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# Titling against grabbing? Critiques and conundrums around land formalisation in Southeast Asia

By Philip Hirsch

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## **Titling against grabbing? Critiques and conundrums around land formalisation in Southeast Asia:**

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### **Abstract**

Debates and critiques around land policy often focus on the neo-liberal agenda of formalising land as alienable property, most notably through land titling schemes. Sometimes these schemes are posited against alternatives such as land reform and community land holding under common property arrangements. Claims and counter-claims are made for land titling as a means to boost smallholder security in the face of involuntary or otherwise unfair alienation of land – sometimes under the rubric of “land grabbing”.

This paper problematises the ways in which assertions are made on behalf of land titling, critiques are constructed against formalised title in land, and debates are framed in the context of land grabbing. A diverse range of perspectives on land titling in Southeast Asia reveals not only contrary positions, but also lines of argument that talk past each other as often as they engage with one another. Underlying this rather unsatisfactory way in which an important policy arena is discussed at both academic and societal levels is a set of conundrums based as much in internal contradictions and dilemmas as in clear alternatives between different land policy approaches.

The paper draws on land titling experience in several Southeast Asian countries to illustrate these conundrums and the ways in which land titling is understood by different actors vis-a-vis issues of security of tenure. It begins by outlining the land titling programs and their place within wider land policy and land politics in different countries. It discusses the commonalities associated with a particular approach to land titling supported by the international development establishment, and it sets this against the quite different historical, societal and political contexts in each country in which the approach has been applied. The paper then goes on to identify a range of positions on titling articulated by various actors, linking them where relevant to land grabbing instances and discourses. Problematic positions of advocates and critics of land titling are then discussed, and the paper concludes by calling for debates on land formalisation as alienable property that are more clearly aligned around some key questions relevant to land grabbing.

### **Introduction**

The global land grab is associated with the related phenomena of rising land values and rising commodity prices of food, energy and fibre whose production is land-based. Locally, land grabbing takes many forms and is normally associated with a

lack of security faced by smallholders in the face of more powerful non-local interests employing various means to usurp rights to land previously owned or used by locals. This lack of security may be due to absence of clear and legally enforceable rights over landed property, or to tenancy arrangements that allow landlords to resume land, or to state claims to ownership of land under de facto occupation or use by local smallholders who face alienation in favour of large scale corporate interests, or to out and out theft, or to use of market power by the wealthy to acquire land from those in vulnerable economic circumstances.

With this background in mind, it may seem odd to put a question mark behind the contraposition of titling and grabbing. Surely the demarcation and granting of secure property rights in land through full and formal title is one of the means by which smallholders achieve security against the land that they own or work being grabbed by others? On the one hand, land titling has often been put forward as a means to enhance security of tenure for smallholders, and in principle therefore as a safeguard against arbitrary or violent seizure of land by state, corporate and other interests. On the other hand, the broader milieu in which land titling is situated means that it also has the potential to reduce security.

To date, critiques of land titling, robust though they are, have not been situated within the discourses on and debates over land grabbing. Similarly, land grabbing discourses and debates have failed to engage with the discussions around the programs, ideologies and institutions within which land titling is enmeshed. This paper seeks to raise questions about the role of land titling in dealing with, pre-empting, exacerbating or sidestepping the land-grabbing phenomenon. The paper draws on case studies of local, country and program experiences in Southeast Asia. It also draws on a diversity of stakeholder positions on the merits of land titling, interpolating the significance of those positions for the land grabbing discussion. The case studies and stakeholder positions are partly drawn from a panel on land titling held at the conference on *Revisiting the Agrarian Transition in Southeast Asia* held in Chiang Mai in May 2010. In addition to standard academic format panels, the conference organised several round tables that brought in practitioners, policy makers and activists around key themes, including land titling. Essentially, the paper seeks to structure the positions and case studies presented at the panel and situate them within the global land grabbing discourse.

The paper starts with a brief overview of land titling in Southeast Asia. It goes on to examine the phenomenon of land grabbing, showing that there is a partial but not full geographical overlap between the two processes. The remainder of the paper considers the extent to which the overlap places titling as an antidote to land grabbing, and the extent to which it may reinforce the problem, drawing on claims and counterclaims by different stakeholders.

## **Land titling in Southeast Asia**

Large-scale land titling projects have become core pillars of rural development policy in Southeast Asia. Neoliberal scholars and policy practitioners have made four key arguments in favour of titling. The first set of arguments focuses on the direct benefits titling promises for states: increased legibility of land relations, greater control over the conditions under which land is held, and expanded state revenues through land

taxation. The second claim is that the possession of title gives landholders a more secure hold over their property, an effect that is meant both to be directly good for landholders and to increase their incentives to make productive investments in their land (Feder and Nishio 1998). Third, because title gives landholders clear, state-recognised ownership and integrates them into national systems of land administration, it is meant to make it easier for them to sell their land, to divide it up, and to use it as collateral for loans. For de Soto, the “property effects” associated with full land title are the most powerful mechanism available for pulling the poor out of poverty, because they give them the ability more effectively to use the land assets they already hold (De Soto 2000). These individual- or household-level benefits are then aggregated at the national level by a fourth argument that views land title as a powerful motor of economic development. As smallholders with access to credit and mortgages become wealthier, and as newly-lubricated land markets transfer productive land to those who are able to use it most efficiently, growth will take off. The Australian economist Helen Hughes has gone so far as to assert that without privatisation and individualisation of land tenure, development is impossible (Hughes 2004). While these arguments are made with varying degrees of qualification (the World Bank, for instance, takes a less fundamentalist approach in recent publications (Deininger 2003), the core claim that land title can help make the poor richer has been a central motivation for land titling programs across the South. Indeed, titling programs are often framed in populist terms, and public enthusiasm for de Soto’s ideas has been expressed by Southeast Asian leaders including Gloria Macapagal-Arroyo, Susilo Bambang Yudhoyono, and Thaksin Shinawatra (Anonymous 8 November 2002; Hutchison 2008; Fauzi 2009).

