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Project: A Lesson for Laos*

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A Lesson for Laos*

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## Abstract

The paper aims to study the factors that influenced the differences in land compensation for land taking in Laos. Dam construction varies from place to place due to the differences in patterns of compensation. Thus, explains the number of patterns of compensation in land taking in the world. To analyze the different types of compensation, this paper identified five theories of compensation in land taking; No taking, full compensation, partial compensation, zero compensation and negative compensation. Then, used this to examine the dam construction in each country. As this paper using some case studies in eight countries as determined by the researcher with the consideration of countries having the potential to build dams in the world, as well as the countries interested to operate dams in Laos such as China, India, Japan, Malaysia, Thailand, Russia, U.S, and Vietnam. After analyzing, could summarize that there were many patterns to compensate in terms of land taking on dam construction in each country. The most popular pattern to use in compensating on dam construction is partial compensation which has many levels for this pattern. Then, applied those theories and effects on Laos for comparison and to understand what available condition to apply a pattern of compensation in land taking on dam construction in Laos. In conclusion, this study indicated that there are many lessons that Laos could use to considerate about the pattern of compensation in taking land in order to build dam different in each place. This paper might be useful for the next future in order to understand and analyze the condition for the pattern of compensation in land taking on dam construction especially in Laos.

*Keywords: Compensation, Land taking, Dam construction, Lao PDR*

## 1. Introduction

Developing infrastructures are usually part of a country's development. However, in these development projects, due to limited resources, the government needs to reclaim back its land for development. This leads to certain problems faced by the government, particularly within the realm of compensation. Compensation is defined as providing with full or equal equivalent compensation for the losses individuals, parties or entities incurred.

The problem in land compensation has also been experienced in Laos, a small land lock country in the Southeast Asia region. Nonetheless, the government tries to direct the country to achieve Laos national objective as the battery of Asia. To achieve this, the government consider hydropower sector as a significant part of development (ABD, 2009). Hence, the government focus on the construction of hydropower dam. Moreover, Laos is endowed with natural resources such as rivers, making it a potential site for dam construction. In fact, the Mekong river passes by 11 transboundary area in the country. Given this notion, this paper would like to analyse the different patterns of compensation in land taking in other countries and how these patterns can be applied on Laos.

## 2. Compensation for government taking

W. Lee and Naito (2002) focused on the type of compensation pertaining to the government's requirement for public use of land. The study focused on the economic aspect to analyze how different types of compensation influenced investment decisions. It is known that there is no risk for other landowners if there is no compensation given during the land taking. Thus, in determining the site of land taking, it is important for investors and government to look for a place that is less likely to have effects on people.

The characteristics for model of compensation is the efficient outcome. First, the government will take the property if the public value is higher than private use value, thereby maximizing the property's ex-post value. Second is the suitability in investment level in order to maximize the property's expectation in the first-time value such as the private value when a land taking

does not take place. However, public value happens less than the investment cost. Thus, no compensation is being carried out.

There had been many debates concerning compensation and land taking. The central question that usually arises is, “Why is compensation important to be discussed in land taking?” Various scholars have provided different analysis and arguments in addressing the question. However, there were similar themes that kept emerging from these scholars, which were property right and eminent domain. As the compensation has concerns with the constitution of each country give the property right to their people and Eminent Domain concern in land used for public use (Durham, 1984). In order to explain about compensation in land taking, Kelly (2006) also mentioned about the constitution and try to explain that there are many ways for the government or eminent domain to choose to compensate. As the government can choose to compensate either through zero or full compensation. Another method is through partial compensation as well as, negative compensation which could only be found in some country’s regulation.

## **2.1 No Taking**

The term ‘No Taking’ refers to the idea that the government should not take private land for public use. Pareto efficient theory argue that development should take place without making anyone else worse off which means that in terms of taking land no one should lose out, and that everyone should gain benefits from the development (Smith, 2014). This supports the idea that government should not take any property such as land for the public use.

