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RÉGARDS SUR LE FONCIER n° 1

# Convergence under pressure

**Different routes to private ownership through land reforms in four Mekong countries (Myanmar, Cambodia, Laos, Vietnam)**

Marie Mellac (IRASEC) and Christian Castellanet (MRLG/GRET)

DECEMBER 2015



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The ‘Land Tenure and Development’ Technical Committee series ‘Regards sur le foncier’ provides a platform for fresh critical analysis of land issues in developing countries. The series makes papers presented by members of the Committee and its network at the group’s research and study days available to a wider audience. All articles are available in French and can be found online at [www.foncier-developpement.fr](http://www.foncier-developpement.fr), with English versions of pieces that are felt to be particularly pertinent. The series receives financial support from AFD’s catalytic ‘Land policy support’ project.

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## INTRODUCTION

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All four countries in continental South-East Asia featured in this paper (Myanmar, Cambodia, Laos and Vietnam) are experiencing land conflicts that could potentially destabilise their governments.<sup>1</sup> Thailand is in a similar situation in many respects, as it has faced mounting tensions over land tenure since the 1990s (Hall *et al.*, 2011). These conflicts are escalating, sometimes violent, and are attracting more and more attention from the media. They have mobilized numerous local and international NGOs, and often triggered the development of an increasingly visible national civil society. In recent years the governments of these four countries have all been forced to take significant land policy measures in order to appease the public and strengthen their own legitimacy (see Part 3), each responding to the problem in its own way and at its own pace.

Beyond national borders, land issues are also contributing to the emergence of a regional civil society<sup>2</sup> and to rising tensions between States, victims and perpetrators of land grabbing. But regional institutions<sup>3</sup> have done little to address this phenomenon as it is still regarded as a matter of national sovereignty. The countries discussed in this paper have all made the same economic choices at more or less the same time (apart from Myanmar, whose land reform only started very recently): putting in place a neoliberal type market economy, promoting a model of modernisation that advocates turning land into capital, and developing industrial and export crops (rubber, oil palm, sugar cane, plantation forestry) through massive, mainly foreign, investments (Castellanet and Diepart, 2015). In this race towards development, sparsely populated regions and politically weak countries are easy targets for those countries/regions where the power and population are concentrated, and whose appetite for natural resources is constantly growing.

There is very little scientific literature on land matters in South-East Asia, and most of what has been written dates from 2007, when the food crisis both revealed and accelerated the extent of large-scale land acquisitions in the region and beyond. The research is also often limited to a single country in the region, and/or focuses on land grabbing without taking account of the historical depth and all-encompassing nature of the current land reforms.<sup>4</sup> In their effort to open up to the market economy, these four countries are proposing land reforms that will radically change social relations on an unprecedented scale. Their reforms are broadly similar in that they all encourage forms of appropriation<sup>5</sup> similar to individual ownership secured by titles, and allow the development of a land market; but different because the way that they are undertaken depends on the historical and political context in each country. So how did countries in the

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<sup>1</sup> Conflicts differ from tensions in the sense that they involve various types of tangible activity and engagement that present a clear and credible threat to the government – demonstrations, recourse to justice, publicity and media coverage, avenues for physical or verbal confrontation; while tension denotes opposition without active engagement that may or may not lead to conflict (Torre and Caron, 2005).

<sup>2</sup> The Mekong Region Land Governance (MLRG) project identified 12 information platforms at the global level, 10 at the regional level (South-East Asia or Mekong region), and one in Asia.

<sup>3</sup> Particularly ASEAN and the Greater Mekong Sub-region (GMS).

<sup>4</sup> With a few notable exceptions, such as the recent work *Powers of Exclusion: Land Dilemmas in Southeast Asia* (Hall *et al.*, 2011).

<sup>5</sup> We follow Le Roy (2011) in distinguishing between appropriation, which is the process whereby an individual or group obtains exclusive use of a good, from ownership (as defined in Article 544 of the French Civil Code, for example), in which the appropriation is absolute. Therefore, ownership is one of several forms of appropriation.

Mekong conduct their reforms, and what impact have their choices had on the development of current social tensions? Are their choices fundamentally different, and will they always be different? What difficulties do they have in common, and which problems are country-specific? And what can be learned from these similarities and differences?

Looking beyond (or behind) their policies and land tenure systems, the comparative tables below show that there is a clear difference between the relatively sparsely populated countries (Laos, Cambodia and Myanmar) and much more densely populated Vietnam. Thailand is somewhere in the middle, albeit with major internal differences. Nevertheless, the four so-called Mekong countries have fairly similar levels of economic development (with the highest GDP in Vietnam) and are still essentially rural countries where over 60% of the active population works in agriculture – although this has fallen to below 50% in Thailand, which is the most economically developed country. Unlike Thailand, the four Mekong countries are also all in economic transition, having recently changed economic direction.<sup>6</sup>

**Figure 1 – Differences in land availability and the role of agriculture in continental South-East Asia - 2013**

		Myanmar	Cambodia	Laos	Thailand	Vietnam
<b>Total surface area</b>	Millions of hectares	65	18	23	51	31
<b>Total population</b>	Millions of inhabitants	53	15	7	67	92
<b>Population density</b>	Inhab/km <sup>2</sup>	84	83	30	131	296
<b>Agricultural land</b>	% of total	19	32	10.3	41	35
<b>Agricultural employment</b>	% of total employment	66	54	74	45	61
<b>Agricultural added value</b>	% of GDP	nd	33.5	26.5	12	18.4

Compiled by: M. Mellac, 2015

Sources: FAO, 2014 – except for agricultural added value (World Bank, 2015)

<sup>6</sup> Moving from a planned collectivist system towards a liberal market system.

**Figure 2 – Key economic indicators in continental South-East Asia - 2013**

		Myanmar	Cambodia	Laos	Thailand	Vietnam
(1) Growth in GDP	2011-2013 %	6.9	7.3	8.1	3.2	5.6
(2) Current account balance	% of GDP	-4.8	-10.8	-29.5	0.5	6.5
(3) GDP	current in \$US billion	nd	15	11	387	171
(4) per capita GDP	current in \$US	nd	1007	1661	5779	1910
(5) Exports of goods and services	% of GDP	nd	65.7	37.2	73.6	83.9
(6) Net ODA received	% of GDP	nd	5.6	4	-0	2.5
(7) Proportion of revenue held by wealthiest 10 %	% of GDP	nd	26.9	29.7	31	27.8
(8) Proportion of revenue held by poorest 10 %	% of GDP	nd	4	3.3	2.8	2.9
(9) Diversion of public funds	Score (global ranking)	2.3 (128)	3.1 (81)	3.7 (54)	2.7 (101)	3.2 (74)

Compiled by: M. Mellac, 2015

Sources: 1 and 2 – (OECD, 2015); 3, 4, 5 and 6 - (World Bank, 2015); 7 and 8 – Proportion of revenues held by the wealthiest 10 % and poorest 10 %. Figures for 2010 for Thailand, 2011 for Cambodia, 2012 for Laos and Vietnam, (World Bank, 2015); 9 – (OECD, 2015) ‘Diversion of public funds’ shows the prevalence of public funds diverted to enterprises, individuals or groups. The higher the ranking, the more funds are diverted. The ranking covers 148 countries.

This paper aims to provide keys that will help us understand contemporary land dynamics in these four countries. In order to do so it highlights their similarities and differences, both in the long history that shaped today’s local land situations and in more recent reforms implemented in the context of greater economic openness. The first part of the paper sets the cultural and historical context, with an overview of the diverse ways that the political authorities and different groups within the region have related to land. After a brief review of the colonial and socialist chapters of their history, the second section looks at the different stages of reforms that have been implemented since the late 1980s. Having set the scene, the third section then considers the current situation through the prism of four of today’s most sensitive land issues.

## I. PART 1 – A HISTORY OF DIVERSITY: FROM AGRARIAN KINGDOMS TO REMOTE MOUNTAIN FORESTS

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### 1. ‘Megadiverse countries’

The number of ethnic groups found in Mekong countries – 100 in Myanmar, 55 in China, 54 in Vietnam, 49 in Laos, 20 in Cambodia – is a controversial and politically sensitive topic that reveals little about their real cultural diversity. Denys Lombard (1995) explains that this diversity is due to their position in the ‘corner of Asia’, between the two great stepping-off points of India and China. He identifies four main layers of settlement that still apply today: the oldest stratum of ‘*pre-state itinerant highland societies*’, followed by ‘*lineal agrarian societies* [...] *from ancient concentric kingdoms*’, then the ‘*Asian networks*’, which include Chinese and Muslim trade networks, and finally the most recent layer ‘*marked by the influence of the West*’, which began with colonisation. Any map of the population of this region (at whatever scale) will resemble an impressionist picture, as the same hillside may have been settled by a succession of very different groups with different languages, religions, agricultural techniques and production methods (Condominas, 1978). But it is also important to note that this diversity is ordered by a fundamental geographic and political opposition that also plays an important role in land tenure: the difference between the highlands and the lowlands, between ‘*numerically and politically dominant peoples and those who are dominated*’ (De Koninck, 1999: 38).<sup>7</sup>

### 2. The centralism that shaped the rice-producing kingdoms

The dominant groups in the region are those with the largest number of people in each country. The *Kinh*, the Khmer and the Thai respectively represent over 80% of the populations in Vietnam, Cambodia and Thailand; the Burmese account for about 65% of the population in Myanmar; and the Lao 55% of the population in Laos.<sup>8</sup> These groups occupy (but do not share) low-lying areas, plains and river basins with high and very high population densities: there are around 50 people per km<sup>2</sup> in the Mekong basin in Laos, 100 to 300 inhabitants per km<sup>2</sup> further south around Lake Tonle Sap, 500 inhabitants per km<sup>2</sup> in the Mekong delta, and exceptionally high rural population densities of over 1,500 people per km<sup>2</sup> in the Red River delta. In Myanmar, high densities follow the Irrawaddy, where there are around 200 inhabitants per km<sup>2</sup>. These high densities correspond with ancient rice-growing settlements that were organised in kingdoms or empires of various sizes, with quite complex irrigated or flood production systems that needed

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<sup>7</sup> It is both instructive and reductive to talk about dominant/dominated groups at the regional level. The dominant groups are not necessarily what one would expect, and domination is not always acknowledged. Scott, for example (in *The art of not being governed* from 2009) shows that certain marginal groups often developed effective strategies for keeping the State at a distance, and that this enabled them to step outside these processes of domination. It is also worth noting that the dominant group in one region may be dominated in another region or at another level, and that there was (and still is) considerable social/ethnic mobility, as Leach (1972) has shown in Burma, and Condominas (1975) in Vietnam.

<sup>8</sup> According to national counts, the Khmer represented 96.3% of the population in Cambodia in 2014, the *Kinh* 85.7% of the population in Vietnam in 2009, the Lao 54.6% of the population in Laos (64.9 % if all the Lao-Tai – people who speak a language from the Thai family – are taken into account), and the Burmese between 60% to 70% of the population in Myanmar (TNI-BCN, 2013).

to be worked collectively in order to function. The nation-states of today formed around these groups, establishing their own elites, imposing their own language as the national language, creating their own capitals, and producing institutions – including land institutions – according to their own representations of space and society, which were shaped by flooded rice cultivation in relatively centralised States. Over time there were various attempts to develop agricultural water projects and sedentarise crops and people, even before the colonial settlers realised the potential benefits of rice production and started their own big drive to modernise rice growing and put the highlands to productive use.

Apart from some minor differences, these groups were organised according to what Lombard (1995) and Bruneau (2006) regard as two basic political models. The Burmese, Lao and Khmer kingdoms are based on ‘agrarian States’ (or what Bruneau calls ‘Mandala kingdoms’), Indian-influenced domains composed of a relatively unstable assemblage of political entities that function at concentric levels. These entities<sup>9</sup> are based “*not on the control of a clearly demarcated territory and its population, but on the king’s capacity to mobilize an armed force strong enough to establish his domination over his neighbours and a faithful entourage to maintain it*” (Bruneau, 2006: 50). Space in these kingdoms was organised topocentrically, in that control over resources and people declined the further removed they were from the centre (or centres) of power. The *Kinh*<sup>10</sup> had empires in the deltas (where the Red River delta starts) and coastal plains (with several competing centres of power at various times) from the 10<sup>th</sup> century onwards, after a thousand years of Chinese domination. With rigorous systems of succession and codified administration, these empires relied on military conquest and territorial colonisation to progressively control, integrate and assimilate the ‘barbarians’ they encountered as they advanced through mountains in the east and down into the southern territories. The two systems did not have the same internal stability or the same way of forming relationships with others: the *Kinh* were colonisers who rarely if ever retreated as they moved south, forcing the populations whose territory they took to withdraw (particularly the Chams and Khmers); while the Thai, Lao, Burmese and Khmer were more ‘administrators/centralisers’ who were happy to make alliances, impose taxes and demand labour services between periods of conflict. When it comes to land matters, however, there are some notable similarities between the two systems.

