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Mind the Gap

Grounding Development Finance and Safeguards through Land Compensation on the Laos-China Belt and Road Corridor

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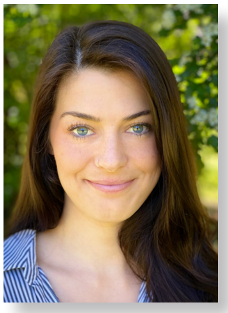

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ABSTRACT

China's vast construction of infrastructure around the world involves not only promises of transnational cooperation, connectivity, and national development, but also local dispossession. Construction requires large tracts of land, often leading to the displacement of local people. In Laos, investments since the early-2000s have entailed land loss and questionable safeguard practices. Despite pressure on Chinese policy banks and through the BRI to strengthen regulations for infrastructure construction, the influx of BRI megaprojects in Laos has exacerbated ongoing social and environmental issues. Using Laos-China Railway land compensation as a case, this working paper presents a grounded and multi-scalar analysis of Chinese development finance and environmental and social safeguards. Through policy analysis, ethnographic, and qualitative methods, I examine regulatory frameworks related to displacement and land compensation for the railway—first, in the context of broader changes across Chinese development finance, second, in terms of how villagers experience implementation on the ground, and finally, how domestic regulations evolved through the project's development cycle. As existing projects are subsumed within the BRI this paper asks: Have safeguards improved as BRI development finance was introduced? Which host regulations were in place when project agreements were signed and how have they been updated throughout the project's development? Focusing on one project underscores the need to dissect how policy bank safeguards compare and interact with domestic policies and local implementation. This case points to the challenges of continued reliance on host country standards in contrast to pressures to improve safeguards domestically and with international development finance. I highlight how these challenges are exacerbated by high-profile projects and argue that more fine-grained, project-based analysis of how safeguards are used begins to answer questions of whether pressures to improve Chinese development finance translate to the ground.

Image 1. Construction of Laos-China Railway pylons and tracks above a village in Oudomxay province, Laos (DiCarlo 2019).

KEYWORDS development finance, safeguards, land compensation, displacement, law, railway, infrastructure, China, Laos

ACRONYMS

ABD	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
ASEAN	Association for Southeast Asian Nations
BRI	Belt and Road Initiative
CBRC	China Banking Regulatory Commission
CDB	China Development Bank
EIA	Environmental Impact Assessment
ESS	Environmental and Social Safeguards
ESIA	Environmental and Social Impact Assessment
CHEXIM	China Export Import Bank
FDI	Foreign Direct Investment
IMF	International Monetary Fund
LCR	Laos-China Railway
MAF	Ministry of Agriculture and Forestry, Laos PDR
MDB	Multilateral Development Bank
MOFCOM	Ministry of Commerce, PR China
MoNRE	Ministry of Natural Resources and Environment, Laos PDR
MoU	Memorandum of Understanding
MPI	Ministry of Planning and Investment, Laos PDR
MPWT	Ministry of Public Works and Transport, Laos PDR
NDRC	National Development and Reform Commission of the People's Republic of China
PAFO	Provincial Agriculture and Forestry Office, Laos PDR
ToR	Terms of Reference
UNDP	United National Development Programme
WB	The World Bank

I. Introduction

拆 (pinyin: chāi): to demolish, dismantle or tear down

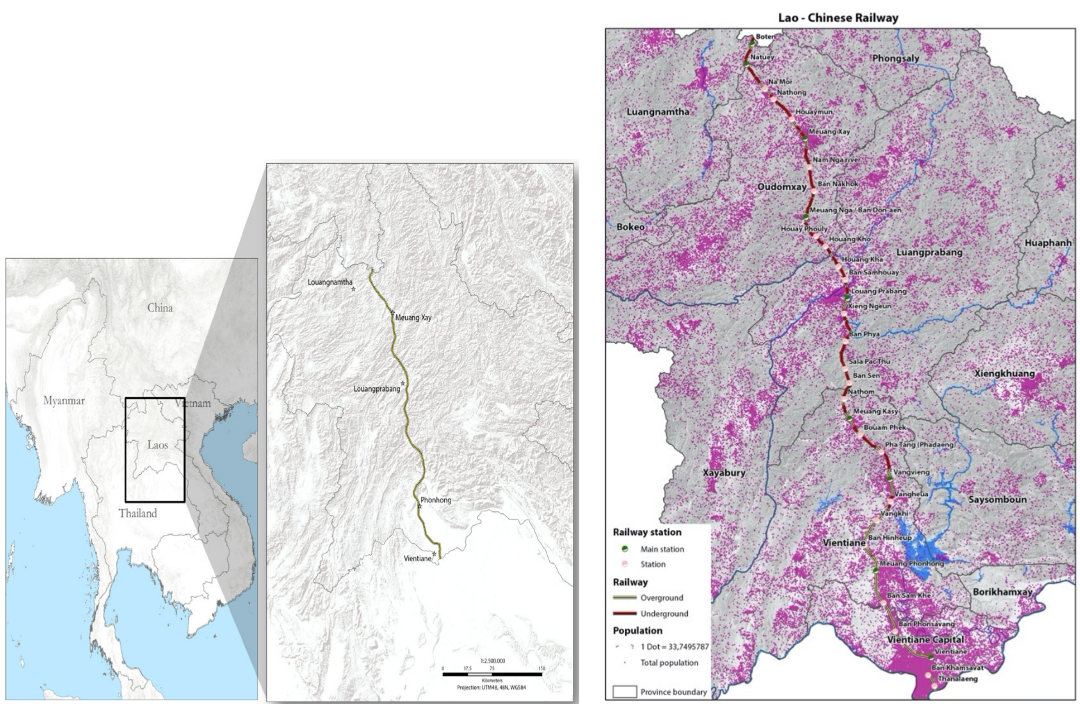
Driving on the winding mountain roads through Oudomxay province, my colleague Phetsavanh[1] points out the increasing frequency of a large red symbol spray-painted on passing homes. I instinctively accept its presence, knowing that railway construction would soon cross directly through a number of these villages. Phet's question reminds me that my past years in China—where 拆 (pinyin: chāi) is spray-painted on buildings and infrastructures marked for removal—makes it easy to overlook in Laos. We decide to stop and ask about the looming demolitions. The woman who lives in the building in Image 2, which doubles as a roadside shop, invites us in from the hot afternoon sun. She confirms that like so many of the other houses along the road hers was marked by construction

Image 2. A home and small, roadside shop in Oudomxay province marked by construction workers for demolition with the character 拆 (pinyin: chāi): to demolish, dismantle or tear down (DiCarlo 2019).

[1] All names in this article were changed for anonymity.

Image 3. Railway pylons in Oudomxay province (DiCarlo 2019).

workers for removal to make way for the Laos-China Railway (LCR). Running from the border with Yunnan, China south through northern Laos to Thailand, the LCR crosses 167 villages and 13 districts through some of the country's most populated, biodiverse, and resource rich regions (Maps 1 and 2). According to the Lao Ministry of Public Works and Transport, it will impact over 3,800 hectares of land (800 ha temporarily and 3,000 ha permanently) and at least 4,411 families on the 414-kilometer route. Additional land beyond the track is used for access roads, worker housing, stations, and nearby development zones. In addition, the LCR Concession Agreement designates no less than 1,000 hectares for station development zones in Muang Xai and Vientiane and 500 hectares in



Map 1. (Right) Southeast Asia and the Laos-China Railway route through northern Laos.

Map 2. (Left) The LCR route mapped over population density.

Luang Prabang and Vang Vieng, four of the largest stations. As of September 2020, after little more than 3.5 years of construction, the LCR is over 90% complete and will begin operation in 2022.

At other marked houses and the numerous interviews that followed, villagers identify land compensation and valuation processes as their primary LCR concerns, citing dusty roads, business competition, and minor conflicts as secondary and tertiary issues during construction. Further up the road, we arrive in a village where railway pylons tower over agricultural land on the east side of the community. Even though construction is well-underway, and a large labor camp built just beyond the hill, no one has been compensated for lost land. As a result, one resident explains, "every single month we have a meeting at the village office between the rail company, the *Nai Ban* [village chief or leader], and affected villagers to negotiate and ask for the compensation. They've done this for two years and still nothing." Like most people we meet in surrounding villages, the shop owner does not know when to expect demolition, nor compensation for lost property. She plans to move in with nearby family whenever it happens, and that the railway "may help Laos finally develop."

