



Civil society and donor engagement in land issues

Extended synopsis

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Overview

Land has long been a basis for social mobilisation in the Mekong Region 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 has become 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 transition away from the long period of military rule in Myanmar after 2011 (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 (To and Mahanty 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, So, and Un 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 300 million USD to the Nguyen Van 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 this 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 Narintarakul 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 Administration Project (LMAP), but this project was similarly shut down as a result of differences with the host government over the case of Boeung Kak Lake in Phnom Penh. This is where occupants of land proposed for commercial development were denied land title in order to facilitate dispossession in favour of a developer without following procedures under LMAP (Biddulph 2014). Donors had, until the 1 February 2021 military coup, been supporting land titling in Myanmar. 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 to 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 tenure. The Food and Agricultural Organization of the United Nations (FAO) has helped develop guidelines both for secure land tenure (FAO 2012), and also supporting responsible agricultural investment at the ASEAN level.

Key actors, 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 (Einzenberger 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 (Land Watch Asia 2011). Several Cambodian NGOs have been active in

responding to large scale land acquisitions and associated dispossession, among them Licadho (Lichadho 2019) and AdHoc (ADHOC 2014). Women and youth 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, Mellac, and Scurrah 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, Poe Ei Phyu, and Knapman 2018). The Land Issues Working Group in Laos is a loose coalition of mainly non-governmental workers with concerns on 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 (www.sombath.org). Nevertheless, spaces of resistance appear in sometimes unlikely forms and instances (Kenney-Lazar, Suhardiman, and Dwyer 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 (Development Research Forum 2014). Chiang Mai University has established a Masters in Development Studies program 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-related issues in the respective countries. LaoDER provides a more critical and discussion-oriented platform.

The main international donors on 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 (Greater Mekong Subregion 2018).

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 of 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 Cambodia land titling programs supported by the World Bank, fundamental contradictions emerged between the neo-liberal premises of these programs, particularly with respect to individualised property rights, and existing governance practices in the respective countries (Independent Evaluation Group 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 Organizations Act, which would severely restrict support for, and activities of, NGOs working in the country including on land issues.¹

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

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 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 (ETO 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 some such cases.

Regional donor programs also facilitate linkages 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.

<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/>

- 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 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.

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