Their empires and kingdoms were quite highly formalised, centrally controlled, and coherent enough to organise sustainable access to resources and/or large population groups within their territories. Many imperial codes were concerned with land, especially in Vietnam, where the Le in the 15<sup>th</sup> century and the Gia Long in the 19<sup>th</sup> century set guidelines for land status, conducting censuses, raising charges and preventing fraud. Under this administrative system (mandarinate), cultivated land was taxed on a pro rata basis, leading to the creation of land registers that accurately recorded individual parcels. In Cambodia, the king held land on a nominal rather

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<sup>9</sup> These entities are called *muang* for Thai groups. There is no workable translation for this term, which is written as *Mueang* in Thai, *Muang* in Lao, *Mường* in Vietnam and *Mong* in Shan state. It denotes political entities at different levels (except the village, which is called *ban*) and may, depending on the context, be translated as principality, kingdom, State, province or even district. Thai and Burmese groups came relatively late to the region (migrating in large numbers from the 18th century onwards) after large northwest/southeast migrations within and around Chinese territory. The Khmers were established in the region well before the Thai and the Burmese, but also set up their most prestigious kingdoms from the 18th century onwards. The most ancient kingdoms were established by the Môn (Fouan) and the Cham (Champa), who were also influenced by India (Chenla is the oldest Khmer kingdom).

<sup>10</sup> *Kinh* is the official name for the Viet, the group that originally founded Vietnam.

than a real basis,<sup>11</sup> and promulgated laws (*Kram*) or codes (*Chbap*) specifying, among other things, how land could be accessed. Taxes were levied according to productivity, or in the case of plantations, the number of trees on the land (Hel Chamroeun, 2008). The Lao did not have a written or oral code that applied to all groups, but there were local codes that applied to segments or groups of *muang*, as in the small Thai ‘kingdoms’ in northwest Vietnam. These more or less centralised and codified systems of land taxes and labour services were important aspects of building ‘citizenship’ within both empires and kingdoms.<sup>12</sup> In return, the king and emperor in Cambodia and Vietnam were obliged to protect access to land, and were not allowed to alienate land without providing compensation. Both nominally owned and had certain rights to the land in their kingdom, but this did not prevent the village authorities from managing and distributing local land rights with a certain degree of autonomy (including individual-type family tenure accompanied by significant rights).

Despite being the lowest level of organisation in both systems, villages were relatively free to manage their own affairs once they had paid their tributes and taxes and discharged their labour services. This was overseen by local chiefs and members of the nobility in Laos, and royal or mandarin agents in Cambodia and Vietnam. Most of the land in Vietnam was divided up and administered by mandarins, who were hierarchically organised according to their success in the administrative contests but still operated with some autonomy. For a long time, this was amplified or magnified by Western observers, who saw villages as autonomous entities isolated from the emperor’s power by his famous ‘bamboo hedge’ although its primary function was actually to protect them from enemies and wild animals (Tessier, 2003). At the village level, councils of dignitaries supplemented the rules issued by the central authorities with local codes and registers that could vary considerably from one locality to another. The relative lack of social cohesion in the kingdoms of Cambodia and Laos during the pre-colonial period explains the considerable autonomy enjoyed by villages, and some very marked local variations according to the nature of their land practices and links with the central authority (Diepart and Dupuis, 2014; Luco, 2002; Taillard, 1974).

In Vietnam, Cambodia and Laos, households could access whatever land was available by exercising ‘clearance rights’ (known as ‘ploughing rights’ in Cambodia), and then retain the right to use the land they had cleared by cultivating it. Their use rights could only be challenged if they stopped cultivating the land (for more than three years in Cambodia) or if the household left the village. Over time, land tenure in villages started to revolve around the family, with use rights activated by cultivation and accompanied by fairly significant derived rights (to transfer to family members, give away and sell). Households paid taxes in kind to the sovereign, who was the ‘symbolic’ primary landholder, but were able to transfer or sell land to other users and therefore had quite a high degree of control over the land provided they continued to cultivate it.

The scope of the individual rights acquired through clearance has caused considerable confusion about the way that households appropriated agricultural land (and rice fields in particular). This is often confused with individual private ownership,<sup>13</sup> although their rights of enjoyment and

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<sup>11</sup> Through a pure form of ownership with symbolic value.

<sup>12</sup> There was also conscription, which was both an obligation and a privilege extended to full members of the community, as opposed to ‘captives’ in Thai societies in northwest Vietnam (Mellac, 2010).

<sup>13</sup> Pierdet (2008), in particular, recounts the debate around this question in colonial Cambodia. Some comparison could be made between the distribution of rights or control in old Cambodia and the French feudal regime, which

alienation were subject to various restrictions. Rights of use and transmission were linked with real use, and were lost if the holder exceeded pre-determined periods set at the central or local level. These rights also depended on residency in the village, and anyone who moved away lost their rights to access village rice fields. The mandatory requirements for residency and direct productive use, which were sometimes associated with relatively easily available land, meant that there was no land market and little or no serious land inequality before colonisation – and that the local elites in Vietnam, Laos, Cambodia and Burma accumulated little or no land (see, respectively for each country, Dao The Tuan, 1998; Evrard, 2004; Delvert, 1961; Adas, 1974). This is often forgotten today when private individual ownership (and the exchange value that land accordingly acquires) is presented as being ‘natural’ for rice growers in the deltas and plains.

### 3. Mobility and horizontality among ‘forest farmers’<sup>14</sup>

While rice growers seemed (and still seem) to be a relatively homogenous and centralised group, the same cannot be said of the other groups in these countries. They are much more diverse and fragmented, ranging from ‘partial’ rice growers in small mountain kingdoms (the Thai in Vietnam and Shan in Myanmar) to ‘pioneer’ slash-and-burn farmers who are constantly on the move (such as the Hmong in the specific context of opium production during the colonial period) or, much more often, ‘settled’ slash-and-burn farmers who regularly rotate their crops and use fallow in clearly defined areas.<sup>15</sup>

The agriculture they practice is less intensive (in labour and capital) than flooded rice production, and nearly always involves slash-and-burn practices. It is hard to generalise about land tenure, even when the focus is limited to the slash-and-burn farmers who constitute a significant proportion of the ‘dominated’ groups in the region (*integral system*).<sup>16</sup> The common

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distinguished between the eminent ownership of the nobles and the ‘useful’ ownership of serfs. In Cambodia, the term ‘possession’ (translated from the Khmer term *Paukeas*, which existed before colonisation) is used to denote the control over land exercised by its users. The type of ownership that exists today is mainly distinguished from possession by its inalienability.

<sup>14</sup> As Jean Boulbet (1975) calls practitioners of slash and burn or shifting cultivation.

<sup>15</sup> *Slash-and-burn cultivation* or *shifting cultivation* refers to rain-fed agriculture where plots are moved, often in rotation, and which uses fire to clear the land and fertilise the soil. When crops are rotated (in what Spencer, 1966, calls *established systems*), fields are cleared in the same space at regular intervals (of around 10 to 20 years) and forest regrowth is used as a kind of fallow. These fields and areas of regrowth form a dynamic territory (area farmed by a village/small community) with more or less fixed boundaries. When dwellings are moved, they are relocated around the edges of the territory on a seasonal or multi-annual basis, depending on the crops. The group or part of the group may create a new territory if the population grows too fast or a series of adverse events occurs (such as poor harvests). There is also a less common form of shifting cultivation, usually associated with poppy production, where farmers constantly move their fields (*pioneer systems*). This type of slash-and-burn is an *integral system*, while slash-and-burn by settled farmers is known as a *partial system* as it enables them to grow flooded rice as a main or secondary crop.

<sup>16</sup> Except in Vietnam and certain states in Myanmar (mainly *shan* state) where Thai language groups who are highland rice growers and partial slash-and-burn farmers constitute the largest minority. In 1966, J.E. Spencer estimated that shifting cultivation was the main source of livelihood for 7 million families (or around 30 million people) in SEA. Despite sustained demographic growth, the overall figures today are identical to those of the 1960s, as a result of rural exodus and people abandoning shifting cultivation due to the lack of available space or bans on this type of farming. In Laos, about 20% of cultivated land is under shifting systems (Vanhooren and Déry, 2005), compared with 8% in Vietnam, and 6% in Myanmar (Trébuil and Hossain, 2000, cited by

factors that emerge mainly relate to the management of (non-nomadic) mobility, which should be considered in socio-political terms as well as in terms of agricultural production systems. These groups (which are sometimes called stateless) are similar in that they are part of small, non-centralised political structures that are more flexible and often described as more egalitarian and horizontal than those of the hierarchical and codified societies in the valleys (Scott, 1995 and 2009). The limited surpluses that they produce mainly come from the forest, which is a crucial element of the group's economy and identity, as a space that is both cultivated and inhabited by people and divinities. Crops are grown in fields that are moved after one or two (and occasionally three) years of cultivation. Use rights are temporary, acquired by clearance, retained by productive use, and disappear if the land has not been cultivated for a certain number of years (eight years for the Thai in northwest Vietnam, Mellac, 2000) or when there is no sign that the forest has been cultivated or maintained, indicating that there are no plans for subsequent cultivation. Village territories are nearly always fixed (over two or three generations), but the spaces cultivated each year are not. Concepts of boundaries and spatial continuity are dynamic, based on practice, and have a very different meaning from those in the large agrarian kingdoms.

The fact that these groups used to have forms of collective land and resource tenure is often noted, but without clarifying that their practices varied greatly. In some groups households were highly autonomous, making their own decisions about where their crops would be grown within the group territory (the Hmong in certain cases); while in others the village decided which crops would be grown on a small number of large, communally cleared parcels where each household would be allocated one or more strips of land according to its needs and the size of its workforce (such as the Brou in Cambodia, according to Matras-Troubetzkoy, 1974). In certain intermediate cases, rotations were decided collectively (with the area under crops decided at the village level) but each household worked its parcels individually, returning to sites it had cleared several years before.<sup>17</sup>

All these different ways of managing and appropriating resources reflected and contributed to the great political diversity of the region – unlike the resource management mechanisms that emergent States have introduced since the colonial period, which reveal the increasing domination of a small number of groups seeking to impose their own representation of land on the rest of the population, and the hegemony of Western models (both capitalist and socialist). There is still considerable diversity today, which is most evident in remote areas but also continues in a more diffuse way through customary practices (some of which are now illegal). This diversity is one of the causes of contemporary land conflicts, which are as much about representation as they are about access to resources.

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Ducourtieux, 2006). The forests of South-East Asia were the most densely populated on the planet before modern migrations (De Koninck, 1999: 39).

<sup>17</sup> The thesis by O. Ducourtieux (2006) clearly shows the different forms of slash-and-burn and associated types of land tenure.

## **II. PART 2 – THE MOVE TOWARDS PRIVATE INDIVIDUAL OWNERSHIP: PROGRESS AND SETBACKS ON THE PATH TO MODERNISATION AND WESTERNISATION**

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The three countries in former French Indochina emerged from socialism and initiated their land reforms in the mid-1980s, in the context of the end of the Cold War and increasing economic openness (1986 in Vietnam and Laos, 1989 in Cambodia). Myanmar started its reform much more recently (2011), after a socialist period that began with a socialist military dictatorship in 1962, followed in 1988 by a rightwing military dictatorship that took power as the other countries were opening up. The current reforms in these four countries encourage private and individual land ownership, although this mode of appropriation (which had been imposed but imperfectly developed during the colonial period) was theoretically abolished during their socialist periods. All four countries are also seeing an unprecedented commodification of land. This section will review the historical contexts in which these modes of land appropriation appeared and disappeared, so that we can better determine the extent to which they are changing peoples' lives and livelihoods today.