While the character 拆 is only recently recognizable in the Lao context, its meaning and the politics and bureaucratic processes surrounding land are all too familiar. Land use, ownership, and rights are a contested terrain globally (Wolford et al. 2013) and are some of the most contentious issues in Laos (Ingalls et al. 2018), where social development and community improvement are often promised in exchange for land. The state's granting of land for investment began in 1992. In 2004, the government began to more actively attract foreign investment under the slogan "turning land into capital" with the goal of capturing development benefits through hundreds of land leases and concessions to foreign actors (Dwyer 2007). Simultaneously, China's 'Going Out' campaign in 2000 incentivized investment abroad. By law, land in Laos is under the ownership of the national community, and managed and allocated by the government (GoL 2003b; GoL 2019). This socialist version of eminent domain leads to ambiguous and overlapping land management practices and competing claims. Yet, the concept of state land is often invoked to acquire land often for foreign-led projects. In the country of 7 million people many land deals are located in the most populated and accessible areas. It is, thus, common for citizens to be dispossessed of agricultural and residential land (and thus for many farmers, their livelihoods) in the name of development. The social and environmental implications of land deals and land grabs in Laos are well-documented (Vandergeest 2003; Baird 2011; Kenney-Lazar 2011; Dwyer 2013; Dwyer and Vongvisouk 2019).

Today, land concessions are dominated by investors from China, Vietnam, and Thailand, in decreasing order of total investment and China remains the largest overall investor. Many existing projects have been subsumed under the banner of the Belt and Road Initiative (BRI), including the LCR.[2] Laos' first railway[3] is portrayed as the first international step to connect Beijing with Singapore, and a vital section of the Pan-Asia Railway because other lines through Vietnam and Myanmar were put on hold and faced stronger push-back to environmental and social risks from Chinese-backed projects. It is primarily financed by the China Export Import Bank (CHEXIM) and like many BRI infrastructures Chinese development finance plays a central role in project implementation. The BRI underscores China's growing role in foreign policy, development, and finance through large-scale infrastructures—roads, power plants, ports, bridges, and railways—yet few grounded analyses have emerged,[4] especially those in conversation with transnational finance and safeguards.

[2] Other projects in Laos include, for example, the Pakbeng-Ngeun Bridge (construction began in 2012), Houay Lamphan Gnai Hydropower Station (construction began in 2010) and Boten Special Economic Zone (agreements in 2012 and reconstruction began in 2015).

[3] The LCR is the first railway to run *through* the country. There are however 3.5 kilometers of track that—after crossing the Friendship Bridge between Nong Khai, Thailand and Vientiane Capital, Laos—run to Thanaleng Station in Ban DongPhosy.

[4] For a noteworthy exception see the 2020 special issue of *Political Geography* "China's Belt and Road Initiative: Views from the Ground" (G. Oliveira, G. Murton, A. Rippa, T. Harlan, and Y. Yang, convenors).

This paper presents a multi-scalar analysis of safeguards and regulatory frameworks related to displacement and land compensation for the LCR—first, in the context of broader shifts in Chinese development finance, second, in terms of how villagers experience implementation on the ground, and, finally, how domestic regulations evolved through the project's long development cycle. Across the long lifecycle of the project, land compensation has been a sticking point despite similar scenarios over the past two decades in Laos. While popular LCR discourse centers on land loss, debt, and displacement, the legal and regulatory geographies surrounding these issues receive less attention. This is odd given a push across multilateral institutions, international organizations, and within development finance to strengthen regulations for overseas investments, as well as specific pressures on Chinese development finance to improve safeguards in light of the Belt and Road Initiative (BRI). However, as existing projects are subsumed within the BRI (Oliveira et al. 2020),[5] the question arises of whether safeguards improved when BRI development finance was introduced. In the case of the LCR, which relies on host country regulations, it also begs the question: which regulations were in place when project agreements were signed and how have they been updated throughout the project's development? I find that although Lao law evolved, implementation remains poor and uneven. A more fine-grained, project-based analysis of what and how safeguards are used answers questions of whether pressures to improve Chinese development finance translate to the ground. My analysis of a flagship BRI project points to the challenges of continued reliance on host country standards in contrast to pressures to improve safeguards domestically and with international development finance. It adds to global evidence on how deferential financing does not work and is exacerbated by high-profile, priority projects.

Methodology and roadmap

This research is based on 15 months of ethnographic fieldwork and interviews with government officials at the central, provincial and district levels, households impacted by construction, lawyers and legal experts, land policy specialists, as well as focus groups and interviews with village leaders and affected households. Data cuts across scales to highlight the often-missed connections between land issues on the ground, state policy, and international safeguards. Because the LCR is a politically sensitive project, I conducted formal and informal interviews. This was especially helpful in village settings, where I often spoke with people on walks, in their homes, or on their agricultural land, which allowed them to point to the material impacts of railway construction. This approach does not account for every household's experience of compensation but does capture consistency across respondents. I complement qualitative data with reviews of relevant policy, legal, and project documents, development bank standards, and new articles.

This paper proceeds in four parts. Section II summarizes key railway land issues through tensions between narratives of satisfaction with and failure of compensation. Section III zooms out to compare Multilateral Development Bank (MDB) and Chinese policy bank environmental and social safeguards (ESS) in the context of China's increasing centrality in global development finance. The following section presents villager experiences of compensation, in light of bank safeguards. Because the railway project employs host country regulations, Section V reviews Lao legal frameworks related to the railway, land, and compensation to trace the evolution of domestic regulations through the lifespan of the railway project, and probe which were used for land compensation. This paper thus tacks between high-level safeguards, Lao law and policy, and local experiences of their efficacy to conclude with reflections and recommendations for both Lao and Chinese safeguard and development finance policy.

[5] Dwyer (2020), for example, also studies an existing project in Laos—an ABD road and corridor that was retroactively enrolled in the BRI—and shows that vulnerable populations and indirectly affected people were excluded from project protections.

II. Context: "Is the railway good for the Lao people?"

Policy and state-media discourse stress that burgeoning BRI energy and transportation networks will transform the country from land*locked* to land*linked*—with the LCR as the centerpiece. According to the Lao government, the LCR will stimulate socio-economic development; provide convenient, fast, and safe transportation; expand business, investment, and tourism; and improve China-ASEAN relations and regional integration. Lao Minister of Public Works and Transport Bouchanh Sinthavong summarized these visions during the 2016 LCR groundbreaking ceremony in Luang Prabang province: "Once completed, the railway will benefit Lao people of all ethnic groups, facilitate and reduce costs of transportation, stimulate the development of agricultural and industrial sectors, tourism, investment and trade, as well as generate income for Lao people and the country" (Westerman 2019). Ideas of modernity and progress entwined in railroad spill over into compensation narratives. For example, media reports claim local people are happy with fair and transparent compensation processes and look forward to numerous project benefits—mobility, jobs, market access, or tourism, to name a few.

The Lao government is in charge of railway land compensation and land issues have been on the forefront of the minds of state officials and citizens alike. As a World Bank economist conducting an analysis on the railway expressed: "It may be telling that every provincial meeting we had with railway committees started with them explicitly staying that 'all compensation has been paid" (Interview 2018). This is clearly not the case, as my interviews with officials and affected households, as well as the state-led media articles show. Yet, the persistence that compensation has been paid in full and "can better people's lives" points to a clear state-directed narrative across multiple sources. Luang Prabang's provincial Director of Public Works and Transport, Mr. Fasanan Thammavong recounted: "We have informed villagers of the compensation rates and have reached an agreement with them. They are now happy" (*Vientiane Times*, March 2018).

Image 4. A billboard in Vientiane province reads: "Build the China-Laos Railway to benefit the Lao and Chinese people" (DiCarlo 2019).

8 Vientiane Times

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Friday November 9, 2018

Lao people's dream: Laos-China railway takes away poverty

Zeng Ren

Among the six countries in the Indo-China Peninsula, Laos is special for geographically being surrounded by China, Myanmar, Thailand, Vietnam and Cambodia. Being mountainous and short of roads, Lao transportation is described as "extremely underdeveloped".

In order to counter this plight, the Lao government declared in 2015 that it would endeavour to transform Laos from being a landlocked country to a land-linked country.

"Land-linked Country", a term created by the Lao people, has been regarded as a national strategy, which reflects the precise understanding of Laos' position. How to link? One of the "keys" is to build the Laos-China railway from the Laos-China border Mohan-Boten Port southwards to Vientiane. km, of which the length of bridges is 62 km and the length of tunnels is 198 km, accounting for 62.7 percent of the total length.

As an important project along the "Belt and Road", the Laos-China railway is also an important part of the Trans-Asian Railway. The railway has been on a nine-year journey since it was approved by the Lao National Assembly in 2010 and officially started construction in 2016.

From expectation to reality, the Laos-China railway has brought many changes and expectations to the Lao people in recent years.

