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Untitled but not Informal: Lao Tenure Politics in Formality's Gray Spaces

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1 Introduction

“Land Use Map of the 3,000 ha Rubber Planting Promotion Project, Vieng Phou Kha District, Bolilsat Z¹ Ltd., Yunnan Province, People’s Republic of China.” The map had a long and formal-sounding title, and it ran the full length of the upper wall, above the entrance door to the rubber nursery’s main building. The nursery was itself located a few hundred meters from Laos’s newly paved National Route 3, a road that was increasingly being called the country’s Northern Economic Corridor in light of its recent linking of northeastern Thailand and southern Yunnan province via a once-remote stretch of northwestern Laos. The nursery and rubber planting operation to which it was attached were located in what was then ground zero of the Chinese agribusiness rush into the region that rode a wave of government subsidies and China’s white-hot economy throughout much of the 2000s (Alton, Bluhm, and Sannanikone 2005; Shi 2008; Cohen 2009; Diana 2008, 2009; Dwyer 2011; Woods 2011; Sturgeon et al. 2013).

When I first came across this map, it was barely legible. This was not because it was hard to see, although it was that too; its black lines were faint, and the yellow paint that formed its main areas of interest barely stood out against the dirty white background (Figure 1). But even when the image came into view, it remained impossible to *read*, at least at the time. Maps make sense because they contain symbols – referents that the sociologist of science David Turnbull (1993) calls *indices* – that link them to the real world through graphical representations and shared understandings between mapmaker and audience. This map had no visible indices, at least none that my colleagues and I could make out. The usual starting place, the legend, had been laid out to the right of the image, but it had never been filled in. There was a small yellow blob, but no corresponding text (Figure 1, lower image, upper right corner). Likewise, the map itself gave few visual clues about what the black lines or yellow patches might mean. The title was clear enough, but there was no additional text or supplemental symbols: no roads, no rivers, no villages, no prominent mountaintops – nothing to tie the white and yellow polygons to the landscape of Vieng Phou Kha District. It was as if the map had been drawn to announce the project’s *presence* without giving away anything about its *geography*.

The government researchers I was traveling with were equally baffled. They were from the Lao government’s National Land Management Authority, which gave our party a certain right to inquire about what was going on. But our confusion stemmed from the fact that we were witnessing the company map for the first time. We had nothing to compare it to, and it thus lacked the indices it carried for local state officials, technicians, company representatives and the like. Unlike us, these viewers had seen the more fleshed-out version of the map in the local district office, as well as the earlier generation of village-scale zoning maps on which it had been based. These other viewers thus knew many things that we did not. They knew that the black lines represented the official boundaries of local villages and internal land use zones; they knew that the areas shown in yellow corresponded to the roughly 8,400 hectares that had been zoned for agriculture in the twelve villages depicted on the map; and they knew that it was this land, rather than the white space that surrounded it – officially classified as forest – that comprised the rubber project’s official target area.

¹ Bolisat Z is a pseudonym.



Figure 1. Bolisat Z company map at project nursery, Vieng Phou Kha District (photos by the author, 2007)

We knew none of this. The map to us looked merely formal – it was clearly a geographic representation, but it lacked any connection to the material world. So rather than asking the hard questions, we were limited to the sorts of inquiries reserved for unprepared visitors: What was the project doing? where was it working? what did the local people think?, and so on. If we *had*

understood the map, we might have asked harder questions: why was the project targeting agricultural land for conversion to industrial tree crops? How this was impacting local landholdings and food security? Did these impacts vary by community – did “rubber planting promotion” (*songserm puk yang phala*), in other words, meant the same thing everywhere? I would later find out that these were the questions that mattered, and that the project’s formalized geography of the company map was thus a poor representation of what was actually going on (Dwyer 2014). At the time, however, the map confronted us as what Bruno Latour (1987) calls a black box – an inscrutable object that we could not get inside, and against which we failed to muster any credible challenge. There thus was no struggle over hard regulatory questions: over why the project was treating some people one way and others another way, why it was targeting agricultural land for conversion to rubber in an area of high food insecurity, and how the classification of land meshed with official government policy aimed at preserving local entitlements to customary land. All we had were polite questions.