### **1. Colonisation and the first steps towards simplification**

It would be over-simplistic and inaccurate to regard private land ownership as a completely external construct that the colonial authorities imposed without reference to local people or their practices. Nevertheless, the colonial authorities were responsible for the widespread development of this form of appropriation, especially among the elites, as they made it a new category of legal ownership and released land that became available when it passed into the public domain after being deemed 'vacant and ownerless' because other types of land appropriation were not officially recognised. This form of appropriation could also be regarded as a real social and cognitive revolution for the general population, who was affected to varying degrees depending on the strength of the local colonial authorities. While the diversity of local land situations did not disappear under the yoke of colonialism, this period did mark a first phase of integration and simplification, if only due to the demarcation of the colonial territories and the introduction of their administration, which replaced or incorporated the highest and intermediate levels of local authority (province, district).

The colonial authorities' lack of control at the local level meant that a large proportion of the population maintained their previous social and land practices, especially in remote highland villages. This was certainly the case for slash-and-burn farmers and rice growers across the mountain ranges of northern Vietnam, despite the colonial authorities' repeated bans on burning and all forms of collective tenure among Thai peoples (Mellac, 2010). The little progress that was made with ownership occurred in localities that were strategically important for the colonial authorities, such as certain types of forest that had been converted into vast concession-type industrial plantations cultivated by labourers, prefiguring the current model of economic concessions. The colonial authorities were so appalled by the damage done by uncontrolled logging – which they had started – that they created regulated forestry areas and then the first protected areas, thereby reducing the space available for shifting cultivation (*ibid.*).

**Figure 3 - The boom in land concessions in Cambodia under the new rural land concessions regime in Indochina (1926)**

Year	Area allocated (hectares)	Area under productive use (hectares)
1926	878,155	674,167
1927	1,120,551	697,166
1928	1,354,720	870,494

Compiled by: M. Mellac, 2015

Source: M. Slocomb, 2010

Internal migration and colonisation was an important factor in converting the countries own populations to private ownership. This kind of resettlement was relatively rare in former Indochina, where it was limited to areas around the colonial capitals and rice-growing developments such as the irrigation schemes in the Red River and Mekong deltas. These led to land concentration and the emergence of landless producers,<sup>18</sup> with former farmers becoming agricultural labourers who worked or sharecropped for new landowners, and often fell into debt.

Burma which was colonised by the British, experienced a real revolution in social production relations that affected all the majority ethnic Burmese in the country. As with its neighbours, this revolution was linked to the introduction of private ownership, which replaced appropriation through use and allowed land to be used as collateral for bank loans (Adas, 1974). While this opportunity was taken up on a fairly limited scale elsewhere,<sup>19</sup> the colonial project to develop rice exports in the previously uncultivated Irrawaddy delta was largely based on credit secured through land. The high costs of colonising the delta were financed by public investments, and the establishment of a banking (and usury) system sustained by strong European demand for rice enabled households to borrow money to finance their production. In the late 19<sup>th</sup> century the British also started encouraging the Chettiars from southern India to move to Burma. They came with experience in their own credit and banking sector, and offered large loans to slash-and-burn households and Burmese intermediaries who then lent the money at even higher rates (*ibid.*). As a result, the colonisation of the delta was largely based on direct productive use by small-scale farmers. The monetarisation of the economy and development of loans and a land market also led to another phenomenon in Burma – a small but growing number of landless farmers and large, often absentee landowners.<sup>20</sup>

<sup>18</sup> The number of landless farmers in the Red River delta varied according to the area concerned. In the 1950s they accounted for over 80% of the population in certain communes near Hanoi that were affected by urbanisation (Quertamp, in Rossi *et al.*, 20012). Do and Iyer (2008: 534), who do not give their sources, state that in the 1940s, 52% of the agricultural land in Vietnam was owned by 3% of the population, and that 60% of the population were landless farmers. Kerkvliet (1997) suggests that 75% of the population in the Mekong delta were landless at this time, and that there was a lower but growing number of landless farmers in the Red River delta, but does not give any figures for this.

<sup>19</sup> Although this process did occur to a lesser extent in the three other countries, particularly Cambodia, where there were high levels of debt and land concentration in the central rice plains between 1910 and 1920 (Thion, 1993).

<sup>20</sup> In 1939, non-farmers held 47.7 % of agricultural land in Lower Burma, compared with 14.2 % in Upper Burma and a national average of 33.6 % (Andrus, 1946).

## 2. Between the ideal and reality of land collectivisation

After more or less long and violent phases of decolonisation, the four former colonial territories went through periods of acceptance and then (since decolonisation in the case of North Vietnam) rejection of the market economy,<sup>21</sup> under regimes that were at best highly authoritarian and at worst violent (Burmese junta) or ultra-violent dictatorships (Khmer Rouge). Without going into detail about these periods, it is worth noting that all of these young States went through a phase of denying private ownership and revoking all forms of individual tenure in the 1970s (and earlier in the Democratic Republic of Vietnam).<sup>22</sup> Some countries then went through a phase of land collectivisation. In the Red River delta in North Vietnam, the collectivisation process was long and thorough enough to profoundly change land relations. In Cambodia, these relations were changed more by the violence of the process than its length, as the Khmer Rouge completely disrupted the country and eliminated everything that bore any resemblance to private ownership, severing the links between land and those who worked it in urban and rural areas alike.

The effects of socialist regimes were shorter-lived and/or less profound elsewhere, and it is important not to assume that collectivisation completely transformed societies even when it was relatively advanced. In the very heart of the Red River delta, from the mid-1970s onwards, the regime “*traded and negotiated with households, increasingly responding to their preferences to the point that the collectivisation project was more or less abandoned in the final phase*” (Kerkvliet, 1997: 21). In the long run, many of the cooperatives in the northern highlands were more of a formality than a reality – institutions with a new look and new name that fulfilled similar functions to the previous political and land structures (Mellac, 2010). Although the ultimate goal of complete collectivisation was never achieved, it did leave a deep impression, if not as a collective experience then at least as a reference or possibility in terms of land matters. Today’s land reforms could be seen as clashing with both customary regimes and the government policies promoted during different periods. They have followed a similar path in all five countries apart from Myanmar: starting in the 1980s with official recognition of individual tenure, which led to a process of decollectivisation (where collectives were still in place) and sometimes the redistribution of land to households, followed in the 1990s by the legal formulation of a new land regime and the distribution of land certificates or titles.

## 3. The individualisation and decollectivisation of land after socialism

As the Soviet bloc collapsed in the late 1980s, households started to resume individual control over the land they worked, especially rice fields. This move towards individualisation – the first step towards decollectivisation – was facilitated by community-level resistance to the introduction or continuation of collectivisation (Kerkvliet, 1995 and 1997) and the authorities’

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<sup>21</sup> Thailand experienced neither colonisation nor closure of the market economy.

<sup>22</sup> In Burma, the 1974 Constitution stipulates that all land belongs to the State. That year also saw the introduction of a new procurement system in which every household had to sell a fixed quota of rice to the State, under arrangements that were relatively favourable to poorly performing households. This changed in 1978, when notice was given that households which failed to grow or provide the expected output would have their land confiscated and reallocated to other households in the village, with no right to appeal this decision (Hudson-Rodd et al., 2003).

inability to oppose these grassroots movements because their own legitimacy was being challenged.

The government in Cambodia, which was controlled by the Vietnamese between 1979 and 1989, was forced to recognise the progressive individualisation of tenure within working groups known as *Krom Samaki*. These groups were clearly inspired by the Vietnamese model, and were put in place with the clear objective of trying to organise production in the chaos left by the Khmer Rouge. In 1982 the annual distribution of cultivable land to households (initially according to their available workforce) was overseen by two of the three recognised types of *Krom Samaki*. The third type (which was not involved in redistribution) declined, and land gradually stopped changing hands between crops in the other two types. The government ratified this situation at the end of 1985, and Pillot (2007) maintains that very little land was redistributed after this point. It is hard to evaluate what impact the *Krom Samaki* and their distribution of land had, but it seems that while they were far from perfect,<sup>23</sup> they did help re-establish some order, enable families to re-appropriate land, and probably slowed down the process of land capture by elites that had taken full advantage of the legalisation of private ownership in the early 1990s.

The government in Vietnam recognised the individualisation of tenure, first in the form of temporary contracts between cooperatives and households (1981), and then through longer-term land allocations within cooperatives (1988). In order to respond to farmers' expectations and revive agricultural production in the middle of a serious socio-economic crisis (Nguyen Van Suu, 2014), it quickly launched several land distribution campaigns that were intended to be egalitarian and reversible without completely breaking from the socialist ideal. The rules of distribution were generally respected, especially in the Red River delta where land ownership had not already been reallocated. Things were rather different in mountainous areas where family lands had been reappropriated, but this did not lead to land concentration among the small-scale family farms (Mellac, 2000 and 2010). Collectivisation was very short-lived in South Vietnam, and the resulting land distribution had less effect than in North Vietnam, despite the dismantling of large capitalist enterprises that had been converted into State farms (agricultural) or enterprises (forests) mainly cultivated by North Vietnamese labourers. With decollectivisation, most of the land in the delta was reallocated to local people, while land from State farms and enterprises that did not remain under State control (forests were often managed by the army) was allocated to the many newcomers from the Red River delta, who initially came as part of forced settlements and were later attracted by the availability of land.

In Laos, the campaign to form cooperatives was launched in 1978 and dropped in the middle of the following year. State support for cooperatives was withdrawn in 1983, and the country completely reformulated its development strategy five years later: cooperatives were abandoned and rice fields that had been nationalised in 1975 were recognised as belonging to the villages

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<sup>23</sup> The numerous preparatory studies undertaken for NGOs after 1992 tend to show that inequality between farms was quite high, averaging around 1.33 hectares (Sophal *et al.*, 2001). This can partly be explained by the distribution of households within the *Krom Samaki*, especially as families returned from migration. Frings (1997) and Pillot (2007) estimate that the elite were able to start capturing land in the early 1980s, while Hap (2010) shows that distribution did not proceed as planned, and that a land market started functioning in the mid-1980s, which corroborates – but does not totally explain – the growing number of city dwellers registered as owners of agricultural parcels (Sophal *et al.*, 2001). Hap (2010) cites a survey conducted by Boreak Sik in 1998 which shows that only 28% of households had obtained their land from the authorities, while the others had acquired it through acquaintances or, more rarely, by buying it (11%).

that worked them. Strictly speaking, there was no redistribution (or distribution) of land in the rice-growing plains (and rice fields in general); it was more a case of returning the land and means of production to their former owners (Ducourtieux *et al.*, 2005). However, as we shall see, the State did go on to allocate forest lands in the years that followed.

In the late 1980s land tenure in the rice-growing plains of the three former socialist countries reverted to being largely individual. Small-scale family subsistence farming dominated once more, and there was relatively little inequality. Even in Cambodia, where landless farmers now make up 28% of the rural population (Phan *et al.*, 2015),<sup>24</sup> they accounted for just 3% of the population in the mid-1980s (Sophal *et al.*, 2001). But the rapid liberalisation of the economy, coupled with the legalisation of private ownership and virtual absence of titles to secure land tenure led to an unprecedented increase in land inequalities.

### 3.1 Legal formalisation

The situation in Cambodia, which had chosen to create individual private ownership without giving its citizens the means of securing access to land, is very different from that in Vietnam.

At the very end of the 1980s both countries started formalising land rights by distributing official documents issued by the State. The first step was to produce the initial texts,<sup>25</sup> which are similar in both countries in that all land was still regarded as the property of the State or the entire population, and individual land tenure was recognised. In Vietnam, the texts favoured individual tenure but retained cooperatives as the basic unit of management within which households were allocated land. In reality, however, the cooperatives lost much of their power as land was allocated for relatively long periods and households had secure tenure.<sup>26</sup> The texts in Cambodia are rather confused, as the 1989 Constitution clearly recognises individual ownership rights, including land rights (Article 15), but also states (Article 14) that the land belongs to the State.<sup>27</sup> The government was faced with large population movements and constrained by its battle against the Khmer Rouge, who were a continuing presence well after the arrival of the Vietnamese. Its main focus was reducing tensions in the country, and it initially took a relatively cautious approach to managing the crisis, making a clear decision to cancel all ownership rights to land held before 1979, and proposing a system of accession to ownership through a two-phase recognition of genuine occupation.<sup>28</sup>

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<sup>24</sup> They represented 12% of rural families in 1999 (Diepart, 2015).

<sup>25</sup> The Constitution and Instruction on land tenure in Cambodia in 1989, the first land law in Vietnam in 1987, and 'Directive 10' (known as *khoan 10*) in 1988.

