



# Foreign Direct Investment (FDI) in Land in the Lao PDR

## Imprint

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## Abbreviations

ADB	–	Asian Development Bank	LSC	–	Land Survey Certificate
BOD	–	Biological Oxygen Demand	LTD	–	Land Tax Declarations
BMZ	–	Federal Ministry for Economic Cooperation and Development	MAF	–	Ministry of Agriculture and Forestry, Lao PDR
CIA	–	Central Intelligence Agency	MDG	–	Millennium Development Goal
DAFO	–	District Agriculture and Forestry Office	MEM	–	Ministry of Energy and Mines, Lao PDR
DDFI	–	Department of Domestic and foreign Investment, Lao PDR	MIH	–	Ministry of Industry and Handicraft
DGM	–	Department of Geology and Mining (Ministry of Industry and Handicraft)	MoT	–	Ministry of Trade
DLMA	–	District Land Management Authority	MoU	–	Memorandum of Understanding
DSA	–	Department of State Assets (Ministry of Finance)	MPI	–	Ministry of Planning and Investment, Lao PDR
FAO	–	Food and Agriculture Organization of the United Nations	NLMA	–	National Land Management Authority
FDI	–	Foreign Direct Investment	NAFRI	–	National Agriculture and Forestry Research Institute
GDP	–	Gross Domestic Product	NSEDP	–	National Socio-Economic Development Plan, Lao PDR
GHI	–	Global Hunger Index	NTFP	–	Non timber forest products
GMS	–	Greater Mekong Subregion	ODA	–	Official Development Assistance
GoL	–	Government of Lao PDR	OSA	–	Office of State Assets
GTZ	–	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Co-operation)	PDPI	–	Provincial Department of Planning and Investment
IPMC	–	Investment Promotion Management Committee	PLMA	–	Provincial Land Management Agency
LTD	–	Land Tax Declaration	PPP	–	Purchasing power parity
LFA	–	Land and Forest Allocation	SEIA	–	Social and Environmental Impact Assessment
LDC	–	Least Developed Country	SOE	–	State-Owned Enterprise
LNCE	–	Lao National Committee for Energy (Ministry of Industry and Handicraft)	WFP	–	United Nations World Food Programme
LPDP	–	Lao German Land Policy Development Project	WREA	–	Water Resources and Environment Agency, Lao PDR
			WWF	–	World Wide Fund for Nature

# 1. Summary

Key facts about the Lao PDR can be summarized as:

- The Lao People's Democratic Republic is a small, landlocked country in Southeast Asia with a total area of 236,800 km<sup>2</sup>. Except for the alluvial plains of the Mekong valley below the 200 meter elevation, over 80% of the country is mountainous, of which a little over half has an elevation between 1,000 and 2,000 meters with sub-tropical temperatures.
  - Though Lao PDR has developed a lot in the last decade with economic growth rates of 7.8% in 2007 and 7.2% in 2008, the country is still one of the poorest in the region and counts among the Least Developed Countries (LDC). The GDP per capita (at PPP) increased in 2008 to 2,387 USD per year, but 76.8% of the population live on less than 2 USD per day (2002) and 19% suffer from hunger.
  - Lao PDR claims to be a food self-sufficient country (in terms of rice production), but production is not regionally balanced and in 47 districts, food aid was given in 2008 to avoid hunger and famine.
  - Lao PDR is divided into 16 provinces and one municipality. Each province is further subdivided into districts. 6.7 million people live in the country, i.e. on average 27 people live per km<sup>2</sup>.
  - The underdeveloped infrastructure is matched by a lack of well educated people - only 61.5% of school children reach the last grade of primary school. This creates a bottleneck for further investments in the development especially of rural areas.
  - Nearly 80% (2005) of the population work in the agricultural sector contributing only 42% to the total GDP. Families often practice subsistence farming and do not produce for the market. In total 1.25 million ha are cultivated with rice being the main staple food growing on 781,000 ha and representing 68% of the cultivated area.
  - It is estimated that on average an agricultural household has 0.5 – 3 ha for its private use, in addition to village land and communal forest. Forests are an important source of income.
- Official data from 2005 (MAF) reported that until 2002 41.5 % of the land area was covered with forest. A more current estimate by the end of 2007 from the National Land Management Authority reported a figure of 35%. Climate conditions for agricultural production are favourable for many agricultural products and most parts of Lao PDR do not suffer from water shortages.
- Nevertheless, pressure on land is increasing, especially in the last decade due to
    - resettlement/regrouping programs, especially because
      - ethnic minorities are forced to move from upland areas into the valleys,
      - villages near hydro-power projects and mining areas have to be reallocated,
    - concessions granted on land which had been used by villagers, and
    - population growth.
  - Since 2002, many concessions were given to national and international companies in order to increase agricultural and mining production which caused an increase in land conflicts.
  - Since no official data about the land concessions is available, GTZ on behalf of BMZ is conducting an inventory in the two provinces Vientiane and Luang Namtha in order to gather information about land leasing and land concession projects. The results for the Vientiane Province are available and show a dramatic increase of FDI in land projects. Just in the Vientiane Province, concessions were granted for 293,487 ha (counted are only projects with a size of 100 ha and more) representing more than 15% of the total surface of Vientiane Province (1,852,500 ha). The largest is the mining sector with 267,381 ha. Among the agricultural and agro-industry sectors land concessions of 12,114 ha were granted for the production of agro-fuel (mostly *Jatropha* projects), 7,290 ha for rubber production and 5,093 ha for wood production. Concession areas for food production counting for only 1,079 ha.
  - It is estimated that all together concessions for 2-3 million ha land were granted (including

domestic projects), representing up to 13% of Lao PDR's total land area. Beside Australia, which is engaged in mining activities, the main investing countries are neighbouring countries like China, Vietnam, and Thailand, but also South Korea. China and South Korea are mainly involved in food production, probably for export reasons. Japanese investors like Oji Paper or Indian Birla are also big investors, both focusing on pulp wood production.

- The guidelines for granting land concessions or leasing contracts are not clearly defined and guidelines for the selection of land for conces-

sions are not developed yet. In combination with misuse of power and corruption on all levels, concessions are sometimes given without respecting the people's rights to live on these lands or are even granted twice, resulting in an increase in land conflicts.

- Forests are often substituted by plantations, meaning that an important source of income (in terms of NTFPs), especially for the poorest, is lost, causing an increase in food insecurity. In general, there is no or insufficient compensation for loss of access to land/forests.

## 2. Introduction

In the last decade the Lao People's Democratic Republic (Lao PDR) has transformed itself into a provider of natural resources (timber, agricultural products, minerals, and energy) for its wealthier and more populated neighbours China, Vietnam and Thailand.

Lao PDR has emerged as a bulk supplier of agricultural commodities (cassava, feed and corn) and industrial tree crops (rubber, teak, eucalyptus and acacia). The past few years have seen a proliferation of large-scale land concessions, mostly to Chinese, Thai and Vietnamese investors, to develop export-oriented agriculture and forestry projects (WWF, 2007).

On the heels of a government policy of steady economic growth and market-based economy as well as the growing demand for raw materials and electricity in the region, foreign direct investment (FDI) has rapidly increased in recent years.<sup>1</sup>

Land (including forest land) has become an important resource for industrial use and commercial crop production, and demand for land has been dramatically growing. In the forestry sector, investment (including forest land use investment) in crop and tree plantations, especially large scale investment in the form of state land concessions is rapidly increasing and various conflicts related to land use and concessions have been reported (MAF, 2007).

Control over land became a new magnet for private investors. Food and financial crises combined have turned agricultural land even more into a new strategic asset. Chinese officials visited Vientiane in November 2008 seeking to lease 1 million ha for rice, and Middle East states tried to secure 200,000 ha for their own food production. National governments and corporations seeking agricultural concessions in Lao PDR are not a new development, but the large increase in interest during the past few years has put these investments in the spotlight.

<sup>1</sup> According to the Vientiane Times foreign investments during the first nine months of 2009 (being worth 4.3 billion dollar) almost quadruple 2008's figures (Vientiane Times 2009).

### 3. Country Profile

Lao PDR is a small, landlocked country in Southeast Asia, bordered by Myanmar and China to the northwest, Vietnam to the east, Cambodia to the south and Thailand to the west with a total area of 236,800 km<sup>2</sup>. The forested landscape consists mostly of rugged mountains with some plains and plateaus. The Mekong River forms a large part of the western boundary with Thailand, whereas the mountains of the Annamite Chain form most of the eastern border with Vietnam.

Though Lao PDR has developed a lot in the last decade with economic growth rates of 7.8% in 2007 and 7.2% in 2008, the country is still poor and is one of the Least Developed Countries (LDC). The GDP per capita (at PPP) increased in 2008 to 2,387 USD per year (ADB 2009). Nearly 80% (2005) of the population is employed in the agricultural sector and families often practice subsistence farming.

76.8% of the population live on less than 2 USD per day (2002) and 19% suffer from hunger, meaning that average consumption is below the minimum level of dietary energy. 38% of children under the age of 5 are underweight (2006). The newly developed Global Hunger Index shows that the Lao PDR faces an alarming hunger problem (GHI of 20.6). Besides net imports of 9,000 tons of cereals in 2007, Lao PDR got additional food aid of roughly 17,000 tons of cereals equivalent in 2008.

