Towards Responsible Large-Scale Agricultural Investments in the Mekong Region

Key messages from a regional dialogue

November 2017
Vientiane, Lao PDR
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This report discusses the future of agricultural investment in the Mekong region, particularly Cambodia, Laos, Myanmar and Vietnam.

It draws on lessons exchanged at a regional workshop on Responsible Large-Scale Agricultural Investment held in Vientiane on 15-17 November 2017, which brought together 130 participants from government, the private sector, civil society, research institutions and international organisations, mostly from Cambodia, Laos, Myanmar, Vietnam, Thailand, China, and the Philippines.

Large-scale agricultural investments, mainly in the form of land concessions, have not fulfilled their promises and have created problems for communities, investors and government authorities. Alternative agricultural investment models centred on family farmers are therefore needed. These include different types of contract farming, joint ventures, land leases, or out-grower models. They have advantages but also carry risks. To be successful and benefit all parties and especially farming communities, they need to follow principles of responsible agricultural investment. These principles are based on the cooperation between communities and farmers’ organisations, companies and government, particularly local authorities, and they include: the recognition of customary land rights, particularly women's rights, the principle of Free Prior Informed Consent of Communities (FPIC), fair sharing of benefits, and respect for the environment.
A key message is that to be successful, responsible agricultural investment requires strong government support. A wider discussion on how the state can support family farming – through sound policy and regulation that effectively controls opportunistic behavior and ensures business serves the public interest – is necessary and timely. Moving towards responsible agricultural investments requires meaningful engagement among all stakeholders – businesses, government, communities and civil society. Platforms for learning and exchange are important, but also finding ways of levelling the playing field to balance power among different stakeholders involved.

The report is organised around six main themes that both look to lessons of the past and devise ways forward:

- In the past two decades investments have focused on large-scale agro-industrial concessions
- Investments in large-scale agro-industrial concessions have resulted in major shortcomings and the risks have discouraged potential investors
- Alternative forms of agricultural investments are being tested and promoted
- And the future? The need to encourage responsible agricultural investment (RAI) and level the playing field
- Smallholder farmers can flourish with appropriate state support
- Different roles for different stakeholders
The recent wave of investments in agriculture has mainly targeted large-scale land acquisition (LSLA) through the granting of agro-industrial land concessions.

In this dynamic, the contribution of FDI has been important and mainly coming from within the region (e.g., China, Vietnam, and Thailand).

In the past two decades investments have focused on large-scale agro-industrial concessions.

Trends in agricultural investment and LSLA in the Mekong Region

The surge in foreign investment in large-scale agriculture needs to be looked at together with increases in intra-regional trade in forest and land-based commodities, as shown in the map below.

Markets for agricultural exports from Mekong countries are global in scope, but intra-regional trade exhibits a particular dynamic. A bulk of agricultural exports from Cambodia, Laos, and Myanmar is destined for China, Vietnam, and Thailand. However, most agricultural commodities flow between the middle-income countries of Thailand and Vietnam, and from these countries to China.

In this sense, the region is a microcosm of broader global economic (re)organisation, with China as superpower, Thailand and Vietnam as semi-peripheries, and Cambodia, Laos, and Myanmar as peripheries.

Land concession areas allocated to companies by governments cover land areas that are disproportionately high if compared to land allocated to family farmers, which make up the majority of the population in Cambodia, Laos, and Myanmar (see figure on left). The ability of authorities to define land as empty, underutilised or illegally occupied has been a key factor enabling the dispossession of communities from their land, and transfer of this land to private concessions.
Investments in large-scale agro-industrial concessions have resulted in major shortcomings and the risks have discouraged potential investors.

The results of LSLA have been largely disappointing and have mostly translated into fundamental problems for the communities and risks for the investors and the government: smallholder land dispossession, market vulnerabilities, land conflicts and environmental degradation. One of the consequences is that bona fide investors are now reluctant to commit to further investment.

The level of implementation of concessions or projects has remained low, the creation of jobs has been less than expected and revenue for government is lagging behind. Most of the land granted for concessions was in fact occupied or used by communities under customary tenure arrangements (individual and collective).