<sup>26</sup> Directive 10 did not specify the duration, but suggested that at the very least land should be allocated for the following periods: 5-15 years for annual crops (rice fields were often allocated for 5 years), and 15-30 years for forest lands and perennial crops (Mellac *et al.*, 2010).

<sup>27</sup> "State property comprises land, forest, sea, rivers, lakes, natural resources, economic and cultural centres, national defence bases and the various public buildings" (Article 14, State of Cambodia Constitution, 1989, in Jennar, 1995).

<sup>28</sup> Households that made genuine use of a parcel had to get their occupancy recognised by the local authorities (village and commune). They could then request a certificate of possession from the land registry (district) that demarcated the parcel, and get the certificate approved at higher levels (Diépart, 2015).

Laos produced its first texts in the early 1990s.<sup>29</sup> Overall, they are also rather confused. The new Constitution of 1991 affirms that the national community has ownership of the land and recognises citizens' rights to use, transfer and inherit land.<sup>30</sup> In 1992 this was contradicted by a Prime Ministerial decree that extended these rights to the right to own, use, bequeath, give, rent, sell and buy land ownership or use rights.<sup>31</sup> As in Cambodia, the legislative confusion shows that the government was rather hesitant about introducing private ownership.

Cambodia passed its first land law in 1992. This is universally regarded as confused and failing to clarify the situation, and was superseded the following year by a new Constitution that clearly recognised private ownership for all categories of land,<sup>32</sup> including agricultural land that had previously fallen under the regime of 'possession'.<sup>33</sup> Although the texts are contradictory, the Constitution took precedence and the government did not see the need to pass a new land law until 2001.

Vietnam published its second land law in 1993. This was very different from the Cambodian land law, as it did not challenge the eminent ownership of all land by 'all the people' (which was reduced by the land law and Constitution of 2013) and, even more importantly, did not recognise any form of ownership. Nevertheless, it did provide some reassurance for households by putting an end to cooperatives and extending and securing households' land rights. The law recognises individual rights to use agricultural land without intervention by the cooperatives, for periods that vary according to the category of land concerned. These periods are rather short, but are guaranteed.<sup>34</sup> Households also have five fundamental associated rights, including the right to purchase and sell land for the remaining duration of the land allocation. The Constitution of 1992 also made it mandatory for the State to issue land use certificates for households (and

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<sup>29</sup> The law on private ownership in 1990, the Constitution in 1991, and the Prime Ministerial decree on land in 1992.

<sup>30</sup> *"The State protects and expands all forms of state, collective and individual ownership, as well as private ownership of domestic capitalists and foreigners who make investments in the Lao People's Democratic Republic"* (Article 14). *"The State protects the right to ownership (rights to governing, rights to using, to transferring) and the rights to inherit property of organisations and individuals"* (Article 15, Constitution of the Lao People's Democratic Republic, 1992).

<sup>31</sup> *"The land belongs to all the Lao people, represented by the government. Lao citizens have the right to own and use land, pass it on in the form of inheritance, to offer, rent, sell or buy rights of land ownership and use"* (Prime Minister 1992, 99/PM).

<sup>32</sup> *"All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law"* (Article 44, Kingdom of Cambodia Constitution, 1993).

<sup>33</sup> Possession is a land right that was created during the colonial period, in a flawed attempt to imitate the right of the same name held under customary regimes. The right of possession is registered locally and requires continuous uninterrupted use for over three years; it is therefore unlike ownership as it is neither definitive nor inalienable. It is still the only recognised regime for agricultural land under the law of 1992, which is confused in that it limits ownership to residential lands (Article 19) while making it possible to convert the possession of land (of any kind) into ownership after 5 years under this regime and under certain conditions (Article 74).

<sup>34</sup> The land law of 1993 states that land allocations for annual crops should last 20 years, and land allocations for perennial crops and forests should last for 50 years. The amount of land that could be allocated for agricultural use was capped at a maximum of 3 hectares. A few months later, Decree 64 specified the following areas for different land uses and regions: 2 hectares in the North and 3 hectares in the South for annual crops; and 10 hectares on the plains and 30 hectares in the mountains and hills for perennial crops (Mellac *et al.*, 2010).

organisations), and to protect individual ownership, mainly by guaranteeing the transfer of use rights. Titling soon got under way and the system has hardly changed since then.<sup>35</sup>

Laos passed its first land law in 1997, pulling together all its many earlier pieces of legislation. The State followed Vietnam in recognising individual and household rights to use agricultural and forest lands, and plans to issue land use certificates for up to 22 hectares of any kind of land per person.<sup>36</sup> These certificates are non-transferable and are valid for three years. This timeframe is seen as a probationary period, and users can apply for a certificate for a longer (unspecified) period provided they have used the land for the prescribed purpose and paid their taxes. If successful, they will also have the right to sell this land. This legislation is highly ambivalent, as it means that households' recognised rights could be understood as private ownership rights as well as temporary use rights that are more consistent with the socialist nature of the regime. In Vietnam, all types of forest land can be allocated (apart from protected areas), but it cannot be used for slash-and-burn agriculture because the ground cover must always be some kind of woodland. In Laos, individuals are only allowed to access 'deforested' or degraded forests, which can be cultivated on a temporary basis – theoretically opening the way for slash-and-burn on the allocated lands. In practice, however, the three-year restriction on rotations (two years' fallow for every year under crops) makes it impossible to grow crops as it would take at least seven or eight years to renew the soil fertility. The individual allocation of forest lands was largely a legal fiction as these lands ultimately ended up being part of collective allocations (see next section).

### 3.2 Titling at different speeds

The legislation that these countries produced shows that they took very different paths towards land privatisation. The means and pace of the titling processes (or distribution of certificates) that began in the 1990s also reveal major discrepancies between the rights that the legislation recognises and guarantees, and the methods used to ensure that they can be enjoyed. These discrepancies are least marked in Vietnam, where the government soon set up an effective system to distribute certificates for all types of agricultural land and (especially in the North) forests. Households receive land use certificates (known as 'red books' because the covers for the final certificates are red) for specified periods that increase over time (as of 2013, 50 years for crops and 70 years for forests). These rights are accompanied by a growing number of derived rights, which are more numerous for agricultural land than for forest lands (which cannot be sold). Therefore, rights of use come with a growing bundle of derived rights that make them similar to individual ownership rights, and all rights are protected by identical certificates. Tran Nhu *et al.* (2006) state that 2.5 million land certificates were issued each year between 1993 and 2006, by which time they covered 81% of all parcels.<sup>37</sup> Around 50% of forest lands were allocated in 2006 (and 65% in 2008, according to the World Bank), but these

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<sup>35</sup> Urban households also have the right to use land, but the fact that buildings are recognised as property makes it difficult to separate the two assets (Mellac *et al.*, 2010).

<sup>36</sup> 1 hectare per person for rice fields and fisheries, 3 hectares for commercial crops, 3 hectares for orchards, 15 hectares for deforested land and pastures for livestock (according to Article 17, Land Law No. 01/97 NA).

<sup>37</sup> The proportion of certified agricultural parcels has oscillated, rising from 68% in 1998 to 81% in 1999, falling to 75% in 2002 and then rising again. The dip can partly be explained by the declassification of the category 'unused lands' (7 to 9 million hectares between 1993 and 2006, which mainly became agricultural land; Tran Nhu *et al.*, 2006). This declassification helped hide the conversion of huge amounts of agricultural land into urban or industrial land, which started around this period.

allocations involved much larger tracts of land and more onerous conditions.<sup>38</sup> These figures show the speed of the whole process and demonstrate the political will to secure individual land tenure in Vietnam. The process was even more remarkable in that it was undertaken with no external funding and relatively little foreign technical assistance (Mellac *et al.*, 2010).

The process in Laos and Cambodia was much less efficient and autonomous. In 2004, Evrard estimated that just over half of the households in Laos had received temporary certificates for between 60,000 and 1 million parcels. As none of these certificates were converted into titles most had expired, but households still regarded them as proof of their rights to the land. Today, almost all certificates and titles relate to recently re-appropriated rice fields, meaning that forest areas used for shifting cultivation have been completely ignored. The process of issuing certificates was mainly supported by the World Bank Land Titling project and then by GIZ (Ducourtieux *et al.*, 2005), following the model implemented in Thailand. The donors that invested heavily in this initiative were primarily concerned with encouraging private land ownership, and prioritised rice-growing land and urban and peri-urban areas. In 2014 there were still only 800,000 final certificates covering 30% of the registered parcels.<sup>39</sup>

The situation in Cambodia is similar, but with even greater delays and gaps despite the clear decision to embrace private ownership. The country initially opted for sporadic, demand-led allocation, which everyone agreed was very slow. According to Yniesta (2014), 520,000 titles were issued in 2000, while Hap (2010), who used official figures, suggests that around 72,000 additional certificates of possession were allocated between 2001 and 2008, bringing the total to less than 590,000 certificates by the end of 2008. The government then introduced a new, more systematic method of allocation, and with financial assistance from Finland, Canada, the World Bank and especially Germany (GIZ),<sup>40</sup> managed to reach a total of 1.7 million certificates in 2011 (Oldenburg and Neef, 2014). However, the decision was made to prioritise rice-growing areas in the central plain (where there are fewer land conflicts as possession of rice parcels is generally recognised and respected at the village level) over marginalised remote forested areas and rain-fed agricultural land, where there is a higher incidence of conflicts over land use and occupancy, especially after the government encouraged the development of large scale economic land concessions. In an attempt to calm dissent among households without titles before the imminent elections in 2012 and 2013,<sup>41</sup> Prime Minister Hun Sen further accelerated the process by sending cohorts of youth to register land and directly issue ownership titles (Directive 01). They also did this in zones that were theoretically allocated to concessions or protected areas, as part of what was known as ‘the leopard skin’ policy. At the end of a year-long programme, a total of 3 million titles and certificates were registered in 2014 (Yniesta, 2014). While this represented remarkable progress, the documents still relate to less than half

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<sup>38</sup> These figures are consistent with those published by the World Bank (WB, 2012a), which calculated that over 10 million land use rights certificates (or ‘red books’) for agricultural land were allocated to households or individuals in Vietnam before 2008. This represents nearly 80% of all the agricultural parcels under cultivation, compared with 65% of forest lands and 75% of residential land in rural areas.

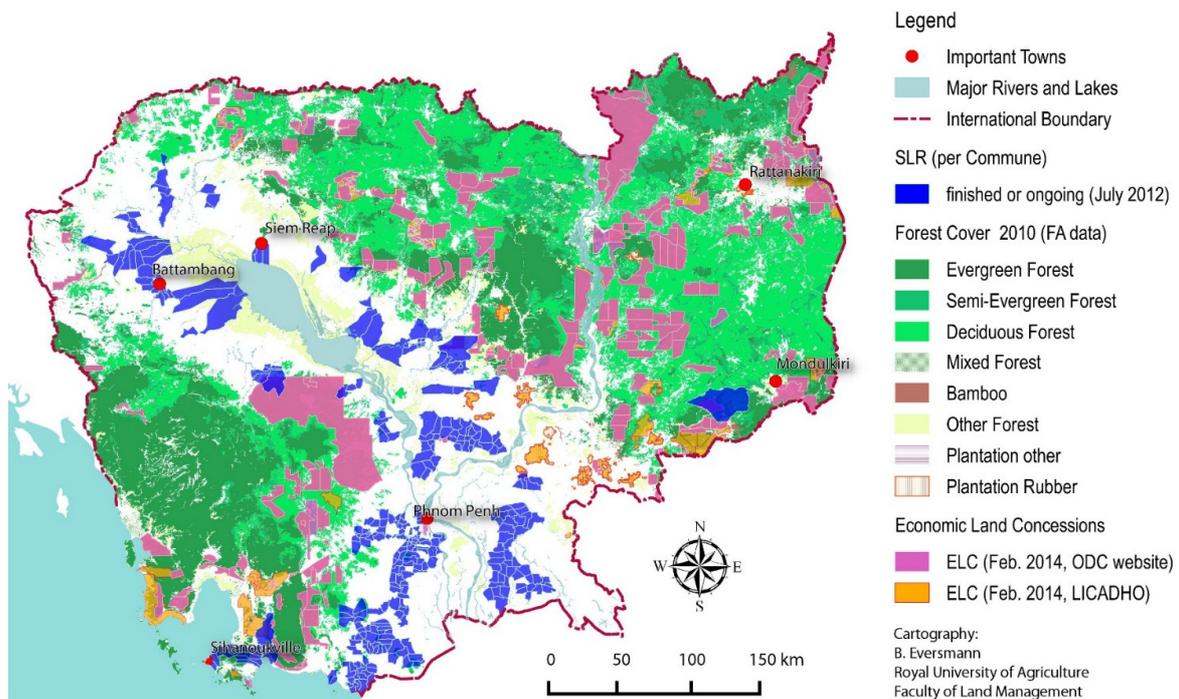
<sup>39</sup> These figures are not entirely reliable even though they come from an official source (Vientiane Times, 11/2014). If they are accurate, not much progress has been made with allocation, although the documents no longer run the risk of becoming invalid as they did 10 years earlier.