## **2.2 Full compensation**

Full compensation is generally understood as Just payment. Full compensation serves as a reminder of the government’s limited power in Eminent Domain. The purpose of this is to safeguard and protect the private property owner’s right in terms of land taking. Moreover, Durham (1984) also emphasized that fairness and efficiency are needed for the full compensation of land seizure by eminent domain.

Full compensation is also concerned with legal matters such as the rules in the constitution. Gdesz (2006) mentioned in his study on the importance of constitutional rule and the international convention in terms of full compensation in the post-communist Poland. As he discussed the protection of the property rights rule based on the constitution of Poland which means that all people in the state have the equal right to ownership, other property right and the right of secession. In terms of the broader interpretation of academic class, this rule in the Polish Constitution could be compared with the term "taking" used in the Fifth Amendment to the United States Constitution. However, this regulation does not support full compensation because full compensation requires more than just protecting property right. Full compensation need to cover more than the income they could receive from the land.

To support the idea of full compensation, as cited in Ellerman (2008), Marshall, Pigou, Kaldor, and Hicks (MPKH) used the concept of cost-benefit and welfare economic to explain the compensation which the compensation should pay cover the opportunity cost. According to Pareto, improvement is categorized into two parts. First, the proposed project or change and second, the compensation of the losers that would make the total project out of compensation into a Pareto superior change. The scholars' argument is used to represent the project with an increase in the social pie measured by money metric and thus as something that can be recommended by economists on the efficient ground. In redistribution of social pie, compensation is a question of equity and not efficiency. To support Pareto's improvement and the KPKH theory, a positive view of the investment should be extracted in order to compensate the affected residents in order to make the cost-benefit and welfare economic efficient. Which means that the government could take land for public use by compensating the land over its market price in order to accomplish social welfare.

In the economic perspective, the full compensation denotes that the government must provide compensation to the landowner at all events of land taking. However, this is not just limited to land taking but to all the activities that the land user has conducted in all event before the calculation of the real price in the present which concerns wealth. Three dimensions of wealth were identified: material wealth embodied wealth, and relational wealth

(Wang, Wolf, Lassoie, & Dong, 2013). However, in relation to land taking, material wealth is the only identified factor which pertains to farmland, houses, livestock, crops, forests. This class of wealth can be measured by using prices as proxies.

### **2.3 Partial compensation**

Partial compensation means that the operator or government gives compensation in only in some part aspects. It is given that all investments concerning land possess different types and value in the market. Aside from the land's actual use, the profit is also considered. Thus, prompting the investors to be prudent before investing in a property. A supporting evidence of this notion could be found in Blume, Rubinfeld, and Shapiro (1984) who explained, when the compensation should be paid and how much compensation is due. As partial compensation is sufficiently large compensation rate on 1) land value or 2) lost profit, but no compensation on lost capital.

Based on the constitution of the U.S fifth Amendment, the 'Just' compensation in taking property right is requested to be paid. However, in this 'Just' compensation require land to be paid at fair price in the market (Wyman, 2007). It means that all event for land taking need to compensate for the loser, but 'Just' compensation is still recognized as partial compensation because in term of compensating in full price have to consider the opportunity cost as well as the benefits that they could receive from the land. Supported by Vietnamese constitution, the citizen can own the land, but in term of the emergency case or national interest, the government has to compensate proportionate to the price of land in the market.

The study done by Gdesz (2006) also mentioned about "Expropriation", that is any public action that reduces property value beyond a specified minimum percentage and requires payment by the public for "lost" value above this level. Hence, for partial compensation, the rules and constitutions should be taken into consideration during the compensation of land taking. Moreover, it was clarified that 'Just' compensation rule uses the fair market value to estimate the property token because there is animosity in distinguishing the real value of compensation. From this study, it is understood that partial compensation in land taking



means that the constitution has to give property rights to the landowner in order to estimate their losses from taking land by the full price in the market value.