With 6.7 million inhabitants, the country has a low population density rate with an average of 27 people per km<sup>2</sup>. With a badly developed transportation system, access to health and education centres is often difficult, especially in the mountainous areas. The enrolment ratio in primary education increased to 86.3% in 2007, but only 61.5% reach the last grade of primary school. Officially, the literacy rate among 15 to 24 year olds is estimated to be 84%.

The Lao government has started resettlement and regrouping programs to get especially ethnic minorities living in the mountainous areas closer to villages in the lowlands or cluster them in one big village, in order to raise the school enrolment ratio and ease access to health centres for them. But these programs also lead to land shortages and conflicts and, since the given land is often of poor quality, people migrate daily or weekly to their land of origin.

Lao PDR with its tropical climate provides good conditions for a large variety of agricultural products such as rice and vegetables in the country's lowland and tree plantations in the mountainous regions. The annual monsoon gives the country two distinct seasons: a rainy season from May to November, followed by a dry season from December to April. Southern Lao PDR gets the most rainfall with roughly 3,000 mm annually. The northern provinces of Luang Prabang, Sainyabuli and Xiengkhuang usually receive only 1,000 to 1,500 mm a year. Vientiane and Savannakhet get about 1,500 to 2000 mm, as do Phongsali, Luang Nam Tha and Bokeo.

**Table 1: Land in total, 2005**

Type of land	%	in million ha
Country area	100	23.680
Land area	97.4	23.080
Swidden agricultural fields and upland rice	2.2	0.520
Permanent agriculture	5.0	1.184
Grassland	2.4	0.568
Forest area	41.5	9.827
Unstocked Forests <sup>2</sup>	42.0	9.946
Land equipped for irrigation	0.01	0.300

Source: MAF 2005

<sup>2</sup> Comprising areas that were previously forested but due to logging, shifting cultivation and other disruptive activities now have a very low crown density.

Only 4-5% of the land is arable land. There are 7 large plains which are the area of focus for production (200,000 ha), 3 large plateaus (Xiengkouang, Nakai, and Boleven), covering an area of 800,000 ha and some mountainous areas. In the lowlands and on the plateau areas, the structure of land has good fertility and is suitable for agricultural production for cash crops such as industrial crops, tree plantation, and the extension of grazing land for livestock.

In the last decades the Lao government has set aside large areas of land for habitat conservation, counting for 16% of the total land area (in 2007, CIA WORLD FACTBOOK). Estimations of the Forest Survey are even higher, estimating the protected area up to 19% of the total area.

The main staple food crop in Lao's agriculture is rice. According to the FAO Statistics, rice is cultivated on 781,000 ha representing 68% of the cultivated area. The data differ widely from the Land and Forest Classification report, which indicates that 561,071 ha of paddy are cultivated, accumulated the size of irrigated and not irrigated areas. The rice production yield nationwide in 2007 was 2.7 million tons or an average of 460 kg/person/year, of which 2,193,400 tons is cultivated from rainfed paddy and 329,200 tons from irrigated paddy field, while the yield of upland rice cultivation was 187,450 tons. On average, rice production nationwide can basically be self-sufficient and some parts can be reserved for sale.

Sweet corn is one of the important crops in Lao PDR and has been included in the household consumption of the Lao people in many ethnic groups for a long time. The production area in 2007 was 20,830 ha with a yield of 52,500 tons. Other starch fruits like potatoes, sweet potatoes and cassava count for 31,000 ha. Among the permanent crops, coffee is the most important with 45,000 ha.

Crops in the tarot family were produced on 26,350 ha in 2007, with a production yield of 216,000 tons and vegetable crops have been gradually developed yearly to fulfil the need of the society.

### Difficulties in food supply

Food supply in some locations (47 poor districts) is insufficient even though newly developed rice seeds and new farming methods have been partly applied. The average production yield of husked rice is around *180-250 kg/person/year* which is considered low in comparison with the rice consumption rate in a society of *300-350 kg of rice/person/year*. Rice production and self-support in rice are mainly found in the plain area (VIII Party Congress on Agriculture and Forestry).

The goals for cash crop production in each province are mainly to set general policy to boost the expansion of cash crop production. The agricultural infrastructure is not yet developed to full capacity, for example, market access and market information and transfer of technology are still low due to the difficulties in communication and transportation and the lack of education opportunities for people in remote areas.

Despite a low population density, pressure on land is increasing in the last years. The main factors are:

- a) resettlement/regrouping programs
  - especially ethnic minorities are forced to move from upland areas into the valleys
  - villages near hydro-power projects and mines have to be reallocated
- b) concession areas are often given on land which has been used in the past by villagers
- c) population growth

## 4. Land Tenure System and Legal Framework

### 4.1 Legal regulations

By constitution, all land is property of the state. Nevertheless, the assignment of permanent use rights allows a land market to evolve. According to the Land Law 2003 the Lao tenure system is de facto based on state land and private land, whereas domestic property, as long as it is not colliding with public interests, is secured by article 16 of the constitution. Additionally, communal land is defined in the Decree 88 from 2008, but not yet included within the Land Law.

In rural areas six forms of land documents are known, granting different bundles of property rights:

- The Land Title includes all rights known in the Lao land legislation: to use, inherit, lease, sell, mortgage, and exclude others. In 1997, a multi-national project started to hand out this type of titles, but focused mainly on settlement areas in economically active district capitals, and only in urban and peri-urban areas.
- The Land Survey Certificate (LSC) is the only official document proving land ownership in rural areas. In addition to use and inheritance of the land, it can be used to sell and mortgage land. The Land Survey Certificate is the highest land possession document available in rural areas and people consider and refer to it as the “rural title” providing the owner with all property rights, despite its lack of cadastral mapping. It is issued by either the District Land Office or by the Provincial Land Management Agency (PLMA). The land is normally surveyed by a land officer either from the province or the district. The LSC was given out in all provinces, but in more than 90% of all cases, the LSC was provided only upon individual request (sporadic certification). In only two provinces, with the support of GTZ, a systematic approach was followed and certification happened on an area by area basis.
- The Temporary Land Use Certificate is issued by the District Agriculture and Forestry Offices and signed by the District Governors, being valid only for three years. The certificate only states that the land has been started to be used in a permanent way. The land is, however, still considered to be state land and therefore cannot be sold or mortgaged and also no compensation is paid. When introduced, the idea was to convert the temporary certificate after three years into a permanent certificate. But 300,000 assigned Temporary Land Use Certificates expired, and their owners lost the right to receive compensation in case of request of their land for state purpose or FDI.
- The Land Tax Declaration (LTD) (generally used in rural areas) only allows for use and inheritance. In the past, it was issued by the District Land Offices; now the task of land tax collection and therefore the issuing of the LTD is done by the District Land Tax Division. Both documents – Land Survey Certificate and Land Tax Declaration – are generally also recognized as a base for compensation. Both documents include a sketch of the property. In case of the Land Tax Declaration this is either done by the local tax collector or an officer from the Land Tax Division based on estimations or simple surveying: in general it is much less accurate than the Land Survey Certificate which reflects the real size and measurement of the plot.
- Land Tax Receipts are mainly given for tax payments. Land Tax Receipts, merely given by local authorities to evoke a basis for taxation, as well as Village Heads Certificates, are often not recognized for compensation payments. Despite the fact that the vast majority of rural land users do not possess a Land Title, at least most of them own a Land Tax Receipt. Even though the Land Law prohibits disposal, it can be observed that Land Tax Receipts are used by villagers when land is sold or leased.

- Village Heads Certificates on Land Ownership (construction land, rice fields, gardens): The ownership certificate issued by the village head or “naiban” has a long tradition. Today, it is mainly used as additional proof/security in combination with the Land Tax Declaration when people apply for a Land Survey Certificate to get access to a bank loan.

None of the documents issued in rural areas gives the owner 100% security to exclude others from the use of the land. While conflicts with other villagers (mainly boundary and inheritance conflicts) are easily solved by naiban and elders, people have no security in case of government projects or state concessions.

Since 1997 the Lao government, supported by the Land Titling Project initiated by the World Bank, has allocated roughly 540,000 land titles, but in settlement areas only. This can be explained by the assumption that 99% of people living in rural areas would not fulfil the necessary requirements. In addition, past efforts of the Land Titling Project were solely poured into economic prosperous areas or already existing land conflicts, which were for a long time not present in rural areas. Since 2002, when land pressure increased due to the emergence of FDI in land and resettlement programs, tenure insecurity in rural areas has grown tremendously.

Land use rights in Lao PDR for agricultural and forest lands have been allocated by the state to rural villages and local households through the Land and Forest Allocation (LFA) procedures and to private sector business investors (both foreign and domestic) through concession agreements and various forms of “cooperative” lease arrangement.

Over the last decade, the relationship between these approaches to land allocation has increasingly raised questions about the impacts of private sector agribusiness investment on rural livelihoods and associated issues relating to the tenure security of rural households.

## 4.2 Legal Framework for Investors

A major condition for transforming state land assets into capital is to attract investments that need state land. Two important obstacles to developing a favourable investment climate in Lao PDR are the cumbersome investment approval procedures and unclear responsibilities of state authorities. There is a growing consensus that the quality of government regulation on business is a major determinant to prosperity. According to a compilation of benchmarks on business regulations in a recently published report by the World Bank (WORLD BANK 2009) conditions for starting a business in Lao PDR are among the least attractive in Southeast Asia and the Pacific Region.