<sup>40</sup> One of the largest projects is the Land Management and Administration Project (LMAP), which received \$US 45 million of funding from the World Bank and other bilateral donors (Milne, 2013).

<sup>41</sup> This directive was prompted by rising tensions over the decision that the 2001 Land Law would not recognise possession after its promulgation, in a context of continuing high levels of migration.

of the listed parcels in the territory (*ibid.*), and coverage is very patchy as certain households only have certificates of possession, some have (so-called ‘hard’) titles and others have nothing at all, as indigenous populations and areas where slash-and-burn are practiced were largely excluded from the titling process. This is clearly illustrated in Figure 4 below.

**Figure 4: Areas under concession and agricultural lands listed in the land register (Yniesta, 2014)**



The new transitional government in Myanmar has tried to follow a similar but accelerated route since 2011, putting in place an intensive titling programme as part of its policy of opening up to foreign investment. In the areas covered by the Gret/LIFT study (2015), 76% of the land appropriated by households was covered by a legal title (‘Form 7’) after only three years of implementation.<sup>42</sup> The process was organised very quickly, using old land registers and with minimal preliminary public awareness-raising – causing numerous conflicts that the local land committees have been left to manage.<sup>43</sup> The distribution of ownership titles was widely justified in the name of poverty reduction but has actually formalised the horizontal and vertical land inequalities that are developing. At the moment distribution is focused on rice-growing and predominantly Burmese areas where an average of 50% of people are landless,<sup>44</sup> thereby

<sup>42</sup> The findings of this study, in which the author participated, have yet to be published.

<sup>43</sup> There have been many conflicts, particularly in the delta, related to the forced procurement system that was put in place in 1974 and subsequently reinforced by the junta. Households that lost land because of it are now trying to recover this land and are pitted against its new users, who include former landless farmers that have been using it for several years. This problem is not addressed by any institutions (Gret/LIFT, 2015).

<sup>44</sup> Holders of Form 7 account for 71 % of land in the Irrawaddy delta and 79 % in the Dry Zone, where the respective figures for landless households are 60 % and 40 %. Landless people gain access to land through sharecropping and farming contracts. While they are not always poor, and include some young households that will go on to acquire or inherit land, they are poorer than landowners on average. Widespread indebtedness is a major cause

marginalising the poorest people and ethnic minority groups in peripheral states. As in Cambodia and Laos, the rice-growing areas where the majority ruling population live are treated very differently from the (former) forested areas used by ethnic minorities.

The history of formalisation and titling in these four countries shows that they have taken very different paths towards private ownership, and that none of them are perfect. Cambodia and Myanmar recognise this form of ownership but have not put in place the means to ensure that it works for everyone everywhere; Vietnam does not recognise private ownership but has created very similar use rights and engaged in widespread land allocations; while Laos is ambivalent as it does not fully recognise private ownership and allocates land in some areas but not in others ... This kind of equivocation is entirely natural when such fundamental changes are required for the transition to a market economy, and it reflects the difficult economic and political choices that have to be made. With a strong power base and legitimacy acquired over years of winning battles, Vietnam has shown the most continuity between one period and the next, basing national development on family farm agriculture and thus on its rural workforce and production systems. As a result, it has provided significant funds to the agricultural sector and used land institutions that protect small-scale family farms to support its agricultural policy. Laos and (particularly) Cambodia have both been impoverished by war and had long to manage acute internal crises. They had little control over part of their territory and populations, poorly trained and ideologically uncertain elites, and are under increasing pressure from foreign actors seeking access to their land ... Having decided (with their donors' blessing) to adopt a neoliberal development model based on foreign investments and large-scale agri-business, it is very difficult for them to maintain their on-going socialist heritage (the former Khmer Rouge are in power in Cambodia, and Laos is still socialist).

**Figure 5: Agricultural and forest land allocations around 2014**

	Number of individual titles / certificates	Number of parcels allocated	Proportion of agricultural households	Proportion of agricultural parcels	Proportion of forest parcels	Number of 'communal titles'	Proportion of landless/ agricultural households
	Millions	Millions	%	%	%	Number	%
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
<b>Myanmar<sup>1</sup></b>	nd	nd	nd	nd	nd	0	30 (50)
<b>Cambodia<sup>2</sup></b>	<b>2,8</b>	3,2	nd	<b>48</b>	–	8	26
<b>Laos<sup>3</sup></b>	<b>0,8</b>	2,6	nd	<b>30</b>	(+/-) 0	19	?
<b>Vietnam<sup>4</sup></b>	<b>22</b>	(x 5 ?)	90	<b>91</b>	98	0	12

Compiled by: M. Mellac, 2015

Notes and sources:

<sup>1</sup> (g) 30-35% for the whole country, around 50% in areas populated by Burmese (personal estimates based on findings of the forthcoming LIFT/Gret study).

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of land loss (and thus land concentration), and perpetuates the dependency between debtors and creditors (Gret/LIFT, 2015).

<sup>2</sup> (a,b) (Yniesta, 2014); (d) personal assessment based on data from Yniesta (ibid.); (f) According to GIZ in March 2015; (g) Figure for 2011 (Phann *et al.*, 2015).

<sup>3</sup> (a, b, d) (Vientiane Times, 2014). Data in this article were presented by the Director General of the Department for Planning and Cooperation in the Ministry for Natural Resources and Environment, Mr Xaynakhone Inthavong, during a meeting at Vientiane on 4 November 2014, but have yet to be verified or validated by any scientific references. While this article states that over 800,000 permanent titles were allocated in November 2014, the data available so far (Evrard, 2004) only mention certificates, as titles have only been distributed in urban areas. (f) Data for 2013. Five of the communal land titles were issued in 2011 and 14 in 2013 as part of the resettlements resulting from construction of the Nam Theun 2 dam (Schneider, 2013).

<sup>4</sup> (a, b, c, d, e, f) (Nguyen Van Chien, 2014) (g) For previous dates, Taylor gives the following figures: 8.2% in 1993, 9.2% in 1998 and 18.9% in 2002; and 22% of rural (not agricultural) households in 2012 according to the World Bank (2012b).

These two countries, now joined by Myanmar, nevertheless established institutions that enabled them to make their initial reforms, overcome political crises and generate economic development. It is also worth noting that the sense of continuity in Vietnam has not prevented numerous land conflicts from arising over time. All four countries now face high, recurrent and visible tensions over land that often turn into open and sometimes violent conflict, especially in marginal urban and remote areas. These tensions are often linked to the same internal and external factors, such as growing competition over land (demographic pressure and pressure from DFIs) and new institutions whose shortcomings still need to be addressed. Having gone through a process of internal reorganisation during the 1980s and 1990s, Vietnam, Laos and Cambodia also entered the new millennium by turning towards a resolutely pro-industrial and urban model of development and modernisation in which agricultural spaces had to make way for other forms of agriculture than family farming, and land had to be mobilized in order to produce capital. But that is where the similarities end, as the conflicts in each country differ according to the initial choices that they made and their subsequent management of the outcomes of these decisions.

**Figure 6: Summary of land reforms: Myanmar, Cambodia, Laos and Vietnam**

	Key characteristics	Implementation
Myanmar	<ul style="list-style-type: none"> <li>• <b>‘Private ownership’ titles</b> (<i>Farmland Law 2012</i>)</li> <li>• <b>Concessionary system</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>‘Rapid’ titling</b> in lowland and central Burmese areas</li> <li>• <b>Lack of control over remote areas</b> and/or where Chinese /Thai influence is strong (concessions)</li> </ul>
Cambodia	<ul style="list-style-type: none"> <li>• Rights held before 1979 annulled (in 1989)</li> <li>• <b>Individual private ownership</b> of land recognised in 1993</li> <li>• <b>Access to ownership through occupation</b> (5 years)</li> <li>• <b>Community titles</b> for indigenous populations (2001)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Slow and partial titling</b> (central basin, non-conflictual zones)</li> <li>• <b>Only 8 communal titles</b> in 2015</li> <li>• <b>Public lands widely mobilized</b> for concessions</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Concessionary system:</b> forestry concessions then social and economic concessions on State lands</li> </ul>	
<b>Laos</b>	<ul style="list-style-type: none"> <li>• <b>Possession</b> for 3 years (certificates) then <b>ownership</b> (titles) for all lands</li> <li>• <b>Limited amounts of land</b></li> <li>• <b>Concessionary system</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Certificates and titles</b> in rice-growing plains</li> <li>• <b>PLUP</b> (Participatory Land Use Planning) in upland villages, integrating village forests</li> <li>• <b>Economic concessions</b> in ‘remaining’ areas</li> </ul>
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>• <b>Land belongs to all the people of Vietnam</b> and is managed by the State (still applies)</li> <li>• Recognition of <b>individual use rights</b> (1993)</li> <li>• <b>‘Progressive privatisation’:</b> associated rights gradually extended (sale, inheritance, mortgage, gift, etc.) and restrictions gradually lifted (categories of user, area and duration)</li> <li>• <b>No concessionary system</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Rapid allocation</b> of certificates for agricultural lands (everywhere) and forest lands (especially in the North)</li> <li>• <b>State enterprises</b> and <b>internal colonisation</b> rather than concessions</li> </ul>

Compiled by: M. Mellac, 2015

The next section looks at current land issues, identifies certain common aspects of these questions and considers the different ways that States and their citizens have responded to them.

### III. PART 3 – CURRENT DYNAMICS AND MAJOR ISSUES

This section will focus on three aspects of current land issues: the forgotten rights of ‘forest farmers’; large-scale agro-forestry concessions, which are a type of land grabbing; and the way that land conflicts shape power relations. The first two issues are among the priorities identified by land actors, especially local and foreign NGOs and donors.<sup>45</sup> Focusing on these three topics means that others will not be considered, and we should remember that there are other, less visible causes of concern and tension that receive less attention or publicity – such as the unfinished process of issuing land certificates and titles, or the exponential growth of other types of landholding apart from agro-forestry sites (mines, hydro-electricity and other forms of energy generation, protected areas, civil and military infrastructures, industrial sites, gated residential areas, business and leisure parks). These holdings reduce the amount of land available to local

<sup>45</sup> For example, priority themes identified by the MRLG project included large-scale land acquisitions, ethnic minorities and indigenous populations, food security, and security of household land tenure (March 2015). The NGO Forum Cambodia is involved in the following land-related programmes (which are coupled with food security): Forestry Rights Project, Indigenous People Land Rights Project, Land Security Project and Resettlement and Housing Rights Project (<http://www.ngoforum.org.kh/index.php/en/programme/land-livelihoods>). Food security is often linked with land, showing a utilitarian concept of this issue.

people and add to the unequal spatial fragmentation created by titling, which forces people to change and is a considerable constraint to their daily practices. All these factors make land a particularly complex political problem.

## 1. The forgotten rights of ‘forest farmers’

This issue concerns people who are or who used to be slash-and-burn farmers in forest areas. While they are not the only ones who find it difficult to access land, this particular group of people are disadvantaged because their country’s legislation does not recognise their practices or customary rights. Those land rights that they are offered are incompatible with shifting cultivation and fall well short of their needs.

