

Free, Prior and Informed Consent in REDD: Complying with Prerequisites in Laos

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I. Introduction¹

Over the last few years, Laos has increasingly engaged in the REDD readiness process, becoming an area for various multilateral and bilateral initiatives to test approaches and strategies and to develop policy infrastructure and capacity in preparation for REDD+ implementation and participation in the global carbon market. In 2008, it was one of the first 14 countries to join the World Bank Forest Carbon Partnership Facility (FCPF) that was purposely set up to finance developing countries to carry out REDD+ readiness programs. In 2011, it submitted a REDD Readiness Preparation Proposal to FCPF that was approved that same year. In addition, Laos is one of eight pilot countries selected for the Forestry Investment Program (FIP) that similarly will fund REDD+ activities including a fund mechanism that indigenous and local communities can avail of. Both fund facilities are not yet operational although FCPF is set to start soon.

One of the initiatives piloting REDD+ in Laos is the 10-year (2009-2018) Climate Protection through Avoided Deforestation (CLiPAD) program. CLiPAD is a Lao PDR (People's Democratic Republic)-German bilateral program that seeks to address forest degradation, conserve biodiversity and improve livelihoods of communities in two national protected areas: the Nam Phui National Protected Area in Sayaboury Province and the Nam Et Phou Louey National Protected Area in Houaphan Province. Overall it aims to assist the Lao government in developing suitable REDD+ framework conditions and in piloting models for effective forest conservation in national protected areas. The Lao People's Democratic Republic forestry and agriculture ministry and department lead program implementation, while the German Government provides technical assistance through GIZ and financial assistance through the German government-owned Development Bank, KfW. The German technical component consists of policy advisory services, capacity building and institutional support in the field of forests and climate change mitigation.

CLiPAD Program Activities

- initiating a national REDD+ policy dialogue and development of a REDD+ regulatory framework
- village land planning in Nam Phui using the Participatory Land Use Plan procedure and incorporating ecological values such as forest carbon and potential for payment for these
- identification of local REDD strategies through conservation contracts for rehabilitation of pilot areas and arrangements for user rights for local communities
- development of financing models for national protected areas including a business plan for the emerging forest carbon market
- identification of potential public or private investments
- development or update of a management plan for one national protected area
- documentation and sharing of lessons learned for the international processes (e.g. REDD+ Partnership, UNFCCC)
- training on impact-oriented monitoring and evaluation system.

¹ The case study is mainly based on papers, documents and articles accessed from the internet and from a short email from Mr Thongsoune Bounphasaisol, REDD+ National Coordinator as well as additional information sent by Dr Georg Buchholz, Program Director, Sustainable Climate-friendly Management of the Environment and Natural Resources (SusCLiME), Lao PDR



Nam Phui National Protected Area, Laos
 Protected Areas and Development in the Lower Mekong
 River Region
http://www.mekong-protected-areas.org/lao_pdr/pa-map.htm

II. Piloting FPIC

One of the initial activities of the CLiPAD program in the first 3-year phase was the piloting of free, prior and informed consent in the Nam Phui area. This was undertaken to satisfy the safeguard standards for Verified Carbon Standard (VCS) projects² the program seeks to develop in the national protected areas for the voluntary carbon market. An assessment it made in the Nam Phui area showed the feasibility of conducting a VCS project. While not explicit on FPIC, the VCS system, which determines quality-assured greenhouse gas emission reductions and credits, makes reference to community consultations. The pilot activity also aimed to serve as an opening for discussions on forest governance, especially on participatory planning and multistakeholder processes, and on the FPIC concept and capacity development within Laos context. Forest governance is a main GIZ objective and in line with BMZ's forest sector concept. An additional objective was to use the "learning by doing approach," based on the

² Email correspondence from Thongsoune Bounphasaisol, REDD+ National Coordinator, Laos, Feb 7 2013

RECOFTC-GIZ FPIC guidelines, to develop Laotian voluntary FPIC guidelines that would be endorsed by the government and bring better understanding of FPIC among involved stakeholders within the country's political and social realities.³ The Lao People's Democratic Republic is a socialist republic with a single political party, the Lao People's Revolutionary Party whose 9-member Politburo and 49-member Central Committee largely determine government policies.

The FPIC consultation was undertaken in eight villages along the Lao-Thai border in the Nam Phui protected area to determine whether or not the villagers consented to participate in the project. CLiPAD contracted external facilitators, the civil society organization Lao Biodiversity Association (LBA) to conduct the FPIC process. Community facilitators were also recruited from the villages to assist LBA with information about the communities' customs and traditions, particularly in resource use, decision making and grievance mechanisms.

