



LARGE-SCALE LAND ACQUISITIONS IN SOUTHEAST ASIA

Rural transformations between global agendas and peoples' right to food

Working Paper

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INTRODUCTION

A new wave of transnational large-scale land acquisitions (LSLAs) in developing countries has erupted since the mid-2000s. Foreign and domestic investors, private, governmental or public/private joint ventures, are acquiring long-term leases or ownership rights of extensive portions of land in countries among the least developed. LSLAs tap into a large pool of meanings and are placed at the intersection of development economics, governance and law, land use and land cover change, the memory of colonial practices, peasants resistance, and human rights. Thus, scholars, civil society and international organizations have developed high interest for these land deals, with high controversy between some who see in this phenomenon the opportunity for long-awaited investments into 'poor' countries agricultural sector, and others who associate LSLAs to dispossession, human-rights violations and increasing poverty for local populations. Despite a growing body of research and knowledge on the topic, various gaps exist, among others: the missing link between the evidence emerging from numerous and often anecdotal case studies on the one hand and the studies and observations performed at macro level on the other hand (Borras Jr and Franco 2010; Cotula 2012; Messerli et al. 2013); the insufficiency of empirical material analysing how land deals are implemented on the ground (Edelman and al., 2013) and their mid-term consequences on livelihoods (Oya, 2013); and the absence of a human rights perspective to analyse the phenomenon and its impact on local populations (De Schutter 2011; Golay and Biglino, 2013).

This report presents the findings of a two-years long research project funded by the Swiss Network for International Studies. Based on comprehensive case studies in Laos and Cambodia, the research was structured around three core questions. What are the development contexts and processes among various actors and institutions across different administrative scales that are determining the negotiation and implementation of LSLAs? What are the impacts of land deals on local populations in terms of livelihood system, resilience and adaptation? What role do human rights law and monitoring and judicial mechanisms play (and what role could they play) in mitigating the tensions related to land investments and protecting the human rights of local populations? The research draws on land change science as a strand of geography and sustainability science, a perspective that is grounded in political economy with a strong emphasis on agrarian transformation, and legal and human rights studies with particular attention to the right to food. Beyond its contribution to academic debates, the research aims at providing material for policy dialogue with authorities, UN agencies, international financial institutions and non-governmental organizations in their effort and programs to accompany the implementation of LSLAs and to mitigate their possible negative impacts.

The first chapter of the paper describes and analyses the recurrent linkages between LSLAs implementation processes and different contexts of agrarian transitions in Laos and Cambodia. The second chapter analyses the implementation of land acquisitions and the consequent transformation of rural livelihoods in the mid-term. The third chapter identifies human rights violations associated with LSLAs and evaluates the role that human rights law and monitoring and judicial mechanism play (or could play) in mitigating the tensions related to LSLAs and protecting the human rights of local populations in Cambodia and Laos.

1. MARGINAL LAND OR MARGINAL PEOPLE? LINKING PROCESSES OF LARGE-SCALE LAND ACQUISITIONS TO CONTEXTS OF AGRARIAN TRANSITION¹

Past and present agrarian transitions in Southeast Asia have affected land use and livelihoods in many different ways, producing diverse and often fragmented socio-ecological contexts. The implementation of LSLAs hence leads to highly dissimilar outcomes from one place to another. This raises problems in generalising case studies and locally obtained empirical results for policy formulation at the regional or national level. Guided by the intention of producing evidence for informed policies and following the emerging call for typologies of LSLAs (Borras Jr and Franco 2012) this chapter aims at describing and understanding recurrent linkages between LSLA implementation processes and different geographical contexts of agrarian transitions. More precisely we will focus on (i) analysing in what socio-ecological contexts LSLAs occur and if such contexts relate to specific types of LSLAs (crops, investors, etc.); (ii) studying the decision-making and implementation of LSLAs involving different actors across multiple scales and analysing if and how the specific contexts of agrarian transition influence these processes. Finally we will (iii) discuss recurrent interactions between the processes-based insights on LSLAs and the place-based attributes of contexts in which LSLAs occur in order to assess how our results can be generalised and out-scaled. Our underlying assumption is that similar interactions between LSLA processes and contexts of agrarian change can inform cases that occur in different places and at different times. This learning process can facilitate decision-making in times of uncertainty.

1.1. Regional dynamics and agrarian transitions in mainland Southeast Asia

In the past decades mainland Southeast Asia has seen an extremely high pace of parallel transformations of societies and agriculture moving from rural subsistence oriented agriculture towards more urbanized societies and industrialized and market-based forms of land use. These changes also termed as ‘agrarian transition’ (De Koninck 2004; Rigg 2006) comprise processes such as agricultural intensification and territorial expansion, integration into market-based economy, migrations, new forms of regulations governing agricultural production, urbanisation, etc. (ibid.). Yet these processes do not happen in a linear manner and they occur at different paces in different places. As a result, the contexts of agrarian transition vary considerably across the region and across different scales. This heterogeneity leads to high dependencies between places, regions and countries in terms of resource and capital flows, migration, value chains, knowledge, economic and political power. It is therefore not surprising that the beginning of LSLAs in Southeast Asia cannot be so closely related to the 2008-2009 food and financial crisis, which are commonly considered as triggers of the phenomenon at global level. Evidence from the land matrix global observatory (Anseeuw et al. 2012) points to the mostly regional and transboundary dynamics in Southeast Asia rather than to global driving forces related to the ‘land rush’². This was confirmed by the detailed inventory of land concessions in Lao PDR manifesting a take-off of transboundary land concessions as early as 2000 as illustrated in figure 1.1 (Schönweger et al. 2012).

¹ This chapter has been prepared by Peter Messerli, Amaury Peeters and Oliver Schönweger, with the contribution of Vong Nanhthavong

² Macro-economic factors such as the oil-price yet played a key role. Not only does it link to the interest in biofuels but it is also closely correlated to the price of natural rubber and hence contributed to the rubber boom after the end of the Asian crisis.

At the level of the four countries, Laos, Cambodia, Vietnam and Thailand, the following key indicators illustrate the heterogeneity and the related differentials in terms of agricultural and societal development (see table 1.1).

Selected indicators of agrarian contexts	Indicator	Lao PDR	Cambodia	Vietnam	Thailand
Agricultural land ¹ (2011)	% of land area	10.3	32.0	35.0	41.2
Rural population per agricultural land ¹ (2012)	Persons per sq. km	181	210	559	208
Employment in agriculture ² (2011)	% of total population	72.0	55.8	48.4	38.7
Agriculture, value added ² (2011)	(% of GDP)	30.8	36.7	22.0	12.4
Agricultural machinery ² (2000)	Tractors per 100 sq. km of arable land	8.5	5.8	262.0	280.0
Agriculture, value added annual growth ² (2012)	% annual growth	10.4	3.1	3.4	4.1
Rice paddy productivity ¹ (2012)	Tons per hectare	3.7	3.0	5.6	3.0
Estimated share of shifting cultivation ³ (2011)	% of land area	28	2.0	n.a.	2.0
GDP per capita ² (2012)	Current US\$	1399	946	1596	5480
Poverty headcount ratio at \$1.25 a day (PPP) ² (C.: 2009, L.: 2008; T.: 2011, V.: 2008)	% of total population	33.8	18.6	16.85	0.38
Foreign direct investment, net inflows ² (C.: 2011, L.: 2011; T.: 2012, V.: 2002)	BoP, current Mio US\$	301	901	7'430	8'616
Net ODA received ² (2011)	% of central government expenses	42.5	57.4	n.a.	-0.2
Mobile cellular subscriptions ² (2012)	Per hundred people	101.9	132.0	149.4	120.3

Table 1.1: Selected indicators of agrarian transitions at national level. Source: ¹ FAOSTAT (<http://faostat.fao.org/>) , FAO; ²World Development Indicators (data covering 2009-2012); The World Bank. ³ (Messerli, Heinemann, and Epprecht 2009; Schmidt-Vogt et al. 2009)

We observe a decreasing importance of the agricultural sector with regard to employment and GDP ranging from Laos and Cambodia to Vietnam and Thailand. This is paralleled by increasing population densities per agricultural land with extremely high values in Vietnam, agricultural machinery and decreasing poverty rates. Laos represents the country with the highest share of shifting cultivation and the highest poverty headcount ratio. Nevertheless, the high value added in agricultural growth, in rice paddy productivity and mobile cellular subscriptions indicate rapid transformations. Governments in Laos and Cambodia depending on strong support from official development assistance (ODA) will be challenged to provide the institutional guidance for such rapid transformations.

High heterogeneity of development contexts and the related dependencies manifest themselves also at sub-national levels. They have emerged from rapid and geographically uneven transformation processes, and conceptualisations thereof have struggled to keep up with the sheer pace of change in the Asian countryside (Rigg 2005). Early theories of intensification in the Malthus/Boserup sense were soon expanded to account for off-farm activities, rural livelihood needs and aspirations related to accessibility of and access to markets, education, health services and technical information (Castella, Lestrelin, and Buchheit 2012). When analysing the systemic interactions between agricultural activities and livelihoods, Rigg (2005) highlights the de-linking of poverty and livelihoods in rural areas from farming and agricultural resources occurring nowadays in rural Southeast Asia. Land, he stipulates, remains an important factor but is not ultimately decisive for rural poverty or prosperity. He refers to emerging patterns of change in the Southeast Asian countryside to construct a generalised framework for agrarian transition where the current trend from subsistence to semi-subsistence farming is complemented by pluri-active and professional and new emerging types of

farming. The first three agrarian types of the following generalised typology shall guide the presentation and discussion of research results in this chapter (see table 1.2 below).

	Type	Agrarian type	Characteristics	Possible indicators for spatial delineation of context
Past	1	Subsistence	Shifting cultivation, farming, hunting, collecting and fishing, village focused; some barter and sale of surplus	Land use mosaics, forests as share of land cover, share of shifting cultivation, ethnicity, accessibility in terms of travel time, poverty incidence.
	2	Semi-subsistence	Combination of subsistence with market oriented agriculture; livelihoods remain farming and village focused.	More intensive cropping mosaics, population densities, agricultural practices, accessibility to markets, agricultural inputs.
→ Present	3	Pluri-active (postpeasant) I	Combination of semi-subsistence with various non-farm activities, both on-farm and off-farm. Migration and delocalisation of work increasing significant.	Land holding per household, diversification of activities (off-farm) and income, migration and unbalanced sex ratios, dependency ratios, accessibility to centres, infrastructure, economic activities at household levels.
	4	Professional	Professionalization of farming and the emergence of agrarian entrepreneurs. Larger scale, commercial enterprises utilising inputs, integration into national and international markets, and technology intensive.	Land concessions and leases, farm size, large-scale irrigated fields and other plantations, agricultural inputs, access to processing, trade points, land tenure, reduction of poverty incidence, environmental decline and social malaise.
→ Future	5	Pluri-active (post-professional) II	Return or adaptation of pluri-activity as part-time farmers make a lifestyle choice and combine farming with other occupations.	Economic activities, farm size per household, income, accessibility.
	6	Remnant smallholder	Rural households who remain tied to the land and to traditional production systems.	Land use mosaics, forests, share of shifting cultivation, ethnicity, remoteness, poverty.

Table 1.2 Generalised typology of agrarian transitions in Southeast Asia based on Rigg (2005), adapted by the authors.

1.2. The geography of LSLAs in Laos and Cambodia³

Materials and Methods

In both countries, national databases on LSLAs were built up from different sources of information and were checked through data triangulation. Based on these unique data sets, a descriptive analysis of different LSLAs was carried out in terms of the investment's country of origin, the purpose and the date when the deals were granted. Based on the geo-references of the LSLAs and using spatial datasets at national levels, the agrarian context of LSLAs was investigated using GIS software. The following attributes were covered by the analysis: poverty incidence, accessibility to populated centres, ethno-linguistic minorities, land cover, forest changes and topographical features.

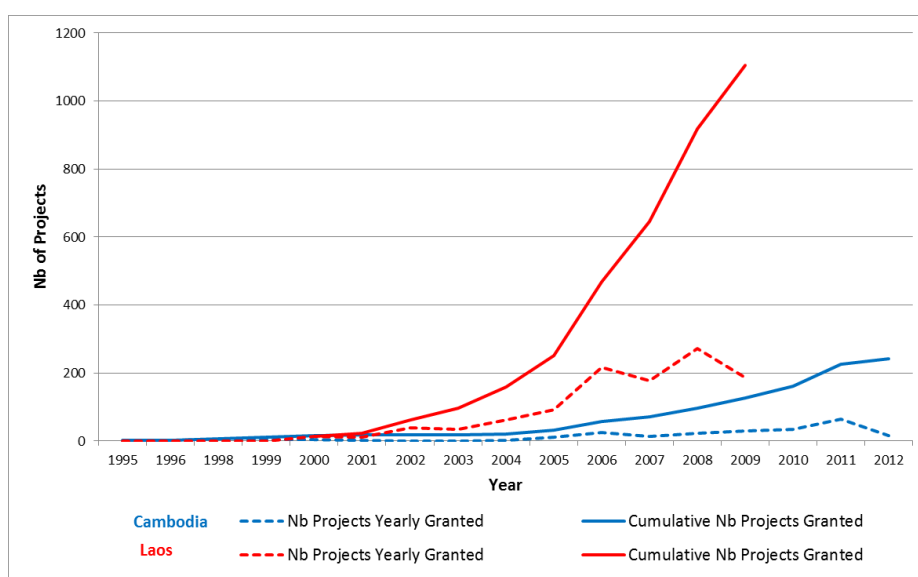
³ Research results in relation to Laos in this chapter largely draw on previously published results (Schönweger et al. 2012).

Key results for Laos and Cambodia

The opening to private investments in the form of land concessions has been present in the economic development policies of both countries for many years. Correspondingly and following a previous experience on a concessions system in Cambodia, a new legal framework has been adopted (land laws) for this type of investment in Cambodia (since 2001) and in Laos (since 2003). A series of further laws and decrees have been released in both countries reinforcing and concretising this inclination (RGC, 2005; GOL 2004, 2008) together with the establishment of institutional mechanism for the implementation of these new laws and policies. The response from investors has not been slow to materialize with what may be considered as a 'land rush' in both countries. Governments have made these private investments in land explicitly an important part of their rural development policy and the fight against poverty.

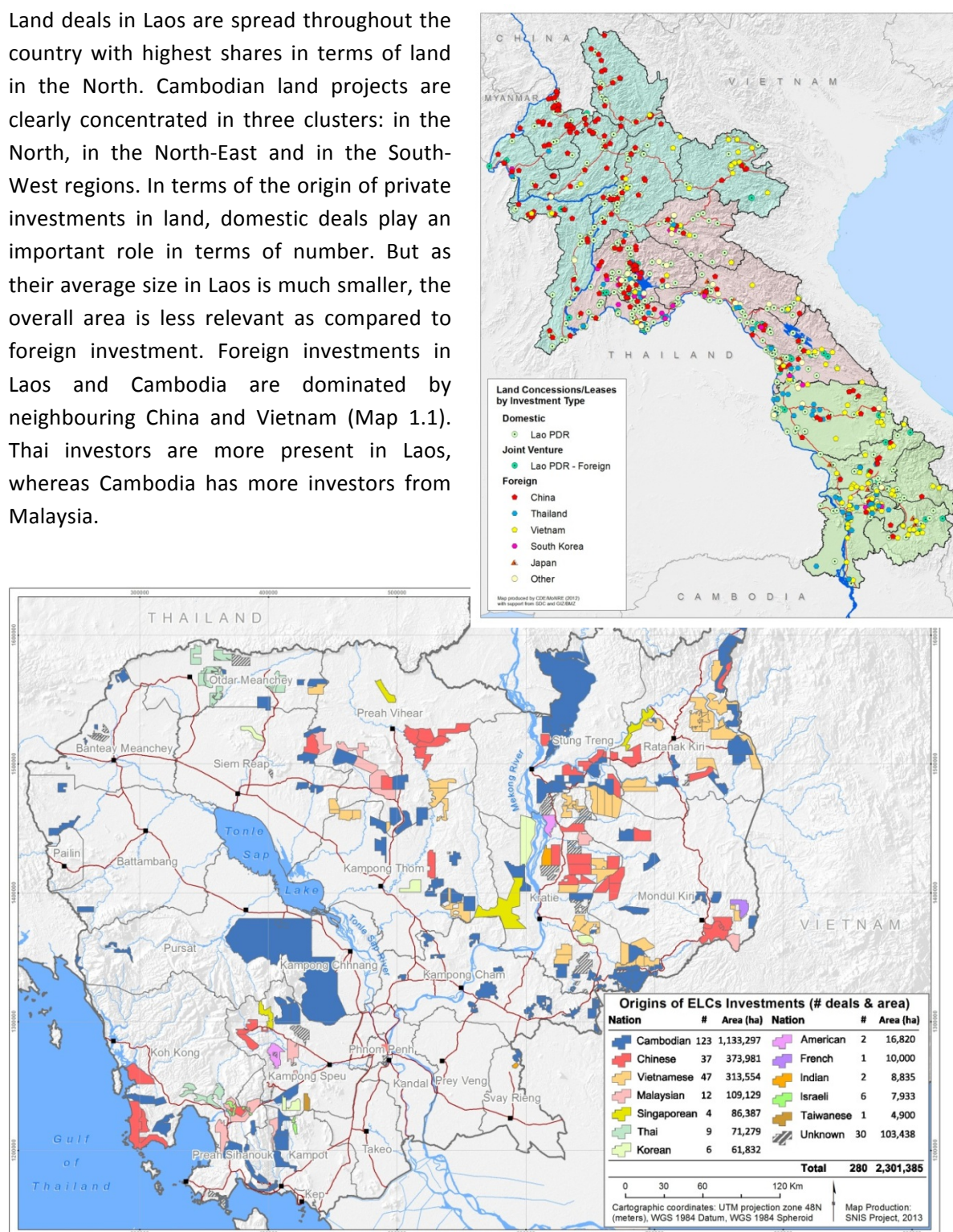
Despite several moratoriums on granting land concessions in Laos (2007, 2009 and 2012) and in 2012 in Cambodia, it is interesting to note the importance of this phenomenon with currently about 2,642 land deals encompassing 1.1 million hectares in Laos (Schönweger et al. 2012), and 486 deals comprising 4.5 million hectares in Cambodia. These granted lands constitute around 5% and 25% of the total national territory of Laos and Cambodia respectively. The number of concessions granted in Laos increased fifty fold from 2000 to 2009 with a steep increase since 2005 (Figure 1.1). The trend in Cambodia⁴ also shows a sharp increase of land deals since 2005. The most impressive observation however remains that since 2000, it has taken only eight years to double the area granted to investors, going from 0.5 million to over a million hectares and it took only 4 years to double it again, reaching over 2 million hectares in 2012.