### Regulations

Domestic and foreign investors can obtain land via long-term state land leases, concession contracts and 2+3<sup>3</sup> or 1+4<sup>4</sup> modes of contract farming. According to the Land Law different authorities are in charge depending on the land size:

Land size	Authority
< 3 ha	Districts authorities
3 – 100 ha	Province authorities
100 – 10,000 ha	Central Government/Prime Minister
> 10,000 ha	Approval by the National Assembly

3 The land owner provides land and labour and the investor offers funding, materials and market.

4 The land owner provides only the land; the rest is done by the investor.

The power of provinces to authorize state land leases and concession contracts is quite limited in scope. They may only lease or concede up to 100 ha of state land (districts < 3 ha), while the government has the power to approve up to 10,000 ha. An area exceeding 10,000 ha needs the approval from the National Assembly. Under 3 ha, district authorities were allowed to authorize concessions<sup>5</sup>. In reality many bigger concession areas than 3 ha were given out by district authorities and also larger areas than 100 ha granted by the Provincial Governors.

In order to promote FDI the GoL has implemented the “Promotion of foreign investment law”. According to this law, foreign investors must submit their proposals to the Department of Domestic and Foreign Investment (DDFI) of the Ministry for Planning and Investment (MPI). Proposals for projects worth USD 20 million or more require the approval of the Prime Minister. The President and Vice President of the DDFI can sign approvals that involve investments of less than USD 10 million, FDI equal to or less than USD 3 million can be approved at the provincial level by all provinces, and in large provinces the ceiling for provincial approval is USD 5 million.<sup>6</sup> The DDFI screening process takes into account the financial and technical feasibility of the project, input from relevant line ministries, and government policy (TUCKER, 2009).

### One-Stop-Service

In recent years, the Lao Government has undertaken efforts to streamline its procedures for approving foreign investment. According to the amended Law on Promotion of Foreign Investment and its implementing Decree 6, the government has been trying to establish a ‘one-stop-service’ administered by DDFI.

After filing a request with DDFI and receiving initial approval, the investor would receive the necessary documents from the same agency: the investment authorization from the Investment Promotion Management Committee (IPMC), the

business registration from MoT, and the internal tax registration from MoF. The investor could, depending on the type of business, start within one or two months. For activities requiring a land or natural resource concession, different rules for investment approval apply; in particular, several agreements have to be negotiated with the government. Following the GoL policy on decentralization and deconcentration, foreign investment regulations assign powers to the provinces to authorize foreign investments in certain sectors (e.g. Category 1<sup>7</sup> investments) provided that certain financial ceilings are observed (GTZ-LPDP 2006).

Some large provinces, (e.g. Champassak and Savannakhet), may authorize investments up to USD 5 million, whereas smaller ones, like Saravane and Khammouane, can only approve investments up to USD 3 million. Provincial Department of Planning and Investment (PDPI) is charged with providing a one-stop-service at the local level.

Notwithstanding the confinement of the provinces to negotiate only Type 1 investments, they may according to article 14 of the Forestry Law authorize forest land to be used for other purposes. As a general rule, they are entitled to negotiate and conclude land lease and concession contracts with investors. Most state land that has not yet been developed commercially, leased or conceded is considered as forest land.

Concession fee rates, usage charges for natural resources, and royalties set by law are not based on supply and demand. Different approaches applied in the provinces to determine fee rates do not seem to meet market standards. Granting land free-of-charge should be restricted to joint ventures when the land offered constitutes the GoL contribution to the project, but is entirely dispensable in the case of other domestic or foreign investments. The prospect for reasonable profit is deemed to be a sufficient incentive and enterprises should not be subsidized (GTZ-LPDP 2006).

5 With a new decree district authorities are actually not allowed anymore to grant and approve concessions.

6 “Land Law” and “Promotion of foreign investment law” are not totally consistent: The defined authority in charge depends once on surface once on investment sum.

7 i.e. Promoted Open Business Activities.

### 4.3 Problems regarding land acquisition

Given the less than perfect investment regime regarding entry regulations, the actual implementation of those regulations deserves particular attention. Key actors and experts from line departments, donor organizations and private sector companies described their observations and expressed their opinion on the considerable gap between prescribed rules on investment approval procedures and the actual handling of matters in practice.

The following views on investments requiring concessions of category 3<sup>8</sup> were expressed in interviews conducted by a GTZ consultant in Vientiane capital.

- There is no one-stop-service for investors, but instead a ‘segregated approval procedure’. Depending on the type of investment planned, investors have to approach several contact points. The Lao National Committee for Energy (LNCE) is responsible for energy, DDFI and Department of Geology and Mines (DGM) for mining, MAF for industrial plantations and the National Land Management

Authority (LNMA) takes care of land leasing and concession contracts. Since there are no clear responsibilities between central and provincial levels and no inventory of state land, investors often turn to provincial authorities to search for appropriate land. Very often the investors have to go to the district and village level to identify and negotiate land deal investments.

- The length of time needed for investment approval depends less on the type of investment but more on its size. Companies planning large investments and having political clout enjoy shorter approval procedures (6 months to 2 years). Small and medium sized enterprises might need 3-4 years to get their activities approved.
- Except for the energy sector, the line departments have no model contracts for investments involving concessions.
- Timber is the main revenue channel for GoL but companies found ways to sideline state authorities by sub-leasing or sub-conceding areas to logging companies. In other cases they abandoned the land that was originally conceded to them for tree plantations after removing the timber for private profit.



Jatropha concession in  
Ban Nampaen, Maed District,  
Vientiane Province



Rubber plantation



Rubber plantation

#### 4.4 Land tenure security

Tenure security is based on legal security. This again requires a consistent legal frame without any loopholes, overlaps or contradictions.

The Lao laws generally provide a base for land administration and therefore for land markets. However, provision of rules is slightly better for urban land markets than for rural land markets. Quite a number of issues for instance the amount of fees for issuing Land Titles are left with the provincial administration to decide. There is a need for a nationwide regulation on who is entitled to issue Land Titles and what fees should be charged. It seems best to issue Land Titles at the District Land Offices as this makes it easier for people to apply for them. Provincial Land Management Agencies are too far away and it would take too much time and transport costs for people to go there. Reasonable fees for Land Registration are between 12,000 kip (ca. 1 EUR) for systematic registration and 30,000 kip (ca. 2.50 EUR) for sporadic registration.

There are probably too many decrees, instructions, notifications, proposed amendments etc. on fees related to land surveying, adjudication, transactions, mortgages etc. It should be considered how to simplify fees as the jungle of regulations on land related fees favours corruption.

#### 4.5 National policy

Through the National Socio-Economic Development Plan (NSED) 2006-2010, the Lao Government wants to promote foreign direct investment in the agriculture, hydropower and mining sectors to foster growth, reduce poverty and achieve the Millennium Development Goals.

Commercial crop/tree plantations are one of GoL's priority areas for promotion of foreign investments. The current forest sector strategy by 2020 anticipates an area of 500,000 ha of industrial tree plantations in Lao PDR by the year 2020. Lao PDR is now experiencing the 3<sup>rd</sup> tree plantation boom while the 1<sup>st</sup> boom was in mid 90s with mainly teak planted by small farmers and 2<sup>nd</sup> in early 2000s with mostly eucalyptus led by the ADB's loan project. However, this 3<sup>rd</sup> boom is much larger in scale and more diverse in species than the past two booms. Not only large investors both foreign and domestic but also farmers are converting their fallow land to rubber, agarwood and teak plantations. Transnational companies are establishing and/or looking for land for fast-growing pulp-wood plantations to feed their paper-mills abroad (MAF 2007).



Jatropha concession in Ban Nampaen, Maed District, Vientiane Province

## 5. Investment Forms in Land

### 5.1 Concessions

Concession refers to a type of investment whereby land is transferred to companies who are responsible for all their investment and cultivation/construction. Large concessions are usually the preferred form of investment since it maximizes company control over the land.

In the 2<sup>nd</sup> tree plantation boom in the 2000s international companies started buying up existing concessions for paper production. Since then large concessions have been handed out for rubber, maize, Jatropha, sugarcane, cassava, agro-wood and other cash crops.

The introduction of concession farming fits into three key policy goals. First, it is said to make underutilized land more productive. Second, it reinforces the government's goal of eliminating shifting cultivation. Finally, concessions provide valuable foreign direct investment. This can help develop not only concession land (by providing infrastructure, jobs and stimulating the local economy) but also provides government revenue that can help develop other regions (HANSEN, 2007). Despite this potential increase, government revenue remains limited due to the low concession fees. At present the fees are about 3-9 USD/ha/year which are the lowest rates in the whole region.

### 5.2 Contract – Farming (or “Cooperative” private sector agribusiness investments)

Contract farming is an investment scheme that provides farmers with critical investments in exchange for a guaranteed share of the profits or harvest. By codifying the commitments of the farmer and trader, it provides “a strategy for reducing the risks inherent in growing crops and delivering them to the market” (FULLBROOK 2007, p. 48). Ideally, it should produce a reliable market for the farmer and a stable secure supply for the trader or processor. Unlike concession farming, farmers retain rights to their land. As a result, contract farming has the potential to improve the land rights of smallholders and local communities while also potentially improving land productivity, boosting the local economy, and generating state revenues. On the other hand, unfair contracts have the potential to result in risks to farmers and debts if the crops fail, if quality standards are not achieved or if contracts are not honoured. The lack of legal knowledge, process and the disproportionate power of the companies compared to the farmers are other factors to be taken into consideration (FULLBROOK, 2007).



