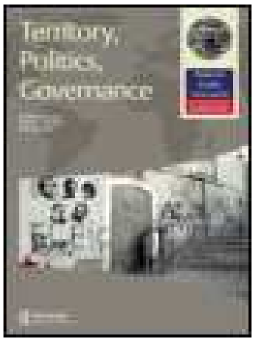
Great expectations: Chinese investment in Laos and the myth of empty land

Juliet Lu



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Great expectations: Chinese investment in Laos and the myth of empty land

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ABSTRACT

In land grab narratives, foreign investors are portrayed as predatory resource grabbers and host states as weak victims or colluders. But foreign land investments are often forged through fragmented relations of state power which investors struggle to navigate. For example, over the last decade, Chinese companies have been granted contracts to develop vast agribusiness concessions in Laos. These areas, however, rarely come under full Chinese company control. To understand this gap between how much land the Lao government grants and what investors actually obtain, this article investigates seven Chinese agribusiness concessions. In each case, tropes of Laos as having abundant 'empty' lands ripe for investment were used by the Lao government to attract investors, and by investors to justify their projects. These tropes reflect the territorial sensibilities of states and investors alike, while erasing existing users and land use systems, and masking the complex politics behind land regulations of which investors are largely ignorant. We thus abandon the concept of weak governance for that of fragmented sovereignty and suggest that, rather than leaving host countries open to land grabs and subject to investor demands as is often assumed, the fragmented state can sometimes strategically impede the influx of global capital.

KEYWORDS

governance; China; fragmented sovereignty; foreign investment; Laos; empty land; land grabs; territory

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INTRODUCTION

Since Laos opened its land markets to foreign investment in the early 2000s, foreign capital has poured into the country. Chinese investors constitute a large portion of this influx of capital and in the late 2000s China overtook Thailand and Vietnam to become the top investor in Laos (Ponghkao, 2007). Media headlines proclaimed a Chinese takeover of northern Laos (Pham, 2008; Woodman, 2011), a claim which resonated with representations in the land grabs literature of China as the quintessential 'land grabber' – it is capital-rich, land-scarce, invests primarily in resource extraction and production for export, and its investments have gained particular attention (Hofman & Ho, 2012, p. 3). Laos, on the other hand, is an archetypal target country for investment, with great natural resource wealth but weak land governance, protracted poverty and development challenges, and unstable property regimes. Indeed, by 2011 Chinese investors had obtained around 200,000 ha of agricultural land concessions from the Lao government, which constitutes 18% of the total area granted to all investors in Laos (Schönweger, Heinimann,

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Epprecht, Lu, & Thalongsengchanh, 2012), and media commentators asked how long until Laos began using Chinese Yuan as the dominant currency.

After examining seven Chinese agribusiness investments, however, we found that the amount of land actually allocated to Chinese companies in Laos has been significantly smaller than the areas initially granted in contracts with the Lao state. This arose for a range of reasons, many of which are common to any investment context like Laos where formal legal and land institutions are new, weakly enforced, and entwined with informal systems. But for Chinese investors, this broke with their expectations – based partly on their experiences in China and partly on the Lao state's promotion of the country as a new frontier for land investment – of finding easily available land and strong state support for their endeavours. The process of negotiating for land and especially of gaining access to land already granted on paper has been far more complicated, costly and time consuming than investors initially planned for. Much of this is due to how the government facilitates and oversees land investments. The Lao state is described as exhibiting fragmented sovereignty because it grapples with institutional disconnect, internal struggles over regulatory power, and a complex landscape of overlapping land uses and formal and informal claims to the land and resources it governs (Dwyer, 2011a; Lund, 2011). But these fragmented, often competing state actors still have strategic political agendas and powerful implementing agency which Chinese investors navigate with limited success. Despite regulatory contradictions and limited technical capacity, state actors serve as powerful gatekeepers mediating investors' access to land. As such, we find characterizations of Laos and other host countries as exhibiting 'weak' land governance or inevitably bending to foreign investor demands to be overly simplistic if not misleading in some cases.

The roles of the state and state-society relations in shaping land deals are increasingly addressed in the land grabs debate, but a dearth of investor perspectives remains. The first phase of literature on land grabs centred on defining and quantifying land grabs, and identifying their drivers. Initial analyses which grabbed headlines were based on global-scale, highly aggregated databases, often consisting primarily of media reported figures, painted a picture of a sweeping global land takeover but this has since been amended (Edelman, Oya, & Borras, 2013). Efforts to quantify land deals overlooked local level complications of those deals, and notion of powerful foreign investors seamlessly taking over land while states stand helplessly by has been largely abandoned. Thus while the sheer volume of deals granted globally and their corresponding area is still substantial (Anseeuw et al., 2012), the actual allocation of land – that is, the transfer of land rights into investing companies' hands – is rarely a smooth, clear-cut process (Hall, 2011b).

This evolved into a second wave we position this paper within, focused more on grounded research of the complex processes and the power dynamics at stake in transfers of land control (Borras & Franco, 2011; Hall, 2011a; Pedersen & Buur, 2016). In this second wave, scholars have acknowledged the previously underplayed role of domestic actors in facilitating land investments. The role of the state has been an important focus of the second phase of land grabs literature, as scholars have demonstrated how differences in state power impact characteristics of land grabs in a given country (Lavers & Boamah, 2016), and suggest that unbundling the state to examine the institutions and social relations involved in land governance is crucial to addressing how they unfold so differently across different country contexts (Wolford, Borras, Hall, Scoones, & White, 2013, p. 189). Domestic elites have also been recognized as key proponents of foreign land investment as in many cases they stand to benefit financially or politically (Fairbairn, 2013; Keene, Walsh-Dilley, Wolford, & Geisler, 2015). The facilitating role of domestic actors and the complex, grounded processes shaping the outcomes of land deals have therefore been recognized as contributing to a discrepancy between the reported figures in the first phase of the land grabs literature and the on-the-ground implementation of land projects (Bräutigam & Zhang, 2013; Edelman, 2013; Scoones, Hall, Borras, White, & Wolford, 2013).

