



Undermining lives in Laos

**Objections to the Sepon project 2 Copper mine expansion of
Oxiana Ltd in Lao PDR**

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by Rod Harbinson

International Financial Institutions Programme
Friends of the Earth International

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Will the mine lead to Poverty Alleviation?

This mining project is an example of unsustainable development that would generate severe negative and irreversible social and environmental impacts. The World Bank IFC and the Australian Export Finance and Insurance Corporation, have both categorised the project in environmental category A, the most potentially damaging type of project. According to the IFC the mine will have 'significant, adverse environmental impact which are sensitive, diverse or unprecedented'. These far outweigh the minimal opportunities for local employment while, in the light of the country's political situation, Lao government revenue is unlikely to benefit the Lao people.

The financial terms obtained by Oxiana Limited from the Lao government will ensure that the vast majority of profits will flow out of this Least Developed Country to rich countries with few benefits for the population of Laos. Indeed the high risk of hazards could quickly turn the situation into a costly loss for the Lao Government. However Poverty Alleviation is far from purely economic so below some of the main contributing factors are addressed.

*'For the first two years of operations, Oxiana Limited is exempt from corporate tax and employees are exempt from paying income tax. For the next two years, corporate tax will be paid, but at only half the usual rate. Meanwhile, there are no taxes or restraints on repatriation of money from the project. The government has waived duties on imported equipment both for the gold and copper projects. In return, the Lao government is to receive 2.5 per cent of the value of the ore mined (but only after Oxiana has subtracted the costs of selling, transport, smelting, refining and other treatment costs).'*¹

World Bank EIR conclusions:

1.1. *The WBG has focused mostly on creating an enabling climate for foreign direct investment in EI, with little effort to help countries develop the capacity to transform natural wealth into poverty alleviation through sustainable development.*

Contravention of World Bank and other guidelines

According to the project outline on the EIB website the, '*The project will be designed to comply with local environmental regulations, the World Bank Guidelines and best industry practices*'. We are concerned that compliance will not be met or in the case that it is, these measures alone will not provide adequate safeguards.

The World Bank IFC offered US\$30 million financing for the Sepon gold project in 2002 but according to the IFC this was not picked up by Oxiana. The IFC commented that: '*They [Oxiana] never indicated why they didn't pursue it [the loan] with us. My guess is that 1) our due diligence and environmental/social requirements would have been greater.....*'² Clearly the lack of World Bank involvement in the project calls into question whether the World Bank Guidelines will be met. With no formal arrangement and hence obligation to adhere to World Bank conditions there is now no incentive for Oxiana to follow World Bank Guidelines.

¹ Chris Lang, World Rainforest Movement report, 2002.

² FoEI correspondence with the World Bank IFC, 10 November 2003.

Environmental and mining laws and regulations in the Lao PDR remain weak along with state capacity for implementation and enforcement. Of specific concern there is no recourse available in the event of gross environmental non-compliance. The role of the government as sole regulator of the mine is problematic, and the government has been frank in its declaration of its limited capacity to effectively legislate, regulate and monitor the mine. Lao Deputy Director General, Department of Industry Mines and Energy (DIME) is reported as stating, 'Sepon is a new development for the Lao PDR. There is lack of experience and our capacity is very low compared with other investments. ... At present regulation [is] far from adequate'³

The Environmental and Social Impact Assessment (ESIA) for the Sepon Gold Project attempts to cover important aspects of the Copper Project too. This is unsatisfactory because the ore processing methods are completely different, geographical pit and tailings locations are different and the Copper Project is on a much larger scale.

The Mine Reclamation Plan is weak and is unlikely to live up to World Bank Guidelines. Specifically it is unlikely to: '*eliminate significant adverse effects on adjacent water resources*'⁴, especially as the ESIA already admits that both the Hin Som and Nam Kiang Rivers will be severely affected. Financing for rehabilitation and mine closure is unsecured and based on vague assurances.

In historical terms the record of heap-leach mining is not good and containment of mine wastes is a recurring widespread problem which the industry has yet to solve. In the case of Oxiana we have concerns about the conflicting messages coming from the company depending on the audience being addressed. Owen Hegarty, Managing Director, in an open briefing to investors, 2 October 2003, said: '*In terms of capital cost per unit and operating cost per unit, Sepon will be one of the world's lowest cost producers*'⁵. This emphasis on cost reduction is not consistent with the assurances in the ESIA particularly regarding post mine closure and rehabilitation. This raises questions about Oxiana's level of financial commitment to the safeguards it has outlined. Monitoring of the situation is problematic due to the isolation of the mine. The mine also does not have a good record of openness or transparency with NGOs or the media.