Under the planned procedure, LBA teams would make four visits to each village. The first was a meeting with the village committee after which informal sessions would be held for the village population. In the latter gathering, LBA would explain and discuss climate change and the REDD+ approach, the villagers' rights and grievance and resource mechanisms. After the conduct of this process, the villagers would give their decision on the project. Their consent would also be sought during and at the end of project planning. As many people as possible were to be included in the village meetings especially in areas where the population was large, and gender balance would be made in the populations consulted as well as in the facilitating teams.⁴

The process described above generally reflects the basic elements of free-prior-informed consent. Efforts were made to maintain independence of the process and non-coercion of those consulted by having a local third party conduct the FPIC process. The consultation was also done at the village level before project commencement. Further, additional measures were considered in the procedure to ensure gender balance and bigger and inclusive community participation. Only the actual implementation of this process however would show whether it worked in the local setting and was applicable in all the eight villages covered. A target output of the CLiPAD program is a manual on FPIC guidelines to be informed by the lessons drawn from this pilot exercise. This is yet to be released.

III. Legal Environment

The CLiPAD FPIC consultation is considered a pioneering activity, as it is the first instance in the country that the consent of host communities has been sought for a project. However, there are various challenges to its broader application and

3 Email correspondence to INFOE from Dr Georg Buchholz, Program Director, Sustainable Climate-friendly Management of the Environment and Natural Resources (SusCliME), Lao PDR, on 8 Sept 2013

4 Goetze, Katharina, "Lao-German REDD+ Project Pioneers FPIC in Sayabouri Province, Laos," <http://www.forestcarbonasia.org/articles/lao-german-redd-project-pioneers-fpic-in-sayabouri-province-laos/>

support in other development areas. The policy and legal environment for FPIC is still relatively weak, a situation acknowledged by CLiPAD program implementers themselves.⁵ Unlike the Philippines, Laos has no regulatory framework for free and prior informed consent nor does it have any legislation specific to indigenous peoples. The concept of indigenous peoples is not generally recognized, as the government concern for national unity overrides any distinctions in ethnic origin and between ethnic majority and minority groups. Laos is a multiethnic country with 49 ethnic groups and over 100 subethnic groups having equal status under the law. According to IWGIA, around a third of the population are ethnic Lao who dominate the country economically and culturally. Another third is comprised by those belonging to other Tai language-speaking groups comprise. "The remaining third have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-Iu Mien families and are those that are considered to be the indigenous peoples of Laos."⁶ The indigenous peoples are deemed among the most vulnerable groups in Laos.⁷

The indigenous and local forest communities have little land tenure and security under existing forestry and land laws, and customary rights are acknowledged only in ministerial recommendations. The new Forestry Law passed in 2008 affirms that all natural forests and natural resources belong to the national community in keeping with the country's socialist policies. The State decides on their use and who can utilize and exploit them. Communities are allowed to manage village forests only if allocated by district officials, but forest management is largely focused on the sustainable use of non-timber forest products including construction materials, fuel wood and wildlife. Individuals, households and organizations can also be allocated degraded and barren forest lands to regenerate, and they have the right to the trees they plant. However, the zoning of large areas as forest lands and delineation of village forests has lately been halted due to lack of funds.

In the same vein, the 2003 Land Law vests ownership of land in the national community, and the State has the responsibility for its management. Land can only be allocated through use, lease or concession to individuals, families and organizations. The Land Use Planning/Allocation Process similarly provides only limited land tenure, and it is the village official who decides on land use at the village level. Changes however are being made in land tenure. In 2007, the National Land Management Authority through a decree introduced the communal or collective land title. In 2012, the first communal land title was issued to communities in five villages in the Ban Xor cluster in Sangthong district. The title covers over 2,189 hectares of village bamboo forests. The 5-year National Socio-Economic Development Plan has targeted the issuance of 1.5 million title deeds between 2011 and 2015.

⁵ Ibid

⁶ IWGIA. Update Laos 2011

⁷ Ibid

More policy shifts may occur with the planned development of a suitable regulatory infrastructure for REDD+ implementation. In 2011, the CLiPAD program facilitated a workshop to formally start the process on revisions to the National Forestry Law⁸ which it hopes could lead towards community titling, village forestry and improvement in forest governance.

