

If you want to go far, go together

Advancing bottom-up alignment & visioning to protect  
tenure rights and livelihoods in the Greater Mekong  
Region

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## Preface

This report has changed shapes several times and has gone through many phases. The task we took on turned out to be even more ambitious than we anticipated, and we have probably advanced half-way. The greater Mekong region (Cambodia, Laos, Myanmar and Vietnam) share many similar features, but these countries are also very different in governance, history, landscape and land use, land tenure systems and the challenges around rights for rural people and communities at the central level, and even more so at the local level. Deciding on the most fertile common ground for work on protecting tenure rights is not that obvious, but if agreed upon will have high potential for an effective cross country push forward (or push back). Clearly, space is needed also to pursue country specific priorities that will benefit from better connections with regional and global initiatives and (knowledge) networks.

We also stopped half-way as SDC needs to agree and decide on focus and approach. Within SDC there is a shared understanding that sustainable rural livelihoods and viable communities require secure rights over key assets: land and forests. There may be less agreement though on whether the weakening of tenure rights is indeed a binding constraint for poverty reduction and food security. There is no agreement yet on what strategy to pursue to protect tenure rights: should the focus be on forest governance and strengthening upland production systems and value chains? Should a rights based approach be emphasized (or not at all)? Actively engage with advocacy around protecting rights or only prepare the ground via data collection and research? Engage more with the private sector? Focus on developing alternative livelihood options and reduce risks via contract farming?

There are also different opinions on strategy: is a change strategy based on “change agents and champions” making a correct analysis? Should the regional program be anchored in the country programs or operate more independently at the regional level? What determines the legitimacy of a regional program? Is there policy space for SDC (or other international partners) on such a sensitive issue and are the powers at play not too large and overwhelming? Not surprisingly, we concluded that there is no consensus yet within SDC on the basic principles of a regional program. In this report we will thus only sketch options with different degrees of commitment and risks from which SDC can choose, and which are ranging from intensification and stronger alignment of ongoing work around tenure rights to a full-fledged, newly created “regional hub”.

We greatly appreciate working with SDC staff at regional and country level and sincerely appreciate their assistance with organizing interviews, the frankness, reflective opinions and the sharing of the in-depth knowledge of the local context. We are particularly grateful for the huge efforts taken, despite very busy working schedules, to provide us with elaborated and very valuable comments on our first draft report. A special word of thanks to Adrian Gnägi for facilitating the process and keeping us sharp.

We are convinced that SDC will design an appropriate and effective regional initiative around the governance of land, forest and water, which is of crucial importance. One conclusion does stand out from our appraisal: Currently, it is the governance of tenure rights that is one of the biggest development challenges in the greater Mekong region; the outcome determines the future possibilities for sustaining viable livelihoods for the women, men and their communities in the greater Mekong region.

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# 1 Summary

This appraisal mission was mandated to assist the Swiss Agency for Development and Cooperation (SDC) in deciding on whether there is rationale and justification for developing a regional programme on land and forest governance in support of SDC country programmes and partners in Cambodia, Laos, Myanmar and Vietnam. And if yes, what focus, approach and organisational set-up would be the most relevant given the issues at stake.

The fieldwork confirmed the huge importance of “large-scale land acquisitions” for agricultural and rural developments, rights over land, forest governance, and particularly for ethnic minorities. Simultaneous developments in the mining sector, around dams, special economic zones and so on, create additional and competing claims to land. These developments have irreversible implications for landscapes and the environment (logging, conversion of forest in farmland or plantation) and for local rights and livelihoods. These developments are producing transformative change in the rural economy in parts of Cambodia, Laos, Myanmar and Vietnam.

The way that land and forests are governed (de jure and de facto) determines the outcome for people, communities and sustainable development more in general. The current failings are partly the result of more general weaknesses in the overall governance context, and cause even more undermining of the “rule of law”, less transparency in decision making processes and elite capture of resources. An image of impunity for private sector and government officials involved in shady, yet legal deals, is emerging, which may undermine even more local rights. Moreover, there are already several cases of long-term donor investments in participatory land use planning, community (institutional) development or markets that have been swept away or seriously undermined because of government agreement to allocate the land to concessions.

Important changes in legislation are in preparation (Laos, Myanmar and Vietnam) alongside recent policy announcements (e.g. moratorium Cambodia and Laos, “fast track” land registration Cambodia). The decisions that will be taken in the coming years by governments on resource allocation and private sector engagement will determine to a great extent the economic viability of smallholder farming and the value chains that they develop, the future of ethnic minorities, and also of forests, biodiversity and environmental sustainability in the region. Decisions on land governance will also influence living conditions in cities.

In our opinion, CLMV countries are at cross roads. Accelerated investments in natural resource exploitation and the energy sector bring needed revenues that can be invested in building a solid foundation for development for now and in the future – reducing also dependency on development aid. This requires that the countries will negotiate these investments contracts carefully, to ensure that the public sector will get a justified share of the revenue and can compensate for the negative externalities, while also ensuring enforcement of contract conditions. Alongside, these revenues need to be managed and invested carefully towards sustainable development based on societal priorities.

Policy on Land and forest governance is a sensitive issue. Key decision on policy orientations are made by the inner circles, based on what is presented as facts, but also ideology and paradigms, vested interests and so on. There is a strong inter-linkage between private and public sectors elites around cross border business operations and these (domestic) interests influence concession politics. Much money can be made from real estate development, infrastructural contracts, and land speculation.

Current developments regarding land governance are steered also by a series of paradigms shaping government policy, such as on modernization of the agricultural sector, eradicating unproductive traditional farming methods, the abundance and under-use of resources, the strive to control rural areas, the urge for high growth targets (GDP) and FDI and the need for revenues. The private sector from its side is driven by rapidly expanding market demands for food, fibre, wood, rubber, minerals and hydropower and the foresight of shortages in the future, particularly in the emerging economies like Vietnam, Thailand and China.

Although it will not be a “quick win”, we see increasingly room for discussing above paradigm and recently also an increasing awareness of (more enlightened) senior decision makers to question the current developments. Addressing the above through a regional programme makes sense as countries are faced with similar issues and are going through comparable policy processes (that may even be influenced mutually Vietnam- Laos for example) –even although the national level political setting differs considerably. There is considerable scope for cross-country sharing of experience and learning. A regional approach can contribute to sharing good practice, innovation and preparing alternatives as it facilitates a wider input of ideas and grouping of capacity.

Contributing to the above goal will require multi-faceted and multi levelled interventions in which the link between realities at the ground and policies is crucial. SDC, engaging at ground level through national level projects and at the same time engaging at macro and supra-national advocacy and lobby efforts is ideally positioned to play such a bridging role.

Conditional is that regional engagement should be constructed on country- level dynamics. Land and forest governance policy and legislation are ultimately decided at the country level. Broad working groups on land are established in Cambodia, Laos and Myanmar and these networks should be the foundation of a regional programme. As such it is strongly recommended to anchor a regional programme in country level networks, building on local dynamics, and work closely with “champions”. A way of engaging some “champions” in the regional programme is via the establishment of an Advisory Board to the programme, which should become a prestigious body for which SDC invites people that have been recommended by the countries.

The goal of a regional programme is to improve land and forest governance and mitigating risks by connecting networks and champions, brokering information and resources; providing a basis for evidence based policy (data, research, observatory and paradigm shift (shared understanding and arguments), convening on issues and creating expert panels, and building capacity of networks (strategic thinking and scenarios, smart policy engagement, documenting and sharing good practice in a systematic way).

In terms of structure of a regional project we list different scenarios ranging from strengthening existing national initiatives to the development of a separate full-fledged regional structure. Potential investment scenarios are:

1. Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks, **without** additional technical assistance
2. Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks, **with** additional technical assistance.
3. Supporting regional initiatives within (legitimate) partner organisations with which SDC is already working and assist these organisations to develop full-fledged land governance programme – in line with on-going work. These programs work at the regional level and provide assistance to country program.

4. Full-fledged regional program that is driven by a regional knowledge hub, located in an existing regional organization and providing services and support to SDC programs (country, regional and global). The hub is specially developed to improve the results and quality of work of the members, while avoiding competition / crowding out with existing networks and initiatives
5. Full-fledged regional program that is driven by a regional knowledge hub, set up as a parallel and independent structure and serving networks and SDC programs.

The nature of the continuous changing, sensitive theme of land and forest governance, which is entailing many cross-sectoral dimensions and engaging a range stakeholders implies that a log-frame approach will not work for defining results. Outcomes have to be defined in terms of increased data and information availability, capacity, competences, and connectivity. On content, planning has to be flexible and responsive in order to address changing realities effectively and engage with emerging opportunities. This unpredictability entails risks for SDC in terms of Return on Investment.

Risks increases from option 1 to option 5 according to intensification of engagement, increase in total investments and complexity of the proposed project structure. In case options 4 and 5 are considered we strongly advise to develop a two-step tender process that allows for an inception period of 9 to 12 months prior to starting up the core project.

## 2 Introduction: setting the scene and methodology

### 2.1 *Background of the appraisal and methodology*

This report is prepared for the purpose to assist the Swiss Agency for Development and Cooperation (SDC) in deciding, firstly, on whether there is sufficient “ground” for developing a regional programme on land and forest governance in support of SDC partners, which adds value to the on-going SDC country programmes in Cambodia, Laos, Myanmar and Vietnam, and ensures stronger connection with SDC global initiatives around land governance. If yes, what are the objectives, the options for SDC with respect to intervention areas, modalities, resources required and the risks of the various options?

The methodology used for the appraisal study is a combination of desk study, interviews, feedback workshop. An extensive number of people have been consulted in all four countries, generally in face-to face meetings. The duration of country visits was 2 to 3 days (excluding travel) and did not include visits to “the field”. Others were contacted by phone and Skype (mostly regional and international contacts). Extensive discussions also took place with SDC staff if present at the time of the fieldwork (during the holiday seasons).

An overview of findings was discussed during a 1-day workshop in Laos with resource persons from the various countries and SDC staff. This workshop was used also to “pre-test” the added value of more structured exchange between country networks and experts. The topic chose was an exchange on approaches for compiling data and other information on concessions for informing policy. This workshop was not, and could, not be used to discuss intervention approaches, in order to prevent any possible conflict of interest if a future regional programme on land governance would be tendered.

A first draft report was presented to SDC in August 2012 and was extensively reviewed. The comments were very important for preparing this final report.

### 2.2 *Scope of the appraisal*

The emphasis of this appraisal was on substance; what are the developments with respect to land and forest governance in the greater Mekong region, what are the implications for SDC and where can SDC add value.

In the inception report, the choice was made to focus on large-scale land acquisitions of farm and forest land (or “concessions” as we will call them in this report). Recent data indicated that this development is spreading and increasingly causing transformative, irreversible changes in the landscape, with respect to governance of land and forest tenure, and local livelihoods. Livelihoods, food security and income of smallholders and communities with more forest-based livelihoods are increasingly affected as their rights are not protected. Moreover, when governments allocate concessions, already existing land use planning, social forestry, other development interventions, protected areas have been ignored in a number of cases. Concessions thus wiped out results of long-term investment by NGOs and donors, because lands that used to be managed by communities is included in a concession and transferred to a company.

In the inception report we proposed to analyse Vietnam as a country of origin of part of the companies that are investing in Cambodia, Laos and Myanmar (in addition to Chinese, Thai and other mostly Asian based companies). Following comments on the draft report, we have added more analysis of the current and future developments in the land sector in Vietnam (user rights, consolidation, and transparency).



In this report, we present a broad overview of land and forest governance using a “comparative analysis” perspective across the four countries, seeking to identify similarities. We use the word ‘seems” as it is important to be cautious. There are a lot of non-factual rhetoric and rumours around, disrupting a fact-based dialogue and decision making.

Moreover, the study covers a vast region with four very different countries and land governance is a “moving target”: the private sector is very active, and there are a number of announced policy developments (and new legislation), there are also examples of “sudden” high-level decisions<sup>1</sup> that affect land governance. Moreover, much is on-going under the radar screen, is not on paper, not widely known and will only become (more) visible when land use changes actually take place on the ground. And, these changes and their consequences are noticed at the national or regional level only when there is good communication with affected communities.

What emerges also from the many discussions is the huge, transformative potential of “large-scale land acquisitions” for tenure rights, for landscapes, for the economy at the local and national level. Many changes are likely to be irreversible and carry high risks for local communities who may lose rights over assets and bear the bulk of the costs. Fieldwork also confirmed the wide concern for these developments on governance, environmental protection and human rights within civil society, in the donor community, some academia, some national assemblies and within some parts of government.

The desk study and interviews showed the presence of many resource persons and the existence of a growing body of high quality research and data on land and forest governance more in general, and on ‘concessions’ in particular. The data collection initiatives that bring together spatial data in Laos (SDC supported programme DECIDE) and in Cambodia (various NGOs, east west foundation) and provide much needed facts. Another important and promising development is that many of these studies have been undertaken by members of land working groups and networks that are emerging in Cambodia, Laos and Myanmar. There are also some studies by researchers from local

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<sup>1</sup> See recently in Cambodia (moratorium, decision on land registration) and Laos (moratorium, suspension of a dam project) and also speed of change in Myanmar

Universities, despite the risks that they face and which were also clearly expressed in interviews (such as Cambodia and Laos).

This report cannot do justice to the large number of documents we received for the desk study or all the information, analysis and nuances which have been shared with us during the many interviews we had in the four countries. We want to express our gratitude to all who have spent valuable time to talk to us, and we are grateful for the broad interest support with identifying people to talk to that we have encountered during this assignment. This interest and preparedness to assist is another indicator of the wide concern in the four countries region with respect to effects for people, communities and society more at large, of the recent developments around land and forest governance.

In the following section we start with an introduction to the status of land governance in the four countries. The second part of this chapter deals with "large-scale land acquisitions", that is the farm and forest concessions. It is the process of how these areas were acquired or allocated that can be labelled as "land grabbing" even when officially legal, but resulting in the involuntary dispossession of the original holders and users of the land, who based their claims on customary practices that may or may not be recognised in law. The fourth section presents an overview of (upcoming) developments and initiatives that we have come across in the countries and at regional level. The fifth section summarises the current work of SDC around land governance. In the sixth section we will develop some possible entry points for SDC and the associated strategy for change. The seventh and final section presents sketches for a regional programme in which we present 5 options with different levels of change potentials, commitments for SDC in terms of management, technical advice and financial commitments, and risks.

### 3 Situation of land governance

#### 3.1 Definition of land governance and responsible investments

Systems of tenure define and regulate access to land, fisheries and forests, that is who can use which natural resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices. The governance of tenure is a crucial factor in whether people, communities, companies and others are able to acquire rights to use and control land, fisheries and forests. Many tenure problems arise because of weak governance.

Land governance is the process by which decisions are made regarding the access to and use of land and natural resources, the manner in which those decisions are implemented and the way that conflicting interests are reconciled (Un-Habitat, 2008). Key land governance themes are thus: rights recognition and enforcement; land use planning, land management, and taxation; management of public land; registries and public provision of land information; dispute resolution and conflict management). Responsible governance of tenure promotes sustainable social and economic development that can help to eradicate poverty and food insecurity. In addition, it encourages responsible investment.

Responsible investments should do no harm, respect human rights and should safeguard against the dispossession of legitimate tenure rights and against environmental damage. States should provide safeguards to protect tenure rights of local people from risks that could arise from large-scale transactions in tenure rights<sup>2</sup>.

#### 3.2 General situation of land governance in the four countries

**Table 1: Comparative situational analysis land governance**

	Cambodia	Laos	Myanmar	Vietnam
Population density pp/km <sup>2</sup>	82	27	76	281
Most Recent significant Land law	2001 land law 2005- concessions	2003- all land is under the ownership of the national community, the representative of which is the national gouvernement	1988	2003
Revisions planned in policy and legal framework land/ forestry	No	Review land and forest law for 2013	Yes -ongoing	2012-2013
Recognition customary rights	Collectivization 1975-1979; destruction titles & records  Land redistribution 1980s LASED program (6000 ha for 1614 hh)	As user rights	Constitution (2008) user rights only, inheritance is allowed but no other transfer. De facto – wide spread in uplands –de facto, north indirect rule	As user rights
Type of formal rights for smallholders	User rights- 50 years	User rights by temporary allocation 30% titled – aim is to finalise all in 2020	Several systems semi-formality (tax records) not for uplands	temporary user right granted (period depending on land category up to 25 years)

<sup>2</sup> Source: Voluntary guidelines  
[http://www.fao.org/fileadmin/user\\_upload/nr/land\\_tenure/images/VG\\_Informal\\_aid.pdf](http://www.fao.org/fileadmin/user_upload/nr/land_tenure/images/VG_Informal_aid.pdf)

				90% households hold Land Use Right Certificate (LURC)
Possibility for collective rights	Yes-2001 +2009 (obligation to register group) only 3 communities completed procedure	Land and Forest Allocation (LFA) program; but also used for concession.  De facto only 2 small scale pilot cases for forest protection	Community forestry instruction 1995 (30 years for groups)	For land under forest classification but not widely applied LUPLA country-wide implemented with support of WB,
Tenure regularization programs	Under Land Administration Sub-Sector Program (LASSP) 2,5 million (22%) parcels were registered (2011 - Muller);  The LMAP (before LASSP) tenure regularization program led to rights violation and an inspection panel at the World Bank (urban area)	Several land titling projects (over 24 million USD) but not systematic (project based)- limited success in terms of reach and tenure security. Initial focus on urban areas, currently on districts categorized as poor (these comprise of mostly ethnic and upland areas).	Paying taxes for land some rights.  In some of the regions- but status unclear;	90% households hold LURC
Resettlement programs	(land redistribution; in-migration in indigenous communities	Yes, particularly from uplands to accessible lowlands and focused on ethnic minorities	Yes (70% in Shan) strongest where conflict	in-migration in indigenous communities
Tenure insecurity	Expropriation for concessions; or "forced" sale of user rights.  Land grabbing by elite rural and urban) – land concentration	Expropriation, poor compensation, Discouraging swidden agriculture by appropriation fallow land  resettlement	Inadequate access to land (35-53% landless) Weak recognition customary rights upland (land policy /laws oriented to lowlands) concessions	Renewal land user rights lease; collusion local authorities & developers;  Uncertainty conditions for land consolidation

The four countries differ with respect to natural resource availability, population density and pressure on land. Vietnam has the highest pressure on land (average 281 pp/km<sup>2</sup>), Myanmar and Cambodia 76 respectively 82, and 27 in Laos. Laos also has the largest forest cover, and a reduction in forested is highest in Cambodia, followed by Myanmar and Laos, while Vietnam is actively promoting reforestation<sup>3</sup> (see annex 4). In the mainland, these south Asian countries share a similar mountainous, agro-ecological landscape, where communities live with forest based livelihoods and who practice swidden/ shifting agriculture and agro-forestry. There is a strong presence of indigenous communities and use of collective tenure, based on customary systems, but generally lacking legal recognition. The exception is parts of Myanmar where communities managed to formalize their collective tenure, but this is still very rare.

