

MEKONG LAND RESEARCH FORUM

Annual
country
reviews
2022-23

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

The Annual Country Reviews reflect upon current land relations in the Mekong Region, and has been produced for researchers, practitioners and policy advocates operating in the field. Specialists have been selected from Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam to briefly answer the following two questions:

1. What are the most pressing developments involving land governance in your country?
2. What are the most important issues for the researcher on land?

Responses are not intended to be exhaustive, and they represent personalized images of the current situation in each country. They serve to inform and inspire discussion on land-related topics in the Mekong Region. This seventh edition of the Annual Country Reviews has been compiled at the end of 2023, looking back at the past two years, but also looking forward. There is also a regional perspective drawing together country-based observations on the state of customary forest tenure rights across the Mekong region.

To take part in discussions on these and other related topics, join the Mekong Land Research Forum researcher network. To apply, please fill in the form found [here](#)

Our online resource can be found at: www.mekonglandforum.org



Mekong Land Research Forum, 2023

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The latest on land

1. In July of 2023, running up to the national elections, a flurry of sub-decrees were released that formerly incorporated more than one million hectares of what were previously biodiversity corridors, into the Protected Area (PA) system. A significant proportion of these biodiversity corridors overlapped with the farms and homes of Khmer smallholders and the swidden plots and territories of indigenous people. The reconfiguration of PA boundaries was implemented without consultation of people living within newly incorporated areas. It was particularly alarming for indigenous people who are most affected by these changes and are at risk of losing access rights to farmlands and ancestral territories.
2. New and existing REDD+ projects are exacerbating the exclusion of Khmer smallholders and indigenous communities from land they hold claims to inside PAs. In early 2023 it became apparent that the proponents of the Southern Cardamom REDD+ project, the largest in Cambodia in terms of land area, were committing serious human rights abuses against Khmer and indigenous farmers living on the edge or inside PAs. Credit issuing has been suspended while the offsetting verifier, Verra, conducts an investigation.
3. The issuing of Indigenous Communal Land Titles continued to be painfully slow in 2023. Many indigenous communities are facing rapid land loss as land speculators, private companies and individuals buy up, or are given rights to, indigenous communal lands. Several applications for communal titles are in areas that overlap with Economic Land Concessions and there has been little progress on excising these lands from concessions. Another hindrance to Indigenous Communal Land Titles is the Protected Area system. Under support from large conservation organisations, the Ministry of Environment has tended to block communal titling within Protected Areas preferring the much more limited Community Protected Areas which the ministry retains jurisdiction over.



The status of research

1. Since the moratorium on new Economic Land Concessions was issued in 2012, the locus of research on land conflicts involving smallholders and private investors has shifted from large-scale state-granted concessions that relied on force and exclusion to gain access to smallholder lands, to smaller commercial land investments that involve a range of mechanisms of exclusion from duress land sales, to land grabs facilitated through lower-level administrative processes.
2. More research is needed to better understand how the new expanded PA system is impacting on rural livelihoods. One particularly important research area concerns the status of the old biodiversity corridors and how smallholders on the ground who now find their farms located within PAs, are legally situated.
3. Another important area of research concerns the evolving Environmental Code and how new environmental laws will impact forest dependent communities - especially indigenous people.

Tim Frewer is a human geographer who has been studying land issues in Cambodia for the last 18 years. He is currently based in Siem Reap at the School of Field Studies.



The latest on land

1. The macroeconomic challenges facing Laos in the land sector are a core issue. The effects of post-Covid inflation were made much worse in Laos due to currency devaluation and rising levels of sovereign debt. The result for Laos has been an extended economic downturn, with the government forced to tighten expenditures. One view is that most Lao people are effectively insulated from the economic crunch because Lao people 'still own land'. However, many urbanites do not own productive agricultural land, while rural people are also being hit by rising food and input prices. It is important to better understand the extent to which land offers rural Lao people a 'subsistence guarantee', or an economic safety net, and how new economic vulnerabilities are playing out for different people through land sector issues, differentiated by class, gender and ethnicity.
2. In the context of Laos' economic challenges, the role of financial markets in land governance is deepening. Lao smallholders and medium sized investors are increasingly participating in the buying, selling and leasing of land, with far-reaching implications. Land leases and sales 'from below' can benefit some, while also privatizing former village commons. Distress-based land sales may be rising, in both urban and rural areas. The Lao Government will likely seek to increase its revenue base through more comprehensive land governance, including through land formalisation, titling and taxes on concessions.
3. Over the past two decades, land conflicts between companies and communities have bedevilled the progress of large-scale leases and concessions, with many human rights infringements. Nevertheless, the Lao government sees potential in opening State Production Areas (PFAs) to commercial plantation investors. While individual land titling is largely prohibited inside PFAs, these areas are still extensively settled by local communities, mostly before the legal forest estate was gazetted. Although there are many pitfalls, there could also be potential for linking innovative company-community partnerships, establishing commercial tree plantations based on the principles of Free Prior and Informed Consent (FPIC), and legal recognition of collective village land rights inside the state forest zone.