As analyses of foreign land acquisitions increasingly take complex power relations between states, elites and local land users into account, it stands that the position and power of investors vis-à-vis these domestic actors and networks of power must also be better understood. Keene et al. (2015) note that while the drivers behind investment are often boiled down to investors' 'profit motive' or to land-scarce countries' high demand for land and host countries' excess supply of it, 'the sources and reasoning behind land deals are often contingent and messy' (p. 132). Without attending to the specific context and processes through which land deals are established, investors' motivations are too often assumed, thus missing key elements to why, how, and to what effect land deals occur. We argue that investor experiences of and strategies for navigating domestic political structures and networks of land-based interests are equally as important for understanding patterns and consequences of land acquisitions, and that more studies should ask how investors' expectations and motives intersect with state, elite and local land users' designs.

This study aims to contribute an investor-centred, grounded perspective to this second phase in the land grabs debate by examining the processes through which Chinese agribusiness investors have obtained land for investment in Laos. It is based on qualitative data collected during field research from August 2012 to June 2013 in Laos and in Yunnan Province, China. Seven Chinese agribusiness companies were selected for study from the State Land Leases and Concessions Inventory (Government of Laos [GoL], 2011) after controlling for minimum concession area of 1,000 ha. Semi-structured interviews were conducted with company managers (on-site at plantations, at Lao district company offices and a limited number at headquarters in China), government staff involved in granting and managing concessions and with village authorities from two to six villages hosting each of the concessions. Interview content covered each interviewee's involvement in the concession granting process, the status of concession land allocation and general reactions to any implementation issues or regarding the project's impacts to date. Key informants were also interviewed, including other researchers, development workers and representatives of private sector organizations in Vientiane, Laos and in Yunnan, China. By tracking how investors negotiate with the Lao state for land and what determines their success in obtaining it, we demonstrate the range of factors which either inflate the areas initially granted or impede the land allocation process.

In the following section we examine claims that Laos contains extensive empty land, and suggest that beneath these claims lie complicated, sometimes conflicting state interests in foreign land investments as a tool for extending Lao state sovereignty and control. Next, we present Chinese company perspectives on operating in Laos, contrasting their expectations of Lao government support and of gaining access to significant areas of 'empty' land. Finally, we trace the various factors which explain the gap between what Chinese companies are granted on paper and what they gain access to in practice. We conclude by reflecting upon the link between the concept of empty lands and practices of state territorialization, the importance of accounting for investor perspectives, and the need to understand weak land governance not only as something that global capital may exploit but also that may hinder investors in the transformation of resource frontiers.

FRAGMENTED SOVEREIGNTY AND THE MYTH OF EMPTY LAND

When asked why they have come to Laos, Chinese investors repeat a ubiquitous mantra: 'China has labour and capital but not land, Laos lacks labour and capital but has land!'. In the early 2000s, Chinese agribusiness companies were overcapitalized and economic growth was generating inexhaustible demand for raw materials, but the country was rapidly running out of arable land and resources to tap within its own borders. At the same time, the Lao government was opening up to foreign direct investment (FDI) as a development strategy and promoting the country as land and resource abundant. The state depicted the country's land as sparsely populated, rich in untapped natural resources, and a frontier of opportunity for foreign investors (Barney, 2009). No group has bought into this vision more than Chinese investors, which is particularly appealing as they are increasingly unable to expand their operations at home. But by 2012–2013 when field work was conducted, Chinese investor optimism about opening vast frontiers of what was depicted as available 'empty', 'marginal' or 'underutilized' land in Laos had evaporated. The mismatch between investors' expectations, based on this myth of empty land, and the reality of how investing in Laos works in practice reveals much more complex politics often at work in global land grabs.

Categorizing land in any way – as unclaimed or occupied, productive or marginal, natural or degraded – is a political act. This is because it also serves to categorize the people who reside on and use the land, the terms of access to resources connected to that land, and the land's relationship to the state as territory, all of which drive forward processes of state territorialization (Vandergeest & Peluso, 1995). Tropes of marginal and empty land are used across the globe by governments and financial institutions seeking to encourage foreign capital to invest in developing countries (Borras & Franco, 2012; White, Borras, Hall, Scoones, & Wolford, 2012). These have become more politicized in the context of the global land grabs debate. On one hand, the promise of available land serves to attract investors with the suggestion of untapped resources, of areas with great production potential despite lacking basic infrastructure, technical inputs or improved management approaches. On the other, it establishes a moral justification and signals state support by depicting these areas as requiring foreign capital for their improvement. These tropes are rooted in a broader narrative that depicts the transition from traditional to industrial agriculture as inevitable and necessary for economic development (White et al., 2012). For example, the World Bank has undertaken an analysis of areas of high 'yield gaps', which it suggests as areas for land investors to target (Deininger, 2011). This builds upon crisis narratives, such as the call for addressing food insecurity by intensifying production, which has in turn driven a push to intensify production upon supposedly underproductive or underutilized arable lands (a designation often congruous with traditional and subsistence modes of production) in order to feed a growing global population (Neef, 2014). In this sense, empty lands are of course not empty of people, per se, but politically categorized as available and optimal for investment because they are not yet devoted to intensive commercial production.

