

CDE POLICY BRIEF



Photo: Michael B. Dwyer

The formalization fix? Land titling and land concessions in Cambodia

Issuing land titles to smallholder farmers has long been embraced as a way to promote lending and land markets, but is increasingly being reframed as a way to protect smallholders from irresponsible agricultural investment. This brief examines the case of Cambodia, where over the last decade extensive land titling efforts have occurred alongside a wave of large-scale land concessions. The problem, however, is that titling has failed to live up to the rhetoric of systematic coverage, and has often focused on areas where tenure was already relatively secure. Areas outside the titling zone, in contrast, have become formalized de facto through the process of granting land concessions to investors. This undermines pro-poor development significantly.

For over half a decade, civil society concerns have been growing about the spate of land grabbing in low-income countries by an unholy alliance of local elites, government policies, and transnational investors. Land titling is increasingly being promoted as a way to encourage “responsible” agricultural investment by enhancing vulnerable communities’ land tenure. The FAO, World Bank, and others, in a widely read 2010 policy paper, suggested that

“countrywide systematic” land registration could help safeguard smallholders against the global rush for “available” land.¹

The devil, however, is in the details. *How*, and especially *where*, property rights are formalized has a major impact on titling’s ability to protect smallholders. Should titles be communal or individual? Should they be saleable or inalienable? Should they be issued systematically across entire

KEY MESSAGES

- Formal land titling is often called upon to enhance smallholder tenure. But in practice it frequently emphasizes other priorities, such as credit access, land tax collection, and creation and regulation of land markets. It is essential that titling projects acknowledge and address these trade-offs.
- Titling efforts often cover much smaller areas than assumed. Their locations and extent should be made more transparent, and used as a basis for public dialogue about how to balance competing priorities.
- In the absence of smallholder-friendly formalization efforts, large-scale land concessions have played a major role in formalizing rural property rights *in favour of the state*. Pro-smallholder mechanisms for planning, titling, and land allocation exist, but they currently face significant hurdles.



The research featured here is focused on Cambodia.

Featured research

This brief is based on interviews, field-based ethnography in Cambodia, and document analysis conducted in 2011 and 2013. The Center for Khmer Studies, the Land Deal Politics Initiative, and the Centre for Development and Environment all provided guidance, funding, and/or material support.

communities, or only sporadically upon request to wealthier landholders? Should they focus on towns or farmland? Be precisely mapped or not? And so on. Each of these choices speaks to particular aims. Yet the relationship between goals and methods is often imperfectly understood.

This brief examines one set of choices – location – in Cambodia, a national context where enough data exists to study the trade-offs between different approaches at the sub-national scale. Since the 1990s, international donors have supported “systematic” titling efforts across the global South. At first glance, these projects seem to target the places where they are needed most, namely countries in Southeast Asia and Sub-Saharan Africa under increasing pressure from large-scale land deals. But upon closer look, these efforts are not as systematic as they appear. The unevenness of titling, in turn, is affording much less protection to smallholders than might be expected.

Titling and concessions show a clear lack of overlap – by design

Land titling serves many aims, including enhancement and regulation of land markets; improvement of land tax collection; facilitation of lending (by collateralizing land), and improvement of smallholder and community tenure. Although many titling programmes aspire to several ob-

jectives simultaneously, the trade-offs between them are not always made obvious; tenure enhancement in particular often takes a back seat. Frequently the trade-offs are masked by a rhetoric of achieving multiple aims, and a lack of public data makes it hard to assess what is actually going on – and where.

Cambodia is an exception: spatially precise data on both land titling and concessions is publicly available. While the reasons might be counterintuitive – the country’s major land titling project became much more transparent when its funders sought to distance themselves from land conflicts in their general project areas³ – the results are important. When combined with spatial data on land concessions collected by the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), World Bank data shows that land titling and land concessions have overlapped very little (Figure 1). While the government has recently started granting titles to residents within putative concession areas – largely out of fear of being seen as sympathetic to land grabbing in the 2013 elections⁴ – the basic pattern shown in Figure 1 still prevails (Dwyer 2015).

This marked separation of titling and concessions is due to several factors.