Figure 1.1: Trends of land concessions granted in Cambodia and Laos. Source: LSLAs national data sets.



⁴ The figures about Cambodia's trends only concerned economic land concessions (ELCs) as no information about the granting date of mining concessions could be gathered.

Land deals in Laos are spread throughout the country with highest shares in terms of land in the North. Cambodian land projects are clearly concentrated in three clusters: in the North, in the North-East and in the South-West regions. In terms of the origin of private investments in land, domestic deals play an important role in terms of number. But as their average size in Laos is much smaller, the overall area is less relevant as compared to foreign investment. Foreign investments in Laos and Cambodia are dominated by neighbouring China and Vietnam (Map 1.1). Thai investors are more present in Laos, whereas Cambodia has more investors from Malaysia.



Map 1.1: Investment project locations and investor's countries of origin for Cambodia (bottom) and Laos (above).

Proximity can partly explain the distribution of investors, as Vietnamese companies are more present in the Southern region of Laos as well as in the Northern cluster in Cambodia. Chinese are more present in the Northern part of Laos but they are also located in the three main clusters in Cambodia. Domestic investors are evenly distributed following the global distribution of land deals across their respective country.

Main purposes in the forestry subsector	Lao PDR	Cambodia
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	# Deals	Total Area (ha)	# Deals	Total Area (ha)
Rubber with and without other plant	248 (68%)	144,453 (47%)	113 (79%)	784,446 (52%)
Timber wood (Trincomalee, Agarwood, Pinus Merkusii, Teak, Bamboo)	25 (7%)	5,026 (2%)	8 (6%)	173,087 (11%)
Pulp wood (Eucalyptus, Acacia)	54 (15%)	135,949 (44%)	11 (8%)	71,570 (5%)
Oil Palm with and without other plant	n.a.	n.a.	6 (4%)	104,155 (7%)
Other tree plantations	40 (11%)	20,807 (7%)	4 (3%)	382,424 (25%)
TOTAL	367 (100%)	306,234 (100%)	142 (100%)	1,515,682 (100%)
Main purposes in the agriculture subsector	Lao PDR		Cambodia	
	# Deals	Total Area (ha)	# Deals	Total Area (ha)
Sugarcane with or without other plant	10 (3%)	34,969 (25%)	10 (23%)	65,596 (23%)
Jatropha	49 (14%)	25,179 (18%)	n.a.	n.a.
Coffee	59 (16%)	19,105 (14%)	n.a.	n.a.
Cassava with or without other plant	34 (9%)	14,747 (11%)	6 (14%)	38,492 (14%)
Other (Corn, Cashew nut, Livestock,...)	208 (58%)	46,015 (33%)	27 (63%)	177,183 (63%)
TOTAL	360 (100%)	140,015 (100%)	43 (100%)	281,271 (100%)

Table 1.3 Main purposes of land deals among the forestry and the agricultural subsectors in Laos and in Cambodia. Source: LSLAs national datasets.

In terms of production, the focus in Laos and Cambodia is on very few export-oriented cash crops. In the forestry subsector, which in both countries exceeds the agricultural subsector, rubber is ranked by far the most important investment followed by other tree plantations with a focus on pulp wood (eucalyptus and acacia) in Laos and timber wood (trincomalee, teak and pinus merkusi) in Cambodia. Regarding the agricultural subsector, investors have a particular interest in sugarcane and cassava in both countries, with a specific emphasis in Jatropha and coffee in Laos, and corn and cashew nut in Cambodia (Table 1.3).

The spatial overlay of LSLAs with key features of the agrarian context concerned reveals important spatial patterns. It can be shown that in Laos concessions have been granted to a large proportion within so-called un-stocked forest areas (45% of the total land granted), a land cover category often attributed to fallow land in shifting cultivation areas and hence representing upland and small scale agriculture. In Cambodia, the land area granted consists mainly of forests (77%), and includes farmers' upland fallow fields as well. Moreover the analysis reveals that the vast majority of investments are located in relatively easily accessible areas. Almost half of the concessions are within an hour from the closest district capital in Laos and about 37% of them are within 2 hours from the closest provincial capital in Cambodia. Yet the main investors (Domestic, Chinese and Vietnamese) also hold projects in some of the most remote regions of both countries which is not completely surprising considering that they are mainly investing in the forestry subsector which concerns less accessible areas (Map 1.2).

National Poverty Lines & LSLAs	Lao PDR		Cambodia	
	National Population	Population in areas under investment	National Population	Population around ELCs
Poverty Incidence (PI)	34.7% ¹	27%	28.3% ²	32.6%
% of villages with PI higher (poorer) than National average	62%	52%	50.1%	63.4%
# of villages with PI higher (poorer) than National average	10,035 ³	1,927	6,699	1,097
Details of Poverty Incidence in areas under investment	Lao PDR		Cambodia	
	Poverty Incidence (PI)	% of Villages with PI Higher (Poorer) than National Avg	Poverty Incidence (PI)	% of Villages with PI Higher (Poorer) than National Avg
Domestic investments	22%	33%	30%	56%
Foreign investments	34%	59%	37%	76%
- Vietnamese	38%	69%	54%	87%
- Chinese	34%	61%	40%	70%
Agriculture	29%	55%	37%	73%
Forestry	37%	62%	32%	58%
- Rubber	39%	n.a.	31%	46%
Secondary Sector	21%	31%	19%	20%
Tertiary Sector	21%	21%	28%	64%

Table 1.4: National Poverty Incidence, National Poverty Incidence in areas under investment in Laos and in Cambodia. Source: ¹ calculation based on Epprecht et al (2008) ² calculation based on ID Poor dataset and Commune database book (NCCD) 2008-2010 Note: The capital, Phnom Pen was not taken into account in the calculation as no data over poverty incidence was available there, ³ based on most current village location data for the Lao PDR (MPI, NGD, 2008), ⁴ based on village location data for Cambodia (RGC, 2009)

In both countries, domestic investments clearly target less poor areas than foreign investments. It is also worth noting that poverty incidence in areas with Vietnamese and Chinese investments is higher than the national average of investments.

Taking into account the geographical distribution of ethno-linguistic groups, spatial analysis has shown that the dominant group in Laos, Lao-Tai, are more affected by land deals as compared to their national representation (72% vs. 64%). Nevertheless, the Mon-Khmer make up a significant portion of the population of areas with land concessions (25%). The situation is a bit different in Cambodia where the second dominant ethno-linguistic group after the Khmer, i.e. the Chaam, as well as several smaller ethno-linguistic groups, such as the Phnom, Charaay, Tampoun and Kuoy are those who are comparatively more affected. This last observation for Cambodia has to be linked with the clustering of investment projects in the North and North-East regions where smaller communities are mainly present. The affected share of the total population can vary from one group to another one with more than 70% of the total population concerned by land projects for eight Cambodian ethno-linguistic groups or more than 55% of their population affected for 12 groups. This can raise concerns about the sustainability of their customs and traditional livelihood systems.

Emerging patterns of LSLAs related to contexts of agrarian transition

In Laos and in Cambodia we have seen a steep increase in LSLAs in the past decade manifesting a more than 50-fold multiplication of land deals for Laos and a fourfold increase of areas granted for Cambodia. Whereas in Laos deals are smaller in size but more numerous in number, Cambodian deals are fewer but larger. Analysing the geography of LSLAs in both countries has revealed many

differences but also some important commonalities. Being aware of the risk of oversimplification we nevertheless undertake to present a very coarse generalisation in terms of emerging patterns of LSLAs and their related context of agrarian transition.

First we identified investments in the forestry sector and specifically for rubber that represent the single most important type of LSLA. For these deals, Vietnamese and Chinese investors play, together, a predominant role as compared to domestic investors. They search for large and connected plots of land if possible not too far from their riparian border. In most cases these plots are found in land areas categorized as 'forests'. In Cambodia this category actually corresponds to forests, which include partly upland farming systems, whereas in Laos the so-called 'un-stocked forests' represent fallow land in shifting cultivation areas. In both countries these deals manifest the highest poverty incidence of all LSLA-affected areas being mostly ethnic minorities in Cambodia and both ethnic majority as well as ethnic minorities in Laos. The agrarian systems affected are partly subsistence farming systems but due to the considerably good accessibility mainly semi-subsistence systems where farmers diversify to commercial crops (including rubber) and partly even off-farm income (type 1 and 2).

Second we observe LSLAs in the agricultural sector where domestic investors as well as other nationalities (Thai, Malaysia, Indian, Western, etc.) play an important role. These deals are normally smaller in size, located in slightly better accessibility to centres and in Laos represent areas with lower poverty incidence. Even though they still target areas classified as forests they interfere more often with pre-existing agriculture in cropping mosaics and hence an agricultural context characterized by semi-subsistence, commercial agriculture and off-farm activities (type 2,3 in table 1.2). In Cambodia, these moderately populated areas also experience strong in-migrations due to new opportunities offered partly by new land concessions over there. In other words the LSLAs do not only interfere with the local agrarian system (type 2 and 3 in table 1.2) but also implant a professional agrarian type (type 4) and attract immigrants of the post-peasant type (type 3).

1.3. Decision making and implementation of LSLAs

Materials and methods

This part of the research focusing on decision making and implementation of LSLAs aimed at i) improving the understanding of the overall decision-making process on LSLAs, and ii) identifying the main involved actors at different levels, and iii) identifying the key factors influencing the granting and the land allocation process. In order to address these issues one PhD student, three Swiss Master Students, two international researchers and four national researchers conducted fieldwork between October 2012 and June 2013 in both countries. The study was carried out in 7 provinces in Laos, and in 2 provinces in Cambodia focusing on altogether 33 LSLAs. Semi-structured interviews with government officials from various sectors and administrative levels, as well as with company representatives were conducted. Approximately 60 villages were visited and questionnaire surveys were carried out with village authorities and households.

Political Drivers and Rational for granting land concessions

In Laos and Cambodia the rational of both governments to grant large areas to foreign but also domestic companies must be understood within the context of economic growth strategies and related global but also regional political and economic integration processes. To mention only a few: the integration into ASEAN, the foreseen Asian Economic Community (AEC), the memberships to WTO, but also the ongoing infrastructure development projects linking both countries with the

bigger and economically much more powerful neighbouring states. At a national level, these processes are reflected through a multitude of policies and strategies, along with self-set and highly ambitious development and economic growth targets (e.g. eradicating shifting cultivation (Laos) and opium growing fields, poverty reduction, ethnic integration, etc.). They are providing the ground for both governments to promote and justify foreign direct investment (FDI) in the forestry, agricultural and extractive sector. Lacking the means to valorise the rich natural resource base in these countries, governments pursue a strategy of ‘turning land into capital’: attracting foreign investors, through leasing out large areas of land under very favourable contractual terms, has become the preferred development avenue to un-tap the massive natural potentials. In addition to the expected raise of national incomes and fiscal revenues, land concessions hold the promise to bring along modernization of the agricultural sector, job creation and infrastructure development. Land speculation, rent-seeking and logging may be in many cases important drivers, but fall short of providing a comprehensive explanation of the current pace and scale of the LSLAS phenomenon.

Main LSLA-typologies and differences between land granting and allocation processes

Main types of implementation processes of land concessions have been identified based on the combination of the country of origin of the investor and the kind of product promoted. The research has provided evidence that the granting process, the land allocation itself, as well as the final outcome on the ground differs significantly. Especially in Laos an area granted on paper, does not automatically lead to the immediate land allocation and project implementation.

Financially strong Vietnamese investors play a key role in the rubber sector. They have been granted and allocated very large plots of land in both countries in a very short time. The clearing and implementation of the plantations happened rather smoothly compared to other concession types. This can be explained by the political backup from the investors’ and host countries’ governments, as well as by the very strong and influential role the powerful Vietnamese Rubber Group (especially in Cambodia) plays in lobbying for rubber investments. In addition most of these “big players” have very good business and private connections across different government administration levels - often up to the very top. Granting land concessions, and control over land is in both countries highly political. The strong relationship between the Lao PDR and Vietnam established during and after the Second Indochina War has influenced political and economic collaboration between the two countries, and shapes the decision-making process around land concessions in favor of Vietnamese investors – especially in the South.

In Laos almost all large Vietnamese rubber investment, as well as Japanese or Indian pulp-tree investment followed a process driven by a very top– down approach. In Cambodia this is the case for actually all crops and investor-origins. Sub-national levels in Cambodia are playing a much less significant role during the overall process. Cambodia’s hierarchical structure of the government concentrates the power on the national level, whereas the power of local authorities diminishes with each level.

In Laos, depending on the concession locations and according to provinces, the specific processes may differ significantly due to the varying power differentials in policy-making between provincial and district governments. Chinese Rubber investors in the north of Laos have been granted land mostly in a very opaque way, pushed and facilitated by provincial authorities, rather than the central government. Furthermore the mountainous landscape in the North has also contributed to a fragmentation of plot size in most of the concessions compared to the few but larger plots in given to Vietnamese investors the South. The farther away from the Lao-China border, the more difficult it seems for Chinese investors to finally get the land effectively allocated, which has previously been

granted on the paper. In Cambodia where the topography is much smoother, concessions of single companies are often much less fragmented into several plots. However, there are numerous records of companies that circumvent legal restricted size of 10,000 ha by spinning-off into subsidiary companies and numerous plots below this size.

Other investors in Laos planting eucalyptus and acacia had a very smooth start by either taking over existing concession agreements or by high level diplomatic ties. Despite the promising start, the same companies struggle until today, several years later, to actually get the land on the ground allocated. Support from provincial and district authorities is lacking and often land is simply not available (anymore). In some cases land finally allocated is not suitable for the product or of low quality. This has led to a more pro-active approach by the companies. They are approaching the villagers by themselves first to find and negotiate for suitable and available land, and only then requesting local governments' support.

Key factors influencing decision making processes

In summary it can be said that the country of origin of the investor, the related political backup a company receives, and the type of crop and the corresponding land needs are the most influential key factors within the overall decision making process. In Laos the sub-national backup is often crucial and local authorities make their support dependent on some types of crops, which they seem to trust more than others. Some investor-countries are preferred over others. Both factors lead to different levels of motivation and support systems, resulting in different paces of project implementation. Additional factors are also the point of time a company has entered the stage. Companies arriving at an early stage have often received better land, closer to infrastructure and larger connected plots compared to late-comers. Conversely, villagers note that they have learned from past experiences with LSLAs and were able to negotiate better conditions for land deals that came later.

Both governments justify the handing over of land to investors by underlining the various potential positive benefits for poor and rural population. Yet, this seems to remain a justification at national policy level rather than translating into appropriate action. Investors' objectives to invest in areas with the highest probability for returns of investment proofs to be a more influential factor defining and identifying areas for concessions. This means, that the agrarian context (as defined above) is playing a rather secondary role in influencing decision makers in the government. The mainly top-down process ignores most of the context attributes with the exception of a few, such as land type, accessibility and soil suitability. It can be assumed that in cases where these factors are only of little importance, forests for logging or ensuring merely access to connected plots of land (speculation) are the only attributes of the development contexts taken into account. In other words, an intentional targeting of land in terms of promoting local agricultural development where it is most needed could not be observed. In at least two cases in Cambodia it can be assumed that timber was extracted by a collusion of concessionaires, local authorities and domestic companies. The ties of the investors to wood processing companies substantiate such hypothesis. The influence of accessibility to the concession area must be considered in such cases in relative terms. In order to extract valuable timber, the government committed the construction of roads to concessionaires. An improved accessibility then led to a further concentration of concession companies within that specific area.

Local population tenure insecurity is another important factor. The lack of legal documentation of smallholders' land, as well as the "criminalization" of whole land use practices such as shifting cultivation in combination with the zoning of a large proportion of the country as "public state land

or private state land” provides superficial legitimacies to target such land. In Cambodia some forest areas have been systematically degraded prior to the contract conclusion in order to legitimize the granting of forested areas. The general lack of reliable data and local land-use maps facilitates the arbitrary use of rather vague land concepts, such as “empty”, “unused” or “underutilized” land providing additional justifications. As a result, the site-specific decisions are generally biased in favour of investors (or the local elite in Cambodia), and often not comprehensible from a local livelihood perspective. In more than one case the Cambodian government has argued that villagers were not the legal landholders and therefore not protected from eviction after concessions have been granted.

Although more relevant in Laos than in Cambodia, the specific village characteristics may significantly alter the decision process and final outcomes. The local and historical context of a village (e.g. during the war), the village’s political endowment and the connection to the outside, especially to influential people within government can be crucial in either minimizing or totally preventing the land transfer of village land to an investor (Dwyer 2013). Village authorities’ capability to resist financial allurements and threats, and to negotiate effectively with companies and district officials, may considerably influence the contractual modalities (contract farming or concession type) and the overall terms of investment (area size, compensation payment, etc.).

1.4. Synthesis and conclusion: marginal land or marginal people?

Figure 1.2 summarizes the key factors of LSLAs decision-making processes according to the three domains i) agrarian context, ii) land governance, and iii) land-based investments. We differentiate more direct influences on land allocation (inner circle) from more indirect influences (outer circle). Finally, key factors shaded in grey represent those factors for which spatio-temporal data allows to analyse patterns at a regional level. Ideally we could describe different types of processes of LSLAs implementation as a combination of recurrent linkages between these key factors. Furthermore, such types could then be ascribed to specific configurations of spatio-temporal indicators (shaded key factors). This would ultimately allow out-scaling the evidence obtained from case study research as a basis to test the reach and the validity of our research results in view of future decision-making.

