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Pascale Hatcher

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Local Communities and Multilateral Safeguards: The Mining Regime of Lao PDR

Pascale Hatcher[1]

ABSTRACT: *Six years ago, the World Bank Group (WBG) embraced a new philosophy for its involvement in mining activities. After decades of promotion of highly liberalised mining codes, the Group repositioned poverty reduction and environmental sustainability as the fundamental objectives of its involvement in the sector. Within this new approach, local participation occupies centre stage, whereby a loosely defined mix of local associations, as well as residents of local communities affected by mining activities, are to have a voice in every stage of a given mining project. Building on the case of Lao PDR, this paper investigates both the participatory model promoted by the WBG, and the political underpinning of its implementation process. The analysis of the socio-environmental model promoted by the Bank suggests that the involvement of local communities is ensconced within a framework which conceives participatory schemes as a management tool to circumscribe the risks faced by mining investors on the one hand, and the enabling-state on the other. While successful in acknowledging the socio-environmental legacy of mining activities, the implementation process of such a model is proving to fall short of its promises.*

Introduction

The abundance of Lao People's Democratic Republic's (hereafter 'Laos') natural resources has, in recent years, been the mantle upon which the government has stood to promise much needed employment, education, health care, clean water and infrastructure. Alongside the multiplication of dams being rapidly developed upon its rivers, the aspiring "battery of Southeast Asia" has also been resolutely eying its untapped mining sector. If for decades Laos was one of the poorest countries in the region, it now boasts steady economic growth and appears resolute to shed its "Least Developed Country" status by 2020. International donors, which were until recently the lifeline of the country, are cheering such fast pace developments vociferously.

This paper investigates the particular role played by the World Bank Group (WBG) in contributing towards this fast pace *mise en valeur* in the form of fostering the country's rapidly emerging large-scale mining sector. Of particular interest is the recent addition of a strong social-development

[1] Pascale Hatcher is an Associate Professor at College of International Relations, Ritsumeikan University.

narrative attached to the multilateral guidelines. Within this new approach, local participation is supposed to occupy a centre stage, whereby a loosely defined mix of local associations, as well as residents of local communities affected by mining activities, are to have a voice in every stages of a given mining project. Echoing the Bank's framework, Vientiane has quickly twinned pro-mining investment incentives with a pro-poor and environmentally sustainable narrative. In this paper, the dual provisions of the mining regime are viewed as a particular strategy employed by pro-market interests to embrace the concept of "socio-political risk" within the industry. Based on the multilateral guidelines, the strategy is here defined as an attempt to both contain and manage opposition to mining activities, therefore reducing investment-risks in the sector. While successful in acknowledging the socio-environmental legacy of mining activities, the implementation process of such a model is proving to fall short of its promises.

The paper is divided into five parts. In the first section, the overarching role of the WBG in fostering new mining regimes in the Global South is analysed in conjunction with the recent insistence on strong socio-environmental provisions. This analysis will then be transposed to the particular case of Laos which, under the leadership of the Group, has recently begun to actively promote the expansion of large-scale mining activities. The third part of the paper is dedicated to the analysis of the provisions enshrined within the new mining law, and notably, its socio-environmental safeguards. The fourth section deals with the actual implementation of the new policies, with the particular Bank-sponsored flagship projects scrutinised. In light of the alarming disparities between the narrative and the experiences on the ground, the final section of this paper investigates how the involvement of local communities translates into a renewed emphasis on socio-political risk management for capital and multilateral institutions rather than an opening of political spaces on the ground.

Growing a socio-environmental conscience: the rise of the Social Development Model

The overarching involvement of the World Bank in the liberalisation and deregulation of the mining sector is of course not limited to Laos.[1] The *Extractive Industries Review* (EIR), which was established in 2001 to independently evaluate the WBG's involvement in extractive industries, estimated that under the leadership of the Bank, no less than one hundred countries reformed their laws, policies and institutions during the 1990s (EIR 2003b: 10).

In her extensive analysis of the World Bank's influence over African mining regimes, Campbell (2004) catalogued three generations of mining codes, which essentially followed the Bank's evolving guidelines over the better part of the last three decades. The first wave of reform, which was carried out under the umbrella of the structural adjustment programs in the 1980s, saw a dramatic retreat of the state from the sector. Oblivious to the decline in the demand for mineral resources in the 1980s, the Bank's re-assessment of the sector led to a new wave in the liberalisation of mining regimes, which extended well into the 1990s. However, the turn of the century was not kind to the Bank's historical involvement in large-scale projects. The highly publicised environmental damage and the multiplication of reported cases of human rights-abuses linked to Bank sponsored projects were a painful thorn in the institution's image.[2] While the Bank did acknowledge that a certain degree of regulation was necessary, notably in terms of environmental protection, it is only within the past decade that the ultimate need for the state to play a regulatory role was acknowledged and instantiated in a "third generation" of mining codes[3] (Campbell 2004). As further argued in this contribution, such a shift has been heavily coloured by the recent expansion of the concept of "risk" to the socio-environmental and political realms.

Today, mining is understood to be one of the most environmentally disruptive activities that can be undertaken by business (Bebbington et al. 2008: 893) and the concept of the "resource curse" is widely acknowledged by all stakeholders in the industry.[4] The EIR found that while extractive industries can yield benefits for countries, data suggests that developing countries with few natural resources grew two to three times faster than resource-rich countries from 1960 to 2000 (EIR 2003b: 12). However, the Review further observed that the majority of the 45 countries that did not manage to sustain economic growth during that time also experienced violent conflict and civil strife in the 1990s (2003b: 12).

The multiplication of socio-environmental problems linked to extractive activities, not withstanding the ambiguous economic benefits of the industry, led to highly critical literature suggesting that the actual benefits of the mining industry may have been overstated. The underlying idea of the "resource curse" suggests that an abundance of natural resources creates political and economic distortions, thus increasing the likelihood that countries will experience negative development outcomes (Rosser, 2006: 7), a reality that is now widely acknowledged by all stakeholders in the industry[5]. The WBG is no exception: "resource-rich countries are indeed more likely to have problems achieving important development goals", states the Bank in a recent evaluation of its experience in the extractive sector (OEG 2005: 120).