The task at hand, then, is to examine these framings of land in Laos as empty or available for investment, uncover their political significance, and bring to light the realities they obscure. In its efforts to attract foreign investment, the Lao state has advertised the country as resource abundant, with extensive areas of land available for investment. Sources from national media (Vientiane Times, 2013) to investment brochures to the Ministry of Planning and Investment's (MPI, 2013) website, boast of the country's 'plentiful natural resources with unexploited large areas of fertile agricultural land' (MPI, 2016). Measures of biodiversity or hectares of arable land are divided simplistically by the country's modest population of 6.5 million people (Lao Statistics Bureau, 2016). This natural abundance is contrasted with repeated mention of the country's population density – the lowest in Asia – to suggest the country as an untapped frontier ripe for capitalist expansion (Barney, 2009).

But these measures mask more complex realities on the ground. The production of 'empty' lands in Laos is intertwined with long standing state land use planning projects, exemplified by the Land and Forest Allocation and Land Titling Programs initiated in the 1990s (Hirsch & Scurrah, 2015). Many of these programmes aided state goals of eradicating swidden-fallow cultivation, a form of rotating agriculture common in tropical areas, by categorizing fallow lands as 'degraded forest' (Baird, 2014; Kenney-Lazar, 2013) and allocating all lands except for permanent agricultural plots and village residence plots to the state (Fujita & Phanvilay, 2004). Swidden-fallow plots fall outside of this and are not issued permanent land titles. Laos is therefore widely considered land abundant and resource rich, but only through policy rhetoric which ignores one of the country's primary land uses and a pivotal livelihood.

What is covered up by portrayals of Laos as land abundant, therefore, is a dense network of ongoing but incomplete land regulatory initiatives (e.g., land registration and titling) colliding with unrecognized but pre-existing land claims and various land use systems, formal and informal. Due to this mosaic of land governance, Laos has been labelled a country with particularly weak land governance institutions. Myriad concerns have been raised by scholars, media sources and activists alike as to the implications of foreign investment entering countries of weak land governance. First, by transferring land into the hands of foreign firms, decision-making around land management occurs far from the land itself (Zoomers, 2010) and brings in a new set of actors who are not necessarily known by or accountable to local land users (Peluso & Lund, 2011). These land deals are thought to primarily benefit investors, often at the expense of domestic stakeholders, by externalizing environmental costs and increasing competition for land and resources. Investors are seen as targeting countries with weak land governance regimes where they can manipulate corrupt or capital-scarce governments (Anseeuw et al., 2012; Borras & Franco, 2011).

The special focus in the land grabs literature that has been placed on Chinese investment serves to amplify tropes of weak states and strong investors. Chinese companies are suspected of acting as puppets for Beijing's diplomatic interests (Salidjanova, 2011), which evokes 'fears of loss of national control' to China (Bräutigam & Ekman, 2012) and thus concerns for host country sovereignty. In contrast to investors, host states are predominantly portrayed as weak or passive receivers in the land granting process (Wolford et al., 2013). They are framed as being coerced into ceding vast areas of valuable, fertile land to investors for long periods at low rates, while others interpret them as being forced to compete for foreign capital by maintaining low land and labour prices in a race to the bottom (Sassen, 2013; Zoomers, 2010). Large-scale foreign land acquisitions have also been referred to as neo-colonial or imperialistic resource grabs, raising the spectre of foreign investors as threats to national security and state sovereignty.

These portrayals sit awkwardly with the fact that host country states often seek foreign capital for land investments actively and proclaim these land deals instrumental in their own economic planning and development objectives (Fairbairn, 2013; Lagerkvist, 2013; Wolford et al., 2013). Foreign land acquisitions present an appealing approach to bringing in foreign capital, generating government revenues and driving agricultural production and rural development where countries lack the financial capacity to drive these processes themselves. But these states are not simply weak and unable to resist global capital as some suggest (Darby, 2010). Rather, many argue that foreign land acquisitions may also serve to extend state sovereignty and territorial control where it is fraught, historically contested or inconsistently enforced (Levien, 2013; Wolford et al., 2013).

An alternative, fragmented mapping of the Lao state

To understand these Lao state motives, we argue that seeing states as having either strong or weak land governance is myopic. This binary view of state capacity limits our understandings of the political project of portraying the country as an empty resource frontier prime for investment, and the subtleties of state-investor power relations in Laos. Instead, multiple forms of state sovereignty are at work in Laos. The Lao state can be understood as fragmented, especially in the regulatory channels and institutions that Chinese investors must navigate (Dwyer, 2011a; Lund, 2011). It is fragmented in the sense that, like many post-socialist or post-colonial states, property and land governance regimes are not fully settled but remain contested (Sikor & Lund, 2010). Because land governance sits at the nexus of population management, resource access, and territorial sovereignty, appropriating and granting land imbues participating state actors with power and authority (Sikor & Lund, 2010). In this study, we find that there are multiple institutions within the Lao state involved in interconnected land granting activities, and these may collaborate or compete. Fragmented sovereignty is thus engaged here because it moves beyond the concept of weak land governance to describe multiple forms of power operating across state territory and to show how diverse actors attempt to use land governance initiatives to consolidate state authority.

Scholars studying land investments in Laos have widely documented how land acquisitions have actually solidified state sovereignty and contributed to processes of territorialization in Laos. Foreign land acquisitions have been portrayed as tools for state territorialization – the latest iteration in a progression of state efforts to convert the Lao hinterlands into zones of accumulation through processes of enclosure and primitive accumulation (Baird, 2011; Kenney-Lazar, 2012) or similarly as the production of resource frontiers (Barney, 2009). These acquisitions have been instrumental for managing populations with whom the state has a tense political history, anchoring them in the locations and the livelihood activities the state deems appropriate (Diana, 2009; Dwyer, 2013a; Lestrelin, 2011). Scholars arguing for this view of acquisitions as tools for state territorialization have pointed to the ways certain populations, including shifting cultivators, opium producers and upland minorities with histories of rebellion against the state, were targeted previously by state land reform efforts and now by state-facilitated land investments (Dwyer, 2013a).