Prime Minister of Laos: Laos benefits most from the "Belt and Road" Initiative

On September 25, 2018, Lao Prime Minister Thongloun met with visiting Zhao Leji, a member of the Standing Committee of the Political Bureau of CPC, Secretary of the Central Thongloun told the visiting Secretary-General of the Boao Forum for Asia, Li Baodong, that the "Belt and Road" Initiative proposed by President Xi Jinping had provided huge opportunities for the infrastructural, economic and social development of the countries along the route, from which Laos has benefited the most.

The benefits of the Laos-China railway for Laos are obvious and will be enjoyed for generations.

Once construction of the railway is finished and it is open to traffic, the time from the Laos-China border to Vientiane will be shortened from 16 hours by bus to 3 hours by train.

According to a report by the Ministry of Public Works and Transport of Laos, the Laos-China railway will help Laos achieve its strategy of external cooperation and connectivity with China and other Asean countries, and

Posters advertising the Laos-China railway.–*Photos Chen Hongbing*

The project is a link in win-win cooperation and mutual development between the two development for local Lao people," Natsavee Norasing, a resident of Luang Prabang

The Laos-China railway boosts the economy

As the old Chinese saying goes, "If you want to be rich, build the road first." Poor infrastructure is the key reason for the slow growth of Laos' domestic economy.

With an area of 236,800 square kilometres and a population of more than 6.5 million, Laos had only one railway line of 3.5 kilometres before the construction of the Laos-China railway. At the end of the line is Thanaleng railway station, located in the south of Vientiane. It is as small as a railway station in Chinese countryside towns. With the construction of the Laos-China railway, the situation will be completely changed.

Nuke, a grocery store owner who lives near the Vientiane railway station, is full of expectation about the Laos-China railway. "We are all happy to have a railway

Image 5. Special issue of the *Vientiane Times* business section on the railway, 9 November 2018.

Nearly all of the widely circulating "satisfied with compensation" rhetoric is secondhand. Across the railway line, none of my interviewees said this from direct experience.[6] Rather, some households, like many in Laos, do not have land titles, and thus do not qualify for full compensation, or in other cases, compensation rates are low (see Section IV). Many directly-affected households do not think that compensation would enable them to buy equivalent agricultural land in their village or elsewhere, because rate are insufficient or agricultural land is unavailable because "nobody wanted to sell their land because everyone wants to keep it to pass on to their children and grandchildren." In the past, smallholders could claim land by clearing the forest, but this is no longer possible. In order to buy new, equivalent land, they have to explore surrounding villages and have sufficient capital to purchase land at market rates. Thus, it is unlikely that affected households will be able to find comparable, affordable land. As one resident explained: "I have already received the compensation, but the amount of payment is very low and hardly enough to buy a new agricultural land in the village or elsewhere. In turn, I have used it to cover my children's education."

Dissatisfaction with land compensation is none too surprising in Laos. Yet, as many households also demonstrate, multiples perspectives on the railway can be held in tension: quite positive views of the project, alongside concerns or struggles with land loss and compensation processes. Some interlocuters feel bull dozed while others convey hope surrounding the railway. There is excitement to visit family in Vientiane more quickly and safely. A young man plans to graduate high school and get a job with the railway company. A woman imagines bringing Luang Prabang cuisine, still warm on arrival, to her grandchildren. A fruit seller lauds the increased business. Whether individuals express

6 I conducted fieldwork in affected villages in all four provinces that the railway passes through—Luang Namtha, Oudomxay, Luang Prabang, and Vientiane.

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Image 6. A household in Luang Prabang province shares their land documents (DiCarlo 2019).

dissatisfaction or excitement, they identify ongoing challenges of land lost to large development projects and suggest similar means of improving "development": clear information, better environmental practices, the ability for public participation, and timely and fair compensation for land and livelihoods lost—all conditions present in existing ESS frameworks.

The next section, thus, zooms out to consider the broader development finance landscape behind the LCR and ESS guidelines related to displacement and land compensation. I trace the evolution of Social and Environmental Safeguards (ESS) of the Multilateral Development Banks (MDBs) and Chinese policy banks operating in Laos—including the LCR financier, China Export-Import Bank (CHEXIM).

III. Chinese development finance and environmental and social safeguards

While investment in infrastructure offers certain benefits, it is well-recognized that it also poses social, environmental, and human rights risks—such as pollution, displacement, loss of livelihoods, or various modes of insecurity. The colossal footprint of Chinese development finance and expansion of China's policy bank assets elevates questions of global governance and recenters long-standing challenges surrounding Environmental Social Safeguards (ESS) for investment projects[7]. A comparison of the two Chinese policy banks and three MDBs that lend in Laos—CHEXIM, CDB, WB, ABD, and AIIB—outlines the broader picture of development finance safeguards. These banks play a significant role in Laos and across the global South. This analysis reveals, first, that Chinese standards

[7] Environmental and Social Safeguards (ESS) are intended to mitigate negative impacts of investment and development, ensure consultations with project-affected people, and provide guidelines to meet minimum social, environmental, and governance standards (Larsen and Ballesteros 2013).

have yet to match those of MDBs, and second, that the categorization of 'Chinese finance' should be further broken down to avoid oversimplifying and homogenizing Chinese projects and standards. I include the AIIB as an example of recent efforts in development finance to improve infrastructure standards.

There is long-standing consensus across MDBs and within the international community that financial institutions are responsible for the risks and impacts of their investments. The World Bank first introduced ESS in the 1980s as it transitioned from "lender to norm-setter" (Dann and Riegner 2019). Many other MDBs—including the Asian Development Bank, European Bank for Reconstruction and Development and the African Development Bank—adopted ESS that emulate those of the World Bank. At the same time, countries began to model national ESS on MDB frameworks. By the 1990s, safeguards were standard across MDBs, the private sector, and consequently integrated in host-country regulatory frameworks (Dann and Riegner 2019). However, as longer-term project impacts emerged, it became clear that the World Bank's ESS track record was mixed at best, as is the case in Laos (Shoemaker and Robichaud 2018) and globally (Rich 1994; Danaher 1994; Rich 2013). In response to years of criticism and in the context of the shifting international order of development finance, the World Bank's new Social and Environmental Framework (ESF) went into effect in January 2017.

However, the past three decades of safeguard limitations and failures produced a common view in borrowing countries: that MDB regulations are burdensome and extra-legal, resulting in slow-moving and bureaucratic project development. This is because MDBs, including the World Bank, tend to connect loans to specific conditions or recommended policies for a recipient country, such as environmental or anti-corruption measures (Nega and Schneider 2011). Many host governments cite a 'Chinese approach' as an alternative, more straightforward path to finance capital, with fewer conditionalities, quicker project completion, and "without the political strings imposed by the West" (Chen 2014). Often framed within a collaborative South-South model, Chinese finance offers an alternative financing structures and conditions that rely on host country laws. Through what Gallagher and Yuan (2017: 265) term deferential recognition the financier "recommends that projects comply with national country systems but seldom assesses the adequacy of such systems, project compliance with such systems, and/or provide technical assistance to project managers or borrower countries for compliance"[8].

The use of host country regulations by Chinese companies is reminiscent of China's promise of non-interference in foreign affairs initiated in the 1950s (Aidoo and Hess 2010) and continued through the Going Out policy in 2000 (McDonald et al. 2009). This model of development finance originated in three of China's banks—the China Development Bank (CDB), Agricultural Development Bank of China (ADBC), and Export-Import Bank of China (CHEXIM)— all founded in 1994 to guide and support state-owned enterprises. Following China's Going Out policy in 2000, CDB and CHEXIM became global leaders in sovereign finance (Gallagher 2013). However, not unlike the critiques of the World Bank, in the 2000s, Chinese projects, companies, and state-owned enterprises came under fire for low or under-enforced ESS. The majority of finance for infrastructure globally—approximately US$40 billion annually—comes from CDB and CHEXIM (Dollar 2018). Both continue to defer to host country regulations (Gallagher 2013). Projects financed through CDB or CHEXIM in Laos since 2009 total at least UD$11 billion for large-scale infrastructure (See Table 1).

[8] As opposed to conditional harmonization or capability enhancing. Gallagher and Yuan (2017) identify three ESS categories: **i) Conditional harmonization** uses a predetermined set of mandatory thematic, operational, and procedural standards that a borrower must comply with regardless of the national system; the development bank performs compliance work and technical assistance for the borrower; **ii) Capability enhancing** uses borrowing country standards, but conducts due diligence to ensure the project is in compliance with local laws and norms; if they are not then the bank provides technical assistance to improve project standards; **iii) Deferential recognition** uses borrowing country standards, but the bank seldom assesses the adequacy of such systems, project compliance, and/or provides technical assistance for compliance.