Rubber plantation in Luangnamtha

The “2+3” model is the most commonly promoted form of contract farming in the Lao PDR. There are 5 inputs in this model: land and labor provided by the farmer, and capital, technology, and marketing provided by the investor. The capital (seedlings, fertilizer, and equipment) is provided as a loan while future profit is generally divided in a respective 70/30 split (farmer/investor). In this model, the aim is to provide villagers with secure access to their land and a stronger sense of ownership in the plantations (FULLBROOK, 2007).

In the “1+4” model (also called “concession-like model”), farmers give only land while the investor is responsible for the planting and maintenance with hired labor. Correspondingly, profits are reversed with the investor retaining the 70% share. Unlike concession farming, villagers still

retain rights to their land and often a minority portion of the harvest in addition to wages. Contract farming, in this case, amounts to the villager renting his land to the investor. Contract farming is a relatively new investment scheme in Lao PDR. In the Prime Minister’s 2007 memorandum, “2+3” contract farming was emphasized as a better approach to FDI in the agricultural sector that would ensure local level benefits. It has been heavily promoted in northern Lao PDR, where reportedly over 10,000 ha have been planted under contract schemes. In the “2+3” arrangement, contracts are usually signed for 30 to 35 years for crops ranging from maize and rubber to chillies and pulpwood (WFP, 2009). Unfortunately, no information is available about impacts on the farmers’ livelihood. And still, most investors prefer “1+4” arrangements.

## 6. Current Situation

Most FDI in Lao PDR still goes into the resource sector, particularly hydropower and mining (about 80% of total FDI). However, FDI in non-resource sectors has increased since 2008 compared to previous years. Major FDI to Lao PDR in recent years comes from the region, mainly from Thailand, China, Vietnam, Australia, India, Japan and Korea.

In 2008, China had invested the most, taking over the top spot which was held by Thailand until 2007. Vietnam also passed Thailand to take second place (VIENTIANE TIMES, 2008). About one third of private foreign investment in Lao PDR comes from Thailand; the modern economic sectors and trade in the capital city as well as in the Mekong basin are operated by Thai companies (HABERECHT, 2008/2009).

The economic relationship between Lao PDR and Vietnam is expanding. Vietnamese enterprises are investing in hydroelectric, mining and industrial tree plantations in Lao PDR. In 2007, China made pledges of trade and investment in Lao PDR worth USD 876 million and direct Chinese investment was approved at USD 1.1 billion by August 2007 (YALE GLOBAL, 2008). Currently many Northern provinces are, for all intensive purposes, economic zones for the Southern Chinese province of Yunnan. Contract farming, especially for rubber plantations, forms a considerable part of the business ventures. The massive expansion of rubber plantations vis-à-vis Chinese companies in Northern Lao PDR stems from a mix of market demand and land constraints in China and political incentives from both the Lao and Chinese governments (HABERECHT, 2008/2009).

The GoL has already handed out sizable concessions such as a USD 30 million project by the Dac Lac Rubber Company for 10,000 ha of

rubber trees; and a USD 30 million project with Viet Nam-Laos Rubber Joint Stock. A minimum of 150,000 ha had been granted to six plantation companies (involving rubber and eucalyptus), representing an investment of USD 500 million. In Lao PDR, rubber cultivation reached about 12,000 ha in 2006 with plans for nearly 200,000 ha by 2010. There has been considerable discussion in the development literature of how small-scale rubber production in northern Lao PDR has helped to reduce rural poverty, though at some environmental cost. This example is frequently cited by international donors and development organizations as a positive example of small-holder-led export agriculture. Yet it does not represent the kind of rubber (or plantation) development occurring in the South – most of which is large-scale, foreign-owned, and in direct conflict with other land uses and users (WWF, 2007).

During the late 90s hoping to put a damper on the opium trade through China, the Chinese national government started a program providing loans to Chinese businesses to invest in opium eradication projects in Lao PDR. Under this rubric, increased numbers of new Chinese investors supplied Lao farmers with seeds and inputs for commercial production of sugarcane and rubber crops. As a result, competition for swidden and fallow forests intensified, altering not only upland people's customary relationship with land and resources, but challenging the resource management framework established during the 1990s.

In May 2007, Prime Minister Bouasone Bouphavanh declared an indefinite moratorium on large land concessions for mining and agriculture “to address shortcomings of previous strategies”. Yet only a month into the moratorium, the governor of Vientiane Province granted 705 ha of land to a South Korean rubber project.

## 7. Investments in Land (Foreign and Domestic)

### 7.1 General Overview

Since investments in land have dramatically increased in the last years and no reliable and comprehensive data about these investments are available, GTZ is carrying out an inventory to

collect data about all concession and lease projects (in form of FDI, Joint Venture and domestic) in the country. For two of 17 provinces, Vientiane province and Luang Namtha, the data are already available.

**Table: Area of land lease/concession projects of two provinces (2009)**

	Vientiane Province (total surface 1,852,600 ha)		Luang Namtha (total surface 961,200 ha)	
	Number of projects	Surface (ha)	Number of projects	Surface (ha)
Total	237	391,709	107	25,366
Concessions	198	390,374	23	19,291
Lease	34	177	61	126
Contract Farming	5	546	23	5,949
<b>Sector</b>				
Agriculture	114	62,551	43	18,140
Rubber	46	25,104	36	18,110
Mining	55	326,944	5	5,502
Industry	30	714	12	48
<b>Investors are</b>	1. Lao (149)		1. Lao (58)	
	2. Chinese (25)		2. Chinese (45)	
	3. S-Korean (24)		3. Thai (1)	

Source: GTZ Lao PDR, 2009

The initiative of GTZ Lao PDR has brought transparency in the investment projects of two provinces. The National Assembly has recognized the efforts of GTZ and NLMA. As a consequence NLMA has been asked by the Governmental Secretariat to do a follow up and to extend its activities nationwide.

Since data for the other provinces are not yet available it is difficult to estimate investment in land for the whole country. It can be estimated that approximately 2-3 million ha are already under concession (also including not yet implemented and active projects), constituting 10-15% of the whole Lao territory.

#### Trends:

Only China is demanding approximately 1 million ha for food production and Kuwait tried to secure 200,000 ha. Apart from food, there are many projects for the production of agro-fuel, mainly investing in Jatropha.

Since the situation got out of control, as mentioned above an indefinite moratorium on concessions has been implemented, but unfortunately with little effect. Despite the moratorium, concessions have been granted.

## 7.2 FDI in land in Vientiane Province, Lao PDR

In Vientiane Province, 102 projects of 237 are financed or co-financed by foreign investors. 57 out of these projects are 100 ha or even larger.

**Table: FDI Land concessions in Vientiane Province 2009 (> 100 ha)**

Kind of investment	Size in ha
Mining	267,381
Agro-fuel	12,114
Rubber	7,290
Wood	5,093
Food	1,079
Others	530
<b>Total</b>	<b>293,487</b>

GTZ Lao PDR, 2009

In Vientiane Province alone, land concessions of 391,709 ha were granted. 293,487 ha land were granted to foreign investors or Joint Ventures (counted are only projects with a size of 100 ha and more). Most important is the mining sector with 267,381 ha, whereby already one single company, namely Phou Bia Mining Company Ltd (an Australian Company, which recently got a financial boost, because a Chinese Investment Bank bought 19% of the shares) alone has conceded an area of 260,000 ha, equalling to 66% of

the total concession area in Vientiane Province. Within the agricultural sector land concessions of 12,114 ha are granted for the production of agro-fuel (mostly *Jatropha* projects), 7,290 ha for rubber production and 5,093 ha for other wood production. Concession areas for food production are counting for 1,079 ha only. Some projects are concerning other activities as tourism counting for 530 ha in Vientiane Province.

In Vientiane Province, besides Australia who is engaged in mining activities, the investing countries are mainly neighbouring countries such as China, Vietnam, and Thailand, but also South Korea. China and South Korea are mainly involved in food production, probably for export reasons. In other provinces, Japanese investors like Oji Paper or Indian Birla are big, both focusing on pulp wood production.

A recent study undertaken by the Land and Natural Resource and Research Center, with the support of GTZ-Laos, found out that especially concessions in the agriculture-forestry sector as industrial tree plantations often replace primary or healthy secondary forest, conservation forest or forests used as communal forest for villagers. Some of the companies cleared more land than they were actually granted.