IV. Motivations and Challenges for FPIC

The FPIC exercise undertaken in the Nam Phui protected area is similarly part of the overall effort and process under CLiPAD to assist Laos for REDD+ preparedness. And it has reportedly led to some positive results: more awareness of FPIC among local civil society groups, FPIC adoption by REDD+ donor projects in Laos such as SUFORD and Village Focus International, and development of similar guidelines by international NGOs, such as the Oxfam Lao FPIC Guidelines.⁹ While it has generated appreciation for the concept of FPIC and better forest governance in Laos, it is also a pilot for compliance with safeguard standards for VCS projects in protected areas. In this context, the exercise appeared to have also been done in fulfillment of the prerequisites of VCS standards more than in recognition of it being a right that is held by indigenous and local communities. To its credit, CLiPAD has gone a step further by conducting FPIC process in the communities in its project area rather than mere consultations that the VCS system cites. Moreover, the decisions of the Sixteenth Conference of the Parties to the United Nations Framework Convention on Climate Change in 2010, under which REDD is being negotiated as a mechanism for climate change mitigation, make reference to the UN Declaration on the Rights of Indigenous Peoples. The UNDRIP, which Laos voted for during its passage in the UN General Assembly, recognizes and promotes FPIC as a right of indigenous peoples.

The FPIC activity was partly intended to seek the participation of the host communities under the objective of certification under the VCS Standard. This was enhanced by the government's acknowledgment of the importance of local community participation in ensuring the success of REDD+ projects.¹⁰ Communities within or in the periphery of forests play a central role in forest protection and in preventing deforestation and forest degradation, thus getting their consent is crucial in making these measures work. The government also realizes that if the local population does not have an understanding of REDD+ and related carbon projects, it would be difficult to get them to cooperate.¹¹ The FPIC consultations provide a way by which to inform and instruct them including on the drivers of deforestation as well as forest maintenance and enhancement.

⁸ LAO PDR, Ministry of Agriculture and Forestry: Annual Review of REDD+ Activities in Lao PDR 2010. Feb 21, 2011 <http://www.theredddesk.org/sites/default/files/resources/pdf/2011/annual-review-of-redd-activities-in-lao-pdr-2010.pdf>

⁹ Email correspondence to INFOE from Dr Georg Buchholz, 8 Sept 2013

¹⁰ Goetze, Katharina, "Lao-German REDD+ Project Pioneers FPIC in Sayaboury Province, Laos," <http://www.forestcarbonasia.org/articles/lao-german-redd-project-pioneers-fpic-in-sayaboury-province-laos/>

¹¹ Ibid

Further, REDD+ projects could affect traditional livelihoods, thus obtaining the community's prior consent could thwart future local opposition.

In this context, the priority in seeking community consent is to obtain a community's cooperation to guarantee project success rather than out of a respect of their right as inhabitants of the forest who care for and nurture the forest. This has an implication and remains a challenge to the wider relevance of FPIC in other types of development. Many of the development projects in the country involve resource exploitation, in particular mining, dam construction and monocrop agricultural plantations. In the past these types of projects led to the displacement of local communities who often were viewed as an impediment to project undertakings. The implementation of FPIC may thus be limited to REDD+ projects, which make its compliance a requirement.

Another difficulty lies in the lack of a legal and policy framework for the recognition of land rights of indigenous and local communities. The right to FPIC is an adjunct to the right to land, and while the recent grant of a communal land title over village forests bodes well for indigenous and local communities, it may take some time for this right to be realized, with fund constraints hampering the zoning and delineation of communally managed forests. This will necessitate a revision of pertinent laws that CLIPAD has already helped to initiate in the forestry sector. However, titling may similarly be restricted to potential REDD+ areas in aid of forest preservation, excluding mineral, agricultural and other classifications of lands where other types of development are occurring.

The Laos government has not yet endorsed the project's draft voluntary FPIC guidelines, but GIZ hopes their bilateral cooperation can make it more receptive to genuine consultation processes on the ground.¹² Since FPIC is a new approach without precedent in the country, the political leadership appears to be taking great caution to prepare the groundwork for it. The government recognizes the need to first develop FPIC principles, guidelines, procedures as well as criteria, indicators and information materials suitable to the local population before it can implement it at the village level.¹³ A difficulty it sees is how to adapt the meaning of free and prior informed consent in Lao and how to make the villagers understand and make sense of the foreign concepts of REDD, carbon stocks and emissions, and carbon trade. In the Philippines, an indigenous farmer may have aptly expressed not only the complexity but the oddity of carbon trade and the carbon market when he said, "Can you put carbon in a sack?"¹⁴

FPIC is likely to be implemented in Laos but only on a scale that enables it to participate in the implementation of REDD+ projects and the carbon market. The

¹² Email correspondence to INFOE from Dr Georg Buchholz, 8 Sept 2013

¹³ Goetze, Katharina, "Lao-German REDD+ Project Pioneers FPIC in Sayaboury Province, Laos," <http://www.forestcarbonasia.org/articles/lao-german-redd-project-pioneers-fpic-in-sayaboury-province-laos/>

¹⁴ This was expressed during an open forum at a workshop on ecosystems approach in Baguio, Philippines at which this writer was present.

rights inherent in it may not fully underpin its exercise by indigenous and local communities.

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