Avoidance of “potentially disputed” areas:

Observers of land titling across Southeast Asia have long pointed out that projects often expressly avoid areas considered “contested”.^{5,6} In the name of capacity building, Cambodia’s titling project initially avoided areas where disputes were likely;⁷ it was launched in densely populated places where people’s tenure was already secure, allegedly because it would be most likely to succeed there.⁸ But even as capacity improved, titling efforts continued to avoid potentially contested areas (Adler and So 2012).⁹

Deference to other (larger) economic interests:

One reason for titling’s persistent avoidance of “potentially contested” areas is the perceived need to accommodate competing interests. As the geographer Robin Biddulph notes, provincial governors are the ones who decide where titling actually takes place *within* a given province. In doing so, they function as what he calls “a decentralized safety valve” for making strategic choices “on the basis of the sorts of vested interests and networks that order the economic development of contem-

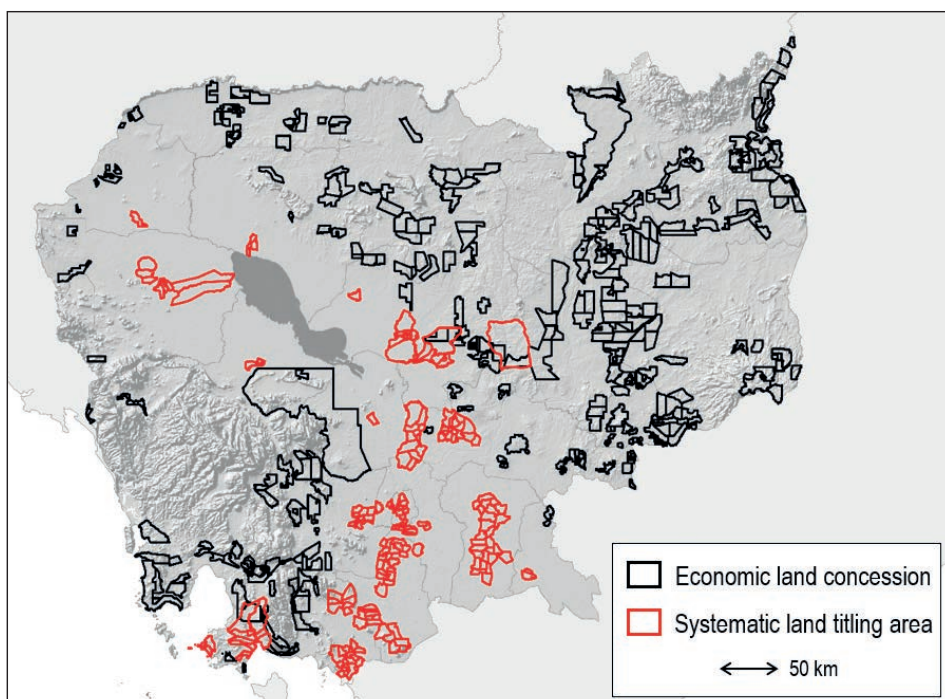


Figure 1. Land titling and economic land concessions in Cambodia. (Figure by the author using data from LICADHO [pers. comm. 2012] and the World Bank [2011].².)

porary Cambodia".¹⁰ These interests and networks comprise Cambodia's version of *neo-patrimonialism*, a system of rule wherein well-connected business elites use quasi-legal mechanisms to pursue their own economic interests. While essentially private and often in conflict with small-scale livelihoods, these interests can nonetheless be portrayed as development.¹¹

Internal incentives: Last but certainly not least, titling projects often pay their employees on the basis of the number of titles issued or the area of land covered.¹² This creates strong incentives to choose densely occupied and uncontested areas – both at the plot and at the community scale – where the titling can be done quickly.^{13,14}

Other pro-poor formalization schemes have been slow to materialize

In parallel to the individual titling described above, several other formalization efforts were rolled out in the early 2000s. Four of these – communal land titling, social land concessions, commune-scale land use planning, and the demarcation of state land – aimed to protect vulnerable communities' land access, especially in less-populated parts of the country. Results have been disappointing.

Communal land titling: In addition to individual titling, Cambodia's 2001 Land Law allows for communal land titles. But it restricts these to indigenous communities, thus excluding the majority of Cambodians (many of whom practise communal management, e.g. of pasture lands). Moreover, those communities that *do* qualify must navigate a lengthy bureaucratic process to obtain official classification as indigenous.¹⁵ As of late 2014, these restrictions had limited the number of titles issued to the single digits.¹⁶

Social land concessions: Also introduced in the 2001 Land Law, these provide a mechanism for granting land to landless and land-poor families "to establish residences for themselves and/or to develop subsistence cultivation".¹⁷ But as with communal titles, results have been constrained by a mix of bureaucracy and competing priorities. After seven years of work, a foreign advisor close to the process wrote that "99% of the distributed [state] land was handed over in long-term leases of up to 99 years to national and international investors to the detriment of the rural poor, who got only a 1% share".¹⁸

Commune land use planning: This was piloted as part of donor-funded efforts to promote decentralization and de-concentration, and was formalized in a 2009 prime-ministerial sub-decree. While not intended as a form of land allocation or tenure formalization, it seeks to document existing land uses and, in the process, "tie land use planning in with the broader commune level planning process [and] provide a basis for discussions between citizens and various levels of government".¹⁹ Unfortunately, it has not been widely implemented.