Table 1. CDB and CHEXIM loans for large infrastructure in Laos (2009-2019)

Project	Type	Borrower	Lender	Signed	Total (USD millions)
Nam Khan 2 Hydropower Project	Hydropower	Public	EXIM	2009	308
Laos China Railway	Railway	Public	EXIM	2010	5950
Mekong Bridge at Pakbeng	Bridge	Public	EXIM	2010	50
Houay Lamphan Gnai Hydropower Plant, Sekong	Hydropower	Public	EXIM	2011	206
Nam Ou Hydropower Project, Phase 2 (Dams #1,3,4,7)	Hydropower	JV	CDB	2011	1000
Wattay International Airport upgrade	Airport	Public	EXIM	2011	37.6
Nam Ngiep 2 Hydropower Project	Hydropower	JV	CDB	2011	345
Nam Ou Hydropower Project, Phase 1 (Dams #2,5,6)	Hydropower	JV	CDB	2012	660
Nam Khan 3 Hydropower Plant	Hydropower	Public	EXIM	2012	127
Pakbeng-Ngeun Bridge	Bridge	Public	EXIM	2012	31.2
Laos – Spaceflight	Satellite		EXIM	2012	258
Xeset III Hydropower Project	Hydropower	Public	EXIM	2014	50.73
Nam Ngum 4a Hydropower Station	Hydropower	Public	EXIM	2016	322
Salavan-Sekong II Power Transmission Project	Energy transmission	Public	EXIM	2016	377
Pak Lay Hydropower Project	Hydropower	Public	EXIM	2017	89.77
Nam Phay Hydropower Project	Hydropower	JV	EXIM	2017	367.29
Pak Ngeuy-Pha Oudom Transmission Lines and Substation	Energy transmission	Public	EXIM	2017	169
Nam Chiane Hydropower Station	Hydropower	Public	EXIM	2017	*unknown*
Nam Tha 1 Hydropower Project	Hydropower	JV	EXIM	2018	400
Thavieng-Laksao & Nam Phay HPP-Thongkoun2 Transmission Lines	Energy transmission	Public	EXIM	2018	199
					approximately **US$11 billion**

CDB and CHEXIM safeguards that are public are opaque and brief. The CBRC's "Green Credit Guidelines" is external state guideline that applies to Chinese banks financing oversees activities, including CHEXIM. Historically, neither CHEXIM nor CDB publish project information or comprehensive safeguard documents, so it is difficult to decipher which ESS are followed. CHEXIM's developed its first social and environmental guidelines in 2004 and made them public in 2007. In terms of land loss, they state plainly: "Respect the local people's rights to land and resources, and properly handle the resettlement problems" (Article 12.3). Precise mechanisms to calculate, enforce, or monitor displacement issues are absent, and it is not clear what weight they hold when a project relies on host country standards or when the project is considered a high-level priority by one or more participating governments. Despite increasing pressures on Chinese finance, these issues were not clarified in CHEXIM's more recent Green Credit Guidance (2015). In addition, CHEXIM has not signed onto the Equator Principles[9]. While both the Equator Principles and CHEXIM's guidelines are voluntary,

[9] Based on IFC (International Financial Corporation) performance standards, "The Equator Principles (EPs) is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making" (http://equator-principles.com/).

they are monitored differently. International investors and signatories to the Equator Principles, for example, may be under more scrutiny from watch dogs; this is not the case with CHEXIM investments in Laos.

However, since the 2008 financial crisis and the 2013 announcement of the BRI, shifting pressures on international development finance gave rise to new southern-led development finance institutions and agreements that pose opportunities as well as challenges for host countries and financiers (Kring and Gallagher 2019). Established in 2015, the Asian Infrastructure Investment Bank (AIIB) exemplifies the push for more robust and transparent ESS. The AIIB, an MDB for which China is the largest shareholder, is distinctly different from Chinese policy banks in terms of mandates, governance, and safeguards, and most closely resembles other MDBs. The AIIB signals trends in Chinese policy and financial institutions' engagement with MDBs since the announcement of the BRI, under which strengthening international cooperation and global governance is a key component. A similar unprecedented example of these shifts is the 2017 MoU between China's Ministry of Finance and leading MDBs—the World Bank Group, European Bank for Reconstruction and Development, Asian Development Bank, Asian Infrastructure Investment Bank, New Development Bank, and European Investment Bank. The MDB-MoU established the Multilateral Cooperation Center for Development Finance (MCDF) as a "platform to foster high-quality infrastructure and connectivity investments." The BRI has prompted additional efforts toward "standard and sustainable" investment principles. For example, in 2019, the CDB with the United Nations Development Programme (UNDP) published a report entitled: "Harmonizing Investment and Financing Standards towards Sustainable Development along the Belt and Road"—one of the first major efforts of the either policy bank (CDB or CHEXIM) to publicly address ESS gaps and investment standards.

While academic and policy literature continues to categorize ESS as either host-country, Chinese, or international (Kirchherr et al. 2017), the development finance landscape is increasingly varied and "Chinese" as a blanket classification does not capture the varied approaches that exist. Instead, the terrain of Chinese development finance is anything *but* coherent, over time or as it reshapes global development finance and local implications today.[10] Wang (2019: 236), for example, argues that contemporary Chinese development finance straddles dual perspectives: "one augmenting the traditional international institutions dominated by the developed countries and the other challenging those institutions in favour of alternatives led by the developing countries"… a sort of hedging that "suggests broader forces at work than bureaucratic politics or personalities." The multiple expressions of China's development finance produce ESS guidelines that range in their specificity, implementation, enforcement, and monitoring.

Table 2 compares land related ESS across Lao regulations, Chinese policy banks, and MDBs that each lend in Laos. LCR financier CHEXIM is Laos's largest investor[11], followed by the CDB which is currently the world's largest National Development Bank in terms of assets and lending (Kring and Gallagher 2019). The WB and ADB are the two major MDBs in Laos and along with the AIIB serve as benchmarks for international ESS. This cases hinges on Lao regulations because CHEXIM defers to host country standards.

As Table 2 illustrates, the AIIB standards contrast those of CDB and CHEXIM, aligning more closely with other MDBs. In terms of resettlement and compensation, AIIB requirements are the most comprehensive: resettlement plans are devised based on a survey of land and assets, and a census of persons to be displaced. This plan covers resettlement and/or compensation, social supports, and

[10] For a breakdown of the policies, standards and guidelines that apply to overseas operations of both Chinese investors and China-led finance institutions see "Inclusive Development International's "Safeguarding People and the Environment in Chinese Investments, A reference guide for advocates" 2nd edition, 2019: https://www.inclusivedevelopment.net/wp-content/uploads/2019/05/2019_IDI_China-Safeguards-Guide-FINAL.pdf

[11] Data from Lao Ministry of Planning and Investment

Table 2. Comparison of ESS guidelines on land, compensation, resettlement, and social and environmental impacts

		Multilateral Development Banks			Chinese Policy Banks	
	Laos	ABD	WB	AIIB	CHEXIM	CDB*
Compliance with host country regulations	n/a	✓	✓	✓	✓	✓
Assistance with host country standards	n/a		♥			
Land, Compensation, Resettlement:						
Community engagement; Consultations with affected communities	✓	✓	✓	✓	✓	
Disclosure of project information and social/environmental impacts & risks	✓♦		✓♠	✓		
Procedures for economic displacement	✓	✓	✓	✓		
Compensation for affected persons	✓	✓	✓	✓	✓	
Conditions for forced evictions	✓	✓	✓	✓		
Grievance mechanism	✓♣	✓	✓	✓		
Involuntary land resettlement and associated procedures	✓	✓	✓	✓		
Conditions for replacement locations; Resettlement assistance	✓		✓			
Collaboration with other agencies	n/a			✓		
Social and Environmental Impacts:						
Environmental and social assessment	✓	✓	✓	✓	✓	✓
Industry-specific ESS			✓			
Use of borrower's environmental and social framework	n/a	✓	✓	✓	✓	✓
Broad compliance with international environmental regulations		✓	✓	✓		
Independent monitoring and review			✓	✓		

Based on Ray et al. 2017; Gallagher and Yuan 2017

Acronyms: ABD = Asian Development Bank, WB = World Bank; AIIB = Asian Infrastructure Investment Bank, CHEXIM = Export Import Bank of China, CDB = China Development Bank

Sources: CHEXIM ESIA Guidelines (2007), World Bank Environmental and Social Framework (2018), AIIB Environmental and Social Framework (2016), CDB's Guidelines on Environmental Protection Project Development Review, Lao Gazette (relevant laws are listed in the following section), Ray et al. 2017; CDB 2019.

* Only summary reports of CDB ESS are available.