**Table: All Joint Venture and foreign land leasing/concession projects in Vientiane Province  $\geq$  100 ha (2009)**

Name of Company	Country	Main Activities	Lease/Concession	Area (ha)
Lao Bio Diesel Import-Export Company Ltd.	Laos-Korea	Establishing Bio-diesel plant and industrial tree plantation	Concession	100,00
Lao BIO Energy	Laos-China	Jatropha plantation and nurseries	Concession	100,00
KV Import-Export Co. Ltd.	Malaysia	Planting Jatropha	Concession	500,00
Xaysomboun Agriculture Development Co.	Malaysia	Jatropha plantation	Concession	1.000,00
Kolao Farm Co.	South Korea	Jatropha plantation	Concession	200,00
Kolao Farm Co.	South Korea	Jatropha plantation	Concession	2.500,00
Kolao Farm Co.	South Korea	Jatropha plantation	Concession	500,00
Kolao Farm Co.	South Korea	Jatropha plantation	Contract farming	306,00
Yongfong Xeun Co.	China	Planting industrial tree (agarwood and Jatropha)	Concession	100,00
Phaluang Agro-Industry Co.	Laos-Thai	Planting industrial tree (palm tree and Jatropha)	Concession	100,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	100,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	200,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	159,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	849,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	2.303,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	597,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	500,00
Kolao Farm Co. Ltd.	South Korea	Jatropha plantation	Concession	2.000,00
Lao Mithsamphan Farm	China-Laos	Fish farming	Concession	102,00
Industrial and Agriculture Development for Import-Export	America	Annual crops plantation	Concession	120,00
Mr. Lai Vanthong	China	Fish farming	Concession	150,00
GO Crapkin Co. Ltd.	South Korea	Agriculture and livestock	Concession	500,00
Rafarm Agriculture Development Co.	China	Agricultural crop plantation (corn, green beans)	Concession	100,00
Lakorea Co.	South Korea	Corn plantation, cattle and chicken raising, and animal feed producing factory	Concession	107,00
Lanexang Economic Development Co. Ltd.	Laos-Vietnam	Exploration of lignite mineral	Concession	6.800,00
Dao Lao Co.	Russia-Laos	Gold excavation	Concession	581,00
Phoubia Mining Co.	Australia	Copper and Gold excavation	Concession	260.000,00
Cherchanghang Co.	China	Rubber plantation	Concession	200,00
Lao Thaihua Rubber Co.	Thailand	Rubber plantation	Concession	670,00
New Chipseng Co. Ltd.	Thailand	Rubber plantation	Concession	100,00
Khanxay Agriculture Development Co. Ltd.	Thailand	Rubber and orchard tree plantation, and nurseries		100,00
Lao Thaihua Co. Ltd.	Thailand	Rubber plantation	Concession	220,00

Source: GTZ Lao PDR, 2009

**Table: All Joint Venture and foreign land leasing/concession projects in Vientiane Province ≥ 100 ha (2009)**

Name of Company	Country	Main Activities	Lease/Concession	Area (ha)
LaoThaihua Co. Ltd.	Thailand	Promote rubber plantation	Concession	100,00
Lao Thaihua Co. Ltd.	Thailand	Rubber plantation	Concession	100,00
Lao Thaihua Rubber Co.	Thailand	Promoting rubber plantation	Concession	100,00
Heurnmao Rubber Co. Ltd.	China	Rubber plantation and processing, and promote local people to do	Concession	100,00
Lao Jonghui Co.	China-Laos	Rubber plantation	Concession	100,00
Lilieng Power Co. Ltd.	China	Rubber plantation	Concession	300,00
Yunan Lilieng Biological Co. Ltd.	China	Develop rubber plantation, buying and processing for domestic and foreign market	Concession	500,00
Yunan Lilieng Biological Co. Ltd.	China	Rubber plantation, buying and processing for domestic and foreign market	Concession	500,00
Feuangdong Lao Co.	Laos-Vietnam	Planting rubber, agrawood, and raising animal	Concession	500,00
Yunnan Lilieng Biological Co. Ltd.	China	Develop rubber plantation method, buying and processing for domestic and foreign market	Concession	500,00
Lao Thaihua Rubber Co.	Thailand	Rubber plantation	Concession	500,00
Lilieng Biological Development Co.	China	rubber plantation and processing	Concession	500,00
Yunan Lilieng Biological Development Co. Ltd.	China	Rubber plantation	Concession	2.000,00
Ari Construction and Building Repairment Co.	China	Rubber plantation	Concession	100,00
Ari Construction and Building Repairment Co.	China	Rubber plantation	Concession	100,00
Vientiane-Haiyeuang Cooperation Centre	Laos-Vietnam	Agriculture-forestry goods service and tourism industry service		100,00
MR.Chang Hwan Choi	South Korea	Building Golf training center C.Y.H	Concession	130,00
Xaisomboun Agriculture Development Co.	Thailand	Agriculture, livestock and tree plantation	Concession	200,00
Yongfongxeun Industrial Wood Plantation Co. Ltd.	Taiwan	Planting industrial crops for market purpose	Concession	100,00
Agarwood Lao Group Co. Ltd.	China	Argar Wood Plantation		100,00
Tongtheun Lao-China Agriculture Development	China	Industrial tree plantation	Concession	500,00
Crapkin Agriculture Co. Ltd.	South Korea	Industrial tree plantation	Concession	100,00
Kolao Farm Co. Ltd.	South Korea	Industrial tree plantation	Concession	1.966,00
Kolao Farm Co. Ltd.	South Korea	Industrial tree plantation	Concession	2.327,00
Wanxouane Ngouane Thanghai Co.	Vietnam	Agarwood plantation	Concession	100,00
<b>Total Land Area</b>				<b>293.487,00</b>

Source: GTZ Lao PDR, 2009

### 7.3 Examples of FDI in Land<sup>9</sup>

#### Case Study 1: Mitr Lao Sugar Co. Ltd., Savannakhet, Lao PDR

The Mitr Phol Group of Thailand has invested in sugarcane plantations and sugar mills in Cambodia, Lao PDR, Vietnam and China. In 2006, the Government of Lao PDR awarded Mitr Lao Sugar, a subsidiary of Mitr Phol Group of Thailand, a 40-year concession, renewable for 20 years, to cultivate sugarcane on 10,000 ha in Savannakhet Province and process it into refined sugar. Mitr Lao's initial investment was about USD 63 million. During the 2008-2009 season Mitr Lao grew sugarcane on about 8,000 ha; the harvest from 8,000 ha is expected to be 230,000 tons, with a yield of 24,000 tons of sugar at the Mitr Lao sugar mill. The mill is capable of processing 500,000 tons per year with a yield of 60,000 tons of refined sugar. Mitr Lao plans to export about 95% of the sugar produced. Mitr Lao is requesting another 10,000 ha concession for the 2009-2010 production season, and plans to request another 24,000 ha within 3-5 years.

Mitr Lao creates employment for more than 5,000 local people, and is paying about USD 600,000 in taxes to the Government.

#### Case Study 2: Oji Lao Plantation Forest Co., Ltd., Vientiane, Lao PDR

Oji Paper Co. Ltd (established in 1949) of the Oji Paper Group is a Japanese company with extensive overseas operations, including 9 tree plantation businesses in China, Vietnam, Australia, New Zealand and elsewhere at the start of 2005. In February 2005, Oji Paper acquired all the shares of BGA Holdings Asia Ltd. of the former BGA Lao Plantation Forestry Co., Ltd. that had been operating since 1996. Now Oji Paper endeavours to be a socially and environmentally responsible corporation and has a policy to seek certification for all forests in its overseas tree plantation operations. Oji Lao also has a program of direct social development assistance for communities in its plantation area, and employs many permanent Lao staff as well as local villagers as daily labor in the plantations.

However, the World Rainforest Movement (WRM) cautions that Oji Paper does not have an exemplary record. For example, in the 1970s and 1980s, a subsidiary cleared 37,000 ha of forest in Papua New Guinea for wood chips, and in recent years they have been buying wood chips from old-growth logging operations in Tasmania, Australia. Oji Paper is also developing genetically engineered trees that it hopes to grow in its plantations. No further information is available.

## 7.4 Challenges regarding implementation and monitoring of land concessions

The information gathered from various sectors at the provincial level reveals that many projects/companies are recorded under different names in different investment documents, even though the company is the same one:

### 7.4.1 One company – different names

**Example 1:** The company name recorded in the investment license issued by the Department of Planning and Investment is ANL Rubber Company Ltd., whereas the name in the “Agreement for Granting Land Concession of the Governor” and the one stated in the Concession Contract is VT Road-Bridge Construction Company Ltd. Both names refer to the same company and the same investor operating its business on the same plot of land.

**Example 2:** The Lao-Thai Hua Rubber Plantation Promotion and the New Chipseng Company Ltd. are one and the same company with the same investor, but named differently in the Investment license (approval) and in the Agreement and Concession Contract Documents.

Different names on different documents referring to one single company cause confusion when trying to identify the exact number of companies leasing/conceding land. Clarification is only possible by conducting interviews in those villages where the projects are located.

### 7.4.2 Authorizing Documents not taking into Account the real Situation

Example: Prior to the approval of a land concession to the Kolao Company (covering an area of 1,404 ha in Ban Nampaen, Maed district, Vientiane Province) a topographic survey was conducted by a survey team (including 2 company staff, 2 members of the District Agricultural and Forestry Office (DAFO), one from the Finance Office, Village Head and Second Head of Village). The results of the Survey Report were summarized as follows: “The area surveyed consists of fallow forest and degraded forest and is suitable for planting industrial crops, especially Jatropha.”

Several months after the concession had been granted and the land been cleared, DAFO conducted another field inspection, because apparently healthy forest was cleared. They found that within the area of zoned primary forest (120 ha), land had been cleared and not only within the approved area which consisted of fallow forest. A fine was imposed on the company but large trees had already been logged and Jatropha had been planted on slopes with more than 45% inclination.