Stakeholder participation

The political regime in Lao PDR is a single party communist state with an oppressive history. Democratic institutions and channels for social engagement in decision-making processes are few. National NGOs are oppressed and Indigenous Peoples are often victimised and certainly not afforded their rights under various United Nations agreements. In view of this political context the opportunities for stakeholder participation in decisions regarding the mine and its impacts are severely restricted.

Stakeholder participation is now widely adopted by responsible development actors as an essential pillar of 'best practice' for proper project development and implementation and is adopted by numerous International Financial Institutions and development agencies.

³ Australian EFIC, Political guarantee for Sepon phase 1, Chapter 6, 18 June 2003.

⁴ World Bank environment, health and safety guidelines - mining and milling - open pit, p2.

⁵ Open briefing. Oxiana Ltd. MD on Khanong Copper Project, 2 October 2003.

World Bank EIR:

EIR findings suggest that communities around EI projects often experience a lack of transparency and information at local levels.¹ The EIR also found that when transparency and information are forthcoming, and when communities are actively involved as informed participants in EI projects, positive development outcomes tend to be more achievable, and negative impacts more effectively mitigated. EIR October 16, P.107

At the local level, the extraction of natural resources can sometimes have negative impacts on communities, especially on Indigenous Peoples and women. To reduce social costs, women's participation must be secured explicitly in the development of EI projects. Also, recognition must be given to Indigenous Peoples for the principle of 'prior informed consent freely given', as this is important to indigenous communities when dealing with the prospect of an extractive industry project. EIR October 16, P.105

- 1.2. *The EI sector can contribute to poverty alleviation, in developing countries that have well-developed political and social democratic institutions, good macroeconomic and sectoral governance, characterized by transparency, and a sound legal and regulatory framework that is sensitive to the poor and the environment. If these prerequisites are not in place, the negative impacts may actually outweigh the benefits.***

Indigenous People

Two villages have been relocated as a result of the mine project.

The mine area has deprived the Lao Theung Indigenous People and Phou Thai ethnic villagers of their land, means of food, livelihood and sacred ancestral sites.

Despite having their traditional Swidden shifting agricultural lands appropriated the Lao Theung are to receive no land-for-land compensation. They will be forced to give up their traditional mode of livelihood practised over millennia, which will have a profound effect on their culture and continued existence. The Compensation policy states that '*The project will not replace any Swidden land lost to the project nor will it make any continuing payments for any such land lost. A one-off payment for loss of production will be made*'.⁶

Endangered species and aquatic diversity

The ESIA's for projects 1 and 2 say that toxic effluent discharge will flow into the Nam Kok River - a biologically important tributary of the Mekong River. The Nam Kok River contains more fish species than France and the UK combined. 135 fish species have been identified and at least 4 turtle species⁷. One endangered turtle species from the IUCN Red List may also be present. Three endangered fish species identified by local people as being present in the mine impact area are on the IUCN Red List. According to the World Conservation Monitoring Centre Species Database Laos has 262 fish species. In comparison the UK has 36 and France 77.

⁶ As cited in Kate Walsh et al, Race to the Bottom, Take II, P37, 2003

⁷ NSR Environmental Consultants Ltd, Sepon Project, Wet Season Aquatic Biology, November 26, 2002.

The Oxiana ESIA's say that the river will be subject to sedimentation, cyanide and heavy metal effluent release and the danger of acid leakage. The Oxiana sponsored assessments of the affects of these toxins on aquatic fauna have been contested by independent scientists. For example Sodium Cyanide is known to breakdown and recombines with other elements into hundreds of harmful compounds, none of which have been considered in the aquatic studies and are not scheduled to be monitored. Heavy metals such as mercury are known to 'bio-accumulate' in living organisms and pass up the food chain with fish being particularly susceptible. There are no plans to study the cumulative and wider affects in the monitoring programme.

Whereas studies and monitoring plans of the environmental impacts of the known contamination are inadequate there is no assessment or planning in the case of a mine disaster such as a breached tailings dam. The implications for the downstream environment and the many river dependent communities are potentially catastrophic.