This paper makes the argument that exclusions of the type described above – exclusions that result from the bureaucratic distance between central and local governments – have important and often unrecognized implications for efforts to promote smallholder tenure insecurity. Specifically, the event illustrated above marks out an entire field of negotiation and techno-political practice that exists within the gray space between centrally registered forms of landownership – often called titles – and practices of land formalization that are undertaken regularly by local state authorities in order to govern the economic spaces under their jurisdictions. This field of negotiation comprises both a range of regulatory and inscriptive practices aimed at managing and representing officially sanctioned uses of land, generally under a broad banner of development, and a range of implicit and explicit debates about how information about these practices – especially the formal maps, but also basic information about what types of development is happening, where and for what purposes – is shared among interested state authorities. As the anecdote above suggests (and as I have shown elsewhere; Dwyer 2013, 2014), these practices have high material stakes, as decisions about how to interpret keywords like *forest* and *locally owned land* create significantly different impacts and risk profiles throughout the landscape, and even within the same project. And as the anecdote *shows*, it is often not a matter of getting access to key documents so much as being able to understand what they say (or don’t). The formal geography of investment – from project contracts and survey maps to local zoning and cadastral maps – is not created for a general audience; it is created, rather – drawn, narrated and passed around – for highly specialized consumers. These specialties are not merely sectoral (e.g. foresters, state officials); across a range of disciplines, they distinguish state officials and technicians into those who see and understand, and those who don’t. Often, as in the case above, this distinction is based on the *vertical* level of the state bureaucracy within which one sits.

This has major implications for land tenure. Tenure is a function of both legal and material issues: in rural parts of Southeast Asia (and elsewhere), tenure security (or lack thereof) often has as much to do with how one uses land as whether or not one has the documents to prove one’s ownership. Lowland rice cultivators are the paradigmatic example of land users whose tenure is rarely called into question no matter what their formal status; the same applies increasingly to many other cultivators – especially of cash crops, and *especially* of *tree* crops – who are able to capitalize on popular associations between their land uses and the idea of development.² Planting rubber trees has thus been an excellent way to claim land in recent years, both by companies and by smallholders; despite recent drops in the rubber price, land under rubber is still reported to be highly secure when it comes to tenure.

This is especially important because, as in example above, most of the land at the agribusiness frontier has yet to be titled. Titling programs throughout Southeast Asia have tended to target urban,

² The same can be true in urban areas; see Ghertner (2010) on the importance of aesthetics over formal plans.

peri-urban and lowland areas where property relations are simpler, density is higher, and other priorities like tax collection and the securitization of property for loan collateral can be prioritized (Biddulph 2010; Adler and So 2012; Dwyer 2015). Areas like Laos's northwestern rubber frontier were left out of the first two rounds of the country's titling program, and as investment-related land conflict has taken off, smallholders have been forced to defend their entitlements in other ways. These can include *other* forms of formality, although as illustrated below, these can go either way; what matters is the interplay between actual land uses and the forms of formality that are brought to bear on a given contest. The problem, however, is that this interplay of formality and materiality is often invisible – or at least, as the opening vignette suggested, illegible – due to the struggles within the state that pit local authorities against central ones. In such a context, titles are not merely technologies for enhancing the tenure of smallholders. They are also technologies for centralizing the administration of land.

Donor-funded efforts to enhance smallholder tenure through titling can thus fall prey to the politics of central-versus-local authority, not only because donor projects tend to be coordinated at the central level, but because titling specifically makes reference to the authority of the central/national state. This is built into the language of formality that is generally used to discuss titles' official status, as well as into the micro-material dimensions of the titling process. Laos's titles are thus commonly referenced not as titles per se (*bai ta din*), but as golden papers (*bai kham*). This is a reference to the fact that they are printed on heavy, deluxe paper that is bordered in gold so as to prevent forgeries, but the echoes of royal and centralized power are easy to hear. What makes it so easy for the *bai kham* to be popularly recognized as the "highest" form of land tenure proof (something that is also reflected in Lao law) is the fact that their production is accompanied by much pomp and circumstance surrounding the creation of a geo-referenced polygon which is printed on the back of the title, and whose coordinate points are precisely listed on the drawing. But spatial precision is expensive, and titling is thus both slow and heavily reliant on outside funding. In addition to the areas described above, titling also happens when infrastructure projects need to clear up property claims and can thus afford to hire titling teams ad hoc.³ When this is all added up, titling thus tends to be associated – for technical as well as financial reasons – with centralized government authorities. As this paper shows, this can have negative implications for smallholders when land use regulation is more closely governed by local authorities who have reason to keep the central government at bay.