The three countries from former Indochina have very different legislation. Cambodia is presented (by most NGO staff and by its own land officials) as the country whose land legislation has been most favourable to ‘forest farmers’ since the promulgation of the second Land Law in 2001. Some of the provisions of this law were inspired by indigenous movements, and recognise the rights of indigenous peoples<sup>46</sup> who occupied and cleared forest lands before 2001, authorising them to exercise their collective rights to lands “where they have established residence and where they practice traditional agriculture” (Article 25). So it is theoretically possible to continue slash-and-burn agriculture in spaces where it was already practiced in accordance with customary rules. However, this system restricts certain types of activity (what Li, cited by Milne, 2013, calls a ‘communal fix’) as it is limited to indigenous populations and only accessible to them under very specific conditions, for practices that can only be collective.<sup>47</sup> It has also taken a very long time to put the process in place: it took eight years to sign the implementing order allowing communal land titles to be created, and titles were then issued in dribs and drabs. According to Milne (*ibid.*), 3 were issued in 2012, 8 in March 2015 and 15 in November 2015.<sup>48</sup> In the coming years, it is anticipated that there will be 10 new allocations per year for the 450 or so communities recorded in the census, of which 115 have expressed and registered an interest in receiving titles.<sup>49</sup>

Some allocations have caused tensions, supporting GIZ’s argument that land titling is not enough to protect indigenous rights (Muller and al., 2014) which are often violated by individuals and corporations, informing local populations that attach little or no importance to the titles they have been allocated (and sometimes lose them), or enforcing the internal rules that are put in place when collective titles are issued. The process is also very complex, involving five separate categories of land with maximum areas for certain categories,<sup>50</sup> internal production rules, etc. These regulations go against practices that have evolved according to local people’s needs (spiritual and social as well as essential or economic), and rules that are constantly negotiated and revised in response to unforeseen events. The process has also not

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<sup>46</sup> Cambodia is the only country in the sub-region that uses this term; the others prefer ‘ethnic minority’.

<sup>47</sup> NGOs also have a particular way of dealing with the problems encountered by indigenous peoples (see earlier note).

<sup>48</sup> The figure for March came from Tek Vannara (NGO Forum), MRLG seminar, Bangkok, March 2015; and those for November 2015 from personal correspondence of J-C. Diepart.

<sup>49</sup> Personal correspondence of a member of GIZ (2014).

<sup>50</sup> The lands that can be allocated are ‘residential’ and ‘cultivated’ areas on State land, reserved land, spiritual forest land and ‘cemeteries’, which are part of public lands (Article 6, sub-decree *No 83 ANK, BK of 9 June 2009*).

been helped by the individual registration campaign of 2012, which led to competition between the individual and collective registration systems. Local communities were torn between the NGOs that supported indigenous groups and favoured the collective titles, and the teams of young volunteers ‘sent’ from Phnom Penh to offer individual titles.<sup>51</sup>

All this would be of little consequence if the pressure on land in Cambodia was not so intense due to the combined effects of agro-forestry concessions and internal migration. Gironde *et al.* (2014)<sup>52</sup> show that one in three households in the province of Ratanakiri is not native to the province, and that migration has intensified: 39% of the migrants covered by the census arrived between 2005 and 2010, and 25% arrived in the last three years. These migrants are mostly farmers from the central plains, where demographic growth is causing increasing landlessness as family farms become smaller. Some newcomers (including former city-dwellers) come with capital that they want to use to develop small or medium-sized commercial plantations. This is a fairly classic case of internal ‘pioneer fronts’ that create problems in areas populated by indigenous groups whose only form of defence is a handful of land titles that are not respected.

The current legislation in Laos (and Vietnam) does not prescribe a specific land regime for slash-and-burn farmers, and provides similar modes of access to forest and agricultural lands (same titles, same three-year probationary period, etc.). The reality is very different, however. Agricultural land allocations are usually a matter of recognising pre-existing use rights, while forest land allocations are pre-determined by Land Use Plans (which became mandatory in 1993). LUPs allocate a portion of the forest to each community (which entails setting community boundaries) and determine which spaces within this portion can be used to grow crops, as shifting cultivation is supposedly restricted to degraded or deforested areas. Land use planning has been criticised, often very severely, for imposing significant constraints on the populations concerned. Lestrelin *et al.* (2011) argue that from the 1990s onwards LUP has continued the policies of forced sedentarisation that began in 1975, and that the Laotian government uses it as a tool to control mobile ethnic minorities, gain access to forest lands, and release land for foreign investments – something that has become a national priority and been used to justify and stimulate these procedures since the 2000s (*ibid.*).

Analysis of the situation on the ground clearly shows that the objective is to sedentarise people and crops in order to mobilize forest lands. In 2004 Evrard showed that the procedure often stops once the area allocated to the group has been determined by the LUP. He also shows that 82% of the land allocated between 1995 and 2002 was classified as forest lands, and that only 2% of this land was recognised as degraded forest, which means that shifting cultivation is restricted to this small area. So rather than enabling minority groups to maintain their farming practices, LUP was used to demarcate the areas available for forestry or concessions. Slash-and-burn farmers initially supported LUP, but gradually refused to participate in it as they found themselves displaced and confined to restricted areas. As the LUP started by mapping out the most accessible and least problematic areas, the status of land in remote areas remains

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<sup>51</sup> A household that joins a community has to contribute the land that it held through individual ownership to the community lands (Article 13). Conversely, a household that wishes to leave the community may obtain individual ownership rights to a residential or agricultural parcel that will be taken out of the communal lands (Article 14, sub-decree *No 83 ANK, BK of 9 June 2009*).

<sup>52</sup> Milne (2013) documented this process in detail in *Mondulhiri et Diepart and Sem* (2015) in the district of Samlaut, Battambang province. It was also documented at the national level by Diepart, Pilgrim and Dulioust (2014) in the chapter on migrations the Atlas of Cambodia.

ambiguous, and these areas are made available for concessions without due consideration of their current occupants. Despite these critics, substantial funding were added starting in 2009 to support and enhance the process by the adoption of a supposedly ‘participatory’ procedure (Bourgoin and Castella, 2011)<sup>53</sup>.

Slash-and-burn farmers in Vietnam face very different problems that have little or nothing to do with concessions, and their situation varies depending on whether they come from the mountains in the north or the central highlands. In the mountains of North Vietnam (the combined regions of the northwest and northeast, which are predominantly Thai), slash-and-burn farmers have generally been treated in the same way as Thai rice-growers. There are similarities between the two groups, as slash-and-burn farmers have a long history of growing rice in certain areas (the Hmong in Sapa region, for example) and have also cleared and/or cultivated rice fields within cooperatives. When they had them, these farmers were allocated rice fields as well as forest lands,<sup>54</sup> and the government made sure that households with few rice fields were allocated more forest lands. The maps in Figure 7 below show how forests have been parcelled up. In Tân Lập (on the right), slash-and-burn farmers (in this case from the Dao group) were allocated bigger parcels and more land than the rice growers (the Tày), receiving an average of 8 hectares per household (in parcels of around 1 ha), while the rice growers were allocated 2.8 hectares per household (in 0.5 ha parcels).

**Figure 7: Forest parcels allocated in 1997 in two communes in Cho Don (Bac Kan) district, distribution shown according head of household’s ethnicity (Mellac, 2000)**

Bang Lang

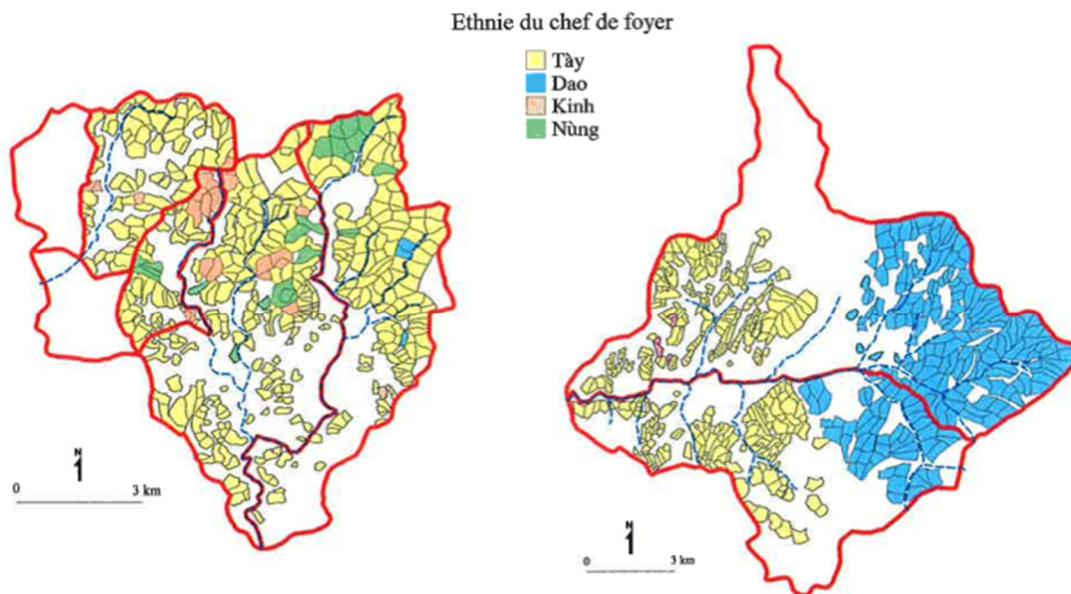
Key: Head of household’s ethnic group

Tân Lập

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<sup>53</sup> Land use planning (LUP) then became Participatory Land Use Planning (PLUP).

<sup>54</sup> The Thai sometimes made sure that non-Thai groups who used rice fields that the Thai felt had belonged to them before collectivisation were not allocated these lands. This meant that slash-and-burn farmers in these areas did not have access to many rice fields (Mellac, 2000).



Since the 1990s, these populations have been among the beneficiaries of government support projects (such as the 327 programme<sup>55</sup>) that aimed to replace shifting cultivation with forest plantations and agro-forestry developments. Increasingly stringent restrictions on burning encouraged large numbers of slash-and-burn farmers to participate in these programmes, and they generally profited from the favourable conditions created by State mechanisms and a dynamic market, establishing plantations that are now productive (Sikor, 2012). Although they initially caused problems because crops were banned or restricted to small parcels (Mellac, 2000),<sup>56</sup> these allocations prevented the creation of large concessions and led to the rapid growth of agro-forestry practices.

The situation is very different for ‘forest farmers’ on the central highlands. A huge proportion of forest lands in this region belong to State enterprises that were created after 1975 to replace ‘capitalist’ (mainly former colonial) concessions, and very little land has been allocated to individuals (2% in 2003, compared with nearly 50% in the northwest region, according to Swinkels and Turk, 2006). The main individual beneficiaries are the settlers who arrived since 1975 as part of the colonisation movements (forced and then voluntary) that the government organised to ease pressure on the Red River delta and make productive use of the resources that were apparently available in this area. This colonisation initially seemed relatively acceptable

<sup>55</sup> Launched in 1992, the 327 programme, which was also known as ‘Barren Land Regreening’, accompanied the distribution of forest lands and had the ambitious objective of protecting or re-establishing forest cover while developing the production of agricultural raw materials, completing the “programme of domestic sedentarisation and improving the material and spiritual living standards of ethnic minorities, generating revenue for the State and consolidating national security” (MARD, 1996, cited by Mellac, 2000).

<sup>56</sup> Forest lands were divided into three categories. Land in two of these categories can only be used to gather dead wood and must be protected by the local people to whom it has been allocated, or even enriched if the forest is degraded. In other words, the responsibility and work involved in protecting/improving the forest is transferred from State agents to local people (Mellac, 2009).

to the ‘indigenous’ populations, as space was still available for shifting cultivation. Certain households, especially the Ede, decided to follow the settlers’ example and voluntarily switched to planting coffee or trees, having left the State enterprises where they had learned to tend these plantations. Hardy (2003) reports that local populations initially welcomed the migrants, and Meyfoidt (2013) argues that the Ede and the Kinh benefited from the boom in coffee growing in the 1990s. But the coffee crisis and unregulated settlements led to deep imbalances between the newcomers and local populations. The number of different ethnic groups in the central highlands rose from seven in 1945 to 50 in 1999, while indigenous populations fell from 80% to 25% of the population in the region (Fortunel, 2008). Nowadays they also have the highest poverty levels in the country and are doubly marginalised: at the central level because they often fought on the side of the Americans, and locally because all the decision-making power is in the hands of the newcomers. Even though Vietnam did not encourage the boom in agro-forestry concessions as its neighbours did, it still doesn’t take real account of the diversity of land tenure regimes specific to forest farming:<sup>57</sup> minorities have to conform to the designated socio-economic model for each region – small-scale family farms growing food crops or plantations that leave little room for communal forests.

This picture of the region would be incomplete without Myanmar, which is still going through a period of rapid change and uncertainty. Until very recently<sup>58</sup> none of its legislation recognised the agricultural and land practices of non-Burmese ethnic groups (Woods, 2015), which are concentrated in poorly regulated areas where they are left to their own devices. This lack of control has led to intense pressure on resources, and the last five years have seen a marked increase in large-scale land appropriations by operators keen to take advantage of the support offered by the government and international financial institutions (IFI) and the legal vacuum that exists in large parts of the country (*ibid.*), including due to armed conflicts and the resulting displacements of population. This means that less land is available for slash-and-burn cultivation.