Population river dependence

The communities living in the mine region are highly dependent on the Nam Kok River and its tributaries for their livelihood. One study concluded that communities on the Nam Kok River are dependent on fish from the river for 47% of their protein intake. The Nam Kiang River has been diverted by the mining operations depriving local villages of 18% of their fish. Oxiana proposals for monitoring toxic levels in fish ignore that toxic 'bio-accumulation' extends up the food chain and may affect the health of people consuming fish caught in the area.

River water is used for other important uses such as crop irrigation, livestock drinking water and washing. The high level of dependence on this water source by villages in the region is a point of concern as they will be subject to the affects of toxic and other river disturbances. These have not been assessed and there is no plan for monitoring.

Millions of people downstream are dependent on the Mekong River for food and livelihood. In Laos, Thailand, Cambodia and Vietnam people depend on it for their livelihood and it is a major source of income generation. The broader implications of a major spill on downstream fisheries and farmland as seen at other mines, have not been addressed but could be widespread and long lasting. Financial stakeholders in the mining operation should be aware of the scale of their responsibilities and potential liabilities in the worst-case scenario.

Post mine closure

The processing of copper ore uses sulphuric acid, which will result in 36.9 million tons⁸ of tailings sludge laced with a toxic cocktail of heavy metals. Acid Mine Drainage (AMD), through the oxidisation of waste rock is a recurring problem in post mine closure as accepted by Oxiana. The high volume of tailings raises impossible problems for secure long-term storage which must be maintained, monitored and paid for long after mine closure. Independent studies of the Oxiana ESIA for Laos by mining experts highlight the inadequate plans and studies for post mine closure⁹.

⁸ NSR Environmental Consultants Ltd, ESIA Addendum, November 26, 2002.

⁹ Jeffrey Nielson, Technical analysis of environmental and social impact assessment for Oxiana Resources NL/Sepon Project Laos, March 2002.

Specifically Oxiana has not lived up to industry 'best practice' by failing to provide a rehabilitation bond for the mine. Given its current status as a Least Developed Country (LDC) the Lao Government is in no position to pick up the bill for post mine closure and in any case this remains the responsibility for Oxiana Ltd and its investors.

World Bank EIR:

A World Bank assistance program supports the closure of 29 uneconomic mines, which serves as a model for 174 further mine closures. The program developed a manual for mine closure, and provided financing for social mitigation measures and environmental rehabilitation.

Does the EIB intend to follow the World Bank manual for 'mine closure' and make it a condition for any loans to Oxiana Ltd?

There are countless examples of tailings and effluent discharge into the natural environment with devastating consequences. On the Island of Marinduque in the Philippines the Mogpog river is biologically dead due to toxic effluent and AMD leakage from up river gold and copper tailings pits. Local people complain of contamination of farmland and the death of livestock due to drinking river water. Human fatalities due to toxic exposure to the mine wastes are regular and it is currently estimated by local NGOs that 76 people are suffering from acute toxic poisoning.¹⁰

EIR Recommendations, mining:

1.1. Ensure Minimum Environmental Harm by:

1.1.1. It is recommended that the World Bank Group support a focussed effort to build capacity for conducting and participating in integrated closure planning, in countries with the potential to develop significant mining sectors.

We recommend the WBG to develop clear closure guidelines and require, as a condition of financing, that sufficient funds are designated to be in place for closure from the start of any new EI development. This should be independently verified, annually updated, and the closure plans should be made accessible to the public. EIR recommends that the WBG should explore the options of establishing an insurance system or performance bonds for regions affected by mine closure or other legacy issues.

EIR supports the CAO review of recent extractive industries projects and recommends that IFC and MIGA should apply available guidance on closure to all EI projects, and ensure that social considerations are taken into account. Measures should be implemented to ensure funds allocated to closure are 'ring-fenced', even after WBG exit.

¹⁰ FoE interviews with affected local residents and NGO representatives, Marinduque Island, Philippines, August 2003.

Forest impact

The forests of Laos represent one of the most significant areas of tropical rainforest remaining in South East Asia. Overall the region has suffered devastating rates of deforestation in the last ten years with large areas becoming denuded. This effectively increases the biodiversity value of the remaining intact primary forests and the pressure to ensure their survival for posterity.

The mine is located in a highly sensitive biodiversity region surrounded by protected stands of primary forest of critical biological importance. Though primary forest is found in unprotected areas in Laos, state protection for the most important areas is given under the National Biodiversity Conservation Area (NBCA) classification, which is similar to 'national park' in other countries. The Phou Xang He NBCA which borders the mine site to the West is most at risk from disturbance. The Dong Phou Viang NBCA is also nearby to the South. The Hin Namno NBCA to the North is of high biological significance as one of the last areas where the critically endangered Vu Quang Ox can be found.

