



KEY THEMES IN LAND GOVERNANCE:

SYNOPSIS OF RESEARCH, POLICY AND
ACTION IN THE MEKONG REGION

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Cover photos (clockwise from top left):

- Mapping out lands under communal control in Southern Chin State, as part of a project with the support of local NGO Ar Yone Oo (photo credit: Kirsten Ewers Andersen)
- Hmong women with a maize crop in Lao Cai province, northern Vietnam (photo credit: Sarah Turner)
- Long Hau Industrial Park, peri-urban Ho Chi Minh City, Vietnam (photo credit: Luongviethoang.hcm under the Creative Commons Attribution-Share Alike 4.0 International license)
- Deforestation in Tumring, Kampong Thom province, Cambodia. Timber extraction is followed by the establishment of rubber (background) and maize (foreground) (photo credit: Jean-Christophe Diepart)
- Pepper cultivation by Khmer migrants on land bought from indigenous Bunong farmers, Mondulkiri province, Northeastern Cambodia (photo credit: Natalia Scurrah)

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RCSD has the privilege of collaborating with the Mekong Region Land Forum to further the interest in land relations in the Mekong region. One of the main activities in which we have cooperated is to organise summer schools for participants to discuss and exchange on different forms of land tenure, land rights, land grabbing, land conflicts, and related topics. The summer school is systematically linked to an important resource, a repository of literature connected to land relations. Articles in our online resource have been tagged under 14 key themes, each accompanied by an extended synopsis, giving in-depth analysis using articles within the resource. The key themes act as a conceptual framework to deepen an understanding of land relations in the Mekong Region.

RCSD is grateful to Professor Philip Hirsch who started writing these synopses together with Natalia Scurrah when first putting the online resource together at the University of Sydney in 2015. The repository was later housed at RCSD and has been maintained by Daniel Hayward, who has helped update some of the early synopses as well as writing new ones. The full set of synopses has now been edited, updated and formatted into this single volume. Each synopsis is quite short (under 10 pages), since the purpose is to make them accessible to a wide readership, including for educational purposes. Our intention is to keep the repository active and to have both an online platform as well as hard copy outputs such as this volume.

Land relations has become a field of specialisation in our graduate program in Development Studies which RCSD has initiated and supported. Our graduate students have become increasingly interested in land-related issues in the region and have helped us to further understand the dynamics of land relations as well as how they link to crucial issues such as inequality and climate change. We hope that this volume will be useful for students and researchers interested in land relations in the Mekong region.

On behalf of RCSD, we would like to thank the Mekong Region Land Forum for its generous support to our long-standing interest and activities on land relations.



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Access to and use of land have long presented social, economic, political and environmental challenges at a global level, within individual countries and locally within communities and households. As processes of development have changed, and have often highlighted the significance of land in people's lives, and as values ascribed to land have multiplied, so the ways in which land is held, managed and studied have similarly evolved and become ever more complex.

While land is a global, national and local issue, there are also features specific to different world regions. The Mekong region is marked by particular kinds of historical and contemporary land uses, social relations around land, interactions within and across national borders, and patterns of development that shape changing uses and types of access arrangements. These uses and patterns have been the subject of a great deal of research, of policy initiatives and of societal action.

If there is one term that marks the response to the dynamism and diversity of land relations in the Mekong region, it is "governance". Land governance has been defined in many different ways, for example by the Food and Agricultural Organisation of the United Nations as follows:

"Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed" (Palmer et al. 2009)

In a series of working papers on the political economy of land governance in the Mekong region that we published in 2015, we expanded this definition sociologically as follows:

"Land governance consists of the means by which authority is wielded and collective action applied in order to achieve particular social and economic outcomes through land use, distribution, access and security. Land governance is concerned with processes, institutions, laws, practices and structures of power involving a diverse range of public and private actors" (Hirsch and Scurrah 2015b)

In line with the revived interest in land through the lens of governance in the Mekong region and

elsewhere, there has been a proliferation of published studies on the subject. Through the Mekong Land Research Forum, hosted by the Regional Center for Social Science and Sustainable Development (RCSD) at Chiang Mai University and supported by the Mekong Region Land Governance project, we have produced and continued to update an online resource that seeks to bring this published material together in a single location and in an accessible way (www.mekonglandforum.org). There are several ways in which the material, consisting of several hundred individual research articles, has been made accessible, including through search functions and the tagging of items by country and by a set of key themes in land governance.

The grouping of research on land governance into key themes has been an important step in bringing together the voluminous literature on the subject. Yet it still leaves the reader with the daunting task of working through hundreds or thousands of pages of text. In order to help different users make more sense of the available material, we have synthesised knowledge on each of the 14 key themes in a set of synopses. These synopses have been developed over time since the initiation of the resource in 2015, and some of them have been updated along the way in line with ongoing developments and new research material.

In this volume, we bring all 14 synopses together as a consolidated resource relating to the state of knowledge on land governance in the Mekong region. Each of the synopses keeps to the same structure, as follows:

- The meaning and significance of each theme is summarised up-front. An **overview** paragraph provides a concise precis of what follows.
- A more detailed explanation explains how land governance has developed over time with respect to the theme, and what is currently happening across the region. In particular, key **trends and dynamics** are outlined to bring empirical examples from different countries.
- Governance involves diverse societal actors beyond the formal institutions and rules of government. A section on **actors and interests** therefore explores each theme with respect to what are also sometimes called "stakeholders".

- Governance is sometimes presented and understood in terms of achieving consensus, but this can gloss over the diversity of views and approaches to dealing with land in more equitable and sustainable ways. To this end, each synopsis identifies some of the main instances of **contestation and debates** around the theme in question.
- The regional focus of this volume is based on a set of conditions that characterise land governance in all Mekong countries as well as the diversity of context and experience at national and sub-national levels. **Differences and commonalities** across countries are explored for each theme.
- The regional approach is also based on ways in which neighbouring countries are often either directly or indirectly involved in each other's land issues. This may link local phenomena with wider processes. **Links and interactions across borders and across scale** explore these connections for each theme.
- Land governance both describes existing practices and is a focus for exploring ways to make such arrangements more equitable and sustainable. As such, each synopsis outlines **reform issues and strategic openings** relevant to the theme.
- The electronic version of this collection includes links from each text reference to its entry in the Mekong Region Land Forum online resource. A consolidated **bibliography** at the end of this volume lists all the articles referred to in the 14 synopses.

We hope that this structured way of summarising and bringing together themes on land governance in the Mekong region will be of use to educators, students, practitioners, policymakers and activists working in the field. We also see the relevance of the volume beyond the Mekong region and welcome our approach being applied or adapted to land governance in other regions. While we have tried to be balanced and broad-ranging in compiling these synopses, they remain our own takes on the themes. As such, they should be read less as encyclopaedic entries and more as the authors' combined review of land governance issues represented by way of a selection of the voluminous literature on the subject.



1. POLICY AND LAW

OVERVIEW

Land law has a long history in the Mekong region, going back to the colonial era. In the post-socialist countries of Cambodia, Laos, Myanmar and Vietnam, there has been an acceleration and elaboration of land policy formulation and legislation around land, including laws on investment, natural resources, special economic zones and other related fields. International donors have been quite heavily involved in law drafting in some countries. Recent implementation of consultative processes around law formulation reflects the growing role of civil society organisations. Discussions around law reflect deeper tensions and debates around relationships between state and society in the countries in question.

KEY TRENDS AND DYNAMICS

Land policy and land law in the Mekong countries has moved through several key transitions from the colonial period, to wartime, to a period of inwardly-focused socialist practice, to a more outwardly-oriented market-based development, and ultimately to a neoliberal era characterised by regional cross-border investments in land for agricultural and other uses. While land policies and laws have developed in ways specific to each individual country, there are trends and processes common to some or all of them (Mellac and Castellanet 2015). The exception here is Thailand, which was never formally colonised, and whose government ultimately prevailed over a communist insurgency. This partially accounts for a long-standing consistency within its land laws (USAID 2011c), as opposed to Cambodia, where all land records were destroyed during the Khmer Rouge period marking a break between people's pre-1970s patterns of landholding and their post-conflict tenure (Pubellier et al. 2015).

The history of socialist experiments emanating from the post-colonial period in Cambodia, Laos, Myanmar and Vietnam has highlighted post-socialist dynamics in land governance across the region. In Laos, Myanmar and Vietnam, there remain significant constitutional limits to individual – and therefore smallholder – rights in respect of land. While in all three countries there are provisions for individual land holdings, in the one-Party States of Laos and Vietnam the constitution stipulates that land is

ultimately owned “by the people” as a whole and is managed in trust by the State (Hansen 2013). In Myanmar, all land and natural resources are constitutionally owned by the State (Article 37). Cambodia's 1993 Constitution enshrines the right to private ownership through transferable land titles, but the majority of unsurveyed and untitled land remains the property of the State, facilitating the granting of concessions on that land (Dwyer 2015).

The post-2000 neoliberal period of increasing reliance on market forces has seen land policies and land laws geared towards “turning land into capital”. Land laws enacted in Cambodia, Laos, Myanmar, and Vietnam have prioritised attracting private sector investment for commercial agriculture, mining, hydropower dams, and urban-industrial complexes. This is mainly operationalised through the granting of large-scale land concessions by the State to domestic and foreign companies. A key problem is that land ownership is often ambiguous and contested. Much of the so-called “State land” granted to concessionaires is occupied and used by local communities, resulting in social conflicts. With few legal protections available to farmers, ethnic minorities and women to uphold their land rights, many smallholder groups have lost their agricultural and forest lands to companies or powerful individuals, making it difficult for them to maintain their former subsistence or semi-subsistence livelihoods (Carter and Harding 2015).

The 2001 Land Law in Cambodia and recently amended 2019 Land Law in Laos provide for the issuing of large-scale land concessions to domestic and foreign investors. Likewise, Myanmar's 2012 Vacant, Fallow and Virgin (VFV) Land Law allows for State expropriation of smallholders' land for large-scale agricultural enterprises (Oberndorf 2012). Its 2018 amendment threatens to fine or imprison farmers who do not register the use of land classified as VFV. While the government has presented this as a unique opportunity for farmers to legitimise their existing land uses, studies indicate it represents a threat to the many farmers cultivating land in unregistered areas (Boutry and Mya Darli Thant 2020). A number of abuses in concession-granting results from the lack of coherence of national policies and competing administrative interests between different ministries, as can be seen in the example of the Dawei Special Economic Zone (SEZ) in Myanmar (Sekine 2016). These are also the result of blatant abuses of power combined

with very limited access to justice under prevailing State-business-civil society power gradients.

Land policies and land laws of countries in the Mekong region also reflect the various efforts, particularly by international donors, to instil international legal norms of good land governance that draw mainly from neoliberal market instruments, but which also seek to protect small producers from the worst aspects of the concession boom. A key policy/legislative tool for attaining “growth with equity” in the mainstream neoliberal development paradigm has been land titling and the creation of land/credit markets. The World Bank and other international donors have supported land titling initiatives in the region, first in Thailand from 1984, and in Laos and Cambodia in the 2000s, although the latter programs were

both aborted. The idea is that a formal land title can help rural smallholders turn their most valuable asset – land – into a household level wealth-generating engine (de Soto 2000). However, in some cases, such as Laos, the policy drive has been more to turn the country’s land asset into national wealth through expropriation (Barney 2009; Baird 2011). While land titling has, in some instances, legitimised existing land holdings, it has also increased tenure insecurity in areas that remain unsurveyed and untitled, as these lands are then seen as reserved for State projects to be handed over to investors (Bugalski and Pred 2013; McCarthy 2016; Oldenburg and Neef 2014; Rabe 2013; Suhardiman et al. 2019a). Overall, the issuance of land titles for farming households has been slow and incomplete, while the granting of land concessions to private developers has accelerated rapidly. In Myanmar, it is particularly worrying that recent government efforts to formalise land holdings – as long-term, conditional leases on State lands – do not recognise customary land rights and may actually create greater tenure insecurity (Oberndorf 2012; Land Core Group 2012; McCarthy 2018; TNI 2013; Woods 2013a). In all countries, but particularly in Myanmar, the legal recognition and protection of customary land rights remains weak. Even where there are some legal protections, such as communal land titling, these come with risks. In Cambodia, for example, the requirement for communities to prove indigenous status before gaining eligibility has been a barrier and is partly behind the very slow issuing of such titles (Milne 2013). Meanwhile, land and investment laws are being changed to facilitate foreign ownership of land (Mark 2016; Woods 2015c). In Vietnam, land policies are being used to legitimise State power in land management and the ability to intervene in land markets (Hoang Linh Nguyen et al. 2018b).

In Cambodia, Laos, Myanmar and Vietnam, the continuing status of most land as State property eases the process of concession granting, particularly where land has been zoned in such a way that fallow areas, grazing land, secondary forest and other supposed “wastelands” can be appropriated as vacant. While the rules and specific laws vary from one country to another, this categorisation of land as waste, unused or under-utilised gives legitimacy to the granting of land concessions for “productive” investments in the Mekong region (Ferguson 2014).



Figure 1: Community farmland under customary laws in Shan State, Myanmar (photo credit: Bawi Tha, in Land Core Group 2012)

KEY ACTORS AND INTERESTS

Land policy, law and land use planning in Mekong countries have been subject to many influences and tensions, reflecting the multitude of interests within bureaucracies, and between donors, governments and civil society:

Governments in the Mekong region (namely in Cambodia, Laos and Myanmar) have embraced a concession model of economic development, reorienting land and related laws and policies to encourage foreign investment (mainly from Vietnam, China and Thailand) in large-scale agriculture and other land-intensive developments. One of the main motivations of governments in granting concessions is to reallocate land from what is often seen as “unproductive” uses by smallholder peasants, to more “productive” export-oriented industrial agriculture controlled by companies. This reflects the sentiment of many in the government that forcing “unproductive” and “backward” peasants out of subsistence economies – through the eradication of swidden agriculture and enclosure of forest and other commons – will propel the rural population toward a modernised set of labour relations and bring about positive “development” (Baird 2011).

While a significant part of the literature on land grabbing refers to “the State” as complicit in land deals that dispossess citizens, States are, in fact, variegated and complex, with many agencies at different levels responsible for drafting, enacting and implementing land and related laws and policies. The Lao, Cambodian and Myanmar States are often described as exhibiting fragmented sovereignty because they grapple with institutional disconnect, internal struggles over regulatory power, and complex landscapes of overlapping land uses, with formal and informal claims to land. For private investors, the process of negotiating access to land with fragmented and at times competing State actors and institutions – even if permission is already granted on paper – can be complicated, costly and sometimes unsuccessful (Lu and Schönweger 2019). Ministerial clashes are frequently seen in tensions between conservation policy against aims to capitalise land (Mertz and Mertens 2017; MRLG 2019). For example, in Huaphan province, Laos, an aim to expand land use for maize contract farming clashes with REDD+ policy (Vongvisouk et al. 2016).

International donors have been quite heavily involved in land-related legal and policy development in the Mekong countries, particularly through neoliberal market instruments. With the support of the World Bank and AusAID, Thailand conducted a land titling program from 1984-2004. It is presented as a positive model that has alleviated poverty and allowed smallholders to access credit markets using their land as collateral (Feder 1987; Feder and Feeny 1991; Jeffress and Onsrud 1989).

Donors have more recently supported programs that align with more progressive voices and counter-movement agendas on land governance. The Swiss Agency for Development and Cooperation (SDC) has, since 2014, been supporting the Mekong Region Land Governance (MRLG) program, whose focus is on the recognition of customary rights and responsible agricultural investment. Other donor programs have similarly focused on strengthening land laws and policies, including increasing legal protection for smallholder farmers, ethnic minorities and women with regard to land access and ownership. While many donor-supported land reforms promise to build reliable legal frameworks, strengthen institutional capacity and create land-based knowledge and information systems, in practice, reforms have seldom led to desired or intended outcomes. In all five Mekong countries (namely Cambodia, Laos, Myanmar, Thailand and Vietnam), donor programs have interacted with, and been assimilated into local political-economic contexts and State territorialisation agendas, particularly the interaction and co-existence of concessions and land titling programs (Biddulph 2011; Adler and So 2012).

Through various land-based coalitions, **civil society organisations** have been active in the process of land policy and legal reform through public consultations in each country. International and local NGOs have played a prominent role in helping to support and coordinate consultation processes (Oxfam 2013; Wells-Dang 2013; Wells-Dang et al. 2016). The Land Information Working Group in Laos, the Land Core Group in Myanmar and the Land Alliance (Landa) in Vietnam have brought together State and non-State actors and provided comments on draft land laws and policies. In Myanmar, the Gender Equality Network has been advocating for the role and rights of women in land-related violations, giving input into the National Land Use Policy (Faxon et al. 2015). The

degree of inclusiveness and openness in consultation processes varies from one country to another and there are few guarantees that civil society participation will result in the incorporation of their perspectives and proposals (Polack et al. 2014).

NGOs also play an important role in land law implementation through educational campaigns, for example, around land registration procedures, farmers' rights and the law. There are an increasing number of guides looking at how to inform communities, and to help them to take action in cases of land-related grievances (Allaverdian et al. 2017; Pierce and Nant Thi Thi Oo 2016). While laws and regulations in Mekong countries grant people freedoms and rights to peaceful assembly and to contest and appeal decisions through judicial and non-judicial arbitration, there has been limited progress in all countries relating to access to justice for victims of land rights violations (Adler et al. 2006). Serious rights violations continue to arise as a result of forced evictions and dispossession of lands and resources, often backed by laws and policies that favour investors over smallholder farmers.

KEY CONTESTATIONS AND DEBATES

A key point of contestation is land policy seeking to maximise large-scale foreign investment in land, on the one hand, and security of tenure for smallholders on the other. In Vietnam, planned revisions to the Land Law favour consolidation for private enterprises, yet there are debates as to whether this will result in more productive land use at the expense of smallholder access (Huy Quynh Nguyen and Warr 2020; Phuc To et al. 2019). Recent land and investment laws and revisions in Myanmar have been criticised for providing certainty for investors at the expense of smallholder security (Oberndorf 2012; Buchanan et al. 2013; TNI 2013; Woods 2013a; 2013b). A particular problem is that customary land-use rights are not formally recognised by the current legal regime (Andersen 2016; Mark 2016; Springate-Baginski 2019; Boutry and Mya Darli Thant 2020). Most *taungya* or shifting cultivation/grazing land is not formally registered or mapped, making such areas particularly vulnerable to confiscation by private actors under the pretext of claiming "wasteland" (Land Core Group 2009). There are thus continuing disparities and contradictions between rights given in law

and enacted through policy, on the one hand, and customary rights and practices on the other (Diepart 2015; Adler and So 2012). Yet in the quest for a federalist State in Myanmar, ethnic minority groups in the borderlands have set up their own legal frameworks, in which recognition of customary tenure helps garner public support (Suhardiman et al. 2019b). In Thailand, legal developments have benefitted smallholders, first, to combat extra-territoriality for outside imperial powers, and later against communist insurgency (Larsson 2012). However, there has been a struggle to recognise the rights of people living in forest areas subsequently given protected status by the State (Fisher 2011; Johnson and Forsyth 2002).

State appropriation of land also provides challenges for land conversion in peri-urban areas (Hall et al. 2011). Under Vietnamese land law, State appropriation of land is permissible only where it is required for public infrastructure, national defence or social and economic development that is in the public interest – a category that is open to interpretation and challenge (Nguyen Van Suu 2009b). In Laos, the revised 2019 Land Law allows requisition of land for public purposes or State investment projects with appropriate compensation (Articles 147 and 152). In practice, "public purpose" can be very broadly interpreted to include economic development that is for private economic gain. Moreover, the law does not require communities to be consulted over concessions planned in or near their villages.

Another key issue is the oft-heard problem that law exists in the books but not in practice. For example, it is commonly heard that Cambodia has good land laws but the challenge of implementation remains vast. National land laws often reflect the priorities and interests of international donors who ascribe to international legal norms that define the contours of "good land governance" (Flower 2018). In practice, however, configurations of political economy in each country make institutions highly resilient to change. Formal law is often superimposed on complex fields of pre-existing customary, colonial, socialist and market liberalisation laws (Crouch 2014; Adler and So 2013; Lund 2011; Gillespie 1998). In Mekong countries, law thus often serves as a basis for negotiation of outcomes rather than for implementation or challenge, and in increasingly economically polarised societies this often leads to unequal outcomes (Adler and So 2012; LRICI 2011).

Lack of law enforcement and irregularities in the implementation of existing legislation has also led to the proliferation of land-related human rights abuses (Colchester et al. 2013). There is a general perception that law serves the interests of the powerful. Instead of striving to improve transparency and accountability, legislative reform often appears to be aimed at formalising the central role and prerogatives of the ruling Parties. This has prompted some people to argue that land reform can only be truly effective with the support of enforceable grievance mechanisms (Gillespie et al. 2014).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Land policies and laws are enacted on a country-by-country basis and each country has gone through reform at different times, in some cases through several iterations. A key commonality is the dynamics created by the superimposition of neoliberal projects in land onto post-conflict and/or post-socialist societies. In particular, the post-colonial experience and experiments with various guises of socialism have shaped the political economy of land in particular ways. There are also common donor influences associated with organisations such as the FAO, the World Bank, the Australian Department for Foreign Affairs and Trade (DFAT), SDC, the German Development Agency

(GIZ) and others seeking to promote policy reform in the land sector, either directly by having input into the formulation of laws and policies, or through international agreements that governments and private parties adopt, such as the *Voluntary Guidelines on the Responsible Governance of Land Tenure* (FAO 2012b).

In some instances the diffusion of international legal norms has resulted in common legal concepts and categories, such as provisions for land privatisation through titling programs, or customary and community-based lands and natural resource tenure. A recent paper conducted a review of laws in 100 countries, demonstrating that the recognition of, and provisions for collective land ownership have improved over recent years (Wily 2018). In practice, however, these vary considerably across the Mekong countries. For example, the 2001 Land Law in Cambodia recognises communal land titles, but it sets up a number of hurdles that have made application for such land tenure recognition a long, drawn-out process. In Laos, communal land is being recognised on a pilot basis, and it is not tied to indigenous status (Baird 2013). In Myanmar, customary land-use rights are not formally recognised (Oberndorf 2012). Meanwhile, in Thailand, there have been various schemes of community land titling over a number of national governments, but ultimately collective land tenure arrangements sit uneasily with either individuation of property within a free market or with State control over land (Hayward 2017).



Figure 2: A lawyer counsels farmers on their land confiscation problems in Mandalay Region, Myanmar (photo credit: SiuSue Mark in Mark 2016)



Figure 3: Looking at community land titling in Mae Tha sub-district, northern Thailand, during a study tour for Lao and Myanmar officials, March 2016 (photo credit: Chaiyapat Sukpanon in Hayward 2017)

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Historically, there has not been a great deal of interaction among governments in the formulation of land laws and policies, though legal norms have been diffused through the aid programs of international donors. There are signs that legal borrowing has increasingly occurred within Southeast Asian, and there is more legal exchange or at least comparison within the region (Baird 2013). For example, Myanmar has looked at Cambodia's experience in communal land titling. When it comes to agricultural use of land, there has been exchange, such as comparing experiences on tissue-culture banana production between Laos, China, and Myanmar, or a more general interest in contract farming in Thailand.

There are also various instances of governance and policy advocacy supported at a regional level, often as part of global initiatives – for example, the significant involvement of international donors and

NGOs in developing and promoting the use of the *Voluntary Guidelines on the Responsible Governance of Tenure* (FAO 2012b). Franco and Khu Khu Ju (2016) outline how farmers in Myanmar have been using the guidelines to frame their pursuit of land justice and peace. Commodity booms and other global drivers of land grabbing suggest that governance reform also needs to extend beyond the land policy framework within individual countries and look at markets and regulatory arrangements at a distance from the site where the grabbing has taken place. For example, complaints over land use for sugar plantations by the Thai company Mitr Phol in Cambodia have engaged an international civil society organisation (CSO) network in Southeast Asia and also in Europe (Hall et al. 2015). A recent court case in Thailand on the matter concerned land in Cambodia, the first cross-border case of its kind. This is in line with what Sikor et al (2013) refer to as a shift in global land governance from “territory” to “flows”, where governance across borders is enacted through control over flows of goods produced on land, rather than direct control over land as territory.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

Land law reform remains a sensitive area of public discussion in many countries. Key reform issues and openings include:

- Involvement of reform-oriented companies in land governance reforms and new sets of laws that minimise land conflicts and provide more systematic methods for access to land. This is so that any future illegal land grabs that might arise, do not pose significant risks to investors and increase their exposure to judicial claims.
- The incorporation of responsible investment into laws and policy, taking into consideration the rights of local land users, the environmental impacts of land use, and the needs of investors
- Providing a basis for secure individual ownership or use rights under titling arrangements
- Legal recognition of customary and communal land
- Consultative processes in law and policy formulation
- Matching compensation policy and practice to market prices for land
- Constitutional definitions of rights in land between “the people” as a collective, State, business entities and individuals
- At the provincial and district level, opportunities to improve practices that link land allocation, resettlement, compensation, livelihood support and other programs that are oriented to smallholders through awareness and concern among local government officers who have to deal with the consequences of decisions made higher up. Upscaling the isolated successes of local initiatives may provide a useful direction for longer-term reform at higher levels.



2. LAND RIGHTS RECOGNITION AND FORMALISATION

OVERVIEW

Land rights and property rights on land are often confused. Tenure rights derive from societal, customary, political, historical and other forms of recognition. Property rights on land, backed up by land titles, may enhance security of tenure, but there are also risks and pitfalls associated with titling – especially if formalisation leads to neglect or undermining of tenure security on non-titled land. There are some protections, such as communal land titling, but these also come with risks. Women and ethnic minorities have been disenfranchised by past titling programs, but progressive titling policy can also enhance security for targeted groups.

KEY TRENDS AND DYNAMICS

Much farmland in Cambodia, Laos, Myanmar, Thailand and Vietnam is held and cultivated under tenure arrangements unrecognised by the State or the legal frameworks of the countries in which they are located. With increased marketisation of agriculture, and with insecurity of tenure in the face of large-scale land acquisitions, formalisation of land tenure has become a priority for government agencies and donors, some NGOs and other advocacy groups, farmers and other land users.

Formalisation takes several forms, including:

- Full land title, involving the formal demarcation of boundaries and registration of land, as in the case of Laos' land titles (*bai taa din*), or in Thailand (*chanood*). Full land title is alienable, can be mortgaged, bought, sold and inherited. In some cases the issuing of a title follows systematic land adjudication procedures. In others, it is sporadic, based either on individual applications and payments through land offices, or through schemes instituted by respective governments.
- Long-term land leases to individual farmers on decollectivised cooperative farmland, as in the case of Vietnam's "red book" land use rights certificates (so do).
- Land allocation in individual plots on State land such as in land reform settlement schemes or allocated forest land. For example, the 1975 Land Reform Act in Thailand acknowledged a high level of farmer tenancy and landlessness, and so aimed for redistribution, including usufruct rights, for those in degraded forest areas (Feder, Onchon and Chalamwong 1988).
- Village land demarcation, within which land use zoning allows for different uses and the allocation of individual plots under less than fully transferable land titles, as in the case of Laos' land and forest allocation scheme with associated temporary land use certificates (Soulivanh et al. 2004).
- Land concessions to smallholders and large commercial investors, for example social and economic land concessions (SLCs and ELCs) in Cambodia (ANGOC 2012).
- Communal land titles, in some cases tied to the ethnic or indigenous status of communities in which it is implemented, as in the case of Cambodia's communal indigenous land titles (Baird 2013; Milne 2013).
- Titles sanctioned by actors outside of centralised State power. For example, the Karen National Union (KNU) has issued land titles in Karen State, Myanmar, as part of a program to achieve autonomous governance in a federal State (Suhardiman et al. 2019a).

The constitutional framework of each country determines the status of formalised land vis-à-vis the State and individual holders.

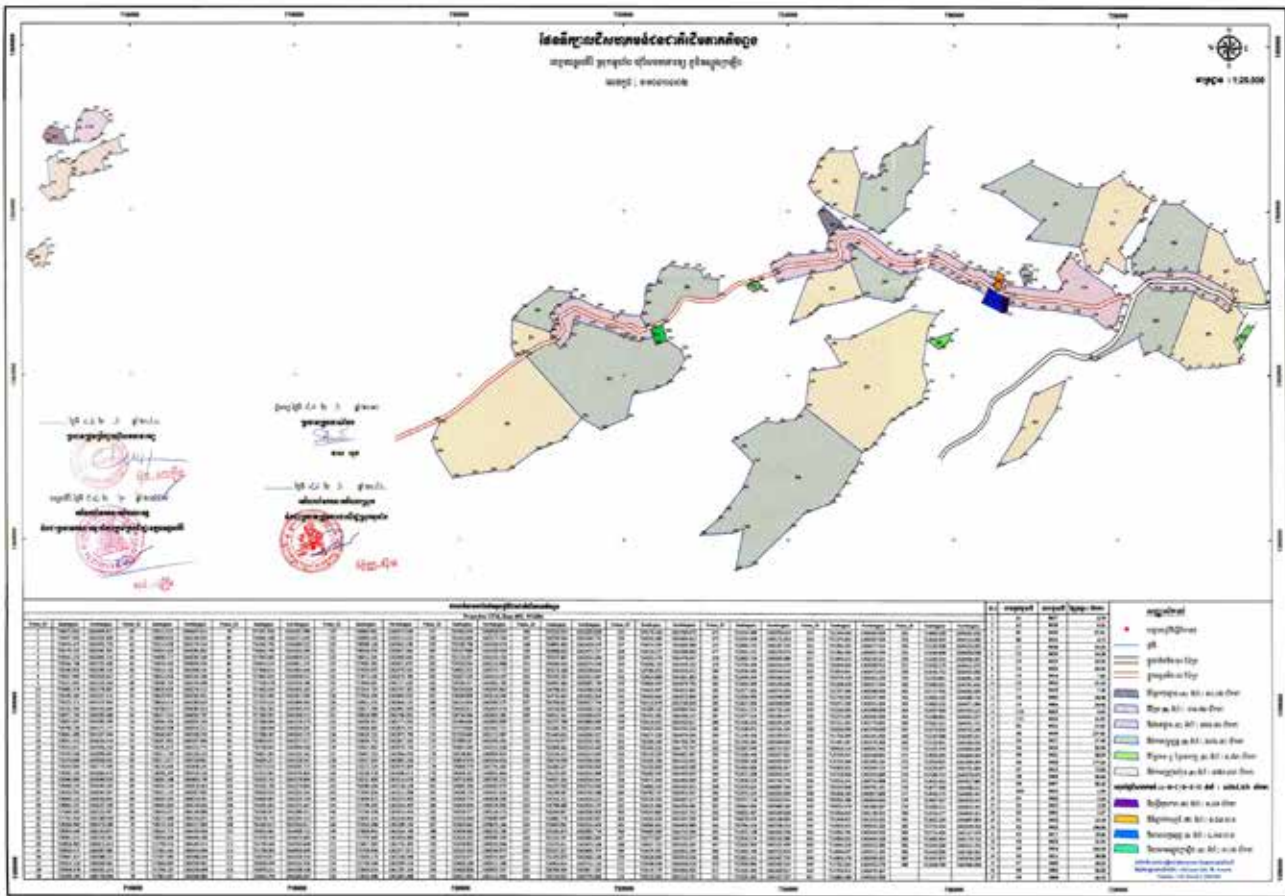


Figure 4: Official Cadastral Index Map with all the GPS points (300+) demarcating the boundary of the Andong Krleung Village's communal lands for agriculture, forest, and burial forest according to the Cambodian Land Law 2001 and Sub-decree 2009 (map credit: Ministry of Land Management, Urban Planning and Construction, Cambodia)

KEY ACTORS AND INTERESTS

Formalisation of land tenure is primarily an issue between State authorities and smallholding land users. However, it also involves a range of others. The key actors involved include:

State agencies

Land titling has had different bureaucratic locations within different countries of the region. In Laos, for example, the land titling program was initially within the Ministry of Finance at the Department of Lands, but in 2007, the National Land Management Authority was formed (Mahaphonh et al. 2007). Responsibility for land titling has since moved to the Ministry of Natural Resources and Environment. In Cambodia, the Ministry of Land Management, Urban Planning and Construction was established in 1998 to oversee land policy. Studies suggest that the Cadastral Commission has been responsible for overseeing land registration, but it suffers from bureaucracy and corruption, and the pace of registration has been slow (ANGOC 2012).

Smallholders

Smallholders have generally been keen to secure land titles for their plots, but mainly when the process has been subsidised through systematic land registration under donor-funded programs. There has been a much slower uptake of titles where farmers have had to pay the full costs of individual plot registration.

Large-scale land holders

Most large-scale land acquisitions are in the form of long-term leases or land concessions. This involves the drawing of boundaries within areas of State land. In Cambodia, these need to be classified as State private land.

Bilateral donors and international lending agencies

The two main donors that have been involved in land titling and other forms of land formalisation in the Mekong region are AusAID and GIZ (Müller 2013). The World Bank has also been involved in land formalisation and wider land policy issues.

AusAID and the World Bank supported land titling projects in both Laos and Thailand, and the World Bank supported the Land Management and Administration Project in Cambodia.

NGOs and other advocates for secure land rights

NGOs have had a somewhat ambivalent position with regard to land titling. On the one hand, security of tenure is an important plank in the rights agenda of NGOs concerned with land grabbing, and land titling is recognised as a way to protect farmers against grabbing (e.g., KESAN 2012). On the other hand, the establishment of alienable title is a concern for NGOs wary of neoliberal market-based approaches to development (e.g., Bugalski and Pred 2010), and more

specifically over the potential for alienable land to be alienated through distress sales or debt foreclosure, particularly where land titling is not supported by economic and other measures to make farming viable (Land Core Group 2009). NGOs have been more enthusiastic about supporting communal land tenure arrangements for a number of reasons. One is that communal land is seen as less prone to alienation than individualised land titles. Another is that communal land tenure provisions better accommodate common property arrangements that provide secure access for the rural land-short poor to benefit from grazing land, non-timber forest products, access to fisheries and other forms of subsistence that are not dependent on land ownership.



Figure 5: Mapping out lands under communal control in Southern Chin State as part of a project with the support of the local NGO Ar Yone Oo (photo credit: Kirsten Ewers Andersen)

KEY CONTESTATIONS AND DEBATES

Titling programs often lead to polarised positions. The extension of fully transferrable land titles is seen as empowering by those emphasising the turning of land into capital and hence taking advantage of market opportunities (Deininger 2003). It is seen as a means to achieve ultimate tenure security in which it is worth making long-term investments, hence achieving higher productivity (for Cambodia, see CDRI 2007, 2010; for Thailand, see Chankrajang 2015; Feder 1987; for Vietnam see Do and Lyer 2003; Newman et al. 2015). There are studies highlighting the potential of titling to stimulate land rental markets (Giné 2005), microfinancing schemes (Green 2019), diversified livelihoods including options to migrate (Chankrajang 2012; Curran and Meijer-Irons 2014), and a conversion to organic farming practices (Sitthisuntikul et al. 2018). Tax on titled land is also seen as an important revenue base in support of public investment in infrastructure for development (Hong Loan Trinh and McCluskey 2012). A positive gender perspective sees women potentially benefiting from sole or joint titling, allowing them a greater say about household expenditure (Menon et al. 2013). One study shows how, in Cambodia, a community used receipts from an Order 01 land survey to win back land from a large deal (Schoenberger 2017).

In contrast, critics of programs that push fully alienable land titles as the basis for development see such programs as potentially disempowering due to the creation of “fungibility” in land as a quick means through which the poor lose their land through distress sales and hence fall further into poverty, while also forfeiting their children’s inheritance. There can also be pressure to sell land if it is privatised through individual land titles, for example, in indigenous communities in Cambodia (Rabe 2013). There is evidence of increased land transactions following land titling (e.g., ADI and LIC 2007), but there are different interpretations about whether or not this contributes to rural prosperity or dispossession. Various studies point to how titling may reinforce socio-economic inequality, both within communities (Boutthavong et al. 2016; Diepart and Sem 2016; Hutchison 2008), but also through facilitating capture of land by outside elites (Green and Baird 2016; Ho and Spoor 2006). Land formalisation is also open to corruption and mal-administration, as documented in Vietnam

(Davidsen et al. 2011). It has been proposed on numerous occasions that titling cannot be successful without supporting conditions and institutions, such as support for agricultural production or conservation-driven policy (Hare 2008; Travers et al. 2015).

There is also debate about the extent to which (in)secure tenure is related to (in)security of title. The legal pluralism that pertains in all five countries with regard to land tenure means that, even without formal titling, land tenure security may be achieved, and vice versa (Adler et al. 2006; Baaz et al. 2017). Debates cover the extent to which land titling should spread geographically, in particular its extension beyond urban and peri-urban areas to rural areas where land markets are not widespread and where a variety of customary land tenure arrangements are in use.

