

# National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia

## Brief #3 of 8: Kingdom of Thailand

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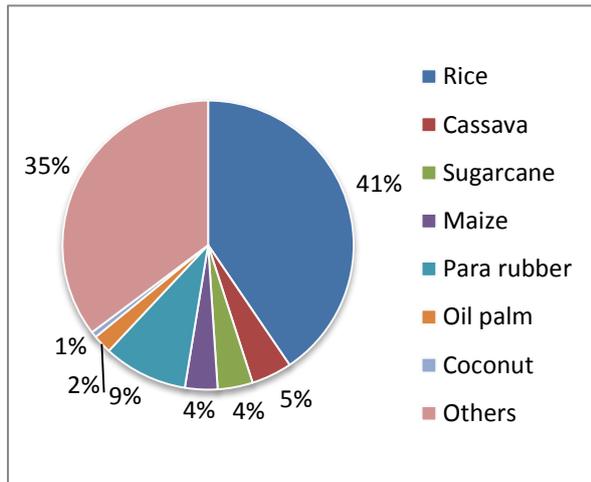
### Introduction

Thailand has a strong agricultural sector and is a leading producer and exporter of rice, rubber, cassava, sugar, poultry and seafood. Currently around 8.6% of the Thai GDP comes from agriculture whereas 38.2% of the labour force is employed in the agricultural sector. With an estimated GDP per capita of USD 10,000, 8.1% of the population is estimated to live below the poverty line. However, rural poverty has reduced drastically over the last 20 years. Large shares of the remaining poor inhabit rural areas, such as the Northeastern and the Northern regions of the country. Inequality in the country is high and Thailand ranks 12<sup>th</sup> in the list of countries with the highest Gini index.<sup>1</sup>

Thailand has one of the lowest official rates of unemployment in the world and its economy depends on the influx of cheap labour from neighboring countries. Making up approximately 10% of the total workforce, 2.5 million migrant workers are reported to be employed in Thailand,<sup>23</sup> of which over 80% are reported to come from Myanmar.<sup>4</sup>

A large majority of the agricultural land in Thailand is used for rice cultivation. Figure 1 gives an overview of the use of agricultural land for the main crops grown.

Figure 1: Utilisation of agricultural land per crop in Thailand (Source: author's own diagram, based on OAE 2013)



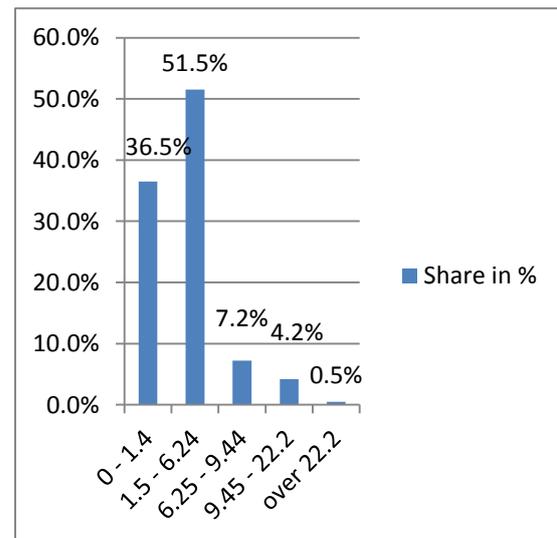
### National trends in Large Scale Land Acquisitions in Thailand

Impressive growth in agricultural production in Thailand during the 1960s to the 1990s has mainly been achieved through area expansion by deforestation and infrastructure development. 28% of Thailand's forest area was lost between 1976 and 1989.<sup>56</sup> Since then, the area of forestland has been slightly increasing according to government figures. More than 50% of the remaining forestland in Thailand is located in the Northern Region of the country.<sup>7</sup> In response to environmental problems arising from continuous deforestation, and triggered by a major flood in the Southern Region of Thailand, a logging ban was put in place in 1989. The Thai National Forest Policy of 1985 aims to maintain a share of 40% of the land resources to be under forest, whereby 25% are to be kept as protected forest and 15% as production forest. The ban on logging did slow down deforestation but could not fully stop it and encroachment into protected forests for agricultural purposes as well as property development remain a serious concern in Thailand as numerous news reports confirm.<sup>8</sup>

The vast majority of landholdings in Thailand are small in size. Information

about ownership of land and the size of land holdings differs between different sources. In the latest agricultural census (2001) almost 95% of land holdings are reported to be smaller than 59 rai<sup>9</sup> or less than 10 ha. Figure 2 gives an overview of the size of landholdings in Thailand according to the Agricultural Census of 2001.

