

TURNING LAND INTO CAPITAL: Assessing a Decade of Policy in Practice

KEY MESSAGES

- One of the central problems with the TLIC policy is its lack of specificity, largely because it was never written down. As a result, the policy has been interpreted and implemented in diverse ways, making its impacts difficult to assess.
- Shortcomings of the TLIC practice are well recognized by the government and led to the issuance of the Party Resolution on Land and the ongoing revisions of the Land Law.
- The Party Resolution specifically states: “Conversion of land into capital still has no comprehensive legal framework, due to which the government and people have not received as many benefits as they should have”.
- The Resolution also recognizes (but does not specify) collective and customary rights to land and contends that land use rights should only be revoked for public interest activities.
- TLIC needs to be specifically formulated in the Land Law and further clarified in its own legal document, like a Prime Minister Decree. The legislation should also specify different forms of TLIC, with justification for their use and detailed conditions.
- Although the Land Law is already under revision, there are still important changes that can be made to ensure that TLIC is formulated in a way that reduces social and environmental impacts and increases the economic value that it generates to the broadest section of the population possible.



Land for sale along the 450 Year Road © M. Kenney-Lazar

OVERVIEW

The policy of Turning Land Into Capital (TLIC) aimed at monetizing natural resources in order to:

- fund improvements to infrastructure,
- facilitate local economic development,
- decrease state expenditures,
- generate additional government revenues.

However, after ten years of the TLIC policy those aims remain largely unrealized. Analysis of TLIC, in theory and in practice, reveals that it has been implemented and interpreted unevenly. Furthermore, the assessment of its performance and impact on the ground has proven to be complicated given a recurrent lack of available data. Yet TLIC is here to stay, therefore a thorough analysis of TLIC should be undertaken to guide its reform so it can achieve its goals for the benefit of both the state and the Lao people.

TLIC'S TIMELINE

1893 -1953

The French Colonial Rule:

Laos' natural resources were seen as a bounty with which to fuel development, although much of the planned infrastructure was never built.

1975

Founding of the Lao PDR:

At this time, the exploitation of natural resources once again became an engine of national development. It is likely that the model of trading rights for forest extraction in exchange for road construction was established during this period.

1986

The New Economic Mechanism:

The NEM sought to use markets, private incentives and foreign capital to cope with the shortcomings of the socialist model. Concessions became a prominent feature of the NEM. It was in this context that the TLIC policy emerged.

2006

8th Party Congress:

The idea of TLIC policy was formalized. The government continued to use state land as capital while strengthening regulations and central oversight. A year after the Congress, the prime minister issued the first of a series of moratoria on land concessions.

TLIC IN THEORY AND IN PRACTICE

As the TLIC policy was never elaborated in an official document, there is great diversity in understanding and interpretation of it. However, the following four intentions are commonly attributed to TLIC:

- generate broad-based economic value,
- fund government projects,
- privatize and commodify state land,
- retain control over land as a national or public asset.

And these four business models exemplify how TLIC operates in practice:

- trading land for infrastructures,
- land-based financing of infrastructures,
- state land leases and concessions,
- land titling and the creation of land markets.

It is difficult to assess TLIC's scale and impact due to the range of possible TLIC related projects and the unevenness of available data. Hence this briefing note focuses only on two dimensions of TLIC in practice: trading land for infrastructures, and state land leases and concessions.

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Trading land for infrastructures: Land (often with timber rights) is traded for infrastructure development (usually road construction) to reduce the financial burden on the government. However, weak central oversight of local implementation has often led to negative consequences for revenue generation and public debt.

State land leases and concessions: Two land concessions inventories have provided detailed data. The 1st inventory documented the boom during the 2000s and revealed extensive overlap between concession areas and village lands or protected forests. It demonstrated that spatial data is crucial for ensuring effective land governance.

2012

The National Assembly:

Shortly after the issuing of the third moratorium in 2012, the NA announced plans for a comprehensive National Land Policy (NLP) which marked the start of a lengthy process of consultations and drafting. The resulting document was rejected by parliamentarians on two occasions.

