



# Don't forget the smallholder! Finding inclusivity in land investments

Webinar Report | Country Insights Series



There is a legacy of small-scale farmers in Southeast Asia that prevails in the present day. However, the tenure security of this group has been threatened by the acquisition of their land, whether through formalised concessions deemed in the public interest, or procurements that take advantage of still-emerging legislation. There is much evidence that large-scale acquisitions, particularly concessions, have delivered neither the economic growth promoted by national governments, nor the profits desired by investors, be they domestic or foreign. A new interest is growing in alternative models of investment, which bring a secure footing for investors, promote sustainable practices, and give smallholders an opportunity to share both in the benefits of production and also achieve secure tenure over their land.

This webinar had two aims. Firstly, it brought attention to newly released country portfolios from Land Portal for Cambodia, Indonesia, Malaysia and Singapore. These portfolios introduce a spectrum of information on the land system in each country, covering fields such as law and regulations, land use trends, investments and acquisitions, and women's land rights. They also offer further detailed sources of data for the user. The second aim was to focus on the topic of Responsible Agricultural Investment through experiences from Cambodia, Indonesia, and Malaysia. While marking out tenure security risks for smallholders and the rural poor, the aim here was to highlight new endeavours towards equitable and sustainable practices for land users and investors, comparing positive case examples, and challenges to promote inclusive measures.

**Moderator:**

- **Daniel Hayward, Local Knowledge Engagement Coordinator, Land Portal**

**Panelists:**

- **Chansovy Ngorn, Centre for Policy Studies (CPS), Cambodia**
- **Andiko Mancayo, Founder of AsM Law Office, Indonesia**
- **Reza Azmi, Executive Director & Founder of Wild Asia, Malaysia**

**Closing reflections:**

- **Rob Cole, Adviser on Responsible Agricultural Investment, Mekong Region Land Governance (MRLG)**

**A complete recording of the webinar is available on YouTube: <https://youtu.be/kszgcTtpUd4>**

## Key Takeaways

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- Understanding tenure issues around large-scale agricultural land investments demands a historical perspective. This takes in the first plantations under colonial rule leading up to present day promotion of economic growth under neoliberal policies, encouraging both domestic and foreign land-based investment.
- The impacts of land investments are complex, with no uniform outcomes for smallholders. However, despite some positive results, many rural communities have lost access to and control of their land, with a limited recourse to have their voices heard, and question the process of land dispossession.
- There are a number of legal and policy developments in Cambodia, Indonesia, and Malaysia, which could be applied to models of responsible agricultural investment. The challenge is to encourage the conversion of policy into tangible actions that support smallholder livelihoods.
- The ASEAN Guidelines on Responsible Agricultural Investment collect together 10 key provisions to support inclusive and environmentally sensitive practices. If used well, they can be an important reference point to guide domestic policy. However, there are mixed messages as to their visibility in different regional countries.

## Webinar Summary

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### **1) HOW HAVE LAND INVESTMENTS IN YOUR COUNTRY IMPACTED UPON THE LAND TENURE SECURITY OF SMALLHOLDERS AND THE RURAL POOR?**

- The situation in Malaysia reflects a hundred year experiment in large-scale industrial agriculture. Four waves can be identified:
  1. 100 years ago – entrepreneurial projects, predominantly rubber followed by oil palm, under colonial rule using private and public investment.
  2. 1950s – under an independent government, supported by international donors such as the World Bank, projects were identified as contributing to national development.