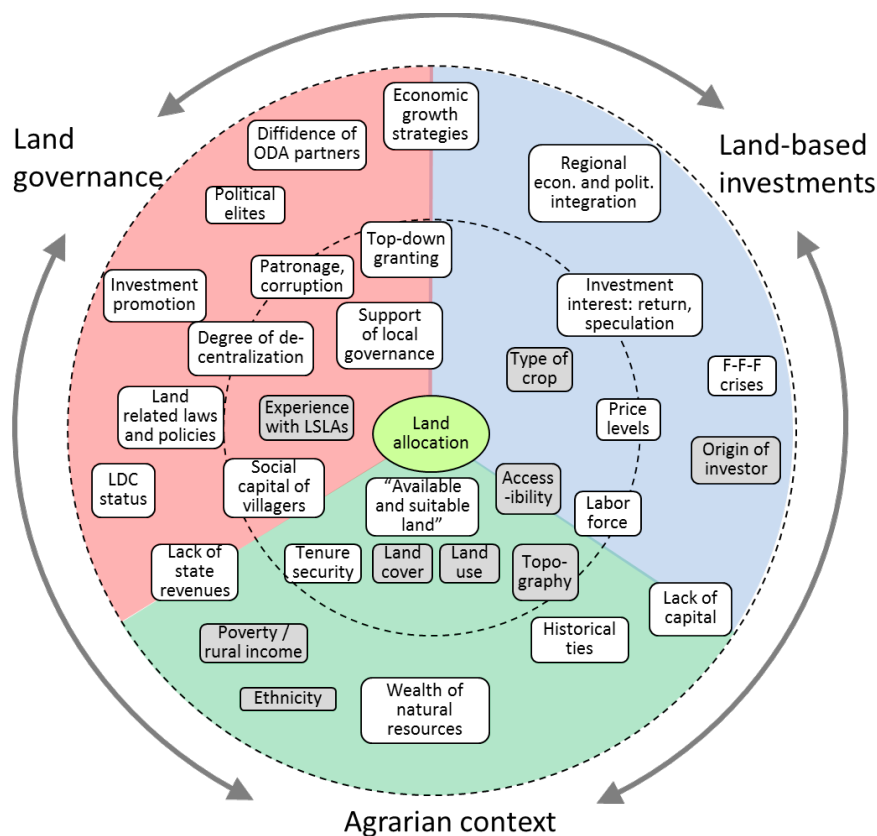


Figure 1.2: Key factors within three main sectors determining the implementation processes of LSLAs in Laos and Cambodia differentiating direct (inner circle) and more indirect influence (outer circle). Key factors allowing spatio-temporal patterns based on regional data are shaded.

Yet, the preceding chapters have shown two important limitations to this endeavour. First, the complexity of different decision-making processes is considerable and makes the clear distinction of separate types quite difficult. Second, the number of key factors that can actually be represented through spatio-temporal data and at the same time play an important role in decision-making is very limited compared to many other very influential key factors. In light of these limitations we propose to synthesize our findings into three idealized types, each combining important recurrent linkages between key factors and manifesting a certain spatial signature (see table 1.5 below).

In an ideal world and relating to the clockwise arrows in figure 1.2, land governance guides land investments, land investments increase land based revenues and prosperity in agrarian contexts, and agrarian contexts inform land governance. The synthesis of our research results show however, that only type (c) entitled 'marginal land' (see table 1.5) actually pursues such a logic and this type only starting to emerge in Laos: as companies which were formally granted concessions but don't have the political backup to overrule existing claims on land are unable to find land, they identify jointly with villagers plots of un-used or under-used land that is truly available and we label 'marginal land'. Land governance support is then sought from higher authorities in order to realize this investment opportunity. Given the quite blurry spatial signature of type (c) it remains difficult to assess to what degree the few case studies can be extrapolated across the region. Relevant indicators may comprise small LSLA plots in semi-subsistence and pluri-active agrarian contexts (see table 1.2) with populations that have a voice, are inclined to and have opportunities for commercial agriculture (ethnic majority, accessibility to markets, know how, etc.) However, the current dominant type of interaction between LSLA processes and agrarian context we could observe is clearly type (a), which we labelled 'marginal people'.

	(a): "Marginal People"	(b): "Marginal Investments"	(c): "Marginal Land"
Occurrence	Widespread type in Cambodia and Laos representing largely the first wave of large-scale investments in the tree plantation sector by powerful neighbouring investors (Vietnam, China).	LSLAs initiated and granted at province level in Laos under current national policies but manifesting problems in effective allocation. It does not exist anymore in Cambodia after centralisation of power in 2008.	This more bottom-up approach emerges as a reaction to failures in type (a) and (b) and directs LSLAs to land where different stakeholders agree that it is available for commercial purposes.
Graph			
Recurrent linkages	• Close linkages between investors, political elites, and patronage under the umbrella of economic growth strategies • Top-down granting processes ignoring contextual factors leading to allocation of large plots • 'Availability' of land is defined through land laws and policies, i.e. weak tenure rights, unclear demarcation of land categories, demand to abolish unwanted land use (shifting cultivation), and land-cover based benefits (e.g. logging of forests)	• Provinces benefitting from decentralized decision-making and favourable national laws and policies to boost economic growth and income • Depending on support of the local government, the intended crop and villagers' social capital, land allocation becomes difficult and may lead to failure • Land availability defined by land use and to a certain degree by villagers leading to granting of smaller and more dispersed plots	• Based on previous experiences with LSLAs and other sources of social capital, villagers have a say in defining available land based on land suitability, use, accessibility • Villagers' interest for commercial agriculture and willingness to sell plots converge with domestic and international investors' intentions (crops and plot sizes) • Based on agreed prospects for land allocation the support of authorities is requested either within already granted concessions or for new ones
Spatial signature	• Large-connected plots of powerful investors mostly in forestry sector (rubber, pulp trees) • Targeted context is mostly subsistence or semi-subsistence agriculture with cropping mosaics, shifting cultivation, forests, relatively higher poverty rates and medium accessibility	• In terms of investor's origin and crop the spatial signature is blurred but different from type (a) • Widespread across different agrarian contexts but less in forests or intensive agricultural lands. • Plots small and fragmented • Gap between granted, allocated and operational surfaces and time of contract and implementation	• Blurred picture in terms of investors but generally less powerful than (a), often domestic, and interested in the agricultural and tree plantation sector • Plots small and often fragmented as left-overs in rather intensively used areas with LSLAs and local land use • Geographical distribution however quite unclear as this type may also expand to remote areas

Table 1.5: Three idealized types of interactions between the agrarian context and governance of LSLA.

For this non-ideal world, the arrows in figure 1.2 would be directed counter-clockwise as the primacy of economic development determines and shapes the governance of LSLAs. LSLAs in turn ignore the specificity of agrarian contexts or even adapt them to their needs. Concretely 'available land' is constructed through land laws and policies weakening the traditional tenure, by requesting the abolishment of unwanted land uses (such as shifting cultivation), and by targeting common goods for their expected revenues (such as logging of forests), which in some cases shall cover the initial investment cost of LSLAs as in the case of rubber. Given the absence of influence the agrarian context exerts on such processes, it seems logically impossible to determine spatial patterns of their interaction. Yet, we may find important indicators not only in the characteristic of such LSLAs themselves (size, speed of implementation, origin of investors) but also in terms of preferential

target regions: marginal people (accessibility, ethnicity, poverty) in subsistence- and semi-subsistence based agrarian contexts (shifting cultivation, forest landscapes, etc.). Finally type (b) evolved in parallel to type (a) and can be characterized as a standstill where a top-down allocation of land is not accepted anymore. Strong land claims within the agrarian context cannot be overruled and the support of provincial or district authorities fades away. This leads to the marginalisation of land investments through lengthy allocation processes and eventually leads to the failure of concessions and the withdrawal of investors. Compared to type (a) that may lead to the exclusion or eviction of farmers this may seem to be a success. But compared to type (c) it may also represent a lose-lose-lose solution to farmers, the government and the investors. This type of interaction between LSLAs and agrarian contexts has a rather blurred spatial signature but may well be extrapolated by geo-referencing the history of failed deals.

We conclude by pointing to the remaining research tasks, which consist of the above-mentioned extrapolations across Laos and Cambodia in order to assess the reach and validity of these findings and to derive evidence for policy and decision-making. Furthermore we would like to draw the attention to key opportunities for future research with regard to more sustainable land investments. It needs to address the potentials of transforming and improving the interfaces between i) agrarian contexts and their representation in land governance through institutional innovations, empowerment, and information; ii) land governance and LSLAs through the design of sustainability standards, voluntary guidelines and binding laws and their implementation, and iii) land investments and agrarian context through negotiation and learning tool allowing to develop innovative farming practices such as out-grower schemes and cooperatives. The transformative potential of these interfaces will be decisive for the future of agrarian transitions in Laos and Cambodia currently standing at crossroads between new forms of rural poverty and more sustainable development.

2. LARGE-SCALE LAND ACQUISITIONS AND LIVELIHOODS TRANSFORMATION⁵

This chapter analyses the implementation on the ground of LSLAs and the consequent transformation of rural livelihoods. Local populations impacted by land deals are mostly smallholders who until the acceleration of LSLAs had relied primarily on family farming. Their ability to use land and other natural resources has since then been profoundly transformed. The analysis relates to the debate on whether LSLAs and the process of agrarian transformation they impel provide opportunities for smallholders to improve their farming systems and diversify their activities - trade, services and salary jobs in relation to the fast developing rubber sector - or if they lead to dispossession and do not offer alternative livelihoods (ADB, 2004; OCM, 2008; Bourdier, 2009a; Ironside, 2009; Barney, 2007; Manivong and Cramb, 2008; Thongmanivong, Fujita et al., 2009; Ducourtieux, 2009; Baird, 2011; Kenney-Lazar, 2012; Luangmany and Kaneko, 2013).

Numerous Southeast Asian experiences show that smallholders can grow rubber successfully (Delarue, 2011; Sikor, 2012 and Sturgeon, 2012). In line with the wide consensus that public support to farmers is crucial to the diffusion of technology (Pingali and Heisey, 2001), the key lesson from those experiences is that smallholder farmers' performances depend greatly on the support they receive (Fox and Castella, 2013; Gouyon, 2005). Another important factor in farmers' performance is

⁵ This chapter was prepared by Christophe Gironde, with extensive contributions from Cecilie Friis, Patricia Paramita and Gilda Senties Portilla on Luang Prabang, Kampong Thom and Champasak, respectively. Information on Ratanakiri comes from field research carried out by the SNIS team including Christophe Gironde, Amaury Peeters, Suon Seng and Chay Keartha. Additional information was provided by Vong Nanhthavong and Juliet Lu for Laos, and by Amaury Peeters and Soop-Mai Tang for Cambodia.

the learning process, as illustrated by the case of farmers in Northern Thailand who could learn tapping in plantations in the South before developing their own farm. Similarly, Northern Lao farmers benefited from 'sharecropping arrangements with relatives' from China who 'extended their rubber holdings across the border' (Sturgeon, 2013). Against deterministic theories around the presumptions of small-size agriculture backwardness, it is argued that smallholdings can reach the stage of 'early advanced economy' with more capital-intensive and quality improving technology (Barlow, 1997). For Cambodian farmers, it is argued that 'the conversion from crop production (maize, soybean, cassava, and cashew) to smallholder rubber plantations provides the largest benefit to farmers' (Hansen and Top, 2006). Yet, Yem and al. (2011) recall that farmers need assistance, as rubber plantations 'requires huge investment in both financial and technical resources'. For Northern Laos, research has suggested that farmers' investments in smallholder rubber production are financially profitable under current market circumstances (Manivong and Cramb, 2008; and Fu et al., 2009). However, despite economic gains, including incentives (e.g. contract farming schemes) and policies by the Lao government, Luangmany and Kaneko (2013) conclude that these investments may come with losses in food security, given their positive correlation with soil degradation and deforestation.⁶

This analysis of the consequences of LSLAs addresses three main challenges. The first is to go beyond analysis based on figures of thousands hectares of land being granted as on paper, i.e. to provide empirical material on how land acquisitions are implemented on the ground and to analyse in what ways and to what magnitude they transform local populations' access to and use of livelihoods assets. The second challenge is to go beyond the assessment of immediate impact, i.e. to analyse how households respond to the new constraints and opportunities, and to what extent they have managed - or have not managed - to adapt their productive activities into sustainable livelihoods over a 5 to 7 years period⁷. The third challenge is to analyse the process of differentiation among the various groups of populations. To address those challenges, we relied extensively on field-site research and carried out a series of 14 in-depth village-case studies⁸. The data were collected in 4 main sites: Luang Prabang and Champasak provinces for Laos; Ratanakiri and Kampong Thom provinces for Cambodia (see Appendix 1). Data collection was carried out mostly through semi-structured interviews with population and local authority representatives and participant observation in villages⁹. The findings from the in-depth case studies are significant for the mid-term (up to 5-7 years) transformation of rural livelihoods at district-scale. The analysis builds on the sustainable livelihoods framework (Scoones 2009; Ellis 2000; Chambers and Conway 1991) and draws on the concept of "livelihood trajectories" (de Haan and Zoomers 2005). Accordingly, the chapter is structured as follow: The first section analyses populations' vulnerability and capability prior to the wave of LSLAs that accelerated from the mid-2000s. The second section analyses the loss of productive assets, mainly large areas of land that local indigenous populations previously used or had as a reserve, and the immediate opportunities for populations in relation to the intrusion of new

⁶ It is difficult to assess smallholder profitability with rubber in Southern Laos because there are very few households who have invested in it (the ones with land, capital and know-how), and rubber companies are not involved with contract farming in the South.

⁷ We refer as 'mid-term' the period that started with the acceleration of large-scale land acquisitions and rubber plantation in 2007-08.

⁸ Cambodian territory is administratively divided in provinces, districts and communes; communes include several villages. Laos is similarly divided into provinces, districts, clusters and villages.

⁹ Research included 2 Master students in Kampong Thom and 1 PhD student in Champasak who spent between 3 and 5 months in the field. In Ratanakiri, a questionnaire-based survey (240 households, 24% of the population of the 7 surveyed villages) was conducted in August 2013.

actors into local economies. The third section depicts the transformation of livelihoods over the last 5-7 years, i.e. strategies of resource allocation and achievements with respect to income and assets. The fourth section proposes a typology of changing livelihood systems that shows the process of differentiation among the various groups of populations.

2.1. Vulnerability prior to the acceleration of LSLAs

This section assesses vulnerability prior to the acceleration of large-scale land acquisitions in the mid-2000s. Most of areas and populations where large-scale concessions were granted in Cambodia and Laos are commonly depicted by governments and mainstream development organizations as being poor or lagging behind in terms of agricultural modernisation because of traditional shifting cultivation and remoteness. In contrast to such depictions of poverty and vulnerability as endemic, some authors argue that “Indigenous areas are rich in nature and resources” (Ironsides, 2009: 121) and that “poverty in rural mountain zones is a contemporary phenomenon” (Ducourtieux, 2006: 81) and not intrinsic to traditional cultivation system (Moiso, 2008). In livelihood studies, vulnerability primarily refers to the limitation or lack of capital (natural and physical capital being impacted by shocks, seasonality, trends). We did not find that this was core to the vulnerability context; populations were rather made vulnerable by public policies and policies’ inadequate implementation prior to LSLAs.

Public policies prior to the acceleration of LSLAs pertain mainly to restrictions on access to farming land in the case of Laos, and to displacement in the case of Ratanakiri. Vulnerability also relates to the lack of protective legal framework and consequent insecurity of land tenure and settlements, such as in Kampong Thom where some villages were illegal by status (Paramita, 2013: 36; Fonrouge, 2013: 33). Once the lust for land intensified, the illegality made populations more vulnerable to displacement and dispossession. In Luang Prabang (Laos), Friis (2013) highlights that there were limitations on population’s access and use of upland areas before the land concession was granted. First, the 'zoning policy' within the Land and Forest Allocation Program (LFA), implemented from the late 1990s, restricted the population's use of land, which should follow a specific use associated to the various zones (Friis: 2013: 64). Similar restrictions were set up for the use of forest products (idem.) Second, the Government of Laos' policy to eradicate shifting cultivation, carried out through LFA, restricted the number of upland plots per household before the granting to Chilan company and the conversion to rubber (Friis, 2013:64, 67). Thus, in some cases like the village of Na Nhang Neua in Luang Prabang, people were confronted with “low land availability” (relative to population) “already before the concession was established” (Friis, 2013: 76). Consequently, the fallow lengths and rotational cycle in the swidden land system had been reduced over the past years.

In Champasak province, Senties also notes that LFA implementation restricted the use of agricultural and forest land in four villages (see Appendix 1) in 1996-1997. However, several households she interviewed did not mention the program as the main reason for making land scarcer –in practice, few households complied with it, as there was little supervision from relevant authorities. Villagers, especially the elderly, tell a story in which land had already become limited due to various factors, including demographic increases, in-migration flows and policy-induced programmes prior to LFA. For instance, in Lak Sao Paet village, in Paksong district, village authorities mentioned that “by the time the government came in 1996 with the idea of a land use registry”, and they determined each person could have 3 hectares for farming, they found out that “there was not enough land for such a distribution, and only 3 ha could be allocated per household and not individually” (Senties 2013). The abovementioned factors subsequently merged with LFA and, combined, resulted in converting

additional primary forest into agricultural land or shortening the fallow periods of swidden plots, while simultaneously creating confusion with regards to new land classifications (Senties 2013).

In Kampong Thom Province, populations were already vulnerable because they had been displaced during or in the aftermath of Red Khmer regime as well as Vietnamese occupation, as illustrated by the case of Bontey Rongang village (Paramita, 2013: 36). The formerly landless families, who established Bontey Rongang in the middle of a State Forest in 2004, were brought together by AHADA, an association of handicapped veterans. Due to the illegal establishment of the village, these families had weak land tenure. Kampong Thom provincial government contested AHADA legitimacy and dismissed AHADA as an association. Consequently, the population was left vulnerable to confiscation, reclaim and granting process. Once the district witnessed increasing ELC granting, populations could at best postpone their eviction (Paramita, 2013: 36-). In Ratanakiri, new villages were established from the mid-1990s when, once after the war, the government developed its administration in 'remote areas' and remote villages were relocated closer from roads and communal administration (Tang, 2013). In such case, displaced inhabitants were assigned land areas for which neither traditional inheritance system nor communal management had legitimized access and use-rights, a situation that favours encroachment and conflicts among villagers, even before the arrival of outsiders in search for land. Khmerization policy, i.e. the policy to settle Khmer ethnic populations in ethnic minority areas also made local indigenous populations vulnerable. Khmer in-migrants managed to accumulate substantial land areas during the 1990s, and in some cases to the point where indigenous populations decided to move away from migrants' clusters (Tang, 2013: 30-31).

Thus in all cases, public policies prior to LSLAs had shaped new contexts whereby local populations access to farming land and other natural areas (forest, rivers) from which they could derive resources (herbal medication, wood, meet and fish) was "dismantled" (Ducourtieux and al., 2005) or at least "ambiguous" and "contested" (Bakker and al., 2010). The rush for land and the radical change in land tenure – long-term land-use rights, formal private property, grabbing - was thus facilitated. Vulnerability related mostly to institutional factors - rather than to productive assets.

2.2. The politics of dispossession and immediate impacts on livelihoods

This section analyses the politics of dispossession. First, it depicts the various losses and constraints as well as opportunities that were associated with LSLAs, and their immediate impacts on livelihoods. Second, it analyses the mechanisms of dispossession, in particular the role played by local authorities and by local populations themselves.