The four countries have different tenure regimes. Most development interventions in land governance took place in Cambodia; both Laos and Vietnam abolished all pre-existing rights with the State taking over control after the Revolution in 1975 and thereafter set in the constitution. Myanmar has a myriad of land tenure systems.

<sup>3</sup> Planted trees and also mono-culture rubber plantations are also included in statistics on forest cover.

**Cambodia:** land titles were issued since colonial times but the registries were destroyed in the period of the Khmer rouge). It was also a period with much displacement, uprooting part of the population. The land law of 2001 was a new start and developed with strong input from the international community. The land law was used firstly to legalize the situation of housing in Phnom Penh, as many had taken over the houses of people who were killed or fled the country (property after 5 years of occupation)<sup>4</sup>. Much donor support has been made available for land administration such as the land redistribution programme that has reached 1614 households, who received 6000 ha in total. The LASED programme can be considered as a “social protection” programme as the amount of land made available is relatively small, the programme is also been as it deals with the fall –out of problematic policy without addressing policies issues itself . GIZ is also supporting the development of a land rights registration programme and is developing methodologies with safeguards, also for collective land, and has provided the training and equipment. The recent decision by the prime minister in July 2012 to accelerate land registration, by sending on students to the fields with this equipment is a demonstration of the political importance of land rights. However, implementation takes place without safeguards, which can result in unjustified claims being registered, conflicts ignored and may produce also “local level land grabbing”. Another dilemma of land registration is that by receiving rights for farmland, claims to forest and grazing lands may be lost, as the limit set for smallholders is 5 ha. The remaining land then becomes public land and can be allocated for concessions. There are also reports that such rights are lost or handed over very easily, under pressure of chiefs, misunderstanding or because title holders hope to acquire a new plot deeper in the forest. Land-grabbing by elite interests and forced evictions has also escalated significantly over the last 10 years”<sup>5</sup>. Observers note that many vulnerable households and indigenous groups, particularly those living on land that has high value for future development, have been arbitrarily excluded from the government’s titling efforts, rendering them more vulnerable to forced evictions and loss of compensation for expropriated land. The land law in Cambodia allows for community title but this is difficult to realise in practice. In 2012, 3 indigenous communities have secured titles and 42 (about 10% of all communities) have almost finalised the procedure after years of work. In Cambodia, international development partners and NGO are working a lot on participatory land use planning, but it is difficult to formalise the results. Participatory land management plans have been ignored by government when allocating concessions.

In **Laos**, a “clean slate” was created in 1975 when all previous land rights were officially abolished, even although these continued to remain relevant in local communities. The State can award user right to households, enterprises (and under strict conditions associations) on a temporarily basis, but tenure security is limited and the state can take back land without compensation (also in urban areas) if this is in the interest of the State. The government has an active policy to discourage shifting cultivation/ swidden agriculture, partly by seeking to fix smallholders on a plot of land. According to law, community title is possible in Laos. However, no such collective land titles have been granted except for 2 recent pilots with producer associations (GRET, SNV). The on-going resettlement and the fixation of people on relatively small plots of a few hectares, de factor weakens or even ends possible future claims on fallow, forest and grazing lands. Resettlement policies, on-going since 1975, have brought down large parts of the ethnic population from the hills to more accessible lowland areas. However, it is very common that no or limited land is available for those resettled newcomers as all arable land was in use by residents already. The lack of land is the major burden for resettled households and causing increased poverty and food insecurity. Other policies like the kum ban

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<sup>4</sup> A study on Cambodia argue that a wave of “land and houses grabbing of those who lost their lives or fled the countries which was legalised as a result of the new law, laid the basis for the fortune of a political elite that seems now also at the centre of the concessions (Un and So, 2011).

<sup>5</sup> <http://www.actionaid.org/ireland/2012/08/killing-fields-stolen-fields>

(clustering of villages) and the eradication of opium growing and shifting cultivation practices in general, are stimulating the resettlement policies and threatening food security and livelihood resilience even further. Particularly upland ethnic groups traditionally practicing slash and burn practices and regarded and regarded as potential political threat (Hmong) are targeted.

In **Myanmar**, land tenure has also gone through several phases. The development of statutory laws related to land tenure in Myanmar is marked by four main historic periods: British colonial period (1824-1948); independence period (1948-1962); the socialist period (1962-1988); and the State Law and Order Restoration Council (SLORC)/State Peace and Development Council (SPDC) period (1988 to present). Land rights are highly diverse across the country with customary systems still in place in the uplands of the countries. Two mechanisms upland farmers currently use to register land are the Ministry of Agriculture-managed processes on land classified as agricultural, and the Ministry of Forestry Community Forestry Instructions on land classified as forestry. Though both processes have their advantages and constraints, the forestry option is more widely applied in the uplands, and has the explicit support of recent government instructions as well as of resources of international agencies. Gaps in the policies affecting upland tenure are include insufficient legal framework for tenure of rotational fallow lands, insufficient avenues of recourse for smallholder farmers in case of conflict, insufficient technical support for and documentation of land use entitlements, centralized decision-making, competition between responsible agencies, and a poor enabling environment. Parallel land administration systems have been developed in conflict areas, including the issuing of certificates but it is unclear what the current status of these documents will be. The allocation of land for concessions started in 1989 and is spreading. Initiatives for a national land policy discussion are under preparation, led by UN-Habitat, and which may result in agreement on the recordation of rights in rural and urban areas.

In **Vietnam**, all land belongs by Constitution to the people, thus the State, and as in Laos, all previous rights have been abolished in 1975. The State awards user right to households, enterprises (and under strict conditions associations) on a temporarily basis. The redistribution and reallocation of land led to a fairly equal land distribution. The privatization of decision making on the use of agricultural land, from 1993 onwards, boosted agricultural production in the years thereafter. However, the government can also take back user rights against compensation. Cases are reported that local governments seem to abuse their power to expropriate on behalf of private project developers. Farmers have user rights for a period of 25 years, which now come to term. Land consolidation may no longer be prohibited under the new land law. The current draft of the revised land law allows commercial transactions for 10 times the area of land as compared to the current law. It is regarded as “the final step Vietnam has to make to transform its agricultural economy into an industrial economy”. However, this change causes uncertainty about the new entitlements for households whose tenure-rights are coming to a formal ending and need to be renewed. Terms for new tenure rights and conditions (length of renewal period) are still being discussed. The announcement of the policies for land consolidation does add to the uncertainty. Other Challenges with respect to land governance in Vietnam are the land price bubble and land speculation, particularly in urban / semi-urban areas but increasingly in rural areas. Close collaboration between private sector interests and central or local authorities, with elements of clientelism and corruption, resulting in land deals that result in expropriation for current land users and are not favorable for the public interest. Land use conversion is a significant problem for small-scale farmers and must be addressed

Article 39 of the Land Law (1994) allows the revocation of land use certificates and changes in land use plans for the purposes of national defense, national security and national economic interests. However, the “national interest” is not clearly defined and several ministries can revoke current land use arrangements. Revocation in the “national economic interest” has proved to be particularly problematic with this now being addressed through the on-going revision of the Law on Land. In addition to the many incidence of land recovery for industrial purposes and urbanization, a key, yet rarely reported, driver of changes in land-use in rural areas is agribusiness expansion. The current standards for compensation and relocation are inadequate and the capacity of local government to manage and resource these processes are very limited, particularly in regard to projects involving large-scale land use conversion. This raises enormous challenges in regard to managing environmental degradation, the loss of farm-based livelihoods for those displaced, inadequate agricultural land available for resettlement sites. Compensation and relocation for farmers displaced from State Owned Enterprises owned land is particularly problematic. The current revision of the land law provides an ideal opportunity to address these problems.

With the wind-fall prices for land in Vietnam, even receiving double or more for your land than prices during allocation, will not allow farmers to acquire land in new locations, effectively leaving them landless after expropriation. Moreover, anger is triggered by actions of estate agents and project developers paying farmers prices according to land for agricultural use but then upgrading land use to recreational and industrial purposes, where after the land is sold for a tenfold of the price paid to farmers.

Vietnam was basing its agricultural policy on smallholder farming and value chain development, in which agribusiness engage. Vietnamese companies are already very active in large-scale farming (concessions) in the neighbouring countries. In Cambodia, Laos and Myanmar, a stronger market orientation and the development of value chains of the smallholder dominated agricultural sector has only recently taken off. This development is still nascent and fragile. Essential services like access to finance, market information and agricultural extension are largely absent for the majority of smallholders. Farmers may also face competition from the large commercial farms (vegetables in Laos; an initially successful local cooperative of women is now being outcompeted by a large-Chinese- grower of vegetables that can produce at lower costs for a number of reasons).

In Vietnam, Laos and Myanmar, governments are discouraging swidden agriculture, partly by blocking access to forest land by giving this out to concessions. Smallholders are confined increasingly to relatively small fields without the resources to maintain soil fertility. Also in Cambodia, de facto land held by smallholders is capped through the registration system (max 5 ha). Moreover, landlessness is relatively high and reported to be increasing in Cambodia and also Myanmar (see annex 3). Developments that reduce the farm size and access to common resources may have implications for the feasibility of commercial smallholder agriculture and also livestock. Moreover, insecurity over tenure and fear of eviction may reduce also the willingness to invest. Will field sizes become so small that investments in value chains become unviable for most smallholders?

## 4 Findings: trends, drivers and impacts around “large-scale land acquisitions”

### 4.1 Trends around large-scale land acquisitions

The remaining of this chapter will focus on developments around “concessions”. With respect to land and forest governance, this is the key development in the region in terms of the changes in land tenure and use. Concessions affect land and forest lands, and are also a major driver of deforestations, either directly or by pushing people of land who then move deeper into the forest to clear fields. Concessions have displaced people who lost their land thus livelihood means resulting in increased poverty. In addition, the government support for concessions is creating widespread tenure insecurity in rural areas with major implications for investments in a smallholder based economy and thus poverty reduction. The way that these investments in concessions are guided and regulated is thus increasing poverty and also a missed opportunity for development and inclusive private sector development. Part of the problems with concession is a weak rule of law resulting in lack of transparency around contracts and weak application of safeguards; the concession policy in turn may undermine governance even more as it strengthens the more shady side of the economy and illegal practices, such as logging. It is also accompanied by violence. It is also around land and forest concessions that civil society is organizing itself and where change processes are starting to emerge.

“Large-scale land acquisitions (LSLA), or concessions as a shorthand, imply that tenure rights over large tracks of lands, as well as the fields, trees, forests and other resources on located in these areas are transferred for a long period to private sector companies, for example as a lease with government agencies. In Cambodia, Laos and Myanmar, foreign companies started acquiring such long-term rights over land already in the 1990s. Acquisition boomed during the last 5 years with particularly Chinese and Vietnamese firms aggressively searching for concession land.

Full data on the companies involved, contract conditions, the area now under concessions (where, how much), how the land is actual used and whether contract conditions are respected are not publicly available. It is possible that the governments do not have a full overview themselves.

Recently, projects and NGOs have taken the initiative to bring together the data on concessions in Cambodia and Laos, respectively and research is on-going in Northern Myanmar. It was found that particularly smaller concessions involving mainly domestic actors or those having been approved by lower tiers of government are poorly recorded. It was concluded that companies now control large tracks of farm and forest land, generally through long-term leases.

It is estimated that in **Laos** at least half a million hectares of agricultural land is transferred to private sector companies, The area covered by mining concessions is larger than for agriculture and forest concessions, but the latter has more impact on smallholders (Heinimann, 2012). In **Cambodia** the area granted under “economic land concessions” is estimated at 2 million ha. The area allocated to mining concessions is 1,9 million ha (Licadho, 2012). Another source estimates that the 100 exploration licenses could cover half of the country (USAID, 2010). In **Myanmar**, it is estimated that 1,7m acres (680.000 ha) were allocated to 218 private business in 2010 (food security working group). The first concessions were allocated in 1989 to Thai companies. The area under rubber has increased from 200.000 ha in 2005 to over 400.000 ha in 2010. Moreover, 1 million ha of palm oil concession is allocated in the south, of which one third seems to be developed (Kramer and woods, 2012). It is reported that MoU for even

larger area have been signed by foreign companies (from Malaysia, South Korea, and Thailand)<sup>6</sup>.

Spatial mapping of the concessions in Laos and Cambodia show that large amounts of prime land have been allocated. The combining of spatial datasets of different sector ministries shows overlapping concessions and thus potential conflict (communities-companies; between companies). The maps also show a fast shrinking space for smallholder farming and for systems ecosystems services (watersheds, protected areas). These data also show that in Laos and Cambodia concessions take over prime farmland and forests, not degraded areas.

Experts are of the opinion that for forested land, the frontier has not been reached yet and the expansion is expected to continue in the coming years. Increasingly, concessions are also moving into protected areas with a high biodiversity value, areas which have been "degazetted" by government. In Cambodia, sugarcane plantations are developed in wetlands and it is being suggested that large farms for rice production are under development.

Comparable processes are taking place in the urban areas and peri-urban fringes. Land speculation is in full swing and highly profitable, partly resulting in city development taking place under the auspices of the private sector. Expropriation by government (or companies) is not always fully compensated. Urban sprawl is often at the expenses of prime farmland and with limited or no compensation. Windfall profits are not taxed, leaving governments short of resources to put in basic infrastructure.

#### *4.2 The role of the private sector in large-scale land acquisition*

As indicated above, most companies that are involved in large-scale land concessions in CLM originate mainly from the region (China, India, Thailand, Malaysia, Singapore, South Korea, and Vietnam). Companies are interested in acquiring large areas of land to earn money. One important source is logging, which does not require much priori investment, and can be exported to neighbouring countries without much problems. Some companies also acquire land to speculate on an increase in land prices. There are also companies that come to produce, particularly rubber, tree crops and sugarcane, but which requires knowledge, management resources and markets. The large-scale production of food crops and animal feed (cassava, maize) is a more recent development. In Myanmar, however, companies having licenses to export food decided that it was more profitable to assist smallholders in producing food crops using contract farming.

Private sector interest in concessions slowed down during the Asian financial crisis (1997-1999) and then accelerated around the turn of the century, when particularly the Chinese economy started to grow and the demand for raw material increased. In addition, Chinese companies were encouraged to invest elsewhere ("Go Out Policy/ going global strategy-1999). Another factor is that the Yunnan province approved an opium (poppy) substitution development program for Myanmar and Laos in 2006, and created a special Opium Replacement fund. This has been used by Chinese companies to fund rubber plantations (Kramer & Woods, 2012). Most technical knowledge and planting material was sourced by the companies themselves from China.

Large investors from outside the agricultural or forestry sector are becoming more interested in farming enterprises. These companies have no experience with farmland investment, agri-business models and markets for agricultural/forestry products. Examples are KOLAO (motorcycles, cars, trucks) in Laos requesting 250,000 hectares of land for *Jatropha* plantations or Zhongxing Telkom Equipment (ZLT) wanting 100,000

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<sup>6</sup> Conference on agribusiness Myanmar august 2012

hectares of concession cassava plantations. This interest may also indicate an increase in speculative investment patterns.

This interest of international investors for acquiring land and policy announcements around commercial farming and food production is stimulating some local business people to engage in land banking in order to become a partner for future joint ventures. In most existing companies, domestic companies/ businessmen are likely to be shareholders, either formally or implicitly. Domestic businessmen play often an important role in getting the deal to get through and may still engage in managing relations with authorities, but seem much less involved in day-to-day management.

With respect to business attitudes with respect to Corporate Social Responsibility (CSR), inclusive business or respecting local rights, only a few companies have demarcated the fields of communities and took that out of their concessions, which may be sufficient for subsistence farming, but not much more. Many companies have a conflicting relationship and will seek to enforce their concessions with assistance of government forces. In Cambodia, this seems now to receive more support from governments also to reduce conflict between communities and concessions (the *leopard skin* policy). In Laos, companies that seek to integrate communities (agro-forestry or smallholder based production systems) do not receive much encouragement or support from government. This seems also to be the case also for companies that want to demarcate and respect community farmland.<sup>7</sup> There are not many cases reported of companies investing in basic infrastructure in neighbouring communities, or in local development funds. Some plantations located in more remote areas have established "villages" for their labours (rubber tapping camps).

### 4.3 *The role of government in concession allocation*

There is legislation in place (or in preparation in Myanmar) in all four countries that provide for environmental safeguards and also lay out conditions for consultation, expropriation, compensation and resettlement, but in practice governments are not enforcing compliance. This may be because of a lack of capacity (to which the SDC project PEI is now responding in Laos) but also due to a stronger position of investment Governments have to authorise a concession. Private companies generally take the initiative and will approach local and central governments. Governments also organise special road shows and seminars to attract foreign investors to invest in land.

Officially, the land allocated to concessions is public land (Cambodia, Laos, Vietnam) or converted into public land by degazetted protected areas (Cambodia), or bought/ leased from communities (Cambodia, Myanmar). Often, the public lands allocated to concession-holders are in use by communities, or until recently (communities may have been resettled - Laos). More often than not, communities are taken by surprise. If their leaders were involved in negotiations at all, they either were either not sufficiently aware of what was going on, did not dare to oppose or were compromised. Communities have often not been consulted or only indirectly via leaders. In most cases, their full rights were not protected or not or poorly compensated. Free Prior and Informed Consent (FPIC), which is important issue in the VGs, is not guaranteed and particularly denied in cases where investors/governments deal with ethnic minority communities.

