

# LAND USE AND EXPROPRIATION IN EAST AND SOUTHEAST ASIA

## THE ROLE OF THE LAW

*Marc Spitzkatz / David Grebe*

Reflecting skyscrapers and shopping malls, multi-lane highways, massive factories and industrial complexes – China and Southeast Asia’s tiger states are becoming resolutely modern. And as their infrastructure expands, their traditional forests and agricultural landscapes of small rice paddies and fields of grain are being transformed at breathtaking speed via forest clearances, mining activities and the planting of monocultures. This progress affects the lives of millions of people, but not everyone’s life is improved. Many opportunities for sustainable development are missed and valuable natural resources go to waste because there are inadequate structures for guaranteeing the rule of law.

The modernisation and industrialisation of East and Southeast Asia have progressed on an impressive scale and at breathtaking speed.<sup>1</sup> This expansion has been largely driven by globalisation and population growth, and has had a major impact on the way land is used. In the cities, old buildings are making way for modern apartment buildings and shopping malls. At the same time, arable land on the margins of cities is being covered with houses and industrial complexes. These new areas are now surrounded by roads and railway tracks connecting the cities with the surrounding areas. It is this hinterland that often finds itself faced with even more serious changes. Ancient forests are being cleared for timber and to make way for agricultural or



Marc Spitzkatz is Head of the Konrad-Adenauer-Stiftung’s Rule of Law Program in Asia, based in Singapore.




David Grebe studies law at the University of Heidelberg. He completed an internship with the Rule of Law Program in Asia of the Konrad-Adenauer-Stiftung while studying at the National University of Singapore.

1 | Cf. Organisation for Economic Co-operation and Development (OECD), *Economic Outlook for Southeast Asia, China and India 2014. Beyond the Middle-Income Trap*, 2013, p. 2 et sqq., <http://www.oecd.org/site/seao/Pocket%20Edition%20SAEO2014.pdf> (accessed 10 Dec 2014).

mining activities. The traditional landscape of small fields is being swept away by monocultures. Palm oil plantations now cover large swathes of Malaysia and Indonesia. But the countries involved are only having limited success in using their newly-gained wealth to combat poverty and drive sustainable development.



Due to a globally increased demand for palm oil countries like Indonesia and Malaysia expanded plantations on a massive scale. Also because of deficiencies regarding rule-of-law structures this development should not be called sustainable. | Source: Mokhamad Edliadi for Center for International Forestry Research (CIFOR), flickr .

The reason for this is the lack of strong frameworks for guaranteeing the rule of law and good governance. The mechanisms and processes for changing land use vary from country to country and case to case. However, it is possible to identify some regional similarities: ownership and land use are insufficiently legally protected; the relationship between formal and informal land rights is unclear; and political decisions are made for the benefit of major agricultural projects.<sup>2</sup> This results in economic and social inequalities and ecological problems.

2 | Cf. John Cherry, "The Great Southeast Asian Land Grab. Disputes over land tenure threaten social harmony in a number of ASEAN countries", *The Diplomat*, 8 Aug 2013, <http://thediplomat.com/2013/08/the-great-southeast-asian-land-grab> (accessed 10 Dec 2014).

## CHANGES IN LAND USE

A number of developments are at the root of the socio-economic and environmental problems linked to the inadequate structures for upholding the rule of law in the affected countries.

### Increasing Investment in Farmland

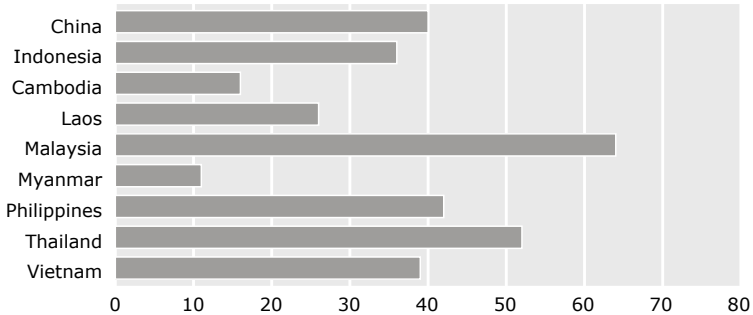
For some time now, governments and businesses have been buying up large swathes of land and changing their agricultural use. As a result the users up to then are often driven from their land. When this is done illegally or at least produces a negative social impact, it is known as land grabbing.<sup>3</sup> Foreign investment in farmland plays a major role in this respect. In global terms, such investment increased from one billion U.S. dollars between 1989 and 1991 to three billion U.S. dollars between 2005 and 2007. The liberal economic policies of the emerging economies mean that they now claim a much larger proportion of this total foreign direct investment than the industrialised nations.<sup>4</sup> In Southeast Asia, this particularly affects Indonesia, Cambodia, Laos and the Philippines. This is due to their limited agricultural productivity and to the fact that their democracies are less entrenched, with weak rule of law and various shortcomings in terms of governance.<sup>5</sup>