Communal titles are seen by some to provide protection and recognition of indigenous land practices such as shifting cultivation (Ironsides 2017b, 2017c, 2017a), and by others as an isolation of ethnic minorities from market opportunities and the ability to take advantage of modern forms of production (Flower 2018). Communal land has the advantage of formalising areas of agricultural land, including old fallows that are part of swidden cultivation systems. At the same time, restrictions on sale and transfer may, in the longer run, constrain farmer options on such land (Milne 2013). While communal land titles may not provide absolute security, there is evidence that it provides a better negotiation platform for communities when dealing with external investors (Baird 2013). In an overview of laws on collective land ownership in 100 countries, Wily (2018) identifies increased legislation that either recognises and/or registers communal property. Nevertheless, there are claims that such tenure systems remain fragile in the face of elite forces, such as military actors in Myanmar (Andersen 2016).

Many academic articles move away from a dichotomous image of land tenure (i.e., formal v. customary) to embrace a recognition of plural forms (Gillespie 2016; Dusek 2017). As well as supporting increased productivity and income gains (Lawry et al. 2017), such an approach is seen as a means to improve the land security of smallholders (U San Thein et al. 2018), and food security (Kenney-Lazar 2016; Keovilignavong and Suhardiman 2020).



Figure 6: A Bunong community in Monduliri province, Cambodia, plant maize mixed with other crops in an upland shifting cultivation agriculture field. The photo was taken in 2002 at one of the first three pilot communal land title villages. The process started in 2003 and they finally received their title in 2014 (photo credit: Jeremy Ironside in Ironside 2017a)

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Land formalisation processes vary considerably across the Mekong countries:

- In **Cambodia**, the World Bank established the Land Management and Administration Project in 2002. This project was cancelled in 2009 over a dispute in relation to community evictions at Boeng Kak Lake in Phnom Penh (CCHR 2013). Ahead of the communal elections in 2012, the government implemented a rapid land titling campaign (known as “Order 01”) in an effort to address conflicts between agribusiness companies and smallholder farmers whose land rights overlapped onto State land.
- In **Laos**, from the 1990s a Land and Forest Allocation Policy attempted to clarify property rights for upland farmers (McAllister 2015a). In 1997, the World Bank and AusAID established the Lao Land Titling Project. The project ran in two phases until 2009, when it was discontinued as a result of differences between the Lao government and the donors.
- In **Myanmar**, donor involvement in land titling is embryonic but can expect to attract considerable interest. Land Use Certificates (LUC also known as Form 7) have been issued in lowland areas following the Farmland Law of 2012. Yet the security afforded is offset by the fact that land belongs to and remains under the control of the State. Much land in the upland is under customary tenure systems, and its security remains precarious in the face of threats of acquisition as vacant or fallow land.
- In **Thailand**, the formalisation of land tenure has been strategically applied at different moments (Larsson 2012). It was applied to negotiate away claims for extra-territoriality by foreign powers in the late 19th and early 20th centuries, and later promoted to encourage farmer loyalty in opposition to communist insurgency. From 1984–2004, a titling program took place, deemed a great success and a model for other countries (Hayward 2017; Nettle et al. 1998).
- Formalisation in **Vietnam** has been mainly endogenous, following the country’s process of decollectivisation since the 1980s (Nguyen Van Suu 2010). In many respects, it has followed the country’s policy process of responding pragmatically to local practice and preferences (Kerkvliet 2005). One of the present debates concerns the consequences of the fragmentation of land within households, and whether or not productivity could be improved through consolidating land into the hands of commercial operators (Huy Quynh Nguyen and Warr 2020).

Communal titling also varies from one country to another. For example, the 2001 Land Law in Cambodia recognises communal land, but it sets up a number of hurdles that have made application for such land tenure recognition a long, drawn-out process. In Laos, communal land is being recognised on a pilot basis, and it is not tied to indigenous status. There is no provision there for different tenure criteria to be applied for different ethnic groups (Baird 2013). In Myanmar, there are references to the recognition of customary tenure, for example in the National Land Use Policy, or the recent revision to the Vacant, Fallow and Virgin Land Management Act, but there has been no clear activation of these intentions. In Thailand, the land reform network P-Move (the People's Movement for a Just Society) called for '4 laws for the poor', which included a law on community land titling. There have been two government schemes to issue such titles over the last decade, but both have become moribund.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Land formalisation experience has been specific to each of the Mekong countries. If there are cross-border links, it is the learning from experience of countries that have implemented similar programs. For example, Myanmar is looking to Cambodia's experience in communal land titling. Thailand's 20-year titling program acted as a model for a similar program in Laos.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

The main areas of reform in land formalisation are:

- **Ensuring the inclusion of women's names on title deeds**

Vietnam lags behind Laos and Cambodia in terms of the proportion of land titles on which women's names appear either as sole or as joint owners. In Cambodia, formal recognition of women's rights is not matched in terms of real security over land tenure, leaving women particularly vulnerable to dispossession (STAR Kampuchea 2013).

- **Legislating for and enacting communal tenure**

Communal land is provided for under Cambodia's 2001 Land Law but is tied to indigenous status. There are experimental pilot programs in Laos. Communal land provisions are being considered within Myanmar's National Land Use Policy, and there is potential for their inclusion within a future National Land Law.

- **Distinguishing between lack of tenure and lack of title**

Land titling carries the risk of reducing security of tenure on land that is not titled. A key reform challenge is to maintain security on such land as titling is rolled out (Hirsch 2011; Dwyer 2015).

- **Recognising but not imposing the cultural association between tenure systems and ethnicity/indigeneity**

The requirement for communities to prove indigenous status before gaining eligibility for communal land titling in Cambodia has proven to be an impediment and is in part behind the very slow roll-out of such titles (Milne 2013).

- **Catering for forest rights**

There is a need to find a balance between the rights and security of people living in and around forests and other protected areas, and the conservation of such areas (Fisher 2011; Neef 2016). Doing so can also be key to engaging communities in conservation activities.

- **Land tenure security and conflict**

Providing land tenure security, whether through titling or the recognition of customary tenure, can be a cornerstone to achieve peace in areas of conflict, particularly relevant to on going talks in ethnic states around Myanmar.



3. FOREIGN DIRECT INVESTMENT AND LAND ACCESS

OVERVIEW

A significant part of the renewed land insecurity among smallholders in the Mekong region is associated with foreign direct investment (FDI). Much of this investment is in the land- and resource- richer countries of Cambodia, Laos and Myanmar and comes from the industrialising countries of China, Thailand and Vietnam. There is thus a strong cross-border dynamic. Investment is in agribusiness, mines, dams and industrial zones. Land deals are often negotiated before specific areas of land are identified, putting pressure on local authorities to “find” land for investors. Territorialisation has helped to make such areas legible, hence identifiable for expropriation. FDI also engages capital in contract farming and other relationships with farmers other than straight expropriation, but which still allow investors certain forms of control over land and labour for agricultural development. Local and national State authorities often play an important brokerage role in such deals.

KEY TRENDS AND DYNAMICS

Over the past two decades, Laos, Cambodia and Myanmar have seen a surge in FDI for large-scale industrial agriculture, a trend that gained momentum during the food and financial crisis of 2007-2008 with a convergence of State and company interests to invest in land resources. Other large-scale land investments attracting FDI include mining concessions, hydropower and energy projects, and urban and industrial complexes. Most of these investments are from neighbouring China, Thailand and Vietnam, but also Malaysia, Singapore, Japan, South Korea, and further afield. Formally approved FDI in the agricultural sector is still relatively low compared with the extractives, hydropower and manufacturing sectors: for example, it comprises less than 1 percent in Myanmar (U San Thein et al. 2018). Nevertheless, large-scale land acquisitions associated with investments in agribusiness have been a key factor behind growing land insecurity and the dispossession of smallholders in the Mekong region, contributing towards a ‘foreignisation of space’ (Zoomers 2010).

Most land developments with foreign capital have been affected through concessions, which are

long-term leases usually granted at low rents. The land allocated for concessions is a combination of forestland and cleared land that is deemed to be under-utilised (or not put to any use at all) or illegally occupied “State land”. In practice, most concessions occupy land and forest areas that are actively used by farmers and villagers and held under customary arrangements, hence the characterisation of the concession process as “land grabbing”. FDI does not always entail outright appropriation of land. Foreign investors also engage farmers in contract farming and land rental arrangements, as with Chinese investors in banana cultivation in northern Laos (Friis and Nielsen 2015). These rapidly commercialising agrarian landscapes involving foreign capital can constitute more subtle forms of land acquisitions (ibid.; Diepart and Dupuis 2014; Woods 2015b).

In the Mekong region land-based FDI takes a variety of forms:

- **Agricultural concessions:** Governments in the Mekong region have introduced laws encouraging FDI in large-scale industrial agriculture as a means to “modernise” agriculture and make use of “unproductive” land. Driven in part by misleading assumptions about the superiority of the large-scale agricultural development model (Castellanet and Diepart 2015), foreign investment is commonly seen as means to increase agricultural productivity and growth in a sector that has stagnated from lack of public investment and unfavourable policies towards small-holders. FDI is also seen to provide broader developmental benefits such as technology transfer, employment creation and infrastructural developments. To these ends, the governments of Cambodia, Laos and Myanmar have granted large concessions to investors to capitalise on boom crops such as rubber, sugar, maize and cassava. Some of the crops in question are termed “flex crops” (Borras et al. 2014; Work 2015), in that they can be used for either food or industrial products, depending on markets and commodity chains.
- **Resource development projects:** Most resource development projects in hydro-power and extractives are public-private partnerships featuring Chinese, Thai, Vietnamese and other overseas investors. Some-

times these are partnerships involving State-owned enterprises or companies owned by influential national tycoons. The main national investor of the Lower Sesan 2 Dam in Cambodia is the Royal Group, which has been implicated in urban land dispossession and is owned by wealthy businessman Kith Meng (LICADHO 2009; ADHOC 2014). In Myanmar, FDI in oil, gas and mining projects has entered the country through joint ventures with military-owned companies, including the Union of Myanmar Economic Holdings (UMEH) and the Myanmar Economic Corporation (MEC) (Buchanan et al. 2013), which are linked to extensive land grabbing and human rights abuses (Amnesty International 2014). Laos has positioned itself to become the “battery of Southeast Asia”, principally through investment into hydropower development, such

as with the Xepian-Xenamnoy dam project in the south of the country (Green and Baird 2016).

- **Urban and industrial developments:** Land has been compulsorily acquired for FDI in urban and industrial developments. While there is relatively little FDI in land in Vietnam, foreign investment is indirectly behind the resumption of land for industrial estates near the big cities. There is also considerable foreign investment in the hotels sector in coastal areas, which has led to the expropriation of land from farmers as well as a loss of access to beach areas by fishers (World Bank 2011). In Laos, developments in the capital, Vientiane, predominantly involve FDI, and are frequently in conflict with attempts to manage urban growth (Vongpraseuth and Gyu 2015).



Figure 7: Construction of the Lower Sesan 2 Dam in Cambodia, 2015. Investment was initially supplied by Vietnam Electricity, and then later by China's Hydrolancang International Energy (photo credit: Prachatai under the Creative Commons Attribution-NonCommercial-NoDerivs 2.0 Generic license)

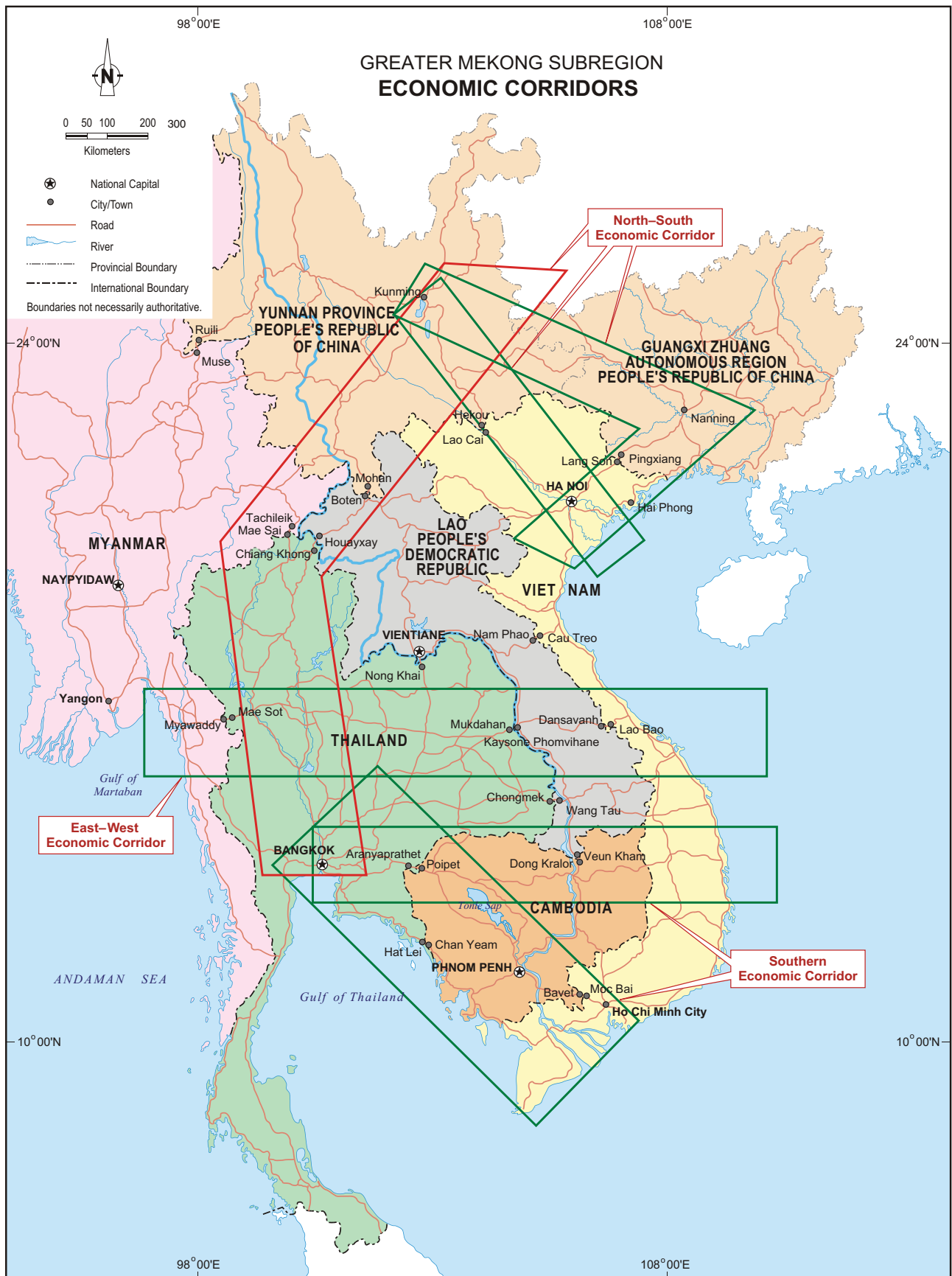


Figure 8: Greater Mekong Subregion Economic Corridors (credit: Asian Development Bank)

- **Special Economic Zones (SEZs):** involve confiscating land from smallholders to provide inexpensive sites for investors in manufacturing enterprises. There has been a proliferation of SEZs in the Mekong countries as each has sought to attract investment in a competitive regionalised economic landscape. In 2015, 334 SEZs/industrial estates were identified in the Mekong region (Walsh 2015), but the number has since increased: for instance, Thailand has established ten zones in its borderlands (Hirsch 2019). These zones “privilege capital over labour” (Walsh 2015: 2) and facilitate access to land for factory investors.

There is a strong cross border or regional dynamic to FDI. This is partly shaped by the unequal factor endowments in land, capital and labour of countries in the Mekong region. FDI is closely linked to regional geopolitical agendas, most notably China’s economic and strategic engagement with Mekong region countries (Burgos and Ear 2013; Mills 2015, 2018; Rutherford et al. 2008). Transboundary land-based investment also takes account of regional initiatives, such as transport corridors and other cross-border infrastructure associated with the Asian Development Bank’s (ADB’s) Greater Mekong Sub-region (GMS) program, or with the ASEAN Economic Community (AEC) (Guttal and Chrek 2016). For example, a highway-centred transboundary project funded by the ADB and the governments of China and Thailand caters to a Northern Economic Corridor passing through northern Laos (Dwyer 2020).

KEY ACTORS AND INTERESTS

State agencies

Attracting FDI in agriculture is central to Mekong governments’ vision for modernising the sector and spurring rural development. This is based on a number of assumptions: that FDI is a precondition for agricultural productivity and growth, that large-scale agriculture is more efficient than smallholder farming, that shifting cultivation is “backward”, and that privatising land will increase productivity by encouraging investment (Castellanet and Diepart 2015).

Several ministries and bodies are responsible for approving investments in land and natural resources,

often resulting in overlapping mandates. In Myanmar, for example, the Central Committee for the Management of Vacant, Fallow and Virgin Land (CCVFL), established under the 2012 Vacant, Fallow and Virgin Land Management Law, is responsible for reallocating “vacant” or “fallow” land to domestic and foreign investors. There is some overlap between the role of the CCVFL and Farmland Administrative Bodies, which are tasked with adjudicating all land disputes related to land classification and compensation under the 2012 Farmland Law. Meanwhile, the 2016 Investment Law (uniting separate legislation for foreign and domestic investment) confers powers to yet another central committee – the Myanmar Investment Commission (MIC) – to grant vacant land to foreign investors. All three bodies have considerable discretionary power to grant land concessions to private investors, with little room for scrutiny or contestation of decisions made by these bodies (OECD 2014). Hydropower and mining projects typically result in the resettlement of smallholders and hence require land, not only for the dam reservoirs or mines, but also for housing and agricultural use at resettlement sites. Such projects usually come under the jurisdiction of ministries responsible for energy and mining. In Laos, for example, most of the negotiations for these lands are carried out between external investors and the Ministry of Energy and Mines with relatively little involvement of other ministries that might be concerned.

In the Mekong region the system of granting land concessions is poorly coordinated and non-transparent. This is in part due to the multiple government agencies at central, provincial and district level conducting land deals without reference to one another. The concession agreements that govern these deals are secret documents, and commercial-in-confidence claims reduce transparency in many areas of public interest (Global Witness et al. 2012). Many projects fail to follow legislation on conducting environmental impact assessments, community consultations and compensation provision. Some authorities have granted concessions beyond their legal power to do so. Evidence that concessionaires are clearing beyond their designated areas is not being matched with careful monitoring or fines (Affeld 2014: 24). The implication is that government facilitation of dubious investments in dams, land concessions, real estate, and other development projects, involves lucrative monetary incentives

derived from illicit activities (Milne 2015) or through government officials' position as gatekeepers in concession allocation (Affeld 2014). This can help a centralised government to strengthen State sovereignty in peripheral areas, as seen in land grabs for rubber plantations in north-west Vietnam (Dao 2015). In post-conflict areas (Cambodia) or places with continuing conflict (Myanmar-China borderlands), acquisitions can consolidate the power of political, business and military elites in patterns of corruption and violence (Kuhn 2018; Woods 2019).

Land developers and financiers

Investors are primarily private sector, but governments also provide financial and other support for private investors or directly through State-owned enterprises. A significant proportion of FDI in plantation agriculture is sourced from China, Thailand and Vietnam, but investors from South Korea, Japan, Malaysia and Singapore are also prominent. Large players include the privately-owned Vietnamese company, Hoang Anh Gia Lai (HAGL) (Kenney-Lazar 2012) and the State-owned Vietnam Rubber Group (VRG). Both have acquired land concessions in Cambodia and Laos, either directly or through powerful business tycoons, and

both are partly capitalised by Deutsche Bank and the International Finance Corporation (Global Witness 2013; Oakland Institute 2014). From Thailand, the Mitr Phol Sugar Corporation has been behind some of the more controversial land deals in southern Laos and south-western Cambodia (Sherchan 2015). Other less prominent investors are also involved in more subtle forms of land acquisitions. Chinese investors in banana cultivation in northern Laos and Kachin State in Myanmar, for example, tend to be smaller companies and private investors that engage farmers in contract farming and land rental arrangements, either directly or through provincial or district authorities (Friis and Nielsen 2016; Hayward et al. 2020).

International donors

International donors and lending institutions have for decades advised governments in the Mekong region to adopt legislative frameworks oriented towards market liberalisation and foreign investment. Private sector investment in hydropower, mining, tourism and SEZs has been a central tenet of donor supported programs aimed at promoting growth through greater regional economic integration. The Asian Development Bank (ADB)



Figure 9. Cleared forest inside a HAGL Economic Land Concession in Ratanakiri province, Cambodia, 2013 (photo credit: Global Witness/Chris Kelly in Global Witness 2013)

has encouraged private investment in tree plantations in countries such as Laos and Cambodia since the 1990s. Private investment targeting large-scale commercial agriculture via concessions is a more recent development for which donors have taken a more ambivalent position. On the one hand, FDI is seen to make a significant contribution to bringing much needed capital and technology to a sector characterised by low productivity. In 2011, the World Bank produced a report that was instrumental in lending legitimacy to the large-scale agricultural development model (Deininger et al. 2011). It suggested that large-scale land investments and acquisitions could present opportunities for countries characterised by a significant “yield gap” and land availability. The International Finance Corporation (IFC), the private sector arm of the World Bank, has financially supported companies such as Vietnam’s HAGL, whose rubber plantations in Laos and Cambodia have displaced a large number of indigenous and local communities (Work 2016). Increased public-private partnerships in the value adding/value chain development of agricultural production, especially for export, are strongly encouraged by various international donors (Rillo and Sombilla 2015).

On the other hand, donors also recognise that large-scale agribusiness investments have seriously affected smallholders’ access to and control over land and natural resources, negatively impacting household economies, food security, human rights, and the environment. As a result, many international donors have sought to promote “socially responsible” agricultural investments seeking to strengthen legal and institutional frameworks and State and corporate accountability (Görge et al. 2009; Liversage 2011; FAO 2012a; OECD 2014). For example, the Swiss Agency for Development and Cooperation (SDC) has identified Responsible Agricultural Investment (RAI) as a key issue of interest in the region, and it is a core area of work funded under the Mekong Region Land Governance (MRLG) project. For many donors, the relevant question is not whether FDI should contribute to meeting investment needs of the agricultural sector, but how its impact can be optimised (through “quality” investments, risk management and policy reforms) to maximise the benefits and to minimise the inherent risks for all involved (see, for example, Rillo and Sombilla 2015: 19-20).

Civil society

Civil society organisations (CSOs) in the Mekong region have been critical of land laws for being too heavily orientated to attracting foreign investment and for providing benefits for investors at the expense of smallholder farmers and communities. Through various land coalitions, NGOs and grassroots organisations have been able to engage with governments on policy issues related to land rights and foreign investment. International NGOs (often with funding from donors) have played a prominent role in helping to support and coordinate consultation processes. The degree of inclusiveness and openness in consultation processes varies from one country to another. Civil society campaigns have also leveraged opportunities provided by international investors and financiers who adopt international codes of conduct. Corporations that have financed business ventures or sourced agricultural products from land deemed to have been “grabbed” have been targeted by civil society campaigns seeking greater corporate accountability (Lamb et al. 2015; Polack et al. 2014; Thorpe 2013; Coca Cola Company 2013).

Smallholders

Smallholders have been displaced by land concessions allocated to foreign investors on “vacant” or “unproductive” land that is claimed by the State but whose ownership status is contested. The process of identifying land and granting concessions to companies is non-transparent and consultation with communities has been extremely poor. Most of the land concessions granted for agribusiness and other resource developments are located in the upland borderland areas, where ethnic minorities are most concentrated. In Myanmar, in particular, the flood of foreign investment financed projects is leading to growing resentment over the large number of expropriations and displacements occurring in the ethnic border regions, and there is potential for reigniting conflicts between ethnic minority movements and the central government (Buchanan et al. 2013; Woods 2013a). Women are affected differently to men and are more likely to be negatively affected by large-scale land deals because they are generally vulnerable as a group (Mi Young Park and Maffii 2017; Daley et al. 2013; Amnesty International 2011; Daley 2011).

KEY CONTESTATIONS AND DEBATES

A key issue is whether attracting FDI for large-scale agribusiness concessions and extractive resource projects is resulting in increased productivity, economic growth, employment and prosperity - as Mekong governments often claim - or leading to “new poverty” through increased dispossession of smallholders (c.f. Sims 2015; Lamb et al. 2015; Baird 2011; Sothath and Sophal 2010; Kirk and Nguyen Do Anh Tuan 2009; Chamberlain 2007). There has been some recognition at State level over the limited effectiveness of land acquisitions, as seen in moratoria on concessions announced by governments in Cambodia and Laos (UNESCAP and ART-NeT 2014), and temporary curbs on new banana plantations in Laos. This potentially opens up opportunities to explore alternative streams of responsible investment. For example, Beban et al. (2017) note a land titling project in economic land concession areas of Cambodia, and how an oil palm plantation has sought to operate within parameters whereby it can seek responsible investment certification.

Critiques of large-scale FDI and the concession model question its efficiency and productivity over small-scale farming (Lu and Schönweger 2019; U San Thein et al. 2018; Kenney-Lazar 2018; Schönweger and Messerli 2015; Land Core Group 2009). While some investors have brought capital and technology to enhance the productive potential of the land, in many cases, developers have reaped profits through timber extraction and speculative gains in land values, rather than through productive investment. In Myanmar, for example, land allocated to large-scale agricultural concessions increased by a massive 170 percent between 2010–2013. However, only 20 percent of the land allocated was planted with crops by the end of 2013 (Woods 2015a; Srinivas and Hlaing 2015). In Kachin State and Tanintharyi Region, two areas with high value conservation forests and where the majority of agribusiness concessions in Myanmar are granted, the percentage of areas planted with crops is even lower: 12 and 19 percent, respectively (ibid.). This suggests that agricultural concessions provide entry points for companies to access logging concessions and/or engage in land grabs for land speculation purposes. U San Thein et al. (2018) also found that there is a clear inverse relationship between the areas of Vacant, Fallow

and Virgin (VFV) land granted and land use effectiveness (i.e., the percentage of land granted that is put under effective cultivation) suggesting that smallholder farmers are more efficient than large-scale entrepreneurs and companies in developing the VFV land granted.

Likewise, in Cambodia, it is reported that in 2015, only 32 percent of agricultural and tree plantation concessions had been converted for use (Debonne et al. 2019). Milne (2015) argues that Cambodia’s “timber shadow economy” has emerged from and feeds off Chinese and Vietnamese investments in land concessions, infrastructure development and donor-supported nature conservation projects. In this case, foreign investments in land concessions and dams has provided opportunities for the State and its network of powerful elites to generate revenue through logging for private gain and in the service of the ruling Party’s interests. According to Milne, Cambodia’s predatory regime of resource extraction through the coaxing of foreign investment represents a new kind of State building, rather than being a sign of State erosion of its sovereignty (Milne 2015).

Available literature suggests that benefits from foreign investment spilling over into the domestic sector (e.g., technology transfer, productivity increases and employment creation), have been limited. The financial benefits to host countries of asset transfer appear to be small. Land rents demanded for concessions are typically low, while the various tax concessions offered to foreign investors means tax revenues foregone (Srinivas and Hlaing 2015). While job creation is often cited as a key benefit of land investments, there is evidence suggesting that large concessions provide limited opportunities for wage labour for those displaced from their land by large enterprises and often involve poor working conditions (Oldenburg and Neef 2014; Woods 2013a; Neef et al. 2013; Sochet 2012; Baird 2011; Middleton and Sokleap 2007). In many cases, investors have preferred to import labour from cities or even neighbouring countries to work in plantations. Meanwhile, secure employment opportunities outside agriculture remain quite limited for the growing numbers of landless.

While the benefits of foreign investment for agribusiness concessions have led to disappointing results in terms of productivity and growth, land acquisitions associated with increased FDI often

have dire consequences for displaced families (Kenney-Lazar 2015; KHRG 2013; Subedi 2012). This is especially the case in upland borderland areas, where predominantly ethnic minorities practice shifting cultivation and where farmers do not have secure rights to their land (AIPP et al. 2015). Smallholders may also be forced to change their practices. For example, a penalty scheme introduced by Chinese investors in Luang Prabang province, Laos, to protect rubber trees from damage, has led to smallholders giving up livestock rearing (Friis et al. 2016). There is a growing consensus in the literature that granting large-scale land concessions at low cost to attract investors is a risky strategy, and attention has shifted to how to attract “quality investments” and the potential for agribusiness models to be more inclusive of smallholder farmers (Cramb et al. 2017; Byerlee et al. 2014; Cotula 2014; FAO 2012a). In particular, the potential of smallholders as drivers of productivity and growth is increasingly recognised alongside their contribution to addressing poverty and food insecurity (e.g., Paglietti and Sabrie 2013). Donors commonly argue that other forms of investment, such as contract farming and out-grower schemes, or investments in key stages of value chains can in principle offer security of supply to investors at a lower risk (OECD 2014).

Whether contract farming and other forms of investment are a viable alternative to large land acquisitions is an open question. The Lao government has promoted contract farming since the mid-2000s. The policy has been sold simplistically as a “3+2” model, with investors providing knowhow, capital and market access, while local farmers provide land and labour. In many cases, however, external capital interests have secured control over land and/or labour in their own right, marginalising smallholders. In northern Laos, farmers leased out land to Chinese companies for banana cultivation, and the work was mainly carried out by imported labour, leaving farmers with little more than the rents for their land (Friis and Nielsen 2016). A report on Charoen Pokphand (CP) maize cultivation by upland farmers in Myanmar’s Shan State provides damning evidence of the risks associated with contract farming that fall on smallholders – many of whom are dispossessed through debts incurred by new patterns of capital engagement with farming (Woods 2015b). Studies have generally concluded that contract farming, leasing and other forms of investment offer no panacea to the problems of agricultural development and growing land inequality.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

The scale of agricultural land concessions varies among Mekong countries, as does the extent of involvement and the mix of domestic and foreign investors.

- From data collected between 2012 and 2017 for Laos, it is estimated that there are 500,091 hectares of land under agricultural and tree plantation concessions, and 415,215 hectares under active mining concessions (Ingalls et al. 2018). Of these totals, 47.5 percent of concessions are situated in Savannakhet, Khammouane and Bolikhamxay provinces. In 2017, 29 percent of the total concessionary area was made up of domestic investments, up from 17 percent in 2010. Vietnamese, followed by Chinese investors control the largest areas under concession (UNESCAP and ARTNeT 2014; Affeld 2014). Lette (2016) documents the efforts of two companies working in eucalyptus and coffee, who have attempted to incorporate principles of responsible agricultural investment into their practices.
- In 2018, the Ministry of Agriculture, Forestry and Fisheries in Cambodia reported that over 1.2 million hectares of land were under agricultural and tree plantation concessions (Ingalls et al. 2018). This figure partially accounts for ELC land revoked after the 01 Directive, although with the process ongoing, there may be a further reduction. A total of 819,452 hectares are under mining concessions, although this figure includes both active mines and areas under exploration, with data lacking disaggregation. Most, but not all, investment carries support from China, followed by Vietnam, with domestic investors also playing an important role (Po and Heng 2019; Touch and Neef 2015; ADHOC 2013; Colchester et al. 2013). The crops being grown are mainly for export to other countries including sugar to the European market.
- It is estimated that 20 percent of all of Myanmar’s land has been awarded to foreign and joint venture investors for 30 to 70 years (Srinivas and Hlaing 2015). From 1991 to October 2016, around 5.1 million acres



Figure 10: A local employee of Stora Enso Company leaning against a pile of eucalyptus trees inside the commercial plantation set up in the village of Ban Lapeung, Ta-oy district, Salavan province, Lao PDR. Stora Enso claim that they incorporate the principles of responsible agricultural investment into their practices (photo credit: Anthony Gueguen/CCL in Guttal and Chrek 2016)

(nearly 2.1 million ha) were allocated to agribusiness companies, entrepreneurs, and individual farmers if they were less than 50 acres (U San Thein et al. 2018). Unfortunately, there is no data on either the origin of these investments, or about mining concessions. It is claimed that only 20 percent of agricultural concessions have been developed (Srinivas and Hlaing 2015). The years 2007 to 2011 proved to be a core period for signing off on permits for large-scale schemes, increasing again after 2015 with the support of legal revisions in investment and land use (U San Thein et al. 2018; McCarthy 2018). As in Cambodia, wealthy and powerful domestic investors hold concessions, often with financial and co-investment support from foreign backers.

- Thailand is less known for internal large-scale land acquisitions, and more as an investor across its borders (Hirsch 2019). This is partially influenced by a legal framework that places a cap on the foreign stake in companies and ceilings on the amount of land that can be used in a foreign concession (UNESCAP and ARTNeT 2014: 8). However, recent policy statements, such as the Pracharat program

and the vision of Thailand 4.0, encourage monopolised control of land, for example towards agribusiness ventures using contract farming. In 2015, ten SEZs were established in border areas around the country, and much attention has been placed upon the Eastern Economic Corridor (EEC), which is an extension of the Eastern Seaboard Development Project in the provinces of Rayong, Chonburi and Chachoengsao. Established foreign investors in Thailand include Japan, the United States of America, and European countries such as Germany, France and the UK (Guttal and Chrek 2016).

- Due to its high population density, land availability to grant concessions in Vietnam is much more limited compared with the other Mekong countries, with the exception of Thailand. Vietnam is thus relatively free of large-scale concessions based on FDI for agriculture and tree plantation projects. However, land acquisitions can follow other pathways, such as through collaborative mechanisms involving multi-level State authorities, large corporations and smallholders in the rubber sector (Dao 2015). Vietnam has passed legislation allowing expropriation not only for public purposes

but also for “economic development”, creating a loophole that has allowed for the disposition of smallholder land for large commercial enterprises. There is speculation as to whether a future revision of the land law will promote land consolidation. Debate centres around the feasibility of consolidation to increase productivity and the potential impacts on smallholders (Huy Quynh Nguyen and Warr 2020; Phuc To et al. 2019).

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALES

Cross border financial investments by Chinese, Vietnamese and Thai companies in the land and natural resources of Laos, Cambodia and Myanmar, have been key factors in the shaping of regional dynamics in land acquisition and in generating levels of connectivity between Mekong governments. Recent convergence in foreign investment regulations and land access rights among Mekong countries are examples of institutional support to facilitate the inter-regional supply of resources and to satisfy aspirations of national economic growth by creating an environment conducive to FDI.

Institutional arrangements and governance processes that reinforce regional connectivity and promote foreign investment in land have been promoted by regional initiatives such as the GMS (Greater Mekong Sub-region) program, funded by the ADB, and the Asian Economic Community (AEC). Regional integration agendas have also been shaped by large agro-food conglomerates; for example, the Vice-Chairman of Charoen Pokphand (CP) was involved in preparing legislation for the Ayeyarwady-Chao Phraya-Mekong Economic Cooperation Strategy, or ACMECS (Woods 2015b). There are also important domestic “push” forces behind cross-border land investments. For example, Vietnam’s restriction of FDI in large-scale agriculture and the limited area of available land have been factors motivating domestic companies such as HAGL and VRG to expand across borders (Global Witness 2013). In Thailand, too, there are limits to large-scale land acquisition on public land that has been allocated to smallholders by the Agricultural Land Reform Office, such that companies like Mitr Phol Sugar find it easier to secure large plantations in neighbouring countries (Sherchan

2015). State firms and State-supported investments may also benefit from direct government support in securing land deals or projects through government-to-government negotiations or interventions. This is best illustrated by China’s opium crop substitution program on the China-Laos and China-Myanmar borderlands, which finances many of the rubber concessions in northern Laos and northern Myanmar through favoured Chinese investors (Lu 2017; Kramer and Woods 2012).

Land-based investments, such as Special Economic Zones and agribusiness concessions, are often located at or near borders. FDI flows across borders in a variety of ways. FDI in large projects, such as oil and gas, hydropower, or SEZs, goes through formal channels as these sectors are controlled by the State and entail massive investments (Sekine 2016; Buchanan et al. 2013). Foreign investment can also be informal, involving partnerships with domestic companies that facilitate land deals. In Myanmar, for example, most of the FDI in agriculture is informal. In part due to greater restrictions and high taxes on foreign investment, foreign companies and investors prefer to obtain land concessions by informally supporting or partnering with local companies (Woods 2012, 2013a). For this reason, official figures tend to underestimate the degree to which foreign companies and investors are involved in land deals, either for agricultural concessions or as a prelude to timber extraction or land speculation (ibid.).

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- **Greater transparency in land deals:** Donors have supported the development of national land concessions inventories in Laos and Cambodia to improve transparency, and this has been put forward as an initiative for countries such as Myanmar to emulate. Within government bureaucracies, there are individuals and some departments who work to improve transparency in land governance, for example the Natural Resource and Environment Information Centre in the Laos Ministry of Natural Resources and Environment. In Laos and Vietnam, the respective National Assemblies have been a significant voice in calling for greater transparency in land concessions.