♦ Broad information is shared but specifics are not always clearly defined or disclosed. In fact, the ESIA itself is not usually shared. Companies are required to host informational meetings on ESIA findings, but the details are typically fuzzy.

♥ Not in practice, though this was put in writing in 2018: "The Borrower will establish means of collaboration between the agency or entity responsible for project implementation and any other governmental agencies, subnational jurisdictions or entities that are responsible for any aspects of land acquisition, resettlement planning, or provision of necessary assistance. In addition, where the capacity of other responsible agencies is limited, the Borrower will actively support resettlement planning, implementation, and monitoring. If the procedures or standards of other responsible agencies do not meet the relevant requirements of this ESS, the Borrower will prepare supplemental arrangements or provisions for inclusion in the resettlement plan to address identified shortcomings. The plan will also specify financial responsibilities for each of the agencies involved, appropriate timing and sequencing for implementation steps, and coordination arrangements for addressing financial contingencies or responding to unforeseen circumstances." (World Bank Guidance Note for Borrowers 2018).

♠ Disclosure "of relevant information"

♣ Projects are typically required to set up committees, which involve a component of both the company and the government. There are usual steps through which it goes, moving up if the grievance cannot be resolved. Ultimately, though, if the grievance cannot be solved through the committee, then the government 'fixes it', meaning forces a resolution. How equitable this is or not depends on the agency responsible (typically this is the district, or provincial governor's office, or the central level depending on project size). There is intense pressure on communities to avoid "making trouble", especially in the context of land and priority projects, so often grievances are pre-empted or dealt with informally.

livelihood restorations. Like WB and Lao regulations, compensation is meant to be paid *prior* to project displacement and improve the standard of living for poor or vulnerable households (though what determines this status is not clearly defined). In addition, the AIIB stipulates that people without a land title have rights to compensation and are thus included in consultations. The World Bank's new Environmental and Social Framework specifies that "project-affected people are consulted about the project throughout the life of the project, from conception through to operation and removal, and that these people benefit from the project" (World Bank 2016: 2). However, a new clause encourages the use of host-country frameworks "to avoid unnecessary duplication of effort, build national capacity and achieve development outcomes that are materially consistent with the objectives of the [ESF]."

Changes in development finance could signal ESS improvements. However, banks with high ESS like the AIIB make the minority of investments, while policy banks that comprise the majority continue to employ host country regulations (see also Kamal 2018). Taking the AIIB as an example, after four years of operation with over 100 member countries, the bank has loaned only US$8.5 billion, much of which was co-financed with other MDBs (Xinhua 2019). Thus, while the AIIB boasts improved ESS, their footprint is so far negligible, particularly in Laos where the bank's first project for US$40 million was approved in April 2019. While policy bank ESS have improved (Kirchherr et al. 2017) it has occurred unevenly and does not necessarily translate to effective implementation. With this in mind, the next section zooms in to local experiences of railway land compensation.

IV. Land compensation outcomes on the ground

> *"It is quite difficult to explain... It is the government's plan to develop the country and people should participate. If we have good enough conditions when we move, meaning we get the appropriate compensation and good agriculture land then people will be happy to move and help the country develop, but we have few details on this."*
>
> (Villager affected by LCR construction in Vientiane province)

Most villagers express a level of uncertainty around railway construction. Many people in affected villages indicate that they are unclear on plans, timelines, and their ability to comment on railway construction and land compensation. They cite past development projects that resulted in land loss to make sense of delays in compensation. Affected people often explain that if compensation leads to the same or better living conditions (a requirement under Lao law), then they would readily agree, but they have little indication of that happening. Those more willing to move may have closer government ties, an additional home, family with extra land, or could negotiate better terms. Those less willing to accept compensation tend to lack power to negotiate and clear information, were previously dispossessed of land, or experienced project-induced social or environmental problems. Villager's ambivalence is connected to eight themes, which while not exhaustive are primary ways they experience and make sense of the project.

1. Delays in compensation

Seated on a hill overlooking rail construction, Phouthong, an older, male farmer in a rural area of Vientiane province, described the 1.5 ha of land he gradually lost to the railway: "I watched my rice field get smaller and smaller through the construction process." As his ability to farm was halted and construction began, he was instructed to wait to hear from the local government when and how he would receive compensation. Opacity in processes raised additional challenges for many affected people who are unsure which institutions they can communicate with when problems arise. He explained, "when the local government came to inform us about the project, they only said, "wait, wait…"; it has been two years without any update. He went on, "I feel very annoyed [with] waiting now." The two rail representatives who came to discuss the project and compensation were both Chinese and were accompanied by one Lao translator. Phouthong does not know how to contact them and why he has not yet received compensation when he gave up farmland long ago. He describes watching his rice fields shrink through the construction process but said he could do little else than talk with his village leader.

Railway land issues have already spanned years. In a number of villages, provincial officials informed villagers as far back as 2010 to cease farming activities in preparation for railway construction. In some places where I conducted interviews, that land has been unproductive for over three years. Limitations on rice cultivation led villagers to buy it from the market, while some people received small stipends to help with food. The LCR Provincial Coordinator in Luang Namtha confirmed that authorities started informing local people about the project in 2010 when the original MoU was signed: "We told people not to carry out any construction or grow crops on land earmarked for the railway corridor to avoid losses" (*Vientiane Times,* April 2017). These same families have been inquiring on compensation and land use for years. Similarly, outside of Vang Vieng, a large family had two houses marked for removal. They relocated near a construction camp. However, one family member felt that the new location was not safe or comfortable so returned to their old home and has resided there since because it has yet to be demolished. The family has not received anything for their farmland, which they can no longer access. Compensation for the LCR began in mid-2018, so households perhaps have yet to be remunerated; though according to law it should be complete prior to construction.

2. Insufficient rates

For what has been compensated, dissatisfaction with rates is common. A woman in Vientiane province explained, "We were already compensated for our house that was damaged and some of the cost to move, but I do not feel satisfied with the money they provided, it was 2,500,000 kip [US$275.00]." This is less than the amount it cost to build her house, let alone find new land to buy and build another. She explained that when her family first moved to this area there were few people. "We were the first family in the village." There were steep sloping hills and families altered the land to build homes and plant crops. She motioned toward her home, "I had to hire people to make the land flat to build a house; this already cost about 3,500,000 kip (US$385.00). If I compare this to what I got [from compensation], it was not enough, and it is not even equal to what I spent to build my house when we came here years ago."

Rates are insufficient for a number of reasons. Table 3 lays out the government approved rates for LCR land compensation by province. Household payments, however, differs based on provincial unit prices and how they were applied to each household's land. Land prices also differ between market and government rates. Pathammavong et al.'s (2017) explanation of land prices surrounding the 450 Year Road in Vientiane shows how infrastructure development leads to speculation and land price variations. In their case, prior to the project the market value per square meter of land was US$1.1. After a government compensation rate of $3.43/m^2$ to acquire the land, they then set resale prices at $130/m^2$ and after land was purchased from the government at this rate the "market value" jumped to $300/m^2$. While this was in the capital, prices of land along the railway vary significantly based on whether it is near a road and city or more remote.

Table 3. LCR budget for land compensation by province, according to MPWT's 2019 Resolution No. 12980.

	Lao Kip	USD	Km of track	Affected villages
Vientiane capital	74,283,841,961 (74.28 billion)	8,194,577 (8.19 million)	45	34
Oudomxay province	47,473,180,963 (47.47 billion)	5,236,975 (5.23 million)	126.6	41
Luang Prabang province	9,262,977,000 (9.27 billion)	1,021,839 (1.02 million)	80	28 (+3 towns)
Luang Namtha province	8,624,002,800 (8.62 billion)	951,351	16.9	4
Vientiane province	3,711,100,000 (3.71 billion)	409,387	145.5	60
Total	**143,335,120,724 (143.3 billion Kip)**	**15,811,927 (15.8 million USD)**	**414 km**	**167 villages**

3. Inconsistent valuation

There is thus tremendous variation in land valuation across the LCR as it crosses rural homes, agricultural land, as well as Laos' population centers. Lowland paddy valuation offers one example of this phenomenon. In Luang Prabang province, the provincial and district Compensation and Mitigation Committees only included items visible on the land the day they collected data (e.g. type of crops, fishponds, trees). This happened when rice was growing in fields, so officials did not consider other

Image 7. The remnants of a demolished home in front of a new railway tunnel, where an orchard once stood (DiCarlo 2020).

potential crops, such as cash crops that farmers could and sometimes did plant after rice harvesting. They did not calculate for opportunity costs of not using the land for five years, if it was only taken for construction (Suhardiman et al. *Forthcoming).* A World Bank national land titling project includes a component on land valuation which was excluded as LCR valuation was left to ad hoc decisions of local committees, further demonstrating challenges of deferential financing when there is incentive to save money.