2016

Prime Minister Decree 15:

The PM Decree was among the most prominent reforms initiated by the new leadership, and received popular support due to widespread concerns about illegal logging.

2017

The 2017 Party Resolution:

In 2017 the Politburo abruptly abandoned the NLP. Instead it issued a Party Resolution which revealed that TLIC will retain a prominent place in the regulatory landscape, while indicating some frustration with the inability of the NA to reach agreement on the issue.

2018

2018:

Revision of the Land Law is ongoing and provide an opportunity for improving the policy of TLIC.

“Findings reveal that, contrary to the central government’s expectations, most of the projects never undertook any commitment to develop new infrastructure or, if they did, never actually delivered on those commitments. Other anticipated benefits from concessions, such as new employment opportunities or access to markets, have also proven quite limited.”

The 2nd inventory (soon to be released) is updating prior information while generating even more spatial data, and adding a layer of analysis on administrative compliance. The findings emerging from pilot data collected in Luang Prabang and Xiengkhouang indicate that: domestic projects by far surpass foreign or joint venture investments in terms of numbers (89% against 11%), but they tend to be of smaller size. In Luang Prabang they represent 20% of the concession area granted, and only 3% in Xiengkhouang. (See the map on the last page.) It is clear, therefore, that local companies have been able to take advantage of the concession mechanisms.

If the proliferation of smaller concessions is confirmed nation-wide, it will further underscore how timely information collection is crucial to land management.

The 2nd inventory’s analysis of administrative/regulatory compliance reveals that projects are often implemented without going through the formal documentation process. State agencies are often poorly informed about projects granted, with a lack of proper documentation and limited communication between different line agencies, which complicates monitoring. Findings reveal that, contrary to the central government’s expectations, most of the projects never undertook any commitment to develop new infrastructure or, if they did, never actually delivered on those commitments. Other anticipated benefits from concessions, such as new employment opportunities or access to markets, have also proven quite limited.



Road construction underway in Xieng Khouang © A. Bartlett

RESPONSE FROM THE GOVERNMENT

Over the years, the central government has intervened on several occasions and tried to keep land concessions under control without frightening investors (e.g. moratoria in 2007, 2009 and in 2012). The first moratorium led to the first concession inventory which revealed the weakness of land information systems at provincial and districts levels, thus highlighting the need to institutionalize data collection. The preliminary findings of the second inventory, as noted previously, also have the potential to contribute to policy reforms. Despite the challenges, the government remains committed to TLIC, and while there are currently no plans to articulate in writing a specific policy on TLIC, the government has undertaken several initiatives to address shortcomings associated with land-use related issues.

From National Land Policy (NLP)... The NLP was formulated in response to the unprecedented land conflicts Laos was experiencing. It was intended to be a form of policy guidance for the Land Law that was simultaneously undergoing revision. The NLP development process was relatively open, and both the public and development partners provided input and recommendations to the draft prepared by the Ministry of Natural Resources and Environment (MONRE).

“Regarding TLIC, the Party Resolution specifically states: Conversion of land into capital still has no comprehensive legal framework, due to which the government and people have not received as many benefits as they should have.”

However, the process included many other steps, from inter-ministerial committees to the Prime Minister’s office and finally to the Politburo. This led to the removal of progressive elements, and the rejection of the document on two occasions by parliamentarians.

...To a Party Resolution: In 2017, the Politburo abruptly decided to abandon the NLP. Instead, the Party Central Committee issued a Resolution that was interpreted differently by various observers as either a neutral political move to restart the reform process, or as a way for the government to impose its views.



Trees have been cleared for a rubber plantation in Sekong © A. Bartlett

“The Party Resolution also recognizes customary land use rights and it specifies that land use rights can only be revoked for public interest projects. What this means in practice is not completely clear, and it must be noted that the term “communal land” has been replaced by “collective land” which could lead to misinterpretation.”