The status of research

- Analyse and leverage the potential for “commoning”, or creation of new village commons in land and natural resources, that can help buffer Lao people from the full force of capitalism and enclosure, while supporting beneficial local participation in the market. We can do this by: (a) investigating both formal / legal procedures to recognise and formalise customary tenure and legal education; (b) developing creative strategies to support *de facto* customary and collective rights to land and livelihood (e.g. documenting customary practices and informal rights, participatory inventories and resource mapping, sustainable resource management and tree planting); and (c) linking collective and smallholder land and resource rights to locally-beneficial market opportunities including women.

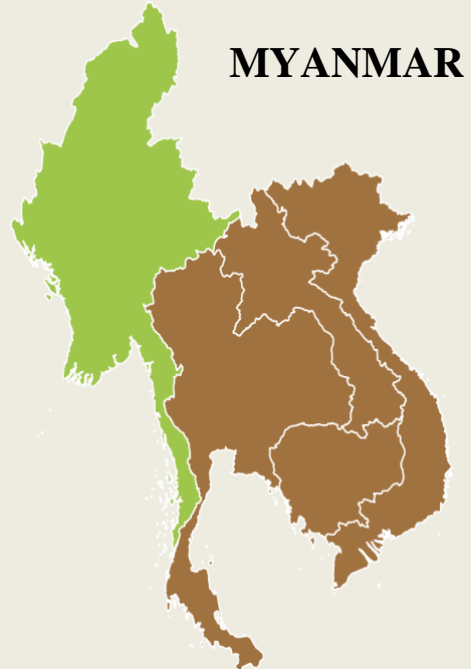
Keith Barney is Associate Professor and Head of the Resource Environment and Development (READ) Group at the Crawford School of Public Policy, The Australian National University in Canberra, Australia. Keith has been active in researching land and resource governance issues in Laos since 2003, often in collaboration with colleagues at the Faculty of Forestry Science, National University of Laos.



The latest on land

1. Following the military takeover in Myanmar in February 2021, overall land governance along with other governing mechanisms have broken down amidst the deteriorating administrative systems impacted by the coup, the civil disobedience movement and the competing authority of the National Unity Government, compounded by armed conflicts spreading across the nation. Rule of law has been undermined by the illegitimacy of the regime in the eyes of most citizens. Several businesses, especially those in extractive industries such as copper mining, gold and jade, have taken this 'lawless' situation as an opportunity to grab land to expand their projects. While land and resource grabs also occurred prior to the coup, communities around those extractive projects are now even more serious victims with no grievance mechanisms, legal-based solutions, and limited civil society organizations' support to address those pressing issues.

2. Western sanctions have made the regime even more dependent on land and natural resource extraction for foreign currency, especially US dollars. The result is much illicit trade in timber, mining, and other resources. At the same time, Ethnic Armed Organizations are also dependent on natural resource revenues for their campaigns against the regime. For instance, rare earths mining has expanded in Kachin and border areas with China. Resource extraction by both sides has serious negative impacts on land and associated livelihoods.
3. The war being waged by the military junta against people's resistance continues to cause massive displacement of the population. In many cases, displacements are temporary but continuous, such as when people flee their villages and hide in the forest during military raids. In other cases, people are forced to abandon their villages and customary lands and become refugees or internally displaced persons (IDPs). According to UNOCHA, the number of IDPs has risen to 1.6 million as of September 2023. There is an urgent need for safe and secure places for people to go, access to land for resettlement and support for basic food and medicine.



