RCSD MEKONG LAND RESEARCH FORUM
A resource for informed debate, education, research, advocacy and policy dialogue around land governance in the Mekong Region

Foreign direct investment and land access

Extended synopsis

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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, Lao PDR 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 done before specific areas of land are identified, putting pressure on local authorities to "find" land for investors. Territorialisation has helped 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, Lao PDR, 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 to the extractives, hydropower and manufacturing sectors, for example, it comprises less than one per cent 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 dispossession of smallholders in the Mekong Region, contributing towards a 'foreignisation of space' (Zoomers 2010).

Most land developments with foreign capital have been effected through concessions, which are long-term leases usually granted at low rents. The land allocated for concessions is a combination of forest land and cleared land that is deemed to be un(der)utilised 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 Lao PDR (Friis 2015). These rapidly commercialising agrarian landscapes involving foreign capital can constitute more subtle forms of land acquisitions (ibid; Diepart and Dupuis 2014; Woods 2015a).

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 increasing agricultural productivity and growth in a sector that has stagnated from lack of public investment and unfavourable policies towards smallholders. 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, Lao PDR 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 hydropower and extractives are public-private partnerships featuring Chinese, Thai, Vietnamese and other overseas investors. Sometimes 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 Union of Myanmar Economic Holdings (UMEH) and Myanmar Economic Corporation (MEC) (Buchanan et al. 2013), which are linked to extensive land grabbing and human rights abuses (Amnesty International 2014). Lao PDR 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 expropriation of land from farmers as well as loss of access to beach areas by fishers (World Bank 2011). In Lao PDR, developments in Vientiane Capital predominantly involve FDI, and frequently conflict with attempts to manage urban growth (Vongpraseuth and Gyu 2015).

- **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 2015:14), but the number has since increased, such as in Thailand establishing 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) Greater Mekong Subregion (GMS) program, or with the ASEAN Economic Community (AEC) (Guttal and Chrek 2016). For example, a highway-centred transboundary project funded by ADB and the governments of China and Thailand, caters to a Northern Economic Corridor passing through northern Lao PDR (Dwyer 2020).

Key actors, 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 (CCVFV), 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 CCVFV 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 reservoir or mine, 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 Lao PDR, for example, most of the negotiations for these lands are carried out between external investors and Ministry of Energy and Mines with relatively little involvement of other concerned ministries.

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 doing 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, involve 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 strengthen state sovereignty in peripheral areas, as seen in land grabs for rubber plantations in northwest 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 to 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 Lao PDR, 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 Lao PDR 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 Lao PDR 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 2015; Friis and Nielsen 2016).

International donors
International donors and lending institutions have for decades advised governments in the Mekong 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 has encouraged private investment in tree plantations in countries such as Lao PDR 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 Vietnam's HAGL, whose rubber plantations in Lao PDR and Cambodia have displaced a large number of indigenous and local communities (Work 2016). Increased public–private partnerships in 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 strengthening legal and institutional frameworks and state and corporate accountability (Görgen et al. 2009; IFAD 2011; FAO 2012: 341; 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 in the Mekong Region have been critical of land laws for being too heavily orientated to attracting foreign investment and 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 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 be "grabbed" have been targeted by civil society

campaigns seeking greater corporate accountability (Lamb et al. 2015; Polack et al. 2014; Oxfam 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 2013). 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; Sothat 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 Lao PDR (UNESCAP and ARTNeT 2014), and temporary curbs on new banana plantations in Lao PDR. 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 per cent of the land allocated was planted with crops by the end of 2013 (Woods 2015b: vi, xi; Srinivas and Hlaing 2015: 28). 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 to crops is even lower: 12 and 19 per cent respectively (ibid: vii). This suggests that agricultural concessions provide entry points for companies to access logging concessions and/or engage in land grabs for land speculation purposes. San Thein et al. (2018) also found 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 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% of agricultural and tree plantation concessions had been converted for use (Debonne, Vliet, and Verburg 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: 224).

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 2013; Neef et al. 2013; Socheth 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, Lao PDR, 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 on 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 2012). 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 lower risk (OECD 2014).

Whether contract farming and other forms of investment is 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 Lao PDR, 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; Friis 2015). 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 2015a). Studies have generally concluded that contract farming, leasing and other forms of investment offers 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 mix of domestic and foreign investors.

- From data collected between 2012 and 2017 for Lao PDR, 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). 47.5% of these concessions are situated in Savannakhet, Khammouane and Bolihamxay Provinces. In 2017, 29% of the total concessionary area was made up of domestic investments, up from 17% 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 reports over 1.2 million hectares in land 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. 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 per cent of all of Myanmar’s land has been awarded to foreign and joint venture investors for 30 to 70 years (Srinivas and Hlaing 2015: 28). From 1991 to October 2016, around 5.1 million acres (nearly 2.1 million ha) were allocated to agribusiness companies, entrepreneurs, and individual farmers if less than 50 acres (U San Thein et al. 2018). Unfortunately, there is no data on either the origin of these investments, or concerning mining concessions. It is claimed that only 20 per cent of agricultural concessions have been developed (Srinivas and Hlaing 2015). 2007-11 proved 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 which 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* programme 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 dispossession 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, Mahanty, and Wells-Dang 2019).

Key links and interactions across borders and across scales

Cross border financial investments by Chinese, Vietnamese and Thai companies in land and natural resources of Lao PDR, Cambodia and Myanmar, has been key factor shaping regional dynamics in land acquisition and 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 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 ADB’s GMS program and the 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 2015a). 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 has been a factor 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 finds 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-Lao and China-Myanmar borderlands, which finances many of the rubber concessions in northern Lao PDR 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, 2013). 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 Lao PDR 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 Lao PDR and Vietnam, the respective National Assemblies have been a significant voice in calling for greater transparency in land concessions.
- **Moratoria on concessions**: In both Lao PDR and Cambodia the political response to problems with land concessions has included a moratorium on concessions (for Cambodia ELCs in general, and for Lao PDR 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 Lao PDR. The

- **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 to codes of conduct), as well as public institutions and actors.

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