Agricultural land registration in Southeast Asia commenced during colonial times. Many colonial regimes sought to attract investment in plantations by creating administrative systems that would assure European investors of the security of their claim to land. Some colonial governments also sought to ‘improve’ the lives of their subjects through the application of western conceptions of private property to their land. During the early 20th century, both the British in Malaya and the Americans in the Philippines attempted projects of this sort, though with limited success. In uncolonised Siam, too, land in some of the rice-growing areas of the Chao Phraya delta was titled. In all cases, however, the amount of titled land remained small as a percentage of agricultural land, and the bureaucratic systems that were meant to govern and keep track of titled land tended to be loosely administered. In this respect, land titling is nothing new. It was motivated primarily as a means to establish a tax base from which the colonial era states could exact revenue from the more commercialised and profitable parts of the agricultural sector.

Nevertheless, until the 1980s, only very limited sections of the cultivated land in each Southeast Asian country had been registered and titled. Most farming was done on land that had only partial, restrictive or no title. That is not to say that states were without land policies on the non-titled land. The redistributive and non-redistributive land reform agendas in Southeast Asia addressed problems of growing landlessness that arose as a result of land alienation in the face of debt, demographic growth and other factors. Land reform was in some cases – notably in North Vietnam during the 1950s – part of a revolutionary “land to the tiller” program. In southern Vietnam, in Laos in a less thoroughgoing form, and in Cambodia in a particularly extreme form, land was collectivised after 1975, so that individual ownership and utilisation of land

was temporarily phased out altogether. In other countries, land reform took on a more pre-emptive role, seeking to redress the pressures behind leftist rural unrest. From Nguyen Van Thieu's late 1960s land reform program in the Mekong Delta (Gorman 2010), to Marcos' early 1970s reform in the Philippines (Borras 2006), to Thailand's land reform program emerging from the democratic foment of the mid-1970s (Hirsch 1990; Hirsch 1992), attempts were made to find land for landless and land-short farmers. Much of then allocated land was on public forest estate that had either already been cleared by those to whom it was "allocated", or that was cleared to make way for land reform settlements. In all these cases, the allocated land was classified under restrictive title whose sale was illegal and transferability heavily circumscribed. In principle this was to "protect" the landholders from further land loss and to discourage them from on-selling the land. Land reform thus fell short of full titling.

The titling agenda really got underway with the Thai land titling program from 1984, which was the world's largest such scheme and whose model was applied or adapted elsewhere. Agricultural expansion in Thailand during the 1960s and 1970s had proceeded at such a pace that, despite a Land Code of 1954 that set out a clear progression from land claim (*bai jabjong* or NS2) to utilisation certificate (NS3) to full land title (*chanood* or NS4), the proportion of titled land was actually declining as opening up of new land outstripped the ability of a poorly resourced and technically limited Department of Lands under the Ministry of Interior to keep up. At the rate at which land was being titled in 1984, it would have taken 200 years to give full *chanood* land title on all agricultural land even if there had been no further expansion. The response to this was a World Bank loan project that drew on Australian technical assistance resourced by a grant from AusAID that paid for the surveying arm of the Australian mining giant BHP to train surveyors and land administrators at the Department of Lands and establish a cadastral system that streamlined the land surveying and registration process. By 1998 some 19 million titles had been issued under the program, up from 4 million at its start, out of a total of 26 million private land plots in Thailand. So successful was it in its own terms that it received the World Bank's highest award of excellence. The BHP surveying arm split off from its parent corporation and established a company to specialise in providing land titling services in the field of international development assistance, under the name Land Equity International (LEI).

The World Bank – AusAID – LEI partnership was used as a model to establish land titling programs in several other countries in Southeast Asia and beyond, including in Africa and the Southwest Pacific where it has had to adapt to a customary land tenure framework that is fundamentally different to the Southeast Asian context. In 1997, the first phase of the Land Titling Project in Laos was set up in a country only a decade out of an isolationist, centrally planned economic framework, and moreover one where the great majority of the rural population depended on subsistence-oriented farming with limited commodity markets or credit arrangements for agricultural products, not to mention for agricultural land. In Laos, the first phase of the program therefore limited itself to peri-urban areas around Vientiane and a small number of provincial towns. Phase 2, from 2003 onward, had a more ambitious but nevertheless tentative move to title agricultural land in more fully rural areas.

The partnership has shown continuity and also been applied in the Philippines and in Java (Hutchison 2008). The Philippines Land Administration and Management

Program (LAMP) is a 25 year scheme to provide some two million landholders with titles on five million hectares. The scheme was carried out in pilot form in Leyte 2002-4 and expanded more widely through the country from 2008 onward. In Indonesia, the Land Administration Project implemented during the 1990s was initially restricted to Java, on the basis that landholding here is based on well identified boundaries and that there are existing markets in land, and later extended to Sumatra.