Mokorosi and van der Zaag (2007) argued that projects give an opportunity for affected residents with the intention of improving their overall livelihood in normal circumstances which is often neglected by the government. The benefits, on the other hand, includes community services, skills training, and access to construction jobs and improvement of housing which normal people in society could not get access to. It is important for the planner to consider how to improve the lives of the affected people once the process of land taking takes place. Therefore, Mokorosi and Van der Zaag argued that despite the problems that arise in the compensation policy, the benefit is far more enormous that should influence the affected residents to be open to such proposal.

#### **2.4 Zero compensation**

Zero compensation is a term in land taking, a policy that pertains to the scenario where landowners are not granted compensation despite their land's suitability for public use.

According to The China constitution Amendment in 2004, the land belongs to the state in the city area and collective in rural and suburban accordance with law. However, the individual or organization can use land though lawful. And in case the government appropriate land for national interest have to make compensation. However, it still seems unclear in terms of zoning between city and rural place.

The principle of no compensation is also related to the land no improvement tax. With that, this study found that the general exception of the principles of no compensation. Renard (2006) also applies the principle of this in his studies including his study on "Restrictions on Vested Rights". According to Renard, all landowner could only develop their land if they have been granted a permit to build, hence having the opportunity to ask for compensation when their land is put to public use. The second principle vested in no compensation is the modification in the state of the property resulting in direct, material, and certain damage that has been used more frequently. However, these basic principles also concerns with zone restrictions. Renard also discussed the decrease in property values in the compensation rights

due to the planning decision based on the urban regulations in France. It is important to distinguish that the principle of land use in France is different to that of the U.S: “no compensation has to be paid for the restriction of development rights.” Thus, this issue has been continuously debated since 1935 with regard to town and country planning.

## **2.5 Negative compensation**

Negative compensation in land taking pertains to the situation wherein the landowner has to pay tax to the government in order to receive the benefits from the development project such as railway, sky train or airport. This pattern is also called, “Windfall tax” which is a concept that had emerged originally in developing countries. This situation actually happened in the United Kingdom in 1997 wherein it was enforced by law to serve particular interests given the absence of constitutional, federal or judicial constraints overriding the concept of parliamentary supremacy which means that any legal recourse can only be conducted through the external sources of Law (Waelde & Kolo, 1998).

However, this scenario only happens if the landowner might have benefited from the development project which will make the price of the land increase. Regardless whether the landowner decides to sell the project or stay in that land which is near that development site, the landowner still has to pay the windfall tax to the government in order to maintain ownership. For the case of Thailand, the people who own land more than 50 million baht has to pay around 5% of the price of land. However, for the management of storage, the person who has received the results from the development of the system and the building of the foundation of the state must have the exceptions particularly in the case of a foreigner or the owner of the premises not having to sell the land, the same as the land where the land is obtained (Peinthid, 2017).

## **3. Land-taking for dam construction and compensation**

The big issue that this paper will discuss delves into the compensation in land taking specifically on dam construction. Historically, right after the World War II the number of hydropower dams have increased to approximately 3,700 (Lumsdon;, Tydecks;, & Tockner, 2014). In order to build a dam, the need of land also matters and this affects the local people

such as to build Manwan dam in China there are about 10 million people were affected (Jiguo, 2002), and there are 2700 people were affected from the Houay Ho and Xepian-Xenamnoy hydropower projects in southern of Laos (Green & Baird, 2016).

It is evident that dam construction requires a lot of land. Hence the compensation in land taking should be discussed. This only denotes the importance of the topic given the increased in the number of cases concerning the development of dam constructions. With high demand on electricity in the market, the expansion for compensating will be sufficient. Hence, dam projects are important for the industrialization and modernization to develop the country.

#### 4. Compensation schemes on dam construction

This section provides an overview of the different compensations in land taking conducted in other countries. The table below provides information that caters specifically to dam constructions which is the main focus of this study. The purpose of the table is to make the reader understand how each cases on dam construction is being compensated in different countries once land taking is being carried out. This paper has chosen some case studies as determined by the researcher with the consideration of countries having the potential to build dams in the world, as well as the countries interested to operate dams in Laos.