While the Resolution’s content is quite general, it includes some progressive points, similar to those removed in earlier rounds of NLP deliberations. Regarding TLIC, it specifically states: “conversion of land into capital still has no comprehensive legal framework, due to which the government and people have not received as many benefits as they should have”. It states that land is owned by the national community and should be managed in a centralized and consistent manner across the country. The Resolution also recognizes customary land use rights and it specifies that land use rights can only be revoked for public interest projects.

What this means in practice is not completely clear, and it must be noted that the term “communal land” has been replaced by “collective land” which could lead to misinterpretation.

...And a Revised Land Law: It is expected that the new version of the law will address the issue of TLIC and will contain specific provisions on concessions. The government apparently wishes to reduce both the scale and duration of concessions, and intends to better regulate them. Notwithstanding PM Decree 84 on Compensation, there also remains a desire to reform compensation processes related to private and public investments, developing an approach based on the principles of improving the livelihoods of those impacted. Up to now, the Land Law revision process has not been opened to external inputs.

RECOMMENDATIONS

The following recommendations have been formulated by the authors and are open for discussion.

To the Government: The Reform of TLIC

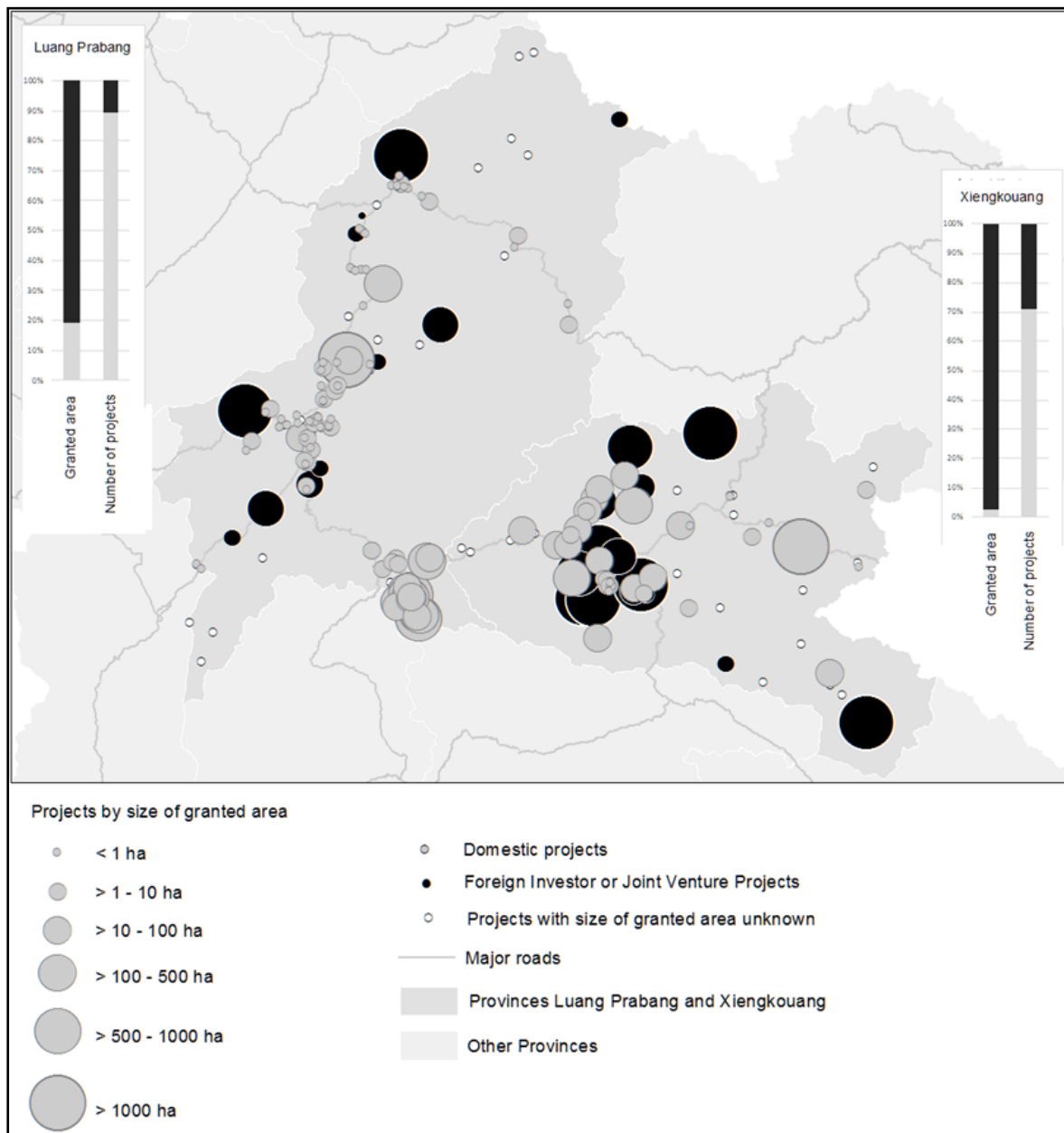
- **Reflect on the value of TLIC and its alternatives:** The TLIC policy is here to stay because it generates financial capital from what is seen as Laos' comparative advantage, namely land. However, available land is becoming increasingly scarce and thus more valuable, therefore requiring improved appraisal of land. The question of who benefits from the commodification of land also needs to be addressed. If greater emphasis were placed on local people generating economic value from their land, then the distribution of benefits and impacts might be more favorable for Lao people.
- **Clarify TLIC's meaning** for better implementation in order to ensure it benefits all Lao people, rather than favoring the state and private investors.
- **Clarify TLIC's implementation:** TLIC needs to be specifically elaborated in the Land law and further clarified in its own legal document, like a Prime Minister Decree. The legislation should also specify the different forms of TLIC, with justification for their use and detailed conditions.