The sections that follow thus present three inter-linked examples of how practices of land use and local forms of property formality intertwine in areas that sit beyond Laos's titling zone. These examples defy the distinction between formally titled and customary or traditional land that often forms the basis of intergovernmental and donor ways of talking about tenure enhancement (e.g. FAO et al. 2010, 2). By showing the richness and high material stakes of untitled but not informal types of land use, this paper attempts to integrate debates about state formation better into ongoing debates about titling and land tenure, especially for smallholders and communities. The examples below suggest that titling has to contend not only with existing forms of land formalization when it is brought into an "untitled" landscape; it must also wrestle with the modes of locally entrenched authority whose formality – and more importantly whose control over actual land uses – it threatens to undermine.

This paper is based on fieldwork conducted largely in 2007-2008 and followed up periodically in the years since through a mix of site visits and interviews with development practitioners. Its methods are described in more detail elsewhere (Dwyer 2011).

Note: The rest of this paper is abbreviated and rough (much of it is in narrative outline form). It is being circulated for discussion purposes.

³ See Mann (citation forthcoming) for an example of this from the Lao hydropower sector.

2 Cadasters: The Uneven Geography of Taxation

In the last half decade, the taxation of land has emerged as a key area of governmental and smallholder anxiety in Laos. For smallholders, paying tax on land is often a way to have one's land recognized by the local government. This practice is not well-studied, and tends to break into public view only when it becomes problematic. Two chief sorts of problems have emerged in the last ten years with remarkable resilience, and form the basis for the discussion of land tax presented in this section. The first is the failure to pay tax on land, a "fact" that state authorities often invoke as a rationale for assigning smallholder lands to state land concessions but that is actually far more complex due to the uneven geography of cadastralization. The second is the failure to collect and amalgamate taxes at the level of the central government's budget, a problem that has underpinned the fiscal crisis that has existed in Laos for the last three years. As explained below, both of these issues extend beyond the commonly invoked dynamic of the state's relations with its citizens, into the uneven geography of the state's relations with itself.

[The first part of this section focuses on the uneven geography of cadastral mapping that is illustrated in Figure 2, which shows (i) the fact that local authorities have in fact done significant amounts of cadastral mapping in Vieng Phou Kha District, despite the fact that the central government's titling program has never been to the area; but also (ii) the unevenness of this cadastral coverage, and in particular its exclusion of upland areas. This uneven *cartographic* coverage provides an explanation for how and why local authorities tax upland land use in the way that they do: via a head tax on upland *labor*. This calls into question the excuse of taking upland farmers' land on the basis that they have not "paid land tax", suggesting that state land is created as much in the ideological arena as in the technical one, but also pointing toward a possible way by which this now-standard argument might be challenged in practice.]

[The second part of the section discusses the fact that tax revenues are low, that collection is expensive, and that land values are a highly politicized issue, not just for tax collection but for compensation cases where the above-discussed argument is successfully challenged by local smallholders. This passage makes the point that much of the tax revenue that is currently collected stays local, and that current "shortfalls" in revenue collection – one of three pillars of Laos's current fiscal crisis (the other two being falling commodity [especially mineral] prices and "leakage" a.k.a. corruption) – are thus more about a failure to centralize and *increase* revenues rather than an actual *decrease* in tax collection.]