- **Moratoria on concessions:** In both Laos and Cambodia the political response to problems with land concessions has included a moratorium on concessions (for Cambodia ELCs in general, and for Laos mostly plantations). This can provide space for raising concerns related to the role of FDI in agriculture. Cambodia has revoked areas of ELC land, although this land does not seem to have been returned to smallholders.
- **Limiting compulsory acquisition for FDI projects to those with a clear public interest:** Separating public interest from business activities is paramount. Transparency in land deals and resource projects makes it harder for decisions to be driven by vested interests.
- **Legislation linking compensation to market values of land:** The on-leasing of land compensated at low rates by the State where developers then receive much higher real estate returns for the same land is a particular point of disaffection in Vietnam and Laos.
- **Policy reforms to support smallholders in making productive use of land rather than prioritising foreign investors:** It is important to seriously question assumptions about the superiority of large-scale agricultural models as being more “efficient” than family farming, and instead reform policies to support smallholder farmers, including greater security over their land.
- **Local government negotiating on behalf of farmers rather than on behalf of investors:** To the extent that poverty alleviation remains an important policy goal for agricultural development, Mekong governments may want to promote smallholder-friendly agricultural development models rather than help investors acquire large areas of farmland.
- **Seek transnational justice from foreign investments:** Increased foreign investment in agribusiness and other land-based developments have opened up opportunities for pursuing grievance mechanisms at scales and jurisdictions outside of the nation state where land investments are made, including consumer markets. Such actions target a range of corporate actors (who subscribe to international codes of conduct), as well as public institutions and actors.



4. DISPOSSESSION AND LAND GRABBING

OVERVIEW

Land grabbing is an over-arching term that denotes the seizure of land from existing users, and sometimes owners, by more powerful commercial or State interests. It is associated closely with new transboundary investments in grain and biofuel production following the 2008 food and energy price spikes (White et al. 2012). There are many cases of outright seizure of land deemed to be unoccupied, under-utilised, or illegally settled by smallholders. However, there are many less clear-cut but nonetheless oppressive means by which powerful interests have gained access to land. In the Mekong region, there is an investment dynamic that takes capital from China, Thailand and Vietnam to acquire leases in Cambodia, Laos and Myanmar. This is reinforced by structures of political power and vestiges of socialised landholding that dispossess smallholders.

KEY TRENDS AND DYNAMICS

Land grabbing, as it is popularly understood, only partly describes the various processes of dispossession in the Mekong region. In some cases it is a misnomer for the complex ways in which smallholders have lost access to land once worked (cf Baird 2014a). Dispossession has taken place through a number of processes. These include the granting of large-scale land concessions that overlap with land worked by smallholders. They also include the definition of land as “wasteland” in various forms (Ferguson 2014), or as land being used sub-optimally and hence open to more “modern” uses and larger-scale users. In many cases, public or national interest has been the pretext for dispossession in the name of the wider good. In other cases, military and authoritarian powers have been used to exclude people from their land. Dispossession has been both within the law and outside it, often raising questions over who the law and its enforcement are designed to serve.

Large-scale land acquisitions, or concessions as they are commonly referred to in the region, have a long history in the Mekong region and more widely in Southeast Asia. Colonial estates measured in hundreds or thousands of hectares produced rubber and other cash crops as important parts of the colonial economy. In the countries of the Mekong region, post-independence revolution-

ary movements saw various versions of socialised land tenure arrangements, from the extremes of Cambodia’s abolition of individual landholding under the Khmer Rouge, to Vietnam’s collectivisation, first in the North and later in the South, to the partial and short-lived establishment of cooperatives in Laos, to Myanmar’s esoteric Burmese Road to Socialism and its impact on the farm economy through forced State procurement (Hirsch and Scurrah 2015b). These agrarian reform programs were, in principle, to follow through on rural support for revolutionary campaigns carried out under “land to the tiller” programs. In this light, the new concessions can in part be seen as a type of reverse land reform, involving the granting of long-term leases to large corporations.

In the case of Laos, most of the concessions have been awarded to companies from neighbouring China, Thailand and Vietnam. Cambodia, too, has seen investment in large agricultural holdings from these three countries, but land concessions here have been dominated by tycoons close to the ruling Cambodian People’s Party. In Myanmar, many of the concessions are run by military personnel following forced land confiscation, and by cronies of the military-dominated regime. In contrast, and somewhat ironically, Thailand has seen relatively little by way of large-scale concessions, having followed a largely smallholder pattern of agricultural development and the formalising of landholdings under private titles, and various forms of certification of public lands such as those administered by the Agricultural Land Reform Office (Larsson 2012).

Not all of the dispossession has been through large-scale concessions. In Vietnam, ethnic minorities in the Central Highlands found their forest and swidden land encroached upon with the movement of some six million ethnic Kinh to upland areas during the 1980s and 1990s, resulting in significant unrest during the early 2000s. In northern Laos, many of the controversial rubber and banana plantations have been through what have been termed “control grabs” by modest-sized enterprises rather than large-scale land grabbing per se (Friis and Nielsen 2016). In Thailand, many smallholders have lost access to agricultural land through a combination of distress sales and displacement by a range of infrastructure projects.

A common claim by those behind land grabs and other forms of dispossession is that the land in question is empty or is being underutilised. Various expressions of “wasteland” discourses have been employed to further this agenda. In Myanmar, the Virgin, Fallow and Vacant Land Act passed in 2012, is a direct successor to the colonial era Land Acquisition Act of 1894, allowing land to be taken for more productive uses (Oberndorf 2012). In Laos, the longstanding campaign to eradicate or at least “stabilise” shifting cultivation has corralled swidden farmers into limited territories and opened up land previously part of fallow cycles to large-scale concessions (Baird 2011). An exception to the mainly smallholding pattern in Thailand has been on public lands where the State sought to establish plantations of eucalyptus during the 1990s on land gazetted as forest reserves, on the pretext that these were “degraded forest lands”; but these met with significant opposition as they encroached on land already occupied by smallholders (Hirsch 1993; Missingham 2003). Vietnam has seen an expansion of rubber in north-western provinces on the basis that this commercial crop represents an advance on the less productive use of uplands (Dao 2015). Much of the establishment of rubber and cashew plantations in north-eastern Cambodia has been on land previously used as swidden fallows by indigenous groups in Ratanakiri and Mondulakiri provinces (Bues 2011; Milne 2013).

In Vietnam, dispossession has largely been for conversion to non-agricultural uses (Labbé 2016). Under

the 2013 Land Law, this can occur either for projects that are in the public interest (such as infrastructure) or national interest (such as military installations), or for those that are deemed to be of significance for national development. In the latter case, many of the projects are run by private interests, for example, for factories, private housing developments, golf courses and tourism-related activities in coastal areas. In this case, the difference between the agricultural land compensation given – often at below market rates – and the on-selling rate to the private operator is the root of great discontent, as well as providing a source for corrupt rent-seeking by provincial government gatekeepers (Nguyen Van Suu 2009b).

The context of authoritarian rule is important in the continuing dispossession of smallholders in all Mekong countries. This is exacerbated by the role of the military, not only in helping to quell or otherwise discourage discontent over land grabs, but also sometimes as a player in its own right in land acquisition. In Thailand, the military regime that has been in place since the coup d'état in 2014 has established a “reclaim the forest” program that seeks to move many hundreds of thousands of smallholders off land that is gazetted as forest reserves but which they have been farming for many years and where earlier civilian governments had tacitly avoided enforcing the over-hanging threat of eviction (Walker and Farrelly 2008).



Figure 11: New apartments, houses and villas (in 2007) in an area of appropriated land, peri-urban Hanoi (photo credit: Nguyen Van Suu in Nguyen Van Suu 2009b)

KEY ACTORS AND INTERESTS

Land grabbing and dispossession involve a range of players. They include those benefitting from the change of land access and use to those affected by it, those regulating it, and those supporting or challenging it. The configuration of actors within and across borders in the Mekong region varies from one country context to another.

State agencies play a role in dispossession in three main ways. First, the State claims ownership of, or rights to manage, large portions of territory in all Mekong countries (Neef 2016). Second, some land is repossessed under the principle of eminent domain, that is, land that is needed for the wider public good. This includes land flooded by reservoirs or needed for road expansion. Governments are usually responsible for such land confiscation. However, in contrast to past practice, when most of the infrastructure projects for which land was required were developed and owned by State organisations, these projects are now increasingly owned by private operators of hydroelectric projects, toll roads and so on. In effect, therefore, the dispossession is carried out by public agencies in the service of profit-making private investors, sometimes as part of joint-venture public-private partnerships in which State enterprises are the owners of the project requiring dispossession.

Third, other State agency actors include environmental agencies responsible for project assessment, planning agencies responsible for approval, and finance ministries responsible for administering land compensation. In the case of the Lao railway project, the diffusion of responsibility between agencies has resulted in late payment of compensation. A significant concern relating to the issuing of agricultural land concessions in Laos and Cambodia has been the role of provincial authorities striking deals without reference to a central register of land availability.

The military is a particularly important player in dispossession in Myanmar. There is a longstanding history of land confiscation in the name of national defence and subsequent use of that land for profit-making activities by the army – in many cases involving private beneficiaries among the ranks (Woods 2013a). The military is also a significant occupier of land in all the other countries of the Mekong region: in the current authoritarian

governance context of these countries such land occupation tends to be unassailable.

Foreign investors are important actors in land grabbing, almost always in cahoots with local or national government and sometimes in partnership with locally powerful private actors. The case of Khon Kaen Sugar and Mitr Phol Sugar in Cambodia's Koh Kong and Ouddar Mean Chey provinces are cases in point. Vietnam's giant Hoang Anh Gia Lai company has secured tens of thousands of hectares in concessions on land previously worked by swidden farmers in north-eastern Cambodia and south-western Laos. Elsewhere, land confiscation is for industrial purposes, for example in the case of the Thilawa Special Economic Zone in Myanmar where companies from Japan and other countries have been allocated land by the government following its confiscation from farmers who previously worked it (Gittleman and Brown 2014).

Cronies are important private actors on the land-grabbing scene in both Cambodia and Myanmar (Global Witness 2015a). These are business actors with close ties to the ruling regime, most notably to senior military officers in Myanmar and to senior ruling Party members in Cambodia. Such cronies are often referred to as tycoons in English, or as *“ok-nhyaa”* in Khmer. The latter is an honorific rank granted to those who make a significant monetary donation to government.

Communities affected by land grabbing are diverse in their makeup and location, but there is a disproportionate impact on ethnic minorities living in upland areas. In part this is because of the “wasteland” effect described above, whereby swidden farmers' practices are considered backward, their swidden fallows not recognised as part of the agricultural cycle and hence as a basis for usufructuary claims, and who have little or no formally recognised claim to land that they have often been working for generations. These groups include ethnic minorities living in Thailand's northern uplands, in mountainous areas of Laos, minorities in the mountainous areas of eastern and northern Myanmar, indigenous groups in Vietnam's Central Highlands, and in north-eastern Cambodia. More extreme cases exist when lack of citizenship recognition compounds tenure insecurity, as has been the case historically in northern Thailand. The most dramatic case of dispossession in this context is the forced eviction of hundreds of thousands of Rohingya Muslim

farmers from their homes and lands in south-western Myanmar. On the other hand, there are also instances of local resistance to, and rollback of dispossession, based on community solidarity as well as relations with local government and civil society actors (Baird 2017; Kenney-Lazar 2018; Schoenberger 2017). Relatively little attention has been given to the intra-community dynamics of dispossession in the face of land grabbing, but with some notable exceptions such as in the consideration of gender roles and dynamics (Lamb et al. 2017).

Non-governmental organisations and broad-based social movements are important players in resisting or protesting dispossession. For many

years, dispossession of farmers from Thailand's forest reserve areas was attenuated by the concerted action of the Assembly of the Poor, and more recently by P-Move. While civil society space has been significantly attenuated in Thailand, challenges continue to be made in cases of dispossession such as that of minority Moken and other "sea gypsy" groups at Rawai Beach in Phuket, where a land developer sought to assert a land title granted under questionable circumstances (Thalang 2017). The proliferation of advocacy-oriented NGOs in Cambodia since the 1990s and Myanmar under the civilian administration from 2011 to 2021 has been focused particularly on land issues, among which dispossession is paramount.



Figure 12: Mock skeletons set up by a mixed Orang Laut/Moken group defending their place on Rawai beach, Phuket, Thailand. Such groups have been hit with a slew of lawsuits in recent years from investors making claims to the land (photo credit: Patipat Janthong in Thalang 2017)

KEY CONTESTATIONS AND DEBATES

Land grabbing includes appropriation of land for both public and private advantage, and in some countries (notably Vietnam) there is a clear policy distinction between the two. In principle, land confiscation in Vietnam is permitted for private activity in the name of national economic development, but it is supposed to be based on a negotiated agreement between the private parties involved. On the other hand, in the case of land appropriation for public purposes, compensation is given at prescribed rates, in principle based on prevailing market prices but in practice usually at below-market rates.

In Laos, Cambodia and Myanmar, land grabbing for private gain has been allowed if it is deemed to promote economic development, without distinction between public and private beneficiaries or uses. The current land use policy in Laos seeks to provide market-based compensation for those thus displaced, but with rates set by the State rather than by direct negotiation. In Myanmar, military involvement in land grabbing has made the process even less transparent. Critique often focuses on the fact that beneficiaries of land grabbing are foreign investors given advantages over local farmers, but State officials have also received private gain.



Figure 13: A sign in Yeup Mai Village, Xekong Province, southern Laos, reads “Encroachment forbidden. This land has an owner”, after the area was included within a rubber plantation concession given to a Vietnamese company (photo credit: Ian Baird)

In Thailand, the main area of controversy in land dispossession relates to public land gazetted as forest reserve or national parks, but where people have often been living and farming prior to such gazetting. Under the military government, this controversy has intensified with the forest resumption policy, which seeks to increase the country's forested area to 40 percent and which has led to ongoing evictions. Enclosure of forests and the alienation of upland ethnic minorities has a longer history here and more widely in the region (Sturgeon et al. 2013). In Cambodia, land grabbing has occurred on the pretext of climate change mitigation, in the form of afforestation concessions (Scheidel and Work 2016), or in the name of poverty alleviation (Scheidel 2016).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

The history and configuration of actors in land dispossession varies from one country to another. As indicated above, Thailand differs from its regional neighbours in not having undergone a socialist restructuring of agrarian relations, and thus also in not having seen post-socialist market reforms that identify large swathes of territory for concessions. On the other hand, Thailand's longer experience of market-based relations and the issuance of transferable land titles means that there has been incremental loss of land over an extended period of time.

The political configuration of each country also results in specific patterns of dispossession. In Cambodia, the “neo-patrimonialism” of the ruling regime puts land concessions and associated dispossession of smallholders within the realm of patronage politics. In Myanmar, the military has played a disproportionate role, but the country's longer term colonial history is also a part of the legislative background to land acquisition by larger players at the expense of ordinary farming families. In Laos, the closing of social and political space for questioning land acquisition for concessions has played an important part, but there are also signs here, as in Vietnam, that the ruling Party wishes to defuse any threat to its ongoing legitimacy that stems from discontent based on land dispossession.

Commonalities across the region include the combination of authoritarian regimes and neoliberal economic policy that puts economic power in the hands of large-scale players. The role of China is another ubiquitous factor in land-based investments in all countries of the region, with implications for dispossession of small farmers. Over a longer period of time, the dynamics of Cold War agrarian politics and its aftermath help to explain distinctive regional patterns and processes of dispossession (Hirsch 2017).

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Land grabbing and dispossession in the Mekong region are driven both by land deals dominated by companies from neighbouring countries and by domestic investment. The domestic investment is largely for the plantation of rubber, maize and other crops whose major markets are in neighbouring countries. Dispossession for dams and mines in Cambodia, Laos and Myanmar are similarly driven by investment by Chinese, Thai and Vietnamese investors. There is thus a strong transboundary dynamic in processes of land grabbing and dispossession in the region.

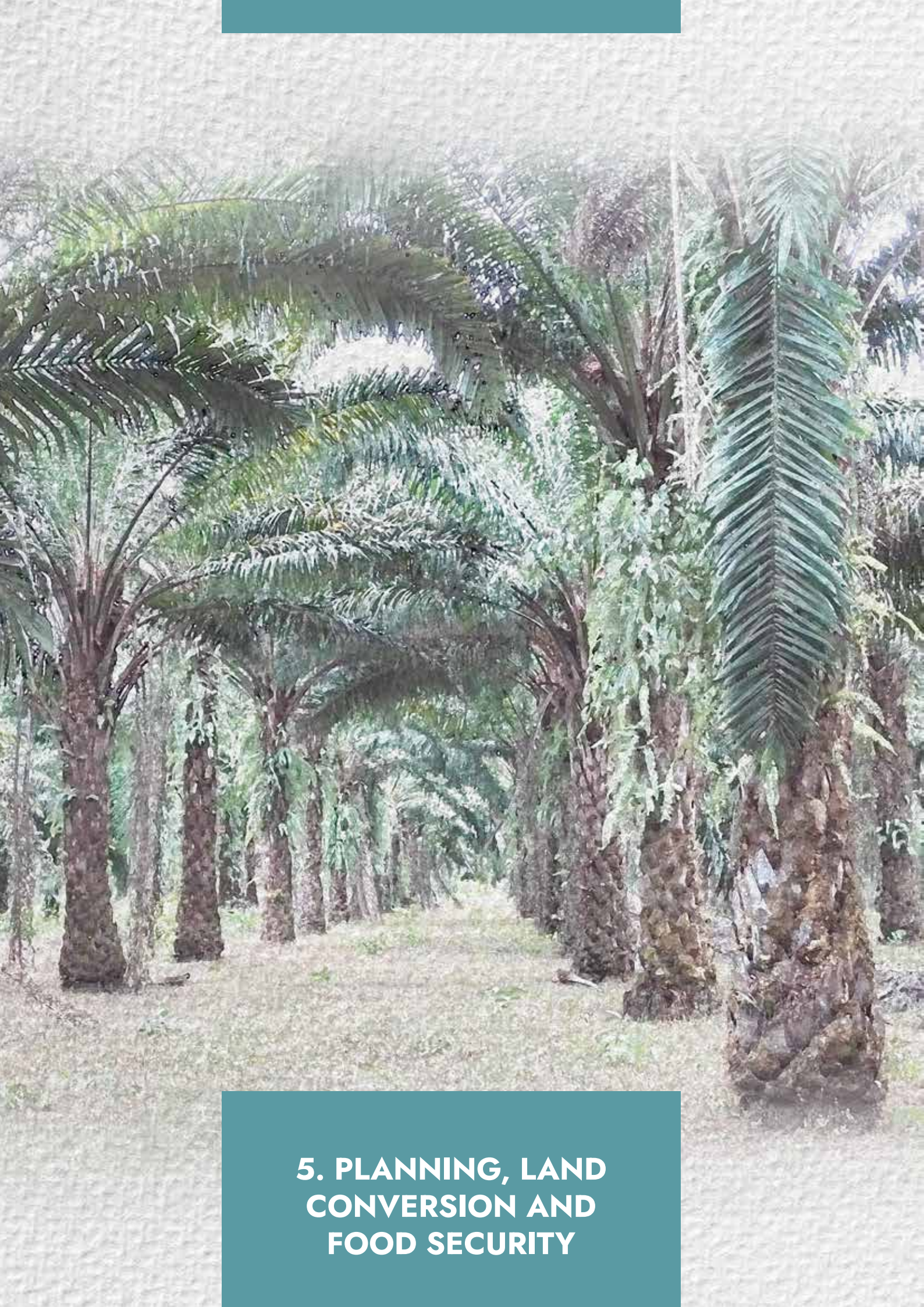
The rise of China has been particularly significant in various forms of dispossession, but often in ways less obvious or less direct than land grabbing for large-scale land deals. Examples include various transport and energy projects that are part of the One Belt One Road project, such as the railway from Boten to Vientiane in Laos. Chinese companies are now also the largest investors in hydropower in Cambodia, Laos and Myanmar, including six of the proposed 11 dams on the lower mainstream of the Mekong River, and all of these involve dispossession of those whose lands are inundated.

An interesting issue for transboundary investments is the legal accountability across borders of companies whose activities flout the law of the country of origin. Two cases illustrate this. Groups representing villagers from eight Thai provinces along the Mekong River in Thailand sought an injunction in the Administrative Court against the Electricity Generating Authority of Thailand for signing a power purchase agreement for electricity generated by the Xayaburi Dam in Laos, which is being built by a Thai company, on the basis that negative impacts on Thai villagers had not been properly addressed. Meanwhile, Mitr Phol Sugar has seen legal action in a civil court on behalf of 3,000 Cambodian villagers for human rights infringements associated with sugar plantations in Ouddar Mean Chey province.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

Some of the key issues for reform in the area of dispossession and land grabbing include:

- Moratoria on land concessions. The dispossession of small farmers has created widespread concern, and there have been periodic policy announcements in Laos that a moratorium will be put on further land deals. This has been driven in part by concern at the central level that provincial level deals were getting out of hand.
- Demarcation of land offlimits to land concessions. An important policy question is the category of land on which concessions can and cannot be granted. In Cambodia, economic land concessions have been granted inside national parks and on other public land. However, where such concessions have encroached on land farmed by smallholders, excisions have been made in the form of social land concessions and granted to small farmers.
- Inventory of land concessions. In response to the uncoordinated issuance of concessions by different ministries and levels of government, various attempts have been made to produce systematic inventories (e.g., Schönweger et al. 2012).
- Compensation mechanisms and pricing principles. Low levels of compensation for confiscated land have been a recurring source of resentment. Recent legislation, such as the 2013 Land Law in Vietnam, have attempted to regularise compensation, but in practice the assessed value of land almost always falls short of prevailing market values.
- Transparency in land allocation. The Open Development Mekong project has sought to increase the transparency of land deals, in particular through maps and associated data. Global projects such as the Land Matrix also have a strong presence in the Mekong region (Anseeuw et al. 2012). Country-specific initiatives have sought to redress land grabbing through increased transparency (U San Thein et al. 2017).
- Support for smallholder production of cash crops that would otherwise be given over to plantations, through contract farming, out-grower or other schemes (Cramb et al. 2016).



**5. PLANNING, LAND
CONVERSION AND
FOOD SECURITY**

OVERVIEW

An irony in the land grabbing debate is that the 2008 food price spike that helped to catalyse land deals has resulted in large-scale investments in land that convert from food to non-food crops or other uses. Land conversion takes different forms in different areas. In peri-urban areas, the concern is that highly productive paddy land is lost permanently to industrial, residential, and recreational uses. In upland areas, forests and complex swidden-based farming systems are converted to industrial crops. The potential of planning and zoning to temper this conversion places tensions between market-based land use choices and socially or politically determined land use strategies.

KEY TRENDS AND DYNAMICS

Conversion of land from forests to farms and from food production to industrial crops has a long history in the Mekong region. Colonial estates converted land for rubber and coffee, for example, and both colonial and post-colonial regimes identified “wastelands” for conversion to commercial crops (Ferguson 2014; Hirsch and Scurrah 2015b). Conflict in Indochina and associated population movement is another part of the history of change in land use and land cover (Susumu 2019). Post-conflict land cover change in north-western Cambodia since the 1980s has seen progressive loss of forest cover, with implications for downstream hydrology and hence food production over a wider area (Chim et al. 2019). Similarly in Myanmar, understanding land use as part of a “conflict resource economy” helps to explain the way in which land and natural resources are exploited, particularly in ethnic minority areas (Woods 2018).

Large-scale land acquisitions accelerated in the Mekong region during the first decade of the current century. These coincided with concern about what has become termed a “global land grab”, as large-scale concessions have been granted

to investors. In Kachin State alone, some 170,000 hectares of farmland and forest were converted to banana plantations producing for the Chinese market (Hayward et al. 2020). Despite the fact that in some quarters these acquisitions were promoted, or justified by the need to attract capital to the agricultural sector to enhance large-scale food production, much of the land given over to such concessions has been for non-food crops such as rubber and biofuels, with adverse implications for local livelihoods and food security (Nanhthavong et al. 2021). Moreover, direct land use change and the associated displacement of farmers also trigger indirect changes as those displaced seek out land elsewhere. In Cambodia, communes with economic land concessions (ELCs) were more likely to experience knock-on forest loss than those without (Magliocca et al. 2019). Similarly, ethnic minorities in the Central Highlands have been found to clear forest frontier land as a result of the coffee boom that has attracted outsiders to claim or purchase land that these minorities previously used for food production (Meyfroidt et al. 2013). Other examples of flow-on effects beyond the site of land conversion include the disruption of livestock rearing in northern Laos as rubber plantations institute penalties for damage by wandering cattle (Friis et al. 2016).

Conversion of land for the production of commercial crops is also driven not only by large-scale land concessions, but also by changes in smallholder production, for example in northern Laos (Hepp et al. 2019). Similarly, in north-eastern Thailand, smallholders have converted paddy lands to rubber plantations even in sub-optimal areas as a result of policy-driven incentives and fundamental changes in livelihood systems (Sakayarote and Shrestha 2016). A study of wetland conversion in the Mekong Delta shows that a combination of poor tenure security, local desire for increased food production and external market-driven incentives can result in socially and environmentally detrimental forms of land use change among smallholders (Hoang Huu Nguyen et al. 2017).

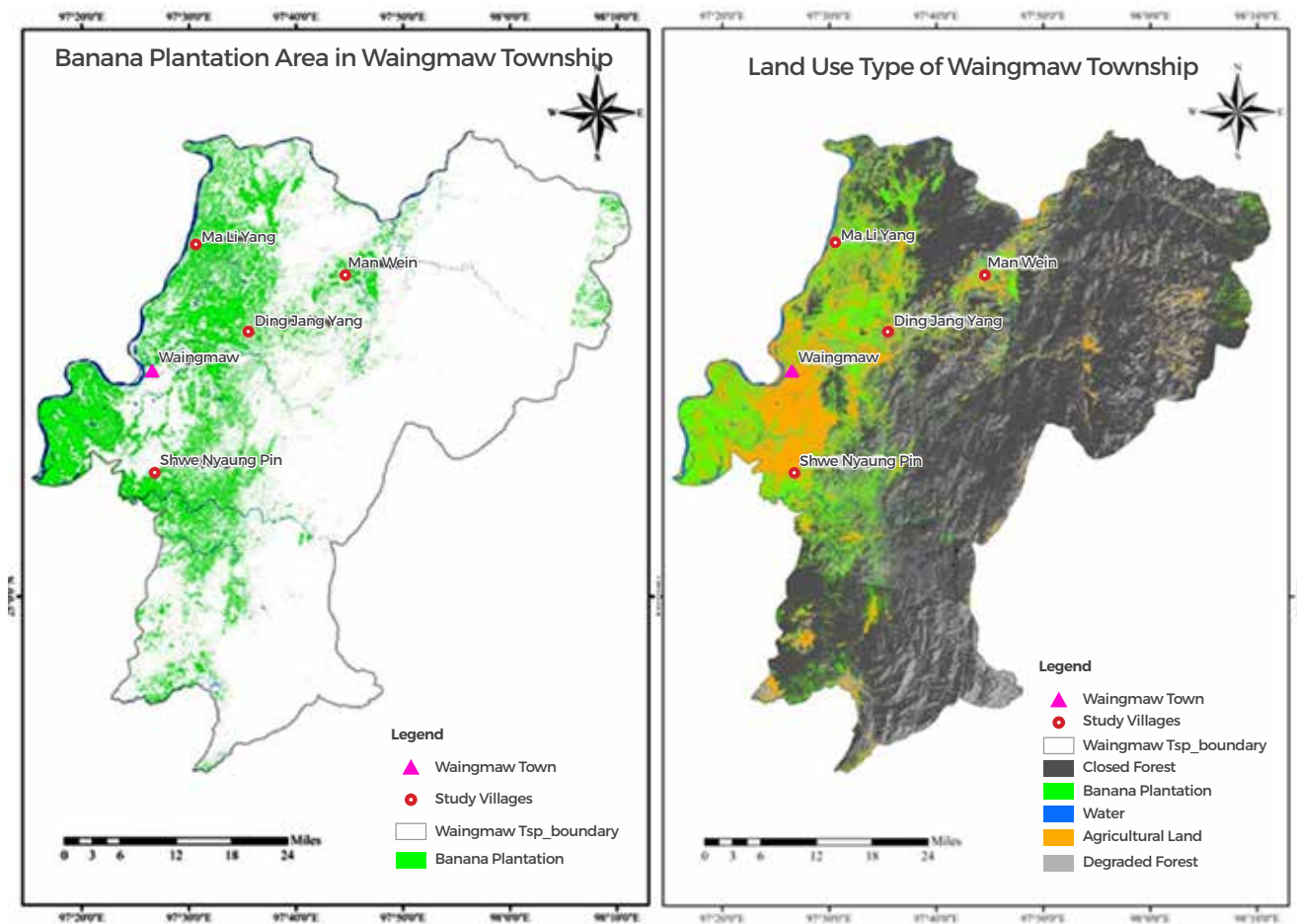


Figure 14: GIS mapping, conducted through an alliance of local and national NGOs, shows land use type (left) and banana plantation areas (right) in Waingmaw Township, Kachin State, Myanmar (credit: LSENG in Hayward et al. 2020)

Land conversion has involved more than the replacement of food crops by industrial and other commercial crops. Rapid urban growth has seen large swathes of land at the peri-urban fringe converted from agricultural to residential and industrial uses, as well as fragmentation of land uses that creates increasing challenges to the sustainability of existing agrarian practices (Han Quang Hanh et al. 2017). This often occurs at the expense of the affected farmers (Nguyen Thi Ha Thanh et al. 2016). Typically such land is among the most fertile and irrigable paddy land to be found in Cambodia, Laos, Myanmar, Thailand and Vietnam (Hirsch and Scurrah 2015b). As a result, expressions of concern over food security have been aired periodically and are often linked to tenure security (Holden and Ghebru 2016; Kenney-Lazar 2016). Infrastructure development is also an important cause of land conversion from food crops, often interacting with other sources of land pressure affecting displaced and otherwise affected farmers (Baird and Barney 2017). Moreover,

the indirect impacts of infrastructure are sometimes even more significant in terms of livelihood displacement and associated food security concerns (Dwyer 2020).

Land conversion has been documented in many ways. Remote sensing and associated land conversion matrices show significant moves away from staple crops toward industrial crops, and from natural toward plantation forest, with implications for food production and ecology (e.g., Wang et al. 2019). Village level studies have taken more qualitative approaches to understanding the implications of land conversion for those who previously farmed the land, for example in Koh Kong in south-western Cambodia (Drbohlav and Hejkrlik 2018). Cross-scale approaches such as tele-coupling link locality-specific land use change to remote decisions, for example, in the case of palm oil and energy companies whose decisions have an impact on local land use in Tanintharyi in southern Myanmar (Lundsgaard-Hansen et al. 2018).

A fundamental dilemma for all the countries concerned is that governments are firmly wedded to market-based development, which limits the extent to which regulatory measures are able to direct land uses beyond what markets and ownership structures tend to dictate. Conversion from subsistence-oriented farming to commercial boom crops occurs as access to markets is facilitated by roads and other infrastructural development (Castella and Phaipasith 2021). Planning and associated zoning of agricultural land has nevertheless been implemented in the name of food security, but under very limited circumstances. Farmers in Laos tend to see food security in terms of overall livelihood opportunities rather than simply in terms of having sufficient land to produce their own food (Keovilignavong and Suhardiman 2020). Urban areas where horticultural gardens have been converted into residential developments have seen farmers turning to selling food as an alternative to producing it, for example in Hanoi's Tay Ho district (Vansintjan et al. 2019)

Zoning within the overall project of land use planning has also become a widespread part of government policy to sedentarise agriculture and to establish fixed boundaries around upland village communities. This is particularly the case in the context of land and forest allocation in upland Laos (Ducourtieux et al. 2005) and in mountainous areas of Vietnam (To Xuan Phuc and Tran Huu Nghi 2014a). Zoning of fixed percentage targets for (re) conversion to forest cover under protected area status also has significant implications for livelihoods (MRLG 2019). While such zoning is often seen as a top-down means of control over livelihoods and a circumscribing of villagers' access to resources, institutional arrangements can also be locally specific and rely on community-level processes, for example in Houaphan province of north-eastern Laos (Suhardiman and Scurrah 2021).



Figure 15: Oil palm plantation around Ein Da Rar Zar, Tanintharyi Region, Myanmar (photo credit: Lara M. Lundsgaard-Hansen in Lundsgaard-Hansen et al. 2018)

KEY ACTORS AND INTERESTS

There is a range of public, private, and civil society actors involved in promoting, regulating and resisting land conversion from food production to other uses. Outcomes are often the product of interaction between multiple actors, exemplified by the complex political economy of both rural and urban land conversion in Vietnam (Wells-Dang et al. 2016).

Private actors include concessionaires such as Hoang Anh Gia Lai and the Vietnam Rubber Group, which have converted large swathes of territory in north-eastern Cambodia and south-eastern Laos to rubber plantations (Kenney-Lazar 2012; Thuon 2018). They also include property developers in peri-urban Vietnam (Labbé and Musil 2013). Industrial estates such as the Eastern Seaboard development in Thailand also have direct and indirect implications for land use, given their demand not only for land but also for water resources (ICJ 2020).

State actors include planners, local authorities, and industrial estate authorities. In Laos, State agencies are often working at cross-purposes in the granting of concessions involving land conversion (Hett et al. 2020). In the same country, land use planning

serves the competing interests of different government departments rather than working toward a well-integrated vision for optimal land use to fulfil national and/or local objectives (Suhardiman et al. 2019c). In Vietnam, as in China albeit with differences in land tenure arrangements, the State retains a significant role in setting the boundaries of land conversion from rural to urban uses, employing the notion of “market socialism” to retain the authority of the State within an increasingly market-driven set of land governance arrangements (Hoang Linh Nguyen et al. 2018b). Debonne et al. (2018) demonstrate the agency of policymakers to govern land use transitions in the case of Laos.

Civil society actors work closely with rural communities threatened by dispossession in the name of land conversion for large-scale infrastructure, industrial and urban projects. In the case of the Dawei special economic zone, affected communities are emboldened by such support (Sekine 2016). NGOs such as Land Watch in Thailand, Landa in Vietnam, and LICADHO in Cambodia work with local communities, but in an increasingly constrained civil society space. Women are often excluded from land use planning and associated zoning, even where nominal participatory processes are instigated (Somphongbouthakanh and Schenk-Sandbergen 2020).



Figure 16: Training provincial government staff in the mapping of areas developed by land deals, Phongsaly province, Laos (photo credit: Vong Nanhthavong, Lao Knowledge for Development (K4D), CDE in Hett et al. 2020)

KEY CONTESTATIONS AND DEBATES

In rapidly industrialising Southeast Asia, market imperatives combine with national policy to take some of the most productive farmland out of cultivation in favour of higher value uses. In Vietnam, in particular, this is a key area of policy debate, one that is driven through ideologies of modernisation (Labbé 2016). There is a basic incompatibility between land use planning based on crop designation, on the one hand, and market imperatives on the other, which is exacerbated in part by the residual socialist approach to land use planning set within a neoliberal economic framework. There are also tensions between a production target approach to food security and one based on household entitlements, capabilities, and diverse livelihoods. In northern Laos, market-driven conversion of smallholdings and of forested areas for maize cultivation in the context of demand and trading networks from Vietnam has undergone a process that is at odds with forest conservation objectives (Vongvisouk et al. 2016).

Land use planning and associated formalisation have been applied in the name of a more rational or considered means to achieve social, economic and environmental ends than a more laissez-faire approach, but the power that this puts in the hands of authorities at various levels has resulted in poor social and environmental outcomes at the community level (Broegaard et al. 2017). A review of land use planning in Laos since 2009 reveals that, despite the intentions of stabilising and improving livelihoods and tenure arrangements, the net effect has often been to constrain access to land and other resources and hence to weaken overall livelihood security (Ling 2017).

Compensation is often a key issue of debate, challenge and resistance when land is re-purposed toward higher value uses and expropriated under “eminent domain” provisions. This is particularly the case where developers are given land formerly classified as “agricultural” and compensation fails to take account of current market values. In the case of infrastructure that is partly financed by such arrangements, resistance may be stronger than anticipated, particularly in peri-urban areas where the land has already been acquired by wealthier and less acquiescent interests, for example, in the case of the 450 Year Road project in Vientiane

(Pathammavong et al. 2017). Another key point of debate is whether monetary compensation can provide proper recompense for loss of livelihoods, or whether it in turn triggers fundamental livelihood ruptures in social relations as well as livelihoods (Green and Baird 2016).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

While land conversion, associated dispossession and implications for food security are issues across the region, it tends to manifest in different ways in each country. Vietnam’s extreme land shortage and rapid urbanisation that encroaches on some of the country’s most fertile farmland tends to bring peri-urban development to the forefront of concerns. While Laos and Myanmar also see conflict over peri-urban development, most of the land conversion contestations have been in the uplands. Cambodia has seen heavy-handed dispossession associated with land conversion in both peri-urban and upland areas. In Thailand, which is a major exporter of food, national level food security does not register as a concern associated with land conversion to the same extent as it does in neighbouring countries. In terms of forest land conversion, both Vietnam and Thailand have seen increases in tree cover, whereas Cambodia, Laos and Myanmar have seen significant declines over the past two to three decades. In Thailand, the increase has in part been driven by land abandonment in marginal areas such as Phetchabun (Leblond 2019).

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALES

Land conversion in upland areas remains closely tied to investment in plantations, some of which is driven by foreign direct investment. More generally, regional markets in maize, rubber and other boom crops mean that influence is not constrained within borders. Peri-urban land conversion tends to be more for domestic residential and industrial expansion. It occurs on the edges of cities whose growth is driven by globalisation and associated processes of gentrification shaped by norms,

trends and economic processes with transnational influence (Steel et al. 2017).

