

Two views on the rubber boom in Laos

Much coveted investment or unwelcome land grabbing?

Foreign direct investments in land can bring economic growth, but they may also have negative impacts on the income and food security of the local population. Using rubber production in Laos as an example, the article illustrates how concessions and contract farming affect the local population and how their situation could be improved.

For many decades, the advocates of neoliberalism have viewed foreign direct investment (FDI) as a cure-all for the economic growth of developing countries. Their argument: FDI fills the gap between domestically available savings, foreign exchange, government revenue, entrepreneurship, technology, knowledge and skills and the desired level of these resources needed to achieve development goals. The critics on the other hand emphasise the adverse effects of FDI, which have likewise been known for many decades: hardly any of the gaps are filled and instead dualistic economic structures are frequently reinforced, while multinational companies suppress rather than promote national entrepreneurship. There are frequently negative consequences for the poorer segments of the population in particular. Against this background, a special form of FDI has recently been attracting much interest. These investments involve

private investors as well as government stakeholders from industrialised and newly industrialising countries, who are using long-term lease and purchas-

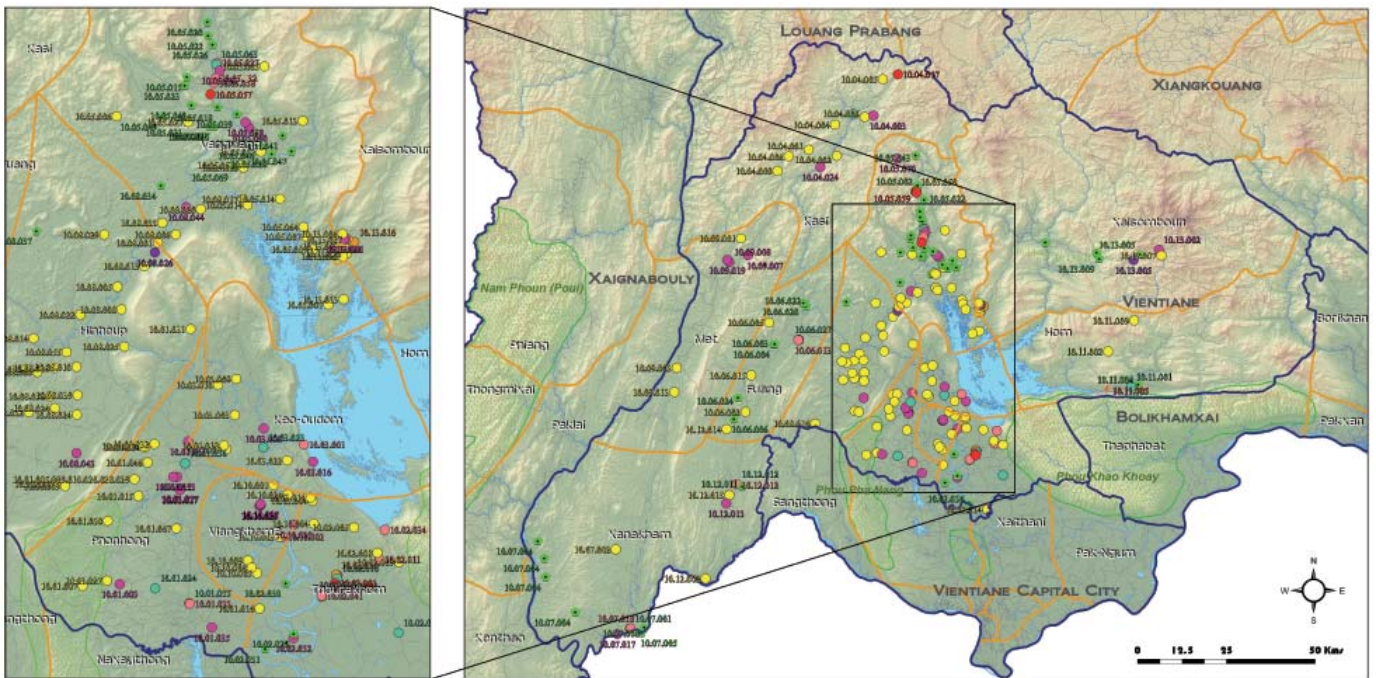
ing contracts to secure large tracts of cropland in developing countries on which to produce food, energy plants and renewable raw materials for export

*In Laos land belongs to the state.
Hence concessions can be granted by
the local or federal government.*

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Photo: IaiF



Inventorising and mapping concessions in Vientiane Province

(see also Rural 21, issue 4/09, p. 34). From the point of view of the small farmers, who frequently lose access to their traditional farmlands through these land transactions, this is popularly referred to as “land grabbing”. According to formal law and also from the point of view of the investors and the governments involved, however, the procedure is often perfectly legal.