Dispossession

The magnitude of losses of livelihood assets vary greatly between the study sites reflecting among others the size of land acquisitions and what is left to local indigenous populations, the proximity of the concessions to areas used by populations, and the pace at which companies started to use the land they acquired. The magnitude also relates to the type of investors with whom populations could eventually negotiate or not. We distinguished three levels of dispossession - extreme, severe, and partial.

Cases of extreme dispossession were found in Kampong Thom. They are cases when populations lost all the land they were using, often as they were displaced, with the consequent loss of perennial plants and houses (Paramita, 2013; Fonrouge, 2013). In such cases, populations had to rebuild livelihoods from ground zero. Santuk district, where 15% of the surface has been cleared or planted by 5 foreign and 12 local companies according to provincial government sources (Fonrouge, 2013:

29), provides among the most salient illustration of extreme dispossession. In Kraya commune, in late 2009, the entire population of 673 families from Bontey Rongang village were displaced 12 km away to Pum Thmay village. As 8'000 ha were granted to a Vietnamese rubber company, those families lost access to the land they had cultivated until then, but also their fruit trees and houses (Paramita, 2013: 40). In the neighbouring commune of Boeng Lvea, inhabitants could keep their residential land but lost access to their cultivated land, as 9784 ha of land was granted to a Vietnamese company since 2006 (Fonrouge, 2013: 44). For some of the families in Boeng Lvea, it is actually the loss of the trees rather than the land that mattered, as they used to make a living from logging (Fonrouge, 2013: 52). Moreover, populations did not receive compensation for all the land they lost; fallow land was not compensated (Fonrouge, 2013: 48), as the government does not officially recognize it yet. Populations who suffered extreme dispossession, including displacement and leaving part of their belongings, had first to rebuild houses and some lived in tarp tents for a few months (Paramita, 2013: 43). Rebuilding refers to a period of time during which displaced populations were left without land to farm and to extra-effort and cost to make land plots productive (e.g. clearing, water control). The transition period lasted for years, as illustrated by the case of the population displaced to Pum Thmay in 2009, who did not receive the cultivation land the government had promised them. In 2011, less than 15% of the evicted had been granted cultivation land. Populations displaced from Bontey Rongang had to clear residential land plot before building a house from scratch on arrival in Pum Thmay. Some of them reported they had to leave part of their belongings behind the day they were transported under the threat of military troops, who had been brought to Bontey Rongang to dissuade resisting villagers. Hence, for the first two to three months, the villagers, who did not receive any assistance, had to live in tarp tents (Paramita, 2013: 43). The victims of Bontey Rongang eviction received compensation in form of residential land: 1 ha per household counting 3 to 6 peoples, as opposed to residential land and cultivation land promised by the government prior to the eviction (Paramita, 2013: 44). Rebuilding livelihoods was further hampered by the fact that in many cases populations were allocated land they had to clear or land with poor quality soil (Paramita, 2013: 62-), and far away and prone to floods and droughts (Fonrouge, 2013). Under those circumstances, populations needed to provide extra-effort in labour and cash. Cases were reported where "because they could not afford the necessary investment to clear the land, they were left with no choice but to abandon it" (Paramita, 2013: 44). Some people are still left without compensation: in May 2013 when the field research ended in Pum Thmay, the village authority had just received a letter indicating a location for the cultivation land, which would be allocated to its population. The allocation for real might still be far away, as the letter instructs "the village authority to form a village committee to conduct a survey on the new land" (Paramita, 2013: 50).

Compared to cases of extreme dispossession, severe dispossession did not entail eviction, and the relative share of land loss is uneven. It refers to cases where the land and access to other natural resources left to local populations is not enough to satisfy basic needs. Severe dispossession relates to the type of agriculture that was practiced before land was granted, to the size and pace of plantation development, and to the incapability for some people to react to dispossession. The type of investor was also found crucial with regards to what could be negotiated or spared. Dispossession is severe in particular for swidden agriculture land, as both Lao and Cambodian governments have facilitated the granting of land areas left in fallow with the argument that those areas were 'uncultivated', 'not used' or 'free'. In Champasak villages studied by Senties, concession areas account from 47% to 95% of the total village area, with an average of 89% for the three studied villages in Bachiang district (Senties, 2013: 2). Comparisons before and after companies planted

rubber indicate that households who had between 3 and 5 ha were left with around 1 ha of farming land (usually their paddy fields) and that swidden agriculture was not anymore possible (idem: 6-8). In the villages in Luang Prabang studied by Friis, the average household lost up to 2 plots of swidden land over a 10 year period, mainly attributed by farmers to the arrival of rubber in the village. In both Lao provinces, local populations have reported being left without a choice (Senties, 2013) or felt they had no choice but to plant rubber on their swidden fields (Friis, 2013: 69-70). Moreover, the severity of dispossession relates to the fact that most households were not compensated for the land that had been kept in fallow. In Champasak, only cultivated plots could be subjected to 'transaction' under the concession agreement. 'Unused' and 'uncultivated' land (including plots in fallow) falling under the concession agreement could be taken by the company without an obligation to pay for it (Senties, *Key Findings document*, 2013: 3). In Luang Prabang, populations were not eligible for compensation with the argument that they did not have "permanent certificates" and that the land was therefore "state land" as found by Friis (2013: 69). The situation was found similar in Ratanakiri: plots in fallow were not taken into account during the measurement operation in 2012, and peoples could get land title only for the plots that were cultivated at the time of the measurement. Dispossession is severe also with respect to the consequences of land loss on other activities and on natural resources. This is the case in Luang Prabang, where the area planted with rubber has reduced also the area available for grazing, and wandering cattle has become a risk for the villagers, since the one main company that operates in the district set up fines for damages to the trees. Keeping cattle required from farmers to build fence for which they did not have the material or did not find profitable to invest in materials (Friis, 2013: 71). Friis depicts an "*indirect* enclosure of resources" by the concession, in particular of forest products and water, as the "(...) company's use of chemical fertilizers and pesticides (...) prohibited collection of non-timber forest products" in the vicinity of the plantation and because the "*rubber is stocking the water*" (Friis, 2013: 93; 72), and thus influencing the water flow to the lowland paddy lands. The severity of dispossession relates also in some cases to the combination of large-scale land deals with a wave of small-scale acquisitions by in-migrants, as we found in Ratanakiri in Trang village. This happened at the early stage of the acceleration of the land rush, at a time where local populations viewed in the arrival of in-migrants a good opportunity to sell part of their land plots as well as their workforce. Trang villagers acknowledged that they could buy motorcycles (always mentioned as the most important acquisition) and other consumption goods; they also explain that rapidly the entire village faced a severe lack of land as in the meantime large tracts of their land reserve was sold to companies. This village has reached the 'post-peasant' (pluri-active I) stage of agrarian transition (reference to Table 1.2) as off-farm occupations provide the crucial part of income and farming has become a complement to the total income. And the trends seemed unstopped: in 2013, one third (31%) of Trang households reported having sold land over the last three years; those sales reflect a process of deactivation of farming and increasing share of salary job in the total income. Last, severity relates to the type of investors, their rapidness in planting, the attitude of populations towards them, and the attitude of the government, as we found in Ratanakiri. Different from ELCs that count several thousands hectares, medium-size private companies (several hundreds hectares) were far more rapid in preparing and planting trees on the land they acquired. It did not let time to local populations to continue farming for a while as it is the case of ELCs. The second reason explained by populations is that they do not fear foreign ELCs as they do fear Khmer owners, whom they know or perceive as people with unlimited power. Populations did not resist to the latter, as clearly indicated by the difference in the same commune (Loum Choar) between Pra Lai - where villagers continued to farm part of the ELC territory - and Trang villages. Furthermore, the government did not react to

the acquisition of land by Khmer individuals, as it did, although late, to the acquisitions by ELCs. In May 2012, the Prime Minister issued the Directive 01, which stipulated that populations could claim back the land plots that had been granted to ELCs and that they still cultivated. A measurement operation began during summer 2012 and populations could then obtain land title for some of their plots. Nothing similar occurred for the land acquired by Khmer ordinary companies (not ELC). The survey carried out during summer 2013 confirm the crucial difference between Trang and Pra Lai village: in the first village, not one single household reported claiming land, as it was sold to private company and in-migrants but not to ELC. In contrast, they are 56% in Pra Lai who got their claimed land measured.

Different from severe dispossession, partial dispossession refers to situations in which villages were left with enough land so that households could insofar satisfy their basic needs from farming. Apart from the relative size of land loss in the total area previously cultivated, the cases of partial dispossession pertain to the location and the pace of development of companies, and the capacity for local populations to anticipate, respond to and negotiate land acquisitions. We found cases in Luang Prabang where companies were far enough from the main agricultural land of the village. Houay-Kong villagers for instance could keep a substantial part of their land, but also their cattle without risking damaging rubber trees (Friis, 2013: 75). In contrast, in other villages, the companies settled on territories that were close to cultivated land to the point that the villagers felt they had to convert their upland fields to rubber in either smallholding or contract farming because the company would otherwise plant rubber on it (Friis, 2013). Loum Choar commune presents also great difference among villages regarding the magnitude of dispossession. The commune counts among the largest ELCs in the province (15'000 ha grant signed in 2002), but until now its productive activity has remained distant from the land used by Pra Lai villagers. We found some farmers, amongst the well off and the chief of the village himself, who have planted rubber trees for their own and even built houses at a place that is – they say - at the edge but within the territory of the company. Such risky investment by relatively well-informed farmers is somewhat surprising. They explained that they decided to clear and plant trees before the company started to do the same, with strong confidence in their capacity to keep their trees. Their confidence can be related to their status and/or closeness to the local elite; the most plausible explanation is that this area at the edge of the ELC was negotiated and left to the population. Partial dispossession might also be just a matter of time, as it can take several years time for ELCs to plant the areas they were granted, in particular when land was primary forest or years old fallow land with trees. Some ELCs encountered organizational challenges and delays, such as getting adequate budget and machinery for land clearing or for developing rubber nurseries. We also found the case of a company whose objective was logging and not planting rubber plantation. All these contingencies and circumstances gave populations time and space to limit dispossession. Some could continue farming granted areas for a while, as in Pra Lai. In Malik, some farmers who had enough workforce, the tools (chainsaws) or the financial capital to hire workers and tools, rushed to clear land plots at the edge - whether inside or outside – of ELCs territory with the aims to stop further or extra occupation and to fix these areas as 'their' land. Finally, the magnitude of dispossession also relates to the capacity for local populations to negotiate with companies, whether to spare some land, to get incorporated into rubber companies or to get some compensation for their loss. In Luang Prabang for instance, Na Nhang Neua populations and authorities managed "to minimise the plot allocated to the Company", using a good personal standing with the district authorities (Friis, 2013: 91). In the south of Laos, Senties found partial dispossession and such maneuvering opportunities limited to very few households, who were in a position to negotiate a better price due to their personal connections and/or

knowledge of their land rights --some even managed to keep most of their land (Senties, 2013). In Ratanakiri, in application of Directive 01 and after the measurement, families obtained a 'primary certificate on landholding' and later, land titles. In Luang Prabang, some villagers felt that the only option to keep their land was to engage in contract farming with the company (Friis, 2013: 69). Negotiation in other cases consisted in land plots exchange between families and companies as we found in Malik commune; in other cases, families received cash for the land they lost. However, none of these arrangements with companies compensates populations for their loss. In Luang Prabang, contracts with the company rapidly turned to failure for some of the families in Na Mai village, where farmers had to uproot rubber trees again in order to plant rice. In the case of land plots exchange in Ratanakiri, families received land plots that were not as good as those they lost with respect to soil quality and distance. What dispossessed peoples received from companies in Ratanakiri cannot be called 'compensation', as the amount - 150 to 200 US\$ per hectare - was calculated in reference to the price of labour to clear and plant the plot, a derisory amount when compared to the income that can be made from one single crop on these plots they have lost forever. Furthermore, not all populations were in position to negotiate, as noted by Senties for Southern Laos where "even if compensation was given, it was not considered sufficient to make up for the lost land, the lost crops and the emotional stress with regards to the subjective meanings attached to land, e.g. the clearing of sacred sites, including the removal of *phi* (spirit) houses" (Senties 2014).

Actors and mechanisms of dispossession

Beside foreign and national companies who were granted large areas of land through concession regimes, the areas we studied witnessed the presence of numerous actors from various types and all size with respect to land acquisitions: local companies contracted to clear the land area of the largest ones (Fonrouge, 2013: 29; 35-38), Military Development Unit, high-rank military officers holdings and "powerful individuals engaged in land business" (Paramita, 2013); individuals holding high-rank position in the governing apparatus (Friis, 2013: 76) whether at central or local level or with close-connections to the former (Senties, 2013). Our case studies show not only the increase and the diversity of stakeholders, but also their duplicity and the intermingling of actors, such as local authority representatives owning companies in Champasak, former governor running a company in Luang Prabang, and government officers receiving land in concession. In addition, all studied areas have witnessed significant in-migration in relation to LSLAs and cash crops boom. In Ratanakiri, our survey reveals that in 2013 one household out of three (31,5%) is not native from Ratanakiri. The distribution of in-migrants by year of arrival shows that in-migration has increased over the period: 7% of the total number of in-migrants arrived between 1995 and 2000; 29% of them settled between 2000 and 2004; 39% between 2005 and 2010 (25% settled over the last 3 years). Laos has not witnessed such a rush of migrants to the studied areas; plantation workers do prominently come from the villages where the plantation lies. However, the presence of newcomers in Champasak studied areas, from within and outside Laos, is noticeable: including Vietnamese managers in the foreign-held plantations and some Laotian workers from other provinces in the plantations that are held by nationals (Senties, 2014).

Local governments, at district, commune and village levels, were found crucial in the politics of dispossession, as they mediated between populations and investors for land deals, and between populations and upper-levels of administration and government for post-acquisitions issues (compensation, relocation, etc.). In Laos, district government had a very significant role in facilitating the concessions whereas the majority of the village representatives did not have any say in the

development plans; they were rather the medium of explanation and negotiation between the district, company and the villagers. In Cambodia, communal authorities were more proponents of the land transactions. The role of communal authority has been even more crucial due to the absence of effective legal framework, authority, and mechanisms people can turn to. Most often, commune and village-level authority representatives persuaded – or threatened - their populations to accept land acquisitions by outsiders, facilitated the deals, and dissuaded populations to complain. In most of the cases, local governments have taken a positive stance towards the conversion to rubber in their talks with populations. More persuasive, they have used the ‘upper-level decision’ argument to explain to the population that there was no choice but to accept government decisions. Investors were thus made legitimate with the argument that the government had approved ‘investments projects’, which in addition, would bring development to their villages. Furthermore, land acquisitions and eventually the absence of compensation were legitimized with the argument that the land was “formally state land” or “*village reserved land for agricultural expansion*” in the case of Luang Prabang (Friis, 2013: 90-91); ‘unused land’ that reverted to the State in the case of fallow plots in Champasak, or ‘private State land’ in the case of Cambodia. Last, when some populations were reluctant, local authorities warned them that the company would take their land in any case without providing any compensation (Senties 2013), although in most cases compensation was not even promised (Friis, 2013: 90)¹⁰. In Phum Thmay, Kampong Thom, local authority advised the villagers to avoid any type of complaint or protest directed towards the government: populations were ‘advised’ to draw lessons from cases from the others experiences of victims of forced eviction and from the case of « protesters and human rights defenders have been frequently arrested and/or assaulted by the government » (Paramita, 2013: 46).

Local authorities were active in the acquisitions of land by outsiders in three ways. First, they often provided the buyers with information about ‘good places’ with respect to soil quality, accessibility, and land improvement work to be done. In Nambak District, the Natural Resources and Environments Office had surveyed the district for suitable land and provided the Company with a map (Friis, 2013: 57). Second, local authority organized meetings where investors were introduced to populations in order to facilitate their ‘arrival’. In Kampong Thom, the local government together with central government were the main actors for the ‘preparation’ of Tan Bien Rubber Company concession, i.e. the eviction of inhabitants (Paramita, 2013). In Bong Lvea, village authority participated to the measurement of land that was taken by the company for eventual compensation, taking the opportunity to charge populations for their compensation claims rather than “defending people’s interest” (Fonrouge, 2013: 46, 48). In some cases, local authority rather took profit from the arrival of migrants, like in Ratanakiri where the chief of one commune collects ‘entrance’ fee from every newcomer who must request permission to settle in the commune (Tang, 2013: 38). The chief of the same commune also facilitated some transactions and/or land grabbing by Khmer buyers, without the full knowledge of the villagers (idem). Third, local authority representatives - village chief, police, commune clerk, commune council members - were actively engaged in land deals, selling land themselves in some cases, whether for companies and to in-migrants, or they allowed “clearance to newcomers” (Fonrouge, 2013: 35). Such behaviours appear to be more common in areas where local authority heads are not native from the commune, like in Kampong Thom for the case of Cambodia. Yet, in Ratanakiri, representatives of the commune, who are indigenous, engaged in confusing arrangements with some peoples, as in Loum Choar where it was reported that the commune authority convinced families in distress, or who feared to lose land, to

¹⁰ McAllister (2012) reports cases of authorities threatening populations to be displaced.

sell them land plots, with the argument that the land would thus be protected from grabbing risk (Tang, 2013). Some interviewees reported that those land plots were then sold to companies by the commune authority. Although difficult to document, this new kind of vulnerability is plausible, i.e. engaging in a 'Faustian bargain' (Wood, 2003) consisting in risky arrangements with more powerful parties against which no recourse is possible. As Ironside argues about neighbour villages, and the 'lawless environment', the story of these peoples is "the story of powerful people dominating their life" (2009: 121).

Overall, local authority discouraged populations from complaining against land deals backed by governments. In Luang Prabang, Friis found that district authority contributed to population's resignation that "disagreement with the concession plan would not have resulted in anything" (2013: 62). In Champasak, Senties found that most villagers interviewed felt intimidated and pressured by the fact that district officials organised village collective meetings to announce the grants in the presence of company representatives, which indicated decisions had been made. In such meetings, villagers were also instructed by the district to collaborate so that the concession would run smoothly (Senties 2013). Lu reports cases in which, when the villages were first approached, they were told that the government had *already* given the land to the company and the villagers had no right to refuse since it was state land¹¹. Lu further argues that it could also perhaps be interpreted as some confusion or vagueness in Lao over technical legal definitions of what a concession is and what land belongs to villagers vs. the state. Regardless, villagers often didn't feel they had a choice in whether to grant land and even less, how to (and to whom) initiate a complaint and seek remedies. Thus, the role of local authority was found to significantly aggravate dispossession.

