social repercussions. The brief concludes with a number of policy recommendations that could greatly improve the management of rubber concessions in Laos.

Introduction

Since the rapid expansion of Lao's rubber industry in 2004, no studies have been conducted to examine the quality of rubber concessions. Quality in this instance refers to the level of compliance to investment obligations. To address this information gap, the NERI, with support from UNDP-UNEP Poverty – Environment Initiative (PEI), conducted a rapid assessment of select rubber concessions in Northern, Central and South Laos. The study has identified the main gaps in the approval process (see illustration) and puts forth a set of indicators and other recommendations that could help improve the situation.

Approval process and management responsibilities for rubber concessions

Key institutions managing rubber concessions:

Inter-ministerial Committee on Investment Promotion (CIP)
Ministry of Planning and Investment (MPI)
Ministry of Agriculture and Forestry (MAF)
Ministry of Natural Resources and Environment (MONRE)
Ministry of Labour and Social Welfare (MoLSW)

Key legislation:

Law on Investment Promotion (2009)
Environmental Protection Law (1999)
Land Law (amended, 2003)
Labour Law (amended, 2006)
Forestry Law (2007)
Decree on State Land Lease or Concession (2009)
Decree on the Implementation of the Investment Promotion Law (2010)
MONRE Ministerial Instructions on Environmental and Social Impact Assessment (ESIA), Initial Environmental Examination (IEE), and Ministerial Decision on the Approval and Declaration of the List of Investment Projects and Activities that shall Conduct IEE or ESIA (2013)

Simplified approval process as per the Law on Investment Promotion (2009)

Investment proposal submission
MoU between MPI and investor
Investor submits FS, ESIA/IEE, ESMMP land
Line agencies issue respective permits
CA between MPI and investor
MPI grants concession licence to investor

Where:

• MoU – Memorandum of Understanding - allows company to investigate land availability and prepare a project proposal;
• FS – Feasibility study - economic and technical;
• ESIA – Environmental and Social Impact Assessment;
• ESMMP – Environmental and Social Monitoring and Management Plan
• IEE – Initial Environmental Examination; and
• CA – Concession Agreement – on project objectives, duration, conditions, and concession fees

Monitoring Investment Obligations

Under the Law on Investment Promotion monitoring entails checking compliance with the CA, the FS, the EIA, and other relevant laws and regulations. There is legal ambiguity regarding monitoring responsibilities. For instance, the Investment Promotion Decree stipulates that concession monitoring is to be conducted by the CIP. Under the Land Law, the Decree on State Land Lease or Concession and EIA legislation, MONRE is responsible for monitoring. MoLSW is responsible for monitoring compliance with the Law on Labour, while MAF is responsible for compliance against the Forestry Law.

Key findings

PROBLEMS

The Approval process of rubber concessions is imperfect due to inconsistency of mandates and procedures to be undertaken by the investor and by government agencies at central and province levels, and due to limited extent of enforcement. For example, MoUs for large concessions are being approved at the central level with little knowledge of actual land availability. This results in areas specified in MoUs being significantly larger than those stipulated in the CA. Provincial authorities are then tasked with identifying additional land that may not be available.

Land tenure and management is the most challenging element because of lack of clear land titles, lack of legal recognition of the customary land rights, land surveys covering only 5% of total concessions, lack of maps identifying different land types (e.g. degraded forest, agricultural land), insufficient involvement of communities in concessions approval and management, and the absence of unified methods for calculation of land compensation rates.

Concession monitoring suffers from legal ambiguity regarding monitoring responsibilities of the GoL, lack of awareness among officials about the monitoring activities within their own ministry, lack of vertical information sharing within ministries, lack of monitoring reports, insufficient technical capacity and equipment for government staff to collect and analyse socio-economic and environmental data, and lack of qualified staff and monitoring budgets for central, provincial and district officials. Moreover, the existing national and province level databases do not currently cover socio-economic and environmental impacts of investments.

CONSEQUENCES

Investors' procedural offenses:

• Land clearing occurred without a FS, EIA, or CA
• Land clearance outside permitted area;
• Non-existent or vague land compensation agreements with affected villages;
• Exceeded number of foreign employees;
• Non-existent or vague contracts between the company and local labour workers;
• Non-existent or insufficient compliance and impact self-monitoring and reporting; and
• Not contributing to the specified funds (e.g. for compliance and impact monitoring).

Socio – economic impacts:

• Low government revenue;
• Villager's loss of productive land, forests and forest products;
• No standardized compensation for the lost land;
• No prioritized employment for locals;
• Low and/or wages not paid in a timely manner;
• Insufficient access to basic services and infrastructure;
• Threat to water availability for other users;
• Loss of fish stock and impacting livestock health; and
• Lack of training and technology transfer to villagers;

Environmental impacts:

• Loss of natural forest or protected areas;
• Loss of wildlife and biodiversity;
• Increased soil erosion mainly when planting on slopes;
• Increased sedimentation of water sources due to non-compliance with the minimal distance from rivers and streams;
• Water extraction from rivers and streams not monitored by officials
• Soil and water pollution from the excessive and unsafe use of fertilisers and pesticides;

Policy recommendations

Apply more thorough and systematic enforcement of the current legislation. For example, an inter-ministerial system to check investors against their legal obligations must be put in place to ensure government can quickly assess and penalise noncompliance. The criteria and indicators below could be adopted to achieve this vital need.

Examples of criteria and indicators for approval and monitoring of rubber concessions

CRITERIA AND INDICATORS

Criterion 1 - Project approval process	Criterion 2 - Compliance with concession agreement
Valid Memorandum of Understanding (MoU)	Cleared area corresponds with the land survey
Valid Environmental Compliance Certificate (ECC)	Planted and tapped schedules respected
Valid concession registration certificate	Company reports regularly (as per laws and CA)
	Concession fees, taxes and funds paid in full and on time

Criterion 3 – Optimal socio-economic conditions	Criterion 4 – Optimal environmental conditions
Written contracts with permanent and daily staff	Compliance with National Environmental Standards
Share of foreign workers within the legal limit (max. 10 percent of manual and 20 percent of technical labour)	Compliance with ESMMP
Land compensation paid in full and on time	No planting on the slopes of more than 35%
Wages at or above the minimum wage	Only permitted chemicals' used
	No forest clearance outside plantation boundaries

Criterion 5 – Gov. coordination and monitoring
Regular monitoring of environmental impacts
Regular monitoring of socio-economic impacts
All approval documents and companies' reports held by responsible ministries and provincial authorities

Align procedures in laws, decrees policies and ministerial instructions. The MPI mechanism of a one-stop service should be revisited and improved. The preparation of a guidance document that clearly outlines every step, timeframe and parties responsible in the approval and management of concessions is essential.

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Clarify and clearly communicate monitoring mandates and reporting procedures to the investor.

Mechanism for transferring sufficient budget for monitoring to responsible ministries and to the province and district officials needs to be defined. Provincial and district authorities need to increase their capacity in monitoring technical obligations and social and environmental impacts.

Establish or improve and harmonise monitoring frameworks (indicators), databases and **reporting templates** of the key line ministries to strengthen their coordination and transparency of investment information – based on the understanding that all ministries are looking to achieve the same objective "to improve the quality of investments".


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