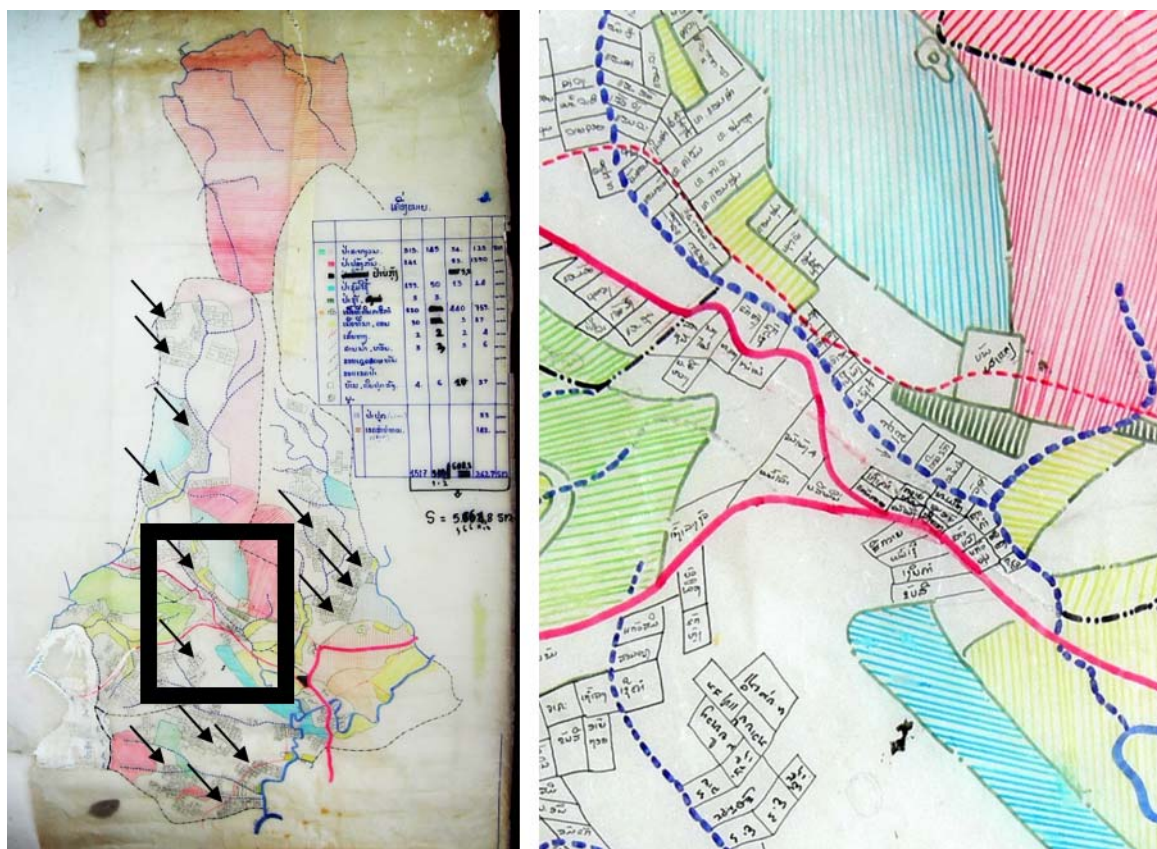


Figure 2. Cadastral coverage outside Laos’s titling zone, Vieng Phou Kha district (photos by the author, 2007)

3 Selling Land

Titling projects are often rationalized on the grounds that they help stimulate the emergence of efficient land markets. The degree to which this is true is beyond the scope of this paper, but the landscape that forms the basis of the material presented above is certainly rich with land sales. Figures are difficult to come by, and this may be one of the ways in which the absence of titling makes land markets inefficient. But it should not be inferred that no titles means no land sales. During the years when I conducted the research described above, an active property market was operating. One of the reasons it may have been hard to see systematically, however, is that it was converting land on a regularization-based model rather than a zoning-based one: land use change, in other words, came first, while official approval came second. While there was no doubt that multiple sorts of negotiations were involved – some certainly involving local authorities like village heads (*nai ban*) and village-cluster heads (*hua-na khet*) – the formal dimensions of this came second, and reflected the conflict between zoning-based regulation and other (“market-driven”) approaches to property.