It is important to recognize that the fragmented state may contradict itself as institutions compete for power (Schönweger et al., 2012). Where host states exercise incomplete land and resource governance, they may actually leverage foreign land acquisitions to expand control over areas currently contested or outside of formal state control (Borras, Kay, Gómez, & Wilkinson, 2012). Despite efforts at recentralization, central level directives are implemented at the provincial and district level, where they are reinterpreted according to local leaders' own perspectives, capacities and priorities, and often with little feedback to or control from Vientiane (Lestrelin, 2011). This tension and disconnect between central and provincial level approaches to land governance is apparent in the politics of land acquisitions in Laos. Central and provincial level authorities and various line agencies all compete for roles in granting land acquisitions (Delang, Toro, & Charlet-Phommachanh, 2013; Dwyer, 2013b). In 2007, the Prime Minister established a moratorium on granting land concessions with the stated purpose of better regulating land deals, which were often granted by province and district governments and seen as having exceeded central level capacity for oversight. Subsequent moratoriums were issued in 2009 and 2012, and can be interpreted as efforts to recentralize concession granting, though these have largely failed to affect lasting change. The Lao state therefore appears fragmented across multiple scales, both horizontally between line ministries and vertically from central to local levels of government – all of which may compete for authority over the land granting process.

We build on the arguments of these scholars to show how the Lao state's fragmented sovereignty affects investors' strategies for accessing land. Whereas fragmentation among land governance institutions and tropes of rural areas in Laos as empty or underproductive are often studied as tools for extending state power and foreign investor access, in this case they have also inflated investor expectations and hidden local level obstacles and barriers to land access which in end have slowed Chinese companies' accumulation of land and resources in Laos. Describing land governance in Laos simply as 'weak' misses these deeper issues of institutional disconnect across multiple scales, internal struggles over regulatory power and overlapping claims to land use rights. The question becomes, then, not only how land deals affect host country state sovereignty, but how the Lao state's fragmented sovereignty shapes investors' ability to access land and implement investment projects.

GREAT EXPECTATIONS: ENCOURAGING INVESTMENT AT THE NATIONAL LEVEL

Chinese agribusiness investments boomed in Laos in the 2000s as a result of changing tides in foreign relations conditions, strategic economic planning and investment policies in both China and Laos – all of which suggested strong bilateral state support for Chinese investment in Laos. The political relationship between China and Laos has not always been strong due to divides in the communist blocks that lasted throughout the 1980s. Until the 2000s, China also discouraged firms from investing abroad, but overseas direct investment has since come to be seen as necessary for China's sustained economic growth (Wei & Alon, 2010). Prior to 2000, China was only a minor investor in Laos with an FDI share of only 2% (Sommer, 2010). Until then, small-scale exchange had occurred across the Northern border, driven by smallholders with trans-border family ties, but large-scale investments were rare. Over the past two decades, however, diplomatic ties and political and economic cooperation warmed and Chinese investment has poured into Laos.

In 2004, the Lao government began actively attracting FDI in the land sector as a central pillar to its economic development strategy, epitomized by the slogan 'turning land into capital' (Dwyer, 2007). It offers a range of tax holidays and cheap land prices, thus land in Laos is highly undervalued compared to land prices in the region (Schönweger & Üllenberg, 2009; Shi, 2008). During the same period, Chinese policies pushed companies to invest abroad. The Go Out Policy was enacted in 1999 and reversed decades of protectionist policies discouraging Chinese companies from investing abroad. The legislation gained teeth in 2004 when foreign exchange and export/import limitations were eased and other financial assistance mechanisms established (Salidjanova, 2011). With these strong signals that Laos and China had opened regulatory pathways for foreign investment, Chinese investors poured into Laos eagerly. The granting of large-scale agribusiness concessions grew rapidly, peaking in the mid-2000s (Schönweger et al., 2012) and pushing China to the place of top investor in Laos in 2010 (Phouthonesy, 2010). Chinese state-owned enterprises (SOEs) were the first movers, in part because they enjoyed state support to engage in sectors considered strategic to 'national priorities' (Marton & McCarthy, 2007), with the Chinese private sector following closely on its heels in the last decade (Gu, 2009).

Within the wider push to 'go out', Chinese agribusiness investments in Laos have received special government support under China's Opium Replacement Programme (ORP).[1] Established in an effort to stem the rise in injection drug use in Southwest China, the ORP aims to reduce opium production in northern Myanmar and Laos by providing direct financial and logistical support to Chinese businesses investing in commercial agriculture in those areas (Transnational Institute [TNI], 2010). ORP projects are meant to provide alternative livelihoods to opium cultivators in the region and to reduce poverty rates. ORP companies receive subsidies, loans and tariff exemptions and quotas for importing agricultural products back into China (Shi, 2008). Thus the Chinese policies that encourage agribusinesses to invest in Laos draw heavily from development discourses of South–South cooperation, while specifically supporting large-scale commercial agriculture projects as the tools for accomplishing such cooperation (Lu, 2017).