The state of research

- The current political situation seriously limits the possibility for undertaking research on land.
- The drafting a new constitution for Myanmar is taking place through two parallel processes: the military is attempting to change the existing constitution and the democratic forces are developing a brand new one. In either case, land and resource ownership and governance decentralization has to be addressed in a meaningful way if peace is to endure. Most citizens advocate for some form of democratic federalism, but what this would look like in practice in terms of land and resource ownership and control, is unclear and contested.

Aung Tun is an associate fellow at ISEAS-Yusuf Ishak Institute. He was previously a visiting fellow there conducting research on the socioeconomic impacts of the military coup. His publications include analytical works on the [Myanmar agriculture sector](#), [post-coup education](#), [post-coup migration](#) as well as [the Arakan Dream](#). He is also author of a chapter on RCEP and Myanmar in a forthcoming publication by ERIA. He has worked as a development analyst for over 15 years on different assignments for the Asian Development Bank, UNDP/Myanmar and other local and international development organizations.



The latest on land

1. In January 2022, the Ad-hoc Committee to Study Land Problems and Issuing of Land Registration Documents of Thailand's House of Representatives reported that the anachronisms of the Thai Land Code A.D. 1954 "have given rampant power to the Land Department Director in issuing and revoking or amending land title deed documents or land certificate utilization, whose acts are unlawful or incorrect". The report suggests a slew of land law reforms, which are long overdue. In a related matter, in April 2023, the Supreme Court ruled that the Land Department's Director must revoke the title deeds of over 800 hectares of land, being held and used illegally by many private individuals, including members of a leading MP family, and return the lands to the Railway Department for public use.
2. In the May 2023 election, the Move Forward Party (MFP) secured the largest share of the vote (38 percent) and seats in parliament (151 of 500). One of several reasons behind its success was its program of reforms related to land which appealed to many rural voters. These include: more funds to disentangle existing land disputes within five years; restructuring land governance to be in tune with the three types of land rights: private, community, and state; reforming the land tax laws; and giving amnesty to all who face legal charges relating to forests and other public land issues. The MFP's bid to form a ruling coalition was strongly opposed by conservative interests.
3. In July 2023, the Supreme Administrative Court ruled to invalidate the permit for an already-built 50-floor residential condo in inner Bangkok, on grounds that the building violates several regulations. Developers persistently break regulations, especially environmental controls, and generally get away with it. The plaintiffs are neighbouring residents, who voiced complaints to the developer in 2016, and later brought the case against five public officials, including the Director of the District and the head of the government agency overseeing environmental aspects. The court's judgement is a triumph for ordinary citizen seeking to improve quality of life in cities, transparency and justice.



The status of research

1. Many outdated laws and regulations relating to land remain in force. Research is needed to identify these measures and have them cancelled or reformed.
2. The growing impacts of global warming, including air pollution, water shortages, floods, urban heat islands and heatwaves, points to the need for more research on sustainable land use both in rural and urban areas, including the impact of changes in land values, taxation of land, infrastructure development and urban planning.

Pasuk Phongpaichit received a PhD in Economics from Cambridge University, UK. She is Professor Emeritus at the Faculty of Economics, Chulalongkorn University, Bangkok and a Fellow of the Royal Society of Thailand. Her research and publications have focused on practical issues and public policy including the sex industry, corruption, illegal economy, gambling, social movements, inequality, taxation, and most recently on land governance.



The latest on land

1. During the course of 2023, revision of the 2013 Land Law has taken most of the media attention on land in Vietnam. The most exciting aspect about this revision is the attention given to access to land for ethnic minorities in the country. Open for public comment since beginning of 2023, the draft law includes an article (Article 17) on the responsibilities of the State Government on land for ethnic minority people. This is the first time that a land law in Vietnam provides specific terms to support ethnic minority peoples' access to land. Importantly, land is not only recognised to be production and housing area but also the cultural value - the living space - for ethnic minorities.
2. From 20 May 2023, and subject to specific conditions of land information technology and the land database of each location, Vietnamese can apply for land use certificate through an online platform.
3. On 24 August 2023, the Prime Minister promulgated Decision 993/QĐ-TTg to approve Vietnam Action Plan to implement the Glasgow Leaders' Declaration on Forests and Land Use by 2030. The Action Plan links the management of the existing natural forest, sustainable agriculture development, and food production with the implementation of Vietnam's nationally determined contribution (NDC). It promotes the devolution of rights to forests to local communities and requests relevant authorities to develop necessary capacities of local people to effectively manage the devolved forests.