It is in light of the extent of the social and environmental problems linked to the extractive industry that the then-President of the World Bank, James Wolfensohn, in 2001 ordered a two-year moratorium on the WBG's mining investments and a review of its involvement in the industry. While the EIR, which emerged from this process, did conclude that there was still a role for the Group in the sector, it underlined that such a role should be strictly limited to one of contributing to sustainable development (EIR 2003b: 4).

In its official response to the EIR[6] (in 2004), the Bank declared: "Our future investments in extractive industries will be selective, with greater focus on the needs of poor people, and a stronger emphasis on good governance and on promoting environmentally and socially sustainable development" (World Bank 2004: iii). While the Bank acknowledged that extractive industries may "aggravate or cause serious environmental, health, and social problems, including conflict and war" (World Bank 2005: 1), it however remains adamant that such negative impacts are not inevitable. Subsequently, wanting to maintain a presence in the sector while attending to the recognised risks, the Bank substituted its conventional policy recommendation framework for one that promoted far stricter environmental and social standards. The ensuing birth of what is here referred to as the "Social-Development Model" (SDM) echoed throughout the mining industry and within regulatory regimes across the Global South and, as discussed further in the following section, to Lao PDR as well.

Today, the World Bank is the unchallenged global leader in both the design and the promotion of socio-environmental practices in the mining sector.[7] Such influential work appears to be viewed by the Bank as "neutral" advice that manages to bridge communities' needs with not only corporate profit-driven behaviour, but with governments' zeal for fast-paced development as well. In the words of the Bank:

> The impact of mines on local communities has been an area of growing concern and attention, and one that mining companies, NGOs and governments are grappling with. The World Bank has used its *convening power* and *neutral* position to bring together a number of different agencies to pursue discussion in this area, share experiences and enable diverse agencies to work more cooperatively together, with the view to resolving some of the problems affecting this area. The convening of conferences, meetings, analytical research and the dissemination of good practice are among the number of ways in which the Mining Department has been working to gain a better understanding of these issues, develop mechanisms for resolution and propagate good practice (Our emphasis, World Bank 2010d).

In line with this self-assigned role, the World Bank has assumed leadership

over key socio-environmental mining research. It is illustrative to note that the Bank's Mining Department website lists a wide range of key issues, notably: AIDs and Mining; Mine closure; Mining and Community; Mining and the Environment; Mining and Local development, Mining and Poverty Reduction, etc. Crucially, it should also be emphasised that the WBG has been pioneering various global guidelines and safeguards on mining related issues[8], in addition to its own International Financial Corporation (IFC)/World Bank policy framework.[9]

As further discussed below, the SDM has been calling for all stakeholders to assume new roles and responsibilities in the task of merging neoliberal objectives with environmental and social safeguards. This has led to approaches to engage local stakeholders into participatory schemes, new "partnership" initiatives between stakeholders, as well as new monitoring responsibilities for the state, the industry and more remarkably, local communities. Of particular interest to this contribution is to investigate how the SDM has been implemented in Laos.

The promises of a sector: mining in Laos PDR & the World Bank

Laos' dire social indicators have long positioned the land-locked country as one of Asia's poorest countries. A decade ago, almost 40 per cent of this Least Developed Country's population was still living in poverty[10] and, as observed by a WBG Fact-Finding Mission, its social indicators were far closer to the average for Sub-Saharan Africa than those for the rest of Asia (Boland, Kunanayagam and Walker 2001: 4). However, short of the last decade, Laos has radically transformed its economy, resolutely turning to its impressive abundance of natural resources. Not withstanding its hydropower potential, Laos, somewhat strikingly, is one of Asia's most resource-rich countries, with more than 570 mineral deposits identified so far. Crouched between Myanmar, Cambodia, Vietnam and more importantly, resource hungry China, the potential attached to the *mise en valeur* of such natural riches have led to the multiplication of social and economic promises.

Today's goal is bold: to become a middle-income country by 2020, as indicated in the Lao "National Socio-Economic Development Plan". The World Bank estimates that Laos will require a steady average growth of 7.5 per cent for this. (2010b: 10). Notably, the country appears to be well underway on this front, thanks to the rapid development of the mining and hydropower sectors, both of which have contributed 2.5 per cent of the annual 7 per cent growth witnessed by the country in the last three years (World Bank 2010b: 1).

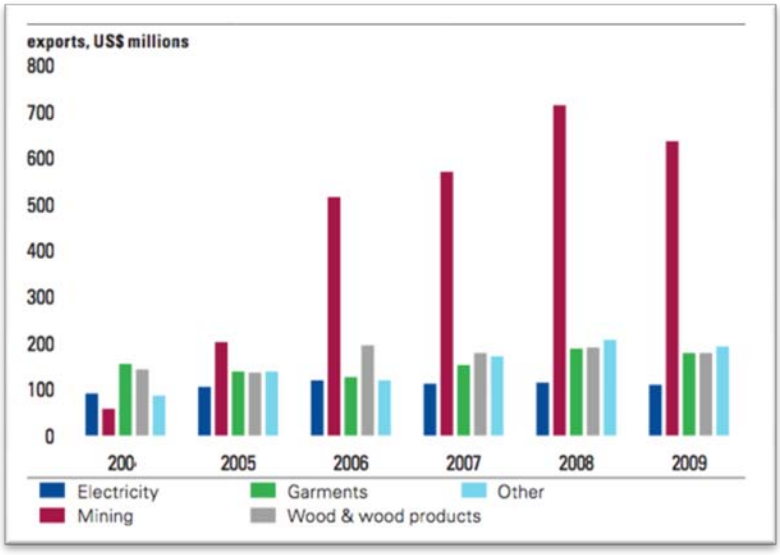
While mining activities were described in the early 1990s as "virtually negligible" (US Geological Survey 1994: 491), by the end of the

same decade, the sector was identified as "one of the most promising long-term growth areas" (US Geological Survey 1999: 13.1). Contrary to many of its neighbour countries, which have a rich history of industrial mining, Laos' ventures only truly began in 2003, making it one of Asia's "final frontiers for miners" (CLC Asia 2009). The country's industrial mining production value has multiplied close to hundred-fold observes a World Bank background report, from around US$ 8 million in 2002 to US$ 600-700 million in 2007 and 2008 (Larsen 2010: 4). These numbers however are far than indicative of the sector's potential as only 10 per cent of the nearly 200 proposed mining and hydro projects are on stream so far (World Bank, 2010b: 1).