The Lao government approved a series of land and investment policies, decrees, and laws in the early 2000s establishing a more welcoming regulatory framework for foreign land investment. The MPI was charged with coordinating horizontally with other line agencies responsible for reviewing and approving investments in different sectors. For agricultural and tree plantation projects, companies needed to register their planned investment activities with the Ministry of Agriculture and Forestry (MAF). At the time when the companies included in this study entered Laos, procedures for surveying and approving land for investment were performed by the Land Management Authority within MAF – this responsibility later migrated to the Ministry of Natural Resources and Environment (MoNRE) when it was established in 2011. The process for gaining land for investment followed a hierarchical flow where large-scale projects required national level approval, and provinces and districts could grant land at more modest scales. What is officially approved at the central level is then received and implemented by the corresponding provincial level line agencies, who in turn allocate many ground level tasks to district level institutions. The area limits on what lower level institutions could grant to investors were raised over the years, but Figure 1 depicts the process as of 2012.

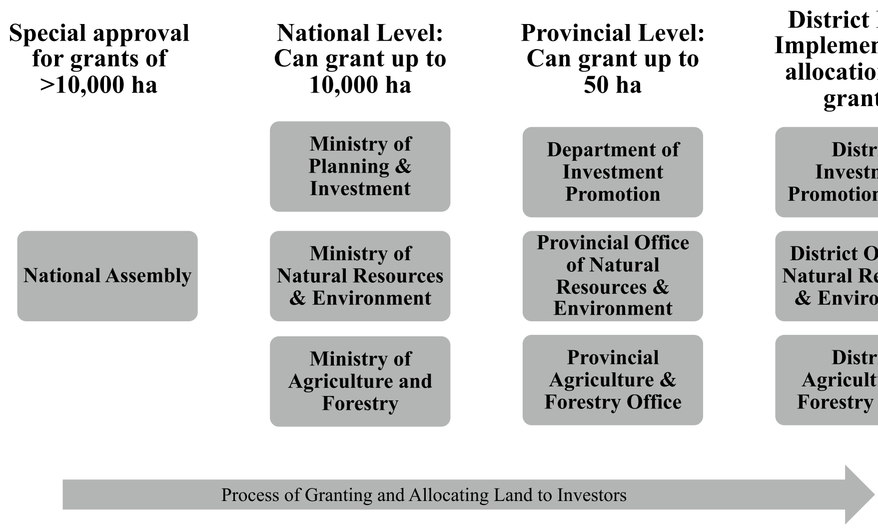

Figure 1. The process of granting land according to Prime Ministerial Decree No. 135, 25 May 2009.

This hierarchical approach echoes a system Chinese companies are accustomed to and fits with both the Chinese and Lao states' governing approach. In both countries, the central state establishes policy measures, which the lower levels are then charged with implementing. But Chinese company managers interviewed emphasized that, in China, high level political connections or official state approval for projects typically ensure lower level cooperation in both policy-making and business. Similarly, when companies face challenges at lower levels in China, they draw on higher level connections to push their plans through lower administrative red tape and obstacles. Although both systems are more complex in practice, representatives from Chinese companies readily understood the Lao system in terms of their own prior experiences in China.

Despite establishing this framework for granting concessions, the processes followed on the ground are far more varied, shaped heavily by the above described internal politics of the Lao state. At the national level, different line agencies have competed for control over the granting process due to the significant revenue flows land investments bring in. This horizontal competition was intensified when MoNRE was established and took over the tasks of land zoning and surveying from MAF. By then, MAF had over a decade of data and staff capacity from overseeing the Land and Forest Allocation Program and did not readily collaborate with the new and less politically established MoNRE. Meanwhile, investors were encouraged to approach MPI first as it was charged with coordinating all line agencies, yet MPI does not perform any key assessments or services for approval, leaving it little leverage over the other agencies in the land granting process. Thus communication and collaboration are inhibited by territorial struggles for political ground between ministries, which translates to the province and district levels as well.

The unevenness in central Lao state control over provincial and district level institutions is visible in communication disconnects. Investment project documents, from company licensing to land concession contracts, are not often shared between granting institutions, thus centrally approved deals are not subject to review by or even communicated directly to the relevant provinces after approval, and vice versa. Lower level offices, especially at the district level, are often saddled with responsibilities for surveying land and acting as interlocutor between companies and local land users, while concession fees and tax revenues are collected at the higher levels. Thus although a top-down system of land granting has been established on paper, few financial mechanisms incentivize vertical cooperation and myriad political divisions within the state create obstacles to communication and collaboration throughout the system.

Chinese investors must navigate this complex terrain of fragmented Lao state institutions in order to access land. The land investment process appears on paper to be characterized by a clearly hierarchical flow from the central to district level governments, and assumes vertical and horizontal coordination of administrative responsibilities as well as clear communication and information sharing. But Chinese companies which have tried to approach the state in this way have been granted land on paper only to have to repeat these negotiations across line agencies at each sub-national level, with differing degrees of success at each point along the way.

DASHED EXPECTATIONS: NAVIGATING LAO LAND POLITICS IN PRACTICE

> When we foreign enterprises come here to develop, they should think how they can help sustain us and help us accomplish things quickly. Only when a foreign enterprise does a good job will they bring up the local people. Our company has already been here for 7 years, only on the 5th year did we get the proper documentation processed. In China this wouldn't happen. (Manager of Rongxieng Company)

> You can say land here is cheap, but in actuality it's not. Not cheap at all, in fact it's very expensive! (Manager of Sun Paper Company)

The Chinese company managers cited above point to two key operating assumptions common to Chinese investors in Laos. The first is the expectation that the Lao government would facilitate their investments because company revenues were expected to benefit local development and the state itself. The second is that land – namely cheap, readily available land – would be easy to come by. In both cases, their initial expectations have not panned out. When they first entered Laos, Chinese investors reported that they were confident in doing business there. Many thought that because Laos and China share a similar political history, they would enjoy strong state support. 'Laos is like China thirty years ago' Guangda's manager stated, emphasizing the countries' common socialist backgrounds and suggesting that Laos can learn from China's own path of development. Other company representatives believed that because Laos and China have similar political systems, business conditions would be similar.