3. 1980s – under a wave of nationalism, land was acquired by the government for projects run by state-connected corporations.
  4. 2000s to the present – a new generation of entrepreneurs and speculators.
  5. The earlier experiments took place in a low-population country, away from coastal areas where most of the people were situated, and on land without conflicting claims of tenure. But this model does not apply in the present day, and land investments increasingly impinge on customary lands in populated areas.
- In Cambodia during the 1990s, the government planned for intensive agro-industrial activities as part of its strategy for national development. As a result, the 2001 Land Law set out the provision for Economic Land Concessions (ELCs). Currently there are 231 ELC projects covering 1.1 million hectares, each with a licence for 99 years, in some cases reduced to 50 years after negotiation by the government. There have been many different impacts from concessions. Investors access to communal land and resources has threatened land tenure security for local communities. However, there have been some positive outcomes through local economic and infrastructure development. To address conflicts between affected communities and investors, a certain number of local farmers have been able to register a title for their land under 'Leopard Skin' policies in 2012-13 (known as Directive 001). Others have found employment in rural areas through land investment projects.
  - Land tenure conflicts in Indonesia emerged after independence, through the development of oil palm and rubber plantations. There are now 12.3 million hectares of oil palm plantations run by a combination of 25 conglomerates. 95.8% of allocated state forestland has been provided to corporations, while only 4.1% has been allocated to community actors. As a result, this is leading to a widening inequality of land tenure. 1% of the population controls 68% of national wealth, a significant feature here involving land assets. The process of acquiring land for investment projects does not involve local communities. There is no operational means for implementing FPIC (Free, Prior and Informed Consent). Instead, the legal system favours investors and discriminates against local communities and the rights of indigenous peoples. This imbalance has been compounded by the 2020 enacting of the Omnibus Law on Job Creation, which has the potential to facilitate large-scale projects, increasing deforestation and emissions from fossil fuel usage. There is a need for a combination of social, technical, legal and financial factors to be in place to eliminate corruption. This includes trust between different actors (government, civil society, individual, development partners, etc.), technical factors like adequate internet and electricity, appropriate legal frameworks and data protection standards, as well as monetary means to invest in systems and proper business models.

## **2) WHAT ARE THE LATEST INTERESTS AND DEVELOPMENTS THAT OPEN THE DOOR FOR RESPONSIBLE AGRICULTURAL INVESTMENT AND THE INCLUSION OF SMALLHOLDERS?**

- In Cambodia, contract farming schemes are being considered as a means to open the door for responsible and inclusive investments with smallholder farmers. This involves arrangements between agricultural cooperatives and private companies, to produce agricultural goods for export. The government of Cambodia has been initiating new laws and policies to support contract farming. There are also initiatives for companies with processing plants and factories to work with smallholder farmers, although exploration is still taking place to develop the best business model here. There are two positive case models from Preah Vihear Province that can be highlighted:
  1. Organic cassava production, with contracts between Cambodia Agricultural Cooperative Corporations (CACC) and 11 local Agricultural Cooperatives (ACs) on behalf of smallholder farmers. CACC provides technical support while the ACs carry out quality control and monitoring of its farmers.
  2. Standard cashew nut production, where Santana Agro Products have been negotiating contracts with different ACs for cashew production beyond its own nucleus estate-type plantation, in order to increase supply to the company's processing plant.
- There are various regulatory and policy development in Indonesia, where NGOs can lobby for the implementation of responsible agricultural investment practices. For example, the 2017 Business and Human Rights National Action Plan can be used. In Presidential Regulation No. 44/2020 concerning Indonesian Sustainable Palm Oil Plantation Certification System and the Environmental Law, there is a public commitment to recognise smallholder and indigenous people rights to land. Government Regulation 18/2021 recognises the authority of Indigenous Peoples to management rights of their land, if located outside state forest areas. AsM Law Office was advocating for this with the National Land Agency. There are government programs in agrarian reform and social forestry that have potential for further engagement. Some large land-based companies in palm oil, pulp and paper, have also given voluntary commitments in this area.
- As a context for Malaysia, around 30-40% of land use for oil palm is under the control of large corporations, another 30-40% under development schemes supporting landless or land-poor smallholders, and then the rest for independent producers. Since 2005, the not-for-profit multi-stakeholder platform RSPO (Roundtable on Sustainable Palm Oil), with industry, NGO and financial representations, have taken the lead in promoting responsible production practices. Through it, large corporations have been looking at how to support independent producers, such as through materials, services, or taking over land management. RSPO standards have also helped frame investment criteria, such as the inclusion of FPIC or environmental due diligence. However, this is still through an industrial model of mono-cropping. What is now not clear is how national banks interact with international investors, to use similar standards as RSPO.