The initial contact between a company and government may also take place via local or regional authorities or by the central level. The right to award concessions can be situated at different administrative levels according to the size of the concession, but which may hinder monitoring and oversight. As this results in overlapping concession allocations, poorly negotiated contracts and disputes with other departments,

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<sup>7</sup> Stora Enso, for example is opting for smallholder based production schemes. In current plantations (300 hectares) only LUPLA was conducted on the companies expenses as was the demining of the land. Despite the generous packages offered Stora Enso was not able to acquire more land till present.

governments in both Cambodia and Laos responded by centralizing decision making. This was more successful in Cambodia than in Laos, where local authorities continue to play an important role. Also in Myanmar (and Vietnam) local governments/authorities play a significant role in allocating land to investors.

Information on how contracts are negotiated between government and companies is anecdotal. It seems that central government have been confronted frequently with poorly negotiated contracts by lower tiers of government, which are not in the advantage of the country. However, also at central level the capacity to negotiate deals seems to be low. A number of deals may have been influenced more by local vested interested and under the table payments.

Cases have been reported also where investments in infrastructure have been paid for in the form of land concessions or timber (barter trade in Lao), where concession are rewards and related to power relations and politics (Cambodia) or linked to generating resources for parties engaged in armed conflict (Myanmar).

All concessions are legal and approved by government. In Cambodia, special decrees are issued to ensure that the transfer is formally legal, such as degazetting protected areas a change in land use restrictions (see on urban issues So, 2010). However, governments have demonstrated very little attention for the protection of the rights of the people that were living on the land before the arrival of the concessions. The position taken is that the development of large-scale infrastructure and enterprises is for the benefit of the nation, which is worth the cost of displacement of people from their lands.

When deciding on the allocation of concessions, governments have not excluded (or protected) the areas where projects or NGOs are working on value chain development, community development, social forestry, land use management. Several cases were mentioned of significant investments made by bilateral donors or NGOs (German NGO in Cambodia) that have been lost. Even SDC has such an experience in Lao (Xayabouly Province under CARE implemented project). CIDSE, for example, started its land governance campaign in Laos around 2007, after decades of investment in certain communities was lost by over-night resettlements of their target communities.

Governments are actively seeking to attract investors in rural land and natural resources and also proclaim to favour quality investments. Land can be allocated for different purposes (agriculture, forest, mining, hydropower, special economic zones, protected areas, community lands, urbanisation etc.) and these uses are often competing. However, there seems not to exist an explicit policy guiding private sector investments for sustainable growth, such as strategic spatial planning of resource use (zoning), a vision on the type of investors, a policy on local economic development (employment, infrastructure). The impression given is one of weak strategic planning and limited coordination between sector ministers. The limited exchange of land information and unified management is producing overlapping claims between companies (farmland, forestry, mining etc.) and also with local land users, protected areas etc. Also hydropower and mining sector show signs of insufficient strategic planning, such as with respect to the large number of dams being planned often in one tributary without integrated planning. Experts question the sustainability and economic feasibility of these cascades of dams.

#### *4.4 Drivers of large scale land acquisition and paradigms*

Although the result is broadly similar, the drivers motivating governments to transfer rights over large areas of land and forests for investment by the private sector are more diverse. These drivers vary across countries and over time.

#### 4.4.1 Government policy and paradigms

Government policy with respect to concessions is informed by a series over paradigms.

Modernization of agriculture: many leaders and government officials are convinced that agricultural growth can be achieved only by promoting large-scale plantations run by (foreign) companies. Moreover, there is a strong focus on export markets partly driven by trade targets (trade balance), partly because of status. Smallholder farming is regarded as not productive, probably destructive for the environment and archaic. This view is in contrast with how for example Thailand and initially also Vietnam approached the modernization of the agricultural sector. The paradigm, that agricultural modernisation requires large-scale farms and “professional” entrepreneurs is gaining influence with governments throughout the region.

Ending unproductive production systems of particularly ethnic minorities. Related is the decision of governments in Laos and Myanmar to modernise smallholders’ production systems, a policy that is targeting particularly the production systems of ethnic minorities that are perceived as economically un-productive, backward and damaging for the environment. In Laos and Myanmar policies aiming at the eradication of shifting cultivation dominate agricultural policies for the last two decades. In Lao, the political goal of unification, implying assimilation of ethnic groups in the mainstream Lao (Loum) culture also backs this policy. These issues are not part of legislation but a (political) legitimization to enforce how land should be used and/or citizens should assimilate. It may also be a result in an additional motivation to transfer land where indigenous communities live as a concession to companies, in order to create irreversible change. Crops that made the upland systems very profitable like opium were fiercely (and successfully) combated (as in the same areas chemical drugs are now produced freely without any government constraints).

Land and natural resource are abundant and underused: Another paradigm driving land and forest policy is a perception of resource abundance and the need to build the economy on resource conversion (turning land into capital, resource abundance). This is reinforced by multiannual policies that set high growth targets for GDP and for FDI. Regarding Laos, current overall development efforts as mapped out in the 5 – years National Socio-Economic Development Plans (NSED), rely heavily on FDI funding (for Laos accounting for over half of the required financial inputs).

The private sector will invest only when access to resources is low-cost and business activities are not hampered by regulations. Governments are of the opinion that few investors are interested to invest. The result is a race to the bottom with respect to price being asked, granted tax exemptions, deregulation and enforcing safeguards. There seems to be no strategy in place to attract the best offers for the country (tenders, public auctions).

Attracting Foreign Direct Investments. Even the governments that have a strong socialist ideology have become convinced that in order to modernise the agricultural sector FDI and international expertise is required. Governments have been working on a more conducive climate for international investors (regulations on establishing companies, taxation issues, possibility to import and export foreign currency, protection against expropriation etc.). The countries still do not score very high on the ease of doing business index, with Vietnam performing best) and also not on the corruption index (again Vietnam performing best - see annex 4).

FDI is most important in Vietnam where it is 3 times ODA, but which is also much larger than in the other 3 countries. According to World Bank data for 2010, FDI is slightly higher than ODA in Cambodia and Laos, FDI is 3 times higher than ODA in Myanmar<sup>8</sup>

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<sup>8</sup> Mainly due to the sanctions which are about to be lifted and the importance of ODA is likely to increase, as will FDI

and 3 times higher in Vietnam. However, these data may not reflect reality. FDI is not always properly recorded, particularly investments originating from China. For example, a study mandated by SDC and the Swiss Embassy in China estimates that direct investments from China in Laos have increased from around 3.5 million USD in 2004 to around 313.5<sup>9</sup> million USD in 2010. In addition to infrastructure, Chinese companies are active in the fields of agriculture, mining and hydropower. The Chinese government provides assistance to the establishment of a good investment conditions for Chinese companies, by creating good will (construction of cultural/state buildings) and the improvement of transport infrastructure (SDC, 2012). In Laos it is estimated that total "approved" FDI currently beats ODA by a factor three (ODA totalling approx. 500 million USD annually while FDI is estimated at 1,5 billion per year), yet not all approved projects are implemented.

From a national (and regional) perspective the financial amount of FDI invested in farmland is relatively low compared to investments in hydropower, infrastructure, mining, However, for the agricultural and forest sector itself, FDI plays an important role in the transformative changes taking place around land rights and in the landscape. Moreover, the development around land and forest governance have to be analysed in relation to comparable developments in the mining sector, around the management of big rivers and hydropower, special economic zones, urban expansion and so on. Not only do these developments produce additional claims on land, they have also their origins in similar paradigms with respect to economic development. The outcomes are affected by similar issues with respect to governance, concepts of citizenship and political economy. Cross sectoral analysis is also important for identifying promising entry points for change and is may be a source for innovations.

Still the importance of ODA, and thus the influence of development partners, should not be underrated (even although this may be the position taken by some governments). ODA is important particularly for running the government administration. FDI seems not to generate (yet) significant tax revenue streams (see annex 4).

Controlling remote rural areas: The allocation of concessions to companies is a way to gain more control over remote, forested parts of the country and generating some government revenue by bringing these area into the formal economy. The political aim is to get control over rural population and particularly ethnic minorities has historical grounds in all 4 countries. Up to present isolated resistance from ethnic groups does occur, recently sparked by conflicts over land (central highlands in Vietnam, d Xieng Khouang Laos, and Myanmar). In Laos, the obligation of lower level authorities to contribute to national budgets through local taxations results often in heavy taxing regimes at local level (for production, transportation and sale of agricultural products see also Hansen -2007). Security reasons are now also given as reason to allocate concessions to the military in north Cambodia.

Need for revenues: Laos was pursuing concessions also as a way to formalise part of the agrarian sector and thus be able to increase tax revenues (Hansen, 2007). In Northern Myanmar, which is a special case as the process of concessions is driven many by local authorities, including armed branches of ethnic minority resistance movements, rubber concessions are promoted to gain revenues from the investors wanting the land and prepared to pay for this, and the future rubber crop.

#### 4.4.2 Regional economy

Other important forces are economic growth in the region, growing market demand, and regional integration:

Regional economic processes: The economies of neighbouring countries, like China, India, Thailand and also Vietnam are growing fast, resulting in a strong demand for raw

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<sup>9</sup> Global statistics on FDI in Laos noted 278 for 2010.

materials and energy. Lately, there is also more demand for food products. In addition, Chinese companies were encouraged to invest abroad and subsidy programs became also available to them (e.g. opium (poppy) substitution development program). The possibility to export illegal logged timber to neighbouring countries increased the interest also in acquiring concessions.

#### 4.4.3 Political economy

Policy on Land and forest governance is a sensitive issue. Key decision on policy orientations are made by the inner circles, based on what is presented as facts, but also ideology and paradigms, international ambitions, power plays and, vested interests and so on. Technocrats may or may not have influence on policy orientation. They probably have more influence on implementation as do also lower tiers of government. For the governments, control over land is important for consolidating political power, and as indicated earlier, control over remote areas is one of the reasons for promoting concessions. Land policy is also becoming a political undercurrent that may have influenced the local government elections in Cambodia, to which the government reacted with announcing a moratorium on new concessions (but without indicating how many concession are still in the pipeline) and the accelerating of recordation of rights. Also in Vietnam, the land issue is becoming politically more important. Here, the decentralization of the responsibility for land governance to Provincial authorities has left the national government with little means for control, the more monitoring systems are weak and excesses do occur.

Inner circles consist of political elite connected to the leadership of the party (Revolutionary Party in Laos, Cambodia and Vietnam) and include the military/Revolutionary Armies. There are strong vested domestic interests that influence concession politics. In particularly Laos and Cambodia, but to certain also in Vietnam and Myanmar, the vested interest with respect to land control and speculation are close to these inner circles. In all countries, politics, land and wealth accumulation are very much interlinked. The "business sector" which has become affluent over the last decades (real estate development, profitable export contracts, logging etc.) has a strong and possibly growing influence on policy decision making and on contract negotiation with foreign companies. They have a high interest in the land sector as much money can be made from real estate development, infrastructural contracts, and land speculation.

As already noted earlier, the countries do not score very well on the corruption index (again Vietnam performing best - see annex 4), but this has not deterred the appetite to acquire land by companies from neighbouring countries. Because the profits are so high, the temptations for backroom dealing and corruption are very high too. These forces may lead to even more contracts that are not in the best interest of the country, let alone local communities. Such a context creates much insecurity for companies that are planning large investments, and will give the upper hand to "fly by night" companies or and the politically well-connected companies that are more speculative and rent seeking in orientation. Such a situation results in a deterioration of the business environment, and increases uncertainty and risks for doing business and will not attract the more serious entrepreneurs going for the long haul.

The particularities in the region with respect to visions on the developmental role of government, on accountability and citizenship de jure (Laos and Vietnam) and de facto (Cambodia), seems to result in limited public policy space for promoting the principles of rights based approaches and accountability mechanisms along the interaction of rights holders- duty bearer, particularly not at the community level.

The situation in Myanmar is uncertain, and expectations are high. But also here there are strong vested interests that benefit from the status quo. There are some opening around National Assemblies in Laos and Myanmar, and some of the current actions by government in Cambodia seem to be taken in response to recent election results.

According to resource persons, currently there seems limited space for discussing land governance in Vietnam, more openness in Laos and Myanmar, and a space that is closing in Cambodia – particularly for international organisations<sup>10</sup>. However, civil society is most active in Cambodia, often in confrontation. Civil society is also strong in Myanmar but using very different tactics. CSO are weak in Laos and also in Vietnam. In Vietnam the emerging civil society faced a major crack-down around 2010, when the government interfered and did put severe restrictions to part of the most critical and vocal NGOs voicing critical opinions about government actions in terms of corruption and also investment policies and their consequences. It is illustrative that the NGO Resource Centre in Vietnam organizes NGOs in over 20 NGO Working Groups, none of those specifically having a land focus.

Land governance cannot be addressed without addressing the core of the political and economic power structure and relations

**Table 2: Perception of corruption 2011**

	<i>Ranking (out of 182) 1 = least corrupt</i>	<i>Scale (1-10, 10 is least corrupt)</i>
<i>Malaysia</i>	<i>60</i>	<i>4.3</i>
<i>China</i>	<i>75</i>	<i>3.6</i>
<i>Thailand</i>	<i>80</i>	<i>3.4</i>
<i>Vietnam</i>	<i>112</i>	<i>2.9</i>
<i>Laos</i>	<i>154</i>	<i>2.2</i>
<i>Cambodia</i>	<i>164</i>	<i>2.1</i>
<i>Myanmar</i>	<i>180</i>	<i>1.5</i>

*Source: transparency international*

## 4.5 Impact of large scale land acquisitions

This section is addressing in particular the risks and negative impacts of large-scale land concessions.

An economic analysis of concessions is not available. Concessions are likely to be profitable for concession holders, particularly those engaged in logging, given their interest in acquiring concessions. First studies show that concessions are not generating much employment, and actually per hectare less people can sustain a living. There is no information on revenues generated for government, or indirect effects as a result of investments in infrastructure, knowhow, market linkages. Economic analysis should compare a with- without situation and take fully into account the social, economic and environmental externalities

### 4.5.1 Local livelihoods

Local communities lose land and access to forests as a result of concessions. Particularly for the large ethnic population engaging in shifting cultivation practices and collection of NTFPs this directly threatens their livelihood / food security basis. For Laos it is for example estimated that NTFPs make up for 50 to 60% of the monetized income of poor households (Greijmans, 2012)<sup>11</sup>. They lose revenues and often can no longer grow their own food or collect NFTP for subsistence needs. When they cannot find alternative paid work at the estates or in spin off activities (for example catering for labourers), or

<sup>10</sup> See for example reaction on comments UN envoy <http://www.opendevdevelopmentcambodia.net/news-source/the-cambodia-daily/un-envoy-paints-bleak-picture-of-economic-land-concessions/>

<sup>11</sup> NTFPs are particularly consumed and sold in periods of rice shortage and the most important coping strategy or safety net for the poor. Also for other activities like animal husbandry, the decreasing access to grazing land is reported one of the major constraints by farmers (second to the lack of veterinary services).

are too poorly paid, their livelihoods become unsustainable and they are likely to become food insecure.

Concessions holders tend to log the land and may thereafter convert the forested land into plantations (rubber sugarcane, eucalyptus and so on). In the region, forest-based livelihoods (timber, non-timber food products, grazing of livestock) are common and very important for food security. The arrival of a concession implies loss of land and loss of access to the remaining forests. Concession holders are excluding neighbouring communities from continuing to use the land, and are able to enforce this with support of government or by employing armed guards. A telling example in Laos is the case where communities were ordered to slaughter the animals that went back to their former grazing lands now located within the concession, but which was not fenced.

Concession holders, and government, make promises such as employment, better basic services and other infrastructure. Overall, some employment is created when the forest is cleared and trees are planted, but thereafter there are only a few jobs. Moreover, often migrants tend to be employed for a number of reasons (preference of concession holders, skills, and experience). The promise of job and income generation for local communities is often not materialising as investors bring in migrant labour from their country of origin. Even in the case of companies having policies in place to recruit local labour, local ethnic people are by-passed as they do not have required skills or the social network to successfully apply. Illustrative is the example of Sepon mine in the South of Laos employing 5000 Lao employees of which half is recruited in Vientiane and half in Sepon District. However, the management estimates the number of ethnic Lao Teung people, the majority ethnic group in the district and living in the direct surrounding of the mining operations and as such most severely impacted by its operations, to less than 10 employees. Also in Laos, for example, displaced people are not allowed to migrate to the capital and need a permit

Although overall poverty reduction figures show a positive trend over the last decade (Laos, Cambodia data for 2008), income disparities are on the rise, with persistent pockets of poverty and food insecurity among ethnic groups. Illustrative are the results of the ADB Participatory Poverty Assessment carried out in 2007 in Laos, which is showing a decrease in livelihood resilience and food security among interviewed households in the 16 poorest districts of Laos (Chamberlain, 2007). Particularly forestry concessions are situated in the areas with high poverty (and ethnicity) indices.

#### 4.5.2 Ethnic minorities

The future of ethnic minorities is at risk in the region. Ethnic minorities are losing the assets that form the basis of their livelihoods. They also lose access to the forests that form the basis of their cultural identity, which is even more fundamental when they are resettled. They also face great difficulties in maintaining the community dynamics because a loss of authority for the leaders who no longer control the land while only the young people can earn some money on plantations, but also the shock to their livelihood systems of losing almost overnight their habitat. Case studies from Cambodia report on communities in shock and apathy, but also violent resistance.