The status of research

1. While there is much attention on carbon financing, there is still a lack of clarity in the Vietnamese legal framework on who has the rights to the carbon sequestered in the trees and soil. Research efforts directed at providing clarity in carbon tenure would not only contribute to the development of a carbon market but also strengthen land tenure governance in Vietnam.
2. Rapid process of urbanization and industrialization in Vietnam over the last decades have brought substantial changes to the country's economic situation. However, it remains unclear to what extent these anthropogenic activities have affected the ecosystem functions in the country and if the economic gains are worth the loss of ecosystem services. Research to shed light into such changes will provide important inputs for consideration in future land policy.
3. Numerous landslides have occurred throughout Vietnam in 2023, leading to loss of lives. In most cases, landslides are linked to change in vegetation cover that has taken place for years. There is a need for research to provide scientific evidence on the link between land-use change and disaster risk, and how land (tenure) policy can contribute to reducing such risk.

Dr. Nguyen Quang Tan is a senior scientist at CIFOR-ICRAF. His research interests include community forestry, forest governance, policy analysis, tenure, poverty alleviation, value chain, and climate change. He has (co-)authored over 80 publications, including international peer-review journal articles, book chapters, policy papers, review reports, and policy briefs.



FOREST GOVERNANCE AND CUSTOMARY TENURE RIGHTS IN THE MEKONG REGION

The legislative foundations for state-driven recognition of customary rights to forestlands continues to evolve in the Mekong region. While this gives the impression that things are moving in the right direction, indigenous peoples and local communities still face many restrictions in how they use and manage forests. Meanwhile, the expansion of state power and capital into the forest frontiers facilitates extractive regimes that exclude indigenous people and smallholders from accessing land and forest resources. Green grabbing through protected areas, renewable energy and offset markets represents the latest threat to communities' customary rights to forestlands across the Mekong region.

In **Lao PDR**, the Ministry of Natural Resources and the Environment and the Ministry for Agriculture produced a draft Country Action Plan outlining the government's approach to formalising the land use rights of all 3,167 villages currently located inside the country's three categories of forestlands (conservation, protection and production forests) by 2030. Residential and permanent agricultural lands that lie within forestlands will receive Land Use Certificates (LUCs) provided land use was established before the declaration of forestlands. Unlike titles, LUCs will not include the right to transfer, mortgage or lease the land, meaning land rights holders inside and outside forest categories will be treated differently. The pathway for recognition of collective land uses, especially land under shifting cultivation, however, remains unclear.

In **Cambodia**, the Ministry of the Environment's (MoE) recent decision to expand protected areas by more than one million hectares will reinforce state control over forest resources. Undertaken without consulting affected communities, the decision exemplifies how green grabbing is a key driver of land alienation and resource appropriation of indigenous peoples and customary rights holders. Recent reports reveal illegal logging of timber-rich protected areas using adjacent economic land concessions to 'launder' timber, while simultaneously enjoying international funding for global carbon markets through the REDD+ mechanism.

The nexus between official protection and state-facilitated extraction is also visible in **Vietnam**, where the country's protected wetlands and forests have been threatened by development projects, including the decision to remove protection from 90% of Tien Hai Nature Reserve to create space for the Thai Binh Economic Zone to house industrial parks, a coal-fired power plant and a resort complex; and the construction of a reservoir that will destroy 600 ha of natural forests in the Nui Ong Nature Reserve that the Rai ethnic group and local communities have protected for generations.

In **Thailand**, civil society organisations and forest community groups are concerned that the government's climate policies heavily depend on offsetting emissions by using forests as carbon sinks that threaten the rights of communities to use, access and manage their forests. Various groups are advocating for Thailand to phase out fossil fuels rather than expand protected forest areas that penalize marginalized forest communities.

In **Myanmar**, ongoing conflicts have hampered efforts to safeguard the country's forests and biodiversity. In March 2021, the Salween Peace Park, an Indigenous Karen-led protected area, was bombed by military-led airstrikes and ongoing violence continues to force people to flee their homes into the forest. Security threats prevent community rangers from monitoring resource extraction and development threats, and more displaced people now depend on forest resources to survive. Nevertheless, people still safeguard the forest ecosystem and the park has even expanded in size since the coup.

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