In Cambodia, land registration is set within a particular set of historical circumstances. After the ravages of the Khmer Rouge period, and a further period of partly collectivised production under solidarity groups (*krom saamakhi*) during the regime installed with Vietnamese assistance in 1979, individuals' historical association with land and other forms of property more or less ceased to determine rights. Land was completely re-allocated, and until the late 1990s a combination of security concerns as the civil war festered on and infestation of farmland with land mines meant that swathes of cultivable land remained off limits. As people rebuilt their lives, land was recognised essentially by usufruct, certified by local commune authorities as belonging to particular families. Even today there is little by way of a rural land market throughout much of the country. Yet land is a sought-after commodity, and in more peripheral areas large scale grabbing under economic land concessions has become a major issue. In Phnom Penh, too, up to 10 per cent of the population has been displaced by urban land grabs. The World Bank's Land Management and Administration Program (LMAP) was geared to applying the titling model to recognise usufruct and transform it into alienable title to be held – or disposed of, if owners wished, in a free market – by the de facto land holder.

In Vietnam there is no international land titling program per se. However, since 1993, a new Land Law provided for alienable leases on land in the form of the “red book” (*sổ đỏ*), with 20 year leases on land given over to annual crops and 50 year leases on land deemed suitable for perennial crops. The issuance of this fully alienable title on land that had only been properly decollectivised five years earlier represents a particularly rapid form of land titling, as some 75 per cent of households reported having received certificates within a decade (Gorman 2010).

For the main part, land titling has tended to work outward from core agricultural areas where land and its produce have been commodified for longer than in more peripheral areas. However, the programs discussed above have extended titling into the margins, and increasingly we see a geographical overlap with areas more commonly associated with land grabbing.

## **Land grabbing in Southeast Asia**

Historically, Southeast Asia has been a relatively land-rich region, particularly in comparison to its giant neighbours to the west and north. The land frontier (Hirsch 1990; Barney 2009; Hirsch 2009) was open until relatively recently in one form or another in most Southeast Asian countries, although it took quite different forms in different historical and geographical circumstances within the region. The sense, then, that there is land for the taking does not necessarily imply in a popular or policy sense that it is taken from someone.

What has changed in recent years and decades is that the land for the taking is more and more generally and demonstrably land already occupied, used or claimed by somebody else. Of course through the growing market in agricultural land, large scale land acquisition is not necessarily, or even mainly, involuntary in a strict sense. More often than not, it involves an agreed trade, albeit under circumstance in which the buyer and seller, or acquirer and relinquisher of land are in positions of very unequal negotiating and social power.

The international discourse on land grabbing that has emerged with large scale land acquisition sits more easily with some circumstances than others. In Cambodia, well connected politicians have for some time granted and have been granted economic land concessions, which are often thinly disguised clear-felling rights on land that may or may not later be planted to perennials such as rubber or cashew trees. These concessions encroach on the swidden and natural forest areas that are part of indigenous minority groups' production systems in the northeastern provinces of Ratanakiri and Mondulakiri. These are unequivocal land grabs. So too is the alienation of land around Boeung Kak Lake in central Phnom Penh, which resulted in several thousand people being evicted from their homes on land that was excised from the LMAP titling program to allow a well-connected investor to develop the land for real estate (Bugalski, Grimsditch et al. 2010) and which is described further below. Increasingly, as land has taken on higher values and as the government has encouraged foreign investment in the agricultural and resource sectors, the land grabbing has taken on new forms. In Kompong Thom province, there have been persistent reports that Kuwaiti government has done a deal to develop irrigation along the Stung Sen River in exchange for 50,000 hectares of wet rice land. It is not clear whether this land would be cleared, developed and granted to the foreign investors, whether it is land already being worked that would be transferred to them, or whether the investors would simply be given some kind of prior access to the product of that land to enhance Kuwait's food security. An investment brochure produced by the Kompong Thom governor's office with the assistance of USAID in 2008 advertises that 100,000 hectares of good agricultural land are available for as little as \$5000 to \$7000 per hectare for foreign investment (Emerging Markets Consulting 2010).

In Laos, land grabbing takes various forms and is commonly associated with the granting of land for rubber, sugar and other plantation crops to Vietnamese, Chinese and Thai investors on land that is nominally state land. Large areas of such land are in fact part of existing swidden systems, and some is also permanent farmland or areas of forest used for grazing and collection of non-timber forest products. Typically, the land deals are done at the provincial level by identifying an agreed quantity of land to be granted for the concession in a contract that is signed prior to identification of the actual area to be set aside. It is then incumbent on the provincial authorities to honour the contract by seeking out "vacant" and "degraded" state land. Typically, this is land on which agricultural land tax has not been paid, as it is common practice for tax only to be paid on land actually being cultivated in any one year. Other forms of land alienation, which may or may not be classed as land grabs, are the flooding of land for hydroelectric reservoirs, as in the case of the 45,000 hectare Nam Theun 2 reservoir, or the sequestering of both public and private land for mining concessions. Typically the compensation for such infrastructure projects is in the form of "land for land" resettlement, but almost always in more land-constrained circumstances than in the area that has been alienated.

Longer standing land grabbing in Thailand has occurred mainly on public land. The two most fraught sets of cases are those of national forest reserves where people have been threatened with eviction to make way for eucalyptus and other plantations, and national parks where the land grab has been in the name of conservation. A significant grievance in these cases is the unequal treatment of wealthier occupiers of such land for resorts and orchards compared with the poorer farmers struggling to make ends meet with annual crops such as cassava and maize. In the early 1990s, an army-led program threatened to evict up to one million families under the notorious *khon jor kor* scheme. Elsewhere, dubious conversion of public land to titled plots has given wealthy individuals alienable rights to land that is claimed by local farmers, and this has led to high profile cases such as that of Lamphun Province in northern Thailand (Samranjit 2010).