**Foreign investment in farmland in Southeast Asia particularly affects Indonesia, Cambodia, Laos and the Philippines.**

- 3 | The phrase is used in a number of ways, but increasingly it no longer differentiates between foreign and domestic actors. Cf. Saturnino M. Borras Jr./Jennifer C. Franco, *Political Dynamics of Land-Grabbing in Southeast Asia: Understanding Europe's Role*, Amsterdam, Transnational Institute, 2011, p. 21, <http://tni.org/files/download/Political%20Dynamics%20of%20Land-grabbing%20in%20Southeast%20Asia.pdf> (accessed 10 Dec 2014). It is important to note that not all investments in farmland deserve a negative connotation.
- 4 | Cf. Roel R. Ravanera/Vanessa Gorra, *Commercial pressures on land in Asia: An overview*, Rome, International Land Coalition, 2011, p. 8, [http://landcoalition.org/sites/default/files/publication/909/RAVANERA\\_Asia\\_web\\_11.03.11.pdf](http://landcoalition.org/sites/default/files/publication/909/RAVANERA_Asia_web_11.03.11.pdf) (accessed 16 Dec 2014).
- 5 | Cf. German Federal Ministry for Economic Cooperation and Development (BMZ), development policy position on land grabbing, *BMZ-Diskurs*, 014, 8/2009, p. 3; Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Themen-dienst: Land Grabbing, 1 Sep 2011, Eschborn, p. 4.

Fig. 1

**Worldwide Governance Indicators: Rule of Law 2013, percentile rank**



Percentile rank indicates the rank of all countries and 0 corresponds to lowest rank.

Source: The World Bank "Worldwide Governance Indicators", <http://info.worldbank.org/governance/wgi/index.aspx> (accessed 11 Dec 2014). For methodological notes see Daniel Kaufmann/Aart Kraay/Massimo Mastruzzi, "The Worldwide Governance Indicators: Methodology and Analytical Issues", World Bank Policy Research Working Paper No. 5430, Sep 2010, <http://ssrn.com/abstract=1682130> (accessed 11 Dec 2014).

Olivier De Schutter, the UN Special Rapporteur on the Right to Food, comments: "Developing countries in general [...] are particularly targeted because of the perception that there is plenty of land available, because [...] climate is favorable to the production of crops, because the local labour is inexpensive, and because the land is still relatively cheap."<sup>6</sup> The exact scale of major investment in farmland in Asia remains unclear because reliable information is lacking.<sup>7</sup> Due to the high degree of speculation and level of secrecy in the negotiations, it cannot be ascertained whether even those reported in the media have actually

6 | Olivier De Schutter, "Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge", 11 Jun 2009, p. 3, <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf> (accessed 10 Dec 2014).

7 | "[...] the lack of reliable information has made it difficult to understand what has been actually happening". Klaus Deininger u.a., "Rising Global Interest in Farmland. Can It Yield Sustainable and Equitable Benefits?", Washington D.C., The World Bank, 2011, <http://siteresources.worldbank.org/DEC/Resources/Rising-Global-Interest-in-Farmland.pdf> (accessed 10 Dec 2014).

taken place.<sup>8</sup> Many global studies have been carried out on land grabbing, but there are very few detailed studies on regional and national land acquisition in Asia.<sup>9</sup>