A related issue is resettlement of communities from higher to lower areas in Laos, which may not be connected to concessions, but makes the latter easier. The Laos government acts from the premises that all land belongs to the state and that resettlement is the best solution for remote communities. Although no official figures are available it is estimated that most ethnic minorities formerly living in the uplands, particularly Hmong communities, are now resettled in the lowlands, where they have to compete with the existing population for access to land and resources. They also have to adjust to farming systems to which they are not familiar and deal with diseases to which they have limited resistance. If health care services are inadequate, the result is high mortality rates. As a result of resettlements, many communities are falling apart losing their identity, although some young people have opportunities to education (Laos). In

Cambodia and Vietnam newcomers are migrating into areas of ethnic minorities either spontaneous or assisted. In Myanmar, ethnic minorities are party in armed conflict. In Vietnam, finally, ethnic minorities are largely not aware of their rights (and duties) regarding land and of any channels to claim rights or express grievance. Ethnic minorities have largely left out in land allocation. Currently the government is forced to buy land from other owners in case is want to allocate land to ethnic communities. In Vietnam the reverse resettlements of ethnic Minh Vietnamese from the lowlands into the uplands, occupying lands previously used by the original ethnic inhabitants has led to protests and violence in for example the Central Highlands.

#### 4.5.3 Environment

The way that natural resources are currently managed, and in particular the loss of vegetation cover and biodiversity may have implications for ecosystems services and the hydrology, which in turn may result in more flooding and faster siltation of the reservoirs of hydropower installations. Concessions are now also allocated in protected areas, even in biodiversity hotspots. Environmental organisations are aware but are not able to prevent these decisions to be taken by government. In Laos, the many REDD+ baseline studies conducted recently brought to light that local communities in forested areas, although depending completely on shifting cultivation, do not cause deforestation rates higher than 0,5% annually (and thus not sufficiently to make REDD+ financially viable and cover for opportunity costs).

#### 4.5.4 Stability and peace

The fast expansion of concessions and the associated eviction of people and loss of rights are increasingly putting a strain on rural societies. Large numbers of people are left without their assets, and have no means left to sustain their livelihoods. Communities are losing their cohesion as a result the growing deprivation for some and the immigration of labourers, who do not respect local customary authorities. Some communities react with apathy and shock; but there are also signs of more desperation and taking the risk to approach the national assembly or media. There is also more incidence of violence. This is happening in a region where civil war only stopped 1-2 decades ago (Cambodia, Laos) or is still on-going (Myanmar).

### 4.6 *Conclusions on trends*

Large-scale land acquisition is the subject of much debate and advocacy at the global level, particularly since the end of 2008. This discussion has influence on policy at the global level; the endorsement of the "voluntary guidelines for the responsible tenure of land, fisheries and forestry in the context of food security" is an example.

The developments in the Greater Mekong Region are different. An important difference is, firstly, that in Cambodia, Laos and Myanmar, the recent wave of concessions started already in the 1990s and, secondly, that most investing companies are from the region itself. These densely populated, neighbouring countries (China, India, Thailand, and also Vietnam) are going through a phase of exponential economic growth that is generating a large demand for raw materials like timber, rubber, energy (hydropower, biomass) and increasingly also for food crops. Current developments around land and forest governance, result in the long-term transfer of tenure rights of access and control of the use of land, and the natural resources on this land (these are trees and forests, biodiversity, water etc.) to companies. Rights of local communities are not protected, often not recognised and loss of rights is poorly compensated. There are also human rights dimensions, because rights are not protected but also because of the personal risks for people engaged in "watchdog" type of work, advocacy or who are to speak out<sup>12</sup>.

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<sup>12</sup> See imprisonment of village leaders in Laos following a meeting with parliament where they spoke about the loss of their land; imprisonment in Cambodia and assassinations in Cambodia

Available research concludes that overall the effects are negative for local populations who are impoverished, become food insecure and lose their cultural heritage. Causes are a lack of protection of local rights, evictions, loss of local livelihood, while limited new employment is generated. In addition, there is environmental degradation and loss of biodiversity. These results are partly caused by the general governance situation (style of government with limited domestic accountability, weak rule of law, political economy, and weak local governance. In turn, these developments will further deteriorate the governance situation. Currently, land speculation is very profitable in rural areas and even more so in urban areas, producing “windfalls” for those who control the formalisation of land titles or can get access to concessions. But, this development may also produce instability and violence because only a few seem to benefit, while many are losing their most important asset for making a living: the land.

These developments around the governance of farmland and forests are also present in other sectors in the region that are economically even more important, such as mining, hydropower, the development of special economic zones, and around urban development, and which also produce even more competition for land. Also in these sectors, there is weak transparency regarding the processes of decision making, decisions on resource and revenue use, or accountability to the national assembly.

The fieldwork confirmed the huge importance of “large-scale land acquisitions” for agricultural and rural developments, rights over land, forest governance, and particularly for ethnic minorities. These development have irreversible implications for landscapes and the environment (logging, conversion of forest in farmland or plantation) and for local rights and livelihoods. These developments are also producing transformative change in the rural economy in parts of Cambodia, Laos, Myanmar and Vietnam. An image of impunity for private sector and government officials involved in shady, yet legal deals, is emerging, which may undermine even more local rights.

Many resource persons advocated for more community empowerment and legal awareness. But caution is needed. Attempts to support (a.o. by the LIWG) claim to rights in Laos have recently led to imprisonment of concerned village leaders without their rightful claims being taken into account. Only for Vietnam, cases were mentioned of communities that were able to resist land use conversion, with the support of local NGOs and drawing on progressive provisions within existing land law and grass roots democracy decrees. Empowered communities have, in some cases, been able to either gain improved compensation or resist further land use conversion. But this seems an exception, particularly for Cambodia and Laos<sup>13</sup>.

It is important to continue working towards the strengthening of local governments and the resilience of communities, and more transparency and accountability in those countries where local governments and local leaders have some influence on if land is allocated, where and under what conditions. However, in context where more than half of the indigenous communities are resettled (Laos) or where decision on the allocation of large concessions are taken at the central level without consultation, communities have extremely limited power to prevent certain developments; they can only try to deal with the consequences, such as seeking better compensation,

In Cambodia, Laos and Myanmar community or collective land rights have been promoted, often also in the context of social forestry / participatory land management planning or programmes in support of ethnic minorities. Also in Vietnam, community forestry / collective forest management is practiced, but mostly externally driven (donor projects). It is not commonly accepted or even appreciated by responsible government

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<sup>13</sup> Some resistance to companies taking over their land, even illegal, is reported by Kenney-Lazar (2012) by communities who were better aware of their rights and knew what happened in other villages. But they also lost a major part. Local governments did not step in to assist communities.

agencies. Although the amount of forest land under tenure by households or communities in Vietnam is significant and still increasing, user rights are limited and strictly controlled, offering limited tangible benefits to its users.

Collective rights are increasingly an “uphill battle” in Cambodia, Laos, and Vietnam, but less in Myanmar. In Cambodia the procedure is complex and gets delayed easily for years when government support is minimal, while concessions are granted with a few months and then take over land that was supposed to become under community title. It is important to salvage and speed up programmes in Cambodia, and further develop the process in Laos. A rethink may be necessary, but it remains the best option to protect rights over larger areas relatively quickly.

The way that land and forest rights are governed currently and the fact that concession are poorly regulated is undermining the ability of government to manage its land and resources, implement strategic plans and enforce laws, rules and regulations. Governments are hardly enforcing existing legislation on safeguards. Sovereignty issues are also emerging when large tracks of land are taken over by foreign companies, and seem to trigger some uneasiness (Laos, Vietnam).

Windfall profits are being made in urban and rural areas as a result of first-time land registration and conversion into residential property. These profits are no longer available to government for investing in infrastructure, thus enhancing even more their dependency on the private sector, which will pursue its private goals (as they should) but which will not equal automatically public interests. This results in a situation of “socialization of costs and externalities” and “privatization of benefits”.

When contracts are poorly negotiated, most revenues will be privatised and are likely to be exported, while resources are depleted and communities displaced. For example in the case of Laos, beyond triggering wide-spread corruption, the huge amount of money flowing into the country also raises questions of equal wealth distribution, poverty reduction and sustainable development. According to the latest World Bank report (2010), the country’s limited capacity to manage and monitor the many new projects could have severe consequences: “[...] the government may not implement projects with high financial and economic returns, or with the appropriate environmental and social infrastructure”<sup>14</sup>. In other words, these developments may produce a situation of “resource curse”. Suggested responses are either renegotiating of contracts or introducing windfall profit taxes,

The decisions that will be taken in the coming years by governments on resource allocation and private sector engagement, will set to a large extent the economic viability of smallholder farming and the value chains that they develop, the future of ethnic minorities, forests and biodiversity in the region and environmental sustainability more in general, and living conditions in cities.

The way that rights to land and forests are governed (de jure and de facto) determines the outcome for people, communities and sustainable development more in general; the current weakness in rights protection and concession allocation are partly the result of more general weaknesses in the overall governance context, but also cause even more undermining of the “rule of law” and even more skewed decision making processes.

These developments with respect to land and forest governance in Cambodia, Laos, Myanmar and Vietnam are highly relevant for the overall SDC development goals of poverty reduction, food security, gender equality improvement, and promotion of good governance. These developments also influence the impact of SDC interventions, and are

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<sup>14</sup> World Bank (2010), *Lao PDR Development Report 2010*, p. 2

therefore part of the analysis in preparation for country programmes, country programmes and at the global level (see section 5).

## 5 Fostering Change: Actors & Lessons

The national and regional political and commercial interests, which led to the current situation of land and forest governance, are very strong, as can be concluded for the previous chapter. Negative impacts are far reaching in terms of rural development and reducing poverty and food insecurity, for the environment and for the rule of law and governance more broadly. Particularly ethnic minorities face extreme threats to their livelihoods. It is a process that is already on-going for more than a decade, and the policy space for discussing the policy used to be very limited. In this section we analyse the position of key stakeholders and conclude with some lessons from past experiences in efforts to foster change.

### 5.1 Stakeholders

#### 5.1.1 Governments and National / People's Assemblies

All four countries are characterized by "big governments" that tend to dominate all aspects of life and influence all governance spheres including the private sector and civil society. Various respondents stressed that real change can only be realized in collaboration with the government. There is mounting evidence, reflected in various policy responses, that increasingly there is an awareness among senior office holders at national level about the potential negative consequences (the flip side) of current paradigms. Some parts of national level governments, particularly the National or Peoples Assemblies increasingly function as legitimate representative of peoples interests including their claims on land and resources. This dynamic works from both sides: in Vietnam as well as in Laos, over 80% of the claims or complaints put forward to the National Assembly by regular citizens are related to land (disputes). As National Assemblies at the same time increasingly emerge as serious countervailing power to governments and their implementing agencies and increasingly (pro-)actively engage in law making and revisions, the hopes for more genuine accountability are largely put on these Assemblies.

In a keynote speech given at an international land and forestry conference in Vientiane the President of the National Assembly of Lao's Committee on Economic Planning and Finance, announced the government's intention to undergo a nationwide formal process of large scale land reform, and prioritize the need for increased local land management, given that access to land for rural households is fundamental to sustained poverty alleviation. *"For over a year, Lao has been undergoing a process of reviewing and revising various policies and legislation pertaining to land and natural resources. What we've learned from countries across the world is that by ensuring local peoples' rights to the land they live and work on, we are opening the door for numerous other benefits for our country."*

#### 5.1.2 National level (INGO) networks around land

Civil society is mobilising around the issue of land governance, particularly concessions. And as noted earlier strong civil society working groups around land are now in place for several years in Laos. Similar groups exist in Cambodia and Myanmar, but working within the context of food security. In Cambodia there are also networks working on concessions from a human rights perspective (Licadho) and from justice and transparency (east west foundation –open development website). Only in Vietnam there is no special working group on land, although civil society is organised around other issues.

### 5.1.3 Private sector and Responsible investments

At the regional level, Vietnam plays an important role as investor in land-based projects, such as in hydro-power, mining and industrial plantations (agricultural, timber trees and rubber).

Vietnamese agro-industry companies are forced to work with numerous smallholders when producing in Vietnam. They are therefore attracted to the prospect of acquiring large areas of land under concession in Laos, Cambodia and, in the future, probably also Myanmar without this obligation to work with smallholders, which is their preferred business model.

FDI is embedded in political / diplomatic relations and thus heavily politicized. The Vietnamese Ministry of Industry and Trade is responsible for promoting such FDI projects. Vietnam is much more selective about their FDI destinations than for example China. Most resource persons met in Vietnam said that the way these companies access land and enter into business relations abroad is not under scrutiny of the government nor of Vietnamese NGOs. The government will only engage afterwards and when really necessary and uses as bottom line that Vietnamese investors should respect the laws of the host country. The government of Vietnam is interested in the principles of the VG (particularly at MoNRE) but only for in-country land and forest governance, not regarding actions of Vietnamese companies abroad. The wood processing sector in Vietnam is now only changing because of the strict enforcement of FLEGT and thus only "legal timber" can be exported. Working with the Vietnamese private sector on responsible governance will require working through trade agreements, end-consumer markets and importing countries.

In Laos and Cambodia there are some rare, yet often, referenced examples of companies that seek to demarcate and acknowledge local rights and take these areas out of their concessions (for example Stora Enso in Laos, some cases in Cambodia). There are also a number of pilot projects on-going with the private sector, aiming at precedence setting by delivering proof of the value of more sustainable business models such in Hydropower (Nam Theung II), Stora Enso industrial plantations or collective forest management pilots in Laos. However these examples have not result yet in replication or scaling. Positive examples of smallholder –company collaboration around value chains that make economic sense for all parties have emerged in Myanmar around the production of grains and pulses for export. However, contract farming in general as an alternative for concessions seems a "red herring" as smallholders can still lose out without a level playing field and adequate support during negotiations. In the ASAEN region the concept of corporate social responsibility is promoted (e.g. by AIT-CSR in Thailand) and the commodity round tables on palm oil is active in Indonesia and Malaysia, FSC and the round table for biofuel is also active in the region.

Work with the private sector in the greater Mekong region is very limited, but a number of NGOs like Focal on the global south, global witness, IIED, OXFAM Hongkong and TNI are starting up research work and building networks around regional companies and their relations with countries of origin. This complicated work is just starting up. WWF Mekong region reported in this regard little success in approaching investors from the region and still relying heavily on companies from the West in establishing partnerships. More analysis of the different actors (agribusiness and funders) and the extent to which they seek stable local relations and want to invest for the long haul; care about their image (in-country- to become an international company), have ties with the local population needs to be understand to identify the companies with whom better practices can be built up (do no harm; do more good) and that then can be used to inspire other companies and demonstrate government what can be achieved, for the economy and stability.

#### 5.1.4 Environmental and Right Based Non Governmental Organisations

The developments around land and forest governance in the greater Mekong region are a point of concern also for the organization working on environmental protection, biodiversity, forests, wild life, landscapes. Environmental Organisations are publicly denouncing developments around hydropower. They are very concerned over the spread of concession, into protected forests and wetlands, and the associated displacement may also cause more pressure on the remaining resources. However, they do not participate publicly in advocacy around land governance, because this may create obstacles in their communications and negotiations with government.

A number of international organizations focusing on the environment work in all four countries and have Indochina/ greater Mekong region programs. Examples are Birdlife international, Conservation International, Fauna and Flora International, IUCN and WWF. These organisations seek to protect the rich biodiversity and wildlife in the region that, ironically, benefitted from the period of conflict but is now increasingly at risk with the improvement of infrastructure and economic development initiatives, such as concessions, other forms of encroachment and poaching. There is also major concern over the impact of the hydropower dams on fish and other wild life, coastal and mangrove areas and wetlands (Ramsar sites). They try to convince governments that economic development and environmental conservation do go together. The position towards local communities differs across organisations, that is whether they are viewed as an additional threat to nature or as important co-managers. Several of these international organizations seek to reach out to the business sector, and also receive donations from the corporate sector. In Vietnam, for example, WWF organizes workshops with the business sector in the country since this sector relies heavily on natural resources and is often a major contributor of carbon emissions. According to WWF, this sector can also prove a powerful partner in initiating climate change responses and moving towards a low-carbon economy in the Mekong delta. Many companies in Vietnam are now requesting a partnership with WWF, but they have become very strict. Only companies meeting their standards will be given permission for using their logo, but it is an interesting development.

Forest policy has a long history in the region. The 1990s, for example, focused extensively on developing policy to prevent illegal logging, but which seems now less prominent on the policy agenda even although the first activity taking place by concessionaries is to log, and export the wood to neighbouring countries. Forest policy is now taking place more in the context of climate change and adaptation, such as REDD+ and REDD readiness trajectories. Laos and Vietnam are REDD program countries and Myanmar has become a partner program. International NGOs, such as IUCN are engaging actively in the REDD readiness trajectory as this offers opportunities for structural CSO engagement and advocacy on policy and the legal framework. The environmental organisations in the region also focus a large part of their work on protecting forests, biodiversity hotspots and landscapes. Organization that are active are WWF, Birdlife, Flore and Faune, Conservation International, and IUCN.

The Rights Resources Initiatives (RRI) is US based organization working on forest governance and indigenous people. It organizes policy dialogues at the national and international level. RRI is active in Indonesia and to a lesser extent in the greater Mekong region. In august 2012 it co- organized with RECOFTC-The Center for People and Forests (SDC partner) a Workshop on International Knowledge Sharing and Learning hosted by the National Assembly of Laos (see reference to key-note speech Madam Souvanpheng, Economic Committee NA, Laos).

Global Witness is an organization that is also having its roots in environmental protection and illegal logging and which is running campaigns against natural resource-related conflict and corruption and associated environmental and human rights abuses. They are active in all four countries. Global Witness used to have an office in Cambodia, but had

to leave the country. Some of their associates have been killed. Global witness is focusing part of its work on the private sector, both regional and international. The organisation is producing important materials on how best to improve transparency and is involved in discussion of commodity round tables and private sector self-regulation.

It should be noted that the civil society organizations most critical in their lobby and advocacy efforts do not have a residence offices in-country but operate from outside, mostly Thailand.