Populations: risky gambling at a time of invasion

In parallel to and as a consequence of LSLAs, local populations contributed to the politics of their own dispossession as they also sold land. It was not an option in Laos, as populations had no right to operate any transaction vis-à-vis the companies with what is considered by the government as "State land". The situation is greatly different in Cambodia, where populations sold part of their land plots, whether to companies or in-migrants. In some cases, inhabitants rented out their land (Fonrouge, 2013; Tang, 2014: 54), or exchanged their land against labour like in Ratanakiri where various arrangements were made between indigenous populations who had land and in-migrants who provided labour force, skills (producing rubber seedlings) and machinery (chain-saw for clearing) in exchange of land plots. Selling was a great opportunity, at a time motorcycles and consumer goods (radios, clothes, mobile phone, hygiene and cosmetics products, processed food, etc.) developed and 'life was changing' i.e. the need for cash was increasing. Land sales also provided a few families with the financial capital to invest into rubber. In Ratanakiri, people estimated rightly that they had access to enough land and did not see a risk when selling. They assumed that they were selling 'extra land', remaining safe as they still had enough to grow rice for the family, and enough land around they were allowed and could clear, as it had ever been. They were right, but just could not realize how fast and large land acquisitions were in preparation. And as some interviewees reported (Tang, 2013), because in their traditional farming system, land was not kept more than 2-3 years of time before being left fallow, they could not conceive that the deals they made were indeed final sales. Although populations may have been naive or/and lured by the first buyers, there is no doubt that they have since realized how much their land tenure has become insecure and how

¹¹ Lu Juliet, personal communication (February 2013)

severe is the land rush in their neighbourhood. Though, some groups have optimistically engaged in gambling with their land, selling more than their 'extra-land', as they expected they could clear other plots in compensation. Such plan turned to failure, as the pace of land acquisitions accelerated and reduced land available for clearing, and because communal authority restricted or prohibited the clearing of the land that was left. For others, land sales reflect a fear of losing their land and an attempt to make a deal 'better than nothing'. Driven by both opportunities and fear, populations have contributed to the politics of (their) dispossession.

2.3. The new deal: economic environment and perceptions

The acceleration of land acquisitions has greatly changed the economic environment in which indigenous populations have to reorganize or adapt their livelihoods. Urban-rural interconnectedness has strengthened and trade has increased. New opportunities have arisen, but they are not systematically synonym to betterment for the bulk of the peasants. The political economy of rubber boom has boosted economic growth but it has also created insecurity and new inequalities.

A more dynamic but competitive and insecure environment

Urban-rural interconnectedness has increased thanks to new and better-maintained roads and because populations have massively bought motorcycles. Distance and transport duration are shorter. This development is more important in Cambodia than in Laos. Urban centres and market places such as Kampong Thmar (Kampong Thom) and Bokeo (Ratanakiri), as well as secondary towns such as Banlung (Ratanakiri) have grown rapidly. In Champasak province, Paksong and Bachiang district towns have also experienced tremendous physical change, including the expansion of market places, banks and ATMs that did not exist three years ago. The supply of agricultural inputs, tools, construction material, medicine, consumption goods, etc., has increased. Retail shops have opened within villages; peoples who travel back and forth on motorcycles supply them regularly; the range of goods has diversified. In addition, there are peddlers making tours in the villages where they sell meat, fish, etc. Such processes are particularly strong for instance in Ratanakiri with massive imports from Vietnam. Rural populations spend more time outside their village, as indicated by road traffic and the increasing number of mini-bus.

However, urban development, shops and increasing trade flows, as well as people's movement are not systematically synonym with betterment for indigenous populations. Some of the food items that peddlers sell in the villages, e.g. meat, fish, vegetables are items that villagers used to produce or collect by themselves, and that they must now pay for as their availability has decreased and because populations are busy with other tasks. If populations can undeniably find an increasingly diversified range of items in shops, their indebtedness also increases in parallel to their consumption of purchased goods. Indebtedness is developing, as households expenses tend to increase in relation to social norms that are trending up. Trade and markets have developed in relation to the rise of cash crops, but farmers sell their harvests mostly 'at home' to traders; they do not go to urban markets located a few dozens kilometres around where sales prices are higher. Markets do develop, but they are not for local populations who do not know how to operate on those markets. Indeed, it is wiser for them to sell at home than to try to sell their products themselves. In sum, many of the opportunities associated to urban-rural interconnectedness remain out of reach from the bulk of peasants.

Another major feature regarding the economic environment is the development of the financial sector. The number of banks and micro-finance institutions has increased as well as their turnover.

Financial services are physically closer to populations who can easily go to bank offices outside their village by motorbike, and because staffs regularly come to the villages for information meeting, loans disbursement, repayment, etc. The development of financial institutions is commonly associated with an improvement of livelihoods. Though, the link is more complex. Although a large range of populations have benefited from access to credit, it has benefited the 'upper-class' more, including village elites who have engaged in rubber and developed trade and services within the villages, e.g. shops and transport, as well as urban actors or in-migrants who have developed non-farming activities, i.e. trade, construction, etc. Inequality has also increased between indigenous local populations and in-migrants in favour of the latter, who get easily access to credit they use to buy land on arrival like we found in Ratanakiri.

Moreover, bank loans do not always correspond to populations' needs: as cash transactions intensify, peoples need cash more often, not only for investment but also for ordinary transactions; their financial treasury needs are sometimes too 'micro' even for micro-finance institutions. Last, reluctance to borrow from formal institutions is serious among local populations: as the range of opportunities to diversify activities for their own account is shrinking, the risk of over-indebtedness becomes greater than investment opportunities. For all those reasons, informal credit remains essential in all studied areas.

Rural livelihoods are indeed increasingly under the influence/control of external actors who control the most profitable economic activities - rubber trade (Gironde and Fortunel, 2014), services, various types of brokerages, logging (Fonrouge, 2013: 74) – and are in strong power position vis-à-vis peasants, as illustrated by contract farming in Laos. The labour market in Cambodia provides another illustration, with the role played by *Mekas* who are peoples organizing and controlling access to job into companies (recruiters and sub-managers). They also control work (supervision and payment); and they may have a partial control on workers' income as they somewhat force them in patron-client relationships when they run shops in which workers are obliged to buy (Paramita, 2013: 76-77).

LSLAs and associated land transactions have not only dispossessed local populations; they have also created insecurity on the land that is left to them. Insecurity relates first to the continuation of lust for land by companies and landowners of all kinds who intend to expand their areas. On one hand, populations are nowadays fully aware of the risk of further acquisitions and grabbing of 'what is left'; they might not gamble with their remaining land as they did before. On the other hand, selling land remains a great opportunity given the price of land but also because some groups of populations are forced to desperate land sales. Insecurity relates secondly to conflicts among tenants. This is the case of populations that were relocated on land that was already contested, such as in Phum Thmay with land already occupied by military units and high-ranked officers (Paramita, 2013:46-47) and in Malik with families relocated on areas that were already disputed with a neighbouring village (Tang, 2013). Furthermore, the relocation triggered conflicts among Toul inhabitants themselves (*idem*), as relocated families do not have a good command of new areas delimitations, i.e. exact borders, who is entitled to use land above their plots, who could contest and claim, who could try to encroach their area, how powerful are the potential grabbers, etc. Those cases show that LSLAs have not only dispossessed populations but also generated conflict among populations, as some try to make profit out of 'confusing situation' (Fonrouge, 2013: 45). Peoples struggle for land that could be spared but could be granted soon, for land that was allocated in compensation, and for land that is likely to be granted or sold for which they can expect a good price or compensation (Tang, 2013: 54; Fonrouge, 2013: 45). In sum, insecurity of land tenure has become systemic. Last, insecurity affects what is left,

if any, of communal land, notably forest areas because of restrictions and bans. Although legislations are poorly enforced, access to those areas is made more complicated and it now has a price (for arrangements with administration) that excludes some groups.

Perceptions and responses

Households' perceptions of the on-going transition, its opportunities and constraints, are essential to understand strategies of resource allocation. Bourdier for instance argues that Cambodian upland populations are rapidly modifying their livelihood strategies with "short-term vision" as they have just the "sentiment of surviving in a new insecure social environment" (Bourdier, 2009). One of the most striking findings is populations' contrasted says about the change in their life. Unsurprisingly, local elites who have all types of capital needed to engage into rubber for their own account have a positive opinion towards the rubber boom and even the presence of large-scale actors. The opinions expressed by ordinary peoples are more surprising. On one hand, they mostly cheerfully express satisfaction about the overall process of change, new life style, e.g. having motorcycles and consumer goods, improvement like better roads, and new opportunities such as getting easily outside their village. Some, particularly the younger generations, also express wishes of renouncing agriculture altogether, opening a small convenience shop or finding an office job. On the other hand, there is awareness among youth of the limitations involved because they have no start-up capital, no skills, no experience and no social networks to access such opportunities. Although most of the interviewed youngsters in Bachieng district expressed dissatisfaction with working at the rubber plantations and with their so-considered "low monthly salary", they see their lives being better-off now due to the cash they get, which allow them to acquire consumer goods and services of their preference, which satisfy short-term needs, including social status and peer identification (Senties 2013). The latter does not mean that they do not express aspirations that depict what they consider a 'better', often non-farming, livelihood: "most of them do but very few have the resources and/or the capabilities to engage into concrete actions to make that happen" (Senties 2014). In Ratanakiri, the optimism is testified not only by peoples' views, but also by the substantial efforts they have deployed to invest in rubber. Those who have already planted rubber do not express concern about their capacity to grow their trees in a productive way, nor how they will learn to tap the trees, neither about how they will sell their product (Gironde et Fortunel, 2014). Among those who have not been able to plant rubber so far, many explain that they are willing to do so and that it is mainly a matter of time, i.e. the time needed to save from crops sales (soja, cassava, cashewnut) to gather the requested sum for the initial investment for rubber. However, one can think that time might not be on their side.

Nevertheless, populations also express fear about the politics of dispossession, their incapacity to resist further land acquisitions by outsiders, and more generally a lack of confidence in their capacity to engage into market mechanisms. In Laos, it is the feeling of intimidation and "being left without any choice by the company" (Senties, 2013) as well as the feeling of insecurity in which nothing could be done "if the government decided to make another project" (Friis, 2013: 70) in the case of land granted to foreign companies. In Cambodia, fear is more pronounced when investors are Khmer, as populations know or presume that rubber trees are the property of high-rank officials or other peoples who have unlimited power thanks to their connections to government forces. A lack of confidence was found particularly strong in Ratanakiri when discussing with indigenous local populations who argue that "the Khmer are smarter" (than them), for instance to engage into rubber, as they have better knowledge on rubber due to their original place where there was rubber before, they have more money to invest when they come to Ratanakiri, they help each other when

migrating, e.g. to host the new comers on arrival, to help them to get jobs in companies, to inform them about indigenous local families who could be willing to rent or sell land. Ratanakiri indigenous populations also take the example of all shop owners and families who have developed service activities, explaining that they (Jarai or Tumpun) do not have the knowledge and networks to organise such business, that they do not know where to buy the goods to resell, etc. The feeling of inferiority against Khmer, who are seen as “cleverer” was noticed by Maffii (2009b: 134) in her analysis of Ratanakiri indigenous women; it is manifest when it comes to land deals. Beyond common statements like “they cannot take our land”, local populations express the idea that it is difficult to resist the Khmer when they express interest to buy land, that the Khmer know how to “trap” them, whether through money lending that will have to be repaid with land, or through progressive occupation of land that at some point make their plots difficult to access.

In the short-term, land acquisitions and the growing presence of outsiders offered local populations the opportunity to sell their workforce, most importantly work to clear the acquired areas. Immediate strategies included also selling land, whether for equipment and consumption (mostly housing and motorcycles) or for productive investment (rubber, transportation vehicle, motor-cultivator), and logging on the lands that were lost but not used yet by new landholders and lands that were going to be lost. In cases of partial dispossession, populations also reacted to prevent land loss by clearing plots in an attempt to fix their possession or right to use it, or with the objective that they would have better chances to get compensation by companies, or to prevent further acquisitions of land that they would now occupy. The substantial loss of farming land and access to areas for natural resources collection combined to the increasing need for cash led populations to transform their farming system towards (1) a more intense use of land plots, as shifting cultivation is hampered; (2) an increase of rapid-return cash-crops such as cassava; (3) a reduction of cattle; (4) an effort to invest into rubber. Agricultural intensification consists into additional consecutive crops instead of fallow; in some cases farmers have re-cultivated areas they had stopped to cultivate, like low-wet-land (*srey*) in Ratanakiri. Another major transition is the reduction of cattle rearing, hunting and non-timber forest product collection, as they became more or too busy with intensified cultivation and off-farm job. They deployed effort to jump in the rubber bandwagon, whether through contract farming like in Northern Laos or through their own plantation. Others invested in non-farming businesses that developed in relation to the overall change of farming system, including a growing demand for agricultural inputs and machines, and increasing expenses for consumption and social status. The search for salaried work has become the core strategy for the bulk of the populations, at the place of residence first and increasingly outside. Out-migration is increasing in all studied areas except Ratanakiri; it is motivated by the need for income as well as aspirations to get an experience somewhere else, in cities and abroad, in particular for youth. Out-migration can be seasonal but migrations stays are getting longer. It is not an option yet for indigenous populations in Ratanakiri because they lack connections outside their place of residence. Only 3.7% of surveyed households reported having a member ‘who migrated outside the commune’ in this location. However, we found evidence that out-migration is going to develop, as illustrated by Vietnamese recruiters who come to look for workers in Ratanakiri, or local agent in Kampong Thom (Paramita, 2013: 79) who organize recruitment, licensing and travel documentations. The out-migration of the entire household has not been an option for many insofar. Populations lack networks to envisage and organize migration of the entire household. Second, at this stage of the agrarian transition, populations could maintain livelihoods locally, by combining: farming on the land they were left with; catching some of the petty business opportunities associated to the acceleration of large-scale

land deals and the rubber boom; selling their work force to large-scale landholdings; and the migration of some of households members.

2.4. Agrarian transition and social differentiation

This section proposes a typology of livelihoods transformation found in the various case studies in the two countries along the agrarian transition. It reflects how households were affected by and could respond to dispossession. Households who have in-migrated to the studied areas are included in the typology. We could not include households who out-migrated in the typology. The main reason for this is that it would have needed too much time and resource to find them in other provinces or abroad. Each type of household is characterized by (i) the main transformation of productive activities and in particular their situation regarding rubber (ii) the difference compared to the previous type, (iii) the factors explaining how livelihoods transformation was made possible or hampered, and (iv) the current dynamics of household economy, i.e. the potential and options for progressive¹² development as well as the limits and risks associated with the current transformation. Five main types of transformed livelihoods can be distinguished.

Rubber farmers

Households in this group have managed to develop rubber plantations of their own on areas ranging from 2 ha (Luang Prabang) to 10 ha (Ratanakiri). This group pertains to local elites – e.g. commune and village chiefs and committee members - and their nearest, i.e. relatives and in-laws. This group includes also early in-migrants in the case of Ratanakiri. This group started to plant rubber simultaneously to large-scale land deals in their areas. Thanks to their status and power, they managed to avoid to be dispossessed by external actors: they could guide them to areas that did not threaten their land assets or they could negotiate their land not to be taken. In cases where their land was located in the granted or sold areas, they had the power to get access to other areas in the vicinity. This group could thus anticipate, negotiate or compensate in case of land loss by large-scale actors. Their participation to the politics of dispossession gave them the opportunity to socialize with investors from whom they benefited inputs (seedlings) and technical advice or to get connected to skilled persons from the emerging rubber sector. They could thus invest into rubber in good technical conditions. Moreover, these households had enough capital to afford the best quality investment (for land preparation, planting, seedlings, use of inputs) and monitoring of their trees (hiring skilled workers). Rubber will become their main source of income and they are likely to achieve their plan to expand rubber areas.

Rubber boom-related family enterprises

This group includes shop-owners, traders, and households providing services such as transport, restaurant, reparation, brokers, workers' recruitment, and money lending. They have thrived on rubber boom and the induced economic growth and diversification. Different from the previous group, these households are mostly outsiders to the places where they have settled their business. This is particularly strong in Ratanakiri, where this group includes almost exclusively Khmer in-migrants, as well as in Champasak in the case of Vietnamese moneylenders. This group has not suffered from the land acquisitions. On the contrary, their non-farm activities have grown in relation to LSLAs and rubber-related economic growth (section 4.A.). Land brokers have made very high profit from buying-reselling land since the time land deals have accelerated; others have made a

¹² We borrow the concept from Bouahom and al. (2004) who distinguished «progressive» diversification from «desperate» diversification.

fortune from logging. In both countries, some of these households have also invested in rubber at the time when land was still affordable, and they nowadays hold plantations similar in size to those of the first group. Many of them have organized their activities around several places (for purchase, for sales, rubber landholding place). For the most developed, the range and size of assets, the pluri-locality, the use of salaried workers, the regular use of formal financial institutions and the engagement into commodity-chains is more akin to family enterprise than to household economy. The limit to their prosperity comes to the fact that they have been imitated by many, as illustrated by series of shops one beside the other along the roads around main market places.

Farming-based livelihoods, limited engagement into rubber

For this group, the transformation of livelihoods is marked by an increasing share of their land dedicated to cash crops, including little rubber. These households have not only developed cassava crop but also other trees such as cashew nut in Cambodia, fruit trees in Southern Laos, tung oil trees in Luang Prabang. Farming activities have remained at the core of their livelihood systems. The engagement into rubber has been slow or came later when compared to the two previous groups: these households did not hold the capital needed to invest into rubber. With time and thanks to savings from cash crops, typically cassava in rotation with soja, they have managed to replace part of their food crops with trees. In Luang Prabang, some households in this group could engage in rubber cultivation on their own; while others had entered contracts with the investment company, since they did not have the financial resources for start-up investments (Friis 2013: 83). The pace of change also reflects how these households were impacted by the politics of dispossession. In Cambodia, this group includes households who lost part of their land because of ELCs or other companies (partial dispossession), but who managed to clear other areas to compensate partly. This group did not sell land, except a few who sold little of their land area at an early stage of the land rush, when they still could easily clear forest areas in compensation for their land sales. In the case of Laos, this group was rather severely impacted by LSLAs, but households in the North turned to contract farming to cope. They lacked capital for initial investment - to buy seedlings and fertilizers – and contract farming has enabled them to hold 1 to 2 hectares of rubber. We cannot predict if these households will manage to turn their investment into profitable cropping system, as trees are not productive yet. So far, they have managed to engage in rubber and do not have to work for others, or only exceptionally, like the following groups.