Table 1

**Agriculture in Southeast Asia and China**

	Arable farmland as share of total area		Added value of agriculture as share of GDP		Farmland in hectare		Employees in agriculture as share of total employment	
	2000	2012	2000	2012	2000	2012	2000	2012*
China	55.60	54.80	15.06	10.08	0.09	0.08	50.00	34.80
Cambodia	27.02	32.60	37.84	35.56	0.30	0.28	73.70	51.00
Indonesia	26.04	31.19	15.60	14.5	0.10	0.09	45.30	35.09
Laos	8.02	10.69	45.17	27.98	0.17	0.21	—	—
Malaysia	21.37	23.59	8.59	10.05	0.04	0.03	18.40	12.60
Myanmar	16.54	19.28	57.24	—	0.20	0.2	—	—
Philippines	37.68	41.57	13.97	11.84	0.06	0.05	37.10	32.20
Thailand	38.82	42.79	9.02	12.27	0.25	0.24	48.80	39.60
Vietnam	28.23	34.97	22.73	19.67	0.08	0.07	65.30	47.40

\* For China data from 2011, for Laos and Myanmar no data available.

Source: World Bank, fig. 1.

### **Scarcity of Farmland and Growing Demand for Food and Fuel**

One of the socio-economic reasons for investing in farmland is its scarcity resulting from accelerating urbanisation. Moreover, climate change is having a negative effect on agricultural productivity while the demand for food increases due to growing populations. The energy/food/financial crisis which resulted in the doubling of world market prices for food and the collapse of the real estate markets in 2007 fuelled this trend and made farmland

8 | Cf. Roz-b. Guzmann, "Global Land Grabbing. Eroding Food Sovereignty", *Turning Point*, no. 12/2010, p. 14, [http://panap.net/sites/default/files/TurningPoint\\_GlobalLandGrabbing.pdf](http://panap.net/sites/default/files/TurningPoint_GlobalLandGrabbing.pdf) (accessed 10 Dec 2014).

9 | Cf. Ravanera/Gorra, n. 4, p. 2.

**Import-dependent countries such as the Philippines and Malaysia were particularly affected by soaring rice prices in 2007 and 2008 due to the financial crisis.**

even more attractive to public and private investors.<sup>10</sup> Import-dependent countries such as the Philippines and Malaysia were particularly affected by soaring rice prices in 2007 and 2008. The situation was exacerbated by export restrictions imposed by the world's largest rice exporters, India, Thailand and Vietnam. In the wake of the crisis, the Chinese government negotiated a number of investment projects in the area of food production with Myanmar, the Philippines, Laos and Kazakhstan. These countries were offered technological expertise and infrastructure developments in exchange for farmland.<sup>11</sup>

Another factor that works in favor of investing in farmland is the growing demand for fuel. Biofuels play an important role in the energy supply of Asian countries that have no access to fossil fuels, or which, like China, have huge energy demands that necessitate the exploitation of every possible energy resource. Biofuels are also increasingly in demand in industrialised countries such as Germany in the wake of policies to promote alternative and renewable energy sources. For example, China has the highest production targets in Asia, at ten million megatonnes of bioethanol and two million megatonnes of biodiesel by 2020. This has a massive impact on land use in other Asian emerging economies.<sup>12</sup>

### **Urbanisation and Industrialisation**

Changes in land use and expropriations are also occurring as a result of the rapid march of industrialisation and urbanisation in the region, particularly in China. Increased migration from rural areas is leading to an ever-growing urban sprawl. Large areas of land that were formerly used for agriculture are now being turned over to the construction of residential and industrial zones. According to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), the urban population of the

10 | Cf. GIZ, n. 5, p. 1.

11 | Cf. Ravanera/Gorra, n. 4, p. 12; GRAIN, "Seized: The 2008 landgrab for food and financial security", *Grain Briefing*, 24 Oct 2008, p. 3, <http://grain.org/article/entries/93-seized-the-2008-landgrab-for-food-and-financial-security.pdf> (accessed 10 Dec 2014).

12 | Cf. Ravanera/Gorra, n. 4, p. 16.

Asia-Pacific region stood at 754 million in 2010, reflecting a 34 per cent increase in urbanisation. The UN estimates that this will reach 50 per cent by 2016. Most of this growth will occur in the emerging economies.<sup>13</sup>



Fish farming is an expanding economy in the Philippines. In order to prepare the shore for aquacultures vast mangroves are cleared (often illegally). | Source: Westly R. Rosario, WorldFish, flickr ©11111.