Because the process of recognition and registration of land rights has been slow, the overlap of land claims resulted in many conflicts and sometimes forced dispossession of local communities.

“As in Cambodia, only 20 percent of Economic Land Concessions have been planted. In Myanmar, only 23 percent of concession areas have been planted, and only 14.5 percent of the area allocated in so-called Vacant, Fallow and Virgin (VFV) Lands.”

Jean-Christophe Diepart, MRLG

As a result, governments of Cambodia and Laos have established moratoria on new concessions and have initiated evaluation of existing ones. In Cambodia and Myanmar, processes of land conflict resolution have been activated, including through the return of land to smallholders. Alternative forms of agricultural investments are being tested and promoted.

Participants shared their views about the performance and impact of concessions and the return of lands in the Mekong Region

“Because of a number of negative impacts from concession projects, the Lao government set up a committee to establish criteria to evaluate existing concessions. So far, the evaluation committee has assessed less than 50 percent of total existing projects. Out of the mining projects assessed, 14 were deemed very good and 56 very bad. For agribusiness projects, nine were deemed very good, 11 medium, and 11 very bad… The evaluation is continuing for projects operating at national level, but most are at provincial level and there has been no evaluation yet… We have to learn how to continue the good projects and avoid the bad ones.”

Leeber Leebouapao, National Institute for Economic Research (NIER), Laos
“In Laos and Cambodia the stated purpose of the moratoria on ELCs was to allow the government a chance to evaluate the effectiveness of these concessions. What’s not clear is once that effectiveness is evaluated, what’s the fate of those lands?”

Micah Ingalls, Centre for Development and Environment, University of Bern (CDE)

“In Cambodia, investments through the allocation of ELCs started in 1992 but this was suspended by the government in May 2012 under Order 01. It was recently announced that based on an evaluation of operating companies by our Government in 2014, 23 companies have had their ELC contracts revoked and all companies will need to re-enter into a new contract with the government... The length of concessions have been reduced from 70 to 50 years. The land size of some companies has also been reduced.”

Buth Morokot, Dept. of Planning, Ministry of Agriculture, Forestry and Fisheries, Cambodia

“In Myanmar, in 2012, the transition government passed laws to make land grabs legal. Most of the concessions have gone to companies and the private sector... Last year, the government issued a policy to return land back to the original owners. But in communities, not all land has been returned. Some has been retained by state government powers. The land released is still limited.”

Yi Yi Win, Land Core Group, Myanmar

“The situation is different in Vietnam. Till 2016, only seven agri-business concessions were recorded. In Vietnam, if you are a foreign investor, it is really difficult to get access to large tracts of land. Companies can only access by renting state-owned land, or renting parcels from smallholder farmers, with taxes and fees. For different reasons, agriculture has become a very attractive business and lots of companies are jumping in to try and invest. One of the most appropriate ways to invest is via public-private partnerships and contract farming. The concern here is how to ensure the inclusiveness and a fair profit for farmers after they rent their land out.”

Nguyễn Anh Phong, Institute for Policy and Strategy for Agriculture and Rural Development (IPSARD), Vietnam
Alternative forms of agricultural investments are being tested and promoted

As a result, alternative agricultural models are emerging that link farmers with companies and markets. These include joint ventures, land lease, contractual arrangements, nucleus-outgrower model, farmer-owned and cooperative-owned enterprises.

Each model of investment has its own pros and cons, associated risks and opportunities and challenges. Success depends on various conditions: local agro-ecology, access to markets, type of crop, existing agrarian structure, the accountability of actors and the distribution of added value between them.

Advantages include access to markets and technology, and increased yield and income. Disadvantages comprise increased dependency on large agro-business companies, increased vulnerability to price fluctuation and the risk of over-indebtedness, distress land sales and growing inequalities within communities. In addition, environmental risks and gender impacts need to be considered.

For these arrangements to meet principles of responsible agricultural investment, an enabling environment is needed to maximise social and environmental benefits. This environment includes supporting farmers’ organisations, recognising their customary land rights, ensuring women’s effective participation, providing an appropriate and enforceable legal framework (e.g., fair contracts), ensuring support and mediation from local authorities, allowing affordable access to credit and encouraging diversification of crops and livelihood activities.