Civil society and (part of the) private sector meet in efforts to define and introduce private sector standards in the extractive industry (see 4.5 below) and forestry sector. The forestry sector is trying to influence private sector practices via market mechanism such as the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan<sup>15</sup>, which sets out a range of measures available to the EU and its Member States to tackle illegal logging in the world's forests by only allowing import of legal timber (raw material and products). Monitoring systems are developed and agreed upon under the Voluntary Partnership Agreement (VPA), which involves active civil society engagement. Vietnam is currently negotiating a VPA with the European Union, and which should have implication for the imports of illegal logs from Cambodia and Laos. The EC is now putting strict import conditions to ensure legality and requiring chain traceability, but which is creating a challenge to the industry in Vietnam and negotiations are currently ongoing. Cambodia, Laos and Myanmar are in the information/ pre-negotiation phase.

#### 5.1.5 Extractive industry, Mining and Hydropower

The energy sector –hydropower - is driving part of the investments around the Mekong River, which have become very controversial. Mining is another important sector<sup>16</sup>. The private sector plays a key role in governance of these resources, and is partly operating at a regional level.

At a global level hydropower and mining gained already experience with setting industry standards and (self)regulation (hydropower) and which have also translated into company policies (mining). Myanmar is considering applying for membership of the extractive industry transparency initiative (EITI) of which the focus is on the use of the revenues paid to government. In Laos, the government's is considering to call a stop (moratorium) for new mining investments, and which may help to accelerate the development of approved mining projects as it will force the developers to mobilise the funding they need to proceed.

It needs to be explored if whether these experiences can be built upon when working with the private sector companies in the agricultural and forestry sector.

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<sup>15</sup> <http://www.euflegt.efi.int/portal/>

<sup>16</sup> According to the presentation by the Ministry of Mines, Laos has 326 million tons of potash reserves, 442 million tonnes of bauxite, 384 million tonnes of lignite, 152 million tons of copper ore, 44 billion tonnes of gold ore, 1.7 billion tonnes of limestone, and 32 million tons of tin ore. As of March, 290 mining projects had been approved. 107 are in the prospecting stage and 125 are in the exploration stage. There are currently 58 mining operations in the country. The two largest are Phou Kham in Vientiane province and Sepon in Savannakhet province. However, a large number of approved mining investment projects are still in the exploration and planning stages. In Cambodia rich mineral resources were largely unexploited till 2006. The country has vast resources of bauxite, copper, zinc, gold, iron ore, nickel, granite, gemstones and tungsten. Cambodia has currently issued 104 licenses to 20 local and international mining companies, including Australian-owned Oxiana Cambodia, Liberty Mining, and Southern Gold; China's Hang Seng Coal Mine; and Vietnam's Vinacomin, along with other companies from Korea. These companies are in the exploration stage in northeastern Cambodia, according to a 2009 report by the Ministry of Energy. Interest in mining has seen a swift increase, from \$4 million in fixed investment in 2008 to \$11 million in 2009. Were industrial mining to take off, it could follow lucrative revenue from oil and gas, which is expected to come in 2013 with an estimated revenue stream of \$1.7 billion by 2021.

With respect to hydropower, a large number of international organisations are working on / engaged with the Mekong river<sup>17</sup>. The Mekong River Secretariat based in Laos being the major inter-governmental agency. But building a regional agenda or supra-national consensus or even dialogue regarding the governance and use of the Mekong river source has proven to be extremely difficult. China is building a cascade of eight dams on the Upper Mekong in Yunnan Province. Laos, in its bid to become “the battery of Southeast Asia”, hopes to develop more than thirty dams on Mekong tributaries, and is even considering four projects on the mainstream<sup>18</sup>. More than 30 projects are under development or at an advanced stage of planning to meet Vietnam's spiraling demand for energy. Cambodia is also hoping to build dams on Mekong tributaries and the mainstream. Since 2007, five more major dams have been approved and a further twelve are known to be under study by Chinese, South Korean and Vietnamese companies. Myanmar has plans to construct dams among others in the Salween River, the region's last major undammed river. China is investing particularly heavily, with at least 45 companies developing over 60 hydropower projects<sup>19</sup>. To make way for these projects, around 190,000 people will be displaced and many thousands more living downstream will be affected. Vietnam's first and largest dam, the Hoa Binh Dam in the North, had devastating consequences for the 58,000 mostly Muong people who were forcibly displaced.

### 5.1.6 Asean and Regional initiatives

Economic cooperation is planned to be strengthened following the arrival of the ASEAN economic community. Tax regimes are likely to change and countries like Laos may have much less revenues from exports. Economic cooperation may also have implications for agricultural policies and the Mekong as an international “food basket”. According to the FAO, the Greater Mekong Sub-region has been playing a key role as a food basket of the world. Thailand and Vietnam alone dominate half of the volume of rice trade in international market and greatly influence the global commodity price and food security. Myanmar was once the world number one rice exporter several decades ago. Cambodia and Laos, have a high potential to become important rice exporters in near future. The greater Mekong sub regions can play a role as a world food basket and the focus of food production and supply to both domestic market and export market should be given equal importance and priority<sup>20</sup>. In Cambodia, for example, a company is now exploring to produce rice on 30.000 ha, partly involving smallholders<sup>21</sup>.

During our field work, the ASEAN, as such, was not perceived as active in promoting more responsible management of land or natural resources and none of the people interviewed expected ASEAN to play a more active role or to engage in an initiative similar to the African union on “land” (the land policy initiative- LPI).

The best entry point at the level of the Asean for a regional land and governance programme is the government driven Asean social forestry Network (ASF), which is already supported by SDC. Moreover, one of the implementation partners, CIFOR, has a

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<sup>17</sup> See [http://sydney.edu.au/mekong/links/mekong\\_region\\_organisations.shtml](http://sydney.edu.au/mekong/links/mekong_region_organisations.shtml)

<sup>18</sup> The Lao Power Development Plan contains 55 new large dams, 7 of which are under construction and nearly 15 more at advanced planning stages. Vietnam is building dam cascades on several Mekong tributaries, the impacts of which are being experienced by ethnic minorities living in Vietnam and by the Cambodian villagers living downstream.

<sup>19</sup> Source [www.internationalrivers.org](http://www.internationalrivers.org) **River International**, an international NGO, engaged in a lobby campaign focusing on individual and institutional shareholders of the Australian – New Zealand Bank (ANZ) as a response to their investment in a heavily disputed hydro-power scheme in Laos. As a result ANZ had to justify its involvement and clarify to shareholders about socio-economic and environmental safeguards built into the project design. International Rivers (illegally) taped the ongoing (preparatory) construction work on the Xayaboury dam in the mainstream Mekong river in Laos, and delivered the material to the BBC who made it a front-line news item. This forced the Lao government to give openness to the stage of constructions, resulting a.o. in a facilitated visit of all development partners to the dam site. The challenge is follow-up amongst donors, also to improve practice for the other dams.

<sup>20</sup> [http://www.fao.org/asiapacific/rap/home/about-assistant-director-gen/speeches/detail/en/?speech\\_id=195](http://www.fao.org/asiapacific/rap/home/about-assistant-director-gen/speeches/detail/en/?speech_id=195)

<sup>21</sup> <http://www.ongreen.com/jobs/senior-rice-agronomist>

strong track record with respect to research on large-scale land acquisitions (bioenergy research stream).As indicated above, social forestry programs are however under pressure because of allocations of forest land for concessions.

Organisations like the Mekong institute can provide important information and updates on regional economic integration, international infrastructure projects and special economic zones and what that may imply for large land based investments.

Since 1977 ASEAN has developed a series of ASEAN Sub-regional Environmental Programmes, followed by the Strategic Plan of Action on the Environment, 1999-2004, ASEAN Vision 2020 and the current Vientiane Action Programme 2004-2010. The ASEAN Ministers responsible for Environment agreed to further synergise the regional environmental cooperation by identifying the following ten priority areas based on the World Summit on Sustainable Development Plan of Implementation as follows ([www.asean.org](http://www.asean.org)): Global environmental issues, Land and forest fires and trans-boundary haze pollution, Coastal and marine environment, Sustainable forest management, Sustainable management of natural parks and protected areas, Freshwater resources, Public awareness and environmental education, Promotion of environmentally sound technologies and cleaner production, Urban environmental management and governance, and, Sustainable development, monitoring and reporting/database harmonisation. ASEAN established a Working Group on Water Resource Management (AWGWRM) and a working Group on Nature Conservation and Biodiversity (AWGNCB), but in the chapters of ASEAN Vision 2020 nor in the mandate and activity planning of both mentioned Working Groups there is mention of land, forest and water governance as such. The issue of land tenure is missing out completely as is any mention of FDI and related environmental and socio-economic consequences. However, particularly the Working Group on Nature Conservation and Biodiversity could potentially be lobbied for taking an interest in land, forest and water governance in the future.

### 5.1.7 Research Institutes: data collection, transparency and research

Cambodia and Laos are in the lead, globally, with respect to bringing spatial data together (Laos) and making data around concessions, companies and legislation available in the public domain (Cambodia). The initiatives in both Cambodia and Laos are not limited to just concessions involving forest and farm land, and also include mining, hydropower, and also community forests and land –if available –and other forms of land use, which helps to identify overlaps and thus competition over resources. The leverage of these investments in data collection and research could be further increased through more systematic embedding in policy dialogues and linkages to smart advocacy efforts. Moreover, these data will become even more powerful when combined with detailed data on food security and other demographical data to analyze developmental impact.

Lao DECIDE is assisting the government in setting up an essential function: a unified land management information system which brings together spatial data from all sectors. The importance of this work became immediately clear in Laos, as the unified data pointing out the overlapping claims and the threat of concessions to protected areas. The maps also show that prime land is allocated to concessions and that smallholder farming is squeezed (Heinimann, 2012)<sup>22</sup>. The information is not yet available on a website<sup>23</sup>.

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<sup>22</sup> Following a similar exercise in Mozambique in 2010, the government reacted by announcing a moratorium. What can be learned from Mozambique is that when not accompanied by concerted action by other actors towards a real rethink of the concession approach, not that much will change. The government does not insist on consultation and vested interest influence decisions on land allocation. And this is the situation in a country with a land law that does acknowledge community rights upfront, which is not the case on the CLMV countries. Moreover, a support programme is put in place and has resources to operate (*itc or land fund*) in order to assist communities with the process of having land rights recorded (demand-led legal awareness and legal

In Cambodia, the initiative is led by NGOs and government is not involved. All information is made available on a website, which has information on location, size, companies and all other related information<sup>24</sup>. Several CSO work together in bring data together and thus share their databases, which is an important development as it also carries the risk of losing visibility (and thus influence and access to financial support). This website is very strict with respect to reliability of data and neutrality, as it seeks to build up a reputation of a trustable source of information and facts. Reliability is ensured by strict checks on data and triangulation, also of the data provided by other NGOs. Again, a reputation of reliability is crucial for building up reputation – and having the systems in place to maintain this – and to avoid being sued by companies or closed down. Companies can take an organisation to court for slander; governments may withdraw a license for the same reason.

On purpose, to uphold its reputation of neutrality, the website itself is not presenting analysis. The organisation that is developing the website, east west institute, encourages the use of the data by other stakeholders, NGOs, researchers, government, and also new groups like students working with GIS and communities, to use the data for analysis. The NGO partners already use their own data combined with other data from the website for analysis and publish this to promote dialogue (see Licadho 2012). In particular the maps showing the area under economic concessions, mining areas and hydro-power projects trigger debate, and supported the calls for a moratorium.

The website developed by the organisations in Cambodia is more reliable than the Land Matrix, developed by ILC and partners (GIGA, CDE, CIRAD), because it is not (just) based on newspaper reports and a good system to check information<sup>25</sup>. The addition of spatial data in both Cambodia and Laos also enhances the potential to influence policy as is already happening in Laos. These data may also be used by technocrats within government to inform (and convince) policy makers.

Another development in the region is that more and more research is taking place on the origin and impact of concessions, and published also in academic journal. Moreover, in Myanmar, data from research projects collecting field level data and providing oversight of land use changes are starting to be taken up in policy dialogue in Myanmar and in China. A good example is the study published by TNI on Myanmar (Kramer and Woods, 2012). Academic research on Laos, however, published internationally seems not yet to have much influence in domestic policy dialogue (e.g. Baird, 2011, 2012; Kenney-Lazar, 2012).

Both in Myanmar and Laos the research work is connected to the national land working groups. The difference is possible that the land working group in Myanmar is connected to the working group on food security which has a broader constituency and the research work is published more widely, and also actively fed back into national and regional policy dialogue and networks of NGOs, international organisations and embassies. However, Cambodian researchers publishing internationally do not promote local

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advice; technical assistance for communities to secure communal rights and negotiate deals with companies). Many communities continue to lose out in deal with companies because of ignorance and weak local governance (local leadership is not accountable and coopted). However, a number of international companies now express support for the *itc* as they want to sign contracts with communities that will not produce conflict later on, which for companies carries a reputational risks and may undermine their business. See also <http://www.rural21.com/english/a-closer-look-at/detail/article/linking-secure-community-land-rights-to-local-economic-development-0000312/>

<sup>23</sup> An international example of a full-fledged land governance observatory, and which is governmental, can be found in Madagascar. It analyses and publishes data on land governance and also undertakes research.

<http://www.observatoire-foncier.mg/>

<sup>24</sup> <http://www.opendevdevelopmentcambodia.net/briefings/economic-land-concessions/>

<sup>25</sup> The Land Matrix is criticized, because of the lack of reliability of many data and thus limited checks or slow corrections, despite what is stated on the methodology.

dissemination and actually discourage that their work will be picked up by, for example, Cambodian political opposition as this will affect their ability to continue research at local universities. NGO and consultancy firms seem to have more policy space.

## *5.2 Voluntary guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VG)*

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VG) are not an actor as such but as benchmarking framework promoted by a group of actors. The VG were developed in the context of the world Committee on Food Security (CFS) and endorsed in May 2012 and developed in the context of the United Nations (FAO). At the global level the Swiss Ministry of Foreign Affairs, and SDC in particular, has played an active role in negotiations around the VG, and will also contribute financially to follow-up work through its global program by supporting initiatives being developed under the guidance of FAO. (see annex 3)

In the CLMV countries there is some awareness amongst government staff of the process, particularly in Vietnam, but overall there was limited involvement in the global process. A few international NGOs working actively in the region have been involved intensively (particularly Focus on the Global South). Overall, the resource persons and organization met were of the opinion that the gap between the principles proposed in the VGs practice on the countries is very wide. Also, there is limited expectation that the VGs will make much difference on how government policy will develop. In that respect, reference was often made to other treaties and guidelines that have preceded the VGs and were less voluntary, such as for indigenous people and which also did not change much in reality. The VGs would gain in relevance if the United Nations (FAO) would to discuss the VGs with heads of state (greater Mekong Region, Asean).

The role of the VGs is important with respect to international companies and financiers from Europe, USA, Japan and other countries that have endorsed the VGs. In these countries the VGs feed into a wider discussion on the principles of responsible agro-investment (PRIA).

In particular civil society stress that the point of departure of a discussion on PRIA should not be that the only way to increase agricultural production is via the private sector, thus excluding smallholders as (independent) economic actors<sup>26</sup>. The usefulness of the VGs for the CLMV countries will be in triggering policy dialogue about development paradigms and sustainability and equitability impacts of current development scenarios.

Given the importance of regional and also local companies engaged in agro investments in the CLM countries and their relatively limited interest in CSR or sensitivity to reputational risk in the short term the endorsement of the VGs – or any other industry standard – may not have much influence.

The next steps following the endorsement of the VGs are being (Rome early October at FAO and during the next CFS). One of the activities proposed is to have national platforms in place around land governance in every country.

Working around the voluntary guidelines and land rights (and land grabbing) in the region is promoted via the regional node of the ILC and via “focus on the global south”.

## *5.3 Previous versus current strategies for change*

Still, it is important to reflect also on the less or not successful strategies and interventions regarding land and forest governance. There was neither lack in the

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<sup>26</sup> This is the reason also why the next discussion in the CFS which is on “responsible agro-investments” is broadened to include also smallholders

number and variety of interventions addressing land and forest governance nor a lack in budget availability.

Possibly, this state of affairs is not the result of poor analysis when these programs were conceived (1990s) or poor implementation, but they have been overtaken and undermined by the emerging interest in concessions, the government buy-in in this development, and the subsequently fast spread of concessions and growing demand. Political economy types of factors add an additional dimension. What seemed to be lacking also is consistency, coordination and alignment among the different initiatives together with the political will / buy-in from government to support change. What can be concluded also is that where (pilot) interventions remain isolated and are lacking systematic follow up / scaling trajectories, and then the end result is limited. Moreover, policy buy-in (political will) is required for going to scale, and needs to be built.

It should be kept in mind that most change strategies used in the past decade to protect community rights and strengthening land and forest governance have not been successful because, ultimately, communities and projects have not been able to protect rights over land and forest when faced with government proposal of resettlement or the decision to allocate this land for a concession. Years of work with communities around managing forests, developing NTFP and other value chains, and community development has been lost as a result. Some case studies show how even NGOs in Cambodia were taken by surprise and could not assist the communities to resist or helps them to adjust (Prachvuthy, 2011). Locally successful work around social forestry and participatory land use planning is not anchored sufficiently in policy, not protected legally and is not receiving sufficient high level support and maybe at risk, particularly in Cambodia and Laos.

Large and very costly programmes supporting more participatory and transparent land use planning and land administration have been implemented (e.g. WB, GiZ), but did not result in rights being formalised (sufficiently), while the presence of land use plans has not prevented the allocation of land for concessions. Large number of capacity building interventions, particularly at Ministry level that have up to present still to show tangible results in terms of increased efficiency and/or improved functioning / performance of related institutes.

A fast way of protecting local rights is by community land title, which is possible by law (Cambodia, Laos, Myanmar) but implementation is painstakingly slow. The years of piloting around community land title in Cambodia have produced only 3 titles and 42 in the pipeline, but it is feared the recent campaign to record rights will favour individual rights, and may cut across this work. Moreover, communities are also discouraged by the many years it takes to come to an agreement. In Laos there are now 2 pilots with farmer cooperatives and the user rights are only for a few years.