### Raw Materials Production

Investment in mining, water supplies and logging are the main reasons for large-scale acquisitions of land. For example, mangrove forests and foreshores in the Philippines are increasingly used for fish farming. This had been preceded by illegal clearances for timber. Fish farming has become the local population's main industry and is generally unregulated.<sup>14</sup> According to local NGOs, Indonesia's forests are not always cleared with a view to planting palm oil plantations. Instead, investors often simply sell the timber and then leave the land unused.<sup>15</sup> All over the region there are signs of mining activity – huge opencast projects run by national or international conglomerates, such as the

13 | Cf. United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), "Factsheet: Urbanization Trends in Asia and the Pacific", 6 Nov 2013, <http://unescap.org/sites/default/files/SPPS-Factsheet-urbanization-v5.pdf> (accessed 10 Dec 2014).

14 | Cf. Ravanera/Gorra, n. 4, p. 18.

15 | Cf. *ibid.*

Freeport gold mine in West-Papua, are “supplemented” by the illegal operations of small local companies.

### **THE LEGAL DIMENSION – LAND RIGHTS, EXPROPRIATION AND COMPENSATION**

The legal dimension of these briefly outlined processes varies and is, in regional terms, remarkably diverse. This is partly due to the region’s different legal traditions, which have in the recent past been influenced by the legal systems of other countries (for example that of the UK and the U.S. in Malaysia and the Philippines, and that of continental Europe in Indonesia and Thailand) and by communist legal systems (as in China and Vietnam).

**Land ownership rights form a part of constitutional rights and fundamental liberties, but they are often affected by changes in land use.**

The planning and approval process includes administrative acts, in which concerned parties can participate, as well as the judicial review of administrative decisions. Of fundamental relevance are acts infringing the constitutional right to property, frequently caused by a change in land use.<sup>16</sup> Problems with registering land titles and “deals” between governments and investors are two factors that have a major impact on the rule of law.<sup>17</sup>

#### **Registration of Land Titles**

In the past, land use in developing and emerging economies was mainly based on customary law. Some of these rights have never been written down, making it difficult for local farmers to defend themselves against the public or private purchase of their land. This is particularly the case for many indigenous peoples in the region, who are still hunter-gatherers or subsistence farmers using slash-and-burn methods. For them, it is crucial that their unofficial land/land use rights are guaranteed. It should be

16 | The tensions that exist between land rights, expropriations and compensation was the subject of a conference organised by the Asia Rule of Law Program of the Konrad-Adenauer-Stiftung e.V. in April 2014 entitled “Appropriate Expropriation? Securing Land and Property rights in South-East Asia”, see <http://kas.de/rspa/en/events/58329> (accessed 15 Dec 2014). The author’s comments in this respect are based on the results of this conference. Unfortunately it is not possible to look in detail at the legal characteristics of the different countries of ASEAN and East Asia in this report.

17 | Cf. Cherry, n. 2.



emphasised that most Asian countries have laws or constitutional clauses that prevent large-scale acquisitions of land by foreigners.<sup>18</sup> So it is easy to underestimate the role of the state as mediator and “dispossessor” in order to facilitate large economic projects that are often funded by foreign investors. On top of this, the land in question is often officially public land, even if people are living on it.

### **Deals between Governments and Investors**

The main investors in farmland come from East Asia (China, South Korea and Japan), as they have a pressing need to meet soaring domestic demand for raw materials and food. These countries and Singapore also often provide the capital for the construction of shopping malls, residential complexes and infrastructure projects. Next come Arab countries such as Bahrain, Libya, Kuwait, Qatar and Saudi Arabia, which have limited freshwater and agricultural resources. In addition, oil companies from the industrialised West are trying to purchase farmland to grow maize, sugar cane and oilseed crops in order to guarantee future energy supplies that are not oil-dependent.<sup>19</sup>

Another important factor is the regional flow of investment between the emerging economies of and in the Global South. They make up almost 50 per cent of total investment volumes in South Asia, East Asia and Southeast Asia. Investment by emerging economies is growing rapidly and in future will exceed the rates of the developed nations.<sup>20</sup> **Investment by emerging economies is growing rapidly and will exceed the rates of the developed nations in the future.** The main agricultural investors in the region are Malaysia’s Sime Darby Berhad, the world’s largest palm oil producer; Charoen Pokphand Foods Public Company from Thailand, which is investing in China, India and the ASEAN countries; and Malaysia’s Kulim Berhad, which is investing in palm oil and oil-based chemicals in Indonesia.<sup>21</sup>

18 | Cf. Raul Q. Montemayor, “Overseas Farmland Investments – Boon or Bane for Farmers in Asia?”, in: Michael Kugelman/ Susan L. Levenstein (eds.), *Land Grab? The Race for the World’s Farmland*, Washington D.C., Woodrow Wilson International Center for Scholars, 2009, p. 99, [http://wilsoncenter.org/sites/default/files/ASIA\\_090629\\_Land%20Grab\\_rptFINAL.pdf](http://wilsoncenter.org/sites/default/files/ASIA_090629_Land%20Grab_rptFINAL.pdf) (accessed 10 Dec 2014).