Figure 2: Distribution of landholdings / size (ha) (Source: author's own diagram, based on Agricultural Census 2001)



More than 85% of all landholdings are smaller than 39 rai or less than 6.2 ha.<sup>10</sup> The Land Reform Network of Thailand reports that 90% of the population in Thailand own less than 1 rai (0.16 ha) of land and only 10% own more than 100 rai (16 ha).<sup>11</sup> Other reports state that 87% of the privately owned land parcels are smaller than one hectare.<sup>12</sup>

The ever growing demand in agricultural products for food as well as for energy and industrial usage is driven by countries strongly dependent on imports for their food supply as well as by the interest of investors, speculating with high returns from investing in agricultural land. This trend emerged during the World Food Crisis in 2007/2008 when food prices rose to record highs, and manifested during the following years of volatile but high food

prices. Thailand has received public interest from investors, mainly governments from the Gulf countries, as a source of supply of food for their populations.<sup>13</sup>

The issue of foreigners buying farmland in Thailand has become a cause of public concern and rumours of such a trend abound, particularly after announcements that the Thai government had set artificially high market prices for rice through its price-pledging policy. This policy, implemented by the government of Yingluck Shinawatra has recently been extended until February 2014 to sustain the support of farmers for the current political party. The concern is that foreign companies would try to take advantage of the policy by investing in farmland for rice production in Thailand.

Although foreigners in Thailand are not allowed to own or rent land for agricultural or livestock production under the Foreign Business Act of 1999 they can invest in land by using Thai nominees. The violation of this regulation is a serious concern for the Thai government and is being actively investigated and monitored. Professional companies engaged in promoting this kind of business model, particularly for the property sector, are well established in Thailand. The Department of Special Investigation has started to investigate in certain provinces where rumours exist about foreign ownership in agricultural land. However, so far no evidence has been found of foreigners illegally owning farm land.<sup>14</sup>

No official data on large-scale land acquisition over the past two years could be found for this study, although sources suggested that acquiring large areas of land for plantations in Thailand is extremely difficult for companies because of the limited availability of unoccupied land.<sup>15</sup> Barney refers to the pulp and paper industry when concluding that recent developments “indicate that the allocation

of large-scale concessions to plantation companies in Thailand is now nearly impossible”.<sup>16</sup> The Land Matrix, an online database on land deals, does not report any land deals by foreigners in the agricultural sector in Thailand. Three deals by Thai companies or research institutes are reported and combined cover an area of less than 30,000 ha. This includes the allocation of lands to the Nong Khai Oil Research Center for oil palm development, 240 ha of land under the Kasetsart University and Viengsa Agricultural Cooperative for jatropha as well as an investment by Charoen Pokphand over 672 ha for oil palm. No further information is available on how the land has been obtained, what rights are held over the land by the acquiring parties or whether any conflicts with other rightholders have occurred.

The Land Matrix however reports an increasing number of outgoing investments in agriculture by Thai companies. Six investments by Thai companies in Cambodia and seven in Laos are recorded. They range in size from several hundred hectares to up to 10,000 ha in the case of Thailand’s biggest sugar producer which bought land for sugarcane cultivation in Laos. Investments target agricultural land for sugarcane, cassava, rubber or coffee production.<sup>17</sup> Further reports confirm that Thai companies are growing as investors in the agricultural sector in the region. In Laos, for instance, Thailand has become the third largest investor (as of 2011).<sup>18</sup>

Investments in Cambodia recently led to complaints about the violation of human rights by subsidiaries of a major Thai sugar producer which obtained a number of large scale Economic Land Concessions for sugarcane cultivation in Cambodia.<sup>19</sup> The same company received a 10,000 ha land concession in Laos in 2009. A major Thai energy conglomerate invested in 20,000 ha of oil palm plantations in Indonesia and has plans to expand this area

to 200,000 ha. They also plan expansion into Myanmar, Cambodia and Papua New Guinea. The aim of this company is to increase their oil palm plantations to 500,000 ha by 2020. The palm oil produced on those plantations is destined for biodiesel production and the chemical industry.<sup>20</sup>