Jatropha concession in Ban Nampaen, Maed District, Vientiane Province

### 7.4.3 Violations of Terms and Conditions Stated in Concession/Lease Approvals

The Thai-Hua Lao Rubber Plantation Company Ltd. had been granted a land concession in Ban That and Ban Vangmon-Neua (670 ha), including the permission to develop 100 ha/year. This means that the company would have needed 7 years to clear the land. However, after two years, 672 ha had been cleared already. The investor's activities were not in compliance with the contract he had signed with the government. This exemplifies once more that so far no functioning monitoring system exists and no authority is clearly assigned to follow up with such investments and concession activities.

### 7.4.4 Overlap of Approved Concession Areas

In some areas, the same land is conceded to different companies twice. Such a case occurred for example in Ban Naphong, Hinherb district, Vientiane Province where 100 ha of land were granted to the Association for Agriculture and Handicraft Promotion for planting *Jatropha* and cassava. Later on, the Provincial Governor withdrew his own decision and approved to give the same area for concession to the Bamboo Factory Ltd. to run a rubber plantation. The company that had been granted the concession first, submitted an official complaint to NLMA and the case was inspected. After the inspection was done, both concession agreements for both companies were cancelled (signed by the Director of PLMA), because the inspection revealed that the area given out covered conservation forest and that the approval was granted without conducting a prior survey and so far no land classification/zoning was done beforehand.

### 7.4.5 Villagers Preventing Companies from Using the Conceded/Leased Land

Some cases exist where unsuitable and inadequate land was conceded to investors. There are cases in which district authorities or villagers did not allow the conceding company to clear the land or to implement planned activities, because the concession had been approved without any consultation of local people. In those cases, district and village authorities had to find different land to compensate the companies. In 2007, the Bouasavanh Tourism Company was granted a land concession of 50 ha for the plantation of orange trees in Ban Jiang, Kasi district, Vientiane Province. The concession was granted without consulting villagers beforehand. Only the village head was involved. When the company wanted to begin with the land clearance, villagers forced the company to leave and they made it quite clear to the company that they would not allow any land clearance. They argued that this land was important for their own livelihood as the conceded land covered valuable village production forest. The project was suspended.



Slashed and burned old growth forest area



Rubber plantation in Luang Namtha

## 8. Driving Factors for FDI<sup>10</sup>

### 8.1 From the investors point of view

In Lao PDR, foreign corporations are frequently among the investors in large agriculture, hydropower and mining projects. Often, these projects are medium- to long-term investments measured in decades. Among the investors, private companies are found as well as state-owned enterprises (SOE) or semi-governmental enterprises, and there are several important differences between the profit seeking corporations and the policy driven corporations making foreign investments:

- Policy driven corporations may benefit more frequently from direct government support in securing a project through government-to-government negotiations or interventions.
- Policy driven corporations may also have easier access to secured project financing, especially when it is provided entirely or in part by a state-owned bank or financial institution.
- Policy driven corporations sometimes may make investments that appear less financially sound or profitable but that are actually in the national interest.

In the end it is the profit motive that drives all of the investments but the return of a policy driven investment may appear in the form of national security, economic development, international goodwill, etc., rather than in financial terms.

Especially the governments of some of Lao PDR's neighbouring countries (i.e. China, Thailand and Vietnam) but also several more distant countries (i.e. the Arab States, Japan and Korea) are among the foreign governments looking to secure sources of vital energy and natural resources inside Lao PDR. China seems to be the country with most of the policy-driven corporate investments, including

major investments in hydropower, but also investments in agriculture and mining. The reasons for policy-driven investments differ between these countries:

**China**, although large in area, is not rich in many of the mineral resources needed by its rapidly growing industries.

**Thailand** has relatively little hydropower development potential remaining and is relying on Lao PDR to supply an increasing portion of its energy requirements for the coming decades.

**Arab States**, rich in hydrocarbon resources, have very limited resources to produce the food needed to feed their populations, especially now that immigrant workers greatly outnumber their native population.

**Japan** and **Korea** are small countries in size, but heavily populated with highly developed industries. Neither do they have enough arable land to grow the food necessary to feed their people, nor does their land provide the mineral and energy resources to sustain their industries.

These investor countries can provide the management, technology, capital resources, and markets needed for large-scale agriculture as well as for hydropower and mining projects.

The phenomenon of FDI in Lao PDR is not a new development, but the large increase in interest in Lao PDR from foreign investors in the past few years has put them in the spotlight. The main reasons for this development seem to be:

- First, the recent world food crisis with its dramatic price increase have prompted wealthy countries that lack the resources to be self-sufficient in food to try to secure land use rights in

<sup>10</sup> Large parts of this chapter are quoted from H. Tucker 2009.

foreign countries so that they can (i) gain more control over agricultural production for their own markets; and (ii) reduce the cost of those products by eliminating middlemen and speculation effects.

- Second, wealthy countries that lack the resources at home to produce adequate amounts of strategic industrial crops to feed their own industries (i.e. wood, rubber, agro-fuels etc.) are similarly trying to secure land use rights in foreign countries.
- Third, corporations are seeking lucrative agricultural investments overseas, especially with regard to the recent upsurge in interest in agro-fuels, etc.

## 8.2 From the recipients point of view

The development goals and strategies of the government are embodied in the National Socio-Economic Development Plan (NSEDP). The four main points of the government's implementation strategy to achieve its development goals are:

- Transform the multi-sectoral economy from uneven performance to rapid and stable development;
- Increasing competitiveness and utilizing comparative advantages;
- Strengthening links between economic and social development, protecting the environment;
- Accelerating the development of social economic infrastructure and finalizing the establishment of a market oriented economy.

The timetable for achieving the national development goals was given as:

- 2005 – Reduce poverty by half and stop opium cultivation;
- 2010 – Eradicate mass poverty, stop slash & burn cultivation;
- 2015 – Achieve the Millennium Development Goals (MDGs)
- 2020 – Graduate from LDC-status



Jatropha concession in Ban Nampaen, Maed District, Vientiane Province

The NSEDP 2006-2010, published in October 2006 by the Committee for Planning and Investment (since 2008 Ministry for Planning and Investment), recognizes the need for foreign investments to make a large contribution to national industrialization and modernization, and also the associated labor problem:

*“A favourable environment will be created to attract foreign direct investment, especially from the main companies in Asia. It is necessary to be aware that FDI is an organic part of the economy and will be further developed in parallel with the country’s socio-economic development process. The present situation of the Lao PDR indicates that foreign investments have played a key role in developing the country’s economy and they will be major factors for development in the next decades. Despite the abundance of natural resources in the country, the discovery and utilization of such resources has not been made due to the lack of funds, skilled labor and management capacity. If the country manages to explore and utilize these resources, it will strengthen commodity production.*

*In general, there are limitations in attracting foreign direct investment due to the lack of a domestic workforce with technical capacity. Human resources development requires an extended period of time. A solution at the initial stage may be to import international labor required to support projects receiving foreign direct investments. [...] Employees and technical workers are urged to prepare for meeting the needs of foreign investments. Thus, there is an urgent need to train technical workers.”*  
(Sec. VII. F. 3. Foreign-Invested Sectors)

*“The attraction of FDI plays an important role for the economic development of our country and it is one of the main factors to create a major step for rapid development in the coming years, [...] In reality, the attraction of FDI is still limited because of the insufficient local workforce with high technical knowledge and skills. Therefore, it is necessary to use imported labor that is connected with the FDI projects by stipulating that the foreign workers have to contribute to economic development in parallel with human resources development. In the Sixth five-year Plan period (2006-2010), it is necessary to focus on implementing measures and methods to develop the economic sectors where there are foreign investments.”*  
(Sec. IX. B. 2. Mobilization of Investment)

The NESDP specifically addresses the need to promote plantation crops:

*“Meanwhile, efforts should be made to diversify the agricultural and forestry products to meet the existing market demand; and focus on the plantation of certain industrial crops based on the potential of each region to increase the export volumes. The latter includes the plantation of such commercial crops as coffee, rubber, tea, cashew, maize, cassava, beans, tobacco and sugarcane.”*

*“Land policy: The efforts on land management should be enhanced, because land is the basic requirement for agricultural production. [...] The allocation of the right of land ownership must be done step by step, e.g. allowing for rental and collect the rental fee at reasonable rates, with increments according to the local context. The rental period should be on a long-term basis (e.g. 50 years for seasonal crop plantation or 70 years for long-term crops) to ensure confidence among land users and to be attractive for investment. The work to allocate the land and/or forest should be enhanced and land titling programs for agriculture purposes should be supported to promote land use in the most effective ways.”*

(Sec. VIII. B. 1. Objectives)

It also addresses the need to develop industries based on natural resources:

*“The orientation of industrial development in the coming years is to give priority to developing the electricity and processing industries catering to domestic consumption and exports, while continuing to promote mining ...*

*The Government will continue either correcting or issuing clearer policies to promote the private sector and encourage foreign investors to invest more capital in developing the industries. The Government will implement development policies for industries using domestic materials in order to increase the value-added and promote potential strengths for economic development.”*

(Sec. VIII. F. 1. Overall Strategy)

*“More investments will be encouraged in exploiting minerals such as gold, tin and copper.”*

(Sec. VIII. F. 2. Sub-Sector Strategies)

Through the NSEDP, the Lao government clearly is promoting expanding foreign direct investment in the agriculture, hydropower and mining sectors. An important issue to be addressed is the needed improvements to the allocation and management of land concessions associated with many projects in these sectors.