19 | Cf. BMZ, n. 5, p. 3; GIZ, n. 5, p. 4.

20 | Cf. Ravanera/Gorra, n. 4, p. 10.

21 | Cf. *ibid.*

Not only private entities are heavily investing in farmland. They are often made by governments through their agriculture ministries, by semi-public entities such as sovereign wealth funds, and by private actors. Local policy-makers often have their own interests at heart when making deals with foreign investors or partners in joint ventures.<sup>22</sup> The Philippines Agricultural Development and Commercial Corporation (PADCC, part of the ministry of agriculture) allocates specific farmers and landowners to interested investors.<sup>23</sup> However, Asian governments rarely play an active role in the search for investors. Along with the Philippines, the governments of Cambodia (where farmland is mainly in state hands) and Indonesia (which is trying to buy nominally uninhabited land in Papua) take a similarly aggressive stance.<sup>24</sup> However, farmland that is actually uninhabited is a rare commodity in most Asian countries.<sup>25</sup> Governments also play a significant indirect role in purely private investment projects by creating conditions such as free trade agreements and bilateral investment protection treaties which promote and protect investment. The signing of these agreements often leads to changes in domestic laws.<sup>26</sup> Similar constellations arise with regard to major investments in property, infrastructure, industry and mineral extraction.

**Governments play a significant role in private investment projects by creating conditions such as free trade agreements and bilateral investment protection.**

### **Administrative Procedures and Legal Protection**

This context makes it particularly difficult to apply administrative law and to guarantee judicial review of administrative decisions needed for the approval of these kinds

22 | Cf. BMZ, n. 5, p. 3; GIZ, n. 5, p. 5.

23 | Cf. Riza Bernabe, "Private Sector Agricultural Land Investments: Impacts on Small Men and Women Farmers and on Food Security", Oxfam Great Britain Philippines, 2010 (unpublished).

24 | Michiko Katagami, quoted in: Megan Corrarino et al., *The Involvement and Responsibilities of International Financial Institutions in Asian Farmland Investment*, Yale Law School, Apr 2011, p. 5, [http://www.law.yale.edu/International\\_Financial\\_Institutions\\_and\\_Asian\\_Farmland\\_Investment\\_Report.pdf](http://www.law.yale.edu/International_Financial_Institutions_and_Asian_Farmland_Investment_Report.pdf) (accessed 16 Dec 2014).

25 | Cf. De Schutter, n. 6, p. 3.

26 | Cf. Lorenzo Cotula, "Investment Contracts and Sustainable Development: How to make contracts for fairer and more sustainable natural resource investments", *Natural Resource Issues*, no. 20, 2010, p. 18, <http://pubs.iied.org/pdfs/17507IIED.pdf> (accessed 10 Dec 2014).

of projects. In any case, existing shortcomings – which increasingly affect implementation rather than the laws themselves – are intensified by the state’s particular economic interests (and self-interest), which can have an impact on the procedure. Lack of administrative capacity and problems with corruption mean that the interests of existing land users and environmental protection issues are either ignored or receive insufficient attention.

### **Expropriation and the Protection of Basic Rights**

The situation is similar when it comes to protecting land ownership from expropriation. Expropriation generally only meets the standards pertaining to the rule of law when the property is expropriated for the public good and adequate compensation is paid. Traditional users of the land find their legal rights are curtailed because they are not the registered owners of the land. This is made all the more difficult by the property laws that are normally applied in communist states. According to their understanding, land belongs to the state and its sub-divisions, and people are only granted the right to use the land (as is the case in China).<sup>27</sup> There are also numerous problems in terms of compensation payments, which often represent a mere fraction of the land’s market value. On the other hand, international investment protection laws often prevent the host country from having access to assets (at least those of foreign investors).<sup>28</sup>

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### **CONSEQUENCES AND RISKS**

The local population is generally only subject to national laws and therefore enjoys much lower levels of ownership protection. All too often, they are simply dispossessed and confronted with poverty, resulting in heavy economic losses and social ruin. The legal and administrative frameworks in emerging economies are often not set up to provide a safety net against such economic and social risks. People generally receive little or no compensation. This is

27 | Cf. Asian Development Bank (ADB), *Compensation and Valuation in Resettlement: Cambodia, People’s Republic of China, and India*, Rural Development Institute, Nov 2007, p. 16.