“Government staff should be acting as an independent regulator to help villagers make the right decisions about whether not they want to enter into a contract farming or concession agreement. But what often happens is that government officials who go along with the company to talk to farmers are often receiving some payment from the company, be it per-diem or sometimes even incentive payments that increase for each hectare agreed in the contract between the company and community. This creates a strong conflict of interest and affects the ability of government officials to act in the best interests of communities.”

Glenn Hunt, Land Core Group, Myanmar
Case studies on contract farming and alternative forms of agricultural development – Do they provide more benefits to smallholders?

In principle, alternative forms of agricultural development, such as contract farming, nucleus/out-grower schemes or land lease arrangements offer better prospects than large-scale land concessions, particularly as smallholders tend to retain control over their land. Examination of various cases in the region suggests that while contract farming and other models have the potential to benefit smallholder farmers, they do not offer a panacea.

“Power imbalances can lead to unfair terms of trade for small farmers and out-growers supplying large companies. This is particularly the case for women who are often excluded from decision making related to investments, and tend to loose out more on opportunities and benefits compared to men.”

Marc Wegerif,
Oxfam International,
South Africa

“Experiences from Cambodia demonstrate that the nucleus-outgrower model could potentially be a win-win for investors and small farmers. However, large concessions are likely to continue in the future, particularly in cases in where processing infrastructure and complex technologies are needed. A sugarcane processing factory is an example where concessions are appropriate and other models are unlikely to occur.”

Chan Sophal,
Centre of Policy Studies,
Cambodia

Outcomes very much depend on factors such as the ability of farmers to negotiate fair contracts, which affects the distribution of the value added, the sharing of the risks, the management of the credit schemes associated with contracts, the role of local authorities, and how environmental costs are accounted for. Cases of contract farming in Myanmar for corn production for Thai company CP have shown how monopolistic control of a contract farming scheme can quickly lead to debt-related land dispossession among farmers.

A joint study by the Center for Agricultural Policies in Vietnam (CAP-IPSARD) and National Agriculture and Forestry Research Institution in Laos (NAFRI) compares three cases of contract farming in Laos. The study highlighted pros and cons of different models. The different approaches to contract farming are depicted in the figure on the following page.
One case involving a contract arrangement for pig farming between farmers in Vientiane Capital and Thai-based conglomerate CP was successful in creating income generating opportunities for farmers, and improved productivity through increased access to technology and quality inputs. However, a closer inspection revealed an arrangement that benefitted only a few wealthier farmers, with poorer families excluded from participating in the scheme (as CP was giving priority to wealthy farmers) and finally even dropping out of pig production, leading to increased inequality in the community.

A second case involving a Chinese company engaging smallholders in the production of green beans had a much more even distribution of benefits among the community; a factor mainly attributed to the existence of a farmers’ group through which the company engaged with local government support. However, the environmental effect of the pesticides used by this highly intensive model was questionable, and farmers had little control over it.

The third case promoted the commercialisation of rice production through contracts between farmers and domestic rice millers. It resulted in increased incomes for farmers and better access to domestic and export markets. Farmers were able to access high yielding varieties and were given technical guidance. Inputs were obtained on credit, which farmers repaid to the millers at fixed prices, resulting in reduced risk for farmers. However, this case also highlighted a tendency (also present in the other schemes) for farmers to become trapped in the low-value added chain segments, while the company dominates the higher value segments. Farmers became increasingly dependent on the company for inputs and technology, making them vulnerable to price squeezing, while still bearing a lot of the risks (debt risk in rice). This tendency toward monopoly and monopsony is common in contract farming, where a single buyer interacts with many sellers for a particular product.

A study by the National University of Laos on the economic and social impacts of Chinese agricultural investments through lease contracting arrangements in Northern Laos highlighted the risks of environmental and health damages to communities, as well as the fact that benefits were not shared equally within the community. Wealthier farmers captured most economic benefits, while poor farmers/ workers bore the negative impacts. It also highlighted the risk of farmers relying on a single crop (ie bananas) and the importance of having policies to ensure crop diversification at family and village level. The regulation prohibiting the lease of paddy fields to banana plantations was not always respected.
And the future? The need to encourage responsible agricultural investment (RAI) and level the playing field

What is RAI?
The development of responsible agricultural investment is based on cooperation between three parties (illustrated below): communities and farmers' organisations, companies, and government, particularly local authorities. Academia and civil society organisations play an important supporting role.