Table 1 shows some of the largest Thai companies engaged in agriculture per sector. The size of companies varies significantly with Charoen Pokphand Foods being the biggest player overall. Mitr Phol Group is Thailand’s biggest producer of sugar. Sri Trang Rubber is the largest fully integrated rubber producer in the world. Information on how much land the respective companies control is not always accessible. The Plantheon Group is reported to manage 100,000 rai (16,000 ha) of land for the cultivation several agricultural products. United Palm Oil is the biggest listed company owning oil palm estates with a total area of 7,244 ha combining seven company estates.

Table 1: Major companies in agricultural production

Sector	Major players	Main export markets
<b>Rice</b>	Soon Hua Seng Group, Capital Rice Group	Nigeria, South Africa,
<b>Animal Feed</b>	Charoen Pokphand Foods, Betagro Group	
<b>Poultry</b>	Charoen Pokphand Foods, Betagro Group, GFPT	
<b>Rubber</b>	Thai Rubber Latex, Sri- Trang Agro Industry, Thai Forest Industry Organisation	China, Malaysia, Japan, USA
<b>Palm Oil</b>	United Palm Oil Industry, Univanich Palm Oil, Vichitbhan Palm Oil,	EU, Malaysia

	Suksomboon Palm Oil, Chumporn Palm Oil Industry	
<b>Cassava</b>	Soon Hua Seng Group	China
<b>Sugar</b>	Mitr Phol, Khon Khaen Sugar Industry, Khonburi Sugar, Plantheon Group, Thai Roong Ruang Sugar Group	Indonesia, China

### Problems with land acquisition

Land rights are determined by a complex set of regulations in Thailand and regulated by fourteen different departments from the Ministry of Interior and the Ministry of Agriculture and Cooperatives. Broadly, land in Thailand can be classified in three categories which are State land, undocumented land and private land. State land covers forest land, government real estate as well as public land. Undocumented land refers to forest land that has been encroached upon and where limited land titles have been given to the respective beneficiaries for private agricultural activities, community self-help projects or cooperative settlement. Private land covers a number of possible forms of tenure, ranging from full ownership to temporary possession and communal land.

Broadly speaking, three types of land rights can be distinguished. These are full private property, conditional private property and rights to occupy and use land.<sup>21</sup> A large number of different land titles are associated with these different types of land rights. The only full land ownership title deed is called “Chanot” (or NS-4J). NS-3 and NS-3K are ownership titles that prove that a certain area of land has been put to use by a person. No restrictions of use apply under those titles.

And they can be converted to a Chanot title. The right for temporary land occupation is documented in the land titles STK-1 or NS 2. Land which this user claims can be handed over only through inheritance. For government land that has been encroached and is privately cultivated, user right claims can be made to the ALRO or the Royal Forestry Department which hand out the SPK-401 or STK-1 respectively. Land with such claims is in general restricted to agricultural use and cannot be sold. A number of further land titles with slight distinction in rights and conditions do exist.<sup>22</sup>

40% of the land area in Thailand is currently classified as private land. This is the result of the efficient and fast issuing of land titles under a World Bank programme (1980 to 1995) which however did not come without its social and economic tradeoffs. Reports claim that the fast proceeding of land titling has been abused by rich elites to gain access to land which in fact has been used by local communities. Often the land has been obtained for speculative purposes or to be used as collateral for bank loans instead of putting it to agricultural production.<sup>23</sup>

Using the corruption perception index and the index of economic freedom (Heritage Foundation) as indicators, governance in land tenure in Thailand is considered amongst the best in the region. Comparing Thailand's land administration system with those of other countries, Thailand ranks best with regards to security of land tenure and the role of private or customary land allocation as compared to State land. Equality in the distribution of land use rights is high compared to its non-socialist regional peers like Indonesia, the Philippines and Cambodia.<sup>24</sup> The rights of local and traditional economies to participate in natural resource management and the duty of the State to seek participation is part of the 1997 Constitution. Implementation into practice

however has been lacking and a new Constitution is in place since the military coup in 2007. The 2007 Constitution still points out the importance of the inclusion of stakeholders in decision-making processes.<sup>25</sup>