A large number of initiatives and significant budgets spent on improving legislative and policy environments resulted in improved laws and regulations, but with no enforcement thus compliance. Formal policy and legislation, turned out to be just "paper tigers" as these policies and laws are either not applied, or diluted during implementation. It is necessary to work on formal policy and legal framework, but it is clearly not enough. Moreover, the concessions are an example of an important development that is in tune with paradigms held by high-level government officials, but not the result of well-planned policies.

## 6 SDC programs on land and forest governance

A regional program has to be constructed upon and add value to SDC country and regional development programme in the CLMV-countries (Cambodia, Laos, Myanmar, and Vietnam; programmes in Cambodia and Myanmar currently under development), facilitate cross country exchange, and strengthen connections with the global SDC work. The regional programme should also work in collaboration with SECO, given the crucial role of the private sector.

SDC has been active in the Mekong Region since the late 1960s, and the region has been a priority focus since 1995. Currently, SDC is primarily engaged in Vietnam and the Lao PDR, but beginning in 2012, development activities have started in Cambodia and Myanmar. SECO, on the other hand, is mainly active in Vietnam, where its program has grown rapidly in recent years.

The assistance of SDC to the Mekong Region aims to facilitate global and regional socio-economic integration and to reduce poverty. The Swiss Development Cooperation also works to improve human security and to safeguard natural resources in the region. Gender, inclusiveness, and pro-poor approaches are transversal themes in the Development Cooperation's work.

The SDC Programme in the Mekong Region concentrates on the following themes: Rural development and sustainable use of resources; Good governance; Economic development with emphasis on private sector support (SECO Programme) and Disaster Preparedness and Response. Currently the SDC in the Mekong region is preparing a strategic plan in order to increase consistency and efficiency in its support strategy. The development of regional programmes is part of this strategic exercise.

### 6.1 Lao PDR Programme

The SDC country program in Laos addresses land and forest governance at the interface of its Local Governance and Citizen Participation and the Agriculture, Forestry and Livelihood Domains. Country level programs like TABI (agricultural biodiversity conservation) engage in Land Use Planning at micro-level, DECIDE info and the recently approved Poverty & Environmental Initiative (PEI) with the Ministry of Planning and Investment address respectively information / data access and enabling policy frameworks.

Although not all potential synergy and complementarities between the different projects is captured and maximized there seems to be a consistency in approach and prioritized themes at national levels (particularly in Laos).

Common assets of the programmes (approach):

- Multi-stakeholder approaches, fostering dialogue and interaction
- Evidence building through practice (pilots) and availability of data and feed back of results into policy arena.

Common issues addressed (content):

- Poverty reduction and food security particularly for most vulnerable: women and ethnic groups
- Biodiversity

**The Rights Link project** focuses on dissemination of information at community level, and promotes collaboration between civil society and government. Working through a rights-based approach, the project targets two main groups of stakeholders: 1) Rights holders, i.e. farmers, local communities and village leaders, and 2) duty bearers, i.e.

policy makers at national and provincial levels. . In the Southern province of Salavan the approach is piloted on the ground in 40 villages of through improving people's access to information on, as well as knowledge of, legal rights to land.

Effective linkages are being developed, aiming at mutual strengthening and cross-fertilization between the projects. Consistency in linking of the projects and overall strategy has still to develop further, yet the current set-up is a valuable learning ground for program development in Myanmar and Cambodia. A good example of this approach is **the Poverty Environment Initiative (PEI)** which is a new programme supported by UNDP-UNEP and co-financed by the SDC. The PEI links governance of natural resources explicitly to food security and increased access to markets in order to contribute to poverty alleviation. PEI Lao PDR has four distinctive but mutually reinforcing components to strengthen institutional capacity of targeted national and provincial government authorities to integrate the environmental concerns of poor and vulnerable groups into policy, planning and implementation processes for poverty reduction, pro-poor growth and achievement of the MDGs. The focus is on the 7<sup>th</sup> National Socio Economic Development Plan (NSEDPP), strengthening of the Environmental and Social Impact Assessment (ESIA) Department, Increasing National Assembly members' understanding of poverty reduction and environmental management and their capacity in reviewing new legislation and policies related to environmental conservation, rural livelihoods and natural resource management (see annex 5). The PEI initiative is the more interesting because it not intends to be a stand-alone project but aims at improving effectiveness / efficiency of existing initiatives through providing targeted support to existing projects. To some extent the proposed regional project on land and forest governance has similar intentions at regional level.

**Decide Info was launched in 2009** to 1) develop means to further disseminate and analyze the data available, and 2) to sensitize analysts and planners towards the importance of taking socio-economic spatial data into account, when analyzing and planning development. The aim is to bridge the gap between available knowledge and data on the one hand, and decision-making and planning on the other. The Lao DECIDE Info project has further increased the availability of, and accessibility to, the data from the Socio-economic Atlas. One of the most remarkable achievements is the use and frequent reference of data from made available through DECIDE info in high level policy discussions particularly between the Lao National Embassy and the Prime Minister's Office and relevant Departments.

**The Agro-biodiversity Conservation Initiative – TABI** aims to enhance the livelihood security of upland farming communities by fostering productive use and conservation of agro-biodiversity resources. In addition, the initiative has developed a digital data management system, to be used for participatory land use planning, and measures have been taken to ensure that knowledge is shared and made available for policy-makers. TABI uses a "landscape" approach to bio-diversity conservation taking into account all spheres; production and conservation areas. One of the six components of the initiative specifically refers to NR governance: Facilitating community access to land and securing agro-biodiversity resources. TABI gives substance to the Convention on Biological Diversity (CBD), and there are similarities with a proposed regional land governance program that would seek to give substance to the Voluntary guidelines (with the difference that these are voluntary).

**The Northern Upland Development Project (NUDP)** applies a two-pronged approach: development activities, capacity building, and implementation at the local level, combined with capacity building in government institutions at the local, provincial, and national level. The NUDP has an integrated land governance component which is financed and technically supported by the GiZ with only limited engagement of the SDC.

Other relevant SDC supported projects in the agricultural sector are the Poverty Alleviation in Remote Upland Areas (PARUA), Sustainable Livelihoods through Livestock Development project (the livestock project), Lao Extension for Agriculture Project (LEAP), Upland Rice Research Project (NURIFAR) and the Reform of the Agricultural and Forestry College. All these programs address governance of natural resources and particularly land on the side line. Some of above mentioned projects are threatened by resettlement or concessions in reaching their results. The PARUA project, for example, is facing resettlement of its target villages and the livestock project is confronted with an ever increasing decrease in availability of grazing lands and thus sources for fodder.

The landscape approach seems to be a promising concept in combining sustainable management of land and natural resources with livelihood objectives. The landscape approach is based upon the identification and securing of a mosaic of land uses including protection, restoration, production and subsistence use, in order to deliver ecological, economic and social benefits. Spatial planning tools to identify and delineate priority areas for the different landscape functions underpin the implementation of the landscape approach. In Laos the SDC funded TABBI project is piloting the approach with good result in both aspects: sustainable management of resources and biodiversity conservation as well as in livelihood improvements. As such the project provides the GoL with proof of concept of a feasible development model as alternative to the currently dominant commercial concession policy. Duly capturing and regionally sharing the lessons from TABBI in working on a landscape approach in LUP-LA while safeguarding local tenure and access to resources through organizing a regional workshop would be one of potential options.

## *6.2 The SDC Vietnam programme*

In Vietnam SDC is active in two sectors: governance and Natural Resource Management & Rural Livelihoods. Again land and forest governance figures at the interface of both themes.

The Forest Partnership (FSSP) aims to include all the major institutional stakeholders in Vietnam's forestry sector: The major innovation of FSSP is the inclusion of the private sector as well as of the provinces. **The FSSP** aims at an economic outcome (natural forests, planted forests and agroforestry types are sustainably established, managed, protected, utilized and developed); a social outcome (Improve the livelihood for forest-dependent people, particularly minority groups, poor households and women in remote areas) and an environmental outcome (Forest protection, natural protection and biodiversity conservation).

Other projects that indirectly address governance issues are the livestock project (PALD) and the Market Access for the Rural Poor (MARP, foreseen in 2013). PSARD and the Community Management project do implicitly empower communities and increase their voice and claim making power which is functional in case of land competing claims over land / natural resources or in case of conflicts (internal and with external parties).

## *6.3 SDC Regional partnerships*

Initiative supported by the SDC that is of importance is the ASEAN Social Forestry Network (ASFN). In 2005, the ASEAN Social Forestry Network (ASFN) was formed to share lessons from social forestry practices and to promote the development of frameworks and policies to advance social forestry throughout the region. ASFN is uniquely positioned to link government forestry policy makers with leaders in civil society, research, academia, and the private sector. Working under the auspices of ASEAN, the network helps to inform senior forestry officials' policy agendas and builds synergies among ASEAN's regional knowledge networks.

Specific goals of the ASFN include: developing a common social forestry and climate change policy framework, and integrating it into the national strategies of member states; strengthening local, regional, and national knowledge sharing, communication, and networking on social forestry and climate change; and developing social forestry pilot projects to inform policy and large-scale implementation with the help of member states and network partners

For the proposed regional programme on responsible land and forest governance the ASFN is particularly interesting because of the direct link to ASEAN.

#### *6.4 Global SDC*

SDC strategies at the global level are support to processes of the UN and global governance (voluntary guidelines, responsible agro-investments, Land policy Initiative African Union, and so on); support to the International Land Coalition (ILC), promoting information availability and transparency (land matrix, land observatory); Building government capacity to negotiate contracts (with IISD), and engaging with the private sector (agribusiness and financial) and commodity round tables (biofuel, FSC).

- SDC supported the VG negotiating process actively and are now also providing resource for follow-up to the multi donor trustfund (activities around e-learning)
- Promoting transparency around contract negotiations in collaboration with a.o. Global witness, ILC and Oakland institute
- Support to commodity round tables (biofuels –smallholder certification pilot maybe in Vietnam or in Indonesia); SECO is engaged in all other commodity round tables and the development of commodity standards (Oil palm, FSC etc.). related work deals with the bioenergy policy and biofuel policy.
- Support to the land matrix and a follow up at the country level (land observatory) with ILC and CDE (Bern). Laos is one of the cases and probably Cambodia too
- Work via IISD (International Institute for Sustainable development – Canada) to build capacities of FDI recipient countries in negotiating FDI contracts via country level and regional level workshop, and also with the panafrican parliament. Emphasis is on Africa but Asia is also considered.
- SDC is supporting the land policy initiative of the African Union and would be interested in something comparable at the level of ASEAN.
- Support to the International Land coalition (ILC) to build capacity of members (of which there are few in the CLMV countries – networks could become member)
- Interested in linking land and forest governance and if that could be linked to REDD+ or UNCCC (soil degradation).

#### *6.5 Unique positioning of SDC*

The fact that SDC has a solid programme at field level, engaging in numerous themes that directly and indirectly address land and forest governance together with their engagement at global level puts SDC in a unique position as compared to other development players engaging in land that are either active at ground level (implementation) or at macro-level (policy influence, lobby, advocacy).

The engagement at two ends of the spectrum comes together with respective networks and knowledge and allows for cross-fertilization and feed-back loops between reality at ground level and policy making, which is regarded as crucial in moving towards more evidence based policy making.

In relation to a regional project on responsible land and forest governance we foresee two-way communication and service delivery:

From regional to national level:

- National level projects receive specialized capacity building support on land and forest governance (on demand)

- National level projects receive specialized support in organizing / facilitating specific events focusing on land/forest governance within the framework of their project (on demand)
- National level projects do receive support for improved inter project exchange and joint learning (incl. cross-country) on specific issues related to land and forest governance
- National level projects can benefit from the results of policy dialogues on regional level through increased policy space for localized land/forest tenure
- National level projects do benefit from the results of lobby and advocacy efforts at regional level through increased commitment of private and public sector towards responsible forest/land governance.

From national to regional level:

- The regional project gains from national level projects by receiving input on the ground level implications (anecdotal evidence) of national/regional policies which feed the policy dialogue on higher levels
- The regional project gains from national level projects by receiving results of the application of development approaches / methodologies tested at field level which can be used for wider sharing / learning (also cross-country).
- The regional project gains from the national projects through identification of national champions and best practices which can be brought into the regional policy dialogue, into advocacy and figure in cross-country learning and capacity building.
- The regional project will built upon the national level network and linkages as built up by national projects and will try to capitalize on this national level social capital at regional level in terms of policy dialogue, lobby and advocacy.

## 7 The outline a regional programme on land and forest governance for sustainable rural livelihoods

Building on the previous chapters, this chapter presents proposals regarding the outline of a regional SDC financed programme on land and forest governance.

### 7.1 *How can a regional programme on land and forest governance add value*

#### 7.1.1 Similarities between countries

As can be concluded from the analysis, particularly the CLM countries face partly similar challenges and urgency with respect to land and forest governance. There is also a shared experience amongst SDC partners and programs in dealing with these issues.

1. Most SDC programs are located in a similar agro-ecological context: the uplands of mainland Southeast Asia, with a strong presence of indigenous communities, land use systems based on agroforestry, non-timber forest products, swidden/fallow farming to maintain soil fertility, and some livestock. Resource tenure regimes are based on local (customary) practices of collective tenure.
2. Cross border investments in land and natural resources; Shared dynamic of type of investors and recipient countries: China, Thailand and Vietnam as the resource extractors, and Myanmar, Cambodia, Laos as the "recipients or hosts".
3. Communities are dealing with comparable issues with insecurity of land and forest governance: tenure regimes and land rights are not formal recognised; very limited progress with securing collective tenure rights; policy measures to end swidden agriculture; allocation of "de-facto" community land to concessions; resettlement (Laos, Myanmar) or in-migration (all countries). Visible changes in the landscape all over the region; building up of dissatisfaction and despair at the local level.
4. (international) workshops in the country which re the product of growing national, regional and international debate and advocacy on land and forest policies, partly as a result of international developments (voluntary guidelines, REDD+, FLEGT), international agenda setting (ILC, global witness, RRI, TNI)
5. More in-country debate partly in response to better data availability and presentation, research, and media attention.
6. Shared policy context and style of governance; centrally-planned economies or centralized leadership; de facto one party states; strong position of military with has also economic interest in land and forests; emergence of "project developers" who made a fortune in land conversion and residential property and have growing influence; domestic elites becoming more interest in acquiring rural land
7. Countries that have relatively recently opened their economies or about to do so. Institutions regulating the private sector are still weakly developed; Growing regionalization of the economy (ASEAN- Greater Mekong Subregion)
8. Policy makers and national assemblies in CLMV countries are engaging in comparable policy discussions -- even although the national level political setting differs considerably
9. Similar trends towards changing/reforming/developing legal policy frameworks in general and for land and forest governance in specific. These legal frameworks are currently under review in at least 3 out of four countries, and there is mutual influence at the governmental level.
10. Civil society organisations in the four countries are dealing with equivalent issues around land and forest governance.
11. Civil society organisations face similar challenges with respect to communication with and accountability to ethnic minorities (few staff members are originating from ethnic minority communities (low education levels)

12. Land and forest governance is binding constraint for work on social forestry, indigenous people, environmental protection and increasingly for smallholder agriculture, in all countries

### 7.1.2 Increasing effectiveness and efficiency of current SDC work

SDC works already on land and forest governance at the country level and at the global level. A regional program would enhance effectiveness and efficiency of SDC interventions by (i) better connecting the country and global level; (ii) addressing issues that are pertinent for all countries and could be developed jointly and (iii) addressing issues that are important for the countries but for which the root cause is located at the regional level.

Land and forest governance is a politically sensitive issue in the greater Mekong region. Recent experience in the region shows that international development partners have to act carefully on this issue, which goes to the heart of a country's sovereignty, is intermixed with important vested interests and human rights abuses. SDC has demonstrated in its country and global programs that it has developed ways to engage on land and forest governance. This is generally done by either supporting existing, legitimate organisations or developing support programs in consultation with governments.

### 7.1.3 Vietnam

The exception in the regional program will be Vietnam. Firstly, large scale FDI based concessions are not an issue in Vietnam itself and land rights are currently reasonable protected, making Vietnam a "best practice" from which other countries could learn. Smallholders have rights and over 90% has a certificate for their user rights. Some do lose access to their land because of speculation and collusion between developers and local authorities, which is more a consequence of weak governance in general and corruption, than because of land governance. Others are displaced because of dams. Women rights over land are also an issue. There is concern though, over the new land law as this may facilitate land consolidation at the expense of smallholders, based on a this time shared paradigm with respect to agricultural modernisation.

Secondly, Vietnamese companies are acquiring land in neighbouring countries because to escape the business model in Vietnam that forces them to work with smallholders. The Vietnamese government only requires that they respect the national law, but is not insisting on "responsible business practices" and is also not in favour of this type of discussions with their companies. The voluntary guidelines would only apply in Vietnam, and not for the activities of Vietnamese companies abroad. Thirdly, a civil society network specifically working on land issues was not identified in Vietnam.

Common ground between SDC Vietnam (in addition to the agricultural modernisation paradigm) and the other three countries is around community forestry, which is a policy that is still poorly adopted by the government.

Vietnam would benefit from a private sector driven change strategy yet, such is only recommended in case SDC is able to establish a strong partnership with SECO Vietnam. SECO's programme and partner constellation is much more suited to guide a private sector driven strategy than current SDC programme (besides the fact that SDC will be facing out of VN losing the rooting of regional interventions in country level projects).

## 7.2 *Desired changes from the regional programme*

The key issues for the regional program on land and forest governance in relation to poverty reduction and sustainable livelihoods are the protection of rights to land and

forests and the paradigms held by governments that drive the developments leading to a loss of rights.

Protecting rights is urgent and has four dimensions: (i) assisting communities to protect rights to land and resources; (ii) review of concession policies (iii) piloting of collective rights to land and forest, and (iv) other more country specific issues that cause tenure insecurity (land speculation, women's rights, land rights and land use planning in urban areas). Working towards changes in paradigm implies that root causes are addressed but outcomes are less difficult to predict, depending on the quality of the process, the influence of the participants and the windows of opportunity. Progress on this matter is not guaranteed.