**3) IN 2018, THE ASEAN GUIDELINES ON RESPONSIBLE AGRICULTURAL INVESTMENT WERE ADOPTED. THESE COVER TEN FACTORS OF AGRICULTURAL PRODUCTION, AND MIRROR GUIDELINES AT A GLOBAL LEVEL PUT FORWARD BY THE COMMITTEE ON WORLD FOOD SECURITY (CFS). HOW VISIBLE ARE THE ASEAN GUIDELINES ON RESPONSIBLE AGRICULTURAL INVESTMENT IN YOUR COUNTRY? ARE THEY USEFUL FOR YOUR OWN WORK?**

- In Indonesia, not many people are aware of the existence of the ASEAN standards. There are no focal points through which they are promoted. AsM Law Office has been promoting The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) for three years, but there is much space for the ASEAN standards too. When promoting and applying any of these standards, it is important to that communities themselves become involved in the monitoring of corporate practices. Self-reporting by companies is not enough, and Community-Based Monitoring (CBM) will increase the credibility and impact of responsible agricultural investment schemes.
- In Malaysia, there are a limited number of projects focused on smallholders outside of government development schemes, and it is hard to see how the ASEAN guidelines fit in the latter cases. We are not seeing how responsible principles are being added into investment criteria. Nevertheless, there are many positive features contained within the guidelines, such as in the implicit support for sustainable land management. In Malaysia, there is a question as to whether land use should follow the industrial development model that has been in place for the last 100 years. This model does not respect soil due to its emphasis on mechanisation and chemical inputs. When applied by smallholders, they only achieve small profits, and find themselves at the mercy of commodity price drops. A shift from mono- to polycultures, for example through agro-forestry, would help, adding organic content back in the soil. There is also potential for smallholders to increase their income, and models of agricultural investment could be tailored to follow this approach.
- Unlike the other case countries here, in Cambodia the guidelines have a good level of visibility, at least with key officials in the Ministry of Agriculture, Forestry and Fisheries (MAFF), some NGOs, and companies working in the agriculture and land sectors. Although they are not mandatory, in this country context the guidelines provide a good foundation to promote responsible investments in agriculture and food. There is an opportunity to integrate their suggestions into domestic law and policy formulation, particularly related to contract farming. GrowAsia through CPSA (Cambodia Partnership for Sustainable Agriculture) play active roles in providing training of trainers to relevant staff in NGOs, companies and government ministries to inform on the guidelines. However, there is a need for flexibility and adaption of the guidelines, so that they can be effectively translated into the Cambodian context, even though the government has been initiating its own law and policies to promote responsible agricultural investments.

#### **4) REFLECTIONS FROM THE MEKONG REGION LAND GOVERNANCE (MRLG) PROJECT**

- The country presentations in this webinar reflect a microcosm of land issues in Southeast Asia. In particular, despite the exit from colonial control and subsequent reworking of land governance, there has been in many instances a recreation of power structures to favour centralised and elite control over the land base. More recently, this power has been applied to control flows of foreign investment into land-intensive commodities, industrial plantations and resource extraction. In this regional process of commodification, smallholders often face difficult choices. Some may adapt and benefit from new opportunities. Others face displacement from the resources upon which they depend.
- The overall focus of MRLG is to protect smallholder land tenure, and one way to do this is through the promotion of inclusive and 'do no harm' agricultural investments, under reference to the ASEAN-RAI guidelines. But how far can we rely upon voluntary guidelines? The principles will only be useful to us if they are effectively communicated and adopted in practice. A key challenge is that short, high-risk investments generally do not incentivise responsible practices. For longer term investments, it starts to be in the interests of the investors to look after the land base and the workforce. This is where companies generally start to have more visible CSR (Corporate Social Responsibility) programs.
- The ASEAN-RAI guidelines are not a new set of provisions but bring together aspects of existing work (such as VGGT and FPIC) under one framework. There is a critique that the guidelines represent little more than a box-checking exercise, and that they may be used as a means to 'greenwash' bad investments into industrial mono-cropping. However, large-scale agribusiness has reached a critical mass in Southeast Asia, and there is much momentum behind this model of production. As a result, we need to look at which tools can help us incentivise more responsible investments, and the guidelines are a useful point of reference to carry out this exercise. It is up to policymakers to place the needs of smallholders above investors, and up to investors to recognise that they depend on the same land base as smallholders.