A large amount of agricultural land in Thailand remains in the possession of small-scale farmers.<sup>26</sup> However, pilot studies in rice producing provinces in Thailand have shown that security of landownership, expressed by a full land ownership title (Chanot) correlate with the size of the land, whereby small farmers have less access to secure land ownership. Land concentration also increased between 1963 and 1993, while the share of land under rental contracts increased threefold.<sup>27</sup> In the Agricultural Land Reform Act of 1975, the Agricultural Land Reform Office (ALRO) was established. It is currently responsible for almost six million ha of land in Thailand. Although large shares of cultivated land are owned by smallholders, overall land distribution is extremely unequal as 10% of the population own 90% of the arable land available, according to a newspaper report.<sup>28</sup> While a small number of people own land in abundance, 1.3 million are reported to not own any land at all and for another 1.6 million the land they own is not enough to make a living.<sup>29</sup>

The Agricultural Land Reform in Thailand is not based on the confiscation of land from private owners to be redistributed to poor or landless families. Rather, it strives towards the recognition of user rights of farmers who have encroached land classified as forest land in order to provide them with secure tenure rights. Efforts to re-allocate land from government authorities to landless farmers have raised concerns in some cases about resulting land conflicts because often the concerned land is already claimed by local communities. Local communities fear that

wealthy individuals could take advantage of the redistribution process to get hold of the land as has happened in previous land distribution projects.<sup>30</sup>

Poor and indigenous communities are frequently located on public land rather than on privately owned land and that is where problems in land administration are most intense. To resolve land conflicts between the State and local communities over public land, the Public Land Encroachment Committee (PLEC) was established in 1992. Representation at the provincial level has been put in place since 2002 to monitor the encroachment of public land and to ensure that efforts of the different responsible government authorities are integrated. The capacities of the PLEC to deal with the numerous claims which have accumulated over time are however limited and complainants often approach the Thai Human Rights Commission instead, although the Commission primarily channels those complaints back to the PLEC.<sup>31</sup>

Although the land registry system of Thailand is relatively advanced, confusion arises due to a number of different government agencies' involvement, the use of different types of maps and scales, and conflicting reference coordinates. The complexity of the legal and judicial system and loopholes given to powerful individuals to abuse legislation has been at the disadvantage of the poor as reported in several cases.<sup>32</sup>

### **Human rights concerns related to Large Scale Land Acquisition**

It appears from existing sources that the main human rights concerns in Thailand are not related to large-scale land acquisitions. Rather, the focus of human rights organisations in Thailand has been on the governments' interventions in the violent conflict in its most Southern provinces, political violence during the red shirt protests in 2010, freedom of

expression, as well as the treatment of refugees from Myanmar. Concerns have also been expressed about the conditions of migrant workers, mainly in the garment, fishing and shrimp sectors. Child labour has also been reported in sugar-cane production.<sup>33</sup> Of main concern are the working conditions of the more than two million migrant workers from Cambodia, Laos and Myanmar in Thailand. Instances of forced and child labour have been reported in food processing factories.<sup>34</sup> No reports particularly referring to labour conditions in agricultural production could be found.<sup>35</sup>

However, ongoing land conflicts in Thailand do exist between different parties, often involving local communities, smallholder farmers, indigenous peoples, government agencies as well as the private sector. These conflicts can be related to land acquisition and the problems of land tenure governance outlined above. Most commonly conflicts occur between local people and the State, namely the Treasury Department and the Defense Ministry.<sup>36</sup> One example are the efforts of the 'Land Reform Network for the Poor of the Southern Region' to halt the extension of land concessions over some 30,000 ha to private companies and instead to distribute the land to landless community members. The Network also claims that concession beneficiaries are encroaching into protected areas and has established a task force to monitor their activities.<sup>37</sup>