## 9. Weaknesses

The Lao PDR has weak legal frameworks, judicial systems, and law enforcement capabilities. The country is controlled primarily by powerful elite groups. This combined with the situation that Lao PDR is rich in natural resources suggests that it may be susceptible to exploitation by foreign political and economic interests, whether they are international or foreign corporations acting on behalf of their governments. The Lao government is promoting FDI to quicken the pace of national development. However, several issues are diminishing to various degrees the beneficial impacts of the private sector FDI in the agriculture, hydro-power and mining sectors in Lao PDR (TUCKER, 2009).

Concerned Ministries and Provinces are not well prepared or equipped to manage and control investment, because:

1. Rules and regulations concerning investment appraisal are not clearly defined or understood
2. Guidelines for the selection of land for concessions are not developed
3. Consultations with local villages are rare and not enforced
4. Monitoring of actual investments are not fully developed and enforced
5. In some sectors it is questionable whether the relevant government agencies have the authority and/or the resources to manage or control FDI
6. National, provincial and district level agencies share the authority to grant concessions depending upon the size of the investment
7. The current process for allocation of concessions in Lao PDR is far from clear and administrative responsibilities are ambiguous.

In addition, the government's lack of coordination and control over FDI, where it is directed and the way it is used, diminishes its effectiveness in contributing to their national development objectives. There is very limited communication and cooperation between government agencies (both between sectors, and between levels within sectors), which reduces the opportunities to realize potential synergies among projects in separate agencies (TUCKER, 2009).

For many projects supported by private sector FDI, only cursory attention is paid to costly and time consuming Socio-Economic Impact Assessment requirements and public participation, often resulting in negative impacts that could have been avoided or mitigated. In many cases portions of the FDI project funds are siphoned off for personal gain by government staff and/or other powerful interests (Lao PDR has achieved quite low scores on the Corruption Perceptions Index and the Ease of Doing Business Index), which inflates the project costs and reduced the benefit/cost ratio (TUCKER, 2009).

In summary, so far concessions have been awarded in an intransparent process, without environmental and social impact studies and without consultations with local people. Often, they even contradict or violate existing land laws (WWF, 2007).

There are a number of other factors contributing to the proliferation of poorly planned large-scale land concessions. They include a recent trend towards decentralization which has given provincial authorities significant autonomy and greater financial incentives to offer concessions and

sign contracts directly with foreign investors; an unclear division of responsibilities between national and provincial authorities; a lack of adequate land-use planning at a landscape level and a disregard for the results of land-use planning processes at the local level; the absence of formal review processes for large-scale concessions (WWF, 2007).

Key problem areas for plantation concessions in Lao PDR include the zoning of swidden fallow lands and village-managed landscapes as “degraded forest” available for commercial plantation developers, and a lack of local rights to participation and representation in the land-zoning process.

Different government agencies and levels of government have each handed out concessions with little to no coordination sometimes resulting in overlapping concessions. This has provided some companies with incentive to quickly plant crops in order to ensure land access. The poor quality of mapping data available for designating concessions also has resulted in the conversion of good quality forest into concession with the timber illegally extracted by the company.

Although the “2+3” model has a promising premise, its implementation has left much to be desired. For a variety of reasons, many large investment contract schemes dissolve into a “1+4” arrangement in practice. In the case of rubber in Luang Namtha, a number of interrelated factors contributed to the problems encountered using the “2+3” model. First, companies pushed for a “1+4” system because, like concessions, it gave them greater control over the plantations and a better share of the profits. Second, villagers desired to be paid wages for their input labor. With few sources of alternative income during the 7 to 8 year waiting period before some crops generated income, wages provide greater household food security. Third, villagers had limited trust in the investors and little sense of ownership or partnership in the contract. It was thus difficult for villagers to work without paying for an uncertain return (WFP, 2009).



Rubber planting on burned site

Rubber plantation in Luangnamtha

## 10. Opportunities and Risks of FDI in Land in Terms of Sustainable Development in Lao PDR

### 10.1 Opportunities and Risks of Land Concessions for Rural Livelihood

Land concessions can be an instrument for the commercialisation of the agriculture in Lao PDR and therefore a chance for a long-term strategy to reduce poverty in rural areas. Market access can lead to a stable cash income for farmers, which is not the case in subsistence farming. A lot of rural development projects financed by ODA (Official Development Assistance) are looking for these options to see it as a starting point for a value chain development. Precondition for this positive development is the access to land for farmers and their farming management skills.

For families that lose access to land, the onset of concession farming means an entire livelihood transition to wage labor. This has a significant effect on household livelihood strategies whereby food security is now dependent on income rather than farming yields. The result is that food security becomes closely tied to income security, and by extension, to the concession company itself. Moreover, families become highly dependent on a single income source (WFP, 2009). A strategy to increase food security for these rural laborers would be to invest in livestock or in vegetable gardens around their houses.

Concession farming significantly affects households immediately and over the longer term. The impact is primarily through its effect on land access and livelihoods. Many households have lost varying degrees of land access due to concession farming. Some households have lost all access to their land and have been resettled elsewhere; others have just lost access to state land, retaining their own private land. The degree of retained land access impacts the likelihood of food insecurity

with lower levels of land access correlated to higher household vulnerability. Households are often poorly compensated for lost land in the transfer of property for commercial farming. Sometimes there are reports of flat-out land seizures by corrupt officials. Households may also find themselves with insufficient crop supplies, insufficient income, and the additional stress of resettlement. The loss of land may also limit access to an entire spectrum of livelihood resources including upland rice, NTFPs, grazing land, wildlife, construction materials, and traditional medicines.

Laborers are sometimes hired on a daily rather than on a permanent basis given the variable labor needs of the plantations. Concession farming is exposing villagers to food security risk immediately and in the long-term as households lose access to land and trade their entire livelihoods to become wage laborers. This is occurring at the same time that shared land and forest (traditional safety nets) are being eliminated. The result is a reduced capacity to cope with shocks and greater vulnerability (WFP, 2009). Lao laborers are sometimes even replaced by foreign laborers who are seen as “more effective”. Only recently a Chinese pulp wood company submitted a request to “import” 500 Chinese workers from China. This is possible according to the Lao Labour Law. If this application is successful others will follow.

On the other hand, the main problem in the region is, that traditional livelihood systems are not working anymore because:

- The government is banning slash and burn.
- The cultivation of upland rice has a very low land and labor productivity.

- The village farmers need cash income. They have to pay for basic needs and services (e.g. electricity, clothes, medical treatment).

Therefore the most important process going on in these villages is the commercialization of agriculture. FDI in land can help some households to be lifted out of poverty entirely by the wages provided by profitable commercial ventures. But so far this is quite unlikely, because with a current average daily wage rate between 15,000 – 20,000 kip (1.80 – 2.20 USD) hardly anybody will have enough income to get out of poverty. The more attractive option seems to be a contract farming arrangement. Outgrower schemes (small-holder contract farming with input and service packages for the smallholder) linked to concessions have the most positive impacts for rural farmers.

Investment and infrastructure development stimulate the local economy and also provide the government with much needed revenue that can in theory be reinvested back into the country for broader development. Profitable and fair investors who provide decent wages would help alleviate poverty by providing a higher income and improve the livelihood compared to the subsistence farming.

Large land concessions have been granted to grow a variety of tree crops to produce wood chips and pulp for paper, rubber, palm oil, agro-fuels, etc. Each of the tree crops is controversial for various reasons, depending upon its particular characteristics as well as the social and environmental circumstances of the concession location. Unfortunately, this is in accordance with the government's development guidelines. The national guidelines for 2006 to 2010 propose the establishment of various tree plantation areas for local processing and exportation. The develop-

ment plan dictates that rubber and other crops (such as coffee, tea, tobacco, cotton and cashews) "should continue to be expanded in areas suitable for these types of crops." (Lao People's Democratic Republic 2006:135). Agricultural production should be export-oriented and mechanisms should be created "that can draw the attention of investors to invest in the construction of agricultural infrastructures" (ibid.).

## 10.2 Opportunities and Risks of Contract Farming for Rural Livelihood

The transition from subsistence to market oriented and commercial agriculture can be a long-term strategy for poverty reduction in rural areas and can provide the opportunity of rural development. Fast growing commodity markets provide farmers with new market opportunities. Especially rubber is a very smallholder friendly crop with a high price transmission between world market price and farmgate price as best practices from successful countries like Thailand and Indonesia show. Nevertheless farmers become more vulnerable to market risks such as price and demand fluctuations. They need more access to market information.

Important is to help farmers to overcome the challenges of commercialization: Long waiting periods before harvest also expose contract farming households to potential shocks. Rubber, for example, takes 8 years before the first yield is harvested. The result is that a household's primary income is vulnerable to risks including fire, disease, and adverse weather that could wipe out entire stocks before they mature. Furthermore, prices and margins for commodities can be significantly damaged from the time when the crop was planted, exposing farmers to market risks. In such situations, investments are lost and

households may find themselves significantly indebted.

Moreover, some commodities may occupy greater and greater portions of land as they mature (e.g. rubber). This limits subsistence food supply in later years and intercropping. There is a sizable disparity in contract farming participation among villagers. Better off villagers with good land and supplementary subsistence crop tend to more frequently engage in contract farming. Poorer farmers with worse land located further from the road are usually unable to take advantage of the opportunities of commercial crops (WFP, 2009).