These examples of land grabbing contexts in three countries of Southeast Asia suggest that land grabbing occurs in particular where there is a degree of what Sikor and Lund refer to as a legal pluralism in land relations (Sikor and Lund 2009). That is, where there is overlap between formal and informal, capitalist and non-capitalist, administrative and customary property arrangements, land grabbing takes advantage of the unequal terrain of power relations. These ambiguities tend to occur away from longer settled, accessible and long-marketised agricultural areas. This in part explains the only partial geographical overlap between land grabbing and areas in which land titling has occurred over a longer period of time, as the latter is usually in peri-urban and core agricultural areas. However, the overlap is considerable, and it is to the links between land grabbing and titling that we now turn.

Before addressing the links between land grabbing and land titling, an important conceptual question arises with the acquisition of land by non-local interests. That is, what are the boundaries between market sales of land, land speculation and full-scale land grabbing? This arises because one of the key shifts in tenure relations afforded by land titling is the provision of secure, legally enforceable property rights in land by non-local players, often in contexts where previously a degree of enmeshment in local social relations had been requisite to securing recognised claim to land.

## **Land titling and land grabbing: claims and counterclaims**

Land titling is subject to a range of claims and counterclaims. Hutchison questions a range of claims made for land titling, showing that the key objectives of enhancing farmer willingness to invest in land-based production, their access to credit and the building of markets in land are less predicated on land titling than the programs presume or the substantial investment of aid monies may warrant (Hutchison 2008). Rather than provide a further critique of, or account of the debate over, land titling per se, the following discussion raises questions vis-à-vis land titling and its implications for land grabbing.

### ***Does title enhance security of tenure?***

An important rationale for land titling is that by demarcating boundaries, registering ownership of plots with state authorities through a land cadastre, and being able to rely on legal enforcement mechanisms, the owner of a plot of land will both feel and

be more secure in the knowledge that the piece of land cannot be arbitrarily expropriated. The former manager of the Land Titling Program in Laos states that, "...it is certain that – in Laos today – those households without title to land they occupy, or farm, or access, are vulnerable" (Lunnay 2010: 1). Where land grabbing in the form of arbitrary use of power to usurp rights to land is a prospect, this element of security may be significant. The same author reports on a review of the Land Administration Project in Indonesia, which found that 70 percent of those surveyed felt more secure on land that had been titled than they would have without title (Sumarto and Hardjono 2002: iii; Lunnay 2010: 5).

However, others question the narrow interpretation of security contained in such assertions and assessments. The presupposition that security is enhanced by titling is based on three key notions. First, it is supposed that legal security is the key factor giving smallholders the assurance and confidence that land is theirs in a permanent sense. Second, it is supposed that the main element of security in land is whether or not it can be taken away by somebody else. Third, it supposes that security over particular parcels of land does not have implications for levels of security of land that falls outside the titling system. Each of these notions has been challenged.

Many cases indicate that farmers do not feel particularly insecure against their land being "grabbed" when they rely on local, customary recognition of land tenure (Borras 2010: 3). Place-based land relations have long recognised land boundaries and rights to farm, inherit and sometimes transfer land in the absence of title. With land titling comes non-place based rules governing access to land by those who do not necessarily maintain social relations in the locality. The implications of absentee land ownership for security of livelihoods range from undermining of village-based irrigation systems, to the employment of labour from outside the locality, and so on. Further, as identified in the case of the LAMP program at Prey Nup in Cambodia, the resilience of local practices in recording land transfers and reluctance to go through the formalities can lead to dual systems of recognition, blurring where there was none before, and potentially conflict later on (Ballard 2010: 4-5). Late-1990s titling efforts in areas of Indonesia with strong customary tenure systems "created new land conflicts, largely because [they] ignored and undermined the existing social systems in place for resolving such disputes" (Hutchison 2008: 336). Similarly, a study from the Vientiane Plain in Laos found that the delocalizing aspect of land titling remained at the formalistic legal level, with pre-existing relations often taking precedence in practice in the early aftermath of the issuance of land titles (Fujita, Phengsopha et al. 2006). Such dual systems of authority and entitlements provide a basis for ambiguity and conflict, for example as fences are erected and create barriers to passage of people and livestock. The same study in Laos found women describing increasing conflicts and fuzziness, rather than clarity, based on the overlapping of incompatible *de jure* formalized and continuing *de facto* traditional inheritance practices between men and women, for example where brothers rather than widows of Hmong men were expected to take over *de facto* control of land titled formally to the deceased man and his wife.

Others point out that economic security is as important as the security of alienable ownership bestowed by land title. In the absence of land redistribution, land titling does nothing to enhance economic security. *Legal* security of tenure is not always associated with *economic* security of tenure (see, for example, Ho and Spoor 2006:

582). On the contrary, by making land alienable to outside accumulators of real estate, the longer term economic security of poorer and vulnerable groups is seen to be undermined. Land titling projects tend to conflate these two ideas into the single aim of “securing property rights” (Deininger 2003).