4. Exacerbated inequality

Land compensation is also an equity issue because it is directly linked to smallholder livelihoods. With seventy percent of the Lao population dependent on agriculture, loss of land accompanied by insufficient compensation can lead and has led to tremendous precarity. Long-term, poorer people affected by large-scale infrastructure projects face additional difficulties. Compensation is often not adequate to rebuild homes or start new businesses or crops. Villagers explained that for wealthier people "compensation does not affect their life very much", they could even make money from compensation because they get more for land and a large house. They may also have money saved, multiple properties, or other means of generating income, such as special skills, business experience, or channels to invest money. Poorer people do not have these options nor much land, positioning them at risk for even greater poverty. In some instances, family members may move to a city for work. This was the case, for example, with the Don Sahong dam when people moved to Thailand to work in factories; yet it is still early too early to identify this trend around the railway.

5. Doubly dispossessed

For some households this is not their first experience of dispossession or displacement. Some have lost land and been moved due to village consolidation programs, agribusiness, large-scale infrastructures, and other resettlement schemes. In a focus group in a rural district of Luang Prabang Province, village leaders shared how they were moved in the 1990s for a hydropower project and,

Image 8. Agriculture and pastureland cleared for the railway in Vang Vieng District (DiCarlo 2018).

as a consequence, had to change their farming practices because of poorer soil quality and limited water supply. They were informed in 2019 that they would again have to move for new city development that is related to the railway. The village chief plans to refuse another move, which is rare. More often, villagers expressed a sense of powerlessness. As one woman explained: “I am only an ordinary person and if the government already decided these projects we have to follow.” In another case outside of Vang Vieng, a family described how they were moved from the forest for village consolidation. Now, after building their home and developing agricultural land, they are again being pushed out, this time by rail construction. In a woman’s closing words in an interview, “If the government does not feel happy that we are staying here, they can send us back to the forest! If they will send us to the forest, we will just go. I feel I do not have rights.”

6. Environmental concerns

Environmental issues related to construction influence perspectives on the project. Water, air and noise pollution, land use changes, safety, and livelihood changes are key local concerns. For example, one of the main creeks and water sources, which runs from the hills, across the rail line through the villages to the Song River was completely blocked by construction (Image 9). This resulted in conflict over water access as construction destroyed and closed the creek the residents we use on a daily basis. A resident explained, “Now the creek is blocked because [the construction company] exploited the area and all the rock and soil went into the water. Now the creek is also full of chemicals from the explosives, so it seems we could not use that water anymore.” Villagers in this area now have to go far from their homes and original water source to access water. Residents express concern that the continued blocking of this waterway, especially in the rainy season, could lead to flooding.

7. The priority project

Villagers often described the railway as a strategic or high-level project. In both Lao and Chinese, the LCR is referred to as a “priory project”— ໂຄງການບູລິມະສິດ (*khongkaan boulimasit)* or 重点工程 (pinyin: *zhòngdiăn gōngchéng*), which I define as a high-level project with special sanctions and strong backing by, often political, elites; it is often framed as development and investment imperative and, at times, as a model project for future infrastructure or regulatory processes to follow[12]. When

Before construction (October 2018) *During construction (December 2018):* *During construction (February 2020)*

Images 9. Changes in creek quality and condition throughout railway construction in Vientiane province.

[12] In Laos, Nam Thuen 2 hydropower project is another example of a flagship project with special sanctions and strong support that initiated legislation, regulation, and institutions for its administration. Like the railway, the project and legal frameworks took a long time to negotiate. It is now cited as a negative lesson learned by both government and industry (Singh 2018).

the railway ESIA was passed without review, those working in the responsible ministry were told "it's a priority project" and the government could not afford it to be delayed by red tape. As a local official put it, "if every [government] project is 'special', what is the point of all the laws and decrees when they don't apply?" The strategic project points to another problem of deferential financing: as priority projects generate momentum and power, they may initiate new regulatory frameworks devised specifically for the project, either to lubricate or speed up implementation procedures, appease powerful actors, or establish new norms; or, more commonly, circumvent or waive existing legal frameworks, pointing to a central problem of deferring to ad hoc regulatory processes. Finally, though often not discussed directly, corruption and fear of speaking out against government-backed priority projects complicates compensation processes.

Against the dual contexts of local outcomes of railway land compensation and high-level safeguards, the next section unpacks the Lao regulations to which CHEXIM defers. It specifically traces regulations related to land compensation as they evolved throughout the railway's development. In doing so, I connect deferential financing and, by extension, terms of risk and finance from Chinese policy banks with the actual policies available at different moments in the project's development.

V. Host-country regulations over a long project development cycle

Laos has had safeguard regulations in place since the mid-1990s (ADB 2010). Despite significant policy, public, and academic attention on land concessions, social and environmental issues persist (Dwyer 2007; Ingalls et al. 2018; Schönweger et al. 2012), legal frameworks often contradict (Hett et al. 2020), and compensation and resettlement procedures remain convoluted and controversial (Green and Baird 2016). A number of regulations address land loss, compensation, and resettlement. Prime Ministerial Decree 192 on Compensation and Resettlement of People Affected by Development Projects (2005) was the first of its kind to do so. From the time the LCR concession agreement was signed in 2016, a flurry of laws and decrees related to land, compensation, expropriation and investment promotion have been amended or drafted. The same year that LCR construction began, Decree 84 replaced Decree 192. Some key differences indicate that the new decree could complicate compensation processes due to the need for a land title and the role of investors. In 2018, just two years after Decree 84 was approved, the Lao National Economic Research Institute (NERI) suggested the government review and improve this policy because many people were not compensated for loss of land to Special Economic Zones (*Vientiane Times,* November 2018). The same year the Law on Resettlement and Vocation was signed, elevating some contents from Decree 84 to the status of a law. Efforts to revise a Land Law have been in discussion since 2013, passed in principle in 2019, and was made public in 2020. Table 4 lists regulations pertaining to land appropriation and compensation that were developed before and after the signing of the LCR Memorandum of Understanding (MoU; 2010) and concession agreement (2016).

The evolution of Laos' domestic regulations raises important questions on the implications of a project's lifecycle: which safeguards or regulations were in place when agreements were signed, were they updated, and what was used? Figure 1 juxtaposes key LCR project dates and Lao policy related to land and compensation. Legal entitlements for LCR compensation and resettlement were based on Decree 192, and related Lao policies, practices, and technical guidelines in the Regulation on Resettlement and Compensation (in the Environmental and Social Impact Assessment Terms of Reference for the Mohan-Vientiane Railway Project). This document specifies that "provisions and principles adopted in this Resettlement Plan for the [LCR] supersede the provisions of relevant decrees currently in force in Lao PDR wherever a gap exists." Because there was no precedent for railway specific ESIAs, those used for the LCR are based on ESIAs provided by the Water Resources and Environment Administration in the Prime Minister's Office.

Table 4. Lao laws and decrees pertaining to land and compensation.

Existed prior to confirmation of LCR project (pre-2010)		**Finalized during LCR negotiations (2010-2015)** *2010=LCR MoU signed		**Finalized during LCR implementation (2016-present)** *2016=LCR concession agreement signed	
2003	Constitution	2015	Constitution (*revised*)	2019	Law on Land (revised)
2003	Law on Land	2012	Law on Construction	2019	Law on Railways
1999	Law on Roads	2013	Law on Environmental Protection (*revised*)	2018	Law on Resettlement and Vocation
1997	Law on Mining	2013	Decree 707 Guidelines for Public Involvement in the EIA Procedure for Investment Projects	2016	Decree 84 on Compensation and Resettlement of People Affected by Development Projects (replaces Decree 192)
1996	Law on Water Resources			*TBD*	Law on Public (State) Compensation
2009	Law on Investment Promotion			2016	Law on Investment Promotion (revised)
1999	Law on Environmental Protection (No.02-99/NA)				
2005	Decree 192 on Compensation and Resettlement of People Affected by Development Projects				
2010	Decree on Environmental and Social Impact Assessment (ESIAs)				
2010	Decree 699 on Water Resources and Environmental Agency				
2009	Decree 135 on State Land Lease and Concession				
2005	Decree 88, Implementation of Land Law				
2005	Decree 101, Implementation of the Land Law				
1992	Decree 99 on Land (Article 8 on land needed by the state for public use)				

As regulations and project agreements overlap throughout the project's lifespan, it is unclear which had the final say. At the same time, Decrees 192 and 84 are the primary guidelines for compensation during railway construction, yet they lack implementation procedures and a uniform land valuation system, which are often determined within project-specific contracts. The LCR agreement states that "[f]or the purpose of economizing on the total costs … the Parties shall study and agree on the specific coordinates and location of the land used for the Railway" and the provincial project management committees carried out this task to determine rates. Once all affected provinces submitted compensation proposal plans then the project committee would sign off on the central compensation plan. Even with a centralized plan, resolutions for compensation rates were written by province and signed throughout the summer of 2018—only one, that of Luang Prabang Province, has been made public. Each lays out detailed calculations by property-type. However, as discussed in the previous section, actual rates varied not only between provinces but within them and even across districts and within villages.

