

Responsible Agricultural Investment in Lao PDR: Overview and implications for policy making

November 2018

Key recommendations

1. Clarify the land tenure framework and strengthen smallholders' land tenure security in the context of agricultural investments.
2. Introduce obligations for project developers to consult, engage with and seek collective consensus from communities, in line with Free, Prior and Informed Consent (FPIC) standards.
3. Continue to promote sustainable agricultural investments and explore more inclusive business models.
4. Increase legal requirements for transparency, monitoring and reporting of agricultural investments.

Introduction

Following concerns over land grabbing and large-scale land acquisitions, governments and companies worldwide have begun seeking lower-risk and more sustainable models of land-based investment. This growing concern led multiple stakeholders to release global standards highlighting the importance of Responsible Agricultural Investment (RAI) and its connection with good land governance and tenure security. This guidance includes the UN Food and Agriculture Organization (FAO)'s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (VGGT), the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources, as well as the Principles for Responsible Agricultural Investment. For private sector actors, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability also provide a useful framework for managing investment risks.

What is RAI?

Responsible Agricultural Investment (RAI) is a framework for agricultural investments that promotes socially and environmentally responsible business practices. The framework for companies and government agencies in Laos to implement RAI comes from national policies, laws and regulations, international guidance and standards, investment agreements and contracts, internal corporate social responsibility (CSR) initiatives and company commitments. A clear definition of RAI needs to be collectively agreed upon so all stakeholders can work toward the agreed-upon goals.

Created in November 2018 by:



Photos taken by: Phongthep Bunkla , VFI, and Anthony Gueguen

The private sector has increasingly recognized the benefits of RAI, including reducing financial risks, avoiding project delays, enhancing sustainability, and avoiding reputational damage. A recent study by USAID showed that land tenure risks are amongst the highest concerns for investors.¹

Context of RAI in Lao PDR

In Lao PDR (Laos), the government has promoted investments in land and natural resources for ten years through the ‘Turning Land Into Capital’ (TLIC) policy.² In recent years, however, the government and international development community have acknowledged that the TLIC policy brought some negative impacts for communities and economic growth. The Party Resolution on Land Management and Development (2017), for example, states that TLIC “still has no comprehensive legal framework, due to which the Government and peoples have not received as much benefits as they should have.”³ Recently, the government has implemented measures to improve the quality of land investments, including a Taskforce established by the Prime Minister in 2017 to investigate the TLIC policy and land concessions, “after these issues have caused land disputes and problems.”⁴

In this context, there are ongoing revisions to the legal frameworks related to agricultural investments in Laos. For example, the Investment Promotion Law was revised in 2016 with articles that reflect the VGGT, including a principle to protect natural resources effectively in a “green direction and sustainably” (Article 5), and to provide incentives for environmentally-friendly businesses (Article 9). The recent Party Resolution on Land Management and Development also contains provisions that align with RAI, including sustainability, closer monitoring of investments and “direct participation of people in the land management.”

1. USAID and Indufor (2018), Investor Survey on Land Rights: Perceptions and Practices of the Private Sector on Land and Resource Tenure Risks.
2. Under TLIC, the government encouraged foreign direct investment (FDI), including agricultural investment, as a key strategy towards poverty alleviation, food security, and economic growth.
3. Resolution of the Party’s Central Committee On the Enhancement of Land Management and Development in New Period, (No. 026 /CC), Vientiane Capital, 03/08/2017. Unofficial English translation.
4. Times Reporters. (2017). Ministry to closely monitor agri-business. The Vientiane Times. 15 February 2017. Available at http://www.vientianetimes.org.la/FreeContent/FreeConten_Ministry.htm



A growing number of development partners and civil society organizations have created guidance on RAI in the Lao context. The Land Information Working Group's Voluntary Commitments for Responsible Agribusiness (2017) and Mekong Region Land Governance (MRLG) Field Guide for Planning a Socially Responsible Agricultural Investment in Lao PDR (2018) are signs that RAI is being integrated into the conversation around investment in Laos, while the World Bank is also promoting RAI through its support to the Green Growth program.

While 'on paper' these are positive steps toward implementing RAI, a number of implementation challenges still remain:

- Lack of shared understanding among all stakeholders of RAI;
- Ongoing policy-implementation gaps;
- Knowledge of national and international frameworks (including land rights and human rights) remains low among all stakeholders;
- Space for public participation in policy-making is limited;
- Lack of clarity in the national laws and policies, combined with gaps in the law (i.e. recognition of customary tenure rights and land expropriation and compensation), means that communities are still exposed to land tenure insecurity in the context of agricultural investments.

This policy brief presents four recommendations for introducing RAI principles into policy-making in Laos. RAI covers a wide range of topics related to environment, economics, and social development. As such, there is potential to integrate RAI principles into many aspects of ongoing policy, legal and regulatory framework revision processes.

Four key recommendations for RAI in Laos

1. Clarify the land tenure framework and strengthen smallholders' land tenure security in the context of agricultural investments.

The policy and legal framework related to land tenure security and customary land rights in Laos is complex, creating a potentially confusing landscape for agricultural investors. Studies have shown that unclear land tenure regimes can reduce investors' confidence to invest in certain countries.⁵ Land tenure security is the foundation for good land management, increased productivity, long-term investor confidence and sustainability for the production of agro-forestry products.

Many people living in rural areas in Laos have customary or traditional land rights based on long-term occupation and usage of the land. While these customary rights may not be enshrined in 'formal' documents such as land titles or certificates, holders of customary land tenure are entitled to full and fair compensation.⁶ When expropriation is unavoidable (i.e. for public purposes), compensation should be undertaken with strong participation from communities, who ought to be involved in land valuation processes. Land valuation should take into account current and future productive value of the land.