Country	Partial compensation in (***)	Partial compensation in (**)	Partial compensation in (*)	Zero compensation
China	✓	✓		✓
India	✓	✓		
Japan	✓	✓		
Malaysia		✓	✓	
Thailand	✓	✓		✓
Russia				✓
U.S.	✓			
Vietnam		✓		

Note: - (\*\*\*) which means that given compensation to affected people around 75-100 present

- (\*\*) which means that compensation is given to the loser is around 40-74 present

- (\*) which means that the compensation is given to the loser is around 1-39 present

The table in above is a summary of the literature review on the pattern of compensation on dam construction in another country. The case of partial compensation in land taking occurs often in every country. All country also uses this type of compensation to compensate for their people in terms of dam construction. This can happen through regulations given that this issue is concerned with the balance between the public and private use of land. The table above shows how popular this type of compensation has been used for dam construction. Specifically, this can be found in countries such as China, India, Japan, Malaysia, Thailand, and Vietnam which will be addressed in the following paragraphs as there are three levels to discuss about this pattern. Moreover, the type of negative compensation has ever happened in taking land for dam construction as well. The explanation about this will be provided below. However, there are no cases that these country use the full, negative, and no taking land for dam construction yet. The paragraphs below explain how each type of compensation affected people.

#### **4.1 Partial compensation in (\*\*\*)**

It can be seen in the figure above that there are many levels for partial compensation in land taking on dam construction. The partial compensation is considered as high standard because the loss experienced by the victim is nearly paid in full compensation. It also happens in many countries such as China, India, Japan, Malaysia, U.S, and Thailand.

From the study done by Wang et al. (2013), China's implementation of the compensation which has the significance given the price of land in its market. The study found that after China opened the market of the country, the compensation policy also developed. In fact, the policy was changed during the transition which is the reason why the compensation on

dam construction has improved to full price since 2002. The development of compensation policy included the government allowing the community to join in decision-making processes in order to negotiate on the price of compensation. This shows the positive signs of transition on compensation in land taking. The study delves into the case of the Manwan dam wherein the affected people around the area was relocated far from their old place. These people have received various amount of money for houses which were sufficient to build new homes which also included farmlands as a monetary compensation for forests. It can be seen here that the affected people in this case were granted a fair compensation. The Dachaoshan dam faced the similar situation wherein the affected people were given the same benefits although the farmland given were low in quality. However, in the case of Xiaowan dam the compensation was said to be full for both who was relocated near the dam and for those who were relocated far from dam construction were given better houses which can be considered as fairly compensated for the loss in farmland given the inadequateness in the relocation site.

There had also been numerous cases of this level of partial compensation in India. Ghosh (2006) discovered that since the start the compensation policy in 2002, the government have compensated land for land which means that displaced families would receive land of their choice, or equivalent to their loss or a minimum of two hectares in the irrigable command of the project. Japan also offers the same benefit of land compensation such as India wherein they also give the loss of land by counting the market price which was set by the standard as the resettlers received money for their material loss, and the compensation on a land-for-land basis, but if the affected people want to move to another place, they are given the option of receiving cash compensation instead (Nakayama, Fujikura, & Yoshida, 2002).

In the case of Thailand, some houses that were affected by the project can also receive the full price of compensation from dam constructions. This has been evident in the case of Kwai - Noi Dam which 70% of the affected residents received the full price in terms of land lost. It is the important to note that in the case of Thailand, the government is the main actor responsible for the compensation (Phingsouk, 2010).

Based on the theory of partial compensation in land taking and the case studies discussed in the literature review, has been shown that the level of partial compensation has many levels and this level represent the good sign of partial compensation should be the full price in order to compensate for the loss. The main aspect of this study is the market price as each place might have the different price for land. Moreover, other factors related to this study should be considered such as the operator and actual policy used in helping the affected people in receiving the full price of compensation.