According to the laws in effect, the land in question is often government property, which the state manages and has the right to contract out in the form of lease arrangements and concessions. Officially, as a general rule unused or underused land is leased. In reality, however, this land is nearly always used by the local resident population. The problem thus lies not so much with the lease and concession agreements underlying the land transactions, but with the fact that the traditional, legitimate use rights of the small farmers are not recognised by law and are therefore, from a purely legal standpoint, illegal and hence unsecured. The following example from Laos illustrates this problematic situation.

Sectors

- Agriculture
- Agro industry
- Industry
- Mining
- Tourism
- Commerce
- Construction
- Hydro power
- Service

Geography

- Roads
- Water
- Districts
- Provinces
- Protected Areas
- Vientiane Province

Source: Lao-German Land Policy Development Project (LPDP/GTZ)

■ Rubber concessions in Laos: Local communities at a disadvantage

Among other things, foreign investors are interested in rubber production in Laos. Concessions for rubber production, however, are usually arranged between the district, provincial, or federal government and the foreign investor, and the local population is excluded. This is legally justified by the fact that the land is government property. Nevertheless the procedure lacks legitimacy, because the rural population lives on this land, earns its livelihood through diverse, primarily agricultural activities, and has acquired traditional use rights to the land. However, there are no cadastres or land registers in which their rights are established.

The farmers who use their land on a permanent basis have only a property tax statement with information on their tract, and on this basis they receive a small compensation. A large percentage of the Laotian rural population, however, still earns its living from rotation agriculture. For this type of production, property tax is assessed on the yield or the number of workers. The farmers thus do not receive any property tax statement with information on the tract of land, but merely a receipt from an ordinary receipt book. With this they have no claim whatever to compensation. Their land is considered government land. The temporary land-use certificates for rotation farmers issued in 1996 in the wake of the land distribution, which after three years of permanent use of the land were to be replaced with legally recognised land titles, likewise do not constitute any grounds for compensation payments. Because of budget deficits, as yet none of these temporary certificates have been converted to permanent land-use titles.



Photo: B. Wehrmann

Rubber production in northern Laos is to the detriment of virgin forest and food production.

While the conclusion of contracts between investors and the government is legal, at least according to formal law, illegal practices are indeed involved. For example, in Vientiane Province several concessions are in protected areas, some concessions are substantially larger than contractually agreed upon, and district and provincial administrations have granted concessions that were larger than the allowable size of three and 100 hectare allotments. In many cases (89 out of 237 in Vientiane Province) written concession agreements are lacking, allowing the blatant circumvention of statutory provisions. The number of cases of corruption is very high (National Land Management Authority 2009).

■ Initial corrective efforts

On 30 May 2007, Prime Minister Bouasone Bouphavanh declared a temporary moratorium on government concessions over 100 hectares. However, this matches neither the national socio-economic development plan nor the 2020 forestry strategy of the Ministry of Forestry, which view tree plantations as a means for generating income. Also in opposition to the moratorium are the goals of certain provinces, such as the northern prov-

ince of Luang Namtha on the border to China. Such provinces have identified rubber production as a priority for reducing poverty. And lastly, there is the increasing demand for rubber in China, where rubber production is being subsidised as an alternative to opium production.

The lack of a systematic overview detailing the location, size, boundaries, etc. of the concessions and the lease tracts makes regulating the granting of concessions difficult. With support from the Lao-German Land Policy Development Project (LPDP/GTZ), in October of 2008 the Land and Natural Resources Research and Information Center of the National Land Management Authority began a nationwide inventory and survey of all concession and lease tracts (see map on page 35).

However, it remains necessary to ensure the security of the current use rights of the local population and their inclusion in the apportionment of concession tracts. A first step to this end was taken in July of 2009, when the LPDP/GTZ Project was given the authorisation to extend the power to grant land titles to rural regions as well. Formerly this had only been possible in the centres of new provincial capitals. At least in Luang Namtha and Saya-

bouri Provinces, formal legal recognition of the land-use rights of the local population can now begin.

■ Alternative contract farming: Are the small farmers getting their fair share?

Based on previous experiences, for some time the Laotian government has been promoting contract farming. This is known as the "3+2 policy". Accordingly, foreign investors cooperate with the local population by contributing three inputs – capital, technology/know-how, and marketing, whereas the farmers contribute their labour and their land. After deduction of investment costs, 70 percent of the profits go to the small farmers, and the large-scale investor receives the remaining 30 percent.