## Notable Quotes from the Panelists

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**“TURNING LAND INTO CAPITAL HAS BEEN A KEY STRATEGY FOR ECONOMIC DEVELOPMENT IN INDONESIA, MALAYSIA AND CAMBODIA. THE INVESTMENTS INCLUDE FROM LARGE CORPORATE MINING (INDONESIA AND CAMBODIA), LOGGING AND OIL PRODUCTION (INDONESIA AND MALAYSIA) TO LARGE-SCALE LAND CONCESSIONS FOR FLEX CROPS SUCH AS SUGAR AND RUBBER IN CAMBODIA.”**

**- DANIEL HAYWARD, LAND PORTAL'S LOCAL KNOWLEDGE ENGAGEMENT COORDINATOR**

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**“THERE HAVE BEEN MANY DIFFERENT IMPACTS FROM ECONOMIC LAND CONCESSIONS (ELCS) ON LAND TENURE SECURITY FOR LOCAL COMMUNITIES IN CAMBODIA. THROUGH THE GOVERNMENT STRATEGY TO ADDRESS CONFLICTS BETWEEN AFFECTED COMMUNITIES AND INVESTORS, A CERTAIN NUMBER OF LOCAL FARMERS HAVE BEEN ABLE TO REGISTER A TITLE FOR THEIR LAND UNDER 'LEOPARD SKIN' POLICIES IN 2012-13 (KNOWN AS DIRECTIVE 001). OTHERS HAVE FOUND EMPLOYMENT IN RURAL AREAS THROUGH LAND INVESTMENT PROJECTS.”**

**- CHANSOVY NGORN, RESEARCHER AND OPERATIONS MANAGER AT THE CENTRE FOR POLICY STUDIES IN CAMBODIA**

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**“WE DO NEED TO LOOK AT NEW MODELS AND I SEE A SPACE FOR EXPLORING HOW POLY-CULTURES/ ORGANIC/ AGRO-FORESTRY MODELS COULD WORK FOR INDEPENDENT LAND OWNERS, AND OBVIOUSLY MAKING THE NUMBERS WORK FOR FUTURE INVESTORS.”**

**- REZA AZMI, EXECUTIVE DIRECTOR AND FOUNDER OF WILD ASIA, MALAYSIA**



**“OVER THE PAST 10 YEARS THERE HAS BEEN A LARGE MARKET CAMPAIGN TO IMPROVE THE SUPPLY CHAINS OF PALM OIL AND TIMBER PLANTATIONS IN INDONESIA SUPPORTED BY THE INTERNATIONAL COMMUNITY. THE INDUSTRY PARTIES INVESTING IN LAND ARE LOOKING FOR SOME REASON TO CHANGE, BUT THEY ARE MOSTLY AWARE OF THE MARKET, NOT OF THE LAW - AND THE LAW COMMONLY HAS LOWER STANDARDS (SOCIAL, ENVIRONMENTAL ETC.) THAN SOME MARKET STANDARDS. WE NEED ADVOCACY OF THESE HIGHER MARKET STANDARDS FOR THE WHOLE VALUE CHAIN AND WHICH CAN BE FOLLOWED BY THE GOVERNMENTS.”**

**- ANDIKO SUTAN MANCAYO, SENIOR SUSTAINABILITY AND HUMAN RIGHTS LAWYER IN ASM LAW OFFICE**



**“VOLUNTARY PRINCIPLES WILL ONLY BE USEFUL TO US IF THEY ARE EFFECTIVELY COMMUNICATED AND ADOPTED IN PRACTICE. A KEY CHALLENGE IS THAT SHORT, HIGH-RISK INVESTMENTS GENERALLY DO NOT INCENTIVISE RESPONSIBLE PRACTICES. FOR LONGER TERM INVESTMENTS, IT STARTS TO BE IN THE INTERESTS OF THE INVESTORS TO LOOK AFTER THE LAND BASE AND THE WORKFORCE.”**

**- ROB COLE, ADVISER ON RESPONSIBLE AGRICULTURAL INVESTMENT FOR THE MEKONG REGION LAND GOVERNANCE (MRLG) PROJECT**



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