#### **4.2 the partial compensation in (\*\*)**

As there are many levels of the partial compensation. And this level also occurred in China as well. In this country, the affected people are given new land to build a new house. However, in this level of partial compensation, the government does not compensate for farmland, but for the total distance of the affected resident from their original house site. In case that the government was not able to clear the farmland, they will provide monetary compensation for such shortcomings. If there are many people who are affected by the dam construction, different people will receive different compensation thus causing inadequate compensations for farmland or given new clear land with lower quality as a replacement for the cleared farmland. It can be observed in China's case that the partial compensation means the recipients do not receive full price compensation for their lost, instead of receiving only some part of it.

India had also faced similar issues where in some cases compensation only took place by giving money to victims for some of the parts that they lose (Wood, 1993). Likewise, Japan, in terms of selling land to dam construction do not receive a large sum of money on a single occasion, which effectively prevents the wasting of compensation given in monetary form and resettlement sites were offered at lower prices than the value of adjacent lands and 'gratitude money' was paid to the resettles (Hattori & Fujikura, 2009).

#### **4.3 The partial compensation in (\*)**

Lastly, the case on Malaysia were discussed in various literatures which generally pointed out that there are many ways to compensate in land taking on the dam which is either

compensated by partial patterns, but here, will represent as the lower payment of the partial compensation such as compensation payments in cash and new houses were provided or promised. However, this has been widely regarded as inadequate for affected residents. Moreover, even though it provides land and house, there is already a decrease in the total value to be received and value of farmland given that such compensation is only 10 percent of the total, whereas the government provides a new land and promise to give 30 percent of the logging revenues (W. C. Lee, Viswanathan, & Ali, 2015).

#### **4.4. Zero compensation**

The scheme of this type of compensation is written here because, in terms of land taking for dam construction, zero compensation could also occur. Zero compensation refers to the situation whereby the affected people do not receive any compensation when their land is taken. This is evident in several cases throughout the world. There are some cases such as China that proves this claim despite having full compensation policy. In order to take land for dam construction, the affected people had been displaced in which the government had only requested for the people in the site to move out about 500 km upstream from their original location in Sanmenxia Dam in 1950s without being compensated (Wang et al., 2013).

Moreover, the zero compensation in land taking happens in such a way that it does not affect property right. For example, in terms of constructing a dam in some places, the location site should have no residents so that the compensation in land taking is not needed, which is also called as zero compensating. An important factor in understanding this is by considering the geography of a particular country in which they choose the place to build dam such as the Chirkey Dam in Russia which constructed the hydropower on the mountain wherein seem there are no residents living in the area (Marchuk, Savich, Malyshev, Durcheva, & Radkevich, 1993). A similar case can also be found in Thailand wherein they also need zero compensation to consider in order to take control of the land which was never used by the public before such as the Kwai-Noi dam. Hence, in this case, the committee of compensation need to consider the dam construction site.

Therefore, the two characteristics of zero compensation in land taking is that the affected people did not receive any compensation for their land lost, and in other cases, it can happen as if the land does not belong to any residents thus being an independent land.

The importance of zero compensation in land taking is needed to be considered. The case in Malaysia provided compensation payments which are conducted through cash payments and providing of new houses to displaced villagers who held legal titles to their land. However, it does not provide compensation to the customary land (Aiken & Leigh, 2015).

After reviewing the different compensations in land taking being conducted in other countries, it can be learned that the zero compensation in land taking can happen in order to ask people to move to another place wherein no compensation is given to the affected families and in another case, is that the development project may also not affect any property rights of landowner which should be both considered for this research.

## **5. Lesson learned for Laos**

Recently, the hydropower industry has dramatically grown. With that, the compensation is not only to accommodate the complete material, social, or cultural losses of resettlement. In order to find out what and how to provide the commodities on the compensation in short term and long term, the government has to intervene in conducting and implanting the compensation policy.