Since Laos remains highly dependent on external assistance – the country's external debt totals 54.5 per cent of its GDP (ICMM 2011: 59) – the resource sectors (mining and power) have become a much-welcomed source of Government revenue. The International Council on Mining and Metals (ICMM) notes that the country's foreign debt is significant enough "to worry the World Bank and the IMF who believe that there is a high risk of debt distress" (ICMM 2011: 17).

Together, the sectors account for 20 per cent of the government's total fiscal revenues, as well as most of the country's FDI inflows (about 80 per cent in 2008) (World Bank 2010b: 1; World Bank 2010c: 7). However, it is the mining sector that now dominates the country's exports, as indicated in Table 1. Together, the country's two large-scale mines—the PBM Phu Kham copper-gold operation and the MMG Sepon gold and copper mine—account for over 90 per cent of total national mining production (ICMM 2011: 17). Crucially, the revenues flowing from royalties and taxes from mining projects alone now account for the government's budget deficit sharp decline–from 7.58 per cent during 1995-2000 to 6.29 per cent during 2000-2006 (Kyophilavong 2010: 75).

Table 1
Exports – Lao PDR



Source: World Bank 2010b: 11.

Key to this contribution is the central role played by the World Bank Group in assisting the country in developing its bourgeoning resource sector. "Today", observe Guttal and Shoemaker, "the World Bank is the most powerful policy institution in the Lao PDR" (2004: 1). It can certainly be argued that the Bank is the chief architect of Laos' recent "resource-boom". As stated by a World Bank official in the Vientiane office, the multilateral organisation has been busy assisting the government not only with its new mining law and its implementing regulations, but with its broader regulatory framework as well (interview Vientiane 2011).

While it officially remains a socialist state, the country started opening itself to the market-oriented economy in the mid-1980s, notably with the introduction of the New Economic Mechanism in 1986. By the end of the 1990s, the Lao Government had liberalised the foreign investment law, allowing for 100 per cent foreign ownership of business ventures. For the *US Geological Survey*, by the end of the 1990s, the country's foreign investment policies were "the most 'investor-friendly' in the region" (1997: 1). It is amidst such shifts that the government started to turn its attention towards large-scale mining. The ensuing 1997 Mining Law[11] triggered a substantial expansion of the sector. According to the Ministry of Energy and Mines, as of March 2010, there were 269 projects in the country, 186 of which were in foreign hands[12] (Boungnaphalom 2010). Such presence of FDI, states the *U.S. Geological Survey*, is "largely owing to the Laotian Government's aggressive efforts to promote mining investment and to strengthen its management and regulation of the mining sector under the framework of the Mining Law of 1997 and the Investment Law" (2008: 16.1).

Despite a notable increase in mining investments, the industry

quickly started lobbying for a revision of the Mining Law.[13] In a World Bank commissioned report, the 1997 Mining Law is seen as positioning Laos at "a competitive disadvantage compared with its neighbours" (2006: 23). The report argues for a "timely review" of the country's mining law and regulations, thus giving Laos the opportunity "to become the leader" in mining legislation reform (2006: 23-26).

In December 2008, Laos adopted a new mining code[14] which was notably the product of the Bank's Seventh Poverty Reduction Support Program (May 2011-February 2012). [15] The Program included the development of complementary regulations which promoted standards and detailed regulations for environmental protection (see World Bank, TA Project P122847). It is to be noted that much of the new law's significance remains uncertain due to the fact that its implementation documents, were, as of June 2011, yet to be approved.[16] However, perhaps tellingly, the thirst for legal clarity and enticing provisions for foreign investors is now the subject of a Bank Technical Assistance project.[17] Approved in January 2010, the project is to develop the country's capacity in the mining and hydropower sectors, with US$2.31 million specifically allocated to the development of the mining sector alone. The Project is resolutely geared towards enticing FDI:

> Clear laws and regulations for the mining sector, along with internationally competitive taxation, are key to developing the sector. While the Government has made considerable progress in these areas, including adoption of a new Minerals Law in December 2008, the legislative and regulatory framework needs to be completed (World Bank, TA Project P109736).

It should be noted that along the World Bank, the IFC – the Bank's private sector arm – has also been providing technical assistance for the new mineral law, the drafting of the country's Enterprise Law, and the preparation of the new unified investment law (World Bank 2008: 38). The *Unified Law on Investment Promotion* tackles investment risks by offering "a clear and predictable" regime and creating "a level playing field for domestic and foreign investors" (IFC 2012). The IFC also provided further financing the *Lao Business Forum*, which is, according to the Bank: "an effective mechanism for enabling the private sector to raise their concerns to [the Government of Laos]" (World Bank 2008: 38). The funding notably provided the Forum with a secretariat to support its operations and to revise the Mining Law.

In the following section, the rise this socio-environmental narrative solidly enshrined within the Laotian new mining regime is investigated in relation to the overall model promoted by the WBG in the mining sectors of

its country clients. Particular attention will be given to the SDM's emphasis on local community development and participation, which is to occupy a pivotal place within each step of the development of mining projects.

By the book: community development & environmental protection in Laos

Under the gaze of the World Bank, Laos's new mining regime has been tightly knitted with a strong social development narrative. Here the very development of the mining sector is seen as having to take into account not only national economic interests but the need to protect the environment and ensure community development. Therefore Laos' regulatory framework "incorporates many environmental and social safeguard policy measures consistent with international standards", boasts a World Bank background report (Gibson and Rex 2010: 1). Support for such socio-environmental consciousness appears to be unanimous in Laos as the government and the mining companies themselves have all vowed to implement solid safeguards.

