

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-

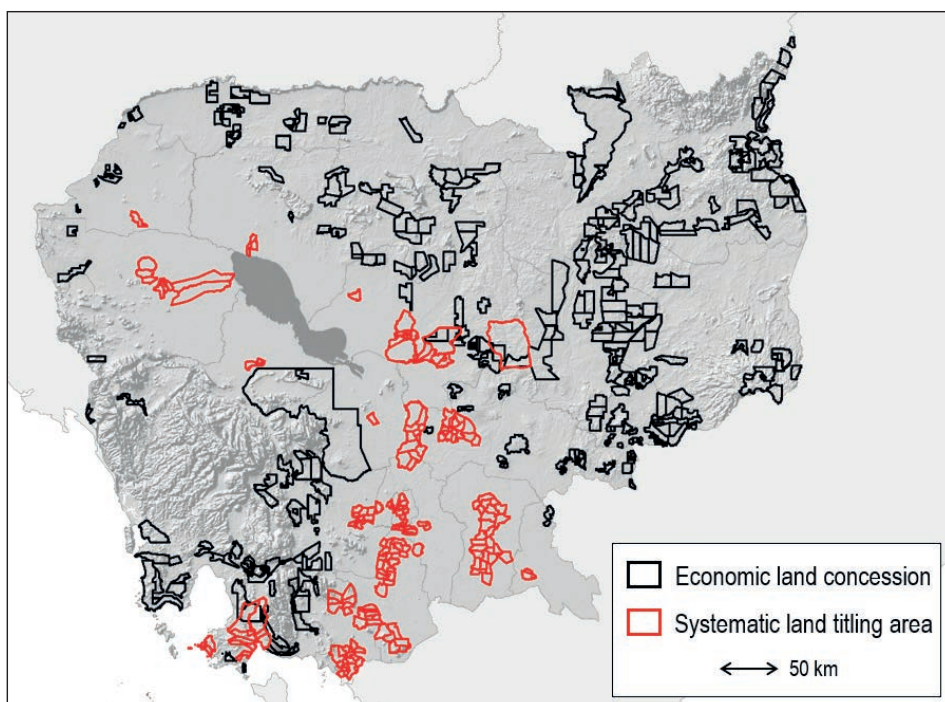


Figure 1. Land titling and economic land concessions in Cambodia. (Figure by the author using data from LICADHO [pers. comm. 2012] and the World Bank [2011].².)

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.

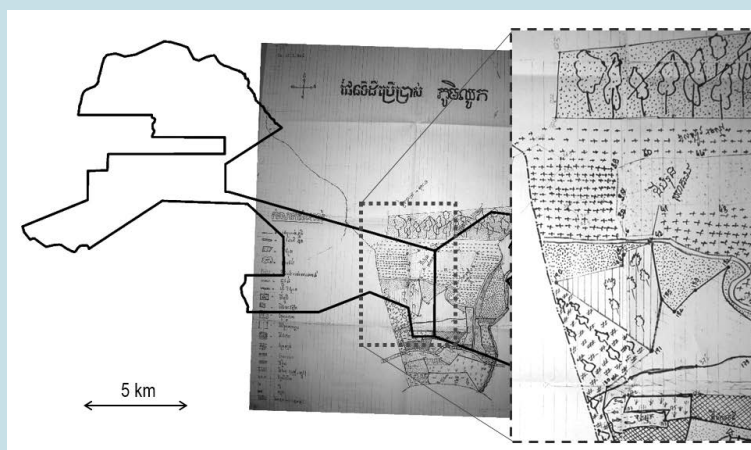
Formalization of state land: The World Bank-led titling project mentioned above initially included a component aimed at formally inventorying state land assets. This would have prevented the now-standard practice of formalizing state landholdings *in the act of granting concessions*.²⁰ Unfortunately, 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.

Michael B. Dwyer, PhD
Postdoctoral Fellow
Center for International Forestry Research (CIFOR)
Bogor, Indonesia
Associate Researcher
Centre for Development and Environment (CDE)
University of Bern, Switzerland
dwyerdwyer@gmail.com



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

Adler D, So S. 2012. Reflections on legal pluralism in Cambodia: Towards equity in development when the law is not the law. In: Sage C, Tamanaha B, Woolcock M, eds. *Legal Pluralism and Development Policy: Dialogues for Success*. Cambridge University Press.