Due to incomplete land titling and registration, many people in rural areas have locally recognized customary land tenure rights. Potential investors should engage independent parties to assess local land tenure dynamics (both 'on paper' and 'on-the-ground' practices) before starting an investment. This is in line with international good practice and guidelines such as the VGGT.

5. UNCTAD & The World Bank. (2018). Knowledge into Action Notes. Available at <https://www.worldbank.org/en/topic/agriculture/publication/responsible-agricultural-investment>

6. GIZ and LIWG. (2018). Key Recommendations on Land Issues in Lao PDR. Available from: <http://www.laolandinfo.org/wp-content/uploads/2011/12/LIWG-key-reccomendations2017-Eng-version.pdf>



2. Introduce obligations for project developers to consult, engage with and seek collective consensus from communities, in line with Free, Prior and Informed Consent (FPIC) standards.

Community engagement based on FPIC principles is essential for the long-term viability of an investment – it is also the number one way to reduce investors' risks.⁷ FPIC is an international standard that asserts the right of affected communities to be fully informed and consulted before a project begins, and the right to say yes or no to this proposed project.⁸ Currently, there are some requirements in Lao law for community consultation and provision of information, such as the Decree on Environmental Impact Assessments (No. 112 / PM, 2010) and Decree on Compensation and Resettlement Management in Development Projects (No. 84 / PM 2016). FPIC is already being followed by some agribusinesses operating in Laos; however, since there are not strong legal requirements for FPIC in domestic laws, there are still many investors who do not follow FPIC. Enshrining FPIC in Lao laws – and enforcing these laws – can ensure that communities are thoroughly informed and consulted prior to agricultural investments beginning.

FPIC states that communities should have access to all relevant information (including potential positive and negative impacts of the investment) available in their local language. To minimize negative impacts of investments, project developers should have two-way engagement with communities affected by agricultural investments, and give sufficient time for them to decide whether (or not) to accept the project. Special efforts should be made to ensure that women are consulted and fully informed and that they participate in the decision-making process.

7. USAID and Indufor (2018), Investor Survey on Land Rights: Perceptions and Practices of the Private Sector on Land and Resource Tenure Risks.

8. This right originally stems from the UN Declaration on the Rights of Indigenous People (UNDRIP), which Laos voted in favor of in 2007. However, experts agree that FPIC is a right that should be extended to all people, not only specific ethnic groups.

3. Continue to promote sustainable agricultural investments and explore more inclusive business models.

Multiple national documents prioritize sustainable investments, both agricultural and otherwise. The National Development Vision to 2030, for example, aims for “green economic growth that ensure[s] sustainable, resilient development”, while the 10-Year Socio-Economic Development Strategy (2016-2025), and the Eighth Five-Year National Socio-Economic Development Plan (2016-2020) (NSEDP), incorporate targets of the Sustainable Development Goals (SDGs) into national-level planning. The 2015 Agriculture Development Strategy to 2025 and Vision to the Year 2030 also support sustainable agriculture and focus on food security as a national priority.

The NSEDP and the National Growth and Poverty Eradication Strategy prioritize creating a “positive” and “enabling” environment for investments. However, creating an enabling environment for investors should not come at the expense of communities’ livelihoods or environmental sustainability, both of which are critical for long-term economic development and stability.

In many countries, including Laos, local-level agreements, such as contract farming (2+3) or small-scale land leasing (1+4), are increasingly being formed between investors and communities. These models are potentially more inclusive than large-scale land concessions, as communities are often able to retain tenure rights over their land, while still gaining economic benefits from participating in agricultural projects.⁹ However, small-scale monoculture investments over a large area can still have negative impacts if not properly managed, as evidenced by the ‘boom crops’ of banana, rubber and cassava in Laos.

9. Sylvester, J. (Forthcoming, 2018). Towards responsible agricultural investment in Lao PDR: A study of agribusiness experiences. GIZ / BMZ.



4. Increase legal requirements for transparency, monitoring and reporting of agricultural investments.

The revised Investment Promotion Law (2016) contains strong provisions for approving and monitoring investments (unofficial translation, Article 5). However, some details are yet to be specified in implementing decrees and instructions. Another complicating factor is the number of agencies with a stake in agricultural investments – at local levels, this may involve several offices. Arrangements for monitoring therefore need to be streamlined, with roles and responsibilities made clear to all relevant offices.

Stronger reporting requirements and systematic collection of data about investment projects at the district and provincial levels could feed into a better national-level understanding of the impacts of agricultural investments on land tenure, natural resources, and the environment. This in turn would paint a clearer picture about the role agricultural investment plays in government priorities to alleviate poverty and increase food security.

Requirements for public information disclosure about agricultural investments could also be strengthened. Currently in Laos, only a handful of provisions require public information disclosure, most of which relate to making Environmental Impact Assessments available to affected communities (Articles 7 and 8 of the Decree on Environmental Impact Assessment (No. 112/PM, 2010)). In one 2018 study, a team of researchers in Laos found that public availability of key investment documents was limited, and that government officials themselves were poorly informed about the process for granting concessions and related documents.¹⁰ Greater government awareness of investment processes and transparency requirements is therefore required.

Greater transparency is encouraged by a number of international RAI guidance documents, including the VGGT, USAID Operational Guidelines for Responsible Land-Based Investment and the United Nations Principles for Responsible Contracts.

10. Kenney-Lazar, M., Dwyer, M., & Hett, C. (2018). Turning land into capital: Assessing a Decade of policy and practice. LIWG.