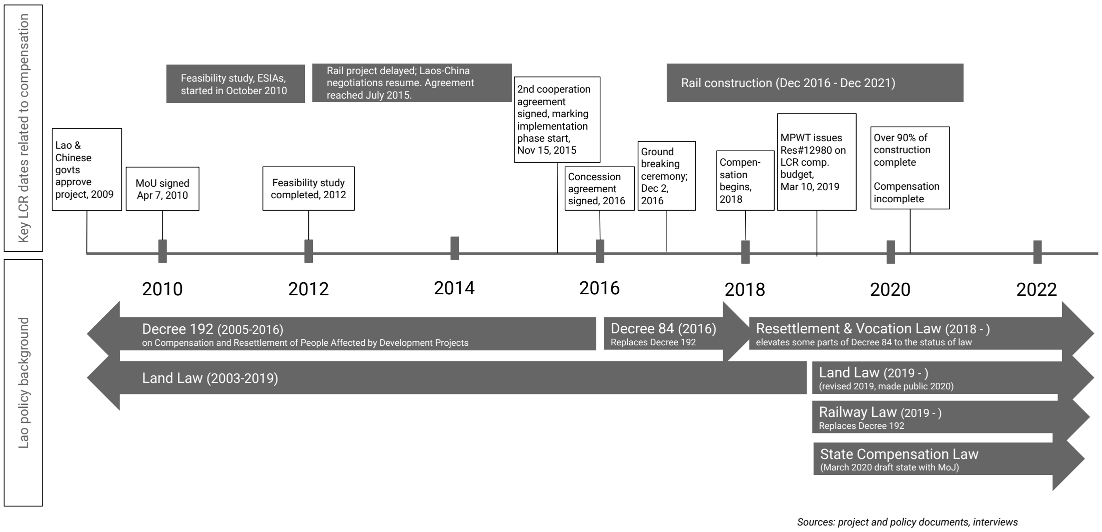

Figure 1. Key LCR dates and Lao regulations related to land compensation.

While a number of laws related to land and construction emerged during railway implementation, the Law on Railways—approved by the National Assembly (NA) on January 29, 2019—can be read as direct critique of LCR challenges as it nods to what went wrong throughout LCR compensation. The law was made public for comment in September 2018 and sought "to offer early and reasonable compensation…when railways are built" (Vaenkeo 2018). The railway law outlines steps that developers must follow through planning, construction, maintenance, and operation, and requires a feasibility study, baseline survey, and development of rehabilitation and repair plans. It specifies that the project should i) be for public purposes and benefit all people, ii) ensure that affected people have a place to stay before relocations, iii) be transparent and fair to all relevant people. It complements earlier decrees on compensation and grievance mechanisms in its requirement that compensation is disbursed before land is developed. It explicitly states that affected households cannot be left economically worse-off and aims to ensure that compensation is awarded in a fair and transparent manner. Railway developers must have compensation and resettlement plans approved before relocating people and starting construction (Article 36), and, with little detail, Article 37 stipulates that the state can expropriate land for construction and should follow relevant guidelines for compensation and resettlement, which at the time of its approval in 2019 referred Decree 84. Compensation for expropriated land must be paid *before* construction and defers to existing regulations (Article 41), in contrast to LCR compensation, where two years after LCR construction began, the Minister of Public Works and Transport Dr. Bounchanh Sinthavong continued to reassure the National Assembly: "We will strive to begin compensation payments by the end of June" (*Vientiane Times,* June 2018). A provincial LCR coordinator further affirmed: "it was difficult to negotiate with and convince people to give up their land for the railway when the compensation policy remained unclear" (*Vientiane Times,* April 2017). Later in the law, Article 153 designates monitoring institutes that are internal (The Railway Management Committee) and external (National Assembly, Provincial People's Assembly, State Audit Organizations, mass organization[13], citizens and media) to projects.

[13] The main mass organizations include the Lao Front for National Construction, the Lao Women's Union, the Lao Federation of Trade Unions, and the Lao People's Revolutionary Youth Union.

Further complicating land compensation, capital and responsibility for all compensation procedures (from valuation and land assessments to negotiations to fund dispersal) constitute the Lao government's main share in the project, exemplifying a classic concession strategy for a capital poor state: putting up and managing land as part of the Lao government's official capitalization. This contrasts many other large projects in Laos, for which the company is responsible for compensation and/or resettlement. However, for the LCR, it was speculated that if the compensation was carried out by the company it could slow construction and open them to further scrutiny and local pushback. The concession agreement thus specifies that the Lao government will:

> (i) implement land acquisition and resettlement of Impacted Persons needed for the execution and completion of the project;
>
> (ii) sign or cause relevant Governmental Authorities to sign Land Lease Agreements with the Concessionaire, and/or issue the land certificate and land maps to the Concessionaire for the land for the Railway Corridor, and complete the registration of the Land Use Rights for the benefit of the Concessionaire before handover of such land;
>
> (iii) hand over relevant land and provide the Land Use Rights to the Concessionaire per the Concessionaire's request from time to time in accordance with the construction management plan formulated by the Concessionaire; provided that, Persons in accordance with Sub-Clause 7.5 and the Concessionaire's request shall be sent to the GOL at least two (2) months before the requested provision of such land.

The Lao government established two committees to undertake these tasks and implement the project: the LCR steering committee (headed by the Ministry of Public Work and Transportation; MPWT), and the LCR project management committee, headed by the Vice-Minister of the MPWT. Both draw on expertise in the Ministry of Natural Resources and Environment (MoNRE), Ministry of Agriculture and Forestry (MAF), Ministry of Planning and Investment (MPI), and Laos-China Railway Company. For a detailed account of the institutional structure of LCR land compensation and its implementation (see Suhardiman et al. *forthcoming*).

Zooming out to the broader policy landscape, Table 5 compares Lao (Decree 192 and 84), CHEXIM, and World Bank land compensation policies and safeguards.

A number of differences stand out between Lao land and compensation regulations in Decree 192 and 84. The former, which was written into the LCR agreement requires that compensation be paid prior to construction, while the later allocates up to 24 months. In Decree 84, there is no explicit mention of public participation or grievance mechanisms, as there were in Decree 192. In both, the project owner is central to monitoring activities, posing possible conflicts of interests. Even with these differences, had host regulations been implemented as written, households would have been informed before construction began and compensated by this point or prior to construction according to the LCR agreement. Yet, overlapping, unclear guidelines led to challenges of coordination and agreement across government agencies, demonstrating that inconsistencies in both policy and implementation over time further complicate deferential financing.

Table 5. Land compensation differences between Laos, China, and the World Bank

	Policy of Laos (Using Decree 192, 2005)	Policy of Laos (Using Decree 84, 2016)	Policy of CHEXIM (2007)	Policy of the World Bank (ESF 2017)
Goal	Art. 1. Ensure that project affected people are compensated and assisted to improve or maintain their pre-project incomes and living standards and are not worse off than they would have been without the project.	Art. 5.1. Protect the rights and legitimate benefits of affected persons; 5.2. Ensure equality, correctness, transparency, disclosure and fairness; 5.3. Ensure coordination, consultaton and participation between the project owner, affected people, state agencies and other relevant stakeholders.	Art. 12.3 Respect the local people's rights to land and resources, and properly handle the resettlement problems.	Avoid involuntary resettlement or minimize it through project design alternatives; Avoid forced eviction; Mitigate unavoidable adverse impacts from land acquisition by: (a) providing timely compensation for loss of assets at replacement cost and (b) assisting displaced persons in efforts to improve, or at least restore, livelihoods & living standards; Improve living conditions of poor or vulnerable persons who are physically displaced, through adequate housing, services and facilities, and tenure security; Provide sufficient resources to enable displaced persons to benefit directly from the project; Ensure resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.
Compensation approach	Fully compensated for net loss of income, damaged assets, crops and trees. Monetary compensation for lost rights to use land and lost assets (structures, crops, trees and other fixed assets), at replacement cost without depreciation or deduction for salvaged materials; provision of "land for land".	Compensation shall be in the form of land, material, or money for the land, agricultural products, livestock and incomes that are affected by development projects based on the compensation value. Resettlement shall be the resettlement and moving of people including rehabilitation of living conditions of the people affected by development projects. The affected people are moved out from their original living areas to be resettled in new living areas allocated by the development projects based the majority of votes by the affected people.	*Refers to host county guidelines.*	Borrower will offer affected persons compensation at replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods.
Compensation Value	Replacement cost is the amount in cash or in kind needed to replace lands, houses, infrastructure or assets on the lands (crops, trees) and other assets (income) affected by the development projects.	Compensation value means the value calculated in the form of material, money or land to compensate the land, constructed facilities, agricultural products, livestock and incomes which have been affected by development projects.	Precise mechanisms to calculate, enforce, or monitor displacement issues are absent, and it is not clear what weight they hold when a project relies on host country law.	"Replacement cost" is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement.