A less tangible, but widely sensed implication of land titling is that while it may increase security of tenure on the parcels of land that come under a land titling program, by implication it reduces the security over often much larger areas of land hitherto subject to local recognition and pluralism in tenure status and which now become fixed as state land with loss of usufruct or customary status. In Cambodia, for example, those previously occupying land under recognition of local commune or municipal authorities are subject charges of squatting and to eviction when powerful interests seek access to such land (Bugalski, Grimsditch et al. 2010: 10), as happened in the case of the Boeung Kak eviction in Phnom Penh. “LMAP thus unwittingly weakened the tenure status of those households who have been excluded from the formal system and must continue to rely on their locally issued documentation and recognition as proof of their rights to the land” (ibid: 10-11). In Laos, land not titled is subject to expropriation for plantations, particularly in cases where land taxes are not being paid on swidden plots under fallow cycles (Hall, Hirsch et al. 2011: chapter 2).

### ***Does land titling reinforce existing inequality or does it merely formalise and secure existing patterns of land ownership***

The connection between land formalisation through titling and other schemes, on the one hand, and land grabbing on the other has an important temporal dimension. Proponents and practitioners of land titling are often keen to emphasise that land titling does not create new structures of land ownership but rather gives legal recognition to, and hence strengthens, existing arrangements (Deininger 2003; Lunnay 2010). But if this is the case, argue others, then historical injustices – notably through past land grabs dating from colonial times onwards – are in effect ossified as land titling gives recognition and hence fixity to very unequal landholding patterns (Borras 2010). In some cases, the prospect of titling or the opportunity to take advantage of corrupt practices (Borras 2010) of local land registries have given outside or local powerful interests openings to grab land.

Land grabbing through titling can happen in at least three ways. First, land can be seized at the moment of titling by people who are able to convince surveyors that they have a legitimate claim to it. The argument that land titling programs have enabled land grabbing by powerful actors has been made about American titling programs in the colonial Philippines, and is an important element of NGO critiques of contemporary titling efforts in Southeast Asia (Wolters 1999: 118ff). Contestations around these grabs include movements such as the “people’s land reform” in Lamphun Province in northern Thailand, where farmers have seized titled land from absentee owners accused of having secured titles corruptly (Leonard and Narinrakul na Ayutthaya 2003). Second, exclusions have affected common property when grazing lands and other resources held in common have been claimed and given individual title. Third, and more indirectly, title can give a legal imprimatur to land grabbed in the past through dubious and even violent means. Jane Hutchison writes that “NGOs in the Philippines assert that land titling will ‘legitimize’ historical injustices by favouring the rights of current landholders over those of the indigenous people who were moved from those lands in the past” (Hutchison 2008:336) Meanwhile,

Bugalski, Grimditch et al argue that, “by excluding households vulnerable to displacement and failing to implement a transparent, rule-based process for titling decisions, LMAP effectively formalized, and arguably deepened, structural inequality in land tenure and administration in Cambodia” (2010: 13).

While it is a premise of land titling that it does not create new rights, but rather recognizes and formalizes existing ones, the actual and potential terms of access to land are changed through the application of law, uniformly defined inheritance arrangements, and other practices across the hitherto highly variegated national space. In this sense, new rights are indeed being created – rights to use and dispose of land without the social constraints that exist in the absence of land title. The delocalizing of access also releases land owners from other social obligations, for example maintenance of local irrigation systems, that are part of many place-based systems of land tenure. For example, in the districts around Chiang Mai in northern Thailand, movement of farmers out of agriculture served to undermine the viability of *muang faai* arrangements (Thangphet 1993). It also creates temporal effects, as land’s role as an intergenerational store of wealth is over-ridden by land as fungible store of capital. While this can and does sometimes occur prior to titling, it is accelerated by the Land Titling Program according to the program's own indicators of success.

### ***Is the problem with titling that it goes too far or not far enough?***

There is sometimes an ambivalence in critiques of land titling, in that a program whose basis is questioned is sometimes criticised for not going far enough. More specifically, programs partially or selectively implemented are seen to open up the way for enhanced rather than reduced land grabbing.

Boeung Kak in Phnom Penh is perhaps the most dramatic recent example of a land titling program partially and selectively implemented to the detriment of poorer land holders evicted from their land as a result of a blatant land grab. This case is described in detail by Bugalski, Grimditch et al (2010), from whose work the following details are summarised. The World Bank funded LMAP program provides for excision of areas “likely to be disputed” or of “unclear status”, but these areas are not clearly defined. They are thus subject to quite arbitrary identification. In 2007 a developer with high level political connections obtained a 99 year lease on 133 hectares around the Boeung Kak Lake, on land which served as home to more than 20,000 people. The lease was granted for \$79 million, approximately three per cent of the current market value of the land. Although the area had very recently undergone systematic land registration under the LMAP process, the land covered by the lease had deliberately been excised as a “development zone”. Prior to this, most of the residents had been living on the land since the fall of the Khmer Rouge, and would have expected local commune recognition of their rights to the land as elsewhere in Cambodia. They had been issued house registration documents, seen infrastructure improvements establishing their settlement as a recognised community, and had seen land sales witnessed. However, the excising of the land in the LMAP process re-defined their land as lying within the leasehold area of the company. Some compensation was given, but at a tiny fraction of going market prices, and the residents were evicted.

The Boeung Kak case achieved a high profile, first in September 2009 when the Cambodian government cancelled the World Bank credit and pulled out of the LMAP program following calls by the Bank for a moratorium on evictions while a national resettlement and regulatory framework was established, and again when local groups took the issue to the World Bank's Inspection Panel in April 2010. In a report released in March 2011, the Panel issued a ringing indictment of the LMAP program implementation, showing that along the way the Bank had failed to follow its own rules and principles and specifically criticised its failure to implement the Resettlement Policy Framework stipulated under the Development Credit Agreement for LMAP between the Bank and the Royal Government of Cambodia.

