



Land dispossession/land grabbing

Extended synopsis

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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, Borras Jr., Hall, Scoones, & Wolford, 2012). There are many cases of outright seizure of land deemed unoccupied, underutilised or illegally settled by smallholders. However, there are many less clear-cut but nonetheless oppressive means by which powerful interests have got access to land. In the Mekong Region, there is an investment dynamic that takes capital from China, Thailand and Vietnam to 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 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, 2014). 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 countries of the Mekong Region, post-independence revolutionary 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 Laos’ partial and short-lived establishment of cooperatives, to Myanmar’s esoteric Burmese Road to Socialism and its impact on the farm economy through forced state procurement (Hirsch & Scurrah, 2015). 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 are 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 force 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 title, and various forms of certification of public lands such as those administered by the Agricultural Land Reform Office (Larsson, 2012).

Not all 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, 2015). 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 are 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 are “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 expansion of rubber in north-western provinces on the basis that this commercial crop represents an advance on 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 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 a source of great discontent, as well as providing a source of corrupt rent-seeking by provincial government gatekeepers (Nguyen Van Suu, 2009).

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 put down 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 & Farrelly, 2008).

Key actors and interests

Land grabbing and dispossession involves 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 it 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, for example. Governments are usually responsible for such land confiscation. However, in contrast to past practice when most of the infrastructure projects for which land is 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 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 in the issuing of agricultural land concessions in Laos and Cambodia has been the role of provincial authorities doing 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, 2013). The military is also a significant occupier of land in all the other countries of the Mekong Region, and 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 cohorts 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 Oddar 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 southwestern Laos. Elsewhere, land confiscation is for industrial purposes, for example in the case of the Thilawa Special Economic Zone in Myanmar where Japanese and other companies have been allocated land by the government following its confiscation from farmers who previously worked it (Gittleman & Brown, 2014).

Cronies are important private actors on the land grabbing scene in both Cambodia and Myanmar (Global Witness, 2015). 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 usufructory 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 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 southwestern 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, Schoenberger, Middleton, & Un, 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 land title granted under questionable circumstances (Bangkok Post, 12 February 2017). The proliferation of advocacy-oriented NGOs in Cambodia since the 1990s and Myanmar under the civilian administration since 2011 has been focused particularly on land issues, among which dispossession is paramount.

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. In the case of land appropriation for public purposes, on the other hand, 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.

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 per cent and which has led to ongoing evictions. Enclosure of forests and their 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 & Work, 2016), or in the name of poverty alleviation (Scheidel, 2016).

Key differences and commonalities among CLMV 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 issuance of transferable land title 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 neo-liberal 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 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 eleven 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 3000 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 off-limits 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 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 (eg Schönweger, Heinemann, & Epprecht, 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 (Thein, Pyae Sone, & Diepart, 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, Manivong, Newby, Sothorn, & Sibat, 2016).

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