A significant scalar issue in land use planning is the extent to which it is driven from the top down or ground up. Participatory land use planning programs have been implemented in all countries of the region, but the terms under which such planning occurs are set by national level programs. Poor coordination between national land policy and associated land use plans, on the one hand, and the realities faced by rural producers facing market pressures on the other, mean that land use planning often remains on paper rather than reflecting or governing the reality of land use decisions on the ground. Poor inter-ministerial coordination often means that foreign investment supersedes zoning in the management of urban growth (Vongpraseuth and Gyu 2015).

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Identification of key food producing areas for agricultural zoning. Recognition of the loss of farmland to urban, industrial and infra-structural development has the potential to help shape land use planning through a more coordinated zoning approach. However, poor coordination between related agencies continues to make this an uphill battle in most countries of the region.
- Better alignment of national food security objectives and household-level food security strategies. The stark inequalities in wealth and related access to basic necessities in all countries of the region means that achieving food security at a national level may do little to provide food security for poor households. Indeed, in some cases, prioritisation of national food staple production may result in policies that further dispossess the rural poor.
- Assessment of the existing food producing role of lands defined officially as wastelands. In upland areas, in particular, shifting cultivation systems leave areas fallow and subject to official definition as “wastelands” open to expropriation in favour of land concessions. Awareness of the significance of fallow systems for upland food production is hence a priority.
- Better identification of non-agricultural employment options for those displaced by land conversion for non-agricultural uses in densely populated areas. In peri-urban and other areas where farmers are displaced in favour of higher-value land uses, it is often unrealistic to plan for the re-establishment of farming livelihoods given land shortages and the very high cost of land in relation to the compensation payments received. Attention needs to be given to realistic identification and assessment of livelihood options beyond the farm sector.



คนไทย 75%
ไม่มีที่ดิน
ของตัวเอง
75% of Thai
don't
own land
☆ 50%

Fight For
Food Sovereignty
ต่อสู้เพื่อ
อธิปไตยด้านอาหาร
☆ 50% PCFS
☆☆ 31%

NO LAND
NO FOOD
NO LIFE
ไม่มีที่ดิน
ไม่มีอาหาร
ไม่มีชีวิต
☆ 50%

คนไทย
75%
ไม่มีที่ดิน
คปอ/แพงอ้อม

6. CIVIL SOCIETY
AND DONOR
ENGAGEMENT

OVERVIEW

Land has long been a basis for social mobilisation in the Mekong region grounded in concerns around issues of justice, inclusion and well-being. Most countries within the region have seen an explosion of civil society complaints, challenges and coalitions addressing intensified land-based disputes. However, the civil society landscape is also quite variegated. In the meantime, bilateral donors are heavily involved in land governance initiatives, recognising the centrality of land as a basis for livelihoods and food security. Foreign NGO and donor involvement in land tenure programs and policy debates raises issues of sovereignty and the matching of program design to the political-economic and socio-cultural circumstances in which initiatives are being implemented.

KEY TRENDS AND DYNAMICS

As land issues have intensified in the Mekong region as a result of dispossession, concentrating land in fewer hands and changing patterns of land use and land tenure, so civil society challenges have multiplied in number and evolved in form. It is important to recognise that mobilisation around land is not new in and of itself. Indeed, land has long been the basis for social mobilisation, providing a rallying call against inequitable colonial practices (Kleinen 2011) as well as post-colonial injustices (Aung 2018). As such, reform and revolution in the region have their basis in unequal access to land.

With the end of the Cold War, mobilisation around land moved away from the previous Left-Right confrontations and into the realm of non-governmental organisations, the media, think tanks and other parts of what is now referred to as civil society. Civil society engagement in land issues in the post-Cold War era has been associated with non-governmental organisations, popular movements, investigative journalism, critical research and other forms of challenge. Nevertheless, social mobilisation around land often has a continuing legacy from earlier struggles (Suebsakwong and Baird 2020). Moments of reform often present themselves during periods of political transition, for example in the decade-long transition away from the long period of military rule in Myanmar after 2011 and prior to the 2021 coup d'état (Mark and Belton 2020).

Civil society in the Mekong region is quite variegated, in part due to the different degrees of political space afforded to non-governmental voices and activities, in part due to the extent to which organised activity is dependent on foreign funding, and in part due to different cultures of resistance and challenge. Thailand has seen the deepest and longest-standing mobilisation against evictions, forced resettlement and, in some cases, challenges to dominant development agendas including critiques of government land policy (Missingham 2003). In the post-socialist countries of the region, land-based challenges by civil society have remained highly sensitive, particularly in Vietnam where the ruling Party's legitimacy was initially achieved through land struggles on the part of the rural poor (Phuc To et al. 2019). In Cambodia, Laos and Myanmar, civil society activism around land has largely been targeted at instances of land grabbing by domestic and foreign investors, usually in cahoots with State authorities. In Cambodia, as the State has partly moved away from brute force in support of land grabs toward regulation through law and legitimation through various developmental discourses and incentives, so there have been tentative moves away from direct confrontation and violence toward civil society seeking to hold State authorities and investors more accountable to rules and promises (Beban et al. 2017).

In a more applied sense, civil society involvement in land and forest programs has also been stimulated by the move toward "governance" and associated multi-stakeholder approaches that go beyond State agencies and involve wider societal actors (Gritten et al. 2019). In some cases, local and international NGOs have attempted mediation between investors and communities affected by land grabbing (Thuon 2018) or among stakeholders involved in watershed conflicts (Dhialulhaq et al. 2017), but with controversial results (Bourdier 2019). Elsewhere they have produced materials that assist communities in documenting customary practices in support of tenure claims (Allaverdian et al. 2017).

Meanwhile, donor programs around land have evolved in three main phases. The first was support for land reform programs as part of pre-emptive counterinsurgency during the early 1970s, supported by foreign aid in tandem with military strategy. In South Vietnam, the United States gave more than USD300 million to the Nguyen Van



Figure 17: Collecting fingerprints as signatures for a petition against a land grab – indigenous communities have been particularly vulnerable to dispossession in Cambodia (photo credit: Andreas Neef in Neef 2016)

Thieu government under the Land to the Tiller program, which compensated expropriated land owners and gave more than a million agricultural plots to landless peasants (Callison 1976). This kind of pre-emptive land reform also took hold in Thailand in the mid-1970s to placate peasant and wider civil society demands for land justice, but it occurred largely without donor support (Ramsay 1982).

The second phase of donor involvement with land governance in the region was the ramping up of land titling from the 1980s onward, supported by the World Bank and the Australian government. The Thai Land Titling Project commenced in 1984 and sought to accelerate the process of issuing full land titles (chanood) on private land. Evaluated by the World Bank as one of its most successful projects (Rattanabirabongse et al. 1998), but criticised by some civil society activists as detrimental to the poor (Leonard and Na Ayutthaya 2003), the program was extended to Laos in 1997 and ran for two phases before closing down as a result of differences between the donors and the host government (Hirsch and Scurrah 2015a). The World Bank also supported land titling in Cambodia through the Land Management and Administra-

tion Project (LMAP), but this project was similarly shut down as a result of differences with the host government over the case of the Boeung Kak Lake in Phnom Penh. This is where occupants of land proposed for commercial development were denied land titles in order to facilitate dispossession in favour of a developer without following procedures under the LMAP (Biddulph 2014). Of the five Mekong countries, only Vietnam has developed a land titling program (red book) without substantial donor involvement (Nguyen Van Suu 2010).

The third phase of donor support has been an ameliorative program of land governance in response to some of the State and market-based processes of land alienation. The Mekong Region Land Governance project, initially supported by the Swiss Agency for Development Cooperation (SDC) and later also by the German and Luxembourg governments, was established specifically to enhance tenure security among smallholders (www.mrlg.org). Through governmental support for large international NGOs such as Oxfam (Wells-Dang 2013), donors have also supported land governance that challenges dispossession, seeks more responsible agricultural investment, and promotes policy reform in areas such as customary



Figure 18. Gender training workshop on land in Cambodia, coordinated by Mekong Region Land Governance (MRLG) under funding from several international donors (photo credit: MRLG Cambodia)

tenure. The Food and Agricultural Organisation of the United Nations (FAO) has helped to develop guidelines both for secure land tenure (FAO 2012b) and also to support responsible agricultural investment at the ASEAN level.

KEY ACTORS AND INTERESTS

Civil society actors can be divided into more advocacy-oriented and more implementation-oriented organisations. Some have a regional role, while others are specific to particular countries. Some work closely with government, while others tend to challenge State actors. Some are more grassroots-based coalitions working strategically on a particular case of dispossession or impact (Eizenberger 2018), others involve landscape level “nested” responses (Apornsilp and Thaworn 2018), while others are dependent on foreign financial support and have offices in the national capitals.

At a regional level, Focus on the Global South has published work on legal tools to promote accountability with respect to land investments (Polack et al. 2014). The former regional organisation TERRA produced the magazine *Watershed*, which, from 1995 to 2008, published a wide range of critiques

of land alienation for development projects. In Thailand, the Assembly of the Poor brought together numerous groups resisting land and natural resource encroachment by State and private actors (Missingham 2003). Subsequently the organisation P-Move (People’s Movement for a Just Society) has similarly supported many local groups and communities in defence of land rights. More specifically focused on land advocacy in Thailand is LandWatch (not to be confused with the regional organisation (LWA 2011). Several Cambodian NGOs have been active in responding to large-scale land acquisitions and associated dispossession, among them LICADHO (LICADHO & STT 2019) and AdHoc (ADHOC 2014). Women and youths play an important part at grassroots levels, but less so at higher levels of decision-making (Rose-Jensen 2017), and even at the community level, roles in protest and post-conflict community building are quite gender-specific (Lamb et al. 2017). Civil society networks in Vietnam include Landa, which seeks to build multi-stakeholder coalitions around land issues including engagement with relevant government agencies. The great majority of complaints to Vietnam’s National Assembly relate to land-based injustices (Hirsch et al. 2016). In Myanmar, the Land Core Group works with local

civil society organisations and has also been involved in the national level land policy process (Land Core Group 2010), while Land in Our Hands takes a more distanced and strident stance with regard to State policy (Franco and Khu Khu Ju 2016). Within Myanmar’s nascent civil society, divisions also appear based on generation and gender (Ma et al. 2018). The Land Issues Working Group in Laos is a loose coalition of mainly non-governmental workers with concerns about land issues (Somphongbouthakanh and Schenk-Sandbergen 2020), but, given the lack of political space to mobilise around land – especially since the forced disappearance of educator Sombat Somphone in 2012 – it has been difficult to work in a sharper-edged way (Sims 2020). Nevertheless, spaces of resistance appear in sometimes unlikely forms and instances (Kenney-Lazar et al. 2018).

Other civil society actors include investigative journalists, think tanks, educational institutions, and online platforms. For example, longstanding work by the Bangkok Post journalist Sanitsuda Ekachai has uncovered numerous instances of land injustice in Thailand (Ekachai 2017). The Cambodia Development Resource Institute and the Thailand Development Research Institute both carry out policy work on land and related issues (DRF 2014). Chiang Mai University (CMU) has established a master’s degree program in Development Studies with a specialisation in land issues that attracts

students from all countries of the region, and the Mekong Regional Land Forum based at CMU has compiled a list of units of study related to land in various universities around the region (<http://www.mekonglandforum.org/node/2541>). Country-specific online platforms include LaoFAB for Laos and MYLAFF for Myanmar, providing a forum for sharing key articles and documents related to land and wider resource and development issues in the respective countries. LaoDER provides a more critical and discussion-oriented platform.

The main international donors in respect of land are the World Bank, which through its lending and technical assistance programs has played a significant role in land titling. Australian Aid (formerly AIDAB and then AusAID) has worked in close partnership with the Bank, and the main land titling projects have been implemented by an Australian-based land consulting firm, Land Equity International (LEI). Along with the French NGO GRET, LEI is also the lead partner in managing the Mekong Region Land Governance project, despite the different emphasis of the project from earlier land titling initiatives. European governments, notably those of Germany and more recently Switzerland, have had a major role in funding land tenure initiatives in the region. The Asian Development Bank supports land use planning and valuation at a regional level (ADB 2018).



Figure 19: Members of various peasants’ organisations protest in front of the UN office in Bangkok (photo credit: P-Move)

KEY CONTESTATIONS AND DEBATES

The category “civil society” is itself a topic of debate: should it mainly be focused on NGOs, or should media, educational and other civic institutions and social movements of various sorts also receive attention with regard to their role in land issues? In a region with so many cross-border investments in land, the idea of transnational civil society arises, sometimes framed as regionalisation from below (Hirsch 2001). There are also questions about the extent to which foreign NGOs working on land should be considered as “civil society” initiatives, but in some Mekong countries there is little political space for local organisational mobilisation around land issues and international NGOs play a kind of surrogate role – albeit often with locally recruited staff.

Questions arise over the role and effectiveness of donor-led initiatives on land governance, particularly given the sensitivities over sovereignty on this issue. To what extent can development partners become involved in policy advocacy, and to what extent should their role focus on supporting domestic processes for progressive reform? In the case of the Lao and Cambodian land titling programs supported by the World Bank, fundamental contradictions emerged between the neoliberal premises of these programs, particularly with respect to individualised property rights, and existing governance practices in the respective countries (IEG 2013).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Differences between Mekong countries in the role of civil society and international donors arise from their respective histories, governance practices and levels of dependence on international assistance (Hirsch and Scurrah 2015b). NGOs and media in Thailand have historically had more space for challenging policy and practice than have civil society organisations in other countries in the

region. The socialist background of Cambodia, Laos, Myanmar and Vietnam has tended to restrict civil society space and also to shape the context of land injustice in different ways. In particular, the post-socialist granting of access to State land on the part of large-scale investors has presented civil society organisations with new challenges.

The space for contestation is not just shaped by socialist vs non-socialist governance systems. In Vietnam, despite the centralised and authoritarian nature of the regime, land issues have repeatedly emerged as societal flashpoints, mainly based on grievances over compensation and corruption (Lam Minh Chau 2019). In Cambodia, similarly, activism around economic land concessions and other forms of land grabbing has continued despite the considerable risks involved for activists. The post-2015 opening up in Myanmar saw a proliferation of land-based challenges. But at the same time, this opening up of civil society space is not uni-directional. Most dramatically and tragically, the 2021 coup d'état in Myanmar has fundamentally subjugated civil society challenges around land to the wider conflagration between society and the military. Even in Thailand, the authoritarian government that came to power in a military coup in 2014 and continued in an elected guise after 2019 has stamped on many civil society groups campaigning on behalf of people evicted from forest lands and involved in other land disputes. “Lawfare” has been one tool of repression, in particular the use of so-called SLAPPs (strategic lawsuits against public participation) (Global Witness 2020). The Cambodian and Lao governments have both passed laws severely restricting the operation and funding of NGOs, and at the time of writing, the Thai government is trying to push through the Operation of Non-profit Organisations Act, which would severely restrict support for, and the activities of NGOs working in the country including on land issues.¹

The continuing donor dependence of Cambodia, Laos and Myanmar has shaped civil society activity with respect to land governance. Most of the NGOs referred to above are heavily dependent on foreign assistance. This can make them vulnerable in a number of ways. First, it subjects them to the vagaries of international financial support. Second, it means they are often painted by government

¹ For the Cambodian law and reactions to it, see <https://www.loc.gov/item/global-legal-monitor/2015-07-15/cambodia-law-on-ngos-passed/>. For reaction to the Lao law, see <https://www.omct.org/en/resources/statements/9-ngos-call-for-the-repeal-of-decree-on-associations-no-238-of-2017>. For the proposed Thai law, see <https://www.thaienquirer.com/26557/new-government-legislation-could-spell-the-end-for-local-and-foreign-ngos-working-in-thailand/>

and others whom they confront as serving foreign interests. Third, it sometimes means that those working for such organisations have come to the job as professionals rather than as activists, and this can distance them from grassroots realities.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALES

Just as investment in land and land-based activity transcends national borders, so civil society advocacy has a regional element (Hirsch 2006) and transnational activism plays an increasing part in contesting land grabs within particular countries (Swift 2015). There are two main dimensions to these responses beyond national spaces. First, regional organisations such as Focus on the Global South and TERRA have long supported collaboration between civil society organisations and activists in the region. This has in part been sparked by awareness, particularly in Thailand, that environmental and resource justice issues previously contained within one country have been spilling over borders as capital has sought new opportunities within the context of regional economic integration (Hirsch 1995).

The second dimension to regional civil society activity has been in the area of extra-territorial obligations. That is, civil society watchdog organisations are concerned not only about the activities of private actors within their own countries, but also about their practices in neighbouring countries (ETOs Watch 2018). The case of Khon Kaen Sugar in Koh Kong, for example, involved Thai activists seeking to hold a Thai company to account for its land grabbing activities in Cambodia. The Thai Human Rights Commission has taken on similar cases.

Regional donor programs also facilitate links and learning across borders. During the 2000s, Oxfam supported the Mekong Learning Initiative, which emphasised cross-country research and education around land and resource issues among universities from different countries in the region. The Mekong Region Land Governance project is the most comprehensive regional program, albeit one that does not include land issues within Thailand since the activities of MRLG are limited to countries where the donors have a development assistance presence. Nevertheless, Thai-based organisations are able to contribute to regional MRLG initiatives. There

has also been partial replication across borders of major initiatives such as the land titling program referred to above.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

There are several areas in which reforms are needed in the role of civil society and donor organisations working in the field of land governance.

- Civil society still has a patchy level of input into the writing and promulgation of land law and the development of land policy. Civil society concern with justice issues and the grounded nature of civil society organisations means that they are in an important position to contribute to reform.
- Land governance is almost always a multi-sectoral and multi-stakeholder issue. Rather than seeing one or another organisation as the leader in advocating for more inclusive land governance, support for coalitions of actors with cognate interests but different kinds of strengths may lead to more strategic ways to address land injustice.
- Given the sheer number of land disputes of various kinds and the volume of complaints and petitions on land issues in all countries of the region, complaints procedures need to be streamlined and complainants shielded from punitive defamation lawsuits.
- Since there are so many donor initiatives through both official and non-governmental channels, more strategic alignment of programs is needed. A working group on land policy could be established at a regional level, either through ASEAN or in a sub-regional context.
- Donor programs could be made more responsive to grassroots actors from all sections of society. The MRLG quick disbursement fund is a helpful model for more nimble and user-generated assistance rather than pre-programmed activities designed in a less flexible manner.



7. LAND DISTRIBUTION

OVERVIEW

Inequality in landholding is a longstanding issue in land relations and their wider place in the political economy of the Mekong region. Historically, the distribution of landholdings in some countries and regions within them has been much more unequal than in others. This has been associated with landlessness and the hunger, destitution and subservience faced by farmers with no other options than exploitative tenancy and/or poorly remunerated agricultural labour. While land reforms have periodically sought to redistribute land progressively, land grabbing and other processes have recently seemed to reverse the “land to the tiller” ideal. This is complicated by the voluntary move of some farmers in some places out of agriculture, together with the difficulties in measuring land concentration, dispersion and landlessness.

KEY TRENDS AND DYNAMICS

Unequal access to, and ownership of land has long been a hot social, economic and political issue in all countries of the Mekong region. Yet the patterns of land distribution and landlessness have varied across the region and changed over time, based on historical trends, geographical contexts and social relations. As the region has become more integrated economically, certain convergences and inter-connectedness in patterns of land distribution have also become apparent. However, the systematic measurement of land distribution is complicated by the absence of good data and the complexity of what defines inequality in land.

Concentration of land is a long-standing concern in agrarian societies, both because it leads to unequal and thus, for many, unfair levels of inequality in food security, wealth and associated social status, and also because it can be a cumulative process. That is, those who accumulate land are able to accumulate wealth at the expense of others, through a range of activities such as money-lending, landlordism and so on. In the Mekong region, Vietnam has a history of having the highest rate of landlordism during feudal and colonial times, exacerbated by the gradual appropriation of communal “safety net” lands by village elites (Kleinen 2011). The social tensions and resentment that this engendered played a significant part in mustering

revolutionary support from the peasantry. Thailand, too, saw a concentration of landed wealth in the central and northern regions, but less so in the more subsistence-oriented north-eastern region or the rubber smallholding southern rural economy. In Laos, there was little concentration of land under the French, and in Cambodia, such concentration was mainly in those areas suited to colonial rubber plantations. Meanwhile, farming in Myanmar saw a high rate of landlessness in colonial times, in part because of usury associated with local moneylenders including Chettiar brought in by the British from southern India.

“Land to the tiller” campaigns played a significant part in anti-colonial movements in all Mekong countries, and they continued after independence through communist-inspired revolutionary movements. Even in Thailand, which was not formally colonised and hence experienced no anti-colonial upheaval, one of the rallying calls of the leftist movement of the 1970s was for fairer distribution of land. Pre-emptive government-led land reform in South Vietnam by distribution of land to poorer households sought to win back the hearts and minds of the peasantry.

Responses to landlessness and unequal landholding include not only land reform, but also tenure reform that seeks to limit the rents charged and to increase tenure security for poor farmers who must rent out their land. Land settlement schemes have also sought to deal with land shortage among the rural poor by clearing and distributing new land. In Thailand, the Agricultural Land Reform Office, established in the 1970s, has mainly allocated land in forest reserve areas that had been spontaneously settled, and in Vietnam large areas of land were cleared after 1975 in the Central Highlands under the New Economic Zones policy.

Three main trends have served to mitigate against, or even reverse, attempts to create a more equal land distribution in Mekong countries. First, the various programs have been working against a socio-economic dynamic in an increasingly marketised agricultural system that tends to witness accumulation by dispossession. Second, policy has increasingly shifted to support for large-scale concessions in attempts to modernise agriculture and to achieve visible and taxable surplus, particularly in the socialist economies that have undergone market reforms – namely, Vietnam (Hirsch et al. 2016), Cambodia (Neef et al. 2013), Laos and

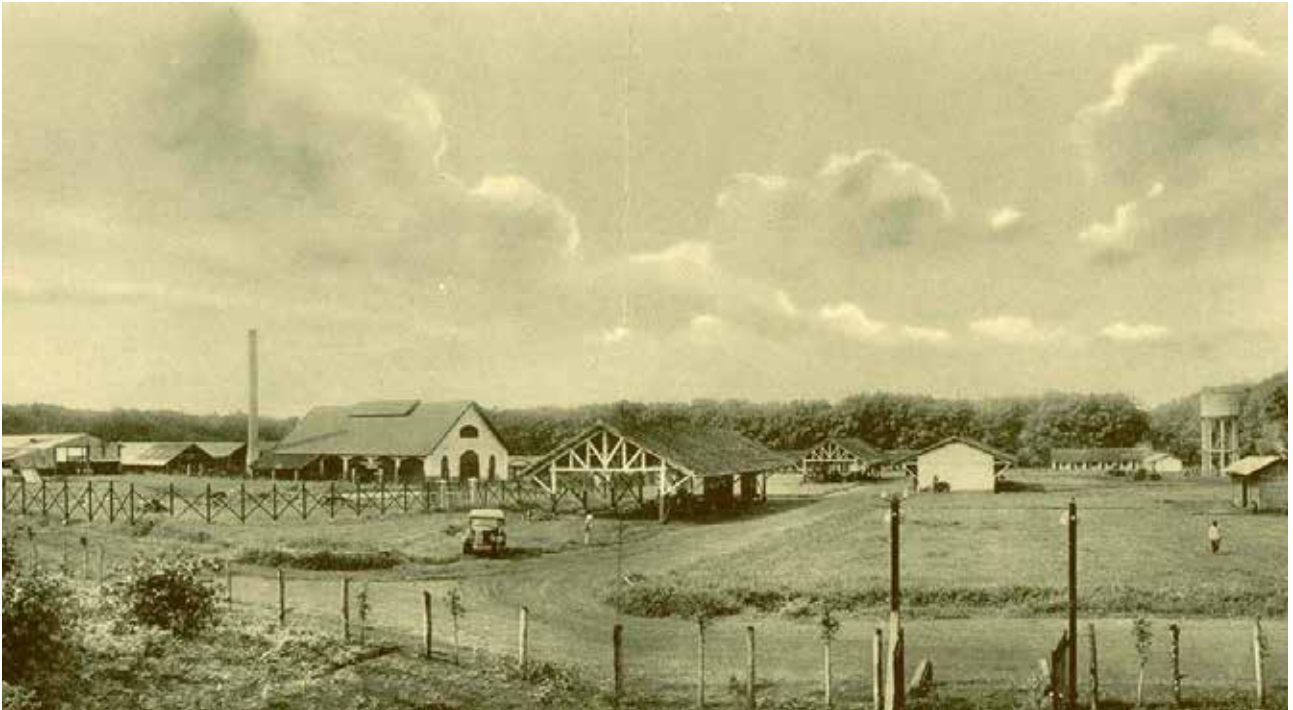


Figure 20: Scenes of colonial rubber exploitation in Indochina – top: rubber plantation at An Loc, established in 1910; above: poster promoting rubber production, where the text translates as “In six years (1920–1925) Indochina sold 24,738,000 kilos of rubber to France and 7,354,000 kilos abroad, the latter amount representing the weight of the Eiffel Tower” (photo credits: TommyJapan1 under Attribution 2.0 Generic (CC BY 2.0) licence)

Myanmar. Third, many smallholder farmers have found it increasingly difficult to stay within agriculture and have sold, abandoned or rented out their land to larger farm operators. There has thus been a series of processes in recent years that appear to reverse gains in securing more equal land distribution in all Mekong countries.

KEY ACTORS AND INTERESTS

Actors in land concentration and distribution include four main groups: small farmers, larger economic actors seeking to gain control over land, policy actors and those advocating on behalf of landless and land-short farmers.

Small farmers are far from a uniform group. Many of the processes of land concentration arise through local processes of accumulation, whereby neighbours exclude others from access to land – what Hall, Hirsch and Li term “intimate exclusions” (2011). Studies of agrarian change have tended to group smallholders into poor (landless or land-short tenants), middle and wealthier farmers. These studies have been informed in part by earlier debates on the peasantry in Europe and Russia, and they do not always fit the realities of rural Southeast Asia.

Larger actors include those pursuing a more industrial approach to farming, including large

plantation concessionaires in boom crops such as sugar, rubber, coffee and shrimp. Not all such actors necessarily gain – or even seek – formal ownership of the land in question, but rather achieve what Borrás et al (2018) term “land control” through leases, contract farming arrangements and so on (see also Friis and Nielsen 2016). Larger economic actors are also engaged in non-agricultural concerns, ranging from large dams to mines to tourist enterprises to peri-urban industrial estates and housing developments. All of these have exacerbated concentrations of land by being able to fetch a higher fiscal return than smallholder farming and hence persuade relevant agencies and policy actors to grant access to such land. Market processes also lie behind such accumulation and concentration.

Policy actors in land concentration and distribution include agencies and actors whose main function is land-related, and more indirect actors who help shape relevant policy. Often there are tensions, whereby, on the one hand, land titling programs and concession policies facilitate land sales and deals at various scales, and on the other hand, land

reform, land settlement and other related agencies seek to redistribute land. Policies such as the Land and Forest Allocation program in Laos both enhance formal access to land, while at the same time constraining smallholder farming (Soulihanh et al. 2004). The “formalisation fix” (Dwyer 2015) both secures land farmed by smallholders while at the same time putting much larger areas off-limits (Hirsch 2011).

Ever since the revolutionary movements based on “land to the tiller” campaigns, advocacy for land justice has been a powerful force in the Mekong region. More recently, such advocacy has sought to roll back some of the regressive trends identified above, in particular with regard to large-scale land concessions. As a result, community land reform, customary tenure, advocacy for legislation that places ceilings on land ownership and so on, have become a central plank of many civil society campaigns. Similarly, a number of development assistance initiatives have sought to secure tenure for smallholders, and many of these are associated with the Mekong Region Land Governance program.

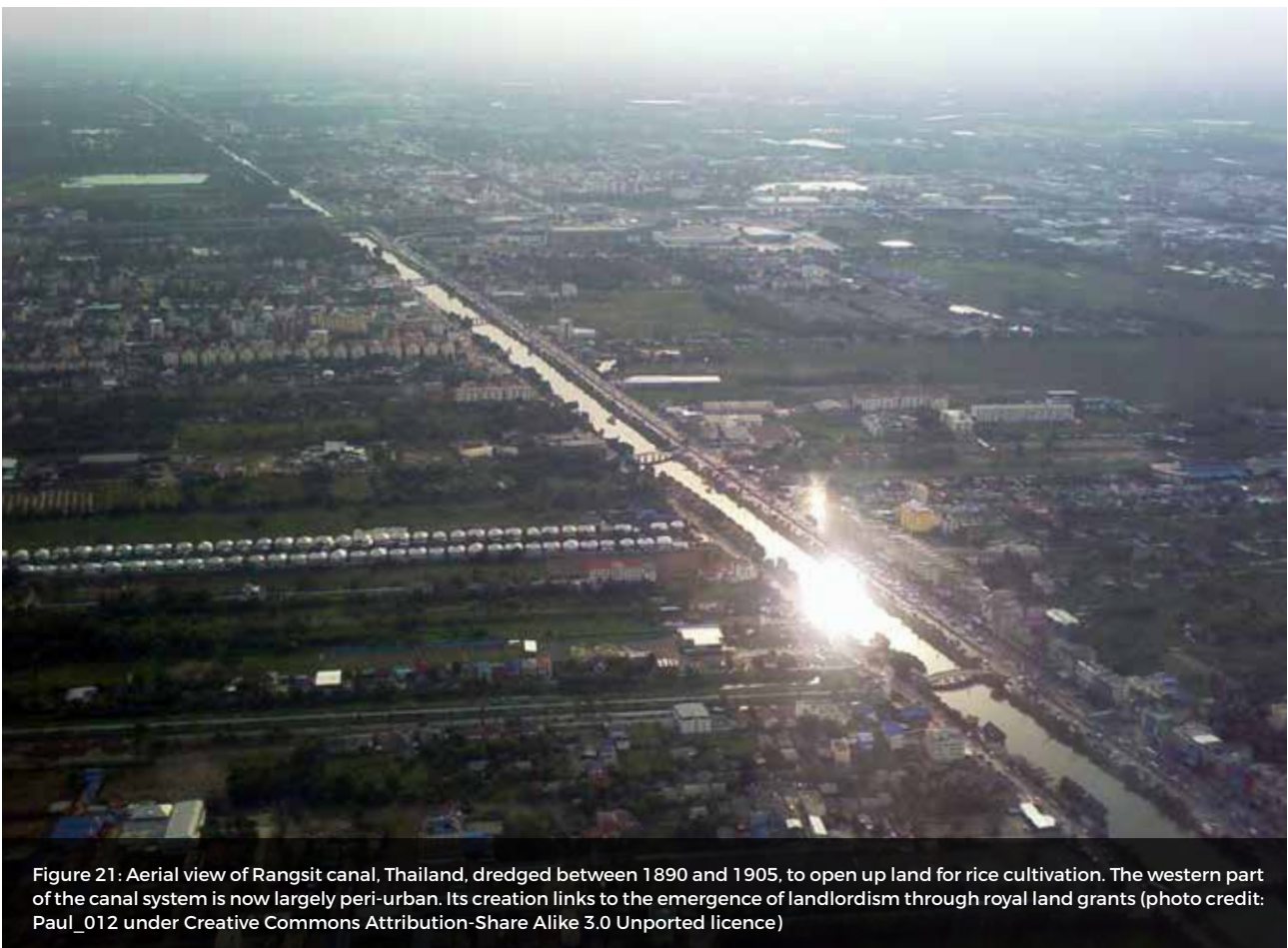


Figure 21: Aerial view of Rangsit canal, Thailand, dredged between 1890 and 1905, to open up land for rice cultivation. The western part of the canal system is now largely peri-urban. Its creation links to the emergence of landlordism through royal land grants (photo credit: Paul_012 under Creative Commons Attribution-Share Alike 3.0 Unported licence)

KEY CONTESTATIONS AND DEBATES

Unequal land distribution has been contested at many levels over a long period of history. As indicated above, anti-colonial and post-colonial revolutionary movements sought support from the peasantry through the redistribution of land. At times of political openness, land reform has been high on the agenda of those advocating for the well-being of the rural poor. In some cases, community land titling has been put forward as a protective measure to guard against the concentration of land, since a community title cannot be bought, sold or otherwise taken from any one land user.

During the colonial period and also during the Green Revolution era of the 1960s and 1970s, most concern over landlessness and the unequal distribution of land was focused on core rice-growing areas, where commercial advantage attracted capital and tended to lead to the accumulation of land in the hands of wealthier farmers and absentee landlords at the expense of the small peasantry. In Myanmar, the Ayeyarwady Delta region saw high levels of land inequality, in part caused by the foreclosure of loans that had been secured by land certificates, and today, the rate of landlessness ranges from 50-90 percent of rural households (Haggblade et al. 2014: 61-62). In northern Vietnam, the Red River Delta and the Mekong Delta, the most productive rice-growing areas, had high levels of landlessness. In Thailand, the Chao Phraya Delta saw the emergence of landlordism at an earlier stage, as a result of royal land grants in exchange for the construction of irrigation, drainage and transport infrastructure in the form of canals.

Whereas the attraction of capital to productive agricultural land has in the past focused attention on landlessness in core rice-growing areas, a critique of regressive land policy has more recently focused on upland areas. It is here that land concessions have expropriated farmers, often ethnic minorities, whose lands are deemed “wasteland” and whose livelihood practices are rendered illegal or invisible (Jones 2014). Shifting cultivators, in particular, have lost access to customary land as their main cultivation practices have been criminalised. Various

policies have declared fallow land “vacant” or “waste-lands”, facilitating accumulation of such land by large-scale concessionaires (Ferguson 2014). “New landlords” have emerged, for example the revamped State Forest Companies in upland Vietnam (Phuc Tuan To et al. 2014).

A word of caution is in order, however. Too exclusive a focus on land grabbing as the main source of rising inequality in landholding may hide more proximate processes and instances of accumulation and dispossession within villages and even between neighbours, in part accelerated by the marketisation of land and other social relations. It also hides the voluntary exit, or partial exit, from agriculture by younger generations of smallholder families. There is thus continuing debate over the main causes of unequal land distribution and their social consequences.

There is also debate about the extent to which private property and associated markets in land should be created. In Vietnam, for example, despite the creation of transferable titles through reforms and land laws, property rights are not fully privatised and markets not fully developed (Kerkvliet 2006). In Thailand, civil society organisations have tended to advocate for community titles rather than the extension of fully transferable freehold rights, based on a concern that the latter will facilitate the gaining of control over local farmland by outside investors.

A number of policy measures exacerbate unequal land distribution. In Vietnam, there is a strong push by government to consolidate smallholdings, which are seen as unviable and backward, into larger farm enterprises (Pham Van Hung et al. 2007). The World Bank seeks a “balance” between the (purported) efficiencies of larger plots and an inclusiveness of land policy (Hoa Thi Mong Pham et al. 2012). In Thailand, the policy of “plaeng yai” (large plots) in rice farming seeks to bring economies of scale through mechanisation and more efficient water management than tends to be the case in many scattered plots. Similarly, zoning under the “*Pracharat*” (civic state) policy of the military regime seeks to consolidate commercial farming through contract arrangements to large agribusiness for crops such as maize and sugar cane.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Historically, the distribution of land has been more unequal in some countries than in others. In Laos, where agriculture was until recently largely a subsistence occupation, landholding has been remarkably even, with most lowland farmers cultivating between one and two hectares of land. In Vietnam, by way of contrast, landholding has been very unequal. However, in all five countries of the Mekong region, smallholdings have dominated agriculture until recently, and even today the main pattern of farming is family-based production.

In three of the Mekong countries, experiments with socialised agriculture led to the formation of cooperatives, from the 1950s in northern Vietnam and from 1975 in the rest of Vietnam, Cambodia and Laos. However, the actual experiences of socialised agriculture differed between these three countries. In Cambodia, the extreme Maoist practices of the Khmer Rouge did away with all private property and related activities. This was followed by a much more tempered form of collectivisation following the overthrow of the Pol Pot regime in 1979, with the establishment of “*krom samakkhi*” (solidarity groups). In Laos, collectivisation reached only about a quarter of the country’s villages, and it collapsed after only a few years, reverting to smallholder subsistence-oriented farms. In Vietnam, the collectives started to disband from the late 1970s, and from the late 1980s individualised family farming was once more the dominant model. All three countries saw a redistribution of land such that landholding was unusually evenly distributed at the start of the market reforms, and all three have seen processes leading to the concentration of landholding as a result of foreclosures and land sales, some of which have been distress sales and some voluntary investments in non-land based economic activity.

Land distribution in Myanmar is highly uneven, both because of the historical patterns of landlessness in the Delta and some other areas, and because of the longstanding practices of land grabbing by the military and their cronies. Unequal access to land remains one of the top social issues in the country, and the opening up to foreign

investment may exacerbate rather than ameliorate the situation despite the more open climate for expression of grievances.