Part-time farmers, rubber out of reach

For this group, an increasing share of salaried work, or petty commodity production for a few, has marked the transformation of livelihoods. This was needed to complement for insufficient farming outputs. This group did not have the capacity to engage into rubber; those among the few who tried were unsuccessful. Like the previous group, these households have developed cash crops. This was achieved partly by replacing food crops and, more importantly, partly through agricultural intensification, i.e. increasing the use of the same land plots. On one hand, cash crops have for a while provided households with the incomes to meet their growing needs. On the other hand, this change in cropping system is not a progress, as cassava is cultivated intensively, years after years, without rotation. Farmers do acknowledge that their land is at risk of exhaustion or is already getting degraded. This intensification is found also for rice, as in Luang Prabang and Champasak where fallow duration has been shortened, from 5-7 to maximum 3 years. Similarly, in Ratanakiri, farmers from this group explain that they cultivate rice repetitively, whereas they used to change plots after two harvests, and that they now stop only once they witness sharp rice yield decrease.

At the early stage of the rubber boom, this group could continue to farm part of the land that was acquired by large-size landholdings. They could catch petty opportunities such as growing cassava, soya, peanuts and corns between young rubber trees during the first three years. This period is over, as rubber plantations have expanded and trees have grown (no more intercropping after rubber trees are 3-4 years old). These households could not afford the start-up investment needed to engage into rubber on their own. The group includes some who have tried to engage in rubber throughout contract farming like in Northern Laos, but have failed, whether because they could not stand the years-long period without any food crop harvest for subsistence; or because they lacked financial capital to purchase inputs; or because the workload associated with their contract was too large and hampered them to work adequately their own fields. Despite the development of annual cash crops, these households cannot rely on family farming activities alone anymore and have to turn increasingly to salaried work. Indeed, they do not invest anymore into agriculture and rely increasingly on salaried work, mostly locally. Significantly, loans are not used for agricultural investment but rather for consumption. The best some of this group have achieved is accessing semi-skilled and more regular jobs for instance in construction or transport. Some have developed petty commodity production like charcoal, processed food or handicrafts. The prospects for this group depends much on, first, the competition from in-migrant workers, which is already very strong in the case of Ratanakiri and foreseeable in the study areas in Laos. Second, prospects depend on networks that may facilitate the migration for work of one member of the household in other rural areas as in the case of Bong Lvea in Kampong Thom, urban areas (case of Svein Serrey in Kampong Thom) or even abroad (case of Huaytong in Champasak). This is the option that Ratanakiri indigenous population lack so far.

Rural workers, farming if nothing else

This group has reached one stage beyond the previous one with respect to the crucial importance of salaried work, including in some cases the migration of one household member. Different from the previous group, these households did not even have the opportunity to attempt to engage into rubber. Most of them have turned to intensive cassava cultivation as it provides rapidly and relatively high income in cash, but their area is limited (1.5 ha per adult maximum) and are confronted with the same limitations of unsustainable intensification.

The stage reached by this group relates to the severity of land dispossession, such as displaced populations who were provided with residential land only at the place of relocation. Households in this group did not have the capacity to clear areas to compensate for lost land. They find at best a few opportunities like renting the land of other households who migrate, often just for one crop cycle, as migrations are seasonal. Salaried jobs have become the priority and households from this group may not even farm the limited land they have kept in case they can be hired durably. Selling labour has become more rational than farming land. The proletarianization is more advanced for those in this group who unwisely sold part of their land or who were landless to begin with. The group also includes recent in-migrants like in Ratanakiri who have so far made their living mostly from salaried work. However, they are in a different path, as they have the capacity in 1-2 years of time to rent or even to buy a first hectare of land from indigenous local populations. Migrants are in a process of asset accumulation, although slow, whereas local indigenous populations are in a process of decapitalization when they sell or rent-out their land to the former.¹³

¹³ The process is less advanced in Laos, where even the worse-off households still rely on farming and salaried work and the collection of non-timber forest products. However, such group might emerge with subsequent

Options for this group are limited to the different types of employers they can apply to and the recruiters they must go through. Daily jobs or couple of days-long recruitment dominate; regular jobs are rare. Workers are constrained by employer's requirements such as owning tools or motorbike; women are discriminated in some cases. 'Fortune' with salary work relates to the drudgery of work, conditions such as number of days per week or month and day-off, and payment system: daily, monthly, based on product, premium payments upon 'regularity' conditions. Workers are particularly at risk because of their weak position vis-à-vis recruiters who also supervise their work and deliver salaries. Workers in general explain that they do not like to work for rubber companies, as "companies took our land", and because companies do not pay daily or also because companies want their workers to stay for long and do not let them go to take care of their own fields. Indeed, there is not anymore such a dilemma for this group; they just have no other choice than to catch any job opportunity. In addition to salaried work, there are a few opportunities like renting the land of other households who migrate, but often just for one crop cycle, as migration is seasonal. Such opportunities are rare; the trend is rather that job opportunities are not enough at home. Consequently, households have to go further away from their place of residence to look for jobs. Many cannot migrate, mainly because they do not have acquaintances, which can help them to organize their migration and search for job; those ones are left with no choice but 'desperate' land sales.

2.5. Conclusion

The process and magnitude of dispossession varies significantly among our case studies, communes and villages, including the almost total loss of productive assets and belongings because of displacement (extreme dispossession), situations where populations lost the essential of their land without any compensation or possibility to negotiate or compensate (severe dispossession in particular of swidden land), whereas in other cases populations were insofar left with enough land to satisfy their basic needs (partial dispossession). Focusing initially on LSLAs in the frame of government laws, our case studies show that land acquisitions of all sizes by various types of external actors have accompanied and sometimes preceded them; and they represent substantial areas. Our analysis has also taken into account local populations: if they had no or little say on government-led land acquisitions, they were active in other cases, gambling with their land that had become a valuable asset. However, in a context of increasing need for cash and changing livelihood strategies induced by the overall process of land commercialization and associated cash crop boom, selling land has become rather a necessity than an opportunity for the majority of peoples.

The case studies further indicate that dispossession cannot be assessed in reference to contracts or other documents from which land transactions are measured. There are cases where land and related-assets' loss is larger than what is reported on paper, as companies encroached land beyond the area they were granted, because large landholdings hamper access to areas located beyond their border, and because other productive activities such as cattle grazing, hunting, fishing, and the collection of NTFP were jeopardized by the new landholdings and fine systems. Overall, populations lost more than what was acquired by outsiders, as governments have implemented measures that restrict peoples' access to natural resources, typically forest areas. There are also situations where land loss was smaller than granted areas, as people could continue to use part of the land until the companies started to plant trees. In some cases, populations managed to spare for their own part of

rubber productive stages, as rubber companies might hire fewer local populations and rather recruit tappers coming from outside.

the areas that were granted; in other cases, they could compensate the loss by clearing other plots and managed to establish their use-rights.

Prior to the acceleration of LSLAs, a soft agrarian transition was already at stake. The transition included the development of cash crops in addition to or replacement of subsistence-oriented production. More important, this transition was marked by public policies that fragilized local livelihoods through restrictions on traditional farming and forest resources collection systems, and through a de-legitimization of customary land tenure. If the implementation of those policies remained soft and populations had some room for manoeuvre to resist, they weakened populations' rights on land vis-à-vis the State and paved the way for LSLAs and more broadly facilitated the commercialization of land by local governments and populations themselves. The vulnerability context was one of public policies that were detrimental to local livelihoods, which otherwise enjoyed sufficient productive resources with respect to land and workforce.

The wave of LSLAs from the mid-2000s has forced a radical transition from livelihoods relying primarily on family farming to livelihood systems in which off-farm job has become the pillar of increasingly more diversified pool of economic activities. Job creation from large-size landholdings do not compensate for the loss of resources local populations derived from farming land. The socio-economic environment in which people have to reorganize their livelihoods is certainly more dynamic in terms of economic growth, diversification and urban-rural linkages, but the new opportunities do not benefit primarily the bulk of the population. In addition to land, new actors have taken control of the local economy (non-farming sector, wage labour) and the added value created by crop boom. The increasing competition they create over land and jobs has rather put local populations into unfavourable power relations and new dependency patterns. Moreover, the new environment is also one that generates or exacerbates conflicts among villagers.

Differentiation is also pronounced at household level. A tiny village elite has managed to engage into rubber on its own thanks to its initial political capital and control over land, and because its implication in land deals with outsiders has in return provided them connections to large-scale landholdings from which they can benefit natural capital (good quality seedlings) and technical support (advice or skilled workers). Another group emerges, sometimes better-off than the former, as it engaged into cash crops-related trade and services; this group does not include many of indigenous peoples but rather outsiders who can be successful in their business thanks to their connections outside the villages. In contrast, the majority of local populations have witnessed a decline of return from farming, reduced farming occupations and have become increasingly dependent on salaried job.

3. LARGE-SCALE LAND ACQUISITIONS AND HUMAN RIGHTS¹⁴

This chapter analyses the consequences of LSLAs on human rights, including the right to food, and seek to understand what role do human rights law and monitoring and judicial mechanism play (and what role could they play) in mitigating the tensions related to land investments and protecting the

¹⁴ This part has been drafted by Christophe Golay, with contributions from Irene Biglino and Ioana Cismas. Two background papers have been used as reference documents to write this chapter: Patricia Paramita and Samuel Segura Cobos, "Large Scale Land Acquisitions: Vulnerabilities and Human Rights. A Literature Review", 2012; Ioana Cismas, "Legal Analysis of International Instruments Applicable to LSLAs and their Transposition in National Law", 2013. These three researchers should be thanked for their invaluable support.

human rights of local populations in Cambodia and Laos?¹⁵ To that end, we will: (1) present a legal analysis of international instruments applicable to LSLAs and their transposition in domestic law; (2) identify human rights violations associated with LSLAs in the two countries; and (3) identify and analyse the work of monitoring and judicial mechanisms with competence to address these human rights violations.

3.1. Legal framework

International level

Relevant instruments at the international level include human rights treaties and International Labour Organization (ILO) conventions to which Cambodia and Laos are parties, as well as soft-law instruments. With regard to the first category, it must first of all be noted that the ratification record of both countries is rather strong as far as the key human rights treaties are concerned. The latter instruments which have been ratified by Cambodia and Laos include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). This means that Cambodia and Laos are committed to ensure the full realization of all human rights. Among others, they are legally bound to respect, protect and fulfil the right to food in their territory, without any discrimination.¹⁶ They should also implement policies to support particularly vulnerable individuals and groups.

A certain degree of reluctance can be detected on the part of both states with regard to the ratification of Optional Protocols allowing for individual or collective communications in cases of human rights violations. At the time of writing Laos has not ratified any optional instrument. Cambodia, on the other hand, has ratified the Optional Protocol to the CEDAW. This entails that women victims of discrimination in the enjoyment of their human rights in Cambodia may submit complaints, or ‘communications’ before the UN Committee on the Elimination of Discrimination against Women. The monitoring functions of the treaty bodies through the periodic review of reports submitted by state parties, and how this relates to Cambodia and Laos, will be discussed further on.

It must be noted that weak ratification of the most relevant ILO conventions characterizes Cambodia and Laos, as well as the investor countries China and Vietnam, although one instrument in particular may be of great relevance to LSLAs. This is the ILO Convention No. 169 concerning Indigenous and Tribal Peoples (1989) which incorporates provisions protecting land rights of indigenous people, which is identified as a vulnerable group vis-à-vis LSLAs. In particular, Article 16 contains a general prohibition against removal of indigenous people from their lands, with the specification that relocation is permitted only as an “exceptional measure” to be carried out in compliance with a strict set of conditions. But Cambodia, Laos, China and Vietnam have not ratified this instrument. None of the ILO conventions with specific focus on agricultural labour (C129, C010, C011, C012, C025, C036, C038, C040, C099, C111, C184) has been ratified by the four states.

¹⁵ See also C. Golay and I. Biglino, “Human Rights Responses to Land Grabbing: a right to food perspective”, *Third World Quarterly*, Vol. 34, No. 9, 2013, pp. 1630-1650. This article published in a peer-reviewed journal is one of the results of this research project financed by the SNIS.

¹⁶ UN Committee on Economic, Social and Cultural Rights, *The Right to Adequate Food*, General Comment 12, adopted in 1999 ; J. Ziegler, C. Golay, C. Mahon and S-A. Way, *The Fight for the Right to Food. Lessons Learned*, Palgrave Macmillan, 2011.

Turning to the soft-law remit, it must be highlighted that in recent years a number of instruments have been developed with a view to reaffirming the relevance of human rights principles in the context of LSLAs, in particular the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law (PANTHER).¹⁷ Given their specific relevance to the subject under scrutiny, a brief overview will be provided.¹⁸

(i) In May 2012 the UN Committee on World Food Security adopted Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (*Governance of Tenure Guidelines*).¹⁹ The main objective of the *Governance of Tenure Guidelines* is to promote secure tenure rights and equitable access to land, fisheries and forests in order to reduce poverty and realize the right to food. Two central elements of the guidelines are the need to identify, record and respect legitimate tenure rights, whether formally recorded or not, and to protect tenure rights holders against forced evictions. Special protection should be accorded to smallholders and to indigenous peoples and other communities with customary tenure systems. The guidelines also recommend that states provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from LSLAs and that responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and respect human rights. The guidelines further underline that redistributive reforms can facilitate broad and equitable access to land and inclusive rural development.

(ii) In March 2010, the UN Special Rapporteur on the right to food, Olivier De Schutter submitted a report to the Human Rights Council in which he outlined a *set of human rights principles applicable to large-scale land acquisitions and leases*.²⁰ These principles include the obligation to conduct negotiations leading to LSLAs in a fully transparent manner and with the participation of local communities; the requirement of free, prior and informed consent of the local communities concerned; the general prohibition of forced evictions; the obligation to recognize and protect land tenure rights of local communities; the importance of sharing of revenues generated by LSLAs with the local population; the necessity of choosing labour-intensive farming systems in countries facing high levels of rural poverty and few employment opportunities in other sectors; the need to protect the environment; the necessity of including clear and detailed obligations for investors in the agreements, with sanctions for non-compliance; the need to include a clause providing that a certain minimum percentage of the crops produced will be sold in local markets in food-importing countries, to contribute to local food security; the necessity to undertake prior impact assessments, including on food security, environment and employment; the obligation to protect indigenous peoples' rights; and those of respecting the applicable ILO instruments.²¹ Despite their soft-law character, the

¹⁷ O. De Schutter, *Countries tackling hunger with a right to food approach*, Briefing Note 1, Special Rapporteur on the right to food, 2010; FAO, *Right to Food. Making it Happen. Progress and Lessons Learned through Implementation*, Rome: FAO, 2011, pp. 6-7.

¹⁸ See also C. Golay and I. Biglino, "Human Rights Responses to Land Grabbing: a right to food perspective", *Third World Quarterly*, Vol. 34, No. 9, 2013, pp. 1636-7; 1642-3.

¹⁹ Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, adopted by the FAO Committee on World Food Security on 11 May 2012.

²⁰ See annex to the report of the Special Rapporteur on the right to food Mr. Olivier De Schutter on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, UN Doc. A/HRC/13/33/Add.2, 28 December 2009.

²¹ Annex to the report of the Special Rapporteur on the right to food Mr. Olivier De Schutter on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, UN Doc. A/HRC/13/33/Add.2, 28 December 2009.

Special Rapporteur stressed that these principles “are not optional; [but] follow from existing international human rights norms’.²²

It must be stressed that both international treaties ratified by Cambodia and Laos, as well as soft law instruments, provide a solid basis for evaluating the impacts of LSLAs on the human rights of affected communities in Cambodia and Laos. The research conducted in connection with the present project, however, has not disclosed a particular use of these treaties and soft law instruments by State authorities or private actors involved in carrying out transactions associated with LSLAs. As far as human rights actors are concerned, international treaties and Olivier De Schutter’s principles have been used by the Special Rapporteur on the Human Rights Situation in Cambodia, Surya Subedi, in his detailed analysis of land concessions from a human rights standpoint.²³ And local and international human rights NGOs have widely used international treaties ratified by Cambodia and Laos, combined sometimes with soft law instruments, in denouncing the negative impacts of LSLAs.²⁴

Regional level

Unlike Africa, the Americas, and Europe, Asia is the only region that does not have a regional human rights treaty, human rights court or commission covering the region in its entirety. One development in this sphere is the establishment of the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children in 2009 and 2010²⁵, although the Commissions’ added value in the area of LSLAs and human rights remains unclear, as does their engagement with the topic.

²² Report of the Special Rapporteur on the right to food Mr. Olivier De Schutter on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, UN Doc. A/HRC/13/33/Add.2, 28 December 2009, § 5.

²³ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012, including § 69.

²⁴ See for example the parallel report submitted by 36 Cambodian NGOs to the UN Committee on Economic, Social and Cultural Rights, in 2009 available online at http://www.cidh.uqam.ca/documents/Parallel_report_Cambodia.pdf (last accessed 28 November 2013). See also Centre on Housing Rights and Evictions (COHRE), *Realising Economic, Social and Cultural Rights in Cambodia*, Summary of Recommendations from the UN Committee on Economic, Social and Cultural Rights, Geneva, COHRE, 2009. ADHOC, *The Report of Land and Housing Rights*, ADHOC, Phnom Penh, 2011. Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, Amnesty International, February 2008. Amnesty International, *Annual Report 2012 – Cambodia*, 2012. Amnesty International, *Cambodia: Briefing for the UN Committee on Economic, Social and Cultural Rights*, May 2009. LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development*, Licadho, Phnom Penh, 2009. Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2012 – Cambodia*, 2012. Unrepresented Nations and Peoples Organization (UNPO), *Alternative Report submitted to the UN Committee on the Elimination of Racial Discrimination at the 80th Session during the consideration of the 16th – 18th Periodic Reports of Laos*, UNPO, The Hague, January 2012, pp. 8-9. Alliance for Democracy in Laos, *Report of the Alliance for democracy in Laos about the human- rights situation and the race discrimination in Laos*, presented to the UN Committee on the Elimination of Racial Discrimination, Hagen (Germany), 30 January 2012. INDIGENOUS (International Network for Diplomacy Indigenous Governance Engaging in Nonviolence Organizing for Understanding & Self-Determination), *Shadow Report Regarding the Periodic Reports of Laos under the UN Convention on the Elimination on the Elimination of All Forms of Racial Discrimination (CERD)*, 28-29 February 2012. Gender and Development Group, *Lao People’s Democratic Republic Implementation of the CEDAW Convention. List of key issues to be submitted to the CEDAW Committee. CEDAW pre-session November 2008 (44th CEDAW session)*, 20 October 2008.