Elsewhere, it is the everyday process of land titling that leads to partial implementation. In Laos, land titling is implemented through a process run by mobile Systematic Adjudication Teams (SATs), who have a considerable degree of discretion over which land to title. Furthermore, the SATs work to an incentive structure that encourages them to title the accessible land where there are clearly marked boundaries and where there are unlikely to be disputes or ambiguities. As a result, most of the rural land that is issued title is within the residential parts of villages or on paddy land close to the settlement. A similar set of issues associated with incentive structures is reported for Cambodia by Ballard (2010). Agricultural land further afield is left untitled. Furthermore, in Laos provincial land office interpretation of the rules for land titling sometimes leads to exclusion of land on a 25 meter strip either side of main roads, on the basis that such land may be needed for future road widening and that compensation liabilities on titled land would increase the cost to the state for infrastructure if such land were titled. A study at Lak Siphok in Champassak Province, found that these processes have led to a number of insecurities. Agricultural land outside the titled area has been grabbed by state officials and leased to a Vietnamese company for rubber planting. An area of teak that was planted by villagers at the behest of the government some years ago has not been titled, and as a result is seen as vulnerable to grabbing if and when the company extends its plantation area. Villagers are concerned that areas where they graze their livestock have also not been titled, and as a result may be deemed state land for allocation to economic land concessions. Meanwhile, a number of houses with road frontage have found themselves either entirely outside the titled area or divided down the middle by titled and untitled land, giving a sense of vulnerability to expropriation without compensation.

There is an irony in the villagers' concerns that grazing, forest and swidden land has been left out of the titling scheme, in that a number of academic and NGO critiques of titling dwell on the risks that individualisation of land will undermine common property arrangements. In this case, it is the exclusion of common property from titling that is the villagers' concern. Land titling programs have responded to these concerns by encouraging governments to recognise areas of customary tenure that should be avoided by land titling programs (Lunnay 2010), but this then raises issues of legal pluralism that do not fit well within the administrative and legal frameworks of countries such as Laos and Thailand. An open question is the extent to which concerns over excision of customary land or land held and used under various common property arrangements would be reduced were there to be no titling in the area or country whatsoever. In other words, is the vulnerability of the commons and

state excisions to grabbing exacerbated by titling elsewhere, or is this vulnerability only relative to the securely titled house and paddy plots?

### ***Does titling broaden or narrow land ownership?***

Land titling programs are promoted by de Soto (2000) and others as the most effective means to spread wealth by broadening property ownership to the poorer sections of society, effectively capitalising the single most valuable asset of the poor – land (see also Deininger 2003). Land grabbing, of course, is understood to do just the opposite. Landlessness is growing rapidly in countries where there is both land grabbing and where land titling has been introduced, sharply in some cases such as Cambodia (Guttal 2010: 4), but the relationship between these is complex. A basic question that is raised is whether titling broadens or narrows the basis of land ownership.

A common discourse that implies a broadening of benefits from programs such as land titling is their labelling as “pro-poor”, a term that has been sharply criticised in the context of land titling (Borras 2010; Guttal 2010). Closer examination of so-called pro-poor agricultural reforms in Vietnam, for example, show that benefits are shared quite unequally, including in the area of land titling. A study by Gorman (2010) of the issuance of marketable land titles shows that this has coincided with differentiation of access to land, with growing landlessness among the rural poor. Gorman is quick to point out that differentiation is not caused by titling per se, but rather follows “...from the mechanisms of economic, social and political exclusion in which land markets and the exercise of property rights are embedded”. What titles do, however, is to fix unequal land distributions where they were previously negotiable, and tended in southern Vietnam to replicate pre-1975 unequal distribution of land, in a process that Borras refers to as “formalisation of inequality” (Borras 2010: 6).

Gender is an important dimension of land titling that tends not to enter the land grabbing discussion. Several countries in Southeast Asia follow matrilineal residence with associated matrilineal tendencies in land inheritance patterns, yet formalised land titling has sometimes registered land in the name of male heads of household. Following critique of the land titling program in Thailand for being overly technically focused and hence missing such issues, and NGO concerns expressed over the land titling program in Laos following the same path with insufficient attention to social aspects of the program, a sustained effort has been made to ensure that titles are issued in the names of both women and men. In Laos, 37 percent of titles have been issued in the name of women only, 27 percent jointly, and 23 percent in the name of men only – the remaining 13 per cent being issues as state land or common property (Lunnay 2010: 4). Procedural aspects of land titling programs also help to broaden their relevance, notably the community education activities that have been an important part of the process in Laos (ibid.). Despite these progressive aspects of titling, they are complicated when the formalised and standardised land tenure arrangements are out of sync with existing practices, as for example was found in the case of Hmong families with patrilineal inheritance arrangements that superseded the rights vested through title in widows (Fujita, Phengsopha et al. 2006).

Unlike land reform and land allocation programs, land titling does not in itself place a ceiling on landholdings. Concerns are raised increasingly over the accumulation of land that this facilitates, and there is a periodic – and currently quite active – debate in

Thailand about the appropriate ceiling for landholding by any single individual (Leonard and Narintrakul na Ayutthaya 2003; Samranjit 2010). This concern has arisen in particular in the context of land speculation during the 1990s boom prior to the 1997 financial crisis, and again during the early 2000s. Another agenda that has arisen periodically but is no closer to resolution is the proposal for progressive land taxes, whereby larger land owners pay higher taxes than smaller landholders, thereby both spreading the returns to land in a more egalitarian manner and discouraging accumulation of land. Other proposals include a land bank for periodic distribution of land to the poor (Samranjit 2010:8).