Table 5. Land compensation differences between Laos, China, and the World Bank (continued)

	Policy of Laos (Using Decree 192, 2005)	Policy of Laos (Using Decree 84, 2016)	Policy of CHEXIM (2007)	Policy of the World Bank (ESF 2017)
Calculation method	Project owners shall prepare the Resettlement Plan with detailed cost estimates for compensation.	Project owners, in collaboration with the committee for compensation and resettlement at the local level, must estimate compensation value for land, constructed facilities, crop products, livestock and potential incomes and organize consultations with affected people by selecting the right and appropriate options based on prices applied by the state, market prices or average prices applicable for period of compensation and based on the types of properties and locations. The prices applied by the state (middle prices) are the prices specified in a separate regulation which are identified and regulated by the Ministry of Natural Resource and Environment from time to time.	*Ibid.*	Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs.
Compensation timeline	Prior to the commencement of project construction, APs shall be fully compensated, resettled, and rehabilitations measures shall be in place, although not necessarily completed yet.	Project owners must complete the implementation of compensation plans within 24 months as from the date the plan is adopted. They can later submit applications to the compensation committees at the provincial or city levels for consideration to extend the implementation time frame. For up to 12 months. If the committees find out that compensation plans are not complete after 12 more months, there must be a new round of evaluation to identify the amount of works that have not been implemented and then new proposals must be submitted for re-consideration.	*Refers to host county guidelines.*	Borrower will take possession of acquired land and assets *only after compensation in accordance with this ESS has been made available* and, where applicable, displaced people have been resettled and moving allowances have been provided to the displaced persons in addition to compensation. In addition, livelihood restoration and improvement programs will commence in a timely fashion in order to ensure that affected persons are sufficiently prepared to take advantage of alternative livelihood opportunities as the need to do so arises

	Policy of Laos (Using Decree 192, 2005)	Policy of Laos (Using Decree 84, 2016)	Policy of CHEXIM (2007)	Policy of the World Bank (ESF 2017)
Public participation	Project owners implement the resettlement program in a participatory manner ensuring that affected people, local authorities, and other stakeholder are informed and consulted and concerns are taken into account, particularly during planning and implementation phases of the land acquisition, valuation and resettlement. Project owners make concerted efforts for effective public dissemination of information about project objectives and compensatory package, through the media and inform local authorities at provincial, district and village levels and mass organizations.	There is no explicit mention of public participation, as there was in Decree 192. The Ministry of Natural Resources and Environment is assigned to play an active role in co-ordination with related local authorities and administrations in organizing, publicizing, disseminating, materializing and implementing this decree efficiently.	For projects that have serious negative impacts on the local environment, we should openly consult the public in accordance with the host country's requirements.	Borrower to engage with affected communities through the process of stakeholder engagement. Decisions related to resettlement and livelihoods will include options and alternatives from which affected persons may choose. Disclosure of relevant information and meaningful participation of affected communities and persons will take place during the consideration of alternative project designs. Special consideration for indigenous communities and gender.
Grievance mechanism	With the concerned government authorities, project owners establish a Grievance Redress Committee to address complaints and grievances pertaining to land acquisition, compensation and resettlement due to the project.	Responsibility to establish a grievance mechanism is unclear, stating only that affected people submit complaints to local compensation units and if they are not satisfied with the outcome, then to report to provincial authorities and eventually the National Assembly. Note: the previous Decree 192 explicitly mentioned grievance redress.	Internal management mechanism of project owner and resettlement implementation agency conducts the monitoring process.	A grievance mechanism for the project must be in place as early as possible in project development to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely fashion. Where possible, such grievance mechanisms will utilize existing formal or informal grievance mechanisms suitable for project purposes, supplemented as needed with project-specific arrangements designed to resolve disputes in an impartial manner.
Monitoring	In carrying out of compensation activities in all cases, the project owner must collaborate with the compensation and resettlement committee at the local levels to monitor and certify the correctness and completeness of the compensation plans.	Monitoring of compensation and resettlement is meant to be done by four entite: the project owner; the Committee for Compensation and Resettlement; the Ministry of Natural Resources and Environment and the National Assembly and State Audit Organization.	Internal management mechanism of project owner and resettlement implementation agency conducts the monitoring process.	Including internal monitoring from the internal management mechanism of project owner and resettlement implementation agency and external monitoring from the external independent monitoring unit

VI. Lessons learned

A more fine-grained, project-based analysis of ESS begins to answer questions of whether efforts to improve Chinese development finance translate to the ground. As Chinese institutions reshape the international development finance landscape[14] and the BRI subsumes existing projects, it is critical to dissect how approaches of China's policy banks compare and interact with domestic norms, policies, and safeguards, and how policies operate within and across host institutions. In addition, LCR compensation challenges underscore the importance of examining a project's lifecycle alongside safeguard policy. CHEXIM's deferential policies for the LCR point an "old model" of development finance, even though reliance on domestic standards is often risky for the host country, local communities, and the creditor. Lao regulations—while less comprehensive than the WB, ABD, or AIIB—are more detailed than those of CHEXIM, suggesting that deference here could yield positive outcomes. Yet, while Lao regulations have been updated over the course of railway development, they have not necessarily applied; this may be the case for other projects retroactively enrolled into the BRI.

If, as the LCR makes clear, host country standards alone are insufficient, then as an initial but not comprehensive step, Chinese policy bank standards should be uniformly adopted. While safeguards and environmental protection regulations have expanded in China since the 1970s, their implementation is uneven, particularly in remote or rural areas (Lora-Wainwright 2017), let alone when implemented outside the country's borders. A number of studies on environmental and land governance challenges in China[15] share commonalities in Laos: ambiguity of responsibility and coordination processes, poor state capacity to monitor and enforce regulations, varied capacity of local governments, conflicting interests across state actors, tensions between economic goals and social and environmental protection, and vague or aspirational policy instruments. Pressure on Chinese banks to adopt Equator Principles or similar, or hold them to their own voluntary guidelines, would help. However, if policy banks are concerned about implementing restrictive ESS that are not required by neighboring countries, there is the possibility to create regional standards for investment.

Taken together, the development finance landscape, gaps between written regulations and implementation, and the development cycle of a project raise questions and offer lessons for bank policy and safeguards. First, ESS must be cognizant of local socioeconomic contexts (Section IV) and the political-legal contexts and capacities (Section V) of host countries. At the very least, following existing Lao legal frameworks that require equitable, clear planning with prior stakeholder consultation might have preempted the problems that arose. Third, project information must be publicly and easily accessible. Unlike other megaprojects in Laos, information from Chinese policy banks is not publicly available. In the case of the LCR, project documents held by the Lao government, CHEXIM, and the Laos-China Railway Venture are all confidential. Fourth, the political context, project owner, and status of a project have implications for how ESS are enacted and monitored. Priority projects can circumvent stipulations that could slow construction. As they either pave over or establish regulations, projects of this scale could be used to advance progressive development financing standards. Even if finance safeguards improve, implementation also depends on local factors. As BRI projects are implemented, they contend with factors on the ground that differ between and within other countries. Within host countries, land-related policies require consistent engagement and effective grievance mechanisms that everyone can and knows how to use. This raises questions on the role of litigation. In Lao, for example, even with grievance mechanisms in place, villagers struggle for a number of reasons (fear, lack of connections or resources, etc.) to turn their experiences into a defensible legal fact, and so larger-scale litigation or lawsuits are practically absent.

[14] See Chin and Gallagher 2019.

[15] See Lin and Ho 2005; Van Rooij 2006; Kostka and Mol 2013; Kostka 2014

Safeguards are more relevant than ever for China, as relationships with host countries will be affected by social and environmental outcomes of investments. In short, Chinese policy banks must step up ESS systems from the current deferential approach, as CDB's 2019 step toward "harmonizing" finance safeguards may very well help to do. At the same time, the Lao government needs to implement and monitor regulations regardless of the financier or status of a project, otherwise projects will continue to bull doze the very people they claim to benefit.

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