In addition to the provisions embedded in the new Mining Law, the country's legal framework grounds social objectives within the broader pursuit of economic growth. The *Law on the Promotion of Foreign Investment* (2004) promotes foreign investments, which are expected to contribute to improve living conditions and the overall development of the country [Article 1]. It also boasts several provisions to ensure environmental protection and sustainable development [Articles 3, 13:7, 16:3]. Both the *Environment Protection Law* (1999) and *Regulation on Environmental Protection and Management* (2000) are grounded in the concepts of sustainable development and public involvement. The country's regulatory framework further ensures that project affected people are compensated and assisted to improve or maintain livelihoods, incomes and living standards [*Decree 192 and Regulation 2432 and supporting Guidelines for Compensation and Resettlement*]. *Decree 112 Regulation for Environmental Impact Assessment* (2010) further requires assessments of impact, protection of affected people, including grievance procedures and information disclosure requirements.[18]

Boungnaphalom, the country's Director of the Environment and Mining Inspection Division (Department of Mines, Ministry of Energy and Mines) notes that today, investors have to comply with a framework that: assures a balance between mining and socio-economic development activities, as well as natural resource conservation and environmental protection; remedies any negative impacts that occur during mining and after mine closure; provides community development (2010).

It is to be noted that, in agreement with the SDM, local communities

occupy a centre-stage within the socio-environmental dimensions of Laos' new regulatory mining regime. Local actors are indeed posited to be key beneficiaries of the booming sector, which is to bring employment and infrastructure (roads and electricity) to isolated regions, provide funds for the building of schools and hospitals, and have a long-lasting spillover effect by generating new business for agriculture, livestock farming, and retail trade (Kyophilvong 2010: 76). Ultimately, mining activities are to nurse "Community development", which can be defined as:

> […] the process of increasing the strength and effectiveness of communities, improving peoples' quality of life, and enabling people to participate in decision making to achieve greater long-term control over their lives. Sustainable community development programs are those that contribute to the long-term strengthening of community viability (ESMAP, World Bank and ICMM 2005: 7).

The Bank's 2010 Technical Assistance project to the country directly addresses the need "to promote models for corporate social responsibility, and risk mitigation and community benefit-sharing approaches" (TA Project P109736). The country's new Minerals Law requires investors to study and recommend a strategy for sharing of fiscal benefits related to the mine operation and that they contribute to Community Development Funds. These funds are to be designed and administered in close partnership between companies, government and communities. The latter are to be closely involved within each phase of a mining project. The basic principles of benefit sharing include:

- Participatory planning, gaining public acceptance and community participation;
- Recognising the importance of providing opportunities to improve livelihoods and living standards;
- Recognising affected people as beneficiaries of the project;
- Equitable revenue sharing;
- Environmental protection and development; and
- Sustainable community development. (Gibson and Rex 2010: 14)

However enlightened the new socio-environmental framework appears on paper, the obvious problem of the implementation of the provisions embedded in the regulatory framework remains. This is taken up in the following sections.

The World Bank Group at work

All branches of the WBG have repeatedly stated that it is in light of the particularly heightened risks that mining activities represent to local communities and the environment that they should be involved in such industry. The Bank affiliates state that they bring to the sector safeguard policies and guidelines that "improve projects beyond compliance" (OEG 2005: 118). In relation to hydropower, mining, and forestry, the 2005 Country Assistance Strategy (CAS) pledges the World Bank's assistance to increase resources and capacities to promote environmental conservation, involve local communities in natural resource management, and strengthen the application of social and environmental safeguards in development projects (IDA 2005: 24).

While the SDM resonates throughout the country's unfolding mining regime, how have the community development schemes fared on the ground? The question is not easily answered, for the regime is quite new and changing, and with large-scale mining operations in the country yet to celebrate their 15th birthday. A point of entry to test the discursive part from the SDM's actual provisions on the ground is to analyse the two natural resources projects in which the WBG has been directly involved: Sepon and Nam Theun II (NT2). These projects are repeatedly cited as "best practice" cases, notably in terms of their strong participatory requirements and socio-environmental safeguards.

Albeit taking place a decade ago, the experiences of the Sepon gold mine project remain timely as the WBG regards the IFC's initial involvement in the development of the project as a case of best practice. The mine, which was originally owned by the Australian company Oxiana Resources[19] (with a 20 per cent interest from Rio Tinto), started gold production in January 2003. While Oxiana later found its own financing, it had initially requested the IFC's involvement in the project.[20] As it is the case for all IFC-sponsored projects, the Corporation's involvement had a dual impact; an important emphasis on environmental and social assessments on the one hand, and an added value for the company's reputation. The EIR notes: "The positive aspects of IFC participation were greater stakeholder participation, formal documentation of the consultation process, a widely-accepted assessment framework (i.e. WBG safeguard policies), expert advice and increased stakeholder confidence in Oxiana" (EIR 2003a: 30). The report further adds: "It is clear that IFC helped strengthen the acceptability of the company to the Laos government" (EIR 2003a: ix).

While there is no doubt that IFC's involvement contributed to the extensive socio-environmental impact assessments which took place in the initial phase of the project[21]—important for a project classified as "Category A" by IFC (i.e. it is expected to have adverse impacts that may be sensitive, irreversible, and diverse)—the process was strongly criticised by NGOs (see EIR 2003a; World Rainforest Movement 2004). *Aid Watch* argued that the

overall process had been very limited, if not somewhat superficial, with "a serious number of anomalies and shortcomings" in the application of the Environmental and Social Impact Assessment (EIR 2003a: 31): "In many cases there has not been sufficient in-depth study and analysis, and mitigation planning often has been superficial, alluding to further studies and further elaboration of details later" (EIR 2003a: 31). The participatory process, which was advertised as resulting from the presence of IFC, appears to have been rather limited to an *information* process. "One limitation of the ESIA was the consultation process of Oxiana, which mainly consisted of providing information and not having discussions", concludes the EIR (2003a: 31).

Another key example of an existing disparity between the participatory narrative embedded within the SDM and the implementation on the ground is the case of NT2. While the hydroelectricity sector[22] in itself extends beyond the purview of this paper, the project nonetheless warrants a few words, as it has involved the World Bank's endorsement and has today become a best-practice flagship project.[23] NT2 is the country's largest dam and largest foreign investments to date.

The 2005 Country Assistance Strategy lists the support for the implementation of NT2 as "an example of an area-based, sustainable natural resource development program that contributes to growth, social outcomes, capacity development, and stronger partnerships" (IDA 2005: ii). The Bank was involved in several ways: helping the Lao Government to appoint and finance a panel of experts to advise on the handling of social and environmental issues in the project, legal experts to negotiate financing arrangements, and requiring the project developer to carry out technical social, environmental, economic and resettlement studies that have been instrumental in project preparation (Guttal and Shoemaker 2004: 1).