[This section then examines a land sale that occurred in an area that had been zoned as community use forest, but which had been planted in upland rice by a single smallholder around the time that the rubber scheme described in section 1 began to target the village’s officially zoned agricultural land. After being converted to upland rice, the land had been sold to a relative from the district center, in violation of the formal zoning map which decreed that the land in question was in a community forest zone, but in line with lowland (rural-cosmopolitan?) norms of use-based ownership. My colleagues and I spoke to the new owner one afternoon as he was in the process of converting the now-harvested rice into a smallholder rubber plantation. He had terraced the hillside field, cleared the vegetation from the roughly meter-wide terraces that contoured the hill every ten or so meters apart,

and was in the process of planting rubber seedlings he had purchased recently from the local nursery (the same one described in section 1). Probably aware that his land conversion as well as the transaction on which it was based were in conflict with the previously decreed community forest classification, the man said he planned to register the sale and the new rubber plot with district authorities only *after* he finished planting the rubber.]



Figure 3. Terracing flags, post land-sale conversion to smallholder rubber (with large rubber concession on the horizon), Vieng Phou Kha district (photo by the author, June 2007)

4 The Formalization of Communal Land

[This section builds on the previous discussion of community use forest and official agricultural land to show how and where these types of land were targeted by rubber planting “promotion” of the sort described briefly in section 1. This section ends the empirical portion of the paper by gesturing briefly to the uneven nature of this conversion process, a dynamic I have focused on elsewhere (Dwyer 2011, 2014), and showing how differentiated understandings of village land use on the part of local authorities led to two very different interpretations of communal land. Building on a lowland-upland distinction that underlies a number of land governance decisions in Southeast Asia (e.g. Cambodia’s communal titling program, which is only eligible to indigenous communities who have registered with the state and been officially recognized as such), this case shows how similarly differentiated understandings have led to large swaths of communally “owned” but state “managed” land in upland “ethnic” villages on the one hand, and interpretations of local ownership as individualized and functionally private in lowland (“non-ethnic”) villages. This case provides a critical spin on the legal letter of the law in Laos, which in contrast to Cambodia, allows communal titling by any village regardless of ethnicity (Baird 2013; Derbidge, cited in Dwyer and Ingalls 2015). Notwithstanding this potential, this case shows how historically based – and historically *biased* – understandings of upland

communities by local state authorities, many of whom are themselves ethnic “minorities”,⁴ can lead communal land to be formalized in the act of its being given away to developers, but only in some villages.]

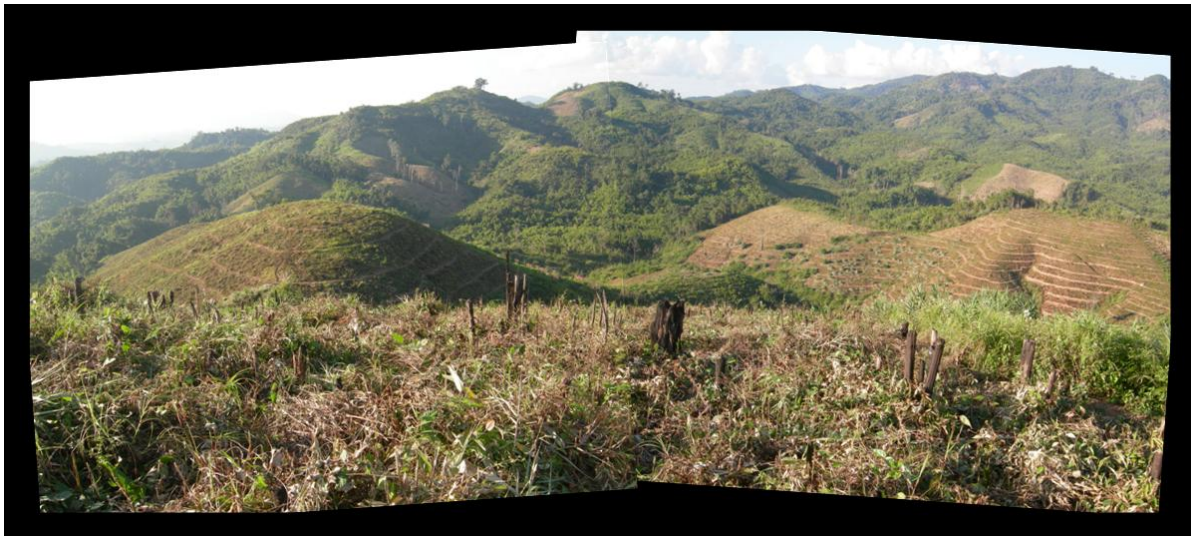


Figure 4. Communal land being formalized by a large-scale rubber project, Vieng Phou Kha district (photo by the author, 2008)