- Ensuring transparency throughout the process of land acquisition, land leases, or other contract arrangements between companies and farmers.
- Designing economically sound business plans.
- Ensuring the intervention is socially just by allowing for a fair distribution of benefits and value added between the actors involved.
- Making sure investments are environmentally sustainable and incorporate measures that mitigate negative environmental impacts.
- Establishing grievance mechanisms that are accountable and accessible to farmers.

In the Mekong region, principles of responsible agricultural investment include:

- Recognising the rights (particularly customary) of women, men and communities, of land and natural resources.
- Women’s land rights need to be promoted separately.
- Making sure that all those impacted by the investment are consulted, following the principle of Free Prior and Informed Consent (FPIC). Processes must be inclusive of women.
How and why do we need to encourage RAI?

Because the application of RAI principles implies higher costs during an initial stage, responsible investors have a disadvantage in the short term. Government policy and regulation is needed to “level the playing field” by making the application of some of these principles legally binding and by providing companies with suitable incentives.

In the long-term, however, the application of RAI should be profitable for the investors as well as for the communities, highlighted by these two participants.

“Our company’s rubber plantations are mainly based on contract farming, and there have been illegal traders offering higher prices because they don’t pay taxes. Some farmers have been breaking contracts. There has been a lot of discussion on the responsibility of the private sector and recommendations to government. But sometimes, we need to look at the responsibility of communities as well.”

Feilong Li, Jianchuang Rubber Co. Ltd

“There has been a lot of progress with the development of guidelines for RAI, which are improving and becoming more consultative. But the problem is getting them implemented. Moreover, when talking to companies, we need to communicate social and environment risk in the language of investment in order to create an appetite for investors.”

Luis Scungio, IDI Southeast Asia

Governments and the private sector of the region have started to promote RAI principles. Efforts are underway by Vietnamese and Chinese sectoral bodies to develop codes of conduct for companies investing abroad. The Lao government is also developing initiatives in the same area, including specific regulations for banana production. Inter-government coordination between FDI “origin” and “recipient” countries is also developing.
Case study – Encouraging Responsible Agricultural Investment in the Mekong region

Oxfam’s Transboundary Responsible Business project, supported by MRLG, aims to promote responsible investment principles and practices by facilitating dialogue and peer-to-peer learning between companies across the Mekong region. The project is targeting companies doing business in agriculture in Laos, Cambodia, Myanmar, as well as Chinese and Thai companies investing in those countries.

It involves a process of identifying companies that are taking steps or want to take steps toward improving their business practices. For example, companies hit by public scandals that are trying to improve policies, or others are trying new engagement models.

Those companies are then encouraged to conduct a self-assessment and baseline survey to determine what areas of its business practices need improving using a scorecard. Some of the indicators include the company’s knowledge of responsible business practices, such as the principle of Free, Prior and Informed Consent.

By the end, companies that have engaged in the process have a better understanding of the responsible agricultural investment and are equipped with appropriate tools for putting the principles into practice. Companies who have undergone the process can also become examples for other companies.

“That is our goal, but it’s premature as we are still testing the waters,” says Silavanh Vongphosy of Oxfam. “Once companies talk about their experiences we hope others will approach us.”

“Our assumption is that by bringing them together at regional level they can inspire each other. Companies taking extra steps can support each other more easily.”

“We are also trying to avoid becoming a rubber stamp for companies who want to obtain a ‘good name’. We want to remain committed to the interests of local people, and want to maintain neutrality. We don’t want to be perceived as a service provider. We want to encourage businesses to recognise what’s important and minimise risks.”
Case study – Development of regulation for responsible investment in banana and other cash crops through land-lease arrangements in Lao PDR

The Investment Promotion Department (IPD) of the Ministry of Planning and Investment (MPI), Lao PDR is currently developing regulation of banana investment through land-lease arrangements in northern Laos, with support from an MRLG innovation fund.