Recently, the Royal Forestry Department (RFD) announced plans to reallocate 146,480 rai (23,437 ha) in five Southern Provinces of expired concessions given to private companies under the Forestry Reserve Act (1964) to landless farmers for the establishment of community forests. Further concessions which are due to expire will not be extended according to the RFD. This move comes late, as some concessions have expired since decades and unclarity over the land use rights has already led to conflicts between local

communities and plantation companies. Ten conflicts are reported to be ongoing in Surathani and Krabi Province at the time of writing.<sup>38</sup>

One case of human rights abuses resulting directly from land acquisition has been recorded and has received significant national and international attention from human rights organisations. In that particular case, land reform beneficiaries were involved in a conflict with a local oil palm company over the land given to them by the ALRO. Although the ALRO successfully sued the company over the encroachment of the land, and the Cabinet decided to allow further use of the land by the community, the dispute is ongoing and currently pending at the high court. Legal cases have also been filed by the oil palm company against Members of the Southern Peasants' Federation of Thailand (SPFT), a civil society organisation supporting the Khlong Sai Pattana community in their struggle. Since then, violence and threats against the community have continued and three killings are said to have resulted in relation to the conflict.<sup>39</sup>

### **Human rights framework as it applies to agribusinesses**

Thailand has ratified 15 ILO conventions, including the core conventions C.100 on Equal Remuneration, C.138 on Minimum Age and C.182 on Worst Forms of Child Labor.<sup>40</sup> Expropriation of land for agricultural development requires timely and fair compensation to land owners as mentioned in Article 42 of the Constitution. It is now necessary for the State to formulate and implement national legislation to ensure alignment with Thailand's international human rights obligations as committed to in its Universal Periodic Review (UPR) of 2011.

The UPR also underlined Thailand's commitment to enhancing the protection of human rights of migrant workers and

increasing efforts to fight human trafficking.<sup>41</sup>

In addition, Thailand supported an initiative within the UN to develop a declaration on the rights of peasants and other people working in rural areas. In September 2012 Thailand voted for the adoption of the UD resolution A/HRC/21/L23 on the Promotion of the human rights of peasants and other people working in rural areas.<sup>42</sup> However, Thailand is not a signatory to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>43</sup> Although Thailand is a member of ILO and committed to ensure Fundamental Principles and Rights at Work, minimum wages and working time regulations do not apply to the agricultural sector.<sup>44</sup>

During the United Nations General Assembly in 2007, Thailand voted in favour of the Declaration of the Rights of Indigenous Peoples (UNDRIP) and is hence obliged to respect this instrument. UNDRIP, however, has not been integrated in national legislation and the identity of the indigenous peoples of Thailand is not recognised in the Constitution of 2007.

A number of environmental conservation laws also threaten the rights of indigenous peoples in Thailand and have led to numerous conflicts between the State and local communities, who often depend on protected areas for their livelihoods. Human rights violations include the eviction of indigenous people from a National Park in 2011. The Community Forest Act of 2007 is further criticised by civil society organisations and indigenous representatives for its exclusion of forest communities' rights. To date, the Thai government has failed in addressing this issue and in making the necessary adjustments to the relevant legal framework. A regulation on community land titling was passed in 2010 to address

longstanding conflicts with communities on public land. The regulation however has serious shortcomings as it excludes protected areas and its implementation is lacking.<sup>45</sup> The Human Rights Commission of Thailand supports indigenous peoples in claiming their rights through the judicial system.<sup>46</sup>

## Conclusions

Transparency of land ownership and land transactions in farmland in Thailand is limited. The direct investment of foreigners in Thai agribusiness or land is prohibited by law and implementation is monitored by state agencies. No reports on large scale land acquisition by agribusinesses in recent years could be obtained for this report and Thailand's agricultural sector appears to remain largely based on small-scale farming.

Nevertheless, access to land is limited for many and at the same time powerful elites own large amounts of land, often for speculation and without bringing them to full agricultural utilisation. Rich and powerful elites taking advantage of land distribution programmes and the complicated legal framework on land property rights in Thailand has been a source of concern in the past. In response to these problems, land reform to address this problem and improve the access to land for landless households has been requested by a network of civil society organisations.<sup>47</sup> Land related conflicts in Thailand are common but seem to occur mainly between local communities and the State.