Despite being repeatedly cited as a key example of best practices for the country, reports from international NGOs suggest that NT2 has had a significant negative socio-environmental impact on local communities. Lawrence concludes:

> Provisions of the [Concession Agreement] and of World Bank and [Asian Development Bank] policies, particularly regarding resettlement and information disclosure, have been violated. But despite numerous monitoring missions, the [Multilateral Development Banks] have not taken strong enough stances—including withholding loan and grant disbursements—to correct Nam Theun 2's problems and minimize negative impacts on affected people (2008: 45).

This closely resonates with the issue of mining as it underlines the obvious problem of the very implementation of the socio-environmental provisions

embedded in the regulatory framework, however enlightened they may look on paper. The case of NT2 was quite explicit, whereby the very presence of the WBG was to lead to the active participation of the local communities affected by the project. However, while the public consultation and disclosure process[24] is being celebrated by the Bank, critics have been vocal, stating that the project has actually failed to meet the World Bank's own standards and that in regard to indigenous groups, "consent for the project is neither free, nor prior, nor informed" (Guttal and Shoemaker 2004: 3). The authors further note:

> As the public participation process unfolded, it soon became apparent that its overall goal was not to foster genuine participation of project affected communities as described in the [World Commission on Dams]'s final Report and Recommendations, but rather to 'jump through the hoops' of appearing to conduct public consultation in order for the World Bank to have sufficient political cover to proceed with the controversial decision to support the project (2004: 3).

Beyond the experiences of the two specific projects discussed above, the key feasibility issue of meeting the solid socio-environmental requirements embedded within the overall Laotian's new mining regime should be closely analysed. Two notable obstacles emerge, one linked to the fact that in Laos, the voice of local communities are bound to be influenced by the one-party regime and second, the actual *capacity* of the government to monitor, regulate and implement the socio-environmental dimensions of the new regime is more than questionable.

The vibrancy of the Laos' "civil society" remains firmly nestled within the arms of the one-party regime; with its official mass organisations such as the Lao Women's Union, the Lao People's Revolutionary Youth Union, the Lao Patriotic Front for Reconstruction, and the Lao Federation of Trade Unions (ADB 2011: 1). While technically forming an organisation or an association is legal[25], the number of Laotian "non-governmental" organisations remains particularly small.[26] The fact that all media (print, radio and television) are firmly controlled by the state is further telling of the lack of political spaces available. Crucially, as observed by Guttal and Shoemaker, less than a decade ago, Laos simply had "no political, cultural, historical, or institutional structures" for a participatory process (2004: 3).

A senior Bank official remains positive however, arguing that since "Laos society is a consensual oriented society", it makes "political sense" for the government to be genuinely committed to socio-environmental issues, thus "the substantial institutional reforms that are aimed at trying to better the situation" (interview Vientiane 2011). In fact, the Government did initiate reforms to facilitate associational life with the implementation in

November 2009 of the *Decree on Associations.* However, no laws currently exist to carry out the constitutional provisions with respect to the establishment of national NGOs and therefore, there are currently no such organisations recognised by the Government (ADB 2011: 2). It should be noted that the government has gradually embraced and encouraged the work of international NGOs (INGOs) in the country. However, this openness to outsiders has remained conditional upon such organisations strictly refraining from political activities. As such, the number of organisations and associations genuinely independent and dedicated to human rights or advocacy is seriously limited, if not completely inexistent. Tellingly, the ADB observes that the government has recently questioned the activities of some INGOs, specifically their criticism of some large foreign investment and infrastructure development projects (2011: 2).

In addition to a lack of political space, there are alarming signs in Laos which indicate that the capacity of the government to actually carry out the socio-environmental safeguards enshrined within its overall SDM-influenced mining regime is seriously lacking. According to the Bank, Laos' Ministry of Energy and Mines (MEM) does understand the need to tackle the environmental risks linked to mining and the importance of rehabilitating damaged areas (2006: 19). However, the multilateral institution also observes: "there are insufficient resources to implement preventative or remedial action" (World Bank 2006: 19). The same document reports that MEM management capacity has been inadequate given the demands on its services: "Good managers are having to deal with environmental issues on an 'ad hoc' basis" (2006: 19). The failure to adequately enforce environmental standards appears to echo concerns in relation to the requirements for meaningful social impact assessments (SIA) to take place. Notably, as early as 2001, this problem was highlighted by a WBG fact-finding Mission: "specific work on SIA regulations and guidelines within the mining sector is at a very preliminary stage" (Boland et al. 2001: iii).

The World Bank office in Vientiane observes that Laos is a low income country and, when compared to its Asian neighbours, still has little in the way of legal frameworks (interview Vientiane 2011). A recent World Bank background paper paints a broader picture of the country, whereby while the laws and regulations in Lao PDR encourage the protection and sustainable use of natural resources, "some gaps, especially in implementation and enforcement capacity, remain" (2010a: 2). The report identifies key deficiencies:

- Despite the economic wealth generated by natural resource projects, sustainable financing for environmental protection is still inadequate. Foreign assistance has been the main source of financing for natural resource management so far;

- Overlapping mandates and a lack of coordination among the agencies involved in natural resource use and management and among the central, provincial, and district levels of government;
- Financial, capacity, and human resources constraints in environmental management, planning, and the monitoring of the environmental and social impact assessments have become the binding constraints to implementing existing legislation, as well as to responding to emergency situations;
- The legislation does not specify types of penalties for breaking the law;
- The responsibility for mitigating damage at the local level is not clearly defined and not included in the project design;
- A lack of public access to information on environmental effects and on proposed and ongoing mitigation measures exacerbates the negative impact. (World Bank 2010a: 2-3)

However, Aviva Imhof, the campaign director of the NGO *International Rivers*, disagrees that the World Bank truly was interested in prioritising capacity offering that "if you want to build capacity, start small!" (interview 2011). Referring to the NT2 experience, which was the very first natural resource project involving the World Bank in the country, the activist observes that "they began with the biggest project: three provinces, 120,000 people affected; far bigger than the Lao Government could handle" (interview 2011). Moreover, Imhof bluntly concludes "It's not a government that lacks capacity, it's a government that doesn't care" (interview 2011).