A key impetus has been growing concerns about the negative social, environmental and health impacts of banana investments. This led the Lao government to issue an instruction temporarily banning the approval of new investments.

There is concern that companies have been circumventing the government by going directly to the village level to broker land lease arrangements through middlemen. There is presently no specific investment regulations for companies or standardised practices for land lease arrangement for crop plantation.

The regulations being developed by IPD aim to safeguard farmers’ benefits from private land lease arrangements for commercial crop cultivation, mitigate negative impacts, promote responsible investment practices, strengthen government oversight and law enforcement, and clarify roles and responsibilities among various government agencies.

The draft regulations have been developed with the assistance of a task force made up of various government agencies, donors and research institutes. Once approved, the regulations will be mandatory and issued as a ministerial instruction.

“One big problem now is that investors come and then they return to their country, and the farmers are left to do the rehabilitation of the land. After you grow banana the land cannot grow in another form without rehabilitation. The money farmers get from the land lease is used to pay for the rehabilitation, so what do farmers get in the end?”

Sengthong Soukhathammavong,
Consultant working with IPD, MPI Laos
Smallholder farmers can flourish with appropriate state support

Farmers are the prime investors in their land but their autonomous investment capacity is limited and needs support. Family farmers have proven their capacity to develop more productive and efficient agricultural systems once they receive appropriate state support.

Examples include production of export crops (e.g. rubber, palm oil) by smallholders in Malaysia, Indonesia, Thailand and Vietnam. These examples suggest that far from large farms replacing small ones, in much of Southeast Asia what is occurring over the long term is a transition from plantations to smallholdings for an important number of cash crops.

Public sector investment capacity exists but is limited. To support farmer’s investments, the intervention of the private sector is also encouraged in combination with public services (research, extension, training, infrastructures, access to credit, etc.).

From this perspective, domestic and foreign direct investment (FDI) has a role to play.

“RAI demands not only better regulation of private investment, but more and better public investment. Looking forward, we need a mix of private and public investment. Public investment, coupled with effective regulation, can make private investment better serve the needs of society.”

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Michael Dwyer, University of Colorado-Boulder
Case study – Growing importance of smallholder production of key cash crops for export in Malaysia, Indonesia and Thailand

Despite the re-emergence of large-scale capitalist farming over the past two decades, key cash crops in Malaysia, Indonesia and Thailand show the growing importance of smallholders in production. Rubber and palm oil are two major plantation crops increasingly cultivated by smallholders in these countries. For both crops, national agricultural policies and programs introduced at different times have played a key role enabling the development of smallholder plantation crop production, in part explaining the relative importance and endurance of smallholders.

In Malaysia, there have been comprehensive and well-funded programs of assistance to encourage new planting and replanting of improved rubber varieties in the smallholder sector. These state funded programs have turned into institutionalised support with agencies responsible for overseeing smallholder rubber development. Although yields of rubber smallholders in Malaysia are still lower than estates, they have increased continuously in past years and smallholders have become the main plantation crop producers (see figure).

Meanwhile, Thailand has become the number one producer of rubber in the world, not due to large-scale agriculture, but based entirely on smallholder rubber plantations and the government’s support of that. For example, the state has intervened to absorb the worst of rubber price volatility through the buying of rubber stocks from farmers.

The more recent expansion of oil palm in Malaysia and Indonesia has also seen the emergence of an important population of smallholders, despite policies biased in favour of large-scale plantations. This highlights the ability of smallholders take advantage of road and processing infrastructure once this is in place, and to adopt this crop as part of successful livelihood strategies.

“All Southeast Asian countries are experiencing similar phenomena, but at different rhythms. Malaysia, Indonesia, and Thailand have experiences that are applicable to states that came later in the game. These experiences show that the state has to be involved in agriculture. In all countries of the world that have working systems, the government is heavily involved and investing.”