Biddulph R. 2011. Tenure security interventions in Cambodia: Testing Bebbington's approach to development geography. *Geografiska Annaler: Series B, Human Geography* 93(3):223–236. DOI:10.1111/j.1468-0467.2011.00374.x

Dwyer M. 2015. The formalization fix? Land titling, land concessions and the politics of spatial transparency in Cambodia. *The Journal of Peasant Studies*. <http://dx.doi.org/10.1080/03066150.2014.994510>

Lohr D. 2012. Land reforms and the tragedy of the anticommons: A case study from Cambodia. *Sustainability* 4:773–793. DOI:10.3390/su4040773

Centre for Development and Environment (CDE)
University of Bern
Hallerstrasse 10
3012 Bern
Switzerland
www.cde.unibe.ch

This issue

Series editor: Anu Lannen

Editors: Paul Mundy, Anu Lannen

Design: Simone Kummer

Printed by Varicolor AG, Bern



ISSN 2296-8687

The views expressed in this policy brief belong to the author(s) concerned and do not necessarily reflect those of CDE as a whole, the University of Bern, or any associated institutions/individuals.

Citation: Dwyer M. 2015. *The Formalization Fix? Land Titling and Land Concessions in Cambodia*. CDE Policy Brief, No. 4. Bern, Switzerland: CDE.

Keywords: land titling, land concessions, state land, property formalization, Cambodia, spatial transparency

CDE policy briefs provide useful, timely research findings on important development issues. The series offers accessible, policy-relevant information on topics such as global change, innovations, sustainable development, natural resources, ecosystem services, governance, livelihoods, and disparities. The briefs and other CDE resources are available at: www.cde.unibe.ch