While the debate is still raging, a consensus does exist on all sides that the process of regulation catching up with the fast expanding natural resources sector is slow and that "there are still significant gaps in the application of the laws as they stand" (CLC Asia 2009).

The politics of market building: risk management from the local level

In this section, it is argued that the questions related to participation and community development should perhaps not be limited to the study of the *quality* of the methods adopted but rather what *political objectives* the focus on civil society elements itself accomplishes in the larger framework of risk management. In such light, the involvement of local communities in participatory mechanisms embedded in the SDM should by no means be defined as part of an opening of political spaces for the affected communities—or in the worlds of the Bank: as "enabling people to participate in decision making to achieve greater long-term control over their lives" (ESMAP, World Bank and ICMM 2005: 7). The approach, rather, serves to manage investment risk from the local level. Here, the SDM becomes both a discursive tool to bring credential to a given project, and a techno-managerial scheme to process any local disturbance.

A common misunderstanding about the overarching significance of the rise of the SDM is linked to the novelties that it actually brings forth. It should be noted that the new socio-environmental project remains firmly grounded in the market model. The argument is better understood when paralleled with the fact that the SDM is always promoted in *complementarity* with the relentless push for the expansion of large-scale mining markets. As such, there is a dual narrative whereby in the first instance, the World Bank is assisting governments in the liberalisation of their mining law and in reforming their tax regime to be more competitive and attractive for foreign investors, and it is only within this framework that the institution then juxtaposes the SDM. It is illustrative to note that backed by the IFC, the Sepon project from the start had managed to obtain generous subsidies from the government: for the first two years, Oxiana and Rio Tinto were to be exempt from corporate tax, and their employees exempt from income tax. For the subsequent two years, corporate taxes were to be paid but only at half the usual rate. Furthermore, there were no taxes or restraints on repatriation of money from the project and the government has waived duties on imported equipment. While the Lao government was to receive 2.5 per cent of the value of the ore mined, this was to apply only after Oxiana had subtracted the costs of selling, transport, smelting, refining and other treatment costs (World Rainforest Movement 2004: 86).

The SDM's dual narrative echoes Emel and Huber's (2008) take on risk within the neoliberal order. The argument here is that the discourse of "risky" capital investment, in which the World Bank's mining reforms are embedded, has "allowed multinational capital to essentially set the distributional terms of mineral investment largely to their advantage in the form of 'investment incentives' (e.g. tax breaks) or 'attractive terms' (e.g. zero to very low royalties)" (Emel and Huber 2008: 1396).

While it remains firmly grounded in the market model, the SDM does venture a step further towards socio-political engineering as it signals the larger recognition that the market requires specific forms of change within the very fabric of society. Crucially, and as further argued in this paper, this transition serves two distinct yet complementary objectives: to ensure market efficiency and to secure its long-term sustainability on the ground. Theses approaches assign a strict depoliticised role to newly acknowledged actors such as in our case, NGOs and local communities.

This SDM merges two distinct legitimacy dilemmas that the mining industry—and the overall neo-liberal agenda—was facing at the end of the 1990s: one emerging from the illiberal actions of state officials in charge of regulating mining activities, and one from the political backlash resulting from the negative effects of such activities on local communities, as discussed earlier.

In a way, local communities are now assigned a role as

"accountability provider" to counter the governance predicaments that have historically arisen from mining activities. In addition to the negative effects—social, economic, and environmental—of mining development on certain segments of society, the former model was being challenged due to the local capture of mining revenues by local officials. This is what Harrison (2006) refers to as "neo-liberal clientism", a new political class that emerged out of the advance of markets. Institutions have been emphasised as the remedy to counteract such predatory behaviour by penetrating not only the political realms but the social realms as well. Under the new model, civil society—and to some extent, mining companies themselves—is seen as having a comparative advantage over the state, which is overwhelmingly perceived as a grouping of rent-seeking individuals. Here local organisations are viewed as representative of the plural interests of the community and consequently, they are perceived as naturally keen in monitoring corruption. In this respect, it is telling to note that Laos ranks 151 out of 180 countries on the Corruption Perceptions Index [27] of Transparency International (2009). Such empowerment of civil society elements over the state however, may prove to be awkward in a country with a one party-rule on the one hand, and on the other hand, with a government who, due to a serious lack of capacity, may distinctly fail to assume its monitoring functions. In other words, while local communities and civil elements appear to be empowered within a SDM inspired mining regime, the model might ultimately transfer responsibilities which use to belong to the state onto a stakeholder which clearly may lack the resources to fulfil its new role.

In their study of the Laotian case, the International Council on Mining and Metals observes that the clear capacity constraints faced by local governments has sometimes forced the companies to step in:

> When companies find themselves planning and providing investments that properly belong to the local governments, the long-term sustainability of the sectors may remain inadequately assessed and under-funded in broader government plans. Furthermore, once the companies demonstrate their willingness to help with local economic and social development, they risk becoming a de facto parallel local government. This is uncomfortable for the companies concerned and is often deeply resented by the local governments, who see their positions partly or wholly usurped (ICMM 2011: 45).

In addition to a pressing need to curb corruption at the local level, civil society elements have now been acknowledged to be key players in insuring the long-term stability of the sector, a key component for mitigating the risk of investors. It should be emphasised that mining in itself is considered to be a uniquely long-term high-risk enterprise for investors. In addition to the fact that the period between investments and returns is often significant, the

industry is considered to be the subject of heightened risks in light of the "obsolescing bargain" effect, whereby extractive industries become "hostages" of the host countries. This is characterised by the understanding that "once the companies have paid for multi-million-dollar fixed assets, they cannot lightly withdraw from the host country" (Bray 2003: 292). In such a particular context, the need for a long-term *license to operate* becomes pivotal. This also explains the consensus in the mining industry for the inclusion of social elements in their project. Such practices, observes an ESMAP, World Bank and ICMM report, are "Good for Business":

> Improved social performance generally leads to better financial returns. [...] If communities benefit greatly from a mining operation, then they have a significant stake in seeing the mine operate successfully and will help to overcome obstacles that could adversely affect the mining operation (2005: 7).