Rodolphe De Koninck, University of Montréal, Canada
Different roles for different stakeholders

The roles of different stakeholders to promote RAI need to be clearly differentiated; we outline these as the following:

**Governments**
- Adopt policies encouraging more responsible forms of investments, as alternatives to large-scale land concessions.
- Put in place adequate policies/regulations and strict due-diligence procedures, monitor/enforce them effectively and ensure full disclosure of all information about land-based investments to all parties.
- Ensure that the tenure rights (particularly customary rights) of women, men and communities are properly recognised and ‘formalised’ if necessary – for instance through securing land rights before signing contracts with investors.
- Develop an appropriate regulatory framework with effective enforcement of RAI:
  - inter-agency cooperation to address overlaps of rules and laws.
  - sanction mechanisms applying to all parties.

**Companies and investors**
- Ensure the legal awareness and access to information of all parties concerned
- Develop judicial and non-judicial mechanisms to address land conflicts
- Ensure intergovernmental and multi-stakeholder coordination in case of multi-country investments

“Land conflicts affect farmers as well as businesses – we need to aim for a win-win solution. There is a need to identify and share positive examples where companies and communities are able to bridge communication gaps.”

Derek Smith, Saffron Coffee, Laos

“Land conflicts affect farmers as well as businesses – we need to aim for a win-win solution. There is a need to identify and share positive examples where companies and communities are able to bridge communication gaps.”

Fongsamouth Khamvanvongsa, Deputy Chief Cabinet, Ministry of Planning and Investment, Laos

“The government has a responsibility to regulate investments to make sure that they benefit the country in general, but also all citizens, and in particular the rural communities and the poorest segments of the population”

Fongsamouth Khamvanvongsa, Deputy Chief Cabinet, Ministry of Planning and Investment, Laos
Civil Society and Communities

- Make sure interests and aspirations of local communities are considered and reflected in the project design, including legal recognition of their individual and collective land tenure arrangements.
- Empower communities in negotiating with investors and state representatives
- Provide legal education and awareness to communities
- Support farmers' organisations

Research/ academia

- Undertake and communicate research examining the comparative strengths and weaknesses of each agricultural development model in different agro-ecological contexts.
- Examine and learn from successful commercial smallholder development policies in neighbouring Southeast Asian countries such as Malaysia, Indonesia, Philippines and Thailand.
- Identify and analyse successful RAI practises.

“The land investment process is confusing for all actors. There is a fundamental lack of understanding of FPIC. A key challenge is how to overcome the power imbalances between investors, governments and communities, and how to support communities. Communities need to be well informed, well advised and well organised to be able to work with investors and achieve good outcomes. Farmers need choices to be able to negotiate good options. They also need to be aware of their rights.”

Vanida Khouangvichit
Village Focus International (VFI), Laos
Research-based Policy Dialogue on Foreign Direct Investment and Large Scale Land Acquisition: a regional initiative of MRLG and partners

The Regional Workshop on Responsible Large Scale Agricultural Investment, held in Vientiane on 15-17 November 2017, was the culmination of a regional initiative to undertake research-based policy dialogue on FDI and LSLA led by the National Economic Research Institute (NERI-Laos), the Institute of Policy and Strategy for Agriculture and Rural Development (IPSARD-Vietnam), Centre for Policy Studies (CPS-Cambodia), GRET (Myanmar) and the Mekong Region Land Governance Project (MRLG), as well as two regional projects focused on responsible agricultural investments implemented by Oxfam and Inclusive Development International (IDI) with MRLG support.

The workshop brought together 130 participants from Cambodia, Laos, Myanmar, Vietnam, Thailand, China, Philippines and countries beyond Asia. It was co-hosted by the Investment Promotion Department of the Ministry of Planning and Investment, Laos and MRLG, with co-conveners Oxfam and IPSARD.

All presentations from the workshop can be accessed on Wikispace:

http://mekongplatformlearning.wikispaces.com/
Regional+Workshop+on+Responsible+Large+Scale+Agriculture+Investment+on+15-17+November+2017

As a precursor to the workshop, an Online Dialogue on Responsible Land Large Scale Agricultural Investment in the Mekong Region was held from 9-27 October 2017. The online discussion was helpful in consolidating a knowledge base on agricultural investment trends in the region and the impacts of large scale land acquisitions, and provided guidance on key issues for discussion at the workshop. The report of this online dialogue can be accessed at http://mrlg.org/resources/responsible-large-scale-agricultural-investments-in-the-mekong-region-an-online-dialogue-summary-report/

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