²⁵ In 2009 and 2010, two new institutions (composed of states’ representatives) have been created – the Intergovernmental Commission on Human Rights and the Commission for the Promotion and Protection of the Rights of Women and Children – by the Association of Southeast Asian Nations (hereafter ASEAN) to monitor existing international human rights obligations of ASEAN members, in agreement with Article 14 of the ASEAN’s Charter, adopted on 20 November 2007 and entered into force on 15 December 2008.

National level

As far as Cambodia is concerned, the most comprehensive survey of the national legal framework of relevance to LSLAs has been provided in the report of the UN Special Rapporteur on the Human Rights Situation in Cambodia, cited above, which the present work does not wish to duplicate. One conclusion that can be drawn from the report, and which has consistently emerged in the course of the present project's fieldwork, is that there is an apparently solid legal framework that, in principle, offers numerous safeguards in human rights terms. However, it may equally be concluded that there is a stark discrepancy between what constitutes 'law on paper' and how the law is actually implemented and applied 'on the ground'.

The Constitution of Cambodia (adopted in 1993) recognizes the precedence of international human rights instruments over national law. It states that the "Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights" (article 31). It also enshrines a list of fundamental rights and freedoms, including the right to life and security (article 32), the right of participation (article 35), and freedoms of expression and assembly (article 41). Its article 61 provides that the State "shall promote economic development in all fields, especially in agriculture, handicraft, industry, to begin with the remotest areas, with concern for water policy, electricity, roads and means of transportation, modern techniques and credit system".

With regard to legislation, the 2001 *Land Law* recognizes the rights of indigenous peoples to collective ownership of their lands, including residential and agricultural land, and both land currently cultivated and land reserved for shifting agriculture. Moreover, specific procedures aimed at the recognition and implementation of indigenous peoples' rights to collective land title are introduced by the law, provided that a process is followed to obtain the recognition of their legal status.²⁶ While this process is pending, in theory the indigenous communities can continue to manage their communities and land according to traditional customs without interference.²⁷ Yet, what emerged from the project's fieldwork component is the extreme intricacy of the process of fulfilling all the bureaucratic-administrative steps required to obtain recognition under the Law for the purposes of obtaining collective titles. This clearly raises formidable hurdles for indigenous communities wishing to avail themselves of the protection introduced by the legislation, casting serious doubt on its practical ramifications and the degree of protection actually afforded by the provisions.²⁸

Another example of legislation which introduces a number of 'formal' safeguards for indigenous peoples is the *Protected Areas Law*,²⁹ which guarantees secure access to traditional uses, local customs, beliefs and religions of local communities and indigenous ethnic minority groups residing within and adjacent to "protected areas".³⁰ Yet, there is evidence about concessions that were granted in such areas to the detriment of indigenous communities, notwithstanding the apparently unequivocal content of the legal provisions. In a similar manner, the 2008 Protected Areas Law

²⁶ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012.

²⁷ *Ibid* § 52.

²⁸ See also J. Vize and M. Hornung, "Indigenous Peoples and Land Titling in Cambodia: A Study of Six Villages", paper prepared for the Annual World Bank Conference on Land and Poverty, Washington DC, April 8-11, 2013.

²⁹ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012, § 37.

³⁰ *Ibid*.

established that an essential pre-conditions for granting land concessions are public consultations and environmental and social impact assessments. According to the Special Rapporteur's analysis, "assessments are to be undertaken and reviewed, with the findings shared before the granting of concessions".³¹ It appears that there is little evidence that adequate public consultations have been conducted prior to the granting of most of the concessions.³² And these decisions affecting the land on which communities live are often made without their involvement.³³ The latter examples are but three illustrations of the dichotomy between 'formal legality' and reality which emerged in a considerable number of interviews³⁴ and which is well-summarized by the words of the Special Rapporteur, "[t]he granting and management of economic and other land concessions in Cambodia suffer from a lack of transparency and adherence to existing laws. Much of the legal framework on these matters is relatively well developed on paper, but the challenge is with its implementation in practice".³⁵

The situation is very similar in Laos, where good laws have been passed, but are poorly implemented, or implemented against the interest of the vast majority of the population, and in particular the most vulnerable people. The Constitution (adopted in 2003) recognizes a list of fundamental rights, including the right to education (article 38), the right to health (article 39), the right to submit complaints and petitions (article 41), the rights and freedoms of expression, assembly, and association (article 44). It also provides that the "State, society and families attend to implementing development policies and supporting the progress of women and to protecting legitimate rights and benefits of women and children" (article 29). It is worth mentioning however that many fundamental rights are not enshrined in the Constitution, such as the right to life, the right to food, and the right to housing, and that the Constitution does not mention international human rights instruments. An example of good legislation, the 2003 *Land Law* creates eight land categories: agricultural land, forestland, water area land, industrial land, communication land, cultural land, land for national defence and security, and construction land. One of its main objectives is to support small farmers to better use agricultural land, and to provide them with a secure legal environment. However, ten years after its adoption, many people living in rural areas in Laos remain untouched by or relatively unaware of these legal provisions. And it has been found by Senties that the land law "paved the way for foreign investment in land through ... legally defining the circumstances under which land can be conceded to investors [with] enormous implications to the typically rural and subsistence-oriented agrarian structures of the country, which ... largely remain founded on customary practices".³⁶ Senties also concluded that the titling of communal lands that could be used to protect villagers against restrictions imposed by corporations, for example in accessing food and water, is poorly implemented in Laos.³⁷ The same can be said about other relevant laws, including the 2007 *Forestry Law* and the 1990 *Property Law*.

³¹ *Ibid* § 114

³² *Ibid* §§ 37-39.

³³ *Ibid* § 115.

³⁴ Interviews carried out by Dr. Irene Biglino in Ratanakiri, Cambodia, in January 2013.

³⁵ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012, § 197

³⁶ G. Senties Portilla, « Land Concessions in Lao PDR : Transforming Rural Livelihoods and Aspirations », Preliminary Thesis Dissertation, Graduate Institute of International and Development Studies, Geneva, 2012, pp. 61-62, 69.

³⁷ G. Senties Portilla, « Land Concessions in Lao PDR : Transforming Rural Livelihoods and Aspirations », Preliminary Thesis Dissertation, Graduate Institute of International and Development Studies, Geneva, 2012, p.p. 67-69.

3.2. Human rights violations associated with LSLAs

A second segment of the research conducted with regard to the project focuses on the identification of aspects and consequences of LSLAs that may be interpreted under the rubric of human rights violations. As a first overarching observation, it must be said that the rights which have proven to be most frequently threatened in LSLA settings in Cambodia and Laos are the right to food, the rights of indigenous peoples to dispose of their lands and natural resources, the rights to housing and not to be forcibly evicted. In turn, violations of these rights tend to trigger a wider pool of infringements such as lack of access to education, healthcare, and violations of cultural rights. As a second observation, we can say that the obligations to respect, protect, and fulfil the foregoing rights give rise to a number of *procedural obligations* that are very often violated in relation to LSLAs in the two countries. These include: (a) Identification of vulnerable groups, as well as an assessment of how their human rights are impacted upon. (b) The state's obligation to ensure effective consultations, participation of stakeholders, and prior free and informed consent, in particular of vulnerable groups. (c) Access to effective means of obtaining legal redress, which includes adequate relocation and adequate compensation, as well as access to court to seek a remedy and ensure accountability.

Concerns raised by UN treaty bodies as a framework for identifying violations

Part of the research concerning the human rights component was devoted to studying the human rights responses to LSLA's from different actors, with one of the focus areas being the work of the UN Treaty Bodies (see part 3 below).³⁸ The findings of this segment provide a useful conceptual container for the identification and classification of human rights violations in connection with LSLAs in Cambodia and Laos. This is because, in their Concluding Observations stemming from the state reporting process, the Treaty Bodies often do identify violations or at least indicate areas of concern. Through our study of a number of closely interconnected, common threads run through their concluding observations. Not exhaustive but a rather vivid backdrop against which to place the project's findings.

The first overarching concern relates to the actual or potential human rights implications of forced displacement and evictions caused by LSLAs, which often lead to drastic changes in livelihood opportunities. As we have seen in the first chapter of this working paper, a connected concern is that in many cases the displaced individuals and communities are not resettled and compensated for their livelihood losses. In its consideration of Cambodia, the Committee on Economic, Social and Cultural Rights (CESCR) examined issues relating to the human rights impact of LSLAs in quite some detail, explicitly reporting that 'authorities of the State party are *actively involved in land-grabbing*'.³⁹ The CESCR expressed grave concerns over the vast concessions granted to private companies and noted the increase in forced evictions and threats of eviction linked to such concessions⁴⁰ and expressed deep concern about the lack of effective consultation with persons affected by forced evictions. It also called attention to the inadequate compensation or relocation provisions for families forcibly removed from their properties.⁴¹

The second common thread involves the impact of LSLAs on the livelihoods and right to food of indigenous peoples specifically. Something that is also very clear in reading the first chapter of this

³⁸ See also C. Golay and I. Biglino, "Human Rights Responses to Land Grabbing: a right to food perspective", *Third World Quarterly*, Vol. 34, No. 9, 2013, pp. 1630-1650.

³⁹ CESCR, *Concluding Observations: Cambodia*, UN Doc. E/C.12/KHM/CO/1, 12 June 2009, § 30. Emphasis added.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

working paper. These negative impacts have been central in the reviews of a large number of states, and have been tackled by virtually all treaty bodies. Emphasis is placed on the right to free, prior and informed consent of indigenous peoples to externally imposed policies and activities that directly affect their livelihoods. For example, as noted above, the CESCR examined the impact of land concessions on indigenous peoples during its assessments of Cambodia. In particular, in its recommendations, the Committee highlighted the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities, including mining and oil explorations, 'with a view to ensuring that these activities do not deprive the indigenous peoples to the full enjoyment of their rights to their ancestral lands and natural resources'.⁴² In further pointing out that legislation providing for the titling of indigenous communities' lands had not been implemented in an effective manner, the CESCR urged Cambodia to provide for the implementation of the provisions without delay.

The Committee on the Elimination of Racial Discrimination (CERD) has also extensively examined the need to better protect the livelihoods – and the right to an adequate standard of living – of indigenous populations. In its consideration of reports concerning the Lao People's Democratic Republic, the Committee reiterated the right of communities to free prior and informed consent and called for the state to ensure that it is respected in the planning and implementation of large-scale projects affecting their lands and resources.⁴³ Express references were made to the importance of 'the cultural aspect of land, as an integral part of the identity of some ethnic groups'.⁴⁴ CERD also scrutinised the human rights impact of land concessions in Cambodia. The Committee noted that such transactions were in many cases being conducted 'to the detriment of particularly vulnerable communities such as indigenous peoples'.⁴⁵ Another concern related to reports that concessions affecting land traditionally occupied by indigenous peoples were being granted without full consideration, or exhaustion of procedures provided for by national legislation⁴⁶.

The foregoing discussion unearths another recurrent theme, namely the question of the disproportionately negative effect, in human rights terms, that LSLAs have on populations that are vulnerable to discrimination and face conditions of marginalization or disadvantage. In addition to indigenous peoples, concerns have been raised about negative impacts on women, children, rural communities, and small-scale farmers. The Committee on the Elimination of Discrimination Against Women (CEDAW) focused its attention on female heads of household in Cambodia who had lost their sources of livelihood because of the confiscation of land by private companies and were excluded from decision-making processes concerning land distribution.⁴⁷ Similarly, in its concluding observations on Cambodia in June 2011, the Committee on the Rights of Child (CRC) expressed deep concern that thousands of children and families, especially the urban poor, small-scale farmers and indigenous communities, were continuing to be deprived of their land 'as a result of land grabbing and forced evictions carried out by people in positions of power'.⁴⁸

As an overarching recommendation in its assessment of Cambodia, CERD requested that a proper balance be struck between development objectives and the rights of citizens and that the former are

⁴² Ibid, § 16.

⁴³ CERD, *Concluding Observations: Lao PDR*, UN Doc. CERD/C/LAO/CO/16-18, 9 March 2012, § 16-17.

⁴⁴ Ibid, § 16.

⁴⁵ CERD, *Concluding Observations: Cambodia*, UN Doc. CERD/C/KHM/CO/8-13, 1 April 2010, § 16.

⁴⁶ Ibid.

⁴⁷ CEDAW, *Concluding Observations: Cambodia*, UN Doc. CEDAW/C/KHM/CO/3, 25 January 2006, § 31.

⁴⁸ Committee on the Rights of the Child (CRC), *Concluding Observations: Cambodia*, UN Doc. CRC/C/KHM/CO/2, 20 June 2011, §§ 61, 61.

not enacted 'at the expense of the rights of vulnerable persons and groups covered by the Convention [on the Elimination of All Forms of Racial Discrimination]'.⁴⁹ Following CEDAW's review of Laos, it was recommended that the state party ensure that development projects are implemented only after conducting gender impact assessments involving rural women.⁵⁰

Selected fieldwork findings

The present sections seeks to provide a number of key insights which emerged during the course of the fieldwork conducted in Cambodia and Laos by flagging selected areas of concern from a human rights standpoint. It is by no means to be considered an exhaustive exposition of the multiple findings that emerged.

Forced evictions, dispossession of land, and internal displacement, highlighted above as a key area of concern in human rights terms in different Treaty Bodies' observations, also emerged as a finding of paramount importance in the project's fieldwork. In the majority of study areas covered by the project, dispossession of agricultural land was a common phenomenon, while evictions from homes only emerged in certain contexts. To cite but one example, with regard to fieldwork conducted in Cambodia, in Sein Serrey, it was shown how LSLAs led a large number of households to lose access to productive agricultural land, which in turn caused them to become increasingly vulnerable to food insecurity.⁵¹ In the latter scenario, compensation following agricultural land dispossession was primarily awarded in the form of alternative land. However, in many reported cases, such land was too small and less productive to farm, leading numerous households to sell the land they obtained and resort to migration to other Provinces.⁵²

The latter point leads to another overarching consideration which emerged as a key area for concern, involving the negative repercussions that displacement following evictions may have on the rights to adequate housing, health, education, and work. In cases of migration stemming from evictions, families were not only reported to face increased hardship, but encountered formidable difficulties in attaining an adequate standard of living, including adequate housing, ensuring education for their children as well as access to health facilities.

As revealed by the fieldwork, even in the absence of outright evictions or dispossession, the granting of land concessions often entailed *de facto* interferences with the enjoyment of a wide array of rights. If we take the right to water as an example, in Ratanakiri (Cambodia) it has been reported that the establishment of concessions has led to blocking paths and roads used by villagers to access waterways, or that the introduction of rubber plantations has diverted the course of streams, or that water sources were simply used for the irrigation of the plantations.⁵³ The same violations of the right to water have been observed in several cases in Laos, including in Savannakhet Province where Chinese companies are active.

A study of the impacts of a land concession of 7'000ha granted to a Chinese rubber company (Sino Company) in 2006, on a local community in Nambak District, Luang Prabang Province (Laos), also revealed that the implementation of the land concession led to a large-scale enclosure of upland

⁴⁹ CERD, *Concluding Observations: Cambodia*, UN Doc. CERD/C/KHM/CO/8-13, 1 April 2010, § 16.

⁵⁰ CEDAW, *Concluding Observations: Lao People's Democratic Republic*, UN Doc. CEDAW/C/LAO/CO/7, 14 August 2009, § 44, 45.

⁵¹ See P. Paramita, *Between Chamkar And The Kitchen: A Livelihood Approach To The Implication Of Land Grabs On Food Security In Cambodian Rural Households*, Dissertation Submitted in fulfilment of the requirement for the Master in Development Studies (MDev) at the Graduate Institute in Geneva, 2013, p. 62.

⁵² Ibid.

⁵³ Interviews carried out by Dr. Irene Biglino in Ratanakiri, Cambodia, in January 2013.

resources that these villages depended on.⁵⁴ This also implied the imposition of a strict penalty scheme for damage to rubber by roaming animals, which led to the prohibition of villagers from continue livestock rearing, which had negative impacts on soil fertility and led to a decline in paddy rice yields.

What surfaced with particular clarity in the course of the fieldwork in geographical areas with a large segment of the population composed by indigenous peoples is the latter communities' increased vulnerability. Interviews conducted in Ratanakiri (Cambodia) disclose a number of interferences with indigenous peoples' access to forest areas, either because the forests had been cleared to make way for plantations in areas affected by land concessions, or because access was physically impeded, the forest area being engulfed by a concession.⁵⁵ This entailed a variety of consequences, including the hindrance of access to food sources obtainable by traditional subsistence activities such as hunting, fishing, and gathering forest products.⁵⁶ The protection of cultural rights is also threatened in this context, in that access to the forest for many community bears spiritual significance, the forest being sacred and hosting certain communities' burial grounds.⁵⁷ Finally, another concern which was expressed in more than one interview, including by representatives of NGOs working specifically on indigenous peoples' rights, members of indigenous communities who sought work on the plantations in order to provide for themselves and their families encountered difficulties in securing employment. In Ratanakiri, it was reported that it is more difficult for indigenous peoples to find work because of language barriers and of perceptions by companies that they are 'unskilled' labourers.⁵⁸ These considerations must be placed against the backdrop of the monumental hurdles facing such communities in obtaining collective land titles, which was mentioned above.

Information asymmetry, which was one of the key themes identified by the Special Rapporteur on the human rights situation in Cambodia,⁵⁹ also emerged in our fieldwork findings. In a survey conducted under the auspices of the present project in Ratanakiri, we found that 64 per cent of the 241 households studied had no knowledge about the special protection of land rights afforded to indigenous peoples under existing legislation.⁶⁰ On the other hand, 36 per cent did have some form of knowledge of such protection, and the survey revealed that it was one of the elements that had an impact on the interviewees' situation.⁶¹ Our survey showed that 100% of those who received compensation for the loss of their land (7 people out of 27 people who lost their land in total) had knowledge about the special protection of land rights afforded to indigenous people. On the other side, 39% of those who lost their land and had knowledge about the special protection of land rights for indigenous people received a compensation (7 people out of 18 who lost their land and knew about special protection), while those who lost their land but had no knowledge about this special protection had no chance at all to receive a compensation (see Annex 1 for a statistical analysis of this correlation).⁶²

⁵⁴ C. Friis, « Land, Livelihoods and Access to Resources in Laos PDR – Large-Scale Land Acquisitions in a Dynamic Context of Agrarian Transformation », Master's thesis, Faculty of Science, University of Copenhagen, 2013.