In Thailand, the absence of socialised agriculture has resulted in less dramatic shifts between patterns of distribution. Thailand has been described as one of the more unequal countries measured by land ownership (Laovakul 2015), yet smallholding continues to dominate farming. One of the difficulties in resolving this paradox lies in the difficulty of obtaining comprehensive data. The best study to date measures distribution of privately owned land with full titles, and finds an extremely high Gini coefficient (*ibid.*). However, this figure includes urban land, which is much more valuable, and so does not give a meaningful idea of the real distribution of wealth. Furthermore, it leaves out various forms of State land title, such as that of the Agricultural Land Reform Office. There is even less by way of comprehensive and systematic study of land ownership distribution in the other Mekong region countries.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

The distribution of land is quite specific to individual countries, and indeed varies significantly between different internal regions. It tends to be exacerbated by the commercialisation of agriculture, and further accelerated by the development of active markets in land that facilitate accumulation. Less directly, the marketisation of agriculture and other land-based activity lies behind policy in the name of modernisation and development that allows accumulation through involuntary land expropriation that is legitimised through purported or actual higher value uses by larger players. In Vietnam, this process has seen much involuntary land conversion in peri-urban areas (Nguyen Van Suu 2009b). This is different from eminent domain, where land is used strictly for public-interest and publicly owned infrastructure projects, and has socially differentiated effects (Nguyen Thi Dien et al. 2011). Nevertheless, there have been some more successful and innovative approaches that achieve a wider sharing of benefits based on awareness of the potentially unequal distributive effects (Phuong Anh Bui 2009).



Figure 22: Banana plantation located in the valley around Ban Sirimoon village, Luang Namtha, northern Laos. The gap in the middle of the plantation shows one paddy rice field of a farmer who refused to grant his land to banana investors (photo credit: Cecilie Friis)

This being the case, only an indirect effect is exerted by regional economic integration on patterns of land distribution. The most clear-cut of these derives from land grabbing that results from cross-border land deals, in particular the securing of long-term leases in Cambodia, Laos and Myanmar by companies from China, Thailand and Vietnam (Schoenweger and Üllenberg 2009). While this incontrovertibly leads to a concentration of control over land by wealthier foreign and comprador national players, it tends not to show up in statistics on land distribution. The reason for this is that the land in question tends to be untitled, and is often part of fallow cycles, so that it was never registered as “owned” by those from whom it was expropriated.

Scale of production is an important consideration in shifting patterns of land distribution. In all five

countries, government policy seeks to modernise agriculture by attracting capital, and this is usually – although not always – assumed to require economies of scale that require consolidation of farm plots. At the same time, the movement of labour out of agriculture has the effect of creating larger farm sizes, even if ownership remains with the smallholding family. In Thailand, for example, there has been a clear shift from larger landholders renting out to smaller ones, in favour of small farmers renting out to larger ones (Tubtim 2019). In northern Laos, we see a trend toward farmers leasing out smallholdings to Chinese investors whose rents exceed the expected return to farming of those smallholders, an effect enhanced if the opportunity costs of labour are considered (Friis 2015). Movement out of agriculture is also a consequence of unequal access to land, leaving the rural poor with few choices (Scheidel et al.

2014). We therefore need to distinguish ownership and management in measuring distribution of control over land, and also to differentiate between voluntary and forced moves away from farming.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

There are several older and more recent approaches to addressing unequal distribution of land at a policy and advocacy level.

- Conventional land reform is politically targeted at redistribution, but its purpose and effects are more complex. In the case of both Thailand and South Vietnam during the 1970s, land reform was driven in part as a response to leftist movements and can be seen as a pre-emptive political measure as much as an attempt to address inequality. In the case of Thailand, land reform has largely involved formalisation of land documents on spontaneously settled forestland. In recent decades, unlike the continuing work of the Comprehensive Agrarian Reform Program in the Philippines, mainland Southeast Asia has seen very little by way of conventional land reform, despite the continuation in Thailand of the work of the Agricultural Land Reform Office.
- Whereas earlier approaches to redressing landlessness took the form of programmed or spontaneous (but often tacitly recognised or even supported) land settlement, the land frontier has become highly constrained in the Mekong region. Even in countries where, until recently, forested areas have been lightly settled, in particular Cambodia and Laos, land pressures are now high, and further settlement mainly encroaches on land hitherto worked largely by ethnic minorities, often practising shifting cultivation. This policy option is therefore largely redundant.
- In response to the landlessness caused by large-scale concessions and the associated recognition of livelihood impacts, checks have been put on large-scale land deals. In Laos, moratoria have been placed on such concessions, following – but not traceable as a direct result of – advocacy by largely foreign civil society organisations and some donors. In Cambodia, social land concessions have been put in place on “state private land”. In Myanmar, there have been some attempts to redress land grabbing carried out by the military and their cronies, but to date relatively little has been returned to farmers.
- Alternatives to large-scale land concessions are sought that maintain small- and medium-scale farming, but with an intensified relationship with capital, most notably through contract farming arrangements (Byerlee et al. 2014).
- In contrast to the protections associated with the partial rolling back of large-scale land leases, there are also reforms in the other direction. In both Thailand and Vietnam, policies for land consolidation are based on the official perception that small plots are decreasingly viable. An important policy question is whether such consolidation leads or follows the livelihood choices of the small farmers whose land is consolidated into larger holdings.
- Devolved rights to manage forest land have been implemented in Vietnam and Laos, but the benefits of such programs on redressing inequality are mixed (Sikor and Nguyen 2007).
- A number of initiatives have been proposed by civil society groups, with partial response from government. These include Thailand’s “four laws for the poor”, calling for the issuing of community titles, the establishment of a land bank, the setting of a progressive land tax, and the provision of legal support for poorer farmers involved in land disputes. All of these are geared to redressing unequal land distribution.



8. DISPUTE RESOLUTION AND ACCESS TO JUSTICE

OVERVIEW

Increasing land pressures in the Mekong region have generated numerous disputes. While many of these disputes are amongst neighbours, their generation is often an indirect consequence of policies and practices of more powerful actors and the displacements and competition over land generated by its commodification. Access to justice is circumscribed by limited access to legal redress and by the political limits to resistance and public complaint under authoritarian regimes. Land disputes are much more open in some parts of the Mekong region than in others, and legal redress is similarly quite uneven over the regional landscape. It is important to understand the specific contexts of dispute resolution and justice procedures in dealing with each case, and reform measures need to look well beyond land issues *per se*.

KEY TRENDS AND DYNAMICS

Cambodia, Laos, Myanmar and Vietnam have all experienced a rapid increase in land disputes over the past decade. Thailand has witnessed disputes over a longer period, in part influenced by its long-established land legislation, history of commodification, and intensified competition for land driven by development pressures. Despite laws and regulations in Mekong region countries granting people freedoms and rights to peaceful assembly, to protest, and to contest and appeal decisions through judicial and non-judicial arbitration, there has been limited progress regarding access to justice for victims of land rights violations. Serious rights violations continue to arise as a result of forced displacement and dispossession of lands and resources, often backed by laws and policies that favour agribusiness investors over smallholder farmers and ethnic minorities (Amnesty International 2008; Subedi 2012; ALTSEAN 2014; Baird 2011).



Figure 23: Houses are set ablaze and bulldozed during the eviction of Kbal Spean village, Cambodia, in 2005. The village, comprising returning refugees and demobilised soldiers after the Khmer Rouge period, was claimed to be an illegal settlement, a dispute that was eventually resolved out of court with the granting of land rights (photo credit: LICADHO, in Amnesty International 2008)

Documented evidence in all five countries points to a lack of procedural justice in the formal and informal dispute resolution processes available to the rural and urban poor affected by land disputes. Barriers to accessing remedy and justice for citizens impacted by land conflicts include:

- Overly bureaucratic and often costly procedures for lodging complaints
- Political interference in mediating institutions, adjudicating bodies and the judiciary. This is particularly the case in conflicts on “State land”, a fuzzy category where “public interest” is left up to the interpretation of State authorities allowing capture by State representatives, local elites and foreign investors.
- State-sanctioned use or threat of use of violence against communities who act in defence of their land rights
- A culture of impunity that allows human rights abuses and criminal activity to go unpunished
- Unequal power relations embedded in society that determines access to existing mechanisms and social networks (e.g., gender, ethnicity, poverty, age)
- Limited agency and social networks among some communities to effectively organise mobilisation through collective action

These factors pose major obstacles to peace and justice in the Mekong region and highlight the need for legal reforms to address issues that go well beyond land per se. Borrás Jr. and Franco (2018) lay out five social reforms needed for socially just land policies, namely redistribution, recognition, restitution, regeneration, and resistance, backed up by a land ceiling and land floor. Yet lobbying for legal changes has often proved arduous and can lead to uncertain outcomes. For example, a civil society movement for a Community Forestry Bill in Thailand resulted in an Act that was passed but subsequently lapsed (Zurcher 2005). A new bill was passed in 2019 but it remains unclear whether this will be implemented to support or marginalise forestland users.

In the absence of impartial institutions that can adequately deal with land conflicts, the poor majority resort to a variety of informal mechanisms to gain leverage in their negotiations with wealthier and more powerful parties. These include collective

action through protests and campaigns, use of media, partnering with human rights NGOs, appeals to powerful individuals (including working through personalised networks to access decision-making power), and more indirect forms of resistance or “everyday politics” (Kerkvliet 2009) in contexts where direct contestation is not tolerated.

Cases have been documented where collective actions have more or less resulted in community “wins” (e.g., The Guardian 2011; Schoenberger 2017; Baird 2017; Diepart et al. 2019). However, these tactics can pose risks for communities as States can respond violently. Moreover, successful results tend to be contingent on particular conditions that are the specific outcomes of the negotiation between actors (Adler and So 2012; Baird 2017; Diepart et al. 2019). In Cambodia, the production of “contingent rules” are said to be possible when certain conditions are met, namely the opening of a political opportunity structure (such as that provided by Order 01), a capacity to organise on the part of communities affected and supportive social networks (Diepart et al. 2019). In Laos, narratives linked to history, identities and placed-based political connections have been essential for achieving success (Baird 2017; Kenney-Lazar et al. 2018). While limited, these cases nevertheless point to the existence of opportunities for resistance and negotiation, despite the narrow – and in some cases shrinking – space for contestation and critical dialogue. It is important to note, however, that even in “successful” cases, the poorest households – particularly female-headed households – who are not able to participate in sustained protests or negotiations have often missed out on a fairer compensation package for lost land (Lamb et al. 2015).

A growing trend among NGOs, particularly in Cambodia and Thailand but increasingly also in Myanmar and Vietnam, is the provision of legal aid to help fight expropriation and land seizures on behalf of poor farmers and smallholders. Increased foreign investment in agribusiness and other land-based developments in Mekong region countries have opened up opportunities for pursuing grievance mechanisms targeting a range of public and private actors at scales and jurisdictions outside of the nation-state where land investments are made, including consumer markets. For example, “follow the money” approaches have been employed to identify investors and organisations

further up a value chain from a company involved in land violations. Campaigns then encourage these actors to apply pressure to the offending company.

A further strand of analysis looks to the avoidance of conflict in the first place. For example, by incorporating customary land tenure into formal laws, a broader form of tenure recognition may alleviate potential flash points (Dusek 2017). Hunsberger et al. (2015) call for the co-production of knowledge between different stakeholder groups as a means for preventing, resolving and transforming conflicts. Lette (2016) highlights a potential example of this process, where foreign companies Stora Enso Laos (paper) and Outspan Bolevens Ltd. (coffee) have set up projects using land in Laos, and have involved communities from the outset agreeing upon grievance mechanisms in an effort to pre-empt disputes emerging as a reactive force.

KEY ACTORS AND MECHANISMS

State mechanisms and remedies to solve land disputes include mediation, administrative bodies and the judiciary. The first point of call for parties involved in land dispute is usually village, commune, district and provincial level authorities. There are cases of local government connecting with wider stakeholder networks to argue for community rights, such as in disputes over access to forest resources (Roberts 2016). However, local government is often unable or unwilling to solve land disputes involving land concessions granted by central government authorities, particularly those involving powerful actors. Complaints are progressively moved upwards to higher level government institutions such as the National Assembly or the Prime Minister's Office, a process which may incur payments or require backing from powerful figures (Culas et al. 2010).

A number of inter-ministerial bodies or committees are responsible for mediating and adjudicating on land disputes. The Parliamentary Land Investigation Commission in Myanmar was assigned to examine cases considered to be land grabs and propose solutions towards releasing the land to its original owners. In Laos, there has been the Systematic Adjudication Teams of the Lao Land Titling Program (Mahaphonh et al. 2007), and commitments to review disputes after the moratorium on concessions. In Cambodia, there was Order 01 in 2012. More recently, the government has set up a countrywide initiative within the Ministry of Land Management, Urban Planning and Construction to address land conflicts. The National Assembly for Land Dispute Resolution has been restructured to look into high-profile land disputes and oversee resolution processes through the Cadastral Commissions and other relevant authorities (Diepart et al. 2019). A number of studies point to how these and other government bodies – such as those responsible for allocating land to private investors – are vested with considerable powers to grant and revoke land rights and adjudicate disputes, but provide no recourse for appealing decisions. Importantly, these bodies are subject to political interference and often struggle to resolve complex cases, especially those involving parties from or with connections to the government or military (Adler et al. 2006).



Figure 24: The signing process for the dispute settlement over the Socfin rubber project in Monduliri province, Cambodia, August 2020. In 2007-8, the Cambodian government allocated two Economic Land Concessions (ELCs) to the French company. Engagement with the local indigenous Bunong community only followed persistent protests, in particular relating to the burning down of burial sites during initial forest clearances. An investigation by the French-based International Federation for Human Rights ruled that the project had violated the UN Global Compact and the UN Framework and Guiding Principles on Business and Human Rights, as well as the OECD Guidelines (Credit: Sothath Ngo in MRLG 2020)

Courts have played a relatively minor role in resolving land disputes in the Mekong region. Courts in Laos and Vietnam are especially ill-equipped to deal with land cases because of their subordination to Party-State socio-economic policy. In all five countries, systemic levels of corruption within the judiciary have severely impeded people from accessing remedies or compensation related to land rights infringements in the courts. In Vietnam, for example, around 60 percent of housing and land disputes are passed from the courts to the National Assembly and hybrid Party organisations for a political resolution (Gillespie 2013). In March 2013, pro-bono lawyers representing families affected by the Koh Kong Sugar Industry Concessions in south-west Cambodia filed a lawsuit against a UK-based sugar company in the UK Commercial Court, opening doors for potential future litigation in courts outside the region.

Civil society organisations (CSO) in the Mekong region have adopted a range of roles and strategies to support communities affected by land dispossession. This includes documenting cases, providing legal education on laws and land rights, submitting complaints to government institutions and companies, appealing to national and international human rights organisations, and legal representation in the courts. Some literature actively promotes certain means of mediation or other dispute mechanisms (Kane et al. 2016; Displacement Solutions and Norwegian Refugee Council 2018). Through their extensive regional and international networks, CSOs are exploring different arenas of law, including scrutinising international investment treaties – such as the European Union’s “Everything But Arms” Initiative (EC and IDI 2013) – and leveraging opportunities provided by international developers and investors who adopt international best practice for due diligence purposes (Polack et al. 2014). In Thailand, farmer networks around the country have collaborated to call for “4 laws for the poor” (land bank, progressive land tax, community land title, and justice fund) in order to consolidate farmer rights to access, own and use land, avoid land abuses, and provide support mechanisms for farmers to seek justice when conflicts do occur.

There is mounting pressure for private companies and investors to adopt international environmental and social standards and/or sign up to industry codes of conduct as a means to increase corporate legal accountability for land-related human rights abuses. Communities impacted by

the Koh Kong Sugar Concession in south-west Cambodia pursued claims through various business grievance mechanisms targeting the companies that purchase sugar for distribution to European markets - Tate & Lyle and American Sugar Refinery. This included challenging Tate & Lyle’s membership of Bonsurco, a multi-stakeholder sugar industry association that accredits its members with meeting social and environmental standards, and submitting a case arguing violation of the Organisation of Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (Lamb et al. 2015). In addition, Oxfam launched a global campaign calling on the world’s largest sugar industry companies, including Coca Cola, to address land grabbing and other human rights violations in their supply chain (Thorpe 2013). While there are few incentives for domestic companies in the Mekong region to enact environmental and social standards under weakly enforced regulatory regimes, the Vietnamese Rubber Group has established a complaints mechanism (Global Witness 2014), although its effectiveness remains under question.

At international level, a corporate level guidance tool has been developed by the Interlaken Group to support companies in aligning their operations with the FAO’s Voluntary Guidelines on the Responsible Governance of Tenure (The Interlaken Group and RRI 2019). However, a number of civil society groups have expressed concern that efforts under way to regulate land grabs through the creation of international codes and standards on how to “responsibly” invest in farmland may not really assist communities whose lands are being targeted. They point out that corporate actions to reduce “reputational risk” are rarely synonymous with communities keeping control of their lands and that the development of “standards” can serve as a smokescreen for companies to continue business as usual (GRAIN 2015). Nevertheless, there is an argument for corporate governance mechanisms, including dispute resolution and grievance mechanisms, where effective and impartial government regulation is lacking.

International donors have financed land sector reforms that have included dispute resolution mechanisms, as well as supported judicial reform programs that have had limited success. International financial institutions have also been targeted by CSOs to leverage opportunities provided by their safeguard policies. In Cambodia, the World Bank



Figure 25: Model of the Boeung Kak development plan, released by the Municipality of Phnom Penh in May 2010 (photo credit: Inclusive Development International in Bugalski and Pred 2010)

funded Land Management Administration Program (LMAP) became the subject of a World Bank Inspection Panel investigation after communities facing eviction from Boeung Kak Lake filed a complaint arguing a breach of the Bank's Resettlement Policy Framework (Bugalski and Pred 2010). More recently, communities and their legal representatives in Ratanakiri province impacted by rubber concessions owned by Vietnamese Hoang Anh Gia Lai Company (HAGL), have triggered the International Financial Corporation's (IFC) dispute resolution mechanism after it was discovered that the IFC had investments in companies linked to HAGL (Yun 2015; Work 2016).

Human Rights Organisations are also important actors to whom affected communities and CSOs have turned in pursuit of greater accountability for land rights breaches by States and companies. Special Rapporteurs have been instrumental in drawing attention to land issues and the situation of human rights in Mekong region countries. National Human Rights Commissions have also been used to file complaints against companies investing across borders. For example, a complaint filed by a Cambodian NGO with the National Human Rights Commission of Thailand against the Khon Kaen Sugar Industry Concession in Cambodia triggered an investigation of the case. Similarly,

NGOs have petitioned the Malaysian Human Rights Commission for an investigation of the potential impacts of the Don Sahong Dam being built in Laos by a Malaysian-based company (ERI 2014).

KEY CONTESTATIONS AND DEBATES

There is a continuing climate of fear around land disputes in most Mekong countries. In some cases extra-judicial State violence is the main constraint, while in others it is the influential private actors (in collusion with State and military actors) who are behind the actual or threatened violence. In Cambodia and Myanmar, security forces have increasingly used force against evicted villagers, including arbitrary arrests and some reported deaths (Amnesty International 2008; Schwedersky 2010; Chao 2013; ALTSEAN 2014). Poor and marginalised communities fear the institutions created to protect them, such as the police, local government and the courts (CHRAC 2009). In Thailand and Myanmar, women have increasingly found themselves at the forefront of civil society protests, and a more conspicuous presence brings with it an increasing threat of violence (Faxon et al. 2015; Pierce and Nant Thi Thi Oo 2016; The Observatory et al. 2017). In Laos

and Vietnam, families are often forced to accept compensation packages which are insufficient to begin a new life. The space to discuss human rights abuses in relation to land issues remains small as civil society organisations fear retribution for criticising government policy. There is an urgent need for government officials to publicly condemn attacks against people who assert their rights and seek redress in the context of land rights violations. Individuals and communities must be able to act without fear of intimidation, harassment or violence in the exercise of their right to freedom of opinion and expression, and to seek remedy and justice.

Another area of debate currently is the effectiveness of initiatives and committees established by some governments to solve land disputes with just outcomes. For example, the 01 Order has revoked ELCs in Cambodia but a key question remains: to whom is this land reallocated? Will it go back to communities or be re-allocated to investors? The status of land revoked has remained ambiguous, and communities are not confident to invest in those lands (see Diepart et al. 2019). In the case of Myanmar, studies have found that many cases remain unresolved, especially those linked to military confiscations. For example, in 2012, Union authorities opened up a commission to hear claims of land confiscations, yet although thousands of complaints have been filed, only a few have been settled (McCarthy 2018). Nevertheless, providing dispute mechanisms in Myanmar is vital to maintain cease-fires and to build peace (Kramer 2015). In the case of forest conflicts in Laos, Kane et al. (2017) conclude that there exist no effective means of resolution within existing systems of governance.

The extent to which the courts can be relied upon for impartial justice is a key issue in the five Mekong region countries in question. Many people do not trust the courts and see them as inaccessible or risky to use. However, alternative dispute resolution mechanisms – such as mediation and consultation – suffer from systemic shortcomings of their own, the evidence pointing to a mixture of success and failure (Hall et al. 2015). Indeed, what much of the literature on land disputes in the Mekong region demonstrates is that no one system can provide the optimal range of solutions to resolve complex land disputes. Rather, it makes sense for those seeking justice to creatively combine elements from State and non-State, formal and informal mechanisms, including maintaining pressure through protests and use of the media (Gillespie et al. 2014).

It is widely recognised that the poor are at a critical disadvantage if they cannot access legal assistance. People whose land rights are affected by investment projects, land developments and titling programs are seldom informed about their rights under national law or relevant safeguard policies, let alone given advice on how to access legal remedies through accountability mechanisms. The little legal assistance that is provided to the disadvantaged is channelled mainly through legal NGOs, particularly in Cambodia. Such support includes awareness-raising about land laws and land rights, legal assistance and case handling, paralegal training, and engagement with local governments. However, the small number of lawyers can hardly service this sector's huge demand for legal assistance. Furthermore, the operation of these organisations is often monitored and controlled by governments. For example, NGOs in Cambodia were forbidden from entering the villages whose lands were surveyed under Order 01. Without access to independent information or advice, community members were pressured into accepting individual land titles without understanding how this would compromise their communal land title claims (Rabe 2013). In Laos and Vietnam, legal aid is mainly restricted to legal education. These programs often exhibit a tension between State views of legal education as a mechanism to enhance social compliance, and those of NGOs who see the law as a tool of empowerment.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

The absence of impartial judicial and non-judicial dispute resolution mechanisms, lack of accountability for perpetrators of land rights infringements, and limited access to remedy or justice for people impacted by land grabs are factors common to all five countries. The various mechanisms used to lodge complaints and solve disputes, however, differ. Meanwhile, the nature of land conflicts themselves also varies. In Vietnam and Laos, for example, official complaints have often focused on the issue of adequate compensation for land expropriated by the State for urban and transport infrastructure projects and hydropower dams, while in Cambodia and Myanmar land conflicts have often involved the appropriation of villagers' land by "crony companies" and the military for agribusiness

concessions. In Thailand, many disputes reflect contested boundaries between State forestland or protected areas, and farmland. Narratives vary between that of illegal encroachment and the rights of local users who occupied the land before boundaries were established.

Political conditions in the five Mekong countries place limits on resistance and public complaint, and they also determine the avenues and strategies pursued by communities and CSOs in seeking remedy and justice. Land conflicts are more open and confrontational in Cambodia, Thailand and Myanmar. In Laos they are more concealed with only passive, non-confrontational forms of resistance tolerated. There, resistance tends to work “with, rather than against the State by foregrounding the contradictions of land use and ownership within State spaces” (Kenney-Lazar et al. 2018). The circumscribed avenues of resistance may result in attempts to stall a process rather than trying to stop it altogether (McAllister 2015b). In Vietnam, increasingly bold direct actions are seen with regard to land conflicts. Experience with public interest litigation to promote accountability in large-scale land deals also differs between countries. While in Cambodia, Thailand and Myanmar there is substantial experience of bringing cases to provincial and national courts, this experience is more limited in Vietnam and Laos.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Although transnational networks have been long established, the nature of these links evolves over time. Recent literature looks at the how networks have consolidated resources to campaign for broad media exposure, explore commodity value chains, global patterns of financial transactions, and corporate ownership structures (Hall et al. 2015; Hunsberger et al. 2017; Swift 2015; Work 2016). The case of the Koh Kong Sugar Industry concession in Cambodia highlights innovative mechanisms for seeking accountability and access to justice to redress the impacts of land grabs across borders and scales, when such mechanisms are not available at home. After exhausting all avenues at the national level, communities and public interest lawyers took their struggles to other arenas and jurisdictions, including the Thai National Human

Rights Commission, the UK Courts, the European Union (targeting its “Everything but Arms” initiative); and an international Sugar Industry accreditation scheme, Bonsurco. Also targeted have been companies in the sugar supply chain, including Coca Cola, and international banks and financiers, including ANZ and the IFC.

Literature points to the availability of international mandates and their use in localised land conflicts, such as the UN FAO Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) (Franco and Khu Khu Ju 2016) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN General Assembly 2018). Nevertheless, such guidelines do not guarantee successful avenues to redress land conflict, such as where the institutionalised form of mediation using international mechanisms has resulted in a new enforcement of power over Cambodian peasants (Bourdier 2019). There are also ongoing efforts by CSOs to have land rights mainstreamed as human rights within ASEAN. However, the ASEAN Intergovernmental Human Rights Commission (AIHRC) is considered to be a toothless body without investigative powers, or a complaints mechanism. To date, there is little indication that AIHRC will be able to investigate allegations of human rights violations in relation to land issues in the near future.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Freedom from fear of retribution in the case of complaints
- Specialised legal assistance is needed for complainants in land dispossession cases
- Equality before the law in land disputes
- Acknowledgement of the growing role of women campaigning in land disputes, with protections needed against the threat of violence
- Recognition of customary claims
- Sustained and open media attention to land disputes and their causes
- Support for advocates of land justice within relevant government agencies, in particular protection for “whistle-blowers” to encourage more open governance

- Provision of adequate compensation for acquired land
- When justice is not found at home, international dispute resolution forums can provide opportunities for seeking justice. International arenas of justice include, for example, complaints with foreign government agencies, transnational codes of practice of multinational corporations, and court litigation in third-party countries. However, greater enforcement power is needed requiring action by investors.
- Early and effective interventions, including community participation and consultation with government and/or developers before and during land projects, can reduce the number and intensity of disputes
- Transparency is essential to effective dispute resolution. Critical information relating to land deals must be made publicly available in accessible form to all parties. Transparency in processes and outcome is essential for the effective participation of people who have been impacted upon in consultation and mediation with governments and/or developers, and to understand how their rights are being affected.



9. MARGINALISED GROUPS

OVERVIEW

The poor, ethnic minorities and women in particular suffer marginalisation that is exacerbated by circumscribed access to land and insecurity of tenure. Ethnic minority land use practices, notably shifting cultivation, are criminalised, while citizenship issues and outright discrimination and ethnic chauvinism have excluded or displaced minorities from access to resources as majority farmers have increasingly availed themselves of land and other resources since upland margins have become more accessible. In some cases, security-oriented programs have distanced ethnic minority communities from land and other resources that are the basis of their livelihoods. Women have seen customary rights in land weakened by formalisation that privileges officially designated heads of households, who are usually male. Decisions and meetings often mainly involve men, and land use planning can neglect land-based resources that are primarily in women's work domains.

KEY TRENDS AND DYNAMICS

The concept of marginalisation brings together other key themes to specify the negative impacts of land relations on certain groups of people around the Mekong region. The term "marginalised" can be defined as representing the treatment of a person or a group as insignificant or peripheral. There are three important relations to highlight here. First, marginalisation is a process rather than an antecedent condition. Second, one becomes marginalised from something, and in this case marginalisation primarily involves access to, control of, or use of land. Third, the marginalised are placed in relation to others who do not suffer the same tribulations. For this latter point, it is possible to apply multiple scales, such as highlighting individuals within a household or a community, or a significant social sub-group or ethnic minority within a particular nation-state. It could be argued that the Mekong region itself is marginalised within global trade and power relations, caught up in power struggles between large capitalist forces such as the USA and China. However, the larger the scale of reference, the greater the risk that inequalities within go unqualified.

Although processes of marginalisation take place in specific localised ways, it is important to reflect on the bigger picture of economic transformation

in the Mekong region. At one level, it is important to take a historical perspective in order to view the marginalising effect of land policies over the long term. This includes colonial-era law drafted in support of plantation economies, certain aspects of which are retained in present-day statutory law. Moving towards recent economic policy, when considering access to and control of land for smallholders and the rural poor, the marketisation of agriculture, with the introduction of "boom crops" has a strong impact when unaccompanied by pro-poor policies (Lamb et al. 2015). Neoliberalism encourages well-connected national elites to take control of markets and resources that bolsters their land-based wealth at the expense of the poor (Springer 2011). This is clearly seen in the advent of crony capitalism in Myanmar (Global Witness 2015a; Woods 2011).

A point of focus for research on marginalising practices highlights large-scale land investments that are discriminatory to local land users, particularly those who make a living outside of State-supported market arenas that have become the priority of developmentalist regimes. In Cambodia, Economic Land Concessions (ELCs) have led to the clearing of farmland and forest under use by indigenous peoples, undermining community resource management practices (Bues 2011). They have also affected the ability of indigenous groups to register themselves under collective land titling, while most concession labour is given to in-migrants (Prachvuthy 2011). Similarly, concessions in Laos have enclosed space, shutting it off to communities who were previously reliant on a variety of resources in the designated zone (Baird 2011). In Myanmar, Cittleman and Brown (2014) assert that nearly 1,000 families will be displaced to make way for the Thilawa Special Economic Zone, and that the process of this relocation fails to meet international guidelines.

There are certain social sub-groups who can be highlighted as being on the receiving end of marginalising processes. However, it is important to clarify that each sub-group should not be assumed to carry a singular identity, and that disparity will be found within. First, large-scale land development can marginalise smallholders who may already be poorly served by statutory law on tenure security. Drbohlav and Hejkrlik (2018) highlight a case from Cambodia where 1,400 fishing families were relocated to make way for a land concession in the Botum Sakor National Park.



Figure 26: Row of houses at a relocation site for the Thilawa Special Economic Zone, Myanmar (photo credit: Lauren Sakae/ Physicians for Human Rights in Cittleman and Brown 2014)

The study shows that the livelihoods of those relocated has worsened, with employment issues, poor infrastructure at the relocation site, and issues over access to health and education services. Nguyen, Westen and Zoomers (2014) show how the acquisition of land for infrastructure development in peri-urban areas of central Vietnam takes little account of the wishes of local farming households whose land is taken.

Ethnic minorities frequently suffer from the exploitation of land for new investment ventures. For example, there is evidence of multiple land grabs from the Ta'ang minority in Shan State, Myanmar, in order to serve military needs such as housing, training, and income generation through hydropower, oil and gas pipelines (TSYO 2011). There is much attention brought to the plight of indigenous communities in Ratanakiri, Cambodia, who have lost their land to rubber plantations operated by the Vietnamese company HAGL (Work 2016). In the aftermath of the 2004 Indian Ocean Tsunami, indigenous sea nomads in southern Thailand have suffered from land dispossession to make way for tourism developments (Neef et al. 2018). However, as a counterpoint, Mellac (2011) notes that customary practices for Tai-speaking groups in northern Vietnam have endured during periods of collectivisation and then individualised market-driven land use rights. In this way, ethnic groups do display the solidarity and power to ride out the potential negative impacts from outside pressures.

Despite legal declarations of equality, patriarchal practices in Mekong countries favour men who monopolise control of land as heads of households (see also the “Gender and land” chapter for further details). They frequently maintain control of land through titling programs. In Ratanakiri province, Cambodia, women and girls are becoming marginalised as a consequence of emerging capitalist relations, with reduced autonomy and agency including the recognition of their land rights (Mi Young Park and Maffii 2017). However, there are actions to let women’s voices be heard. In Myanmar, a coalition of more than 100 organisations lobbied for the inclusion of women in discussions over National Land Use Policy (NLUP) and helped bring them to the table in the peace process (Faxon 2017; Faxon et al. 2015). The urban poor also suffer from insecure land tenure while residing in informal housing, leaving them open to the threat of forced eviction (CHRAC 2009; Mgbako et al. 2010). Bugalski and Pred (2010) note how a land titling program in Phnom Penh excluded certain informal communities, thereby exacerbating inequalities (see the chapter “Urban land governance” for further information).

There are various ways in which marginalisation is felt by affected communities. Most clearly in relation to land is dispossession (see the chapter “Dispossession and land grabbing”). Engvall and Kokko (2007) make a statistical link between land tenure security and poverty in Cambodia, where a proposed land reform package could result in a 16 percent fall in poverty incidence for landowning rural households and a 30 percent fall for the land-

less. A report from Myanmar looks at rural debt, and how its emergence through entry into marketised agriculture can result in distress sales of land (Kloeppinger-Todd and Sandar 2013). Marginalisation from access to land can also impact food security for smallholder farmers, where the emergence of cash cropping takes precedence over production for local consumption (Land Core Group 2010; Rammohan and Pritchard 2014). A further impact is cultural, particularly considering that the capitalisation of land frequently ignores other important meanings to its users. By isolating access, the very cultural identity of users can be threatened where land operates as a key identifier.

As well as the direct impacts of marginalisation, there are several intersecting ways in which marginalisation of the poor, ethnic minorities and women tie in with other themes. For example, a variety of environmental issues can be tied into marginalisation from land (see also the chapter “Environment and conservation”). Conservation is often prioritised against the needs of those living in forest areas, without considering that there could be programs that are mutually beneficial to both. Indeed, ethnic minorities have been singled out as the cause of forest destruction, such as through the derogatory terming of “slash-and-burn” practices (Ayuttacorn 2019; Ganjanapan 1998; Hares 2009). However, such groups may equally be the victims of the degradation of land, water and forest resources, for which they are not necessarily responsible (Neef et al. 2006). In Vietnam, the devolution of forestland allocation carries a risk of leaving out the poorest of local communities due to the

monopolising influence of local power dynamics (Sikor and Nguyen 2007).

Another intersecting issue involves migration, which may contribute to, or result from marginalisation processes (see also the chapter “Migration and labour”). In Cambodia, migration into or between rural areas is threatening the customary lands of local, particularly indigenous, land users (Ironside 2003). In Vietnam, migration into the Central Highlands for coffee production has pushed local ethnic minorities further into forest margins, with a resulting threat of deforestation (Meyfroidt et al. 2013). There are also examples of forced migration, such as through long periods of conflict in Myanmar. Indeed, any lasting peace agreement in this country must address the case of IDPs (Internally Displaced Peoples) and other refugees who have fled their land.

While much literature focuses on the emergence of marginalising dynamics in land relations through the Mekong region, there are also examples of attempts to counter such forces. Frequently this involves community participation in a project, such as in participatory land use planning. Archer (2012) looks at a participatory urban slum upgrading project in Bangkok, which provides improved tenure security, albeit with fears of a debt burden for residents who are involved. Huy (2006) explores pro-poor provisions in Vietnam for community forest management, where the challenges reside in limited capacity to implement plans rather than in any deliberate means to exclude the poor.



Figure 27: An image of exclusion from land. Fences around a concession area at Ka Nat Thum village, Ratanakiri province, Cambodia, leave land inaccessible for local villagers without prior consultation (photo credit: LICADHO in Bues 2011)

Finally, as a conceptual framing device for processes of marginalisation, the 2011 book “Powers of Exclusion” by Derek Hall, Philip Hirsch and Tania Murray Li examines the processes by which land relations are being transformed in Southeast Asia, and who is being excluded from access to land rights. Four “powers of exclusion” are observed, namely regulation, the market, force and legitimation. This analysis can be used to highlight impacts at community level, as well as national developmental trends. Significantly, the double-edged sword of exclusion can be noted. On the one hand, an ability to bound your land and exclude others can produce security for the owner or user. On the other hand, this process can isolate or shut out individuals or communities with the potential to devastate their livelihoods.

KEY ACTORS AND INTERESTS

State

The State plays a vital role when providing national land-related legislation that may be either pro-actively inclusive to all user groups or have the potential to marginalise some by favouring the interests of others. With the instigation of neoliberal economic policies around the region over the last 20 years, there is a fear that the latter scenario prevails by favouring the private sector and elites over local land users. In Myanmar, the Transnational Institute highlights bias in the draft National Land Use Policy (NLUP) that could marginalise smallholder farmers and customary land use rights (TNI 2014). The 2018 revision of the Vacant, Fallow and Virgin Lands Management (VFV) Law and 2020 revision of the Farmland Law have been criticised for potentially criminalising anyone cultivating land without the necessary user certificate, with vague references to customary land tenure insufficient to protect those farming under local rules. The challenge is for State actors to develop policy frames that can attract investment with the inclusion of existing user groups who are in a position to give consent to ventures and share in the benefits.