Logging in the region, both legal and illegal is an ongoing and escalating problem. This has been facilitated by Oxiana's upgrading of route 28A¹¹ which is also frequented by logging trucks. Prior to this logging was largely seasonal due to the monsoon rains making this road unpassable. Now the road upgrade has accelerated the rate of timber extraction.

The influx of people seeking work from outside the area is regarded as a problem by Oxiana. As well as the social conflicts and rise in prostitution that have arisen, this may also lead to additional pressure on the forests, as unable to find work at the mine these people seek alternative sources of income in the area.

The proposed hydropower power transmission routing to supply the mine is as yet unknown by us but may include additional deforestation, the extent of which will depend on the route chosen. As well as the immediate forest loss caused by infrastructure projects like this the construction and service tracks open up access to the forest which are quickly followed by loggers.

As well as the pressures on forests from infrastructure development and increased social mobility there will be more direct influences from the mine operations such as soil erosion, blasting noise, dust and release of airborne pollutants. The mine itself will directly destroy 532 hectares of forest¹².

Human Rights

Unlike some of its mining competitors Oxiana Ltd has no 'best practice' features such as a Human rights Policy (See EIR extract below) and has been widely criticised for its handling of issues involving local communities. Specifically there are concerns that the operations of the Community Development Fund set up by Oxiana have not been clearly defined and it is not clear to whom it is accountable. The World Bank IFC has questioned whether indeed the Fund has received the promised financial allocation following Oxiana's rejection of its loan for this purpose. In anycase the

¹¹ NSR Environmental Consultants Ltd, ESIA Addendum, November 26, 2002.

¹² NSR Environmental Consultants Ltd, ESIA Addendum, 8. Assessment of residual impacts, 8.1.4, November 26, 2002.

Community Development Fund will only receive a paltry 0.26% of revenue generated. In comparison other companies allocate a minimum of 1% of pre-tax profits to community funds.¹³

World Bank EIR:

- 1.3. *WBG safeguard policies have helped highlight the importance of social and environmental considerations in planning and implementing EI projects. Partly as a result of this, major EI companies continue to improve their environmental and social standards. However, influence on small exploration and production companies appears indirect and minimal to date. The WBG appears to have a more significant and direct impact on environmental and social initiatives by private financial partners and export credit agencies. P.111*

Major EI companies including BG, BP, BHP Billiton, BOC, Premier Oil, Rio Tinto and Shell, can be categorized as companies with best practice features including: (1) Explicit human rights policies, such as a declaration of support for the 'United Nations Universal Declaration of Human Rights', support for the 'Core Labor Conventions' of ILO, support for the ILO 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy', and the OECD's 'Guidelines for Multinational Enterprises'; (2) Statements of business principles of conduct; (3) Commitment to business integrity; (4) Application of policy in business partnership arrangements; and (5) Policy and guidelines governing arrangements with security forces, based on the US/UK 'Voluntary Principles on Security and Human Rights'. EIR P.110

Regional hazards

The mine and access road are situated on the former 'Ho Chi Minh trail' used by the Vietcong as a supply route during the Vietnam war. It is estimated to be the most heavily bombed area in the world and the incidence of Unexploded Ordnance (UXOs) is high. This continues to cause considerable problems for Oxiana. According to a de-mining expert working on the project a major risk of detonation is ground vibration caused by intensified use of heavy trucks, machinery and mine blasting. Whilst Oxiana has taken steps to de-mine areas used directly for its operations the risk of detonation on peripheral areas or farmland used by resettled villagers remains. It is unpredictable what consequences a detonation would cause but local people, workers and environmental safety features such as dams all stand increased risk.

The area is prone to intense monsoon rains which have proved disruptive to the operations of Oxiana. For example in the rainy season of 2002 the mine headquarters were cut off by road for several weeks so the Lao army was called in to supply the camp by boat. Flooding has been a cause of toxic overflows from tailings pits and dam breaches at other mines (eg, Marinduque, The Philippines) located in monsoon areas. Whilst features in the ESIA do take into account the problem of flooding they do not anticipate the increased incidence and acuteness that is likely to occur due to the effects of continuing deforestation, erosion and climate change in the region.

¹³ Don Argus, Chair BHP at BHP AGM, Australia, 13 November 2003.