This determined how company managers interpreted the concession granting process in a number of ways. Most assumed that the higher their political connections, the smoother their projects would develop and all initially sought central level connections. They were especially taken aback, therefore, when concessions negotiated and granted at higher levels of government did not translate into corresponding allocated areas. Instead, the allocation processes occurred at lower levels, making companies heavily reliant on district level authorities throughout the land allocation and project implementation phase. Particularly problematic for investors were instances where land was granted across multiple administrative boundaries. Yunnan's operations span four provinces in northern Laos, and Sun Paper's and Lilieng's are split between multiple districts. All three reported extensive inconsistencies in terms of regulatory conditions and ease of doing business across administrative units, and have had to build new relationships in each location – a process they describe as costly, time consuming and highly inefficient. Even at the village level, companies must often negotiate for land directly with village representatives even after obtaining government support and approval, and some villages have successfully resisted investment despite state and company pressure.

Finally, companies expect greater enforceability of granted concession contracts, and thus mistake granted areas as reflecting state buy-in to their projects. Investors extensively discussed the positive development outcomes their projects would deliver for Laos, and shared the sentiment expressed by Ruifeng's manager that 'Laos needs our investment'. Rongxieng's manager drew on this logic, proudly recounting, 'The provincial governor took concern in our company; he came and saw our plantation, saw that our company was not like other companies. That we were really there to invest'. Investors thus expected that getting state approval for their concessions indicated Lao state buy-in to their projects, and understood areas granted as reliable estimates. Some government officials interviewed echo this, and were apologetic about the obstacles to land allocation. But others suggest that concession agreements provide only permission to obtain land, or a maximum amount the company could seek, but no guarantee to that area.

In the end, companies still receive considerable areas of land, but the gap between the areas they expect to receive and those which are allocated create specific issues for them. To begin with, companies have found it difficult to plan. Most initially planned to establish processing factories in Laos, yet all but Yunnan (which processes rubber latex from all producers in Luang Namtha Province, not only its own trees) have delayed these plans because their scale of production would not support the planned facilities. Companies also cite unforeseen delays and costs as justification for delaying compensation payments and development projects for villages. Ultimately, while investors have rushed into Laos expecting an abundance of cheap land, they have realized that land is far more expensive and far less available than it initially appeared.

The gap between land granted on paper and land allocated on the ground

These Chinese investors came to Laos for a range of reasons and apply different approaches within the land granting process. They each held expectations of how to operate within the Lao context based on an encouraging policy environment. But all companies were new to Laos and these expectations were based on little more than speculation, a rudimentary understanding of Lao actors and state motives for granting concessions, as well as the company's prior experiences working in China.

Of the seven companies included in this study, six solely cultivate rubber, which is consistent with the fact that rubber is the most common agricultural crop Chinese companies have invested in throughout the country (see Table 1). The companies arrived in Laos within a very short time span, and each established concession agreements within two years of arriving. Chinese SOEs have paved the way for further investment as Yunnan Natural Rubber (a Yunnan-based SOE

Table 1. Company characteristics.

Company name	Crops	Year Entered Laos[a]	Ownership and headquarters in China	Location of operations in Laos (region: province)
Yunnan	Rubber	2001	SOE, Yunnan	North: 4 Provinces
Jinrun	Rubber	2004	Private, Beijing	North: Luang Prabang
Ruifeng	Rubber	2005	Private, Yunnan	North: Luang Namtha
Lilieng	Rubber	2005	Private, Yunnan	North: 2 Provinces Central: Vientiane
Rongxieng	Rubber	2006	Private, Sichuan	Central: Savannakhet
Guangda	Rubber	2006	Private, Jilin	Central: Savannakhet
Sun Paper	Acacia, Eucalyptus	2007	Private, Shandong	Central: Savannakhet

[a]The 'Year Entered Laos' refers to the year the company manager reported during interviews that they initiated their search for land in Laos. This typically involved initial contact with state representatives, but concession agreements and other legal documentation may not have been initiated at that point.

focused on rubber) arrived in 2001, three to six years before the others. The following three companies (Jinrun, Ruifeng and Lilieng) are private but participate in the ORP. Rongxieng, Guangda and Sun Paper are also private but have invested in Laos independently, without Chinese state support. All produce for export back to China, thus each reported initially looking for land in the north, citing cheaper transport costs and proximity to China as their motives for this. None of the companies selected operate in southern Laos, due to these logistical considerations as well as the stronger presence of Vietnamese investment in that region.

Companies took different approaches to acquiring land and engaged different state actors in the concession granting process. As leaders in their respective sectors, Yunnan and Sun Paper enjoy strong political connections in China, which is perhaps why both approached the central level government first. Ruifeng was approached by the Luang Namtha provincial military which, according to Luang Namtha Department of Planning and Investment staff interviewed, sought funds for road building in an insecure border area along the Mekong River and Myanmar. Ruifeng was granted 10,000 ha of land in that area, and claims to have repaired and partially built some of the 150 km roads throughout the concession. Jinrun and Lilieng approached province level authorities, while Rongxieng and Guangda both began with small, 100 ha concessions (demonstration plantations) granted by district officials, and sought provincial contracts when they were ready to scale up their plantations. A range of state actors are thus simultaneously engaged in granting concessions, and companies follow different strategies for engaging in the land acquisition process.

While large areas of land were granted to the companies, these numbers have not translated into the allocation of correspondingly extensive areas in practice. In fact, all companies studied have obtained a far smaller amount of land than was granted them according to their concession agreements (see Table 2). At the time of field visits and interviews, all were confronting major obstacles to land allocation and neither the companies nor government partners expected significant areas to be further allocated.