Amongst the key rewards for mining companies to nursing community development, as further observed by the report, are heightened reputational gains for the company, lower closure costs and liabilities, efficiency and productivity and local support services, an improved local workforce linked to education opportunities (ESMAP, World Bank and ICMM 2005: 7). "In other words", continues the report, "community development is a reciprocal process. By helping communities to develop themselves in a sustainable manner, a mining company is simultaneously helping its own business to succeed" (2005: 7).

However, beyond such motivations which animate corporate social responsibility[28] schemes in general, it needs to be noted that the rise of the SDM translates into a need to *manage* popular resistance and the risks that they bring to long-term mining investments, rather than an expansion of local political spaces, as suggested by the model. Local actors are engaged only within the logic by which it is in a company's own interest to ensure local stability. In this respect, as explained by Rodan (2006) in relation to the recent shift in neoliberalism, what distinguishes the new model is not only the acknowledgment that some degree of state intervention is necessary to redress market failures, but also that a host of governmental and non-governmental institutions are crucial to market efficiency and sustainability. In such light, the recent interest in social relations and participatory schemes in the mining context reflects a move by neoliberals to create a framework which ensures the sustainability of markets at the level of society. Socio-environmental concerns therefore remain framed in terms of "externalities", rather than risks confronting local communities. In their analysis of the conceptualisation of the notion of risk in the mining sector, Emel and Huber make a compelling argument by questioning how

capital has come to redefine the very idea of risk within such techno-managerial framework:

> Largely ignored in the financial risk lexicon are the environmental, economic, social and public health risks to the landowner, whether it be the host state or the local community. These latter risks—recognized as significant by local community members, indigenous groups, and non-governmental organizations that resist mines—are viewed by investors, banks, and mining companies as engineering and social issues that can be mitigated (2008: 1398).

Crucially, this is a process where socio-environmental principles are embraced only after being re-packaged within a depoliticised framework which serves to manage the risks facing investors above all else. MIGA, the insurance arm of the WBG, observes that:

> […] well-designed environmental and social programs can help *manage potential reputational risks* for project sponsors, *reduce social conflicts* within communities, protect the environment and help *reduce political risks*. For these reasons, MIGA aims to help its clients take a responsible approach to the environmental and social aspects of their projects (emphasis added. MIGA 2009b: 1).

In such light, the SDM allows for a contraction of local concerns within a depoliticised framework, one that suggests technical solutions to problems which used to be perceived as highly political. This echoes what Carroll (2010) coined as "political technologies" embedded within the larger context of a shift within neoliberalism[29]:

> Specifically, these new technologies included participatory approaches and consultation exercises designed to circumvent or dissolve implementation impediments. The core concern underpinning much of this was not to have input from newly empowered citizens in shaping the development and deployment of particular programmes and projects […] Rather, the technologies were executed in a manner that sought to build constituencies for particular agendas and marginalise opposition, in tandem with technocratic efforts to avoid some of the problems attending past efforts–especially environmental and social problems associated with large-scale infrastructure projects (Carroll 2010: 9).

This assessment of the political technologies inherent within neoliberalism is highly relevant to the WBG's SDM and its diffusion down to mining regimes throughout the global south, where mining activities have historically been politically highly contentious. The political and the environmental legacies of the sector have indeed repeatedly polarised

public opinions—perhaps not unsurprising given these countries' rich and unique biodiversity—a reality far from captured by the latest incarnation of the mining regime supported by the World Bank in Laos. In such light, the framework is nestled within the larger expansion of neoliberalism whereby the latter seeks to mend its acknowledged flaws by tackling the realms of possible contestations to the advancement of markets wherever they might arise–whether at the heart of the government or within civil society. Here, the participatory agenda aims to rally coalitions of interests amenable to the project.

The shift to the SDM reflects an emphasis on investment risks above all else. As such, the idea expressed within the SDM to strive for "a *sensible balance* among the risks, benefits, and distributional effects of natural resource exploitation" (emphasis added, World Bank 2010b: 7), takes another light. Here the "sensible balance" is better defined as dedicating the maximum of socio-environmental safeguards *necessary* to address investment risks. The problem with the SDM is the obstinate refusal of the World Bank, a public institution, to acknowledge the very *political* nature of dictating what levels of risk should be acceptable for communities; as after all, mining remains the most environmentally destructive activity that can be undertaken.

On that note, there is a certain hypocrisy in simultaneously promoting strong socio-environmental standards as well as the active liberalisation of the sector to foreign investors and then suggesting that any failures in the model should be blamed on a lack of a government's capacity. The World Bank's Vientiane office argues: "We are not engaged in reviewing individual projects, we basically provide the government with the tools and they are supposed to then use these tools" (interview Vientiane 2011). The Bank officer further notes that while the Laotian government is keen on developing a solid framework, "there is a gap between what [it is] intending to implement and what is being implemented on the ground" (interview Vientiane 2011).

It is to be emphasised that empowered through its new mining law, potential mining investors are now assailing Laos[30], despite the country's moratorium on mineral exploration licenses instigated in 2009. Ironically, the scale of the current mining rush is now making the Bank voice great caution, warning that the government's capacity has not yet coped with the challenges posed by such rapid expansion. A Bank officer further explains:

> the process through which [Laos exploits its natural resources] and the pace through which it is done is really beginning to have a big influence on the ultimate outcomes. Doing it so quickly, with limited capacity, may mean that the outcomes are not as good as [the Laotian government] would like them to be […] (interview Vientiane 2011).

Complementing this perspective, the Bank's *Lao PDR Development Report: Natural Resource Management for Sustainable Development* conveys the institution's uneasiness with the fast pace of the development of the sector and the country's lack of capacity, notably for the implementation and enforcement of existing socio-environmental regulations (World Bank 2010b: 1).

Conclusion

Building on the case of Laos, this paper analysed the recent emphasis on socio-environmental safeguards promoted in the model by the WBG, and the political underpinning of its implementation process. In this paper, the overarching question concerning the magnitude of the influence of the World Bank, a public institution, has been raised, both in relation to the fact that in Laos' civil society is tightly nestled within the arms of the one-party regime, and the reality that there is an overwhelming consensus that the government is currently unable to carry out and monitor its own mining regime.