28 | Cf. Cotula, n. 26, p. 18.

partly due to the difficulty of assessing the value of goods and land because of the aforementioned lack of records.<sup>29</sup> As a result, the profits of the construction boom and the economic benefits of natural resources do not trickle down to all levels of society as much as they should. These profits also tend to be massively reduced as a result of the high cost to the economy of dealing with the socio-economic and environmental damage caused.



Agricultural activities remain one of the major sources of income in Southeast Asia. But more and more farmers have to make room for large-scale farms. Searching for alternative employment might turn out difficult. | Source: Dani Bradford, International Food Policy Research Institute (IFPRI), flickr ©①③③.

### **Rural Populations**

From a development policy perspective, investment in farmland can lead to intensified conflict over land, increased migration from rural areas, and the resettlement or eviction of local people. Foreign acquisitions can pose a real threat to stability and peace in countries where there legal security is lacking and where corruption is widespread and property laws fragile.<sup>30</sup> The goals of agricultural investment are problematic, as they tend to revolve around the production of biofuels and food for the markets of the investors' countries of origin. So the only value created in the

29 | Cf. ADB, n. 27, p. 3.

30 | Cf. BMZ, n. 5, p. 3; GIZ, n. 5, p. 8.

producer country is restricted to producing raw materials.<sup>31</sup> Large-scale land-grabs make it more difficult for countries to produce food for local markets. This affects price levels and employment in these countries. If foreign investment drives out production for domestic consumption and this is not compensated for by additional purchases for the market, then the local population's food security might be at risk if they are producing food for export.<sup>32</sup>

Local farmers may also face marginalisation if they lose their livelihoods. It is assumed that agricultural investment creates jobs.

**The wages in large-scale food production are between ten to 50 per cent of what small farmers earned previously.**

However, in reality it can lead to unemployment because of the increase in mechanised production methods.<sup>33</sup> The wages in large-scale food production are between ten to 50 per cent of what small farmers earned previously.<sup>34</sup> The use of machinery, pesticides and fertilisers means less labour is needed for each unit of land. But no new jobs are created in processing or selling the goods that are produced.<sup>35</sup> The World Bank estimates that to date only 21 per cent of land investments carried out between 2003 and 2008 are being used. After the drop in food prices on the world markets, follow-up investments were no longer considered to be urgently needed. No new job opportunities were created. But the land has been set aside for future needs, so it cannot be used.<sup>36</sup> Along with the potential of sparking social conflicts, capital-intensive agriculture also generates ecological risks because of forest clearances, the expansion of industrial plantations and the over-exploitation of water resources.<sup>37</sup> Investment projects are generally located on land that is relatively well supplied with water, meaning that local small farmers no longer have access to the resources they need. They are

31 | Cf. Helmut Goeser, "Land Grabbing. Ursachen, Wirkungen, Handlungsbedarf", Deutscher Bundestag, Wissenschaftliche Dienste, WD 5-3010-204/11, 21 Nov 2011, p. 10, [https://bundestag.de/blob/192332/e135367c9c5de7bbfd987adda71c606/land\\_grabbing-data.pdf](https://bundestag.de/blob/192332/e135367c9c5de7bbfd987adda71c606/land_grabbing-data.pdf) (accessed 10 Dec 2014).

32 | Cf. BMZ, n. 5, p. 3; GIZ, n. 5, p. 8.

33 | Cf. GIZ, n. 5, p. 2.

34 | Cf. Goeser, n. 31, p. 10.