Hence, the lessons from this paper will be applied in this study that will be applied to Laos case in order to understand the concepts and patterns of compensation on dam construction in Laos. The geographical characteristic of Laos as a country is also different which makes it different compared to other places. Given that reason, it is very important for the operator of the dam to understand which pattern is suitable for compensating the affected people. Hence, this paper uses the lessons above to educate the Lao government that compensation on dam construction should be considered on a case by case basis because the loss of land in each place is different.

It can be realized from the literature above that there are many ways of compensating land taking concerning dam construction. Moreover, there are many conditions to be considered in



which dam construction should be compensated by full price or zero compensation. And another most popular pattern that all countries identified in this paper is the partial compensation which is an important aspect of the analysis of this study. Another interesting aspect of the study is the negative compensation in which the affected residents had lost their place and paid compensation to the government. Although this is not really happening yet, it may do so soon, potentially in Thailand given the application in its law. Although it is not certain yet whether it will be applied to dam construction. However, from the analysis in this study, it could be understood that the factors that make the compensation in each dam different are due to the differences in the regulations that make the process of compensation in land taking. Moreover, the investor makes the compensation looks like the affected people, classify of land are the condition to make the compensate will be.

The full compensation in land taking is considered in the case that the affected people have the license to use their land base on the regulation of the country and pay to them in over full price in the market. Hence, in terms of Laos, the land is still belonged to the state because of this reason. It is not easy for Laos to discuss this type of compensation.

However, in the case of dam construction having no effect on any property rights as similar to the case of Russia, the compensation in land taking can be considered as zero because it does not need to relocate anyone. There are instances that the dam construction is built on mountains, thus the compensation could be considered as zero compensation. This is what Laos could learn from Russia where it could be applied to use this pattern in order to understand how zero compensation can be of work. Moreover, it can also be realized above that the case of compensation in land taking in China and India which asked people move to another place has also benefits. Sometimes, this pattern can be used in a case which the new place for relocating is better than the old place. However, in the case of customary land, Laos still needs to consider it by itself.

In terms of partial compensation in land taking, the compensation is just in some loss or it will be lower more than the market price or in the market price. The study of partial compensation from other countries above showed that it can also be applied in Laos' situation in which dam construction is necessary to be compensated when a large number of people

is affected. Based on the partial compensation scheme, it is usually important to consider the decrease in the amount of investment cost and the reason why there are instances that the compensation is given the full price, but just some part of the loss. Perhaps Laos could learn this from Japan in order for the dam operator to buy the land from the people directly or the government may find ways in providing some parts of the total land to them in order to take their land as seen in the case of Malaysia given their regulation of giving compensating back at least 10 percent of their loss.

In the case of the negative compensation, the affected people have to compensate the government in order to receive the benefits from the development project. As it can be seen in the case of Thailand, normally they use this scheme with the construction of trains or roads, however, this paper's study pertains to dam construction. It is not suitable yet to build a dam in Laos.

Finally, the case of 'no taking' land for dam construction is still an important lesson for Laos to understand in order to develop the country in a sufficient way as some place might be not suitable for dam building or that project might give negative impact more than positive impact hence this lesson can apply in some time.

From the study in this paper. Not only it is applicable in dam construction in order to compensate for taking land, but it might be useful for another program as well such as mining project, railway, land lease for agriculture and industry in order to consider to compensate for land taking.

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### Educational Attainment

- August 2016- Present: Master of Arts, Master of Arts in Asia Pacific Studies, College of Interdisciplinary Studies, Thammasat University, Bangkok.
- 2012 – 2016, Bachelor of International relations, National University of Laos, Lao PDR.
- 2011 -2015, Bachelor of Art in English, Thipvaly college, Lao PDR.



### Scholarship

- 2016 – 2017, Thailand International Cooperation Agency (TICA)

### Work Experiences

- Program assistance (15<sup>th</sup> June, 2015 to 30<sup>th</sup> December, 2015), STELLA, Lao PDR
- Media project assistance (6<sup>th</sup> March, 2016 to 30<sup>th</sup> March, 2017), Fair Trade Laos.