



# SAFEGUARDS IN CASES OF LAND LOSS OR EXPROPRIATION

## BRIEFING NOTE

DECEMBER 2021

### ISSUES

*Photo: Construction work inside the Boten Special Economic Zone, Luang Namtha province (Photo by LIWG)*

The new Land Law of 2019 has brought forward some distinctive policy improvements about expropriation and compensation (Art.147-154); a major step towards safeguarding people's land rights is the obligation to pay compensation prior to the act of expropriation. Further, the State's power to exercise expropriation is limited to public purpose or state development projects. While this may require further clarification about the extent of what is to be interpreted as "State investment", it does implicitly exclude expropriation for private investments.

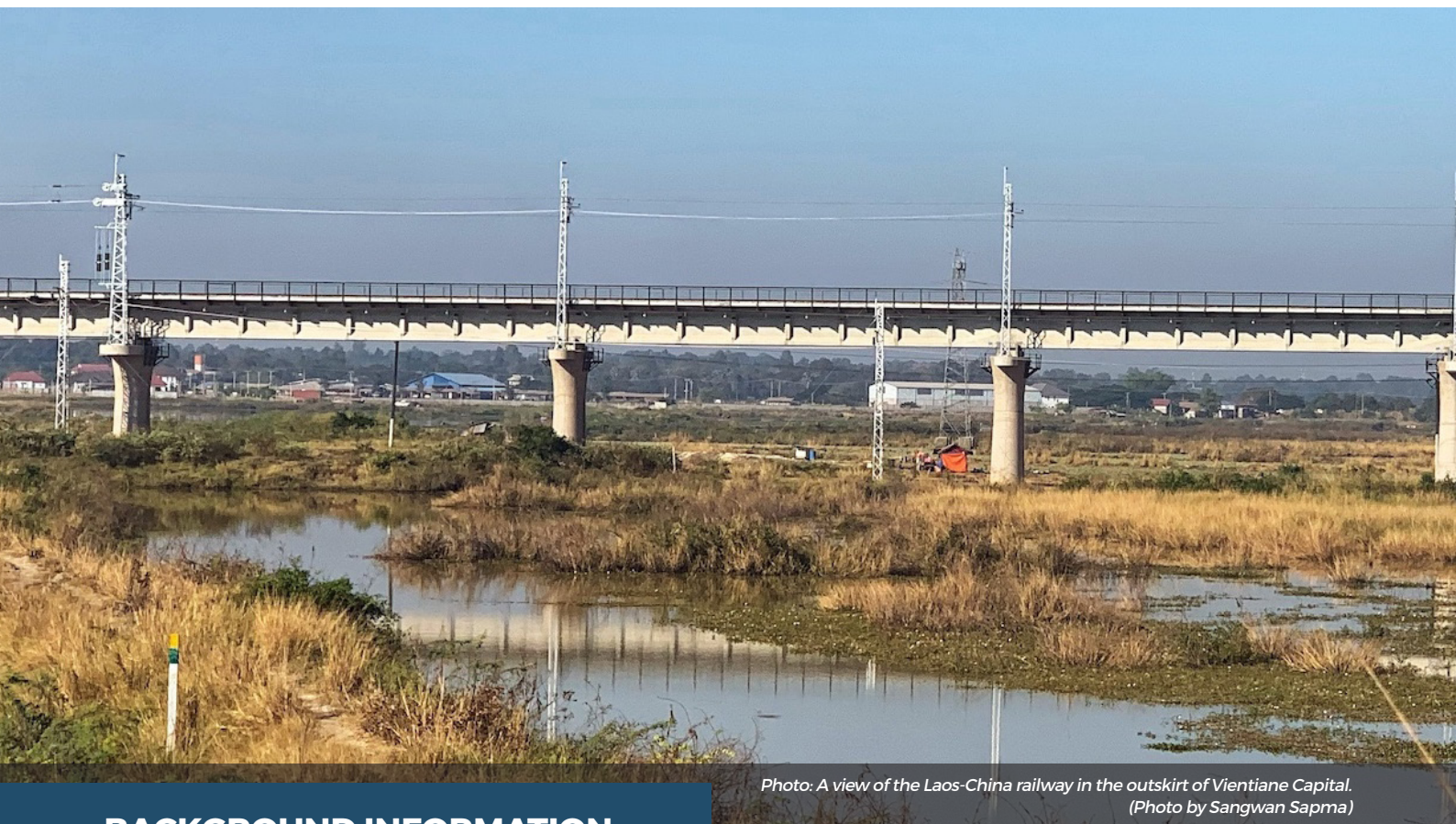
As the last example shows, the few provisions in the Land Law on the subject may lead to **misinterpretation and inconsistency and are, therefore, in need of clarification**. This includes clarification about the current **lack of required participation by the land-owners who are affected** in cases where decisions about expropriation are made. Coupled with the lack of required transparency about how the decisions were taken, there is no requirement for the State to provide a comparison of alternatives to the project, which could result in a reduced need to expropriate altogether. Generally, there is a **lack of data transparency and access to information** by the public.

This adds to the overall difficulty for people in challenging decisions taken on expropriation and compensation, which can be costly if cases are escalated to higher levels of the justice system – district, province or central level courts. A **lack of knowledge and awareness**, especially among the rural population, as well as **limited access to legal support**, provide further barriers to a fair protection of people's rights to their land and related livelihoods.