Civil Society

Perceived marginalisation can lead to strong responses by civil society. Despite the threat of a State crackdown in Vietnam, protests do occur, most recently and publicly in the Dong Tam dispute

where a land seizure for a military-owned telecommunications company led to a deadly clash between villagers and police. Marginalised community groups often see no other means but to take up forms of resistance, be they overt or subtle forms of disruption (see also the chapter “Dispute resolution and access to justice”). For example, an ethnic minority Khmu community in northern Laos has employed various forms of resistance against a Chinese-owned rubber concession using sabotage, refusal to work at the rubber plantation, and complaints through legal and State institutions (McAllister 2015b). Civil society groups often adopt innovative means in their responses to marginalisation processes, using international networks to highlight their plight. Groups such as AIPP (Asia Indigenous Peoples Pact) and IMPECT (Inter Mountain Peoples Education and Culture in Thailand Association) have been instrumental in bringing together community alliances. The response to processes of marginalisation can also have an important impact upon the very identity of affected groups. There has been a reassertion of Kuy identity (the largest indigenous group in Cambodia), taking an active role to promote a cultural heritage and defend land rights (Swift 2013). Migrant Dara-ang women in northern Thailand are changing practices (in this case to organic farming and off-farm activities) in order to legitimise their economic activities and distance themselves from connection to forest encroachment (Ayuttacorn 2019).

Inter-Governmental Organisations

The role of IGOs in relation to local land users and the poor has shifted over time. By intention, the marketisation of land was hoped to carry positive outcomes in providing a source of revenue. However, there has been criticism of government aid agencies and inter-governmental institutions that place markets above rights in the desire to capitalise land, not fully incorporating secure access to, and use of land for poor communities (Hutchison 2008). In the last ten years, this discussion has become more nuanced, with project literature and international guidelines carrying a specified focus on the rights for local land users, whether through formalised titling or the recognition of customary rights. In an attempt to encourage market development, but without marginalisation, many international donors are promoting initiatives such as responsible investment.

Private Sector

Domestic and foreign private investors seek out land for capital-generating ventures, and there are numerous reports of cases where State agencies have taken advantage of the insecure or unrecognised tenure of local land users to give that land to private corporations or well-connected individuals (examples can be found in Kenney-Lazar and Mark 2021; Po and Heng 2019). Many cases underline the explicit support of State and international actors in the provision of this land, and even where compensation and/or relocation is given due attention, they nevertheless result in further marginalisation, with dispossessed groups shut out of benefits that are derived from the added value in the land development (for the example of the Laos-China railway project see Suhardiman et al. 2021).

KEY CONTESTATIONS AND DEBATES

Land titling programs have been criticised for potentially marginalising women, but in some cases (e.g., Laos) there are more women's names on title deeds than men's. Nevertheless, there are often discrepancies between customary practice and official registration with regard to gender. For example, many customary inheritance practices in Thailand focus on matrilineal structures of kinship (Ingalls et al. 2018). This is lost in a theoretically gender-blind formal titling program. Further, there is a risk that land ownership becomes monopolised by men who predominantly take the role of head of household. This latter issue is particularly felt in Vietnam, where women continue to be marginalised in formal household-held land use registration certificates (Menon et al. 2013). There is thus considerable debate over the gender implications of land formalisation.

There are other social groups who may become marginalised through titling programs. For example, the Cambodia Development Resource Institute (2007) has highlighted a need to incorporate concerted pro-poor policies into such schemes. Yet debate remains as to the effectiveness of formalising land ownership and use. The most famous proponent of formalisation is the Peruvian economist Hernan De Soto. He proposed that formalising land activates the one capital possessed by the rural poor, namely land as natural capital, thereby allowing the possibility of participation in

markets and improving their socio-economic status (de Soto 2000). Hirsch (2011) highlights how titling campaigns promote smallholder security. Yet he also presents examples supporting the counterargument that formalisation may in fact weaken security and exacerbate inequalities. It is also possible that the enforcement of land categories can be used to delegitimise local claims. Over the last 20 years, concessions have been allocated by State governments around the region, dispossessing local users since their presence on land is not recognised under statutory law. Ferguson (2014) observes that land grabs in Myanmar have been facilitated first by the formal classification of wasteland, later adapted to the category of Vacant, Fallow and Virgin Land.

Ethnic minorities suffer disproportionate insecurity in land tenure, but the reasons for such insecurity are embedded in wider societal discrimination, the status of lands, and land use practices commonly associated with minorities. As well as increased economic risks, Guttal (2006) argues that such processes of marginalisation ignore the inherent socio-cultural status of land, a historical memory for people. Taking this away threatens the very identity of such groups.

The nuances involved in how marginalisation occurs, and who is affected, are complex. As a result, simplified representations of marginalisation based on ethnicity, gender, or socio-economic status are thus subject to challenge.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

In general terms, cases of marginalisation throughout the region carry common features. Although national legal and policy systems may vary, women, ethnic minorities, and the poorest of society frequently suffer similar struggles. In the case of land, they fail to have their rights recognised, or lose access altogether. An epoch of neoliberal economics has exacerbated rather than alleviated inequalities in the Mekong region. One contrast is in the use of the term "indigenous" (Baird 2013). While this term is relatively unused in Thailand and Laos, Cambodia has set up legislation engaging land rights for indigenous peoples. Sub-decree 83 from 2009 allows registered indigenous communities eligibility for

communal land titles, even though practical application of the regulation has proved cumbersome (Milne 2013). There are also contrasts between large-scale land grabbing in Myanmar, Laos and Cambodia, and quieter yet no less significant drivers of inequality in access to land for smallholders in Thailand (Hirsch 2019).

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALES

In the same way that marginalisation acts as a cross-cutting issue to other key themes, so it links to a variety of cross-border issues. For example, marginalisation also results in the cross-border movement of people, who have been dispossessed from their land, who suffer from the impacts of environmental degradation, or are fleeing wider conflicts in their country of origin. Processes of marginalisation are often connected to cross-border investment that supplants local claims to land use control and use. The Thai company Mitr Phol, among others, has been instrumental in taking concessions in Cambodia for the purpose of sugar cane produc-

tion, leading to the dispossession of local communities from their land (EC and IDI 2013; Sherchan 2015). However, the reactions to this initial cross-border interaction have shown similar features. A cross-border network of communities, NGOs and CSOs have brought the case to the attention of sugar retailers in Europe, using their collective reach and strength. In 2020 a lawsuit was heard in Thai courts, the first time a case was brought by non-Thai plaintiffs against a Thai company for actions outside the country.

With an increasing complexity of scales involved in the processes leading to, and impacts of marginalisation, responses are frequently taking account of a regional perspective. The FAO has developed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security as a framework that can be applied at a multi-country level (FAO 2012b). The Mekong Region Land Governance project intervenes on topics such as customary tenure and responsible agricultural investment. It takes the donor perspective that these are regional issues and cannot be addressed solely at the national level.

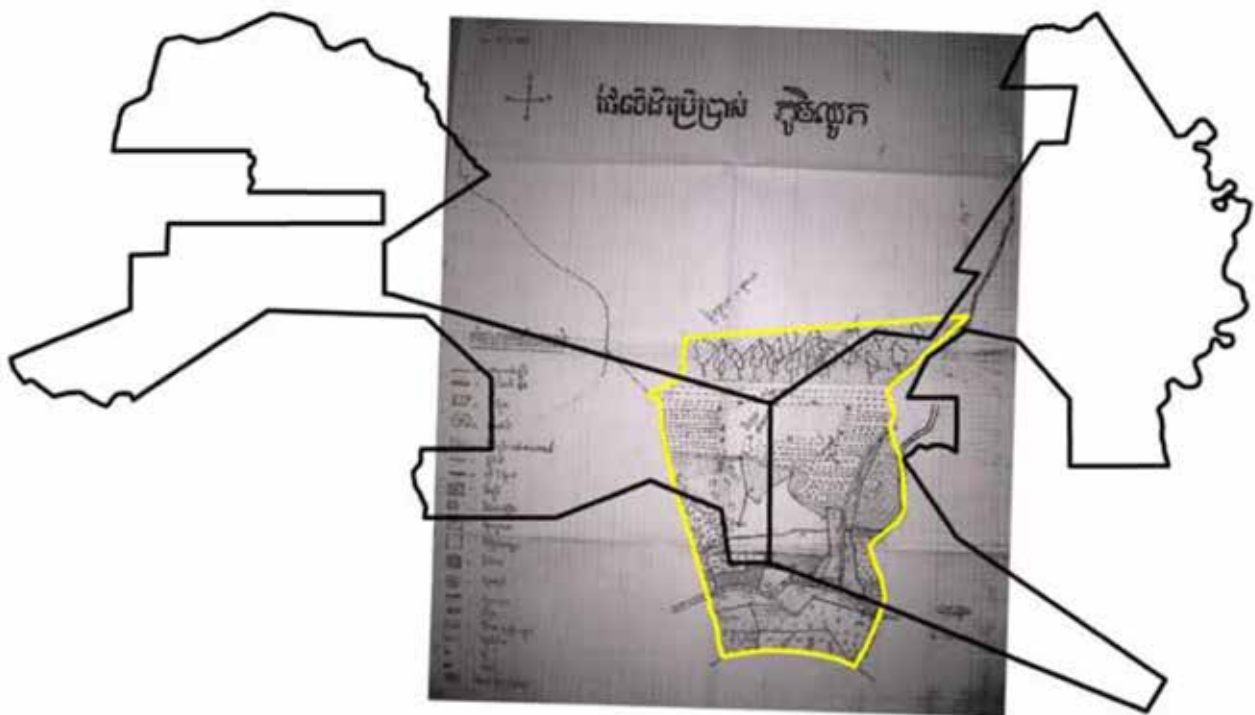
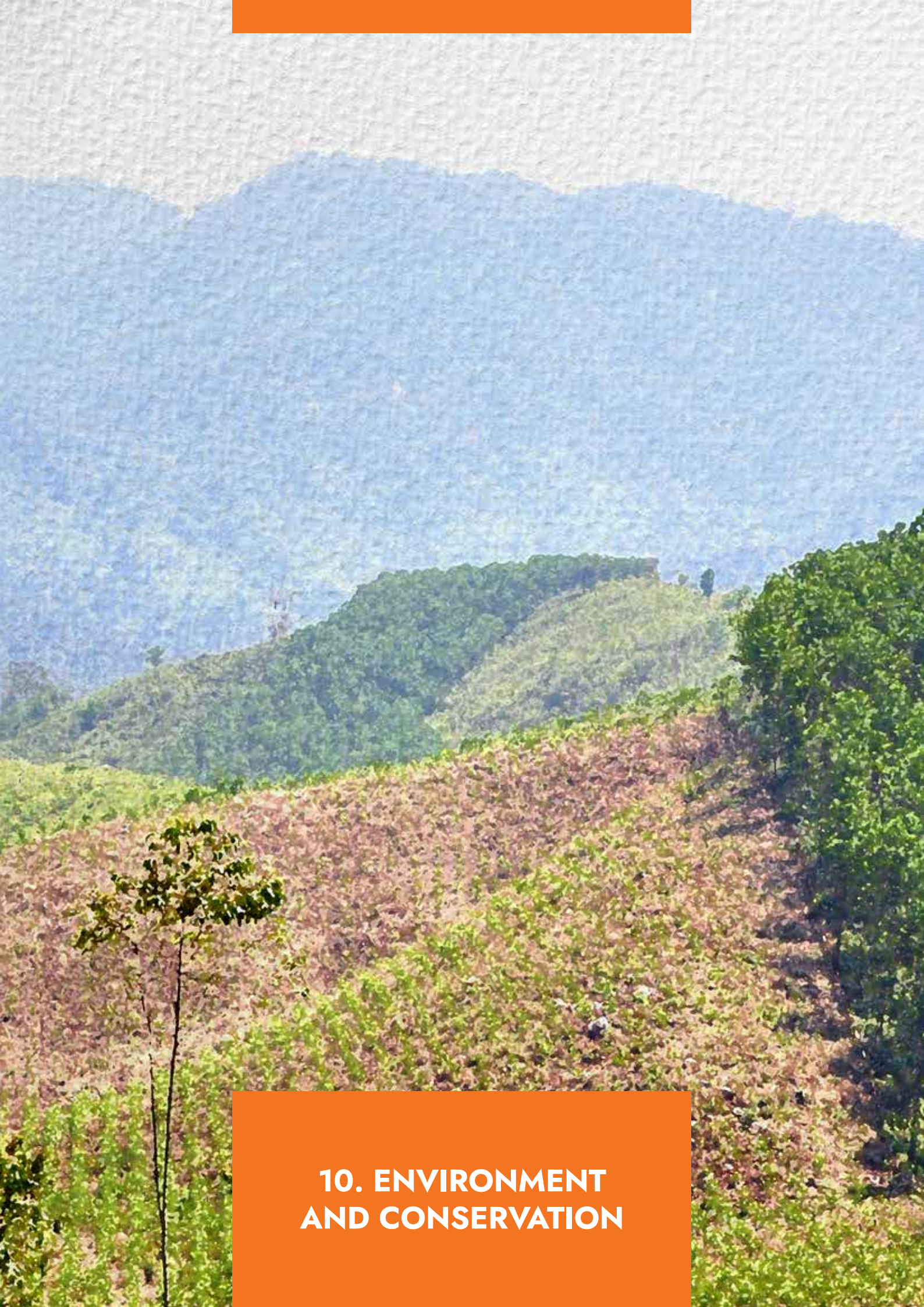


Figure 28: Participatory Land Use Planning (PLUP) map overlaid with Koh Kong concession boundaries for industrial sugar production, Cambodia (photo credit: Equitable Cambodia and Inclusive Development International in EC and IDI 2013)

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Recognition of ethnic minority land-based live-lihood practices in establishing tenure rights based on existing land use
- Support for indigenous and other ethnic minority claims to land and farming practices thereon
- Application of Free, Prior and Informed Consent (FPIC) for ethnic minorities for investment projects potentially engaging their land
- Appraisal of investment projects with specific reference to impacts on land tenure security for women and ethnic minorities
- Shared benefits for land users with investors, including return of land in a sound condition on the conclusion of leases
- Legal support for contract farming laying out the conditions for responsible investment and sustainable land use
- Legal recognition of women's tenure over house-hold land
- Inclusion of women in relevant public meetings and decisions affecting land use and tenure
- Access to services, including land tenure security, for the urban poor



10. ENVIRONMENT AND CONSERVATION

OVERVIEW

Land governance has become attached to environmental agendas in a number of ways. The best recognised of these is the cordoning off of forest land for conservation in national parks and other protected areas. In many parts of the Mekong region, this has become an issue where conservation zones have been declared in areas previously settled, criminalising the largely ethnic minority farmers who find themselves living in such areas. More recently, “green grabbing” has become an issue as environmentally inspired programs such as REDD+ assign recoverable value in forest carbon and hence give new incentives to acquire rights to forest land that is part of the livelihood domain of smallholders. Other environment-related issues include the pressures placed on lowlands - especially delta areas - by climate change, the damage done to soils by industrial agriculture, and the environmental externalities of modern practices that have an impact on nearby smallholders.

KEY TRENDS AND DYNAMICS

Environmental protections in the Mekong region are frequently threatened by commodity markets. Most directly, an interest in timber products can lead to illegal deforestation, such as in the multi-million dollar smuggling industry in luxury rosewood to China (EIA 2014; Global Witness 2015b; Singh 2013), and wood from around Indochina that is processed in Vietnam to feed demand for cheap furniture in Europe and the US (EIA 2011; EIA and Telepak 2008). Commodification and associated crop booms place more indirect pressure on forests, such as in the expansion of rubber in the 2000s due to high prices, and the rise of tissue-culture banana in northern Myanmar since 2015 (Hayward et al. 2020). For example, in Laos an estimated 14.43 percent of natural forest was converted to plantation forest between 2010 and 2017 (Wang et al. 2019). In Cambodia, nearly half of the concessions given out from 2000 to 2012 were forested in 2000 (Davis et al. 2015). Concession areas have contributed over 30% of deforestation between 2000 and 2019 (Hayward and Diepart 2021), while some ELCs encroach into protected forest areas and wildlife sanctuaries (ADHOC 2014). In Thailand, Zheng et al. (2018) identify forest loss in the northern province of Nan due to increases in maize production.



Figure 29: Deforestation in Tumring, Kampong Thom province, Cambodia. Timber extraction is followed by the establishment of rubber (background) and maize (foreground) (photo credit: Jean-Christophe Diepart)

There are other knock-on effects from timber extraction. The combination of deforestation and intensified agriculture, particularly mono-cropping, contributes to soil and landscape degradation (Lestrelin 2010). The shift to industrialised farming stresses freshwater ecosystems, threatening their ability to provide for agriculture and food security (Johnston et al. 2010; Thomas et al. 2012). A further link ties deforestation with concerns over the impacts of climate change. In particular, the increasing frequency and severity of the impact natural disasters are having on farmer strategies. An example is found in the aftermath of the 2011 floods in Thailand, and the resulting shift in crop choices (Panichvejsunti et al. 2018). Environmental disasters can also create new precarities in land tenure. Following the 2004 tsunami, there has been significant dispossession of land for indigenous communities in the south of Thailand (Neef et al. 2018).

The industrialised use of water in the region is having a profound impact on supported ecosystems, including on communities living in proximity to water sources or courses. Nowhere is this more apparent than in the plight of the Mekong, no longer free-flowing, but a human-managed river due to the extensive number of hydropower projects interrupting its route from China to Vietnam, with plans afoot for numerous others. Each venture has considerable environmental costs, both individually and cumulatively, with communities forcibly displaced to make way for new dams. A further threat to water provision sees large-scale infrastructure projects on wetlands surrounding cities that provide a vital filtering service to wastewater. Contentious examples are the construction of Suvarnabhumi International Airport on the Cobra Swamp on the outskirts of Bangkok, and projects on That Luang Marsh in Vientiane. Meanwhile, several lakes in and around Phnom Penh have been filled in to create land for commercial developments. In the context of urbanisation processes, a lack of coordinated land use planning is creating a platform for precarity in relation to environmental disasters. Beringer and Kaewsuk (2018) show how infrastructure development is increasing the risk of flooding in Khon Kaen city, northern Thailand.

Climate-change mitigation policies in Myanmar, combined with resource investment through concessions and other large-scale land acquisitions, are creating overlapping disputes on land. In Myanmar, this exacerbated rather than alleviated

tensions within the peace process that emerged after the transition to civilian rule in 2011 (Woods 2015c). Work and Thuon (2017) note how in Prey Lang, Cambodia, industrial tree plantations qualify as forest restoration, and local communities are unable to access areas of land around ELCs that have been mapped as protection zones. A key strategy to identify and address drivers of deforestation and degradation, and incorporate them into climate change mitigation, has been the UN-backed REDD (Reducing Emissions from Deforestation and Forest Degradation) program in its various iterations (Broadhead and Izquierdo 2010). There are concerns that REDD projects are re-centralising forest management as opposed to promoting decentralised governance that can more easily strengthen local resource tenure security (Baird 2014b). Claims on forest carbon are reorienting power relations and property rights in forest areas, potentially creating new fields for dispute (Mahanty et al. 2013). Such programs are also seen to justify and help to promote commercial farming. For example, the promotion of rubber plantations by the Vietnamese government is aligned with REDD+ and Forest Law Enforcement, Governance, and Trade (FLEGT) programs (To Xuan Phuc and Tran Huu Nghi 2014b). However, Work (2015) shows how REDD carbon-capture programs in Cambodia are being restricted due to a monopoly on the timber trade by domestic elites.

Rather than compound tenure issues, there is evidence that for REDD schemes to be successful, they first need to directly address potential areas of dispute, otherwise deforestation may continue. Bourgoin and Castella (2011) provide an example of such a process in the use of participatory land use planning as part of a REDD project in northern Laos. Approaching the topic from a different angle, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) recognise that strong support for the tenure of vulnerable and marginalised people can also help to protect them from the impacts of climate change, including climate-induced displacement (FAO 2012b).

Both environmental degradation and projects to mitigate against it can have a significant impact on the livelihoods of communities living in proximity to areas such as forests or water courses. Ratner (2011) highlights the need to prioritise community-based management in forestry and

fisheries against public and private sector investment. He suggests that policies supporting access to common-pool resources will help in their sustainable management. Community freshwater fisheries in Cambodia have been highlighted as being under threat from commercial use, to the further detriment of fish stocks (Diepart et al. 2015; Sneddon 2007). A number of commentators make explicit links between climate change projects and forest plantations as drivers of the global land grab (Fairhead et al. 2012; Hunsberger et al. 2015, 2017; Zoomers 2010). Yet so-called green grabbing does not merely concern forests, as seen in the example of ocean-grabbing in northern Tanintharyi, Myanmar, for access to fish stocks and offshore gas (Barbesgaard 2018).

One area of governance linking local tenure rights and environmental needs is that of Community Forestry. In Vietnam, the implementation of the Law on Forest Protection and Development in 2004 increased the potential scope for community-based projects (Huy 2006). Sikor and Tan (2011) contend that Community Forestry can contribute to sustainable forest management, poverty reduction, grassroots democracy, and the preservation of local cultures. Yet there are other ways of involving community members in natural resource management regimes. Fischman (2012) assesses conflict over land and forest access and use in Doi Mae Salong, northern Thailand, between local communities representing different ethnic groups, the army, and agricultural and forest departments. A Payment for Ecosystem Services (PES) scheme is put forward as a solution, which could allow shared management of natural resources, and include land tenure security for participating communities.

KEY ACTORS AND INTERESTS

State agencies

There are different types of State policies that engage both land and other aspects of the environment. On the one hand, land-related policy can have an impact on the environment. For example, the formation of Special Economic Zones around the region can result in the dilution of legal protections for the environment. This is seen in the cases of SEZs and the Eastern Economic Corridor (EEC) in Thailand (ICJ 2020). In Laos, policies encourage the conversion of degraded forest to agricultural



Figure 30: Villagers get help from Buddhist monks to ordain a State forest to become a village-based community forest, Thailand (photo credit: Kirsten Ewers Andersen in Andersen 2011)

and plantation concessions that might give some support to rural livelihoods (Van der Meer Simo et al. 2019). However, the policies frequently underestimate the “environmental income” that could be derived from such areas without having to resort to conversion.

On the other hand, environmental policy can have significant impacts on land relations. In Vietnam, wetland policy within Kien Giang Biosphere Reserve places significant attention on the involvement of local communities, allowing them to maintain access to areas in the reserve and derive sustainable sources of food and income (Hoang Huu Nguyen et al. 2017). In a less positive way, recent policy in Thailand has tightened up on community access to forest areas. This includes reclamation policy under the 2014 junta and the 2019 National Parks Act, potentially prohibiting community access to certain protected areas, and allowing authorities the ability to impose harsh punitive measures where the new rules are violated.

State responses to environmental issues are not consistent, and there is frequent and ongoing competition between different ministries and departments. Conflict takes place through differing aims in the utilisation of land, such as for agriculture or industrial development as opposed to protectionist aims in forest conservation. Broegaard et al. (2017) expose competing agendas in relation to land use and rights in Laos. On the one side is an aim to provide tenure security, intensifying agricultural production while protecting forest areas. On the other side are policies that promote agribusiness and look to change land use and access practices. A further study from the Huaphan province in the north-east of the country specifies competition between land use for maize cultivation to supply the Vietnamese market, and government provisions to implement REDD+ (Vongvisouk et al. 2016). Yet forest programs can also be seen to justify and help to promote commercial farming. For example, the promotion of rubber plantations by the Vietnamese government is seen to align with REDD+ and Forest Law Enforcement, Governance, and Trade (FLEGT) programs (To Xuan Phuc and Tran Huu Nghi 2014b).

Civil Society

Environmental degradation and the consumption of resources is frequently associated with those living in and close to rich and biodiverse areas. Many land-related projects seek to limit this impact, ideally looking at sustainable production practices that can provide market opportunities for the community, and also contribute to local resource management including forest protection. An example links sustainable bamboo forestry management to communal land titles in Vientiane Prefecture, Laos (IFAD 2013). There have been different generations of such projects, labelled as community-based resource management, Payment for Ecosystem Services (PES), and Community Forestry, the latter promoted by regional non-governmental forestry organisations such as the Center for People and Forests (RECOFTC) and the Centre for International Forestry Research (CIFOR).

There are many ways in which different civil society groups network in order to promote their efforts. Roberts (2016) highlights how local community networks with NGOs and local officials can bolster efforts by marginalised groups (in this case, the Black Lahu in Chiang Rai province, northern Thailand) to resist central State attempts to impose forestry regulation or enforce eviction from forest

areas. However, there are also disputes between different groups of civil society. A rising urban-based middle class frequently takes on environmental causes, questioning the practices of rural and forest dwellers against conservation needs.

Inter-governmental Organisations (IGOs)

There are many international mandates, actively promoted by IGOs, that link environmental causes with equitable land rights. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) recognise that strong support for the tenure of vulnerable and marginalised people can help to protect them from the impacts of climate change, including any need for climate-induced displacement (FAO 2012b). They propose that secure tenure can be placed together with sustainable land use, looking for an inclusive space for both social and environmental needs. The Food and Agriculture Organisation of the United Nations (FAO) continues to use the VGGT to frame its work in countries around the globe, including those in Southeast Asia.

A more recent mandate is the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN General Assembly 2018). In calling to strengthen the rights of rural people, the declaration affirms the concurrent need to fight against climate change and to conserve biodiversity, in order to protect smallholder farming.

KEY CONTESTATIONS AND DEBATES

There are different ways to look at the relationship between poverty and the environment, such as in how poverty has a bearing upon the environment or whether the environment (and its degradation) influences poverty. Tong and Sry (2011) study the latter, namely the impact of floods, drought and land erosion on poverty in Cambodia. They note unexpected benefits in the case of flooding due to improvements in the wealth of biodiversity to support communities. Much recent research takes a more nuanced view of this debate, noting a more complex interrelation between poverty and the environment. One report suggests that REDD in Cambodia has an important role in trying to achieve a balance between community and conservation needs (Biddulph 2012). By doing so, it can address

poverty alleviation for local communities, with related projects able to supply land tenure options through the provision of agricultural plots in forests. Trædal and Vedeld (2018) challenge the dichotomy between forests and agriculture, instead promoting the notion that conservation and livelihood activities, within a context of the sustainable use of forests, can be beneficial for all. This is particularly relevant for the poorer segments of communities.

However, there are critiques of payment for environmental services projects. These are in part based on the institutional and property rights challenges in implementing them, and in part on their neoliberal basis that marketises “nature” and other values that have previously been off-limits to commercial reasoning. This fits into a perspective where governments continue to employ protected area demarcation as means of territorial and resource control (Ganjanapan 1998), retaining power over the permission for large-scale commercial activities to operate within such areas. Indeed, the near-universal under-regulation and under-enforcement of environmentally damaging practices by industrial agriculture in the Mekong region receives much media attention, but with little government reaction to date. Milne (2015) notes how illicit logging in Cambodia goes unaccounted for due to the endgame of attracting finance for Chinese-backed hydropower, and Vietnamese-backed rubber concessions. National policy has long promoted investment, thereby disincentivising protective measures for the environment, particularly for forests (Yasmi et al. 2010). In this sense, it is no surprise that Environmental Impact Assessments, when setting up projects, are ineffective. Peluso and Vandergeest go on to question the assumption that forests should be put into the hands of State authorities, using the notion of “protection”, and thereby taken away from local people (Peluso and Vandergeest 2001).

Debate over the continued settlement, resource extraction and farming in protected areas continues to pit different civil society groups against one another, depending on their orientation toward livelihoods or more “dark green” objectives. Conflict is exacerbated by the sense of ambiguity in overlapping rights. For example, when setting out boundaries for protected areas, Thai authorities failed to account for large numbers of people already residing within such areas, leading to continuing disputes to this day on access rights and land use for cultivation (Fujita 2003; Sato 2000). A

key argument in this debate is that forest-dwelling communities contribute to environmental destruction through the agricultural practices of rotational farming, most clearly seen in its framing as “slash-and-burn”, or in the identification of such groups as forest destroyers. Ethnic minorities in the northern highlands of Thailand have been vilified for encroachment into protected areas, deforestation and opium production by a growing environmental lobby (Ayuttacorn 2019; Hares 2009). In a similar way, government policy in Laos has been geared to eradicating slash-and-burn techniques (Ducourtieux et al. 2005).

An opposing view postulates that environmental destruction occurs from the commercialisation of farming around mono-cropping, or deforestation for commercial land use, rather than via rotational farming by ethnic groups (Guttal 2011). For example, swidden agriculture practices in Laos have decreased since 2010, and so are disproportionately held accountable for environmental degradation (Ornetsmüller et al. 2016). The Kachin Development Networking Group (KDNG 2010) show how cassava, sugar and jatropha plantations have undermined the Hukawng Valley Tiger Reserve in northern Myanmar. Even where deforestation is associated with shifting cultivation, the impact can be traced back to commercial agricultural practices. For example, in the Central Highlands of Vietnam deforestation has indirectly resulted from the expansion of coffee production and other mono-cropping activities, which have pushed ethnic minorities further into the forest margins in search of sufficient land to practice shifting cultivation (Meyfroidt et al. 2013).

Various reports highlight positive outcomes from shifting cultivation compared with industrial agriculture. For example, Fox et al. (2011) suggest that it can be carbon neutral under certain conditions. They argue that for projects relating to climate change, rather than focus on enforcing forest boundaries, much can be achieved by looking closer at land use with an emphasis on both sustainable livelihoods and environmental services, including carbon release. Local knowledge is frequently promoted not only to support the citizenship and land use rights of ethnic minorities around the region, but also to encourage the inclusion of communities in forestry management regimes and promote (agro)biodiversity in forest landscapes (Kane et al. 2017; Virapongse 2018). There is a growing body of work claiming that

community involvement in environmental projects is critical for success, and that land policies that are socially just are more likely to reinforce climate justice (Borras Jr. and Franco 2018). MRLG warns that the “70 Percent Forestland Policy” of Laos may not be successful while it fails to include communities in both the land mapping and zoning of forest and land use areas, and in forest management regimes that can provide access and sustainable use of forests (MRLG 2019).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Forest coverage in countries around the Mekong region show different trends in recent decades. Myanmar (with the largest coverage at around 29 million hectares) and Cambodia have both seen decreases in coverage over the past 20 years, primarily due to timber extraction and clearances for other land uses (Ingalls et al. 2018). In Myanmar, exploitation was particularly high during the 2000s before a transition towards a quasi-democratic process, in particular feeding a demand for timber products. The transition offered hope to conservationists (Cosier et al. 2017), yet a legacy of exploitative crony capitalism has been detrimental to both forests and local communities living around forest areas.

Thailand has stabilised its forest area at around 32 percent of national coverage, influenced by an earlier period of agricultural expansion than other countries, and a logging ban from 1989. There have been various schemes in Thailand both for reforestation and to offer leasehold rights for land use on forest reserve land (Hirsch 1990). There was a failure to enact a Community Forestry law in the mid-2000s (Fisher 2011), while new legislation in 2019 threatens to criminalise the continued presence of forest dwellers.

Over the past two decades, both Vietnam and Laos have shown an expansion in their forest coverage. The case of Vietnam suggests that it is at the end of a forest transition curve, in that rapid deforestation is now reduced, and regrowth is possible (Pham Thu Thuy et al. 2012). There is an established Forest Land Allocation (FLA) policy, attempting to regulate protectionary measures and place consideration on community access (To Xuan Phuc and Tran Huu Nghi 2014a). In 2010, Vietnam introduced a Payment for Ecosystem Services (PES) scheme, even if subsequent evidence points to the maintenance of strict State control over forest areas rather than an equitable relationship with civil society for access to, and management of forest areas (Phuc To and Dressler 2019). In Laos, forest cover remains at over 70 percent of total national land area according to FAO figures. However, due to differences in how forests are defined, this figure differs significantly from official government figures, set at nearly 45 percent (Ingalls et al. 2018).



Figure 31: New acacia plantation (left of photo) as part of a production forest, next to an older pine forest (right of photo) as part of a protection forest in Thua Thien Hue province, Vietnam (photo credit: Tran Huu Nghi in To Xuan Phuc & Tran Huu Nghi 2014a)



Figure 32. Plantation development – the new “industrial slash-and-burn” for climate change mitigation? This picture shows part of a 34,007 hectare reforestation site in Prey Lang forest, Cambodia. The burned wood in the front of the picture shows evidence of the company’s prior vegetation burning to clear the area, after removal of market-bound timber. The many sticks with the white pieces of plastic indicate where new acacia species seedlings for the large-scale plantation have been planted. The remaining dense primary and secondary forest, which is increasingly lost for the establishment of the plantation, can be seen at the very horizon of the picture (photo credit: Arnim Scheidel and Courtney Work in Scheidel and Work 2016)

When compiling data on forest cover, the figures commonly include tree plantations, such as mono-cropping in rubber and oil palm. It is disputed whether such data should be included, with plantations of this kind not supporting the rich biodiverse ecosystems commonly associated with primary non-industrial forests. In Cambodia, tree plantations have been set up in the name of sustainable forestry and climate programs, cloaking a corporate land grab that is leading to the destruction of primary and secondary forest (Scheidel and Work 2016).

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALES

Regional trade and investment are key factors in the exploitation of natural resources, often superseding national conservation policies. For example, long-standing relations between Kachin State in northern Myanmar, and Yunnan province in China have encouraged the movement of resources across the border, most recently timber, jade, and the setting up of rubber plantations. The latter case highlights how acquisition of land for cross-border land investment incurs large-scale changes to the landscape. As well as the resulting change and loss of biodiversity, industrialised agricultural processes can have profound environmental effects. The use of chemical inputs that enter water sources threatens

the health of humans, livestock, and wider biodiversity. Land clearances or seasonal preparation for new crops may involve a burning process, which contributes to issues of haze that also crosses national borders. The exploitation of rivers, such as the Mekong, can affect downstream ecosystems and resource provisions with no consideration for national borders.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Co-management arrangements that recognise sustainable agricultural practices within protected areas
- Benefit-sharing through payment for environmental services
- Progressive tenure reforms to ensure that returns to REDD+ go to the rural poor rather than wealthy investors or State officials
- Adaptation programs in areas vulnerable to sea level rise and other climate change impacts
- Setting and enforcement of environmental legislation to control agricultural practices with environmental externalities for surrounding farms
- Promotion of the principles of Responsible Agricultural Investment that call for environmental protections alongside inclusive sharing of benefits from agribusiness ventures



11. MIGRATION AND LABOUR

OVERVIEW

Land governance in the Mekong region operates in a context of rapid agrarian and demographic change. Migration has long been a key issue in land acquisition and governance in the region, but it has switched substantially - though not entirely - away from a mainly frontier-oriented movement of people in search of new agricultural land toward urban-destined movement in search of non-agricultural work opportunities. There is now a major cross-border movement of labour from rural parts of the region, largely - but not exclusively - to Thailand. In most parts of the Mekong region the rural population continues to grow in absolute terms, even as it declines on a relative basis, but more slowly and with less exclusive employment in farming. Land pressures, dispossession and the growth of a rural-derived proletariat raise questions regarding the number and quality of jobs available, both in the cities and on land given over to industrial agriculture, plantations and other uses.

KEY TRENDS AND DYNAMICS

To consider links between migration and land tenure (in)security requires a multi-sited and multi-dimensional approach. As economies in the Mekong region deepen their level of marketisation, facilitated by improved communication and transport links, a traditionally agrarian population has been placed in greater proximity to regional processes of urbanisation and the forces of a globalising trade system (Markussen et al. 2013; Scheidel et al. 2014; UNCDF 2010). At the household level, this shift has witnessed a diversification of employment strategies, frequently operating at multiple locations. The entry into a wage economy encourages non-farm activities, which bring a higher and more regular income than farming alone (Mao et al. 2008; Nguyen Thi Dien et al. 2011).

Land is integral to the process of commodification and diversification arising from the entry into dynamic national and regional markets. In parallel with changes to rural livelihoods, the post-1990s return of plantation farming marks a shift from smallholding toward agribusiness (Byerlee 2014). Whether through a growing presence of non-food products, such as rubber and palm oil, or conversion for industrial and urban infrastructure, changes in land use are impacting national concerns about

food security (Hirsch et al. 2016; Scheidel et al. 2014). This can have a mixed impact on smallholders. On the one hand, land loss may occur through large-scale acquisitions; on the other hand, new plantations may provide a source of wage labour for a rural or migrant population (Byerlee 2014; Kenney-Lazar 2012). As an example of the exclusionary effect of agribusiness, Barney (2007) notes how plantation development in an area already impacted by an upstream hydropower project on the Hinboun River, Laos, has disrupted local land rights systems and displaced villages. Gorman reflects more generally on how the intensification of land use in Vietnam has created pressure in excluding access to water (Gorman 2014). Meanwhile, rising land prices can marginalise smallholders, who may not possess the means to profit from the marketisation of land (Pilgrim et al. 2012).

A common source of debate on migration motivations is framed around the question of whether people move as a result of migrant agency or structural influences. Much of the literature relating to land use change and rights speaks of the imposition of wider forces on livelihood decisions within



Figure 33. Banana farm worker in protective gear, an indicative image of industrialised agriculture (photo credit: Ko Lwin in Hayward et al. 2020)

migrant families. At its most severe, conflict can cause internal or regional displacements, such as for one quarter of the Lao population during the Second Indochina War, 1964-73 (Hirsch and Scurrah 2015a). Human trafficking takes advantage of vulnerabilities to attract or force migrants into the sex trade or fishing industry (Chantavanich et al. 2013). Increasingly severe climate-related events are likely to be a strong factor in the future, both for rural smallholders and urban dwellers. Meanwhile, population dynamics themselves may instigate migrant decisions, such as demographic growth in Cambodia leading to movements not only to urban centres but also between rural areas (Diepart 2015).