## **2. Pressure on remaining pioneer fronts from economic agro-forestry concessions**

Looking beyond the legislation, and well beyond Myanmar itself, another major factor in the lack of recognition for local land rights is the pressure that private interests are exerting on forests and apparently little-used lands. This pressure is felt everywhere, usually in the legal form of ‘economic concessions’.

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<sup>57</sup> The 2003 Land Law created a new category of users called ‘population communities’, which are defined as “communities of Vietnamese people living in the same hamlets, villages and agglomerations with the same uses and customs, or belonging to the same family, to which the State allocates or lends land, or whose land use rights it recognises.” They may be allocated unlimited amounts of agricultural and forest lands free of charge for an unlimited period. As it would be very difficult to establish such communities in reality, this has had virtually no effect on land tenure (Mellac *et al.* 2010).

<sup>58</sup> A new National Land Use Policy (NLUP) that « recognize and protect customary land tenure rights and procedures of the ethnic nationalities » as one of its main objective was released by the Parliament in January 2016. Its is now too early to evaluate its effects.

At first sight it seems that Vietnam is the exception to this rule, as its concessionary system is not very well-developed due to the widespread individual land allocations in the North and the fact that State enterprises hold use rights to 60% of forest lands (figure for 2010, To *et al.*, 2013). Although Sikor (2012) maintains that private companies and transnational enterprises “have not been able to gain a foothold in the forest plantation sector” (2012:1078), private interests are making their presence felt. The government (supported by local officials) has strongly encouraged households with use rights to forest lands in the northwest to make their land available to large rubber companies through production contracts that deny them control over both their land and their production (Dao, 2015). It is also worth noting that State enterprises are less ‘public’ than their name suggests. Recognising that they are inefficient, in 2004 the government issued Decree 200/CP obliging them to become profitable, and also encouraged them to attract foreign capital – meaning that they operate more like private enterprises than State ones. This reform not only led to huge job losses,<sup>59</sup> but also failed to attract the desired investments or make these enterprises much more profitable. Their response to their economic problems was to reduce operations to the bare minimum and hire workers on unfavourable temporary contracts. Furthermore, in order to retain control over the land they occupy, they have refused to offer households any land allocations (even temporary ones related to production contracts) despite being encouraged to do this by the State. This strategy of land capitalisation is creating local conflicts and feeding competition over access to land between the growing number of landless households (particularly those of laid-off workers) and companies wishing to seize the commercial opportunities created by the rising demand for fast-growing timber and agricultural products (particularly for livestock rearing).

A number of NGOs headed by Oxfam (2013) supported calls (particularly from former slash-and-burn farmers) for a second, tax-free land allocation through a collective titling process where the land would then be distributed among members of the communities concerned. This option was very different from what Hanoi had in mind for ‘forest farmers’, and it was not included in the text for the 2013 Land Law.

The processes of vertical concentration that have developed in Vietnam also exist in the three other countries,<sup>60</sup> but are mainly focused in economic concessions. Cambodia, Laos and, more recently, Myanmar have been encouraged by IFIs such as the World Bank and ADB to create land categories (long term and large scale land concessions) that are specifically designed to attract private, mainly foreign, investors – who are actively encouraged to invest in these countries in order to develop industrial agricultural and forest plantations (Dwyer, 2008; Baird, 2011). This neoliberal modernisation policy is justified by the argument that industrial agriculture is the only way to stimulate rapid growth in agricultural production, which small-scale agriculture is portrayed as unable to do. Small family farmers are perceived as resistant to change, and are being encouraged to abandon agriculture and find employment in more modern sectors, either the newly created agro-industries or secondary and tertiary sectors in urban areas

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<sup>59</sup> To (2014) citing MARD (2012) suggests that the number of workers fell from over 68,500 at the time of the reforms to 16,600 in 2011. Workers used to have long-term contracts that gave them the status of quasi-public employees.

<sup>60</sup> Mainly in Laos, in the form of the so-called ‘2+3’ model. “*The ‘2+3’ model of contract farming has been heavily fostered [...] as it is seen as the best way to promote rural development. Under this system, farmers provide land and labour (2) and the company provides capital, technology and a market for the final product (3)*” (Tan, 2009: 7).

(Castellonet and Diepart, 2015). Concessionary systems vary slightly in each country, but generally allow enterprises to rent large amounts of land for long periods (and derisory rents) in order to exploit forest resources or grow crops. In Cambodia, the status of agricultural and agro-forestry economic concessions was determined in 2005, in a decree that allows national and foreign enterprises (including 100% foreign capital) to obtain concessions of up to 10,000 hectares of land for up to 99 years.

Concessions in these three countries raise numerous questions and have triggered serious conflicts. Firstly, there is the question of the availability of the land that is allocated. Most of it was previously used for hunting, gathering, rearing livestock or as land reserves – meaning that various land users have been affected by these land allocations. Some of the procedures that potentially make these spaces available have already been described above, such as PLUPs (?) in Laos and communal land titling in Cambodia. Another method largely used by Cambodia is to create State lands, within which any unallocated land is automatically owned by the State. There are two categories of State land in the country: private State land that is open to social and economic concessions, and public land (especially forests) that is reserved for activities and uses that are in the public interest (including conservation), which is supposedly closed to concessions but was used for forest concessions until 2002 (forests were classified as a public good). Although it is theoretically protected, public land can be reclassified as private State property if it is no longer regarded as serving the public interest. This has happened on many occasions, allowing the Ministry for Environment (which is responsible for protected areas) to grant concessions within these spaces and benefit from the revenues they generate. In reality, the land that is ‘available’ for concessions is actually taken from protected areas and spaces used by local people.

There are also important questions about that way that State uses the institutions it has created, as all three countries have abused the system in order to release land. A number of NGOs have exposed the scale of past and present abuses, forcing the IFIs that supported these governments to demand that they curb such behaviour. In the 1990s, IFIs and NGOs were highly critical of the abuses committed by enterprises that had been allocated forest lands in Cambodia, as they bled these and the surrounding forests dry. The State reacted by banning forest exploitation (2002) and developing a new model that encouraged the development of economic agro-forestry concessions, which was approved by the same IFIs. When these concessions also led to spillovers and conflicts, the government announced a moratorium and reform of ELCs in 2012. This reform allows land within ELCs to be reallocated if it is not used according to the approved plans (much land is left unused), so that it can be put to productive use by local people. At the same time, Order 01 issued by the Prime Minister organized a massive and quick campaign of regularization and recognition of the de facto occupants of forest lands, giving new titles inside concessions, protected forests and also protected areas, even in some cases inside communal lands. Now this new model is being debated and reinterpreted because it has created confusion and land fragmentation, still allows operators to sidestep the regulations, and because local people’s land rights and uses are largely ignored.

This kind of policy has resulted in concessions being granted for such vast tracts of land that nearly 25% of the national territory in Cambodia is now in private hands (Gironde *et al.*, 2014). A total of 4.4 million hectares has been allocated through 486 contracts for mining and agro-forestry concessions (respectively accounting for 2.3 million and 2.1 million hectares), while 3 million hectares is possessed by 1.9 million families and cultivated by about 1.4 million farming families. In Laos, much less land is taken up by agro-forestry concessions

(450,000 hectares according to Schoenberger *et al.*, 2012), but this still represents 5% of the national territory. In Myanmar, agro-forestry concessions rose from 800,000 hectares to 2.1 million hectares between 2010 and 2013, and even this sharp rise is under-estimated as it does not take account of concessions allocated by the local authorities or armed ethnic minority movements (Wood, 2015).<sup>61</sup> Most of these concessions are located in remote, densely forested states (Kachin and Taninthari) and are supposed to develop oil palm and rubber plantations, but are actually also used as a cover for timber extraction. The State has reserved nearly 5 million hectares of forest and ‘vacant’ land for future concessions, and in 2004-2005 declassified nearly 700,000 hectares of forest reserves purely for agricultural concessions. Many of these concessions are located in conflict zones whose populations have fled or been expelled by the military before the land was allocated to foreign, often Chinese, investors (*ibid.*). The scale of the land transfers that States have made to large enterprises, and the hugely unequal land distribution this has caused in contexts where most of the population still live off agriculture, and where the number of landless is increasing, is such that some observers regard this as a process of “regressive land reforms where governments take land from the poor and give (or sell or lease) it to the rich” (White *et al.*, 2012, 620, cited by Nga Dao, 2015). Some even describe it as ‘counter-reforms’ that are the exact opposite of the socialist and social democrat-inspired agrarian reforms of the 1960s and 1970s (Castellanet and Diepart, 2015).

Vietnam has based the productive use of its last pioneer fronts on a massive resettlement programme for farm households from the North, reproducing the former *Kinh* model of colonisation of the South by the North (*Nam Tiên*); while Laos, Cambodia and Myanmar have opened their borders to foreign interests, thereby undermining both local land rights and the sovereignty of their national territory. These decisions are hard to justify when considering who are the main beneficiaries from these concessions.

### 3. Land conflicts, actors and civil society

The promoters of agro-forestry concessions argue that they boost economic development and provide local employment, and that their modern production models and capital investments generate significant revenues. These claims have sparked much debate and many different and often partial responses, as one point is often considered to the detriment of the others. What is clear is that these models have not proved their worth as effective drivers of development (except for a few cases at the local level), and output often falls well short of the plans that persuaded investors to put their capital into the land in the first place. Only 23% of the concessions in Myanmar had been put under crops in 2013 (Woods, 2015), and a UNDP study in 2005 found that just 2% of concessions in Cambodia had been used to grow crops (Sperfeldt *et al.*, 2012). The current figures are certainly higher, but the lack of transparency among the actors concerned, not least the State, makes it is very hard to obtain exact data.<sup>62</sup> The Cambodian government’s recent decision to cancel nearly 500,000 hectares of undeveloped concessions confirms that these investments are often speculative rather than productive. A large number of

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<sup>61</sup> A Burmese member of the MLRG project even suggested the figure of 4 million hectares for the end of 2015 (data provided by J.-C. Diépart, November 2015).

<sup>62</sup> An internal document from the Ministry of Agriculture, Forests and Fisheries (MAFF) records the existence of 115 economic concessions in mid-2015 (registered by the Ministry, and therefore involving over 1,000 hectares of land) representing total of 1,164,525 hectares, of which 41 % – around 500,000 hectares – remained undeveloped.

concessions have been used for lucrative timber exploitation rather than the promised development, and many authors note that ELCs do not respect the legislation regulating their operations (ignoring the requirement for impact assessments, for example), do not always produce what was planned and provide little or no local employment. Very little of the revenue they generate goes to the State because they don't pay tax and are largely in the hands of foreign capital. Situations obviously vary, and not all investments have the same impact, but most observers reckon that the number (and quality) of jobs created does not compensate for the livelihoods lost when the land was appropriated for these concessions. In some cases, certain groups (especially local elites) do gain from the new agro-industries, but concessions generally accentuate the differences within rural communities and are of no benefit to the poorest groups or the majority of local people (Gironde *et al.*, 2014).

Most land in Cambodia is held by national interests, while in Laos and Myanmar it is concentrated in the hands of a few companies, including joint ventures and some who are reputed to act on behalf of foreign, particularly Vietnamese, companies (Global Witness, 2013).<sup>63</sup> Woods (2015) notes that 300,000 hectares of land in Myanmar have been allocated to over 800 supposedly Burmese enterprises that are often a front for foreign (mainly Chinese) interests. China and Vietnam are the two main foreign investors in Laos and Cambodia, respectively followed by Thailand and Malaysia. The Vietnamese have a particularly strong presence in the highlands of northeast Cambodia and southern Laos, while the Chinese are major players in northern Laos (Gironde *et al.*, 2014) and well-represented all over Cambodia. Investments from neighbouring countries are often driven by their spatial and/or historical proximity – which brings us to another type of beneficiary from these concessions: corrupt elites. In an example of the way that the concessionary system feeds the personal enrichment of 'tycoons' close to the seat of power, Global Witness (2013) calculated that 20% of all the land allocated in Cambodia went to five senators from the ruling party, the CPP. In one recent case, Pheapimex, an enterprise that is one of the largest landowners in Cambodia, jointly owned by one senator, was allocated 315,208 hectares of land for concessions in the provinces of Pursat and Kampong Chhnang (CCHR, 2013). Local and international NGOs now spend a good deal of their time and money exposing these abuses, assembling documentary evidence to back up their claims, and supporting local people whose living and productive spaces are threatened by concessions. As a result, they are very active in land-related debates and actions.