5 Zoning and the Struggle over Concession Formalization

[There may be another empirical section: a case study that uses a different village in the same to highlight the role that zoning plays in mediating the struggle for resource control between local and central authorities. The case is set within the wider context of central government efforts to formalize the process of granting concessions (i.e. allocating “state” land for development purposes) so as to take this very practical power away from local authorities, and shows how local authorities have used zoning – a technology originally pushed upon them by central authorities – to manage and represent their own resource concession deals.]

6 Conclusion

Untitled but hardly informal. The distinction sits at the crosshairs of two sets of relationships that structure property relations in Laos, and probably more broadly. The first is that between the state and its citizens, and comprises the space of norms, actions and documents that give rise to formalized types of ownership. These include titles, but also things like tax certificates, land survey certificates, and the zoning maps that featured in the opening example. Formality is a characteristic based on official recognition – or to put it more abstractly, on self-reference; a formal document acknowledges something, but it does so by reference to its own authority. Documents like those named above thus have the state in its diversity as essential to their being: the state as tax collector, the state as surveying expert, the state as economic planner, and so on. This diversity gives rise to a second set of relationships – namely those that occur *within* the state’s substantial and often multi-layered bureaucratic domain. These relationships create the distinctions that give lawyers and technocrats sustenance: between temporary land use certificates and land survey certificates, between zoning maps

⁴ I have placed “minorities” in scare quotes because in this part of Laos, some of these groups are actually in the numerical majority.

and cadastral maps, between communal and collective forms of possession – and so on. Most importantly for the present purposes, these relationships create the conceptual and institutional possibility of distinguishing titles from every other type of formality that could be – and indeed often *is* – used as a de facto form of property in the everyday world. Titles, so the mantra goes, are spatially precise. They are centrally recorded. They are printed on special paper, edged in gold. They form the basis for transactions that are *actually* legal. And so on: a list of characteristics that converges on the state not in the diversity of expertise elaborated above, but in its singularity as the arbiter of real ownership.

Put this way, however, it is easy to see how everyday life – and everyday property in particular: the social relationships that govern norms of ownership in particular cases and particular landscapes – can go about its business regardless of whether or not it has been visited by land titling efforts. In all but the most remote areas, and indeed in practically all of Laos, this sort of everyday property is, if not pervaded by the state, then at least rarely far away from it. Purely informal transactions are rare: sales, leases and the like are witnessed by local authorities like village heads, district land officials, local administrators, and so on. Generally this witnessing occurs in writing (and all-important: red stamping), and includes elements of both approval and registration. And herein lies the point: this proliferation of formality is quite at odds with the simplified and singular formality of land titling. Contracts, tax receipts, survey certificates, you name it; these create a paper landscape that is highly formalized even as throughout most of the countryside it remains untitled.

By remaining focused on titling as the ultimate proof of secure and tenure – and as the goal, however elusive, of tenure enhancement efforts – advocacy in defense of the landed but insecure risks getting caught in the politics of ongoing state formation. The examples presented above gesture to the diversity of practices, both material and formal, that comprise the social relations of property in one fairly typical corner of northwestern Laos. In doing so, they show both the ubiquity of the state in property's creation and social regulation, but also the significant distance of the central government. Extending the titling zone to include landscapes like those discussed above means not only mobilizing the financial resources and technical skills that are often foregrounded in discussions of land administration policy and practice. It also means mobilizing the political resources to wade into the ever-present regulatory tensions – sometimes merely tensions, other times outright struggles (Dwyer 2013) – between central and local authorities. As important as these dynamics are, tenure advocates may have other strengths, and other priorities.

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The purpose of the 2015 Chiang Mai conference is to contribute to *deepening* and *broadening* of our understanding of global land deals, resource conflict and agrarian-environmental transformations – in the specific regional context of Southeast and East Asia, with special attention to climate change mitigation and adaptation policies as well as the role of China and other middle income countries (MICs) within the region.

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