Much of the present “land-grabbing” narrative encompasses a capture of land that results in the displacement of incumbent populations. Whether through elite capture or cronyism, the monopolisation of land by the powerful and privileged has resulted in land loss, with out-migration a frequent livelihood outcome for those affected (AASYC et al. 2009; Pilgrim et al. 2012). The role of the State is prominent here. At its most influential, State policy has enforced the movement of huge population numbers within national boundaries. Collectivisation in the 1975-79 Democratic Kampuchea regime witnessed the extensive relocation of millions to collective farms (Scurrah and Hirsch 2015). The entry into global markets has seen State policy embrace population displacements, whether to support an agrarian transition to cash crops in Vietnam (Markussen et al. 2013), or to address rural poverty in the movement from Lao upland to lowland areas (Bird 2007). In the latter case, a policy supported by international agencies has not necessarily benefitted migrants due to the poor quality of new land, and an inapplicability of acquired local knowledge to its new spatial context. A growing concern now involves processes of urbanisation, where residents may be relocated to make way for new commercial, industrial or infrastructural developments (Scurrah and Hirsch 2015). This is matched by extensive land use change in peri-urban areas, such as in the development of That Luang Marsh in Vientiane (Hirsch and Scurrah 2015a).

There is also space for human agency to impose upon migratory practices. Much movement operates along undocumented lines, as migrants follow pioneers or brokers around states or across borders (CDRI 2010; World Bank et al. 2014). This often acts counter to policy (Diepart 2015), with the State wishing to control or restrict such movements.

However, migrant decisions may be informed by shifts in other fields, such as land governance. Indeed, much rural policy that encourages the modernisation and commercialisation of agricultural practices acts against smallholder needs, thereby resulting in adapted livelihood strategies compelling smallholders into non-farm urban work (Markussen et al. 2011; Scheidel et al. 2013). Insecure land rights in rural areas act as a catalyst towards this diversification (Chankrajang 2012). Meanwhile, government-regulated compensation packages often undervalue land loss and diversification needs (Nguyen Quang Phuc et al. 2014). Changing location may prove one of the only options for a civil society that is powerless against State forces.

A transformation of labour practices, including diversification and multi-local livelihoods, can have a detrimental effect on farming productivity in various ways. Some studies highlight surplus labour, or lack of skills for participation in cash crop farming (Liu 2012; Pham Van Hung et al. 2007), while others reveal labour shortages during peak-season needs (EMR and World Bank 2013; Mao et al. 2008). Such seemingly contradictory occurrences demand close contextualised scrutiny of human movements. It is true that certain migratory trends are highlighted by some studies. Research papers suggest that migrants are often young, male, moving temporarily to urban areas, and predominantly for purposes of education or employment (AIPP et al. 2015; Barney 2012; CRUMP 2012; Markussen et al. 2013; Portilla 2015; Tong et al. 2011; World Bank et al. 2014). Yet there is also much variety that should deter the analyst from oversimplification. As a counter to generalised trends, there exists an emerging body of research offering alternative narratives relating to migration practices around the region. For example, there is growing evidence for extensive rural-to-rural migration within Cambodia (Diepart 2015; Diepart et al. 2014). The former source also notes a growing number of international female migrants, taking up employment in domestic labour abroad. In terms of motivations for migrant strategies, a series of push factors can be noted beyond issues of education and employment, such as environmental pressures, conflict, or land insecurity. Understanding the decisions and strategies accompanying migration practices by necessity involves a pluralistic outlook, incorporating differing scales of time (permanent, temporary, circular, seasonal), space (internal, cross-border, regional, international), and motivation.



Figure 34: Pepper cultivation by Khmer migrants on land bought from indigenous Bunong farmers, Mondulkiri province, north-eastern Cambodia. Rural-to-rural migration from lowland to upland areas is driven by the search for agricultural land. It has contributed to the rapid expansion of cultivated land for boom crops and a corresponding retreat of the forest frontier (photo credit: Natalia Scurrah)

The COVID-19 pandemic has affected labour migrants severely. As key economic activities have slowed down or ceased, many migrants in urban centres have found themselves with reduced or no income. Large numbers have returned to their villages of origin, within but also across national borders. Of these, many have sought at least temporary livelihood relief through agriculture. This has proven challenging, as in many cases there is already a squeeze on land availability such as in Cambodia and Vietnam. In Thailand, a younger generation, who have moved to cities, lack the necessary knowledge and experience to 'return' to farming but still benefit from continued family links in their home villages. In Myanmar, displacements related to COVID-19 are compounded by conflict through the 2021 military coup. The overall situation highlights the role of secure land tenure in rural areas to cushion the blow of catastrophes such as COVID-19.

Just as the mechanics of migratory practices are broad, so the range of outcomes is both complex and hard to place into singular trends. As a diversified household strategy, the sending home of remittances draws much attention in migration literature, with disputed claims over its long-term ability to redistribute wealth and alleviate poverty. Increased pressures on access to land push many families into full or partial relocation (UNCDF 2010). The influence of migration may see cities struggling to provide the land, services and jobs necessary to support a burgeoning population, while an aging rural population lags behind. In some cases, the environment suffers a harmful impact. For example, resettlement programs, from high density areas to mountainous zones in Vietnam, have increased deforestation (Pham Thu Thuy et al. 2012). Some migrants may achieve a successful livelihood transformation. Yet the poorest may be the last to gain any benefits (Phuong Anh Bui 2009).

KEY ACTORS AND INTERESTS

The transition of **governments** in Southeast Asia to market-based economic policies has been accompanied by a plethora of policies aimed towards agrarian transformation, modernisation, and economic growth. These may not always work to the benefit of the workforce, such as in an overemphasis on rice production in Vietnam (Markussen et al. 2011). Policy considerations also extend to issues of migration. For example, the neoliberal context of Cambodian State land distribution has influenced many movements of the population (Diepart and Dupuis 2014). When it comes to migration policy itself, governments are often in a quandary. On the one hand, facilitation can contribute towards an agrarian transition, allowing for migrant labour to respond to demand in the industrial and service sectors. This can tie in either with pro-migration policies to promote labour mobility and reduce poverty, or with minimal regulation to allow informal migration to flourish. For example, the Cambodian government has a less extensive migration policy in the belief that human movements support growth in the country, geared towards a growing workforce in urban areas and the reorganisation of land into larger farms (Diepart et al. 2014). On the other hand, State actors may wish for strict controls to limit movement. This policy tension is most keenly felt in Thailand. While migrants are often essential to the construction and agricultural industries, fears about the constant flow of undocumented workers are resulting in (rather unsuccessful) attempts to closely regulate movements through a series of bilateral MoUs (Chantavanich et al. 2013).

Private sector demands for labour influence mobility strategies, whether acting as a pull into areas with emerging industries, agribusiness or urban development, or a push out of areas where extractive industries may be monopolising land use and marginalising local livelihoods (Barney 2007). The private sector will also react to mobility patterns, be it in areas of population increase, or in the emergence of brokers and companies organising these movements.

Civil society, namely participants from society as whole, has an enormous impact on migration practices through the agency of individuals, households, and community networks. This may follow or weave in between legislative lines. There is a tendency towards diversified household livelihood strategies in terms of employment modes that may also be multi-local. Labour routes in one direction may be mirrored by a pathway for remittances in the other. This becomes an important line of wealth transfer from the urban to the rural poor, even if the success of this transfer is disputed. Although migrant practitioners have traditionally been young males, gender roles are shifting as more women migrate. However, as well as instigators of migration, marginalised groups supported by civil society organisations may be strongly affected by the mobility of others. The rise of different cash crop booms around the region has seen ethnic groups in peripheral areas inundated by incomers, the result being a marginalisation of traditional agricultural practices, including restricted access to land.

KEY CONTESTATIONS AND DEBATES

While a longstanding rural development objective has been to keep people on the land, away from urban slums, current patterns of agrarian change involve substantial voluntary movement out of agriculture, leading to critiques of overly subsistence-farming-oriented agricultural support programs. There is a generational gap emerging in the region where younger household members identify opportunities in urban non-farming employment. Often with the support of their elders they are venturing away from agricultural occupations, leaving behind a vulnerable, aging farming population, an unproductive use of land, and a temptation to sell that land for short-term financial benefits. At the same time, modernist State programs to turn land into capital and farmers into wage labour are controversial and often predicated on unrealistic assumptions about the labour absorption capacity of the industrial sector. Policy aims to centralise a labour force in urban areas may not even be followed, as workers follow crop booms to peripheral rural areas (Cole et al. 2015).

Cross-border migration is a subject of ongoing debate, particularly concerning the illegal or semi-legal status of millions of workers in several Mekong countries. This debate may show concern for illegal trafficking or poor conditions for workers, support improved recognition of migrant rights, or frown upon the illegitimate status of those crossing national borders. In this and other labour concerns, debate is often ethnically charged. With the advent of the ASEAN Economic Community, the issue of freedom of movement is pertinent, although for the time being it appears that migration policy remains under the remit of national or bilateral policy. To develop effective policy is particularly problematic when it remains difficult to capture a true overview of movements. National statistics may represent permanent migrations enshrined in changes of official residence, but they often fail to acknowledge either temporary, seasonal or circular movements (Cole et al. 2015). In this sense, a qualitative approach to studies is needed to help understand migration practices and their motivations, and how these relate to agrarian transformation (Barney 2012).

A further contestation concerns the direction of migration and labour policy, and who it should benefit. The governance of migration rarely matches the needs of migrants, and can hinder the potential contribution they can make to economic, social and political development in the region (Chantavanich et al. 2013). Conversely, studies show how migrants

are often more vulnerable than other social groups, whether moving through their own agency or forcibly relocated (Kim 2011; Markussen et al. 2013). Household (such as marital) relationships may become stressed (Locke et al. 2014), with the impacts on gender relations and the increasing movement of women a particularly under-researched area. Managing migrants and harnessing the economic benefits they can bring, while supporting and protecting their rights, proves a complex puzzle for policymakers (CDRI 2010).

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

The modernist path of development has affected an agrarian transition in Mekong countries, with significant shifts of labour towards industrial and service sectors. At the household level, families are adopting a diversified livelihood strategy, involving a younger generation seeking non-farming employment. In some cases, this will be influenced by increasing land scarcity, as plots become subdivided under demographic growth (Diepart 2015). All countries in the region have seen extensive internal migration. A common factor is movement towards urban centres. These can have knock-on migratory effects. For example, as residents of north-eastern Thailand move to Bangkok seeking new employment opportunities, a labour market gap in the north-east is subsequently filled by Lao migrants crossing the border (Rungmanee 2014). There is also increasing evidence supporting rural-to-rural migration (Diepart 2015; Scurrah and Hirsch 2015). This may result from perceived land abundance in upland areas, or attraction towards new crop booms, as witnessed in Cambodia and Vietnam (Hall et al. 2011). An outcome may be exclusionary effects on access to land for existing residents, often including local ethnic minority groups (Gironde and Peeters 2015).

While there is consistent evidence of labour movements and migratory practices throughout the region, the specific historical-political contexts of particular countries have also bred variation. Some countries, such as Vietnam, have been more controlling of internal movements through strict residency policy, while others, such as Thailand and Cambodia, have perceived the benefits of greater flexibility for their citizens to contribute towards

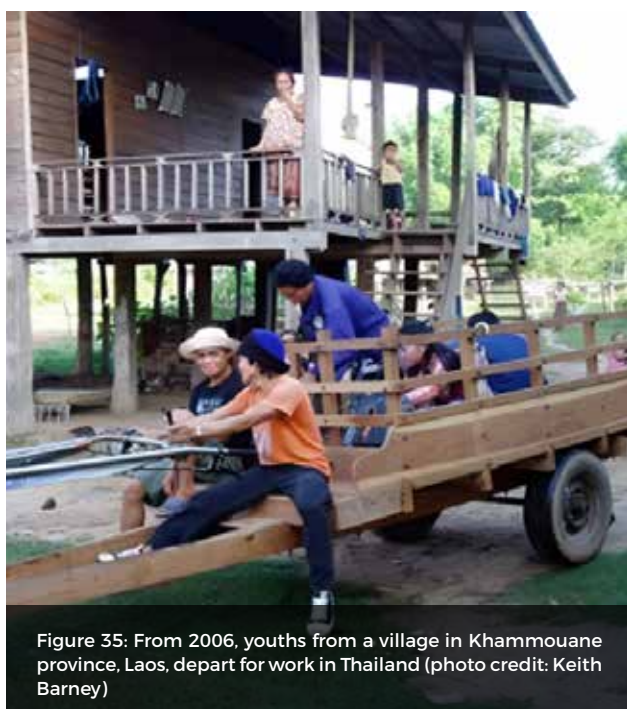


Figure 35: From 2006, youths from a village in Khammouane province, Laos, depart for work in Thailand (photo credit: Keith Barney)

national development. State-controlled movements have been prevalent in countries during periods of socialist rule, namely in Cambodia, Vietnam and Laos. Population movements in these times might follow an anti-urban approach to agricultural collectivisation. However, there have also been community relocations, such as in Laos, aiming to bring populations away from inaccessible peripheral areas, into a new role as State subjects. As Mekong lands increasingly embrace globalised market economies, labour is encouraged to occupy urban areas. In the case of Myanmar, conflict-related displacements have dominated a period of military rule (Scurrah et al. 2015), and after the country opened up after 2011, issues of land conflict emerged as populations were repatriated.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

There are multiple forms of migration stretching over variations on motivation, temporal and spatial forms, means, and characteristics of migrants. There is complexity over these different scales and so one must be careful to embrace this variety while also looking for underlying trends. Sometimes internal migration may be more common than its international counterparts, as has been the case in Vietnam (Markussen et al. 2013). Or rural-rural migration can outsize rural-urban migration, as in the case of Cambodia. Across national borders, Thailand acts as a significant regional recipient of migrants, absorbing labour from Myanmar, Laos and Cambodia (Cole et al. 2015), and offering a variety of employment options to often unskilled labour in construction and agriculture. This includes a large number of undocumented migrants across porous borders, despite attempts at State control (AASYC et al. 2009). Other Southeast Asian countries such as Brunei, Singapore and Malaysia also take in significant numbers of the regional population (Chantavanich et al. 2013), although migrant opportunities may be found across the globe, such as for many Thai workers to South Korea. Cross-border investments also impact heavily upon migration practices, as land is acquired for industrial or agri-business practices. This can result in labour both in and out of investment areas, with multiple knock-on effects including an increase in landlessness (Boutry et al. 2017).

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Policies of farm consolidation and mechanisation that follow rather than force movement of labour out of agriculture. This would accept that household agency can work to the benefit of market transitions in a country.
- Labour protection in the mainly low-paid occupations available to those forced off their land, where migrants often end up as one of the most vulnerable groups in a community
- Value-adding through commodity-chain approaches to rural development
- Employment effects assessment of new land-based investments where local populations who are affected are not given due consideration and consultation
- SME programs geared to rural employment as a means to enhance options for diversification beyond agriculture without the necessity for participants to migrate
- Agricultural models that offer smallholders the opportunity for sustainability and productivity
- Migrant support services in destination areas
- Extending the role of the ASEAN Economic Community for movement and employment rights around the region
- “Safety net” provisions for rural-urban migrants in land tenure policy formulation



12. AGRICULTURAL MODERNISATION

OVERVIEW

Modernisation is a key ideological underpinning of State development policy throughout the Mekong region, and it is also a basic rationale for regional economic integration. The drive for modernisation is particularly fervent in the post-socialist framework where lingering ideas of socialist modernity combine with a desire for “catch-up” based on a sense of missed decades of economic development. Aspirations for agricultural modernisation translate into land policy informed by key assumptions. These include the need for foreign direct investment to modernise agriculture, the advantage of large- over small-scale farming, the fact that land markets will put farms in the hands of the most efficient producers, that farmers who have less productive capability should become wage labourers, if necessary on land given over from subsistence to commercial farming, and that there is sufficient labour demand in the modern economy to provide jobs to those exiting unproductive smallholder agriculture. At the same time, some NGO programs are locked in an anti-modern mindset that is increasingly out of line with the aspirations of many rural smallholders.

KEY TRENDS AND DYNAMICS

Agricultural modernisation is often viewed through the prism of large-scale land development schemes that present promising opportunities to countries with transforming economies characterised by a significant yield gap and land availability (Deininger et al. 2011). But, in fact, the issue is wider than this. Modernisation is quite prescriptive when it comes to smallholder farmers. An international consensus has formed between international development organisations, donors and recipient countries around the idea that small- and large-scale agriculture developments are not mutually exclusive processes. The prevailing ideology is that well-regulated large-scale land investment and production offers a basis to boost investment for agricultural development, to organise production of entrepreneurial and efficient smallholder farmers and to accelerate the inevitable transition of an inefficient traditional farm economy to a modern industry- and service-based urban economy (Deininger et al. 2011; Castellonet and Diepart 2015). The paradigm has been challenged by a number of organisations and academics who have

critically addressed the assumptions of the modernisation model. The debate has become highly polarised between proponents who see agricultural modernisation as the golden pathway to increased productivity and poverty reduction, and those who exclusively focus on exclusionary and environmentally damaging land policies and practices that have emerged out of it.

The story of agricultural modernisation in the Mekong region mirrors many comparative aspects from other parts of the world. This follows a pathway from political seclusion to an outward-looking neoliberal-infused perspective that places cultivation practices into global value chains. Despite the diminishing contribution of agriculture to the GDP of regional countries, as industrial and service sectors increase, the exploitation of land for commercial crops has remained a keystone of national projects to ascend income ladders. Land tenure reform has been tied up in increasing agricultural productivity, whether to support food security or to accelerate economic growth through agribusiness. Many farmers have embraced the change to industrial crops (Cramb et al. 2017) and the promises of economic betterment. Yet in so doing, they take on new forms of risk, placing themselves at the beck and call of the market, particularly in terms of price drops. Vongvisouk and Dwyer (2016) present the example of falling rubber prices in northern Laos, where trees in larger plantations go untapped as this has become economically unviable, and farmers suffer under their contract arrangements with companies. The paper asks what could be done to protect farmers from market forces.

Land grabbing ties in closely with processes of agricultural modernisation, where loose legal frameworks and policy mandates have been exploited to take land away from smallholders and place it under the control of larger agribusiness corporations. Perhaps the most significant impact of agricultural modernisation relating to land in recent years has been the instigation of land concessions around the Mekong region, most notably in Cambodia, Laos and Myanmar. Large-scale land acquisitions accelerated from the 1990s onwards as socialist countries opened up to global markets. However, such practices can be traced back to the colonial period, albeit under different forms of power and patronage (Scurrah and Hirsch 2015).



Figure 36: Smallholder rubber plantation planted during and after the upland titling campaign Order 01, in Ratanakiri province, Cambodia (photo credit: Jean-Christophe Diepart)

The provision of land for industrialised agricultural production has presented a series of impacts. Conversion to cash crops is creating concerns for food security at both local and national levels, as land used for industrialised agricultural commodities supplants primary food sources. Labour is also important. Agriculture remains a vital source of employment for people across the Mekong region, even as its contribution to national GDP has declined relative to other sectors. The assumption that large plantations offer an alternative source of waged labour is also problematic, taking into account examples in northern Laos where Chinese investors have brought in their own workforce rather than employing the local population. A key question is thus whether or not the rural poor benefit from large-scale agricultural investments (Sothath and Sophal 2010). A nuanced exploration of the exclusionary power of land relations under agricultural modernisation (Hall et al. 2011) points to smallholders losing their land and resources, diminished livelihoods through unfair compensation and precarious wage labour arrangements (Cuttal 2011; Hall 2011; Kenney-Lazar 2012; Scurrah et al. 2015). McAllister (2015) highlights how the application of the Land and Forest Allocation Policy in Northern Laos has facilitated land grabs for Chinese rubber concessions and urban elites. Local tenure rights are denied legitimacy, excluded in the face of commercial agricultural and speculative accumulation, at great cost to smallholding farmers.

Some of the most extreme forms of exclusion involve the poorest and most marginalised communities, particular ethnic minorities around the Mekong region (Sturgeon et al. 2013). Bonnin and Turner (2013) provide the example of Hmong and Yao farmers in Vietnam, and how agrarian transformations are affecting gender, family and inter-generational relations. The very fabric of social life is being influenced here, a frequently unconsidered consequence of modernisation processes. In particular, traditional farming practices, especially shifting cultivation, are finding themselves under ideological attack, counter to the desire to capitalise land for increased productivity. Vilaymeng (2005) observes the impact that the Land Allocation Program in Huaphan province, north-eastern Laos, has had, given that it has been used to stamp out shifting cultivation, which is perceived to be environmentally damaging. A similar trend can be seen in land policy in Vietnam, which has reduced shifting cultivation in an attempt to improve forest cover (Jakobsen et al. 2007). Negative impacts are observed in terms of threats to labour opportunities and food self-sufficiency in the face of new income-generating modes of production.

The link to forest policies is important when agricultural modernisation in the Mekong region is being considered. This is particularly significant given how land made available for modernised agricultural practices has resulted not only in



Figure 37: Hmong women with a maize crop in Lao Cai province, northern Vietnam. The incorporation of new modes of commercial agriculture has had significant impacts on gender and community relations (photo credit: Sarah Turner; for more information on the case see Bonnini and Turner 2013).

extensive dispossession for smallholders but also in the clearance of large tracts of forest cover (Davis et al. 2015; Gironde and Peeters 2015; Woods 2015a). Wester and Yongvanit (2005) cite the example of the Dong Mun uplands in north-east Thailand, where the promotion of forest conversion to cash cropping has resulted in an influx of immigrants to clear land, beyond the control of forestry programs. New moderating agreements have since developed to avoid further forest loss. Knudsen and Mertz (2016) note how forest allocation policies (FLA) in Vietnam have not only increased tenure security for inhabitants within designated forest zones, but have also catalysed a shift towards specialised crop cultivation, with an increased access to credit, against the declining profitability and sustainability of shifting cultivation. Through its impact on deforestation, land conversation for agriculture is deemed to be a core driver of carbon emissions in Vietnam, against which there are attempts to implement REDD+ (Pham Thu Thuy et al. 2012). However, these very REDD programs in Vietnam may support commercial farming such as in the promotion of rubber plantations (To Xuan Phuc and Tran Huu Nghi 2014b). The wider environmental implications of modernisation must be noted here, including erosion, soil quality, disruption of water sources, air pollution from burning, and landslides (Fox et al. 2014; Mao et al. 2008).

There is growing evidence that large-scale land concessions have largely failed to contribute to national economic growth, as States around the region would hope. The moratoria placed on concessions in Laos and Cambodia in 2012 were partially motivated by such fears. As a result, questions should be asked about how the outcomes of a financialised agricultural sector for commercial profit, and how a regionalisation of investment in farming, are playing out at national and local levels. Schönweger and Messerli (2015) use the example of coffee concessions in southern Laos to suggest that the land supplied is not being fully used or providing the high yields necessary to demonstrate tangible success in economic output. They recommend that more data must be gathered to observe the general success of such projects, to learn how to avoid repeating any failures, or to seek alternatives. Indeed, as more questions are asked over the viability of large-scale land acquisitions for agricultural investments, new emerging literature is looking towards more inclusive agribusiness models (such as those involving contract farming), where the costs and benefits of production can be more equitably shared between company and farmer (Scurrah et al. 2015). For instance, Byerlee et al. (2014) have conducted an extensive review of potential inclusive business models for agricultural investment in Myanmar using a typology of seven models. The study in particular draws on comparisons with experiences in Thailand where agribusiness

has been linked with poverty reduction. They assert the need for collective action, although the report warns against contract farming being the simple solution against large-scale land acquisitions.

KEY ACTORS AND INTERESTS

State actors

As the region has opened up to global markets and value chains, State actors have been instrumental in facilitating an agricultural transition into cash cropping, frequently with the support of the international community. In a seminal text for the region on top-down economics, Deininger (2003) promotes government as a vital mediator to instigate land policies that promote growth in the agricultural sector and alleviate poverty for the rural poor. Consecutive Thai governments have installed policies and schemes to support the conversion of smallholder lands to cash crops, aided by credit obtained from the Bank for Agriculture and Agricultural Cooperatives (BAAC). As a reflection of such approaches, State policy has aimed to improve efficiency in agricultural production systems. Nguyen Van Suu (2009a, 2009b) notes how post-Doi Moi policy in Vietnam has looked towards intensified agriculture or conversion to industrial or urban needs. This has partially resulted in a reduction in the amount of land available for agriculture, with about 10 percent of this land converted to non-farm uses between 2001 and 2010 (Hirsch et al. 2016). The shift from land- to labour-based productivity has allowed the younger generation to move out of agriculture into other sectors of employment.

Various research papers query whether the economic benefits of State legal provisions and government policy are truly looking towards equitable outcomes among actors. Scheidel (2016) asserts that, under the claim of poverty reduction, the Cambodian government has used programs of agricultural modernisation to capture and control large areas of land. This compares to the situation in Myanmar, where first, the Farmland Law, and second, the Vacant, Fallow and Virgin Lands Management (VFV) Law, both promulgated in 2012, have been deemed to favour the acquisition and control of land for modernisation practices at the expense of many users, including ethnic minorities (U San Thein et al. 2018; Scurrah et al. 2015).

Agribusiness

Agribusiness includes a multiplicity of actors, from large companies directly possessing or managing land, to middlemen who act as mediators, to smallholders in agricultural value chains. Increasingly, it can be seen that agro-food multinationals are setting the agenda for practices around the region, as States become more subservient to global markets (De Koninck and Rousseau 2013). They have a strong input into national policy mandates, price-setting schemes, and financial support systems, from the production of seeds to the collection and processing of farming outputs. Woods (2015b) has provided an important view of the Charoen Pokphand (CP) Group organising contract farming for maize production in Shan State, Myanmar. As the company minimises its risk factor in the production system, the effects of an agrarian transition are reformulating socio-economic relations at the community level, benefitting some farmers while placing others in a precarious cycle of debt. Meanwhile, Dwyer (2013) shows how Chinese agribusiness, together with State collusion, has become a driver of displacement rather than a means to securitise land.

Farmers

The evidence of livelihood outcomes for farmers under agricultural modernisation is frequently critical. Many researchers place them as passive recipients of rural development, at the mercy of State and corporate powers (Rossi and Nan 2017). Expropriation of land for concessions to foreign investors, or conversion to other uses, demand a new household strategy that may not have otherwise been sought. Nevertheless, there is much evidence of smallholders actively engaging with, and embracing cash crops for economic return. When they do so, farmers are also increasingly exposed to the volatility of market prices (for inputs and outputs), and the higher level of credit needed in commercial agriculture makes them more vulnerable to over-indebtedness (Cramb et al. 2017).

Other actors

Consumer tastes are changing around the Mekong region, particularly as an emerging middle-class brings new demands in food choice and quantity. For example, the growing demand for meat products, particularly in Thailand, Vietnam and China, has instigated a rise in maize production in order to serve the processing of animal feed. This



Figure 38: Bulldozers at work in Hukawng Valley Tiger Reserve, northern Myanmar. They are operating on behalf of a junta-affiliated company with a remit to establish an agricultural development zone (photo credit: Kachin Development Networking Group in KDNC 2010)

has not only impacted land use within each country, but also the search for new regional production areas (see the example of CP in Myanmar above, with Vietnamese traders also expanding operations in north-east Laos). The consumer is also a significant actor that can shape farming practices (whether as a direct lobbyist or targeted by NGOs to put pressure on companies) in areas such as chemical use, the burning of land before planting a new crop, exploitative contractual arrangements, and debt. This can involve other players such as religious, conservation, and royalist groups.

KEY CONTESTATIONS AND DEBATES

Modernity is a highly polarised ideological field in the Mekong region and is seen to play out within the field of agrarian transformation. Theories behind modernisation policies perpetuate the myth that smallholders and their traditional practices are backward and maintain poverty rather than contributing to national growth (Scurrah and Hirsch 2015). Nowhere is this clearer than in the attitude of national governments to practices of shifting cultivation (Hirsch and Scurrah 2015a), varying from suspicion to legal prohibition. Various studies suggest that agricultural modernisation, rather than improving the well-being of farmers, is actually failing to increase productivity, and is contributing to extended poverty and inequality (Evans et al. 2011; Haggblade et al. 2014; Marsh and MacAulay 2001; MSU and MDRI/CESD 2013). Rather than

modernisation acting as a catalyst to a wide range of socio-economic developments, it may instead further issues of food insecurity (Diepart et al. 2015) or rural unemployment. It remains a question as to whether or not smallholder interests can be retained in the face of large-scale investments (Cramb et al. 2017).

Many NGOs and academic studies have challenged modernist-informed assumptions on which regressive land policies and practices are based. Yet some NGO programs themselves are locked in an anti-modern mindset that is increasingly out of line with the aspirations of many rural smallholders. Debate continues as to whether or not the formalisation or recognition of land rights account for improvements in agricultural productivity, either through an ability to use land as collateral to gain credit or by enhancing secure access to and use of that land. There are certainly many voices that promote this notion as a means for land to catalyse rural development and poverty reduction, and increase yields, with a formalised administrative structure reducing land disputes (CDRI 2007; Deininger 2003; Kemper et al. 2015; Newman et al. 2015). The case of the land titling program in Thailand is well-recognised as a model that supposedly gives farmers options to invest in and modernise production systems (Chankrajang 2015). Hare (2008) suggests that the limited effects of Land Use Certificates (LUCs) in Vietnam, following the 1993 Land Law, are not so much a misplaced ideological approach but are rather due to the absence of supporting institutions and conditions.

Quy-Toan Do and Iyer (2008) question the case of Vietnam by suggesting that increased investment in agriculture by farmers in Vietnam is more due to increased security of tenure rather than increased access to credit. Nguyen Van Suu (2004), through research in Bac Ninh province, is more critical in arguing that new land tenure systems, and the desire for industrialisation and modernisation, have actually resulted in greater land inequality as the process has been monopolised by cadres at the local level. This chimes with evidence from the Central Highlands of Vietnam, where the arrival of Kinh migrant workers to participate in a coffee boom led to the monopolisation of land use, resulting in both rapid deforestation as well as the marginalisation of ethnic minorities who were participating in shifting cultivation practices (Meyfroidt et al. 2013).

The systematic mustering of data to back-up these challenges remains a key task. In part this is because the debate manifests as one of values as much as one informed by facts. Challenges to anti-modernist discourses come from two main directions: developmental State and commercial programs that accuse NGOs and others of wanting to keep countries and rural people in poor, backward circumstances; and academic studies that identify gaps between communalist, subsistence-oriented programs for ethnic minorities, on the one hand, and, on the other, the aspirations of many rural people for economic advancement within and beyond agriculture.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

Throughout the region, national policy formations have in some form followed the notion of “turning land into capital”, a conceptualisation with profound effects for the modernisation of agricultural production systems. This reflects processes in a post-conflict neoliberal context whereby the State has aimed to gain control of land distribution and productivity (Diepart and Dupuis 2014; Woods 2011). The timing has however varied depending on the specific political developments in each country. For Vietnam and Laos, a top-down promotion of modernised farming practices can be traced to the period following 1986, when political restructuring and reform led to an opening-up to regional

and global markets, and away from socialist isolationism. Cambodia soon followed suit from the mid-1990s onwards, looking towards plantation cropping. For Thailand, having avoided a communist uprising, and being aligned with Western-based capitalism after World War II, agricultural development commenced from the 1960s onwards. Finally, the recent political history of Myanmar represents a more extreme case of conflict and isolationism, with the country only starting to open up to the outside world in the decade after 2011.

The agricultural systems of all countries in the Mekong region have narrowed towards the production of certain key cash crops (such as rubber, sugar cane, cassava, maize and oil palm). Rice remains a dominant crop, albeit one that has undergone a shift from subsistence production to that of a marketed commodity. Nevertheless, there are geographical specifications of modernised practices as different crops have gained favour in certain areas of the region. Therefore, one can identify certain trends or boom crops such as coffee in the Vietnamese Central Highlands, sugar cane in Cambodia, or banana plantations in northern Laos. The marginalising effects of large-scale plantations upon traditional farming practices, particularly affecting ethnic minority groups, is a narrative that is found throughout the region. Similarly, the issue of land use is often placed against environmental concerns, particularly the conservation of forest areas, pitting government departments, and State and civil society against each other.

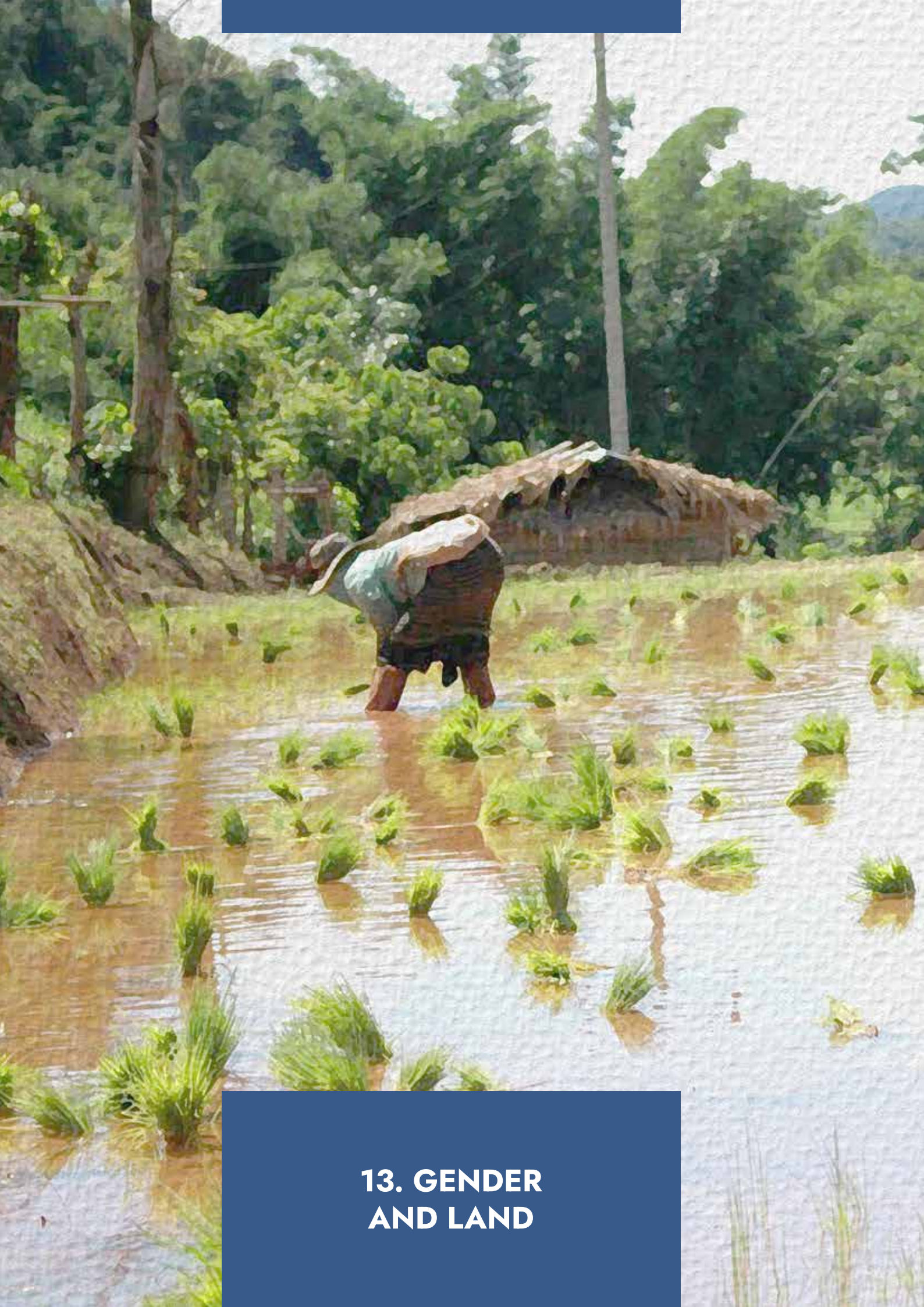
KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Large-scale investments in agriculture between regional countries remains a key frame for research and analysis. On the whole, there is a directionality in FDI from China, Thailand and Vietnam, towards Cambodia, Laos and Myanmar. Important work conducted by MRLG has pointed towards a further clustering of certain crop developments through bilateral investments. These include investment by companies from China in banana and rubber in northern Laos, from Thailand in sugar cane in Cambodia and Laos, from China and Thailand in rubber in Myanmar, and from Vietnam in rubber in Laos. Large-scale concessions have been strategically placed in border areas to facilitate transportation

back to the investor country. Woods (2015b) looks at the example of Chinese subsidiaries of CP expanding maize production systems to set up contract farming in Myanmar. Although CP is a Thai-originated company, output is transported to China for processing into animal feed and use in meat production systems, primarily poultry farming. Cross-border interactions also operate at smaller scales. For example, Beban and Gorman (2017) look at Vietnamese farmers crossing into Cambodia to lease land, with the benefits captured by local elites.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- It is vital that the base assumptions associated with modernity are backed up by firm evidence concerning the impacts of agrarian transformations, rather than assuming positive shifts in production systems. Similarly, data to the contrary should be used to challenge the commoditisation of farming into cash cropping.
- It is necessary to create at least a level playing field to allow smallholders to compete with larger enterprises on an equal basis, and to share any benefits emerging from agricultural modernisation. This includes a sharing of the risks involved in switching to new crops, lessening the chance of farmers falling into debt or suffering from environmental hazards associated with new production techniques.
- More action is needed on the ground to support civil society and educational programs that challenge fact-free claims of modernity-oriented policy initiatives.
- Dialogue and debate must be supported within civil society on ideological bases for programs and their compatibility with farmer aspirations.
- The huge environmental, social and health impacts of the large-scale monocropping is being recognised globally and locally, and there is a growing movement for alternative approaches to agriculture and food systems that fall under rubric of 'agroecology'.