The greatest number of land-related debates revolve around economic agro-forestry concessions – which also involve the most actors, ranging from States and their corrupt elites to private companies, public and private investors from neighbouring countries, IFIs and foreign cooperation agencies, local and international NGOs, rural populations (with varying levels of local organisation) and even monks from the pagodas of Cambodia and Myanmar. The only people missing from this arena are city dwellers (who have their own battles to fight), as longstanding social divisions make it hard to rally the victims of urban and rural investments into a single movement (this is particularly true of 'forest farmers').

The way that the authorities deal with conflict goes well beyond land issues. In Cambodia, 300 households were charged in relation to land conflicts in 2010, and there were five cases of demonstrators being fired on (mainly in the textile sector) between November 2011 and January

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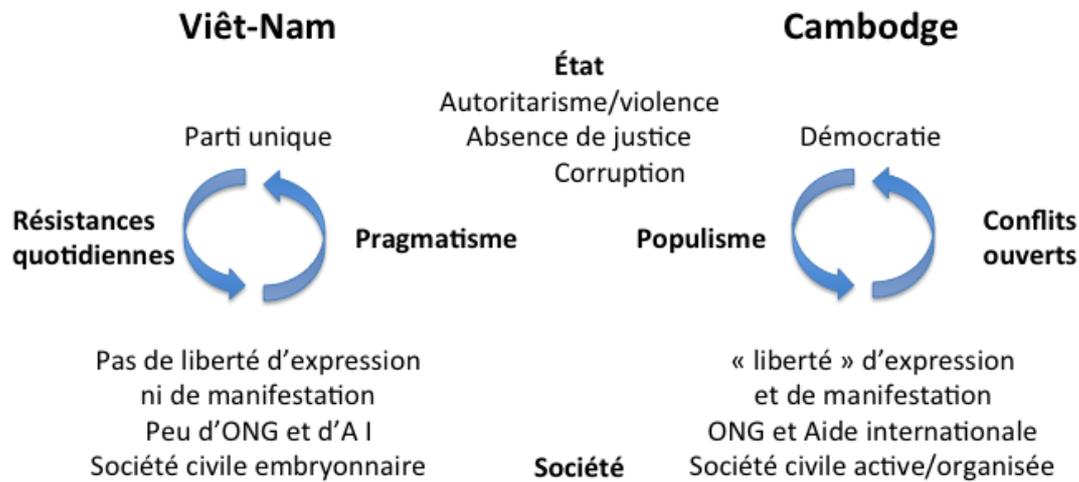
<sup>63</sup> The same document (as in the previous note) shows that 39 of these 115 registered economic concessions had been allocated to Cambodian enterprises, 33 to Vietnamese companies and 23 to Chinese operations.

2012 (Neef and Touch, 2012). No conflicts have led to any ‘direct’ deaths since then (as a result of witnessed shootings by the security forces), but the violence continues behind the scenes and people are still being charged and given prison sentences. A large number of activists were jailed in late 2014, and there was a recent spate of incarcerations and suspicious disappearances in Laos and Cambodia, as well as deportations of foreign NGO staff. In Myanmar, the security forces and army have been implicated in numerous injuries and deaths during conflicts over land. It is not always easy to distinguish between so-called ‘ethnic’ conflicts and land conflicts in this country, but violence is widespread even in Burmese areas outside armed conflict zones, such as the Monywa copper mines: in November 2012, between 110 and 150 people sustained serious burns from phosphorous ammunition used by the police (Amnesty, 2015). While there is less obvious violence in Vietnam, it is hard to document what goes on in a country where the press is tightly controlled, as well as NGOs. The violence is largely, but not totally (see Vilsalmon, 2014) hidden, as are the ‘sit-ins’ organised in front of the National Assembly in Hanoi, which is cut off by roadblocks and concealed behind barricades.

The situation is also different because Vietnam has not dealt with land in the same way as the other countries (land is titled and there are no economic concessions), and there is a different relationship between the State and its citizens (see Figure 8 below). In Cambodia, Prime Minister Hun Sen responded to tensions over titling (or the lack of it) by rapidly accelerating the pace of the process ahead of an important round of elections. The National Assembly in Laos made an unprecedented refusal to vote on the text of a land policy after receiving numerous complaints about it, prompting a major crackdown and the promulgation of a text that ignored these complaints and reaffirmed the government’s decision to convert land into capital. Vietnam has not make any grand gestures of the type seen in Cambodia, but opted for a measured path of appeasement, as can be seen with the vote on the last land law in 2013.

**Figure 8 – Relations between the State and society in Vietnam and Cambodia (models)**

<b>Vietnam</b>		<b>Cambodia</b>	
		<b>State</b>	
		Authoritarianism/violence	
Single party		Lack of justice	Democracy
		Corruption	
<b>Daily resistance</b>	<b>Pragmatism</b>	<b>Populism</b>	<b>Open conflict</b>
No freedom of expression or demonstration			‘Freedom’ of expression and demonstration
Few NGOs and little IA			NGOs & international aid
Embryonic civil society		<b>Society</b>	Organised civil society



Compiled by: M. Mellac, 2015

Vietnam's new land law (the first law not to have been passed after a preliminary reading in the National Assembly) had a difficult passage after the government's first attempt at public consultation (which elicited 6 million responses), and falls well short of many of the hopes raised by this consultation. Nevertheless, it does make some progress by extending the duration of agricultural land allocations and providing safeguards against expropriation, through (supposedly) independent land committees that will determine how much compensation should be paid. This will reduce the role of the provincial officials who have been widely accused of being responsible for pointless and abusive expropriations since 2003 (Gillespie, 2013), as exhortations to use land as a lever to finance local development led to abuses of the institutions created for this purpose. Having gone too far in this direction, Vietnam now seems to want to appease rural households with assurances that they will have greater security of tenure.

The Vietnamese government has gradually gained a reputation for its pragmatism and ability to fulfil its citizens' expectations – sometimes by allowing things to happen outside the legal framework if this helps ease local tensions (Kerkvliet, 1995; Bergeret, 2002; Brocheux, 2011). For long its decisions owed little or nothing to international NGOs and IFIs, which have only been invited to intervene or express their views on land matters since 2008,<sup>64</sup> or to the very few local NGOs that do exist, which are not permitted to engage in advocacy activities. This is different to the situation in Cambodia (and in Myanmar since 2011) where debates are for long more open. So it is not so much a matter of praising the Vietnamese regime, whose government agencies received 1.6 million complaints, petitions and denunciations between 2004 and 2011, of which 70% related to land (Gillespie, 2015; Kerkvliet, 2015), but of noting how poorly the democratic process functions in neighbouring countries that opted for multi-party states. In Cambodia and Myanmar, land conflicts are a key part of this process and one of the elements that energises civil society – creating links with NGOs, feeding blogs and triggering the emergence of local groups, often among indigenous peoples. But there is also a high risk that

<sup>64</sup> When the World Bank, which had long been kept out of land matters, was able to provide \$US 70 million for the 'Land Administration Project', its first project in this sector, (Mellac *et al.*, 2010).

land issues will be exploited for political purposes, as they are in Cambodia, where the opposition openly supports victims of expropriation. This had led to many rumours, including suggestions that conflicts are artificially inflamed in order to serve the opposition's interests ... while the ruling party can present itself as the guardian of internal order. Not even the monks in their pagodas are exempt from this complex political game: in Phnom Penh for example, Wat Samakki, which is known for accommodating households whose land has been expropriated, is controlled by a virulent Khmer Krom<sup>65</sup> who is calling for the Mekong delta to be incorporated into Cambodian territory. Support for the victims of expropriation is invariably entwined with hatred of the Vietnamese, two of the leitmotifs of opponents of the CPP, the party the Vietnamese brought to power in the 1980s and which still serves many of their interests, especially in terms of forest and economic concessions. All these factors make land issues much more complex and harder to untangle and resolve.

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<sup>65</sup> Someone of Khmer ethnic origin who lives in the Vietnamese part of the Mekong delta. This monk recently arrived from Vietnam.

## **CONCLUSION – SECURING LAND RIGHTS IS A COMPLEX POLITICAL ISSUE**

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These last points bring us back to the question of securing land rights, and considering this as a political issue rather than a purely technical or legal matter. Why are some rights secured and others not? The nature of the regime (democratic/authoritarian), the type of rights that are recognised and the rapidity with which they are allocated are all contributing – but not determining – factors. After all, speed has not worked in Vietnam. Security of tenure – and more broadly still, fair tenure as an aspect of spatial justice – depends on the way that land is perceived at the centre of power and within power relations. It also depends on the way that land is used to serve a national vision that takes account of the reality, history, diversity and expectations of the country's inhabitants, their different opinions of something that is so much more than a commercial commodity, and which shapes individual and collective relationships with territory, the environment and other people.

Countries in the Mekong sub-region share a number of common characteristics, most notably their journey from colonisation to independence, socialism and then economic liberalism, with corresponding stages in their land affairs: the appearance of private ownership and concessions during the colonial period, State control and collectivism, then land redistribution (sometimes egalitarian) in the post-socialist period and, since the 2000s, a return to private ownership via land registration and concessions. These parallels are all the more striking because the political systems are (officially) quite different, with market socialism in Vietnam and Laos, and multiparty democracy in Cambodia and more recently Myanmar, after very different phases under a Conservative military dictatorship in Myanmar and a Maoist dictatorship and civil war in Cambodia.

Another striking point is the fact that the considerable effort invested in registering agricultural land within a liberal paradigm (securing tenure to encourage agricultural investment) has done little to reduce insecurity of tenure in any of these countries. On the contrary, conflicts have multiplied and become a major political issue for all of them in recent years. While the first stages of their reforms and the relative availability of land served as adjustment variables in times of transition, these conflicts are often related to the modernisation policies in these countries, which are based on encouraging foreign investments, major infrastructure projects (especially hydro-electricity) and mining, developing industrial zones and granting huge land concessions for agro-industry and forest plantations. This paradox can be explained by the fact that their land registration campaigns have focused on rice-producing land in the central plains, where occupancy rights are socially recognised and there are fewer conflicts – avoiding the remote forest highlands where ethnic minorities that had remained relatively autonomous from the central authorities practice shifting rain-fed agriculture (with the notable exception of Vietnam, which systematically registered all land, including forests). None of the legislation has favoured these 'forest farmers', recognising neither their customary community rights nor their slash-and-burn practices. Registering recognised farmland in some parts of the country but not others underscores the fact that all the areas that were left unregistered can be considered 'vacant', meaning that they belong to the State and can be allocated for concessions or developments with no consideration for the rights of the people whose livelihoods depend on this land.

The ensuing wave of concessions in Cambodia, Laos and Myanmar has caused serious conflicts with people who have been deprived of their rights, and a surge in land inequalities that is causing particular concern due to the rapid rise in the number of landless farmers. In this sense, these three countries have presided over an ‘agrarian counter-reform’ conducted in the name of modernisation and growth. The underlying ideology may be called neoliberal, but there is no hiding the fact that these practices generated revenues and kickbacks that fed the political and business elites in neo-patrimonial States.

Another type of conflict is developing in Vietnam, this time over the conditions in which farmland has been expropriated during peri-urban developments or the construction of major infrastructures. Like their counterparts in European, Japanese and Indian resistance movements, affected farmers are contesting the merits of some of these operations (the definition of public interest) and challenging the fact that the compensation they are paid is based on the agricultural value of the land, while the added land value feeds the State coffers and oils the wheels of corruption.

This situation highlights two of the issues that international cooperation agencies should address: the need to take account of the diversity of local land situations and avoid proposing models that do not fit local realities; and the need to stop being naive and consider whose interests are being served under the cover of apparently acceptable policies. The seismic effects of individual private ownership need to be assessed, particularly its capacity to trigger intense fragmentation at several levels, not only between titled and untitled land but also within titled spaces, as private ownership leads to the individualisation of strategies and practices. This fragmentation could be understood as one of the outcomes of the emergence of modern States whose new institutions are charged with developing the market economy and the individual private ownership that goes with it. The simultaneous advancement of agro-industrial concessions as a path to rapid development and poverty reduction, promoted by some international institutions in the name of a rather questionable economic logic (Deininger, 2010), takes no account of the real conditions in which rights are recognised or the functioning of the State concerned, and has the opposite of the intended effect.

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