### 7.2.1 Assisting communities to protect rights to land and resources

The outcome of this activity is assistance to communities, men and women, in upholding, protecting and securing their rights to land, forests and other natural resources, both primary and derived rights (including tenancy). This theme includes (contract) negotiations between the community and the government or directly with the private sector (concessions or contract farming) on the terms of the contract and enforcement, benefit sharing arrangement, or compensation issues. Activities that contribute to protection of rights are partly oriented towards communities and media (awareness raising on existing rights), legal support including with negotiations, grievance and conflict mediation and resettlement issues. A second set of activities deals with effective engagement in debates on policy and legal change to enhance rights protection (recognition of customary rights, policy on recognition of collective rights, safeguards, compensation and displacement, resettlement policies, land use policy). This also deals with issues as applying regulations and monitoring, and renegotiation. It may be useful to establish links with networks active on hydropower and mining, or environmental protection. An entry point for regional policy dialogue could be the issue of collective land tenure for ethnic minorities is relevant to all 4 countries it allows for regional advocacy and trans-boundary dialogue and learning.

### 7.2.2 Review of concession policies

Rights protection requires active engagement with concession policies. As we have shown in the previous sections, the current process of identifying, allocating and negotiating concessions undermines community rights to land and forests. Moreover, legal safeguards that exist are not applied, undermining the rule of law. Strengthen the capacity and political will for regulating "concessions" is important for poverty reduction and social stability and the moratorium in Cambodia and Laos are possible entry-points.

Not addressing the governance issues related to concessions (limited local consultations, arbitrary allocation of land, lack of transparency around contract negotiations), will result in even more "governance" problems. The limited enforcement of existing legal safeguards (environment, local rights, expropriation, compensation, displacement, labour laws), lack of transparency around revenue streams and the permission to use violence (armed guards) will strengthen economic and political forces that thrive in situations of weak governance and the "rule of the strongest". It will undermine an enabling business environment for attracting those international companies and investors that have to abide by international law and are willing to use more responsible business practices. The "de facto" privatising of public resources and revenue streams, combined with the dispossession of communities contributes to a "resource curse"<sup>27</sup>. This is the issue around which much mobilisation of is taking place at global level. The contribution of the regional program is to stimulate data collection, research and exchange to promote fact-based discussions; promote coherence and broad dialogue at

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<sup>27</sup> See on Africa a recent comment by Joseph Stiglitz: <http://www.guardian.co.uk/business/economics-blog/2012/aug/06/africa-natural-resources-economic-curse>

the national and sub-national level, also within government and promote follow-up on recommendations.

The prospect of achieving significant change by working with agribusiness is not very high in the short term. The regional program could develop a watching brief on developments in this sector and report regularly on this to the partners. Issues are for example debates around policies for “quality” investment framework, principles for responsible agro invest, showcase good practice and discuss and scaling<sup>28</sup>; government policy on private sector development such as strategic economic development planning; discussing standards, developing benchmarks and tracking developments with respect to transparency in contract negotiation, FPIC, due diligence, safeguards, experiences with community-investor partnerships, CSR, benefit sharing and employment.

### 7.2.3 Piloting of collective rights to land and forest

The formalisation of collective or community rights is an efficient way to protect rights to land and forests relatively fast against “outside forces”. By law, collective rights are possible in the countries. In addition, subsidiarity of land use management is promoted, and includes participatory land use planning, and social forestry. Much effort has been invested in land use planning, but as indicated in the previous sections, it is not leading to formal rights and this may undermine social forestry. Agreements that were reached seem not to be respected.

However, also with respect to collective rights progress is limited up to now, and countries have not moved beyond the piloting of a few cases. The policy space seems to be closing, which would make even more difficult for communities to protect their rights in a meaningful way. SDC and its partners have invested considerable time and efforts in these measures and a social forestry network exists at the level of ASEAN. It is proposed that under the auspices of the regional program a concerted effort will take place to work on “the rule of law” and ensure the legal provisions can be implemented in an effective and efficient manner, in close exchange with policy makers. This is also a theme were linking up with international initiatives such as the global tool network (GLTN) may increase the range of technical options. Ultimately, it is also about policy and politics; close collaboration with the Asean Social Forestry Network is essential. Such a “regionally” concerted, and ideally, high profile effort should work towards developing substantial examples. It important also to work on a methodology for systematic piloting and testing and scaling up of pilots and promising programmes and sharing of results, which would be useful also for other innovations (see also point 4).

### 7.2.4 Other country specific issues that cause tenure insecurity

A regional programme should also create space for country specific issues with respect to rights insecurity, such as the position of user rights in Vietnam and land speculation; developments around registration in Cambodia, land markets and coercion; urban tenure security in all countries, (post) conflict related tenure issues in Myanmar and so on.

## *7.3 Addressing paradigms driving government policies and leading to loss of rights and livelihoods*

We conclude that governments are actively promoting or allowing the spread of tenure changes on the costs of local households and communities because of exiting paradigms with respect to agricultural and rural development, economic development paradigms in country and regional (Greater Mekong and ASEAN on food security, agricultural development, natural resources, regional economic development etc.). Some examples are (i) modernisation is via large-scale farms and not via smallholders driven by the

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<sup>28</sup> The planned collaboration between the WB and Oij Ltd from Japan on large scale yet smallholder based production schemes for Eucalypt in Laos could be an opportunity for regional precedence & cross-country learning.

political desire for GDP growth, (ii) swidden agriculture destroys the environment and is backward (iii) land and forests are not used productively and (iv) protecting local rights would hinder development towards a formal economy, (v) FDI targets driven by economic growth targets (GDP growth).

These paradigms have major implications for support for community rights, social forestry; community based natural resources management, functioning of smallholder-based production systems and the possibility to develop sustainable value chains, and the future of indigenous people whose cultural identity is interwoven with forests.

Addressing existing paradigms requires the design of a theory of change towards “transformative social change” by the change actors in the programme (the networks at sub-national, country and regional level and the “champions”) and has to deal with questions such as on the levels where changes need to be generated, an assessment of influence; the relationship patterns required and the social and cultural factors to consider. The design can be facilitated with resources made available through the regional program.

## *7.4 Agents of change - partners in the regional program*

### 7.4.1 Anchored in country level networks and dynamics

A regional programme should be constructed on country-level dynamics. Land and forest governance policy and legislation are ultimately decided at the country level. Broad working groups on land are established in Cambodia, Laos and Myanmar and these networks should be the foundation of a regional program.

Vietnam has also several broad working groups on food security, agriculture etc but not yet on land issues as such, even although challenges around land and forest policy are of growing importance. In the inception phase, the possibility for establishing a more specialised working group around land issues needs to be discussed with SDC counterparts in Vietnam.

The programme needs to take a “bottom-up” approach to enhance legitimacy and pertinence:

- Assist country level networks and organisations to develop sub-national chapters (regional diversity) and connect better to communities
- Assist country level organisations and networks specialised in land governance to connect effectively with other thematic networks, to learn across silos and build strategic alliances at both the country and regional level (human rights, environment, hydropower, extractive industry, CSR and responsible business etc)
- Assist country level networks organisations to link up effectively to regional and global initiatives, and take the driver’s seat.
- As indicated in previous chapters, international and regional civil society organisations are mobilizing increasingly around land and forest governance. They have noticed also the opportunity of current and upcoming legislative revisions in the countries. Over the last months there were several high level events on land and forestry organized through regional civil society support in Laos and Cambodia in August (REDD+), September (RRI and RECOFTC) and October (ILC). The events are also initiated and organised by international organisations, not the country level networks. These events are bringing together senior government and civil society for advocating purposes. Although potentially powerful, there is a risk of “one-off events” given the limited inability for regional and international organisations to ensure follow-up in terms of policy advice or support. A regional programme driven by and having firm in-country roots could ensure that country level organisations are in the lead around such events (and

can also avoid duplication), and can take forward the attention generated because of the international dimension in policy dialogues.

#### 7.4.2 Support Champions and change agents

Champions and “first movers” are potentially powerful change agents, located within the governmental and political system or within the private sector, and who act from within their constituencies. They can be in charge of government agencies, policy advisors, members of the National Assemblies or work within the private sector. Champions can play a key role in policy change, but “influence” is difficult to grasp, it not necessarily “visible” and can change. Moreover, the same person may be searched after by a range of organisations, which can undermine their effectiveness. These people also no longer need support to grow, but can be crucial for the effectiveness of a programme. In addition, a “change agent” cannot be held accountable for outcomes.

The regional programme has to engage champions and change agents at the country level, as their effectiveness will improve if they have more knowledge of regional process and better contacts, which in turn can enhance the influence of country level networks.

A structural way of engaging “champions” in the regional programme is via the establishment of an advisory board for the program, which should become a prestigious body for which SDC invites people that have been recommended by the countries. This advisory board would meet regularly (6 months) to give feedback on the programme development but will also organise well-prepared thematic discussions. Alongside, networks have to be continuously on the lookout for emerging champions and seek to connect with them, make facts and research available to them, and engage them in dialogue and visioning exercises. The regional program need to work closely with SDC national projects to identify champions (and best practices) which can be brought into the policy dialogue and figure in cross-country learning and capacity building.

#### 7.4.3 Linking to innovations in the private sector

In the inception report we emphasized working with the private sector as an important force for change and for improving governance around concessions. However, based on the field work we conclude that for the “regional programme” a strong focus on working with the private sector involved in concessions to protect rights is unlikely to make many inroads under the current circumstances and in the short term. The entry points that are used globally (self-regulation and peer pressure such as in the context of commodity round tables; conditions imposed by lenders and risk insurers (IFC, MIGA); pressure by shareholders and consumers; reputational risk) are much less effective in the greater Mekong region. Most companies originate from the region itself or are (partly) domestic, and operate in a very different business and political environment. Regional companies, like from Vietnam invest in neighbouring countries to escape restrictions in their home countries, such as with respect to working with smallholders.

There are very few international companies active in the region that rely on resources from international lenders and have to abide by international standards, such as IFC. Moreover, governments in the region are also not encouraging responsible investment in practice.

Our hypothesis is that more responsible business practices will require a more active positioning of central and local governments, and local civil society, government to government exchange, and civil society mobilization which is starting in some countries (India, Thailand). The exceptions are companies from the region that seek to become global players and for whom “reputation” becomes important. Better understanding the range of private sector actors active, how they are funded, how they relate to governments and communities, what they produce and export, labour relation etc. and also the effect of programs like FLEGT is needed. In the short run, responsible

investments and private sector work is mostly an information, exchange and knowledge theme, while connecting to specialized organisations having the networks and competence to engage directly.

## 7.5 Overall Theories of change

The regional program can work along the following strategies for change:

- (1) "Enlightenment, education and evidence" with a focus on data, statistics, websites, training and capacity building
- (2) "Emergence, unpredictability of interdependence" which entails (action) research, monitoring and impact evaluations
- (3) "Political struggle and collective" which is a central activity for the change agents working with the regional programme, but not for the regional programme itself which would not go beyond laying the ground for analysis, dialogue and exchange that will lead to the definition of transformative social change. Change on land and forest governance can partly be fostered by outsiders (advocacy, advice) but will require internal advocates (change from within) to be structural and durable.

## 7.6 Approaches

In this section we discuss some ways of working for the regional program.

### 7.6.1 Data, Information and research for open data, transparency and fact-based policy dialogue

- Data basis on policies and tracking results
- Data basis on concessions (spatial and other data; Collect, check and Inform )
- Systematic assessment of land governance and tracking trends; compare across country; (making visible that change is happening: Land Governance Assessment (LGAF) Scorecard)
- Dissemination of good practice, results from pilots, important research: Summaries of research and Policy briefs; translation in local language/ audio recordings, video in order to make findings and analysis available and accessible to a wide range of constituencies
- Actively highlighting emerging issues (for evidence based policy dialogue) – build on data bases Cambodia and Laos
- Documentation and publication of case studies (write workshop with practitioners) on successful initiatives to bring about social change

### 7.6.2 Connectivity, networking and alliances

- Strengthen the networking & exchange amongst networks and with individuals (champions) at the sub-national, country and regional level ;
- Facilitate effective exchange between country level organisations and regional/ international organisations to promote working across silos (land, forestry, mining, and hydropower) and constituencies (e.g. bring in the environmental groups). Broker partnerships with human rights initiatives; connect to better practice in the mining and hydropower sectors (particularly those in which Development Banks or finance houses from the West participate) that should be put to better use. Link to GLTN, to international events that are sources of information
- building systems for sharing information and systematic exchange within countries, between countries and at the regional level
- Investment in communication (video conferencing etc.)
- Discussion forum and information distribution on what is happening regarding tenure security in CLMV region; Periodic face-to-face meetings of reform alliance to discuss trends and windows for change

### 7.6.3 Capacity development

- Offering learning and capacity development trajectories to members, for example on working in networks; scenario building; reading maps; smart communication and advocacy);
- Assist network members in becoming “frontrunners”, able to anticipate and propose, and challenge and increased ability for “rapid response”;
- Capacity building on strategic thinking and scenarios,
- Capacity building on smart policy engagement and dialogue and presenting information and findings; agenda setting
- Capacity building on piloting innovation, Amplifying “islands” of success and inspiration: assistance in scaling-up of pilots, and key experiences
- Capacity building on documenting good practice
- Provision of targeted expertise: experts and innovators to advise and guide on specific issues and developments
- Exchanges on alternative mechanisms of tenure security; participatory land use planning; Information on Types of tenure security mechanisms (social cohesion; land use planning; land titling schemes; embedding tenure in cultural, economic, conservation etc. mechanisms)
- Structured learning visit of groups of potential allies to successful land policy change imitative (e.g. India)

### 7.6.4 Rapid response

The policy and legal framework around land and forestry governance is changing fast. It is “unpredictable” what policy entry points will emerge or how governments will react and certain decisions will pan out. An organisation’s and network’s ability to respond rapidly, and thus being prepared and ready for when such possibilities emerge, is therefore crucial for effective dialogue, engagement and advocacy. The “regional program” should have a funding facility for making available quick disbursement funding to allow for pro-active work in windows of change. It will also have access to a roster of consultants with experience in different types of tenure security mechanisms

**Table 3: Actor and program constellation per theme**

	Transparency/ fact-based dialogue via data, information and research	Capacity development	(connectivity & networking alliances)	rapid response (using opportunities)
Protecting rights	(LGAF) Rights link NUDP	(GLTN, Un Habitat)	M-power PEI GLTN, FAO, ILC	
concession agreements	Lao-decide info; Open development – Cambodia, SDC Global- observatory on land acquisitions ; universities	Global -IISD	ILC, Global witness SECO. IIED	
collective tenure;	TABI	(GLTN)	AFSN FSSP – Vietnam GLTN, ILC	
Open issues	(LGAF)	(GLTN)	UN-Habitat	
paradigms	Rai – discussion		PEI. ILC, TNI,	

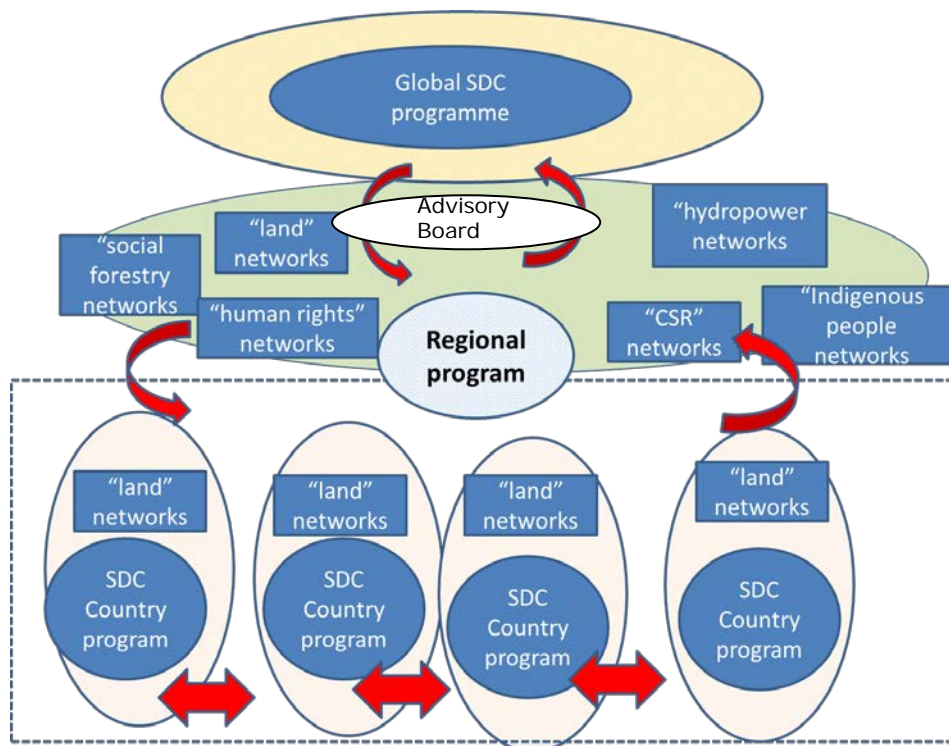
change/ Viable smallholder alternatives to ELC	CFS		FIAN Mekong institute	
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## 8 Sketches for possible SDC interventions

In this chapter we outline the proposal for a regional level SDC programme on land and forest governance as based on the findings and analysis presented in previous sections.

All scenarios below are based on figure 2 below, in which scenario one and two mostly entail the basis of the figure while scenario 3 is illustrated by the figure minus the regional hub. The two latter scenarios are depicted by the entire figure.

**Figure 2: Structuring regional engagement on responsible land & forest governance**



### 8.1 Investment scenarios

To add real value, the regional programme structure needs to be anchored in relevant country level programmes and connect to on-going SDC supported regional and global initiatives.

A choice has to be made amongst the following investment options:

- Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks, without additional technical assistance
  - a. NGO Working Groups or Networks: At least in Cambodia, Laos and Myanmar there are active land governance working groups, partly situated in broader food security platforms, or more linked to governance, justice and human rights. Assisting these platform and network to coordinate and collaborate in a more systematic way and develop a kind of joined network across countries and with regional networks is important. Such a network could then also collaborate with the ILC and all kind of other networks around land, forestry, food security, regionalization, indigenous people etc. – on their own terms.