Poorer households are often unable to participate in contract farming because of the quality, size and location of their land. Cooperatives may be helpful in this regard. Landless people do not have assets that would allow them to participate. Most poor households therefore participate in contract farming as wage laborers in order to supplement their insufficient subsistence food supply. The loss of access to commons or forests associated with transitions to commercial farming significantly affects these poor households most. (SIMMONS, 2003).

Increasing opportunities for wage labor open poor households to the risks associated with an income-based rural livelihood; however, wage labor also presents an opportunity for increased income if the contract farms are profitable (SIMMONS, 2003).

For some, the increased revenue from contract farming can trickle down to other people in the community as farmers spend their increasing earnings. As farms require inputs and supplementary food, increased demand in a community with limited supply leads to higher prices. Higher prices mean more money for retailers; however, for those not engaged as either contract farmers or retailers to contract farmers, prices rise as incomes remain static. Contract farming is an opportunity to significantly increase incomes either as a farmer or a landlord. For retailers to contract farmers, it also presents an opportunity to increase sales at

potentially higher prices. When providing incomes and preserving land rights, contract farming may help households (WFP, 2009).

The establishment of tree plantations as rubber is identified as a strategy to alleviate poverty, an instrument to stabilize shifting cultivation and a profitable substitute for opium.

Furthermore, it is in line with the Lao National Forest Strategy which plans to increase forest cover from 40 percent to 70 percent by 2020. Tree plantations are meant to make a large contribution to reforestation.

### 10.3 Environmental Risks

The proliferation of industrial plantations is creating a number of environmental consequences of great concern. In terms of environmental issues, this includes increased threats to already underfunded protected areas due to direct encroachment and the displacement of lowland farming communities by plantations; the fragmentation of ecologically important areas that lack formal protection; greater risks to connective corridors between protected and unprotected areas which provide valuable habitat for wildlife species; and potential risks for watersheds and river systems (WWF, 2007).

There are many cases of conversion of rich forest or village forest/land, no planting activities after logging/clearing, not unified and very low concession fees and so on (MAF, 2007). An increase in agricultural production for export as well as forest plantations may accelerate deforestation and loss of habitat for many unique animal species in Lao PDR. An increase in use of chemical fertilizers and pesticides may lead to water and soil pollution.

The three major tree crops being grown in Lao PDR are not native to Asia, and they all come from different continents — the eucalyptus comes from Australia, the para rubber from South America, and the oil palm from Africa.<sup>11</sup>

<sup>11</sup> Information about the effects of tree plantations is quoted from Tucker, H.: Foreign Large Scale Investments in Agriculture, Hydropower and Mining: Challenges and Opportunities for Development Cooperation in Lao PDR and Cambodia, Prepared for GTZ Lao and MRC; (Vientiane: May 2009) (unpublished).

Given that all three tree crops are normally cultivated in large-scale monoculture plantations, the disruption to the local ecological systems is severe. The monocultures drastically reduce the biodiversity within and near their boundaries and also serve as barriers to the normal migratory and dispersal patterns of endemic fauna and flora in surrounding areas. These exotic species are not part of the normal local food chains, and so they provide little or no nutritional support for much of the endemic fauna; and they also may not meet other habitat requirements of the endemic fauna as well.

Most of these plantation trees are either clones with no genetic diversity, or they are propagated from a small number of parental stocks and thus have very limited genetic diversity. This presents a significant risk because a pathogen may have the potential to destroy entire plantations.

Eucalyptus and oil palm have further negative impacts on the environment:

- Eucalyptus is known for its large need for water
- Palm oil mill effluents also have a very high biological oxygen demand (BOD) and present a serious danger to nearby rivers and lakes, should they escape from the holding ponds.



Rubber plantation on unsuitable steep slope



Rubber plantation in Luang Namtha

## 11. How does FDI affect Strategies of Development Cooperation? – Some Recommendations<sup>12</sup>

The recent upsurge in FDI in Lao PDR is considerably larger than the volume of ODA being provided by the donor community. In the case of conflicts between FDI in land and donor projects with other objectives (e.g. biodiversity), probably the larger project will be given preference.

It is of utmost importance that the donor community, individually and as a group, is aware of this changing environment and realize the need to reassess how to do business in Lao PDR. As there are both positive and negative aspects of FDI, the donors need to actively keep abreast of the FDI projects and proposals. The donors should assist the government in anticipating FDI trends and their potential impacts in order to develop appropriate measures for issues and problems raised by FDI. They should then assist the government where it is needed and not adequately covered by the FDI.

As stated above, FDI projects are primarily concerned with opportunities to either make a profit or to secure access to resources that are needed in the investor's home country. Since they are generally not very concerned with most aspects of the host country's development agenda, there remains a clear mandate for the donors to continue supplying ODA especially in support of programs to reduce poverty, develop social infrastructure, promote good governance and government reforms, and build government capacity in many areas. However, the donors as a group should continuously search for ways to engage foreign investors in those programs whenever possible. The donors together with the govern-

ments also should continuously look for opportunities to develop synergies between their development programs and activities and the foreign investment projects (TUCKER 2009).

### Legal Reform

It is very important for the GoL to develop programs for legal reforms, especially in the areas of public participation, freedom of information, contract law, land reform etc.

**Public Participation:** Public participation can be recognized as a legal right of people who may logically be expected to suffer directly from any of the potential detrimental effects of a public or private investment project. Public participation may be defined as including a variety of things, such as the right to attend and speak out at forums held to inform the public in advance of a project, the right to access to key project documents, the right to register as a potentially aggrieved party and to qualify for compensation, etc.

**Freedom of Information:** The law can prescribe what types of FDI and ODA project information must be made public, in what form, and when (preferably to include geographical coordinates, SEIAs, resettlement plans, compensation programs, etc.).

**Land Titling and Registration:** In order to improve land security for small-scale farmers and indigenous communities the process of land titling and registration programs has to be continued. Many people, especially those outside

<sup>12</sup> Chapter 11 is quoting H. Tucker 2009. The recommendations for donors that follow are based on H. Tucker's experience, as well as reviews of published reports from various sources and articles in the news media. They have not been discussed or agreed with either the governments or the donors concerned.

urban centres, have not yet had their land claims officially recognized, and this leaves them highly insecure especially when faced with government-granted land concessions. It further limits their access to credit and thereby their opportunities to improve their livelihoods. In addition to supporting land-titling programs, the GoL should also support the establishment of a central database or registry (including permanent maintenance and updating systems) in each country.

**Land Concessions:** As with land titles, it is equally important to establish a national database of land concessions that includes all of the pertinent information – clear geographic coordinates, the use rights and negotiation rights conferred, the concession period and conditions for extension or renewal, schedules of taxes and fees, etc. This would require that concessions be surveyed prior to granting and registration, so the minimum requirements and responsibility for the survey also must be clearly delineated. This would also improve the access to reliable data.

**Contract Law:** Lao PDR needs to develop a body of contract law. The lack of an adequate framework of contract law is impeding the development of commercial agriculture and agribusiness in Lao PDR. Although contracts are made between farmers and their suppliers and buyers, there is no legal recourse when they are abrogated by any of the parties, and enforcement depends almost entirely on the good will and understanding of mutual need among the

parties, which clearly is not adequate for large-scale commercial enterprise.

**Protected Area Systems:** Lao PDR has an extensive system of protected areas, at least on paper, but the protected areas are subject to encroachment and to redefinition by the establishing authority. The protected area systems are at the heart of national and international efforts to preserve biodiversity and important cultural and historical sites; and they are also very important resources for the tourism industry. Continuing donor support can help to ensure the integrity of the protected area systems, and could encompass research and development programs, monitoring and enforcement systems, public access and information, etc.

**Natural Resource Management:** With a growing population and a developing industry, the pressure on natural resources will increase exacerbated by the effects of climate change. It is important to know the countries natural resources (potential of arable land, climate, rainfall, soil types etc.) with its potential for production and on the other hand the development of future consumption due to the growing need of the population.

### **FDI Screening, Monitoring and Enforcement**

The government of Lao PDR needs to develop effective regulatory frameworks to screen proposed FDI projects and reject those that are not in the national interest, to regularly monitor approved FDI projects to ensure that they meet the terms and conditions of their agreements, and to initiate

corrective and/or punitive action if and when they do not. Initially, donor assistance is needed to guide and hasten the development of the regulatory frameworks, and subsequently it will be needed to support their effective implementation.

### **Public Information and Participation Programs**

Effective and timely public information programs are needed to keep directly affected and other concerned individuals aware of the issues and pending actions related to investment projects in their areas. This is closely related to the suggested legal reform to establish parameters for freedom of information.

### **Capacity Building**

In all the above mentioned areas donors can support the government. An important mean of support is capacity development. But rather than providing support indiscriminately or across the board, the donors and governments should jointly identify critical areas where capacity is lacking and

focus more on the assistance there. In the context of this study, critical areas for capacity building at present would likely include legal professions, information systems, resource economics, environmental sciences and natural resources management, etc.

### **Unified Action**

Because the annual ODA provided to Lao PDR is much less than the annual private sector FDI, it is important for the donor community to pool their efforts and resources to develop unified development programs that have a better chance of making the desired impact. A framework for collective action already has been established in some areas – for example with the sector and subsector working groups in Lao PDR. However, even there the donors still have a lot to do to really unify their disparate programs. There has been little progress, for example, toward the goal of getting donors to pool their funds in support of certain programs or projects.

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