To CSOs and Development Partners: Policy engagement and advocacy

- **Engage in broad-based advocacy:** There are important lessons learned from the experience of civil society working on the NLP where we have seen initial recommendations from development partners continuing to appear in subsequent documents. This suggests that advocacy should not only aim at shaping specific **policy tools** but can also be seen as a broader contribution to the development of **policy ideas** within government and Lao society.
- **Get involved in transparency efforts:** If poor implementation was a common criticism of TLIC, this was due in part to a lack of transparency. The government now appears to be committed to greater transparency (e.g. by conducting a second inventory) and it is important that INGOs, civil society organizations, and other development partners continue to seize this opening.
- **Develop a policy stance towards re-investment:** After ten years, the question of re-investment and management of existing project is on the table. The way a project is managed defines its impact on the communities, the environment and the nation at large and should therefore be measured.
- **Strengthen regulation:** There is a need to strengthen and empower institutions that have a coordination and regulatory role, from the central down to the local level.
- **Continue efforts to enhance land tenure security:** Currently, TLIC is effectively a subsidy to big business. Small holders need greater support through policy and regulation, and there is a strong case for village land tenure.

This briefing note is based on the January 2018 full report "Turning Land into Capital: Assessing a Decade of Policy in Practice" by M. Kenney-Lazar, M. Dwyer and C. Hett and commissioned by the Land Information Working Group.

The full report is available at <http://www.laolandinfo.org/>



Locations of concession project in Luang Prabang and Xieng Khuang provinces, shown by size of area granted. Source: adapted from Hett et al. (2015)

ABOUT THE LAND INFORMATION WORKING GROUP

The Land Information Working Group (LIWG) is a civil society network that was set up in 2007. The LIWG consists mostly of international and local civil society organization staff and other individuals working on land issues in Lao PDR. The group has over 80 Core Members representing nearly 40 organizations, and over 180 individual Supporting Members. The LIWG activities are implemented through the LIWG Secretariat which is overseen by the Committee, elected from among the member organizations.

The group was established so that its members could inform one another about land matters, especially in view of increasing land related foreign direct investment (FDI) projects and concerns over the negative impacts on the livelihoods of rural communities, as well as to develop common initiatives to address some of these issues. The LIWG does this by cooperating with a wide variety of stakeholders: civil society, the government, development partners, private sector, and, importantly, the communities themselves. For more information contact: info@laolandinfo.org



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