Thai agribusiness has a strong orientation on export and biofuel crops which does impact local livelihoods and, through increased food prices resulting from export and biofuel-oriented agricultural development, potentially threaten the food security of the most vulnerable households who still lack adequate access to food.<sup>48</sup>

Environmental impacts and encroachment by agribusinesses as well as by small farmers also remain concerns in Thailand. Despite obvious efforts, it has been difficult for the Thai government to hold the respective companies or individuals to account for their actions. Ambiguity over property rights and a lack of streamlining of the work of relevant government agencies exacerbates these problems.

Increasingly, Thai agribusiness companies are becoming key investors in agriculture in other countries of Southeast Asia. In some cases, these Thai companies have reportedly violated human rights through large-scale land acquisition. Such cases have been brought forward to the Thai Human Rights Commission and Thai companies are engaging in a process to solve conflicts. This shows that the Thai government has an increasing responsibility to ensure that Thai companies fulfill their human rights obligations in foreign countries.

Finally, labour laws need to be made applicable to the farming sector. It is important that the conditions of migrant labourers in agribusiness operations be investigated by the State, and as well as the conditions of the numerous smallholders across the country, as well as to hold companies accountable for the abuse of human rights where these occur.

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## Endnotes

<sup>1</sup> This index measures the degree of inequality in the distribution of family income in a country.

<sup>2</sup> Wallace 2013.

<sup>3</sup> CIA 2013.

<sup>4</sup> Vartiali et al 2013.

<sup>5</sup> Krasachat 2002.

<sup>6</sup> Cropper et al 1996.

<sup>7</sup> OAE 2012.

<sup>8</sup> Thiwatsirikul et al 2012. Sarnsamak 2011; Duangsathaporn 2010.

<sup>9</sup> One hectare equals 6.25 rai.

<sup>10</sup> NSO 2003.

<sup>11</sup> Lasimbang and Luithui: 22.

<sup>12</sup> Nabangchang and Srisawalak 2008.

<sup>13</sup> Spender 2009.

<sup>14</sup> Pratuangkrai and Pongvutitham 2012a.

<sup>15</sup> Barney 2005.

<sup>16</sup> Barney 2004.

<sup>17</sup> C.f. Land Matrix Beta.

<sup>18</sup> Pratuangkrai and Pongvutitham 2012, Bangkok Post 2010, Vientiane Times 2011.

<sup>19</sup> Equitable Cambodia 2013.

<sup>20</sup> Thongrung 2012.

<sup>21</sup> Nabangchang and Srisawalak 2008.

<sup>22</sup> Lasimbang and Luithui w.y.. and <http://www.samuiforsale.com/knowledge/thailand-land-title-deeds.html#8>

<sup>23</sup> Lasimbang and Luithui w.y..

<sup>24</sup> Childress 2004.

<sup>25</sup> Nabangchang and Srisawalak 2008.

<sup>26</sup> The share of smallholders in area planted with rubber is estimated at 95% and for oil palm approximately 75%.

<sup>27</sup> Phelinas 2002.

- <sup>28</sup> Bangkok Post 2011.  
<sup>29</sup> Samranjit 2007.  
<sup>30</sup> Bangkok Post 2008.  
<sup>31</sup> Nabangchang and Srisawalak 2008.  
<sup>32</sup> Ibid.  
<sup>33</sup> Phasuk 2012; Amnesty International 2013;  
Human Rights Watch 2013.  
<sup>34</sup> Vartiala et al 2013: 3 ff.  
<sup>35</sup> It should be noted that the sources consulted  
for this briefing were in English only.  
<sup>36</sup> Bangkok Post 2008.  
<sup>37</sup> Nabangchang and Srisawalak 2008.  
<sup>38</sup> Sarnsamak & Saengpassa 2012.  
<sup>39</sup> FIDH 2012.  
<sup>40</sup> ILO (nd).  
<sup>41</sup> UPR Info 2012; UNPAF 2011.  
<sup>42</sup> La Via Campesina 2012 ; Mann 2011.  
<sup>43</sup> Vartiala et.al. 2013: 4.  
<sup>44</sup> Ibid.  
<sup>45</sup> Rattanakrajangsri 2011.  
<sup>46</sup> NIPT 2010.  
<sup>47</sup> Nabangchang and Srisawalak 2008.  
<sup>48</sup> Isvalanonder 2011.