References and notes

- ¹FAO, IFAD, UNCTAD, World Bank Group. 2010. *Principles for Responsible Agricultural Investment That Respects Rights, Livelihoods and Resources (Extended Version): A Discussion Note Prepared by FAO, IFAD, UNCTAD and The World Bank Group to Contribute to an Ongoing Global Dialogue*. 25 January. http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf
- ²The black polygons are communes where titling occurred under the World Bank's Land Management and Administration Project (LMAP), and were extracted by M. Dwyer from a World Bank map published here: <http://ewebapps.worldbank.org/apps/ip/PanelCases/60-Management%20Report%20and%20Recommendations%20Map%201.pdf>
- ³Dwyer M. 2015 [citation in Suggested further reading].
- ⁴Milne S. 2014. Under the leopard's skin: Land commodification and the dilemmas of indigenous communal title in upland Cambodia. *Asia Pacific Viewpoint* 54(3): 323–339.
- ⁵Biddulph R. 2010. *Geographies of Evasion: The Development Industry and Property Rights Interventions in Early 21st Century Cambodia* [Doctoral dissertation]. Gothenburg, Sweden: University of Gothenburg.
- ⁶Grimsditch M, Henderson N. 2009. *Untitled: Tenure insecurity and inequality in the Cambodian land sector. Bridges Across Borders Southeast Asia*. Phnom Penh and Geneva: Centre on Housing Rights and Evictions, and Jesuit Refugee Service.
- ⁷World Bank. 2002. Project Appraisal Document, Land Management and Administration Project, Report No: 22869-KH, 29 January. Quote from page 24.
- ⁸Sovann, quoted in Biddulph R. 2010. *op. cit.*, page 98.
- ⁹Adler and So. 2012 [citation in Suggested further reading].
- ¹⁰Biddulph 2010, *op cit.* page 99.
- ¹¹Hughes C. 2007. Transnational networks, international organizations and political participation in Cambodia: Human rights, labour rights and common rights. *Democratization* 14:834-852; LICADHO [Cambodian League for the Promotion and Defense of Human Rights]. 2009. *Land grabbing and poverty in Cambodia: The myth of development*. Phnom Penh, Cambodia: LICADHO; Cock A. 2010. External actors and the relative autonomy of the ruling elite in post-UNTAC Cambodia. *Journal of Southeast Asian Studies* 41:241–265; Un K and So S. 2011. Land rights in Cambodia: How neo-patrimonial politics restricts land policy reform. *Pacific Affairs* 84:289–308.
- ¹²Interview with land administration staff, August 2011.
- ¹³Hirsch P. 2011. *Titling against grabbing? Critiques and conundrums around land formalisation in Southeast Asia*. Paper presented at International Conference on Global Land Grabbing, April 2011.
- ¹⁴Ballard B. 2010. *Land titling in Cambodia: Procedural and administrative exclusions*. Paper presented at the RCSD International Conference on 'Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives', 13-15 May 2010, Chiang Mai, Thailand. Available online at http://rcsd.soc.cmu.ac.th/InterConf/paper/paperpdf1_497.pdf.
- ¹⁵Baird IG. 2013, 'Indigenous Peoples' and land: Comparing communal land titling and its implications in Cambodia and Laos. *Asia Pacific Viewpoint* 54:269–281. DOI: 10.1111/apv.12034
- ¹⁶Mark Grimsditch, pers. comm. Nov. 2014.
- ¹⁷Land Law (2001), art. 53.
- ¹⁸Müller F-V. 2012. *Commune-based land allocation for poverty reduction in Cambodia: Achievements and lessons learned from the project: Land Allocation for Social and Economic Development (LASED)*. Paper prepared for presentation at the Annual World Bank Conference on Land and Poverty, Washington DC, April 23–26, page 4.
- ¹⁹Adler D, Ironside J, Ratanak M. 2009. *Mapping and tenure security in Cambodia's indigenous communities*. Phnom Penh: Heinrich Böll Stiftung Cambodia, page 24.
- ²⁰See Dwyer M. 2015. *Trying to follow the money: Possibilities and limits of investor transparency in Southeast Asia's rush for 'available' land*. CIFOR Working Paper 177, available online: <http://www.cifor.org/library/5535/trying-to-follow-the-money-possibilities-and-limits-of-investor-transparency-in-southeast-asias-rush-for-available-land/>

References and notes cont.

²¹World Bank Inspection Panel (WBIP). 2010. Investigation report: Cambodia: Land Management and Administration Project (Credit No. 3650 – KH). Report No. 58016–KH. 23 November. Available online at: <http://go.worldbank.org/IUTVJ7CXG0>. Page xx.

²²Grimsditch & Henderson 2009, *op. cit.*, pages 56-64.

²³Chan S, Tep S, Sarthi A. 2001. *Land tenure in Cambodia: A data update*. CDRI Working Paper 19, Phnom Penh. See also: Dwyer 2015 [citation in Suggested further reading] for discussion.

²⁴Royal Government of Cambodia. 2007. Circular 02. On Measures against Illegal Holding of State Land. Phnom Penh, 26 February.

²⁵Sar S. 2010. *Land Reform in Cambodia*. FIG Congress Paper. Available online: http://www.fig.net/pub/fig2010/papers/ts07j%5Cts07j_sovann_4633.pdf

²⁶For more on Koh Kong concessions see: Bridges Across Borders Southeast Asia. 2010. *Bittersweet: A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia*. Phnom Penh, Cambodia: BABSEA; Danish Church Aid. 2011. *Stolen land, stolen future: A report on land grabbing in Cambodia and Honduras*. Copenhagen, Denmark: Danish Church Aid.

²⁷CLUP map. 2006. Chi Kha Leu Commune, '[Village Scale] Commune Land Use Planning map.' From anonymous source, Phnom Penh.

²⁸See also: De Schutter O. 2010. *Access to Land and the Right to Food*. Report of the Special Rapporteur on the right to food presented at the 65th General Assembly of the United Nations [A/65/281], 21 October 2010. http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf

²⁹Dwyer M, Polack E, and So S. "'Better-practice' concessions: Lessons from Cambodia's Leopard Skin landscape." Revision under review for *International Development Policy/Revue Internationale de Politique de Développement*.