While the Land Law refers to the acquisition of customary land rights (Art. 127 and 130), it is **unclear how customary land rights status would be treated in cases of expropriation and compensation**. Procedures for **expropriation and compensation for land under collective use are omitted entirely** from the current legislation and require respective sub-legislation.

While the country is in a rapid process of infrastructural development and growth, these policies require the utmost attention to maintain secure and sustainable livelihoods for the people affected and a stable environment for development and investment. Avoiding conflicts and grievances through transparent and clear procedures that are easy to understand and follow would greatly reduce the high transaction costs in time, effort and resources.





*Photo: A view of the Laos-China railway in the outskirts of Vientiane Capital.  
(Photo by Sangwan Sapma)*

## BACKGROUND INFORMATION

“Security of tenure is the certainty that a person’s rights to land will be recognized by others and protected in case of specific challenges” (FAO, 2005). The second part of this definition signifies the importance of safeguards for land rights holders in cases of land loss or of expropriation, as well as appropriate compensation when this happens. Tenure security is more than just a recognized right or the possession of a certificate or title. It also involves the processes through which challenges to these rights are handled in policy and practice.

The policy framework around land investments has been continuously adapted and improved in Lao PDR to cater for the increase in domestic and foreign investment interests, which support the economic development of the country and its people. For example, Instruction 0457 on Investment Approval and Land Management Mechanisms for Land Leases or Concessions of the Ministry of Planning and Investment (MPI) provides requirements for investors to conduct land surveys and mapping, and to develop a written agreement with the land rights holders, based on consent in respect of the proposed project and land deals. The Land Law lacks such requirements for public purpose and State investments, which

presents the same possible risks for the land rights holders who are affected as private investment projects.

While Decree 84 on Compensation and Resettlement of the Ministry of Natural Resources and Environment (MoNRE) from 2016, and the later Law on Resettlement and Vocation from 2018 – which are commonly referred to in cases of expropriation and compensation – stipulate provisions for adequate and fair compensation, they also fail to provide safeguards in respect of the actual expropriation, as well as the appropriate provision of grievance mechanisms for the land rights holders who are affected.

There is further the insufficient provisions that require equal treatment for land holders with formal Land Titles and for those who have other documentation or no documents at all to prove their rights to the land. While Art. 130 of the new Land Law provides for the recognition of customary land without documents, the recognition of this in cases of expropriation is often left to the discretion of government officials, with no accountability to an independent decision-making process. Local government, in particular, is charged with an enormous amount of decision-making responsibility, with the consequent risk of inconsistent and unintentional outcomes.





Photo: Villagers participating to the "River of Life" activity to identify community changes, organized by youth volunteers from LIFE project in Namor district, Oudomxay province (Photo by LIWG)

## RECOMMENDATIONS

To help to reduce the risk of conflicts and grievances, the following recommendations are made to improve policy on expropriation and compensation processes:

- 1.** Develop a decree on expropriation and compensation. This could be done by revising and expanding Decree 84, improving provisions relating to compensation and adding provisions for expropriation:
  - a. Expand on the currently few provisions on expropriation and define a mandatory step-by-step process with respective time periods, including preliminary notification, community consultation, negotiated agreement, final notice and then the recording of the requisition in the land register.
  - b. Include provisions for safeguards and grievance mechanisms for land rights holders who are affected prior, during and after expropriation takes place.
  - c. Include the requirement for people's participation in expropriation decisions, if applicable, in line with the requirements of the Decree on Environmental Impact Assessment (2019).
  - d. Include provisions on the expropriation of, and compensation for State land for collective purposes.
  - e. Include provisions requiring compensation at market prices, independent of the land rights status of the land rights holder who is affected. In addition, land rights holders should have the right to appeal against the compensation value that has been determined.
  - f. Align with legislation from other sectors, especially regarding environmental impact assessments, resettlement and vocation, and investments, leases and concessions.
- 2.** Revise and improve instructions and guidelines on land management processes (Land Use Planning, Village Forest Management Planning, and so on) to enhance and ensure access to data and information.
- 3.** Improve inter-government data and information-sharing mechanisms to avoid confusion and to enable better consistency, efficiency and accountability.
- 4.** Develop practical and technical mechanisms and procedures to enable public access to land related databases, such as Lao LandReg, Land Use Information System (LUIS), or the Land Lease and Concession Information System (LLCIS).
- 5.** Provide means to raise awareness among the public on all aspects and processes regarding expropriation and compensation, the rights of landholders, access to information and, in cases of disputes, people's access to grievance mechanisms and legal support.



This Briefing Note was commissioned by the Land Information Working Group (LIWG) and jointly developed through the Land Law Advisory Group, including independent consultants and the following projects and organizations: the Food and Agriculture Organization of the United Nations (FAO), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the Mekong Region Land Governance project (MRLG), the Center for People and Forests (RECOFTC), the Wildlife Conservation Society (WCS) and the World Wildlife Fund (WWF).

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**Full Citation:** Derbidge, J. (2021). Safeguards in cases of land loss or expropriation, Briefing Note #5. Vientiane: LIWG.



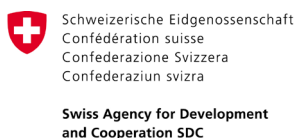
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