Borras has produced a schema for assessing change in land property relations so that they can be placed into redistributive, distributive, non-redistributive and concentrating categories (Borras 2010: 5). Within this schema, there are countervailing tendencies in the impact of land titling on spreading wealth. Titling tends to fix unequal structures, and it does not necessarily give wealth to the poor in the de Soto sense, inasmuch as it simply formalises or recognises what was theirs previously. On the other hand, access to titles by women can be empowering, but even here there are complications when formalised rules cut against the grain of customary practices that lead to dual or conflicting arrangements whose resolution tends to follow existing lines of power and authority.

### ***Is the land titling agenda consistent with national land policy and the prevailing political economy of land?***

In 2009, two of the major World Bank land titling schemes in Southeast Asia were cancelled. There were face-saving reasons given on both sides for the withdrawal or termination of the schemes in Laos and Cambodia, but there were also more deep-seated reasons for their cancellation. These reasons are closely entwined with key factors behind land grabbing in the respective countries, and they remind us that the programmatically cast land titling process is in fact deeply entwined with the political economy of land in each country.

In Laos, the post-socialist context is particularly relevant. The land titling program is being implemented to a neo-liberal model, informed by de Soto type thinking, in a country that frames state land as “national common property” – hence negating common property at other levels as a relevant category – and within a one-party developmentalist state for which national benefit is the ultimate priority in areas such as land relations. Tensions with the land titling program arose in a number of areas. One of these is the excision of land along roadsides and in special economic zones to allow the state to resume such land for development. Another is the linking of land use and land use planning and zoning with the question of which land is titled and which is not. A further tension has arisen in the reservation of large swathes of land for economic concessions in the name of modernising land-based production, and hence keeping such land out of the area to be titled. This sits at odds with the land titling rationale, which claims that titling recognises existing rights rather than creating new ones, and with the principle that any development of land that is currently occupied by smallholders should at least help the latter realise its capital value through appropriate compensation. Discordance on all these issues lay behind the cancellation of the AusAID-World Bank land titling program at the end of its second phase in mid-2009.

In Cambodia, the political economy of land in question is more closely associated with the authoritarian nature of what has been characterised as a neo-patrimonial state (Pak Kimchoeun, Horng Vuthy et al. 2007). Urban and rural land concessions alike are part of the reward system for loyalty to the ruling Cambodia People's Party led by Prime Minister Hun Sen. Enacting a land titling program such as LMAP within such a framework brings to the fore inevitable tensions, particularly when procedures are non-transparent and where any semblance of transparency is nevertheless corrupted by a climate of violence where claims for redress put claimants at bodily risk.

Vietnam provides an interesting counterpoint to these two cases. Here, land titling took on an essentially endogenous form rather than coming as part of a packaged aid program. Yet here, too, the prevailing political economy of land has shaped the outcomes, not in a direction that has threatened the program itself with collapse as in Cambodia and Laos, but rather in a direction that goes against the pro-poor intentions of land titling in the sense that the prevailing political economy of "illiberal capitalism" under the *Doi moi* market-based production concentrates rather than distributes formerly collectivised land-based wealth through "structures of political and social exclusion which constrain access to law and to the value produced by marketization" (Gorman 2010: 18).

More instrumentally, the different agendas of land titling programs and the regimes in which they operate suggests that they miss the wider land policy framework of the respective governments. This point has been recognised in retrospect by the Director of company that implemented the Lao Land Titing Project, with the lesson drawn being that there should be a greater degree of policy engagement by programs whose implementers tend to come at them as technical exercises (Lunnay 2010: 5-6). An open question remains, however, of the extent to which policy engagement can get at the deeper-seated political economic issues outlined above.

### ***Does land titling lead to more intensive/productive use of land?***

Land titling is based in part on the premise that farmers with the security of tenure afforded by state recognition and demarcation of their own land will be more enthusiastic about investing in it, will be better able to do so when they can mortgage it, and will be able to sell or rent the land more smoothly to others who may be inclined to maximise its productive value once title gives the land fully alienable status. Land grabbing for speculative gains, particularly where such land is left idle, clearly cuts across this intention. A casual glance at roadside land uses in most Southeast Asian peri-urban and frontier areas alike suggests that there is much idle land, sometimes – as in Cambodia – with stark reminders of the large-scale acquisition in the form of brick walls enclosing bare ground many hectares in size. There is a tension, therefore between the intention of land titling and the effect of speculative acquisition of land by non-local interests as land becomes fully alienable.

The extent of speculative land acquisition is often difficult to assess. A 2001 report quoted by Pongtip (2010: 1) suggests that up to 70 percent of land holdings in Thailand are underutilised, with losses of 127 billion baht (about 4.5 billion dollars) per year. In Vietnam, property speculation is particularly notable in peri-urban areas, and in many cases it is local state actors who take it out of production as eminent domain for industrial and residential development. It is estimated that between 2001

and 2005, some four per cent of the total agricultural land was taken out of production – without full market compensation for its previous users – through such processes (Gorman 2010: 7).