This gap between the area granted and allocated results both from the inflation of the areas granted in contract agreements, and from obstacles to allocating land to companies – both of

Table 2. Areas granted and allocated.

Company name	RuiFeng 瑞峰	Jinrun 金润	Lilieng 力量	Sun Paper 太阳	RongXieng 荣祥	GuangDa 光大	Yunnan 云南
Granted (ha)	10,000	7,000	2,500	39,000	2,407	1,800	166,666 Undefined arrangement[b]
Allocated (ha)	2,500[a]	1,300	1,500	7,500	1,400	1,400	345 Concession and 7,333 contract farming

[a]According to interviews (Long District DoNRE 2012), 5,500 more ha was scheduled for surveying in 2013 but very little of this was accomplished.

[b]Yunnan's land agreement was negotiated in 2001 in Vientiane, resulting in a vague Lao state commitment allowing the company to seek *up to* 166,666 ha across the four Northern provinces bordering China. The company had to renegotiate for specific areas of land at each subsequent level (province and district), and typically even with villages. This has proven highly time consuming and costly, and the company's small holding in Luang Namtha was the only concession area it could obtain. Thus while the gap between granted and allocated land is not specifically in the concession category, the company's access to land has been limited by the same granted/allocated gap, thus we include the presented numbers in our analysis.

which we will discuss within the next two sections. It reflects areas of disconnect between Lao government agencies responsible for managing land governance, as well as the limitations of investor power in negotiating for land.

Factors inflating area granted

Companies and Lao state actors alike engage in inflating the areas granted – sometimes strategically and sometimes due to limited information access, weak implementation capacity and low land availability. The primary reason cited by all companies for their interest in Laos was the assumption of abundant, cheap land. Land is increasingly expensive in China, and it is now rare to find even 1,000 ha of land available for investment. Company managers further suggested that, with the low land concession fees the Lao government is asking for, they see little reason not to request as much land as the government will provide. Many admitted that the requested area did not necessarily reflect what the company actually had the capacity to manage or needed to profit. Ruifeng for example initially discussed developing over 20,000 ha with the Luang Namtha Provincial Army – an area which exceeds the arable land available in the entire district where the concession was granted (Shi, 2008). When interviewed, the manager admitted that local labour was too scarce in that area to tap even the whole 10,000 ha it had been granted, much less a concession double that size. Thus granted areas are partly inflated by companies' high requests for land.

China's own policies incentivize investing in land abroad. The financial incentives offered by the ORP directly encourage companies to seek larger granted areas. Qualifying for the programme in the first place requires documented proof (typically in the form of a concession agreement) of investment based on a minimum area and amount of capital invested. Once approved for participation, companies can access loans, subsidies and quotas for import tax exemptions based on the area granted. 'The more you invest, the more money you get from the (Chinese) government' explained a Lilieng representative at the company's headquarters in Kunming. This has had the effect of encouraging companies to over-report concession areas to the Chinese government when applying for the ORP, or at least to focus on obtaining official Lao state documentation rather than planning manageable, productive plantations.

This tendency to inflate land requests points to a larger problem of how and by what measures Lao government actors determine areas granted. By law, land surveys should be conducted before the concession is granted. In almost all cases, surveys were consistently conducted only after the concession agreement was signed – with no or only limited prior negotiation or coordination with lower levels of government or villages. Sun Paper visited Sepone District along with central level officials before investing, but because they were reassured that abundant land was available for their 39,000 ha concession they never surveyed the land themselves. 'They (central government officials) really know how to talk, they said all of the land was high quality and available. It was a big leader who said this, so we really believed it' recounted the Sun Paper manager interviewed. District officials interviewed, meanwhile, recounted that by the time Sun Paper arrived in Sepone in 2007, much land had already been granted to other investors and very little remained. The Savannakhet Deputy Provincial Governor also announced in 2007 that provincial officials were facing difficulties providing investors with land (Ponghkao, 2007), thus casting doubt that the proclamations of the central level officials who granted Sun Paper's concession were accurate.

Because no national cadastre and comprehensive data exists on land use and zoning in Laos, land surveys are vital for determining land availability. Only Rongxieng performed land surveys before requesting land, but this was done to determine climatic and soil suitability, not to check for conflicting land claims or zoning issues. Areas granted in concession agreements did not, therefore, seem to reflect availability.

Obstacles to obtaining land

Once granted, myriad obstacles exist to actually obtaining land, particularly of the scale that concessions in this study were granted. Most stem from the fact that land is surveyed after concession agreements are granted, and by a lower level state authority. Regardless of which level concessions were granted at, the majority of land management tasks (e.g., surveying land, informing villagers, conflict mediation, etc.) and the final land allocation (interpreted here by the approval of individual land plot maps with landscape-specific boundaries drawn) was carried out at the district level. Thus once concessions are granted, the granting authorities had little involvement in each deal beyond issuing written requests for lower level cooperation.

This process is poorly understood by investors who often expected the Lao government to drive the allocation process. The Head of the Vientiane Province Department of Planning and Investment said this was a misunderstanding: 'Lilieng understood that the Province would find the land for them, and only later realized that they had to find it by themselves. However, by the time they started there was no land available'. In cases where district staff actually carried out land surveying and negotiations with local land users, companies were expected to finance these activities. District level government offices were less than cooperative, which is not surprising – concession fees and taxes go to the central level despite that the district level has to address most of the challenges and negative impacts potentially arising from foreign land acquisitions.