35 | Cf. *ibid.*

36 | Cf. *ibid.*

37 | Cf. GIZ, n. 5, p. 2.

then forced to move into forested areas, to the damage of the environment.<sup>38</sup>



The illegal but tolerated occupation of land by the people is called squatting. In many cases, squatters had lost their land due to lacking land titles. In Cambodia, this phenomenon is also a result of an insufficient poverty reduction. | Source: Leo Fung, flickr ©📷

Another phenomenon that goes largely unmentioned when discussing the negative effects of agricultural activity is the radical transformation of nature into land for growing crops, grazing or settlement as a result of the illegal – but to some extent tolerated – activities of squatters on publicly-owned land. This phenomenon is also to blame for much of the illegal logging that is observed in Cambodia, Indonesia, the Philippines and Thailand.<sup>39</sup> This is a consequence of inadequate action to fight poverty and a lack of state protection for public land, including nature reserves. It intensifies the effects of land grabbing, i.e. driving small farmers from the land they have traditionally worked.


38 | Cf. Goeser, n. 31, p. 10.

39 | According to the online magazine *Mongabay*, over 100,000 farmers are squatting in a Sumatran national park and growing coffee. Cf. Jeremy Hance, "Over 100,000 farmers squatting in Sumatran park to grow coffee", *Mongabay.com*, 06 Nov 2012, <http://news.mongabay.com/2012/1106-hance-squatters-bukit-barisan.html> (accessed 10 Dec 2014).

## Urban Populations

Similarly, urban populations do not always benefit from urban development projects, which are usually conceived for well-off customers – whether it is residential complexes or shopping malls. The poorer members of society are often driven out of cheap housing in the cities and, as is the case in China, resettled in satellite towns miles away from the city. This may improve their living standards, but the social impact can be very negative, particularly when older people are uprooted from their familiar surroundings.<sup>40</sup>



Opaque award procedures and “deals” regarding large-scale industrial and mining projects are one reason for land conflicts. The local population tries to organise protests like here in Myanmar in 2012 where the operation of a copper mine caused an uproar. | Source: Jason Eppink, flickr ©.

## Industrial Complexes and Mining

The main risk associated with industrial zoning and mining is the lack of consideration given to environmental protection. This can harm the health of the local population and lead to significant collateral damage to the ecosystem, to

40 | Cf. Sophie Lee, “Landnahme in China: Tod des brennenden Bauern”, *Spiegel Online*, 21 Feb 2013, <http://spiegel.de/wirtschaft/soziales/landnahme-in-china-a-884154.html> (accessed 10 Dec 2014).

the detriment of water supplies and agricultural production. Such projects often cause opposition amongst the local population and civil society organisations, as is the case with Myanmar's controversial copper mining project.<sup>41</sup>

### **THE RULE OF LAW AND SUSTAINABLE DEVELOPMENT**

In conclusion,<sup>42</sup> shortcomings in the rule of law with regard to approval procedures and expropriations favour an imbalance in investment decisions, which have only limited benefits in overall economic terms. This is because of the inadequate application of mechanisms for monitoring, assessing and protecting basic rights. Firstly, the separation of power in the form of departmental responsibilities in public institutions such as ministries and specialist bodies is not sufficiently clear. And secondly, the authorities responsible for issuing permits fail to adequately weigh all the issues involved. This is often reflected in their procedures, with decisions often being made without official consultation and simply presented as a *fait accompli*. In addition, shortcomings in terms of procedures and assessments are often not successfully highlighted in legal terms. The lack of judicial independence is a factor in this respect, ranging from inadequate levels of professionalism to structural dependence to sheer corruption. And as previously mentioned, ownership rights in many countries are so vague that they present no serious obstacles. Finally, in many places the media is not allowed to report critically about projects or potential court proceedings. Journalists in countries such as the Philippines and Cambodia lead dangerous lives. Just recently, a Cambodian journalist who was investigating illegal logging was found shot dead.<sup>43</sup> Such cases result in decisions that only serve specific economic and social interests while contributing nothing to sustainable development in the long term.

41 | Cf. Khin Pyae, "Authorities Open Fire on Myanmar Copper Mine Protesters", *Radio Free Asia*, 15 Nov 2013, <http://rfa.org/english/news/myanmar/mine-11152013160128.html> (accessed 10 Dec 2014).

42 | Also the outcome of the conference on "Appropriate Expropriation? Securing Land and Property Rights in South-East Asia", n. 16.

43 | Cf. Reporters Without Borders, "Reporter Shot Dead While Investigating Illegal Logging", 13 Nov 2014, <http://en.rsf.org/cambodia-reporter-shot-dead-while-13-10-2014,47099.html> (accessed 10 Dec 2014).