## Conclusion: sharpening the debate

While the relationship between land titling and land grabbing is complex and sometimes contradictory, a key conundrum lies at its heart. The conundrum is that, while most farmers and other landholders are pleased to obtain formal title over plots of land that they hold individually under more weakly demarcated and state-recognised arrangements, the process of land titling in some areas can weaken security in others and can entrench, sharpen and exacerbate existing inequalities in access to land.

The above discussion indicates that debates over land titling and concern over land grabbing intersect only loosely and very partially. As the geographical overlap between these two processes grows and deepens, it will be important to bring key elements of debate in both arenas together around common sets of questions. In particular, the growing concerns worldwide over land grabbing may help to sharpen the basis of critique and clarify the terms of debate over Southeast Asia's ongoing land titling programs.

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## References

- Anonymous (8 November 2002). Bring 'dead assets' to life, de Soto advises govt. The Nation. Bangkok.
- Ballard, B. (2010). Land titling in Cambodia: procedural and administrative exclusions. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. . Chiang Mai, 13-15 May 2010.
- Barney, K. (2009). "Laos and the making of a 'relational' resource frontier." Geographical Journal **175**(2): 146-159.
- Borras, S. M. J. (2006). "The Philippine Land Reform in Comparative Perspective: Some Conceptual and Methodological Implications." Journal of Agrarian Change **6**(1): 69-101.
- Borras, S. M. J. (2010). Land policies and titling in Southeast Asia: contemporary issues and future trajectories. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. . Chiang Mai, 13-15 May 2010.
- Bugalski, N., M. Grimsditch, et al. (2010). Land titling in Cambodia: lessons from the land management and administration project. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. . Chiang Mai, 13-15 May 2010.
- De Soto, H. (2000). The Mystery of Capital. New York, Basic Books.
- Deininger, K. (2003). Land Policies for Growth and Poverty Reduction. Oxford, World Bank and Oxford University Press.
- Emerging Markets Consulting (2010). Kompong Thom Province Investment Profile. Phnom Penh, USAID Cambodia MSME project implemented by DAI.

- Fauzi, N. (2009). "Land titles do not equal agrarian reform." Inside Indonesia **98**.
- Feder, G. and A. Nishio (1998). "The benefits of land registration and titling: economic and social perspectives." Land Use Policy **15**(1): 25-43.
- Fujita, Y., K. Phengsopha, et al. (2006). Post-socialist land reform in Lao PDR and its impact on community land and social equity. The Eleventh Biennial Global Conference of The International Association for the Study of Common Property (IASCP), Bali, Indonesia.
- Gorman, T. (2010). Fields of contention: land markets and the state in contemporary Vietnam. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. Chiang Mai, 13-15 May 2010.
- Guttal, S. (2010). Land and natural resource alienation in Cambodia. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. Chiang Mai, 13-15 May 2010.
- Hall, D., P. Hirsch, et al. (2011). Powers of exclusion: land dilemmas in Southeast Asia. Singapore and Honolulu, Singapore University Press and Hawaii University Press.
- Hirsch, P. (1990). Development dilemmas in rural Thailand. Singapore, Oxford University Press.
- Hirsch, P. (1990). "Forests, forest reserve, and forest land in Thailand." The Geographical Journal **156**(2): 166-74.
- Hirsch, P. (1992). "State, Capital and Land in Recently Cleared Areas of Western Thailand." Pacific Viewpoint **33**(1): 36-57.
- Hirsch, P. (2009). "Revisiting frontiers as transitional spaces in Thailand." Geographical Journal **175**(2): 124-132.
- Ho, P. and M. Spoor (2006). "'Whose Land? The Political Economy of Land Titling in Transition Economies.'" Land Use Policy **23**(4): 580-587.
- Hughes, H. (2004). The Pacific is viable! Issue Analysis. Sydney, Centre for Independent Studies. **53**.
- Hutchison, J. (2008). "Land titling and poverty reduction in Southeast Asia: realising markets or realising rights?" Australian Journal of International Affairs **62**(3): 332-344.
- Leonard, R. and K. Narinrakul na Ayutthaya (2003). "Taking land from the poor, giving land to the rich." Watershed **8**(2): 14-37.
- Lunnay, C. (2010). Lao Land Titling Project: implementation and lessons. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. Chiang Mai, 13-15 May 2010.
- Pak Kimchoeun, Horng Vuthy, et al. (2007). Accountability and Neopatrimonialism in Cambodia: A Critical Literature Review. Working Paper. Phnom Penh, Cambodian Development Resource Institute.
- Samranjit, P. (2010). Land titling: toward farmer rights and not a market drive. Conference on Revisiting Agrarian Transformations in Southeast Asia: Empirical, Theoretical and Applied Perspectives. Chiang Mai, 13-15 May 2010.
- Sikor, T. and C. Lund, Eds. (2009). The Politics of Possession: Property, Authority, and Access to Natural Resources. London, Wiley-Blackwell.
- Sumarto, S. and J. Hardjono (2002). An Impact Evaluation of Systematic Land Titling under the Land Administration Project (LAP). Jakarta, SMERU Research Institute.

- Thangphet, S. (1993). The impact of urbanisation on local resource management: a case study of an indigenous irrigation community in northern Thailand. Urban Planning. Sydney, University of Sydney. **Master of Urban Studies: 150.**
- Wolters, W. G. (1999). The development of property rights to land in the Philippines, 1850-1930. Property rights and economic development: land and natural resources in Southeast Asia and Oceania. T. V. Meijl and F. V. Benda-Beckman: 110-138.