Although the 3+2 policy represents an improvement for the small farmers, it also entails substantial risks:

- With very rare exceptions, the Laotian rubber farmers do not have a contract with the foreign rubber company. In Nongkham, Bokeo Province, the Chinese investor merely provided the head of the village with its business terms and conditions. In this case at least they were written in Laotian; other villages have only papers in Chinese, which no one in the village can read.
- The Laotian farmers assume a considerable financial risk. It takes seven years for rubber trees to produce the first harvest. Until then labour and capital must be invested. However, nowhere is it established exactly what the capital, technology and

advisory inputs of the investors comprise, nor how much will ultimately be charged for them.

- The 30:70 profit sharing arrangements between Laotian authorities and Chinese companies are in practice frequently skewed in the investor's favour. Furthermore, the sum that the investor pays the small farmers for their percentage is based on the local market price at harvest time. In view of the rapid regional increase in rubber production, this price may fall far below the world commodity price in effect at the time.
- The small farmers have no legal security as far as property is concerned. They do not receive any document guaranteeing them ownership rights. The official justification for this is that they are thus exempt from having to pay property tax. But who guarantees them that the rubber plantations will always remain in their possession?

A study on the rubber boom in Luang Namtha Province (Shi 2008) revealed that all of the Chinese companies engaged in business activity there follow a 4+1 policy, according to which the local farmers only contribute the land. The farmers are paid a maximum of five years for their labour. The Chinese investors frequently employ cheap day labourers instead. After at most five years, the rubber plantation is then divided: the Chinese investor takes 70 percent and 30 percent is left over for the farmers – without any additional production or marketing support.

■ Who benefits?

In 2007 there were 28,700 hectare in rubber production in Laos. In that same year, contracts were concluded with seven Chinese companies for an additional 21,000 hectare in Bokeo Province alone. A large percentage of

the yield is processed in China. However, an increasing amount of processing, at least the preliminary stages, is now taking place in Laos. In addition, the Chinese built two rubber factories in Luang Prabang – last but not least because of the less strict environmental regulations and the lower wages. The Vietnamese are planning to build two more plants in Savannaketh in southern Laos. Rubber production generates income for the Laotian state in the form of lease fees and taxes, albeit not as much as possible. For the rural population, it brings roads and thus better access to markets, but frequently costs them their land and thus their livelihood, and causes damage to the environment. Some small farmers have invested in rubber production independently and are operating at their own expense. How well they will be able to fare against the competition remains to be seen. In the village of Hath-yao, the farmers have formed a co-op and are building their own rubber factory with second-hand machinery from China, in order to take advantage of the higher prices for processed rubber compared with the pure raw commodity prices.

■ What needs to be done?

Regardless of its form, FDI can turn into development-inhibiting land grabbing. To prevent this from happening and to promote the income and food security of the local population instead, a fair distribution of profits along with extensive transparency must be assured. To this end, the local population must have an effective voice in planning, drafting of contracts, and implementation of investment measures. In the case of contract agriculture, this includes the conclusion of easy-to-understand, fair and unambiguous contracts between the small farmers and investors. In the case of concessions, socially equitable and environmentally sustainable lease contracts are required, in which, along

with the rights, the duties of the investors (inclusion of the local population, lease fees, taxes, environmental protection measures, etc.) are also clearly specified. Both forms of FDI should be monitored by government and civil society. Furthermore, affordable legal counselling and representation should be available to the population. A very decisive first step that still needs to be taken, however, is the recognition of the land-use rights of the local population according to formal law. Once legally established, these rights also need to be permanently secured.

A list of references can be obtained from the author.

Zusammenfassung

Ausländische Direktinvestitionen (ADI) in Land können Wirtschaftswachstum bringen, aber auch die Einkommens- und Ernährungssicherung der lokalen Bevölkerung beeinträchtigen. Am Beispiel des Kautschukanbaus in Laos wird dargestellt, wie sowohl Konzessionen als auch Vertragsanbau zu *land grabbing* durch ausländische Investoren führen können. Die Sicherung der traditionellen Landrechte der Bauern, die Inventarisierung der Konzessionen und die Beteiligung der lokalen Bevölkerung an der Abgrenzung neuer Konzessionen sind Voraussetzung, um mit ADI positive Entwicklungsimpulse zu erzielen.

Resumen

Las inversiones extranjeras directas (IED) pueden traer consigo un crecimiento económico para el país, pero también pueden afectar negativamente la seguridad alimentaria y de ingresos de la población local. El ejemplo de las plantaciones de caucho en Laos sirve para ilustrar que tanto las concesiones como los cultivos por contrato pueden llevar a la expropiación de tierras por parte de inversores extranjeros. A fin de asegurar que las IED aporten impulsos de desarrollo positivos, es indispensable garantizar los derechos de propiedad tradicionales de los campesinos, inventariar las concesiones existentes y buscar la participación de la población local en la delimitación de nuevas concesiones.