13. GENDER AND LAND

OVERVIEW

Land governance reform initiatives often refer to gender equality, but some reforms can also entrench male privilege in access to land. Women's control over land is shaped by culturally specific inheritance practices, by their role in agricultural and other livelihood practices, and by the legal systems of the countries in which they live. Changing labour practices and engagement with capitalist property rights arrangements are having profound effects on gender relations in communities, reshaping hierarchies of power and influencing family and wider social relationships. Change can be both for the betterment and decline of rights for women. While typically depicted as household caregivers, women often take leading roles in economic production, use of, and decisions about land and resources, and controlling household income. Enhancing gender equality has the potential to have a positive impact on production systems, supporting food security and cementing a right for women to choose how they contribute to these systems. Gender is a significant dimension of how people react to conflict and livelihood traumas, such as through forced evictions and relocations. Women often take a leading role in protests against land-related violations.

KEY TRENDS AND DYNAMICS

In the context of agrarian transition, the security of smallholder livelihoods is a key priority. Within this context, the issue of gender has often been treated with minimal consideration, despite women themselves representing a marginalised group amongst those already suffering from poverty. The lack of attention, in part, refers to those creating and implementing policies and projects relating to land and agriculture, and also to researchers scrutinising the state of land dynamics. It is perhaps unsurprising that after three decades of official commentary, the 2012 World Development Report was the first of its kind to focus on gender equality (CDRI 2013), the omission implying a sense of neglect up to this point.

Taking a gender perspective requires a consideration of the position of both men and women in relation to land. Yet the fact that women's rights are violated more extensively than those of men should not be glossed over. This suggests the need

to take a close look at the specific roles, voices and dynamics either taken up by, or imposed upon women in relation to issues such as insecure land tenure. While women are key actors in food production, both globally and around Southeast Asia, they may own as little as 2 percent of land, or, in other cases, lack any sort of access (Land Core Group 2009). Indeed, in the case of Cambodia, use of agricultural land has been highlighted as one of the areas of highest gender inequality, measured not just in terms of ownership rights, but also relating to plot size, or cultivation levels (FAO and MoP 2010). Where matrilineal systems may favour the inheritance of property, including land, through the female side, thereby defining and promoting a status of rights, formalised systems of tenure have witnessed land ending up in the control of household heads, who are most frequently men (USAID 2011a). However, the provision of information and education is often lacking so that women remain unaware of their rights and, where abuses are taking place, are unable to access legal support.

Consideration of gender is vital in the creation of progressive policies for smallholders, since house, land and property rights affect men and women in different ways (CCHR 2016; COHRE 2011). For example, land confiscation in Myanmar has been seen to place a great strain on gender relations, with a large burden in both domestic and economic production falling on women, while also threatening the identity of the man as provider of the family (Pierce et al. 2018). A further case study looking at indigenous communities in Ratanakiri province, Cambodia, highlights how economic land concessions and market-based resource exploitation have resulted in significant repercussions not just on agrarian practices but also on gender relations, with indigenous women and girls under threat of further marginalisation (Mi Young Park and Maffii 2017). Of considerable concern, a direct threat of violence towards women may emerge, as demonstrated through studies on forced evictions in Cambodia (CCHR 2016; Richardson et al. 2014). These studies further highlight the knock-on effects of land conflict, with potential for an increase in domestic violence, a deterioration in women's mental health, and subsequent impacts on their children. Changing agricultural systems and rural livelihoods may indeed benefit some families, yet they arrive with new gender challenges that must be negotiated. The shift from subsistence to commercialised agriculture can have a profound effect on the established roles of men and women in farming,

the speed of change serving as a source of discord within marital arrangements (Bonnin and Turner 2013). This intersects with many other relations such as those that are generational - where younger members of a family may resort to alternative livelihood strategies - or other impacts of agricultural development such as stresses on food security. In this sense, gender becomes a cross-cutting issue, linking with land among a number of economic, social and environment factors.

One growing area of interest concerns a gendered awareness relating to the relationship of migration to agricultural practices, access to land and its use. At one level, the pressures on women may increase as diversified livelihood strategies see men migrate to work away from home, leaving the women not only to maintain household and childcare duties, but also to increase their role in farming and other tasks linked to economic production. This is a legitimate concern, yet one must be careful not to ignore the movement of women as well as men around the region. The impacts of migration on land may be multifarious, potentially decreasing tenure security or directly resulting in land loss, but also allowing for accumulation through remittances. In a study of Thai migrants, one article suggests that women and the poor are more generous in the remittances they send compared with men (Vanwey 2004). Another study of Lao migrants into Thailand highlights generational divides as younger

people cross the border, yet nevertheless there are important gendered distinctions in the makeup of this group and its developmental impacts (Barney 2012). Regardless of who travels and who stays at home, migration can easily place stresses on marital relations due to the time family members are separated by their changing production roles (Locke et al. 2014).

The relative lack of attention paid to gender in land studies is also reflected in the absence of women's voices, a concern that can be placed on development-related discourse around the region. Yet if women represent a subset of vulnerability against land grabbing and evictions then it is all the more important that such voices are heard. This situation is starting to improve in research pursuits, which highlight how women are excluded from public consultations and decision-making processes relating to land. For instance, a report by Amnesty International on civil society responses and resistance to housing evictions in Cambodia focuses on the stories of five women (Amnesty International 2011). There is a growing awareness about the involvement of women in protests against land-based violations, and studies are increasingly attempting to account for this. This includes the recognition of a threat of violence against women involved in such protests, as is the case with human rights defenders in Thailand (The Observatory et al. 2017). Even where women and youths are highly



Figure 39: A woman planting rice in Oudomxay province, Laos (photo credit: CCL Group in Somphongbouthakanh and Schenk-Sandbergen 2020)



Figure 40. Photos of land activists Montha Chukaew and Pranee Boonrat at the place where they were shot and killed in Surat Thani province, Thailand, on 19 November 2012 (photo credit: Luke Duggleby / Protection International in The Observatory et al. 2017)

represented in social movements relating to land conflicts, the leadership of such movements is generally held by men (Rose-Jensen 2017).

Various studies look at the potential benefits to be gained from improving gender rights within systems of land tenure security, and there is a growing body of evidence to support such a move. For example, joint land titling can help to bring better welfare for children, greater efficiency in production, equality and empowerment (Land Core Group 2009). A study in Vietnam compares land-use rights with reference to the two genders, and finds that titles under a woman's name or jointly held by husband and wife tend to result in benefits such as increased household expenditure, women's self-employment, and decreased household vulnerability to poverty (Menon et al. 2013). There may also be an increase in the bargaining power of women in the home. With the support of such evidence, there is a growing call for clear gendered land policies around the Mekong region. For example, social land concessions in Cambodia for landless and land-poor households need to account for gender disparities and make sure that female-headed households gain sufficient support (Thiel 2010). Meanwhile, it is claimed that legal services and practices in Vietnam must improve to support women's access to land (Hoàng Cẩm et al. 2013). This includes the provision of joint land titles, which hope to strengthen the bargaining power of

women in the household without detracting from farm output (Newman et al. 2015). Yet there is a risk that agrarian transitions may operate counter to such aims. A study looking at various indigenous groups in Cambodia suggests that the participation of women in communal land management and household food provisioning is being undermined by the formalisation of legal, administrative, and market-based governance (FAO 2019). On the whole, development agencies are failing to support these changes thoroughly with effective gender-sensitive projects.

KEY ACTORS AND INTERESTS

Gender equality is something that involves a multiplicity of stakeholder groups and is also demanded within each group. It cannot be achieved without the effective representation of women throughout.

Smallholders: Women are key actors in food production: in 2009 they were involved in 60-80 percent of food production in developing countries, and 50-90 percent of rice cultivation in Southeast Asia (Land Core Group 2009). Yet even today many identify themselves as "workers" or "helpers". A new breed of women view themselves as farmers, and have become involved in wider agricultural discussions such as those relating to the National

Land Use Policy in Myanmar (Faxon 2017). They are also increasingly found at the forefront of protest movements in Cambodia (CCHR 2016). Nevertheless, there is evidence of tougher attitudes to women in community consultations over land conflicts (Pierce et al. 2018). The roles of female and male smallholders are further challenged by market-led shifts in the agricultural sector, which includes migratory practices for new employment opportunities (Rungmanee et al. 2021).

State: Governments around the Mekong region have helped to install gender equality in statutory law and national-level policy. Yet when it comes to implementation, there may be a disconnect on the ground. It may not help that decision-making processes are frequently dominated by men, both at State and community levels. Research in Cambodia has shown that working on gender relations after land grabbing and eviction at the community level, simultaneously, can help to rebuild community and State relations (Lamb et al. 2017). However, tensions may remain where policies relating to land acquisition prove detrimental to civil society and women in particular (Bélanger and Li 2009).

NGOs and CSOs: International mandates such as CEDAW (the Convention on the Elimination of all forms of Discrimination Against Women) have been key to legitimise local efforts to promote gender equality. NGOs and CSOs have further consolidated their position through the creation of networks, using such mandates as a unifying feature in gender-sensitive programs of action. One study has looked at the experiences of the Gender Equality Network (GEN), a coalition of 100 organisations in Myanmar (Faxon et al. 2015). The strength in solidarity for GEN allows women a voice in land-related policy consultations (a good example is their inclusion in discussions about the National Land Use Policy). The network also offers a vital avenue to publicise information and improve public understanding about gender violations. Frequently, gender is organised around the wider topic of commercial pressures on land, such as with large-scale concessions for resource exploitation. This creates a challenge to instigate activism on these broader terms, but without losing the focus on gender rights within the multifarious issues (Daley 2011).

KEY CONTESTATIONS AND DEBATES

Many gender-based critiques of policy and programs such as land titling point to the biases that arise, for example, by assumptions that men are heads-of-household. Implementers of such programs emphasise legal and safeguard provisions, such as joint titling, promoting the notion that regulatory shifts may contribute towards equalising gender relations and practices both in the household and throughout society. However, the pathway is not always clear. There are policy mandates that claim to support gender equality in the development of land administration, management and distribution (Council for Land Policy Cambodia 2012), and yet studies highlight a significant gap between policy and its implementation in practice (Thiel 2010). This includes the availability of international legislation on both gender equality and land governance, with the challenge being to see them incorporated at both national and sub-national government levels, and in local communities.

Since traditional inheritance practices are culturally specific and vary both between and within countries in the Mekong region, there is a tension between generalised discussions about the place of women in control over land, on the one hand, and a context-specific analysis, on the other. In particular, this tension acknowledges that there are both matrilineal and patrilineal systems within the region. Furthermore, gender-specific legal provisions and practices in formal land ownership within the family unit differ from one country to another. A basic question is the extent to which modern, formalised systems of property relations enhance or degrade the position of women with respect to land.

A further complication in this debate involves the provision of sufficient data to allow for informed policy strategies. Within larger debates such as land grabbing, large-scale land investments and customary tenure, gender has only recently become more visible, and gender-disaggregated data is catching up to indicate gender relations within these topics. As well as greater understanding about the plight of women in poor rural households, it is also important to acknowledge the shifting roles of men in relation to land systems around the Mekong region.

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

There has been an attempt to enshrine gender equality into statutory law within the Mekong countries, which has had different degrees of success. For example, the VFV and Farmland Laws in Myanmar are operationalised to focus on the rights of the head of the household, most commonly the husband (USAID 2010). There is also a lack of facilitation towards joint titling, which undermines Buddhist-based customary laws and their higher acknowledgement of women's rights. Similar to the situation in Myanmar, Thai law may have been detrimental to women's rights, enshrining notions of equality, but undermining traditional matrilineal systems that include inheritance of land on the female side (USAID 2011b). It is a claim that is echoed in Laos (USAID 2011a). Even if the specific mechanisms of land titling vary by country (for example, compare land-use certificates in Vietnam to a full bundle of property rights in Thailand), the consistent message is that improved access for women to these rights will not only be to their specific benefit, but also to households and communities. However, the way data is collected and represented by different countries often makes gender inequalities invisible and these need to be improved (FAO & MoP 2010).

There are several useful reports mapping out country-specific rights and practices relating to gender and land (Ingalls et al. 2018; Neef 2016; USAID 2010, 2011a, 2011b, 2011c). As well as legal differences, the specific historical, cultural and legal developments of each country will inform the role of gender in land governance and how it plays out on the ground. For example, in Cambodia, mass executions under the Khmer Rouge regime created many female-headed households in the 1970s and land allocations to women in the 1980s (USAID 2011a).

The volume of gender-related research on land sourced for this online resource is geographically uneven, with a significant majority of studies focused on Cambodia, addressing issues such as the impact of evictions upon women. In Myanmar, much research has centred on the representation of women in consultations for and within the

National Land Use Policy, which was published in 2016 (Faxon 2017; Pierce and Nant Thi Thi Oo 2016; TNI 2015). In terms of quality sourced research, Thailand and Laos lag behind other countries in the region.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

An important focal point for the promotion of gender rights has been a variety of international agreements. Most directly these include CEDAW (the Convention on the Elimination of all forms of Discrimination Against Women) and provisions within the Sustainable Development Goals (SDGs). There are also elements within non-binding agreements such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (NGO-CEDAW and CAMBOW 2013; STAR Kampuchea 2013; RRI 2017). Such frameworks offer markers that stretch over boundaries within the region, providing legitimacy to the work of NGOs and CSOs operating at local levels. A further measure is the ability of women to give Free, Prior and Informed Consent in the face of external development projects that involve large-scale land acquisitions.

There are other transboundary factors where gender closely interacts with land. Migration has specific gender outcomes, depending on who migrates and who stays at home (Barney 2012; Rungmanee et al. 2021). The different settings of land tenure are also important, whether on agricultural land or within community forests (RRI 2017). More commonly, the call for gender rights goes hand in hand with other forms of marginalisation, such as reaching the poorest or those in isolated rural areas (ILC et al. 2004; Jackson 2003). However, in looking at greater security for women and men, one must be reminded that these do not represent singular groups and that much variety in status and land relations will be found (Scott 2003). Gender intersects with other social categories including class, age, and ethnicity, to shape the processes and outcomes of agrarian transformation.



Figure 41: A group of men and women in Laos discuss gender roles using a visual cards approach (photo credit: Phetsakhone/Land Information Working Group (LIWG) in Somphongbouthakanh and Schenk-Sandbergen 2020)

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- Gender mainstreaming in proactive policy that gives women an equal chance of gaining secure land tenure rights
- Access to credit and land-related services, where women can also gain investment opportunities through their land and contribute to poverty reduction
- The provision of joint-titling options, improving women's bargaining power within the household
- Improved education to inform both women and men about gender opportunities within the land sector
- Inclusion of the voice of women in new land-related legislation, which tends to be drafted and approved by men



14. URBAN LAND GOVERNANCE

OVERVIEW

Rapid urban expansion raises a host of land governance issues. Conversion of farmland for residential, industrial, commercial and infrastructural purposes tends to encroach on fertile agricultural areas and fosters issues of food security. The large profits to be made from non-agricultural uses of land that was previously farmed creates winners and losers among those displaced and those benefiting from new economic activities, raising questions of compensation. Increasing demand for land impacts on slum dwellers, who live in precarity through insecure tenure. Within urban areas, loss and maintenance of public space in the form of parks and other recreational areas is a key issue. Booming real estate markets in cities promote land speculation, with related issues including transparency in zoning, permits and other public-private interactions. The financialisation of land, using a variety of digital technologies, disconnects and de-localises land in and around urban areas, affecting community and agricultural zones. Urban expansion increasingly involves regional cities as well as the main metropolitan centres.

KEY TRENDS AND DYNAMICS

In the Mekong region, as elsewhere, urbanisation can be understood in many ways. A traditional perspective defines an urban area in terms of the absolute size and density of its population. Studies have tended to focus on the largest urban areas in the region, particularly Bangkok, Hanoi and Ho Chi Minh City. Yet some of the most dynamic pictures of change can be found in medium-sized or secondary cities (Nguyen Quang Phuc et al. 2014). Furthermore, it is problematic to speak in terms of clear boundaries between the rural and the urban (Srinivas and Hlaing 2015), the alternative being to understand the density of, and interactions between, people, infrastructure and services as a continuum. Urbanisation is also not just about conglomerations of people and their activities. It can also be seen as a “way of living” that through commercial value chains, migratory practices and modern media technology, pervades even the most remote of settings.



Figure 42: Long Hau Industrial Park, peri-urban Ho Chi Minh City, Vietnam (photo credit: Luongviethoang.hcm under the Creative Commons Attribution-Share Alike 4.0 International license)

In each country of the Mekong region, the quest for rapid economic development has resulted in policies to stimulate FDI and the generation of capital. One established means to achieve this aim is the promotion of industrialisation and urbanisation in order to concentrate economic activities. Nguyen Van Suu (2009a, 2009b) has published extensively on the impact of Doi Moi reforms in Vietnam and how they have led to the conversion of agricultural land for such development on the edge of cities. Labbé (2016) labels this process as a “Third Land Reform” under the support of appropriate market controls and decentralised powers of expropriation. Frequently, for Vietnam and other countries, this means that smallholder land is acquired to feed new ventures. Conversion processes have been a significant source of conflict, where State agencies act to facilitate private sector ventures, and farmers are told to give up their land (Gillespie 2011). Legal reform may contribute to disputes, with land titling not always providing the necessary stipulations to regulate against conflict (Gillespie 2013). Indeed, looking at Vietnam, Gillespie and Kim both highlight the confusion wrought by a pluralistic legal system at work, where dispute resolution often relies on administrative and localised norms and practices over statutory rights (Gillespie 2013; Kim 2004). Indeed, statutory rights leave open the option for the State to acquire land in order to serve national economic interests, over-ruling the claims of local users.

Evictions affect not only farmers on the peri-urban fringes, but also those living within cities (Bugalski and Pred 2010; CESC 2009). Phongsiri (2019) notes the case of Mahakan Fort in Bangkok where, after a 26-year stand-off, a centuries-old community was forced to move out to make way for a public park. Evictions disproportionately affect slum dwellers who face land tenure insecurity and are excluded from basic urban services such as access to water or sanitation (Archer 2012). There may be little participation or consultation with those who are evicted, and insufficient resettlement packages (Amnesty International 2008). An article from 2010 claims that 150,000 Cambodian urban residents, including both relatively recently arrived squatters and long-time residents, were at risk of being forcibly evicted, lacking the necessary legal safeguards to protect their presence on urban land (Mgbako et al. 2010). There is also a body of work looking at the particular impact of evictions on women. As well as a lack of a legal framework and support services, the suffering of women may be

compounded by the influence of structural and social power relations, as found in Cambodia (COHRE 2011). However, a counterpoint study suggests that living in urban areas in Vietnam can actually provide improved land and other rights for women, through increased access to information and legal services (Hoàng Cam et al. 2013). Women and youths also have an important role in social movements emerging as a reaction to forced evictions (Rose-Jensen 2017).

The influence of migration is important when land rights in urban areas are considered. Land scarcity and a lack of affordable housing for those arriving to find work in cities can lead to the growth of urban slums with its corresponding threat of land insecurity and eviction. A report by the Cambodian Rural Urban Migration Project highlights this fact, along with the need to provide infrastructure services (water, electricity and transportation) and social services (health and education) to such groups (CRUMP 2012). Migratory populations provide a core source of income to relatives continuing to live in rural areas, resulting in a variety of profound social shifts at their village of origin (Diepart et al. 2014; Locke et al. 2014). Agricultural tenure security in rural areas can have a significant impact on the decision to migrate. Chankrajang (2012) highlights how, in Thailand, secure rights facilitate rural communities to hold onto their land yet to have the option to migrate and participate in urban-based activities, particularly when they live in areas with poor transport networks.

As a site of concentrated activity and human settlement, urban areas can maximise their use of land and generation of capital through an integrated planning system. Yet in the Mekong region planning frequently takes place in a haphazard way, lacking coordination between the numerous government agencies responsible for the multifarious aspects of urban life (Thiel 2011). Instead, land markets frequently rule over changes in the urban landscape. Rising prices define land conversions where evicted communities make way for lucrative residential, commercial and infrastructure projects (Mgbako et al. 2010; Löhr 2011). This can make land inaccessible to all but the wealthiest. The financialisation process risks stripping land of its social value, becoming a commodity for speculators and developers. At the same time, the use of e-technologies in land markets can create further marginalisation for communities.

Peri-urban areas have attracted the attention of numerous studies (Hall et al. 2011; Labbé 2011; Nguyen Van Suu 2009b, 2009a). It is here that some of the most varied and highly concentrated activity can be found, mixing commerce, industry, agriculture, and housing, and with multiple forms of migration present (Labbé 2016). Wells-Dang et al. (2016) highlight how developers actively look for agricultural land in and around urban areas in Vietnam to convert for commercial uses, a pattern repeated throughout the region. These fringe urban areas still have land that can be acquired and converted for other uses, often at lower prices and with great potential for high added value (Shatkin 2016). As a result, some of the greatest pressures on land can be found in peri-urban areas (Zoomers 2010). Nghiem et al. (2018) observe some of the effects from the industrialised use of land in the Red River Delta around Hanoi, Nam Dinh and Hai Phong, noting a profound loss of rice-growing land, polluted soil and water sources, and a large influx of migrants. The availability of peri-urban land is also attractive to FDI, with such areas showing most clearly the application of land acquisition policies (Nguyen Le Phuong and Nguyen Mau Dung 2015).

KEY ACTORS AND INTERESTS

State

The State has played an important role in countries around the Mekong region, setting the regulatory frame through which land can be used for urban and industrial purposes (Nguyen Quang Phuc et al. 2014; Shatkin 2016). This ties closely with acquisition policies, justified as acting in the public interest, and with the aim to stimulate both domestic and foreign investment in development projects (Nghiem et al. 2018). The role of the State in land markets may vary, minimised in a country such as Thailand but remaining strong in the planning of a socialist State like Vietnam. In Laos, the policy of “Turning Land into Capital” has been applied in the context of urban development, such as acquiring land for the 450 Year Road project in Vientiane (Pathammavong et al. 2017). Nevertheless, there are different strategies for urban land governance within different State agencies, such as in the approach of an investment-related ministry compared with those involved in agriculture or forestry (Hoang Linh Nguyen et al. 2018b). This disconnect is one reason why State-based urban planning is frequently ineffective, where informal land markets

then emerge to fill the governance gap (Hoang Linh Nguyen et al. 2018a).

Civil society

Access to land in urban areas frequently displays a lack of equity in terms of socio-economic status and gender (Thiel 2010). This can involve both those moving to cities and those occupying areas incorporated into urban systems. For those losing their land to urban-related projects, communities have found themselves pitted against State and private sector actors, and they are unwilling to accept the terms on offer for land acquisition (Nguyen Van Suu 2009a). While many smallholders find themselves powerless against the regulatory conditions of expropriation, others have actively fought to keep their land. Even if not always successful, expressions of grievance may have a significant impact upon the ability of urban projects to proceed, as in the case of delays to the 450 Year Road project in Vientiane, Laos (Pathammavong et al. 2017).

Private sector

Urban development goes hand-in-hand with the presence of private capital, benefiting from an often close relationship between the State and corporations (Guttal and Chrek 2016). This involves both domestic and foreign investment, although in the less wealthy countries of the Mekong region FDI is seen as critical to stimulate growth. In the context of urbanisation, the private sector plays a prominent role in all developments, whether linking to industry, infrastructure, or real estate.

KEY CONTESTATIONS AND DEBATES

Much debate about urban land governance revolves around a tension between private gain and the public good. There are concerns that the rapid rise of land values is driving less wealthy urban residents to the outskirts of cities, where they suffer from limited services and long journeys to work. Land is often bought for low prices from its owners, and this does not reflect the potential for added value once that land has been developed (Pathammavong et al. 2017; Truong Thien Thu and Perera 2011). Under inequitable compensation schemes, smallholders are at risk of significant livelihood loss. For example, in two districts around Hanoi, farmers have come off badly in the conversion of their land, not only missing out on a share of the benefits, but

also lacking sufficient compensation to guarantee a successful transition into non-farm activities (Nguyen Thi Ha Thanh et al. 2016). This debate around fair compensation continues to dominate land disputes in many countries. Fearing these outcomes, many farming households and also speculators have impeded projects, refusing to give up their land, as has been seen in Vientiane, Laos (Pathammavong et al. 2017).

With an emphasis on foreign investment in property around Southeast Asian cities, the urban poor may be expelled from their homes to make way for urban development projects. In particular, those in informal housing are under threat of forced eviction and resettlement. There are many research studies on the plight of the urban poor, and yet the financial attraction of urban projects continues to supersede concerns for their status. Talocci and Boano (2018) document one attempt at a land sharing project in Phnom Penh, and how difficult it can be to solve insecure urban land tenure. The study cites widespread criticism of the project, noting how it unfairly labels the urban poor as a single group. Rather than cater to differing needs, the project has upset existing power relations, and points towards the private sector prevailing in new National Housing Policy to maximise growth from land markets.

An implication of these scenarios is the debate about how to promote and actualise coordinated

urban planning that accounts for multi-stakeholder needs. For example, in the case of Vientiane, Vongpraseuth and Gyu (2015) look at the disconnect between urban growth and its management. They identify contestation and a lack of organisation between different interest groups involved in managing this growth, compared with a strong desire to attract both FDI and domestic investments. Beringer and Kaewsuk (2018) highlight the example of flood risks in the north-eastern Thai town of Khon Kaen. They explain how a lack of planning for new developments leaves the city open to such a risk, increasing the vulnerability of local communities. Indeed, environmental concerns are increasing in cities, as intensified land use, including for industrial purposes, infrastructural work, and the use of motorised transport, are having an impact on the health of residents, such as through poor air and water quality. Both in Bangkok (the construction of Suvarnabhumi airport) and Vientiane (the development in That Luang), there have been recent developments on marshlands and yet there has been little study on the impacts of landscape conversion in this way. These marsh areas help to regulate the underground water system of both cities, and conversion risks a detrimental effect on the natural processes at work. The conversion of peri-urban agricultural land to other uses also has the potential to undermine food security for increasing urban populations.



Figure 43: A slum settlement in Borei Keila, Phnom Penh, Cambodia (foreground) is overlooked by new housing for the poor (photo credit: Giorgio Talocci; for more information on the case see Talocci & Boano 2018)



Figure 44: Bangkok's Suvarnabhumi airport, operational since 2006, is built on an area known as the Cobra Swamp. Such wetland areas have an important part to play in the natural hydrological cycle of the city, and the long-term impact of large-scale infrastructure projects remains unclear (photo credit: Aero Icarus under a Creative Commons Attribution-Share Alike 2.0 Generic license)

KEY DIFFERENCES AND COMMONALITIES AMONG MEKONG COUNTRIES

While the Mekong region is relatively under-urbanised, the extent of land area and population classed as urban around the region varies by country. Data from the World Urbanisation Prospects (UNDESA 2020) highlights the following proportions of urban residents (out of the total population) in each country in 2020:

- Cambodia: 24.2 percent
- Laos: 36.3 percent
- Myanmar: 31.1 percent
- Thailand: 51.4 percent
- Vietnam: 37.3 percent

The two countries with the highest proportional urban population also have the region's largest cities, namely Bangkok in Thailand with a metropolitan population approaching 15 million people, and Hanoi/Ho Chi Minh in Vietnam (both with around 10 million inhabitants). A difference is highlighted here in the dominance of a single urban centre in Thailand (which could also be claimed for Phnom Penh in Cambodia) as opposed to more than one primary urban centre in Vietnam. Since 2000, the rate of urbanisation has been decreasing in Thailand and Vietnam to under 2 percent per annum for Thailand in 2020 (which matches the overall global trend) and under 3 percent in Vietnam (UNDESA 2020). Cambodia and Laos have relatively higher growth rates at over 3 percent per

year. Meanwhile, Myanmar maintains a low urbanisation rate, staying at under 2 percent by 2020, with no signs of an imminent urban explosion. However, one must be careful with such figures, which emphasise an urban-rural divide rather than close links between these areas. For example, the growth of urban areas might result in assumptions that rural-to-urban migration dominates regional mobility practices, when in fact rural-to-rural population movements are more extensive (Ingalls et al. 2018), and urban growth may in fact be fuelled by internal dynamics. Further, when migration to urban areas takes place, households display a diversified livelihood strategy that transcends urban-rural boundaries, combining both farm and non-farm work in multiple locations.

Concerning the production of literature on urban land governance, there have been certain trends in different countries. The bulk of literature contained in the Mekong Land Research Forum online resource involves cases from Cambodia and Vietnam. In the former country, attention is predominantly placed on urban evictions. For Vietnam, there is a focus on land acquisition to convert agricultural land to urban development projects, and the many disputes that have arisen over compensation packages on offer (for example, see Hansen 2013; Kim 2011; Phuong Anh Bui 2009; Sun Sheng Han and Kim Trang Vu 2008).

The region lacks integrated and long-term strategies when it comes to land-use planning. This can compound the vulnerability of populations who lack secure access to land. However, each country,

sub-region and city carries its own particular dynamic. For example, Kim (2007) highlights an internal disparity in comparing the evolution of property rights in Hanoi and Ho Chi Minh cities. One must also recognise differences in historical approaches, where the ascension of socialist regimes in Cambodia, Laos and Vietnam for many years turned to anti-urban policy (Labbé and Musil 2013). South (2007) provides evidence on the forced relocations of communities away from urban locations in Myanmar, such as a “cleansing” of Yangon in the late 1980s/early 1990s.

KEY LINKS AND INTERACTIONS ACROSS BORDERS AND ACROSS SCALE

Urban development has attracted foreign investment both across borders within the region, but, frequently also from countries outside. This has been both welcomed and encouraged through growth policies in all Mekong countries. Taking the example of Vientiane, Vongpraseuth et al. (2015) demonstrate the high levels of investment arriving from Singapore and China. Bangkok has built itself into a megacity, setting itself up as a source for global finance, and a regional hub for multinational companies and a host of international governmental and non-governmental agencies. The setting up of Special Economic Zones is of particular interest, in the ability of these initiatives to stimulate urban areas or to act as a source for new concentrations to emerge. These can also contribute to the growth of border towns as sites of increasing cross-border trade. For example, Aung (2018) looks at how the SEZ at Dawei, southern Myanmar, is bridging the

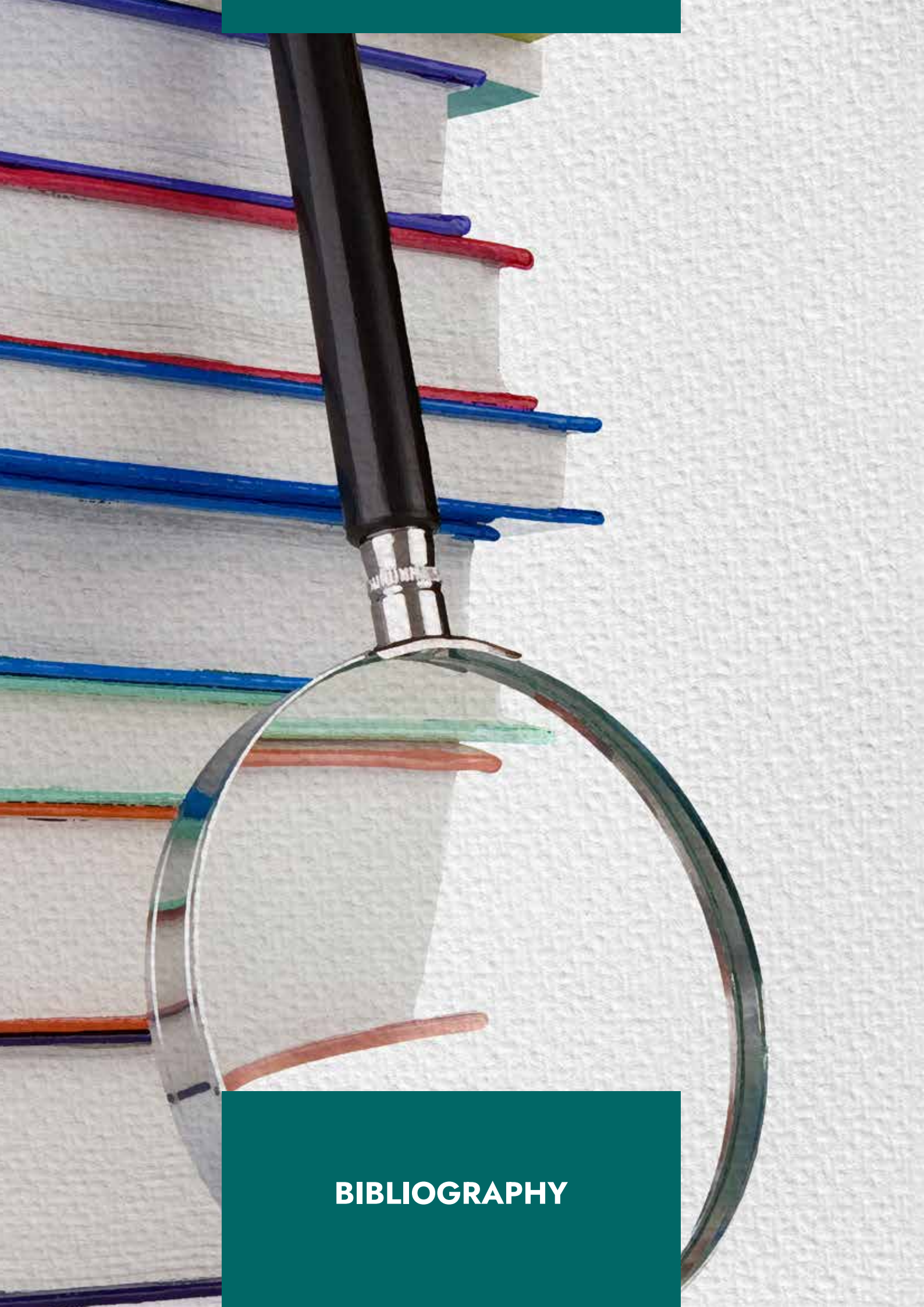
gap between the urban and the rural. A new road will link the SEZ to Thailand, and countries further east as part of the Southern Economic Corridor in the Greater Mekong Sub-region. In Laos, SEZ status has been given to urban projects, highlighted in the example of the Vientiane Long Thanh Golf Course, which is a Specific Economic Zone. As well as the journey of finance, urban developments also catalyse the migration of populations both within and across borders to participate in employment opportunities within the construction, industrial and service sectors. This movement in itself is having profound effects upon land use and household activities at the origin sites of migrants.

KEY REFORM ISSUES AND STRATEGIC OPENINGS

- The provision of equitable compensation policies and services to support the livelihood reconstruction of smallholders in peri-urban areas
- Improved rights against insecure land tenure, and access to services for slum dwellers
- The retention of green spaces to support burgeoning urban populations
- Activating new legal provisions to achieve coordinated urban planning across multiple government departments
- Taxation and fiscal policies to produce a more level playing-field between developers and local land users
- Avoiding undue land speculation in order to create options for affordable housing



Figure 45: Phonsinuan Road, close to the Thai consulate in Vientiane, Laos. Within eyeshot is a Thai pizza chain, a Lao-Singapore business college, two new upmarket cafes, a Korean food store and an IT shop. Yet only 15 years ago, this was still rice fields (photo credit: Daniel Hayward)



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The Mekong region is marked by particular kinds of historical and contemporary land uses, social relations around land, interactions within and across national borders, and patterns of development that shape changing uses and types of access arrangements. These uses and patterns have been the subject of a great deal of research, of policy initiatives and of societal action. The Mekong Land Research Forum at Chiang Mai University, with the support of the Mekong Region Land Governance project, has grouped together research on land into 14 key themes. In order to help different users make more sense of the available material, we have synthesised knowledge on each of the key themes in a set of synopses. In this book, we bring all 14 synopses together as a consolidated resource relating to the state of knowledge on land governance in the Mekong region.



The Regional Center for Social Science and Sustainable Development
Chiang Mai University

The Regional Center for Social Science and Sustainable Development (RCSD) was established in 1998 at the Faculty of Social Sciences, Chiang Mai University, Thailand in response to the need for integration of social science and natural science knowledge in order to gain a better understanding of sustainable development issues in upper mainland Southeast Asia.

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The Mekong Land Research Forum is the primary resource for informed research, education, and advocacy around land relations in the Mekong region. It is hosted by RCSD. Together with Chiang Mai University and partners, it nurtures the next generation of researchers on land.

Please visit www.mekonglandforum.org/



The Mekong Region Land Governance Project (MRLG) aims to improve the land tenure security of smallholder farmers in the Mekong Region and has been operating in Cambodia, Laos, Myanmar and Vietnam since April 2014.

MRLG is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the Government of Germany and the Government of Luxembourg.

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