In light of these clear obstacles to the implementation of the socio-environmental safeguards embedded in Laos' mining regime, the analysis has suggested that the involvement of local communities is rooted within a framework which conceives participatory schemes as a management tool to circumscribe the risks faced by mining investors on the one hand, and the constitution of the enabling state on the other. As such, the SDM should not be read as a novel attempt to empower local stakeholders politically. Here participatory schemes and civil society engagement serve to mediate the negative impact of mining activities on the ground, while also offering a depoliticised path to vent local contestation.

Ultimately, this may bring the debate to another level. Rodrik (1998) observed that "every politician knows the clamour for controls and restrictions overcome markets when markets produce outcomes that are not endowed with popular legitimacy" (cited in Ahrens 2004: 11). As such, and this may very well be the very essence of corporate social responsibility, the new model might have been created in order to allow for the pre-emption and preclusion of tighter state-sponsored regulations and standards for international mining companies, notably from the government of their countries of origin.

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[1] Hereafter, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) are referred to as "the World Bank" or "the Bank".

[2] On the specific roles of the IFC and MIGA in the industry notably see Hatcher (2010).

[3] See Hatcher (2004) for an analysis of the Malian mining sector as an example of third-generation mining code implementation.

[4] The "resource curse" is a term applied to the tendency for an abundance of natural resources to create political and economic distortions which increases the likelihood that countries will experience negative development outcomes (Rosser 2006: 7). The EIR found that while extractive industries can yield benefits for countries, data suggests that developing countries with few natural resources grew two to three times faster than resource-rich countries from 1960 to 2000 (EIR, 2003b: 12).

[5] See Auty (1993), Sachs and Warner (1995). For a thorough critical literature review on the subject see Rosser (2006).

[6] For a thorough analysis of the EIR and the World Bank response, see Campbell (2009).

[7] It is to be noted that this greater emphasis on the environmental and social consequences of mining activities is part of a greater shift within the Bank as a whole. While the specifics of the changes carried out within the Bank amidst the Wolfensohn presidency (1995-2005) are beyond the range of this contribution, it should be noted that the period marked an all-encompassing shift within the Bank's narrative. From its austere emphasis on the blind pursuit of economic growth, which characterised the 1980s and the better part of the 1990s, the Bank in the last decade embraced a more "comprehensive" way of doing business. "Our dream is a world free of poverty", Wolfensohn declared, and in so doing, he committed the institution, at least discursively, to addressing the social aspects of poverty and to forging closer partnerships with other actors in development, including those within civil society (on the topic, see Hatcher 2006).

[8] Such as the Resettlement and Indigenous Peoples; effective public consultation and disclosure (1998); HIV/AIDS's guide for the Mining Sector (2004); Sustainability in Emerging Markets (2002), etc.

[9] *World Bank OP 4.01 Environmental Assessment* (1999); *World Bank OP 4.12 Involuntary Resettlement* (2002); *World Bank OP 4.10 Indigenous Peoples* (2005); *World Bank OP 4.11 Physical and Cultural Resources* (2006); *IFC Policy on Social and Environment Sustainability* (2006); *IFC Performance Standards on Social and Environmental Sustainability* (2006); *IFC Guidance Notes: Performance Standards on Social and Environmental Sustainability* (2007); *IFC Health, Safety and Environment Guidelines* (General - 2007 & Mining - 2007).

[10] In 1998 (World Bank 2010b: 14)

[11] Law No 04/97/NA on Mining (12 April 1997). Implemented by Decree in 2002.

[12] There are now about 150 mining companies operating in Laos, including companies from China (56.5 per cent), Vietnam, Thailand, Australia, Korea, Canada, Germany, India, Japan, UK, Russia, etc.

[13] Of concern in the Laotian case was the failure to meet the "clarity" requirements expected from a "modern" regime. In addition to the confusion over the terms relating to the transfer of mining rights (Article 39) and the expiration of mining licences (Article 34), the provisions for taxation

and duties were seen as a cause for concern within the investor community. Furthermore, while in practice the country did permit 100 per cent FDI into a particular project, Article 21 allowed the state to compel foreign investors to accept state participation in their mining venture, which for the Bank "introduces a conflict of interest given that it is the government which regulates the sector". (Thompson 2010: 8). Interestingly, the 1997 law would have been tightly modelled from the Vietnamese mining law (Anonymous interview, Vientiane August 2011).

[14] Law No 04/NA was made publically available only in late 2009.

[15] Approved May 2011 (ended in 2012), the project (P122847) committed 10 US$ millions.

[16] Although government officials indicated that they are "80 per cent of the way" to getting final approval. (quoted in CLC Asia 2011)

[17] Approved in January 2012, the "TA for Capacity Development in Hydropower and Mining Sector" (P109736) has a committed amount of 8 US$ millions.

[18] For further details, see Gibson and Rex (2010: 16).

[19] The Minerals and Metals Group (MMG) now own the Sepon Gold and Copper Mines. MMG was formed in June 2009 - when China Minmetals Non-ferrous Co., Ltd acquired key assets of OZ Minerals. It is to be further noted that OZ Minerals was itself formed in July 2008, when Oxiana merged with Zinifex Ltd.

[20] The IFC approved a US$30 million loan in February 2002.

[21] In addition to the 5 volume Environmental and Social Impact Analysis, 16 targeted studies were commissioned, a Public Consultation and Disclosure Plan; a Resettlement Action Plan; and a Community/Indigenous Peoples Development Plan were submitted) and meetings were conducted with the government, communities, and NGOs. (EIR, 2003a: 29)

[22] The fast-pace development of hydropower has positioned itself as a significant purveyor of government revenues, which are projected to eventually surpass the mining industry.

[23] The Boards of Directors of the World Bank ($270 million) and the ADB ($107 million) approved loans and guarantees for the project in 2005.

[24] There were after all over 200 consultations and workshops conducted for the people both in the preparatory work, and during the implementation process.

[25] As stated in Article 44 of the country's 1991 Constitution (Revised in 2003).

[26] According to Kunze (2010), civil society in Laos is one of the most limited in the world.

[27] The Index is a measurement tool of perceptions of public sector corruption.

[28] The larger mining companies operating in Laos, such as Pan Australia and Lane Xang Minerals Limited, boast strong CSR policies.

[29] There is a rich literature on the subject. See Carroll (2010); Gamble (2006); Jayasuriya (2001); Robison (2006).

[30] See World Bank 2010b.