⁵⁵ Interviews carried out by Dr. Irene Biglino in Ratanakiri, Cambodia, in January 2013.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012.

⁶⁰ Ratanakiri survey of 241 households.

⁶¹ Ratanakiri survey of 241 households.

⁶² The highly relevant question of whether those who received compensation felt it was adequate remains to be investigated.

The foregoing discussion underpins the right that lies at the very core of the project: the right to food related impacts of LSLAs. In most of the contexts described above, land is the main source of food availability and accessibility, and there are often few other livelihood opportunities available for affected households and communities. As a consequence, and as revealed by the fieldwork, drastic changes in dietary habits, both in terms of *quality* and *quantity*, have occurred for certain communities as a consequence of their inability to grow their own food or obtain it from natural resources following the absorption of their land by land concessions. In a number of reported cases, individuals and their families were left with no option but to purchase food on the market although, due to their precarious economic conditions, they could not afford a rich, nutritious and diverse diet as they had when they had agricultural land on which to grow food and access forest areas which provided additional food sources (i.e. fish and wild animals).

To analyse these findings in terms of violations of the right to food, it can be recalled that a state would be acting in violation of this right if, by granting concessions or selling land to investors (whether domestic or foreign), it were depriving local populations from access to *productive resources indispensable to their livelihoods*, unless appropriate alternatives are offered.⁶³ It would also be violating the right to food if it negotiated such agreements without ensuring that this will not result in food insecurity.⁶⁴ Finally, a point that is particularly pertinent to the present discussion is that failure to protect individuals and communities from similar actions and consequences undertaken by *third parties* can also be construed as a violation. We have found that these violations of the right to food are taking place in both Cambodia and Laos.

Another key thread that surfaced in the fieldwork as especially problematic in human rights terms involves compliance – or lack thereof - with what we referred to as ‘procedural obligations’ above. Inadequate participation, consultation, and information asymmetry appeared to constitute a dominant trend in the survey performed in Ratanakiri (Cambodia), as well as in Savannakhet and Luang Prabang (Laos). According to the survey done in Ratanakiri, it must be highlighted, specifically, that 78 per cent of those who lost land as a consequence of LSLAs were not notified in advance, thus revealing that in most of the cases there was no consultation, provision of information, or participation.⁶⁵

3.2. Human rights remedies

National level

As far as Cambodia is concerned, once again Special Rapporteur’s report, cited above, provides the most comprehensive overview of what remedies exist at the domestic level. Among these, the Special Rapporteur identifies a number of *land dispute resolution mechanisms*, including the Commune Councils, the Administrative Committees, the Cadastral Commission, the National Authority for Land Conflict Resolution and the courts.⁶⁶ It is not clear to what extent these mechanisms have contributed in providing a viable avenue for affected people to have their cases

⁶³ See annex to the report of the Special Rapporteur on the right to food Mr. Olivier De Schutter on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, UN Doc. A/HRC/13/33/Add.2, 28 December 2009, p 5.

⁶⁴ *Ibid.*

⁶⁵ Ratanakiri survey of 241 households.

⁶⁶ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012, §§ 56-58.

heard and resolved.⁶⁷ In a Guide to defend land and housing rights, Bridges Across Borders Cambodia (BAB), International Accountability Project and the Center on Housing Rights and Evictions (COHRE) gave the following advice to potential victims of evictions: “The Cadastral Commission has a very big list of cases waiting to be heard, and sometimes it is not effective or efficient in solving disputes, especially if they involve a powerful person. You may decide to file a complaint to the Cadastral Commission, *but at the same time you should also consider other options to resolve the land dispute*. For example, you may write petitions and letters, and arrange meetings with officials, in addition to complaining to the Cadastral Commission.”

Administrative remedies are even weaker in Laos, where the main avenue that exists is a hotline created in 2012 to call the national assembly. According to many, a great number of complaints are related to land disputes.⁶⁸ And in one case at least, it led a member of the national assembly to visit the community and compensation was given to its members. But everything is made orally, which makes it difficult to have more information about the efficiency of this remedy. In order to gauge the effectiveness of such remedies in Cambodia and Laos, a full-fledged study on this particular aspect would be warranted, although such an investigation exceeds the objectives of the present project. What does emerge with greater clarity, however, is that individuals affected by LSLAs encounter many hurdles in accessing justice, both in Laos and Cambodia. In a 2012 report, the UN Special Rapporteur on extreme poverty and human rights developed an analytical structure for the analysis of the obstacles in accessing justice that face people living in poverty.⁶⁹ The Special Rapporteur’s framework identifies a set of macro-categories whereby obstacles can be classified, and a large number of issues identified in the framework reflect barriers that have emerged in the countries under scrutiny. To select but two examples for the purposes of the present paper, the categories ‘*institutional and structural obstacles*’ and ‘*social and cultural obstacles*’ can be briefly examined.

Under the first heading, in Cambodia for example we find physical accessibility issues affecting persons living outside of urban centres and, therefore, not within easy reach of the courts. There are detectable economic accessibility issues as well, which apply even in cases where there are no fees to lodge complaint but are rather, in terms of transportation costs, lost wages, and seeking legal assistance, which may raise additional barriers for individuals.⁷⁰ In interviews with NGOs⁷¹ it surfaced that, in order to help overcome such barriers, a number of organizations have established paralegal programs and ‘access to justice’ programs throughout the country⁷², although it is not clear what the

⁶⁷ According to a report by Bridges Across Borders Cambodia (BABC), the Center on Housing Rights and Evictions (COHRE), and the Jesuit Refugee Service (JRS), around 5’000 cases have been received by the Cadastral Commission between 2002 (year during which the first cases have been accepted) and 2009; 1653 have been resolved, 1211 have been rejected, 220 have been withdrawn, and 1975 were still pending in 2010. BABC, COHRE, JRS, *Untitled. Tenure Insecurity and Inequality in the Cambodian Land Sector*, 2009. On the difficulty to use this kind of information and judge the efficiency of administrative mechanism to resolve land disputes, see more generally the report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, UN Doc. A/67/278, 9 August 2012.

⁶⁸ Interview by C. Golay in Laos in January 2013. See also I. Baird, « Turning Land into Capital, Turning People into Labour: Primitive Accumulation and the Arrival of Large-Scale Economic Land Concessions in the Lao People’s Democratic Republic », *New Proposals: Journal of Marxism and Interdisciplinary Inquiry*, Vol. 5, No. 1, 2011, pp. 10-26.

⁶⁹ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, UN Doc. A/67/278, 9 August 2012.

⁷⁰ *Ibid*, § 55.

⁷¹ Interviews carried out by Dr. Irene Biglino in Ratanakiri, Cambodia, in January 2013.

⁷² See for example the initiatives promoted by the Community Legal Education Center (CLEC), <http://www.clec.org.kh/>.

coverage and impact of such initiatives are. In addition to inadequate capacity and resources affecting courts in many parts of the country, corruption has been pointed out as a key concern. It has been reported that corruption of courts from companies and wealthy land purchasers is a common problem.⁷³ It has also been suggested in the interviews that the independence of courts may also be compromised by judges live in fear of retaliation or by the fact that they are or may be threatened if they take positions in favour of plaintiffs to the detriment of companies or what are referred to as ‘high ranking persons’ in cases involving LSLAs. In a number of interviews it emerged that courts in many instances have stated that they have no jurisdiction in order to refuse to hear cases involving LSLAs, or use devices to suspend or prolong the proceedings indefinitely. Under what the Special Rapporteur labels ‘*social and cultural obstacles*’, the Cambodian scenario there appears to be characterized by a widespread mistrust of the justice system. According to a study by Transparency International, the judiciary is perceived by Cambodians as the most corrupt institution in the country, followed by the police and public officials.⁷⁴ What surfaced in the fieldwork is that when individuals know that courts exist and that actions may be initiated before them in order to claim, for example compensation or restitution, they don’t trust them. Others fail to engage with the judicial system when it comes to land disputes in the context of LSLAs because they fear reprisals.

International level

Against this backdrop, international human rights mechanisms have demonstrated a willingness to address human rights implications of LSLAs, with different human rights actors addressing different angles of the phenomenon.

The United Nations treaty bodies – in particular the CESCR, CERD, CEDAW, and CRC – have tackled the intersection between LSLAs and human rights, and issued recommendations to both Cambodia and Laos.⁷⁵ As we have seen, several common threads can be extracted from these recommendations: (1) The actual or potential human rights implications of the internal displacement and evictions that occur as a consequence to LSLAs, which often threatens livelihood opportunities. (2) And the way in which LSLAs may negatively influence the livelihoods of indigenous peoples and populations that are vulnerable to discrimination and face conditions of marginalization or disadvantage have been identified as a key concern. (3) We can also add that land policy reforms financed and promoted through development assistance can be seen by the treaty bodies to entail negative impacts on the enjoyment of human rights, i.e. when they focus on individual property rights instead of collective or communal land titles.⁷⁶

The UN Special Procedures of the Human Rights Council have also engaged *vis-à-vis* human rights and LSLAs with both country mandates and thematic mandates. The best country mandate example is the 2012 report by the Special Rapporteur on the human rights situation in Cambodia, Surya

⁷³ Interviews carried out by Dr. Irene Biglino in Ratanakiri, Cambodia, in January 2013.

⁷⁴ Transparency International, *Country Profile Cambodia*, 2012.

⁷⁵ See in particular CESCR, *Concluding Observations: Cambodia*, UN Doc. E/C.12/KHM/CO/1, 12 June 2009, § 16, 30; CERD, *Concluding Observations: Lao PDR*, UN Doc. CERD/C/LAO/CO/16-18, 9 March 2012, § 16-17; CERD, *Concluding Observations: Cambodia*, UN Doc. CERD/C/KHM/CO/8-13, 1 April 2010, § 16; CEDAW, *Concluding Observations: Cambodia*, UN Doc. CEDAW/C/KHM/CO/3, 25 January 2006, § 31; Committee on the Rights of the Child (CRC), *Concluding Observations: Cambodia*, UN Doc. CRC/C/KHM/CO/2, 20 June 2011, §§ 61, 61; CEDAW, *Concluding Observations: Lao People’s Democratic Republic*, UN Doc. CEDAW/C/LAO/CO/7, 14 August 2009, § 44, 45.

⁷⁶ See in particular the recommendations of the CESCR addressed to Germany, in relation to its development cooperation in Cambodia. CESCR, *Concluding Observations: Germany*, UN Doc. E/C.12/DEU/CO/5, 20 May 2011, par. 11.

Subedi, focusing on LSLAs and their impact on human rights in this country.⁷⁷ Among many recommendations, the Special Rapporteur called on Cambodia to assess the impact of concessions on livelihood and income-generating opportunities of affected families through a set of concrete actions. Relevant government bodies and business enterprises were urged to comply with legal requirements for public consultations. Surya Subedi also insisted on the fact that standards of free, prior and informed consent must be rigorously applied when consulting with all indigenous peoples. As we have also seen, the best thematic mandate example is the presentation by the Special Rapporteur on the right to food of a set of human rights principles applicable to large-scale land acquisitions and leases, to the Human Rights Council in March 2010.⁷⁸

If NGOs have often been at the origin of concrete recommendations addressed by UN monitoring mechanisms to the governments of Cambodia and Laos, they have not properly used the possibility to send communications to UN treaty bodies and Special Procedures in case of human rights violations associated with LSLAs. In the future, they should be encouraged to use this possibility, and send communications to relevant Special Rapporteurs of the Human Rights Council, including those on the rights to food, water, housing, education, water and sanitation, health, the rights of indigenous peoples, and extreme poverty and human rights⁷⁹, and to the Committee on the Elimination of Discrimination Against Women in case of violations of women's rights in Cambodia.

3.4. Conclusion

To respond to the research question related to human rights and LSLAs, we identified human rights violations associated with LSLAs and analysed the role that human rights law and monitoring mechanisms play (or could play) in mitigating the tensions related to LSLAs and protecting the human rights of local populations. Our findings are contrasted. Human rights are well recognized in Cambodia and Laos, and national laws are adequate, which represent a good basis for evaluating the impacts of LSLAs. But these human rights instruments and national laws are poorly implemented in both countries. And despite a constructive role played by international monitoring mechanisms, human rights violations are widespread in the context of LSLAs in Laos and Cambodia.

It is therefore difficult to reach a conclusion regarding the role that human rights law and monitoring and judicial mechanisms play in mitigating the tensions related to LSLAs and protecting the human rights of local populations. International mechanisms play their role in monitoring the human rights situation and making recommendations to the governments of Cambodia and Laos, and they certainly offer one of the few avenues that exist to seek remedies for violations of human rights associated with LSLAs in the two countries. But they are hardly heard. It is also difficult to understand how human rights law and monitoring and judicial mechanisms could play a more positive and efficient role, without looking at a broader range of issues, and in particular the links between democracy, development, and respect for human rights.⁸⁰

⁷⁷ Report of the Special Rapporteur on the human rights situation in Cambodia, Surya Subedi, UN Doc. A/HRC/21/63/Add.1, 24 September 2012.

⁷⁸ See annex to the report of the Special Rapporteur on the right to food Mr. Olivier De Schutter on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, UN Doc. A/HRC/13/33/Add.2, 28 December 2009.

⁷⁹ See C. Golay, C. Mahon and I. Cismas, « The Impact of the UN Special Procedures on the Development and Implementation of Economic, Social and Cultural Rights », *The International Journal of Human Rights*, Vol. 15, 2011, pp. 299-318.

⁸⁰ In the Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in 1993, States have all recognized that « [d]emocracy, development and respect for human rights and

CONCLUSION

We have created or identified typologies in the three parts of our research. In the first part, we identified three major patterns in the processes leading to LSLAs in Cambodia and Laos, in which national, provincial and local authorities play different roles. We also identified three types of recurrent linkages among key factors, each manifesting its specific spatial signature: the marginal people, marginal investments, and marginal land types of interaction. In the second part, we identified various degrees of dispossession affecting local populations in relation to LSLAs, and classified them as extreme, severe and partial. We also identified five types of livelihoods transformation reflecting how households were affected by and could respond to the politics of dispossession, the main transformation of their economic activities and, how/if they have managed or not to engage into the rubber-boom. Finally, in the third part we identified three types of human rights violations taking place in the context of LSLAs in Cambodia and Laos: human rights violations associated with forced displacement and evictions; violations of indigenous peoples rights, including their right to an adequate standard of living; and human rights violations associated with land policy reforms financed and promoted through development assistance, such as those focusing on individual property rights instead of collective or communal land titles.

The analysis of decision-making processes shows that LSLAs in Laos and Cambodia are far from an ideal world in which land governance would guide land investments and land investments would increase land based revenues and prosperity. Only one type - 'marginal land' - actually pursues such logic and this type is starting to emerge only in Laos. The current dominant type of interaction between LSLA processes and agrarian context we could observe is clearly the type we labelled 'marginal people', whereby the primacy of economic development strategies and close linkages between investors and political elites determine top-down land granting processes, which ignore the specificity of agrarian contexts or even adapt them to their needs, with 'available land' being constructed through land laws and policies weakening the traditional tenure.

Our findings show that in-depth field research is crucial to go beyond the "fascination with big numbers" (Oya, 2013) and the "here and now" (Edelman *et al.*, 2013) primacy of land grabbing research. Focusing initially on large-scale land acquisitions, our case studies reveal that comparatively medium- and small-size ones, which represent substantial areas of land, have accompanied the largest acquisitions. All must be taken into account to appreciate the magnitude of land loss for the populations who previously derived their livelihoods from those spaces and resources. Similarly, the starting point of our project was the wave of LSLAs that occurred from the mid-2000s; field research has shown that earlier public policies had prepared for the radical transformation of land tenure and land use whereby customary tenure and shifting cultivation were fought by governments. In the current transition from family farming-based livelihoods to economic activities system in which off-farm job has become crucial, large-size landholdings do not create enough job for native populations to compensate for the loss of resources they derived from farming their land. New opportunities linked to the development of large-scale landholdings, cash crops and stronger urban-rural interconnectedness are undeniable, but it benefits just a few.

Our research in Cambodia and Laos and analysis of the work of UN monitoring bodies show that several human rights are violated in the context of LSLAs in Cambodia and Laos. We have found that the rights that are most frequently violated in LSLA settings are the right to food, the rights of

fundamental freedoms are interdependent and mutually reinforcing ». Vienna Declaration and Program of Action, UN Doc. A/Conf.157/23, 12 July 1993, Part I, par. 8.

indigenous peoples to dispose of their lands and natural resources, the rights to housing and not to be forcibly evicted, and the right to water. In turn, violations of these rights tend to trigger a wider pool of infringements such as lack of access to education, healthcare, and violations of cultural rights. We also found that procedural rights, such as the rights to participation, consultation, prior free and informed consent, and access to effective remedies, including adequate relocation and compensation, are also threatened in the context of LSLAs. National laws are generally good in Cambodia and Laos, but they are poorly implemented. Administrative mechanisms to respond to human rights violations are poor in Cambodia and almost non-existent in Laos, and what does emerge with great clarity is that individuals affected by LSLAs encounter many hurdles in accessing justice in both countries. In this context, holding States accountable for human rights violations stemming from LSLAs is a cause for concern, and international mechanisms offer an avenue for seeking accountability.

The challenges of future research include the need to integrate the typologies and analyze how they interact. It will also be important to perform extrapolations across Laos and Cambodia in order to assess the reach and validity of our findings and to derive evidence for policy and decision-making. Among the research opportunities ahead, one is to follow-up the current transformation of livelihoods that we have highlighted, in particular to see (1) whether the smallholders who have invested into rubber will manage to turn their investment into profit in an economic system dominated by large-size actors; (2) if more households will manage to invest into rubber, and (3) if the mass of part-time farmers and rural workers will be able to further resilience or will be forced to definite withdrawal from farming and distress migration. It will also be important to deepen the analysis of the links between democracy, development, and respect for human rights in both countries, to better understand how human rights can play a more efficient role in mitigating the tensions related to LSLAs and protecting human rights of local populations.

Last, we would like to draw the attention to key opportunities for future research with regard to more sustainable land investments. It needs to address the potentials of transforming and improving the interfaces between i) agrarian contexts and their representation in land governance through institutional innovations, empowerment, and information; ii) land governance and LSLAs through the design of sustainability standards and the better implementation of voluntary guidelines and binding laws and treaties, and iii) land investments and agrarian context through negotiation and learning tool allowing to develop innovative farming practices such as out-grower schemes and cooperatives. The transformative potential of these interfaces will be decisive for the future of agrarian transitions in Laos and Cambodia currently standing at crossroads between new forms of rural poverty and more sustainable development.

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