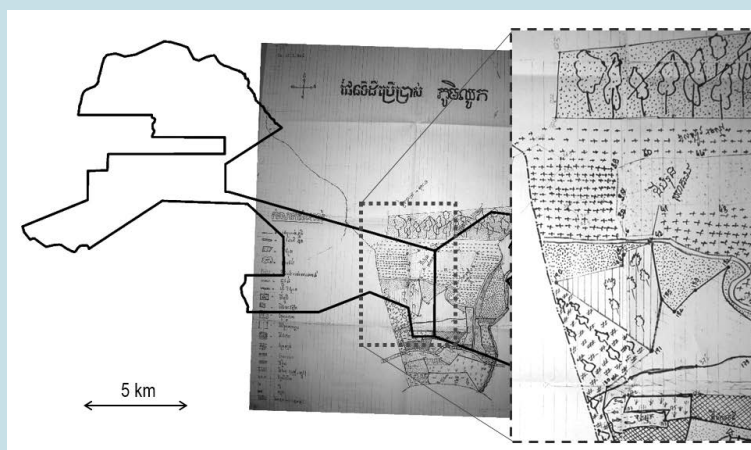
Formalization of state land: The World Bank-led titling project mentioned above initially included a component aimed at formally inventorying state land assets. This would have prevented the now-standard practice of formalizing state landholdings *in the act of granting concessions*.²⁰ Unfortunately, this component fell prey to the "political-economic context" in which the project was operating,²¹ and was only minimally implemented.²² In its absence, estimates of state land are likely inflated. Many in the policy arena continue to accept the figure that 80% of Cambodia's countryside is state land, despite significant flaws in the data on which this (decades old) figure is based.²³

Concessions have formalized the countryside by default

Because of these shortcomings, many hinterland areas have been formalized by default via land concessions. This is particularly apparent in high-profile concession cases where concessions compete with – and often trump – untitled smallholder land uses (see Box 1). More broadly, though, it illustrates the combined failure of smallholder titling efforts and other formalization schemes to move more widely into the Cambodian countryside. As a result, the rural hinterland remains largely unmapped in terms of its legal ownership, and concessions remain the primary vehicle for creating geographically specific ownership in many parts of the country.^{24,25} This is hardly the formalization fix that pro-poor advocates of land titling had in mind.

Box 1. Koh Kong sugar concessions

One of Cambodia's most infamous land concessions is a pair of sugar plantations located west of the titling zone in southern Koh Kong province. Developed by an influential Cambodian businessman with Thai and Taiwanese associates, these concessions – producing sugar for export to Europe under the EU's "Everything But Arms" trade provision – have attracted attention because of their detrimental impact on local communities. While claimed legally as state land, significant parts of the plantation areas had been used by local communities. Their use had been carefully documented via the Commune Land Use Planning process (see below). While CLUP was not intended to allocate property rights, the evidence it provided – overlaid with the black polygons of the sugar project's concession area – vividly illustrates how "state" land is often not empty.²⁶



Source: CLUP map: Chi Kha Leu Commune, 'Village Scale Commune Land Use Planning map' (2006).²⁷ Concession polygons extracted from the data set shown in Figure 1.

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Policy implications of research

Promote spatial transparency to help navigate complex trade-offs

Greater transparency about both land titling and concessions is needed to help concerned communities and policymakers navigate important trade-offs. Having good data – about where, how, and when titling has occurred – is essential to meaningful debates. Similarly, making the concession survey process more transparent, both by publicly gazetting proposed concession locations and by being clear about criteria for available land, could help make concession development efforts more compatible with existing smallholder land uses.

Create public dialogue

As well as working for transparency, governments and multilateral agencies should facilitate more inclusive dialogue about the social goals of land titling. Titling efforts have long favoured access to credit, tax collection, and the creation and regulation of land markets. As tenure enhancement becomes an increasingly significant priority, should these other goals be demoted? Should other approaches to tenure – or credit, or taxes, or land market regulation – be pursued? These issues demand open and well-informed debate between civil society, policymakers, affected communities, and funders.²⁸

Focus on areas and people at risk

If titling activities are intended to strengthen tenure, they should focus on areas and people at greatest risk. This might require steering pro-tenure interventions like titling (whether communal or otherwise) and commune land use planning to areas where concessions are tentatively planned, but where detailed surveying has yet to occur.

Extend legal and policy-level tenure protections to untitled land users

Meanwhile, consider affording policy-level protection to landholders who physically occupy land, even if they do not have legal title. To avoid conflict, some developers now use material possession as a basis for recognizing local entitlements. Making this more widespread could help eliminate the perverse incentives of mitigating conflict on a concession-by-concession basis.²⁹

Measure impacts, not titles issued

If meant to enhance tenure, titling campaigns require metrics that accurately reflect that aim. "Impact" in such a context would mean safeguarding vulnerable land users' access to resources, and might draw on conflict- rather than area-based indicators.

Suggested further reading

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