Making additional funding available to already existing programs and networks working on land and forest governance at a regional or cross country level, to strengthen the work of SDC partner organisation, both governmental and non-governmental, and at national and regional level. This could also include Global SDC programs to expand work in the CLMV countries, as part of these global initiatives (earmarking of funds) Work with SECO on private sector trajectories including voluntary guidelines for specific sub-sectors and/or commodities

- Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks, with additional technical assistance.
  - This is done by making available special “SDC” internal technical assistance tasked with promoting exchange, building synergy encourage innovation and documentation of promising results (between programs at the country level, across countries and with regional and global initiatives, and with SECO around private sector development issues). This set-up implies that there will not be an explicit regional programme, but a much stronger internal coordination between networks via SDC provided TA and some extra financial resources (studies, meetings, travel, pilots)
  - Universities and think tanks can be (and should be) supported by becoming more effective in policy dialogue around studies and other research – but this is likely to require external support.
  
- Supporting regional initiatives within (legitimate) partner organisations with which SDC is already working and assist these organisations to develop full-fledged land governance programme – in line with on-going work. These programs work at the regional level and provide assistance to country program.
  - a. Existing partners: RECOFT may be a good option as they are a strong member of the ASFN –which is part of the ASEAN governance structure and has demonstrated clear interest. Social forestry programs will not be sustainable, if rights to land and forests are not secured and enforced and this is now a key issue for land governance in the region. ASFN seems also the best entry point to work with ASEAN, as none of the resource persons met was of the opinion that land policy initiative as taken by the African Union, would be possible with the ASEAN. It is important, however that RECOFT will than include explicitly also work on private sector development (inclusive” private sector development; due diligence and standards setting, safeguards, regulations and monitoring; and work with China
  - Linking to regional and global networks and organisations, some of those having established relations with SDC (RECOFTC, TNI, IIED) engage increasingly in research and advocacy regarding responsible land and forest governance. Linking those to country networks and SDCs country level activities and securing proper follow up is a low risk – high RoI strategy. It may be easier to work with these network on issues related to private sector development (inclusive” private sector development; due diligence and standards setting, safeguards, regulations and monitoring; and work with China. But this will require support from consultants and some oversight from within SDC.
  
- Full-fledged regional program that is driven by hub, located in an existing regional organization (following an inception and two step tender process) and providing services and support to SDC country, regional and global programs regional hub, which is specially developed to improve the results and quality of work of the members (while avoiding competition/ crowding out with existing networks and initiatives;

- Or - Full-fledged regional program that is driven by a regional hub, which is specially developed and independent (selected following an inception and two step tender processes).

## 8.2 Risks

The nature of the theme, changing rapidly, entailing many cross-sectoral dimensions and stakeholders and being highly sensitive, does not allow for a blue-print or log-frame approach. Planning and the way of working have to be flexible and responsive in order to capture changing realities and emerging opportunities. Outcomes are highly unpredictable thus including risks for SDC in terms of Return on Investment.

Risks increases from option 1 to option 5 according to intensification of engagement and complexity of the proposed project structure.

**Table4: Comparative risk analysis scenarios**

<i>Scenario (1 to 5)</i>	<i>Expected Impact effectiveness</i>	<i>Required Investment</i>	<i>Expected Return on Investment (RoI)- efficiency</i>	<i>Risk level for not achieving outcomes</i>	<i>Risk for SDC</i>
Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks without additional TA	Medium- (quality workplans)	Low, maximum 200,000 / year	Medium - absorption capacity networks  ability to make connections	Low	low
Intensification of on-going SDC work around land and forest governance in existing SDC country level programs and networks with additional TA	Direct impact at implementation level and at national policy level (feed-back policy loop at country level)	Low, maximum, 350,000 USD/year	Medium to high	Low  (recruitment and institutional position)	Low
Supporting regional initiatives within (legitimate) partner organisations with which SDC is already working and assist these organisations to develop full-fledged land governance programme – in	Additional direct impact at national implementation level plus expected impact at national & regional strategic & policy levels through intensified regional learning &	Medium (600,000 USD/ year)	Medium to high	Medium to low (capture by sectoral interests)	Medium

line with on-going work	advocacy				
Full-fledged regional programme that is driven by a regional hub, located in an existing regional organization.	In potential high, but longer term and highly unpredictable	High, approximately 2 million USD annually	Potentially high but largely unpredictable	High	High
Full-fledged regional program that is driven by a regional hub, which is specially developed and independent	In potential high, but longer term and highly unpredictable	High, minimum of 2 million USD annually	Potentially high but largely unpredictable	High	High

The two latter options have the potential of realizing change at strategic policy level yet entail also highest risks levels. For this reason a risk mitigation matrix was developed concerning scenario 4 and 5 as mentioned.



**Table 5: Risk mitigation matrix scenario 4 and 5**

Risk	Risk level <sup>29</sup>	Impact of risk on not achieving outcomes <sup>30</sup>	Mitigation strategy
<b>Approval process – internal</b>			
Limited or no buy-in from National level project officers	3-4	5	Early involvement in approval and planning process and clarification of complementarities with national level efforts on land and forest
Limited or no active contribution of national level projects in final project definition and structure	3	4	Dedicating session in regional meeting to clarification of proposal and request for suggestion and ideas about mutual linkages national-regional interventions
<b>Design and Planning</b>			
Lack of alignment with existing initiatives on land and forest governance causing isolated interventions, holding the risk of overlap and missing out on synergy and leverage	3	4	Inception phase including an in-depth institutional assessment of existing and upcoming initiatives and potential linkages looking for complementarities and synergy
Lack of alignment with existing SDC initiatives on land and forest at national level causing isolated interventions, holding the risk of missing out on synergy and leverage between national and regional level	3	4	Inception phase developing a detailed governance structure allowing for national level projects to put forward quests for activities and services supportive to national level
Non clear authority, accountability and communication lines between project partners lead to confusion and in-efficiencies in management and implementation	2-3	3	During inception phase a clear and transparent governance structure is defined incl. ToRs for project entities and concerned project positions.
Rigid planning and approval processes that are not sufficiently flexible to capture sudden opportunities or reply to sudden requests	2	3	Project planning and governance structure should be able to reply quickly. A quick response modality should be supportive to financial requirements of such quick response initiatives.
Host organisation not sufficiently embedded in networks dealing with land and forest governance and/or not sufficient in-house knowledge to have added value (be convening) to exiting initiatives	2-3	4	Institutional assessment during inception phase should lead to specified criteria regarding host organisation / or coordinating hub and potential partners and preferably to a short-list of preferred partners / applicants (consortia partners)
Regional coordination body dominates initiative	2-3	3-4	During inception phase a democratic and transparent governance

<sup>29</sup> Risk level in case no mitigation strategy in place: 1 limited likelihood to 5, high likelihood mentioned risk will occur

<sup>30</sup> Impact in case no mitigation strategy in place: 1 limited impact to 5, high impact of mentioned risk on reaching defined goals

			structure should be defined in a way that upward voicing by stakeholders and downward accountability from hub to stakeholders is guaranteed
Members of regional steering committee and country focal points are not actively involved and/or do not possess sufficient convening power and networks to provide embedding and leverage to the project	2-3	3-4	During inception phase institutional analysis and consultations with SDC and external stakeholders should lead to list of highly qualified and committed (individual level) and well positioned (institutional level) candidates for the Steering Committee and for country level anchoring
<b>Implementation</b>			
The initiative is by-passed or overtaken by changing context and realities in terms of changes in policy environment and / or market dynamics.	2	3-4	Grounding of the project through country level focal points and steering committee members should assure anticipating capacity while flexible planning and governance structure should allow for necessary adaptations/re-steering
Project does not reach a level of convening power to influence required paradigm shifts at higher decision making level	3-4	4	Partnership and alliances (can be issue based and temporarily) together with engagement of high level experts should provide sufficient convening power to the project.  Linkages / support to regional advocacy initiatives should be established. At the same time a linkage to ASEAN would be an opportunity to increase convening power & leverage.
Need for (financial) support is different than anticipated and/or opportunities occur in different fields as priority anticipated resulting in under-use & expenditure in some facilities and lack of funds in others	2-3	3	Evaluation moments (annually) should allow for re-allocation of project focus and means according to actual needs. The Steering Committee could be functional in this.
	2-3	3-4	
	3	2-3	
<b>Monitoring &amp; Evaluation</b>			
Impossibility to capture tangible results and impact	3	2-3	Definition of clear indicators including proxy indicators and consistent monitoring efforts

The combination of high likelihood (4-5) and high impact (4-5) indicates serious risk that, in case not addressed (mitigated) properly, leads to failure to reach set goals. Based upon the of risk indications in the above table most significant risks (high likelihood of occurrence combined with high impact on reaching goals) are found in the approval and design & planning phase of both option 4 and option 5. In order to mitigate those risks it is highly recommended to have an ***initial inception phase***.

## Annex 1: People met & Work programme

<b>Cambodia: 31 July to 04 August</b>		
Charya CHET, Ussa OU, Tina FRANKE	STAR Kampuchea-	interview
Manfred Horning- Heinrich Böll Stiftung; Brian Rohan-Vishnu law group; Depika Chersan – Human rights consultant; Maia Dokno- consultant; Dorine van der Keur –lawyer- consultant; Isabelle Skaburskis		Joined meeting
Srey Chanthly	agro-business consulting (SDC consultant agriculture)	interview
-Terry Parnell; Andrew Bonane	East West Management Institute - Program on Rights and Justice (EWMI-PRAJ)	interview
Philip Courtnadge	(UNDP –aid effectiveness)	dinner
Mathieu Pellerin	(Licadho- GIS spatial datasets)	Interview
Dr. PUNG Chiv Kek	Licadho	interview
Thorben Kruse	GIZ	interview
Christoph Oldenburg & forestry colleague	NGO forum –land working group	interview
Tuy Sereivathana	Country Representative -Fauna & Flora International (Cambodia)	interview
Koen EVERAERT-	European commission	interview
Jacob Jepsen	Danida; forestry advisor	interview
Men Prachvuthy –	Royal University RUPP/ Mekong institute	interview
Mr Phalla,	ILO -Indigenous land governance project	interview
<b>Myanmar: 7-11 August</b>		
Claire Light	Swissaid	
Patty Curran	Trocaire	
Dr Maung Maung Than	RECOFT	
Lyndal Barry	EU capacity building project	
	Coordinator food security working group	
Andrew Kirkwood, Harald Kreuzer	LIFT –(Livelihoods and food security Trust Fund) multi-donor programme <a href="http://lift-fund.net/index.php?option=com_content&amp;view=article&amp;id=1&amp;Itemid=2">http://lift-fund.net/index.php?option=com_content&amp;view=article&amp;id=1&amp;Itemid=2</a>	
Srinivasa Popuri + Eben Forbes	UN Habitat	
Kevin Woods	TNI; univ. of Berkley	
Claudine	SDC Peacebuilding	
Attending agribusiness workshop in Yangon Myanmar organized by land core group of food security working group- Presentations Kevin Woods and by various companies		

<b>Vietnam 7<sup>th</sup> / 10<sup>th</sup> of August</b>		
<i>Name</i>	<i>Organisation / position</i>	<i>Comment</i>
Hoang My Lan	SDC Vietnam Program officer	Personal interview
Ha Nguyen	SDC Vietnam	
Ha Cong Tuan	Acting Director General of Vietnam forestry Administration	Plus officers from Int. cooperation department MARD
Pham Xuan Phuong	Former director of Legislation Department – MARD	Group discussion
Doan Diem	Former Deputy Director of Forest Protection Department	Group discussion
Nguyen Quang Tam	RECOFTC	Group discussion
Dang Hung Vo	Former Vice Minister MONRE, current advisor to the government on land law	Personal interview

	revision	
Ramesh Khadka	Regional Director WWF	Personal interview
Le minh Tue	Advisor FORMIS	Personal interview
Nguyen Thi Thu Hong	Director Department of International Cooperation, Science and Technology, MONRE	Including other staff of the department
Hoang Thi van Anh	Deputy Director department of Policy and Legislation - MoNRE	Including other staff of the department
Nguyen Lam Giang	Director Helvetas Vietnam	Personal interview
Dominic Smith	Technical advisor Access to Markets Helvetas Vietnam	Personal interview
Laos 25 <sup>th</sup> of July / 12 <sup>th</sup> of August		
<i>Name</i>	<i>Organization / position</i>	<i>Comment</i>
Liliane Ortega	Deputy Director SDC	Personal interview
Ruth Huber	Regional Director SDC Asia	Personal interview
Adrian Gnagi	Program Manager and Regional Advisor SDC Asia	Briefing and de-briefing
Nitsa	SDC Program Manager	Personal interview
Viengxong	SDC program Manager	Personal interview
Keolab	SDC Program Manager	Personal interview
Hanna Saarinen	Coordinator Land Issue Working Group	Personal Interview
Andreas Heinimann	Technical Expert CDE, Lao DECIDE	Personal interview
Keiko Miwa	Director WB Laos	Personal interview
Agnieska Kroskowska	Program Development Coordinator Laos and Myanmar Helvetas	Personal interview
Martin Greijmans	Technical Advisor SNV Laos (forest governance and REDD+)	Personal interview
Kate Lazarus	Expert water governance and coordinator M-Power	Personal interview
Chanthaviphone Inthavong	Former director Land Management research and Information Centre of NLMA	With staff of the LMRIC-NLMA
Elizabeth Mann	Technical Advisor Land, Water & Forest Management WB and ADB	Electronic
William Rex	Former director WB Nam Theung II hydro-power project	Digital and Skype
Nishan	Technical Advisor Land Governance CIDSE and vice chair LIWG	Personal interview

Regional/Global 27 July to 12 August		
<i>Name</i>	<i>Organisation / position</i>	<i>Comment</i>
Suchat Katima	Director Mekong Institute, Thailand	Personal interview
Shalmali Guttal	Advisor Focus on the Global South and acting coordinator VG trajectory	Two personal interviews
Megan MacInnes	Global Witness, London	Skype
Manfred Kaufmann, Alexandre Ghelew	DEZA KAM; DEZA GEW	telephone
Jun Borrás	ISS	telephone
Kirsten Ewers	Expert community land tenure	electronic

**Participants workshop / brainstorm (13<sup>th</sup> of August 2012, Vientiane)**

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Karin Eberhardt	SDC	Myanmar
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Christoph Oldenburg	NGO Land Issue Working Group	Cambodia
Chantaviphone Inthavong	MoNRE	Laos
Michael Viktor	IMWI	Laos
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### **Annex 3: Definition of land governance and responsible investments based on “Voluntary guidelines”**

Systems of tenure define and regulate access to land, fisheries and forests. These tenure systems determine who can use which natural resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices. The governance of tenure is a crucial factor in whether people, communities and others are able to acquire rights to use and control land, fisheries and forests. Many tenure problems arise because of weak governance.

Land governance is the process by which decisions are made regarding the access to and use of land and natural resources, the manner in which those decisions are implemented and the way that conflicting interests are reconciled (Un-Habitat, 2008).

Responsible governance of tenure promotes sustainable social and economic development that can help to eradicate poverty and food insecurity. In addition, it encourages responsible investment. Responsible investments should do no harm. They should respect human rights. They should safeguard against the dispossession of legitimate tenure rights and against environmental damage.

States should provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights. States should provide safeguards to protect tenure rights of local people from risks that could arise from large-scale transactions in tenure rights. Safeguards should also be in place to protect human rights, livelihoods, food security and the environment. States should make provision for investments involving transactions of tenure rights to include consultation and participation with those whose tenure rights might be affected. States should ensure that existing legitimate tenure rights are identified in a systematic and impartial way.

Where investments that involve large-scale transactions of tenure rights are being considered, States should provide for independent assessments to be conducted on the potential positive and negative impacts of those investments.

Contracting parties should ensure that all relevant people are engaged and informed in the negotiations. Investors have the responsibility to respect national law. They should recognize and respect the tenure rights of others. They should respect the rule of law. Professions (e.g. legal and surveying professions) who provide services should undertake due diligence to the best of their ability when providing their services. All should contribute to monitoring the implementation of agreements that involve large-scale transactions in tenure rights. All should also contribute to monitoring the impacts of these agreements.

Some States may invest or promote investments in other countries. Where States do so, their conduct should be consistent with the protection of legitimate tenure rights, the promotion of food security, and their obligations and commitments.

Source: Voluntary guidelines

[http://www.fao.org/fileadmin/user\\_upload/nr/land\\_tenure/images/VG\\_Informal\\_aid.pdf](http://www.fao.org/fileadmin/user_upload/nr/land_tenure/images/VG_Informal_aid.pdf)

## Annex 4: Overview development, natural resource use and governance indicators

	<i>Cambodia</i>	<i>Laos</i>	<i>Myanmar</i>	<i>Vietnam</i>
<i>Human development index *</i>	139	138	149	128
<i>Life expectancy at birth (years) *</i>	63.1	67,5	65.2	76.2
<i>Income (GNI per capita in PPP terms \$* )</i>	1848	2242	1535	2805
<i>Inequality adjusted HDI *</i>	0.38	0.405	n.a.	0.510
<i>Multidimensional poverty index % *</i>	0.251	0.267	0.154	0.084
<i>Gender inequality index*</i>	0.500	0.513	0.492	0.305
<i>Population *</i>	14.3 m	6.3	48m	88.7m
<i>Population density</i>	82	27	76	281
<i>Ethnic minorities</i>	10%	40%		
<i>Forested areas (2010)**</i>	57%	68%	48%	44%
<i>Change in forested area 2000-2010 **</i>	-1.3%	-0.5%	-0.9%	1.6%
<i>ODA</i>	733	413	355	2940
<i>FDI (2010 x10<sup>6</sup>\$)</i>	782	278	910	8000
<i>Ease of doing business index</i>	138	165	n.a.	98
<i>Corruption perception index **</i>	164	154	180	112

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**31** Sources: Human development index and World Bank: [www.worldbank.org](http://www.worldbank.org)