Even when land was surveyed, delineated and allocated on paper, many companies found that the amount of land identified for them was either unavailable (occupied by local land users, allocated to other companies or otherwise already claimed) or unsuitable (rocky, too mountainous). Sun Paper, for example, estimated that roughly 600 ha of the total 7,324 ha surveyed and allocated by the district government to the company was either watershed protection area, rocky land, or too high in elevation for Eucalyptus cultivation. Lilieng was issued plot maps and paid concession fees for five parcels of 500 ha each, only to find that some of the parcel areas only amounted to 100–250 ha in reality, and could not be expanded as the surrounding areas were already in use by nearby villages. Both companies have brought these shortcomings to the attention of government partners, but beyond reimbursing concession fees for the areas not available, no recourse has been offered.

Finally, companies have run into a number of challenges at the village level surrounding compensation payments, grievances, and acts of resistance and sabotage. State lands granted to investors are rarely state-owned in practice, in the sense of being demarcated and uncontested. Land in Laos is typically state-owned merely in that the state has formally zoned them state land, but may remain occupied, used or even locally held under customary tenure (Kenney-Lazar, 2013). Most villages were not consulted until after concessions were granted when officials and/or company representatives explained to them that areas in their village would be given to the investor. Often villagers were simply informed of their responsibility to provide investors with land and, according to village authorities interviewed, given no option to refuse the concession. However, in one contrasting case, Nalae village was originally approached to provide land for Sun Paper's factory site, but after a full year of negotiations facilitated by the district government, the village successfully refused the concession and Sun Paper moved its factory site. Negotiations with villagers were portrayed by company representatives as complex, costly and time consuming, with disagreements exacerbating negative relations between companies and local villagers. Where Lilieng and Ruifeng refused to pay compensation on the basis that land granted to them belongs to the state, and not to villagers, both have experienced the retaliatory destruction of rubber seedlings and burning of plantation areas. To investors, these village level negotiations and conflicts result in a range of delays, additional costs and reputational risks, and require significant district government involvement in negotiating for and allocating land.

The experiences of these companies are presented here to unsettle common understandings of how large transnational corporations operate in remote, backwater areas of the developing world. These companies represent some of the larger transnational corporations operating in Laos currently, and it should be recognized that the smaller companies, individual investors, and households with cross-border family ties take different approaches to obtaining land in Laos. Perhaps these smaller-scale actors, who need less institutional support to operate and who attract less attention, may represent more insidious flows of capital into resource frontiers and thus succeed where larger companies like those studied here have been limited. Regardless, these results serve to remind scholars of land investments that gaining formal access to land through titles and investment contracts is quite different from maintaining that access in practice and from being able to benefit from land. Formal claims to a resource do not ensure the capacity to generate profit or accumulate capital from it (Ribot & Peluso, 2003). In a place like Laos especially, extra-legal mechanisms of access – legitimacy, social and political authority – can prove of comparable or greater importance than legal claims to land.

CONCLUSIONS: THE LIMITED CONCEPT OF WEAK GOVERNANCE

The dual myths of weak states and empty lands may fuel efforts to grab land, but these myths also erase the complexities, contingencies, and layered systems of land use and resource access that the Lao state considers undesirable and illegitimate, and that foreign investors are not likely to understand. If on the surface these myths attract investors, they also belie deeper tensions between the territorial control of the Lao state and the relatively autonomous political economies of the country's hinterlands. While it may be true that the Lao government exercises weak governance in certain regions, this weakness is neither uniform nor is it structured in such a way as to allow the wholesale transfer of land to Chinese control. Rather, the cases presented in this article show how processes of host country state building attempt to enlist foreign capital in the project of rationalizing lands considered empty, degraded or underutilized.

The process of granting land initially appears to Chinese investors as top-down and facilitated by strong Lao state support and the convenient abundance of available arable land. But in actual practice, the Lao state contains multiple territorial agendas at each level – from the broader state projects of classifying shifting cultivation and traditional subsistence agriculture as underproductive or marginal land, to the internal tensions of vertical and horizontal competition among state agencies over the power to grant land and manage foreign capital. What was granted by various agencies on paper rarely guaranteed companies land access in practice. This forced companies to engage multiple state actors and to attend to the complexities of Lao land use systems, which consist both of informal practices and the formal structures of state land regulations. Furthermore, investors who sought high level political connections were no more successful at accessing land than those who approached villages and lower level state actors, in fact often more time and money were expended by companies taking a top-down approach.

Thus we find that the Lao state is not really 'weak' when faced with the forces of foreign capital, but that its control over its land and people is incomplete and never was complete in the first place. Instead, the Lao government attempts to discursively erase problem populations and economies in order to attract foreign investors who might then be able to transform this rhetoric into reality. But as a result of its fragmented sovereignty, the Lao government cannot act as the final arbiter in facilitating local dispossession at the hands of foreign capital. Rather, sub-national government officials and villagers still play a key role in determining what happens to their lands. In this particular balance of power, the Lao state is but one vital yet finicky gatekeeper for Chinese companies seeking access to Lao land and resources.

In other words, 'weak' governance fails to account for how, facing the forces of global capital, certain forms of territorial control remain quite robust in Laos. Instead, the concept of fragmented sovereignty allows us to see how sub-national actors interrupt the great expectations of both the central government and Chinese investors. Rather than viewing China's global integration as an inevitable process unfolding across global space with the full cooperation of national governments, the case of Chinese agribusiness investments in Laos shows how local and transnational actors must navigate competing interests and visions of territorial control. This is not a case of weak governance per se, but rather a case of many partial, yet robust, power brokers exercising limited sovereignty across the Lao state's fragmented territory.

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NOTE

1. Also referred to as the Opium Substitution Program or yingsu tidai zhongzhi xiangmu/zhengce (罂粟替代种植项目/政策) in Mandarin.

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