



The Formalization Fix?

Land titling, state land concessions, and the politics of geographical transparency in contemporary Cambodia

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Abstract

In their widely read discussion paper, the FAO, IFAD, UNCTAD and World Bank propose systematic property rights formalization – “the identification of rights holders, the legal recognition of rights and uses, and their demarcation and registration” – as a central first step in addressing the problem of irresponsible agricultural investment. This paper examines the case of Cambodia, one of at least a dozen countries where systematic land titling and large-scale land grabbing have proceeded in parallel in recent years. Cambodia’s experience exemplifies the challenges of what I call the “formalization fix”, and highlights the *geography* of land titling (and property formalization more generally) as a question that, despite substantial debate in Cambodia, has yet to receive adequate attention internationally. Examining three dimensions of Cambodia’s less-than-successful “formalization fix” efforts – (i) the spatial separation of systematic land titling and agribusiness concessions; (ii) the fact that property formalization can also be a *means* of land grabbing; and (iii) the political arena of efforts to legitimize “state land” – this paper questions the formalization fix as a policy solution, argues that the problem of unmapped state land needs to be addressed head on, and calls for greater geographical transparency in property formalization efforts in the global South.

About the Author

Michael B. Dwyer is a postdoctoral researcher at the University of Bern’s Centre for Development and Environment (CDE). His research examines the uneven geography of land administration systems and agribusiness investment in Southeast Asia using a combination of ethnographic, critical-GIS and archival methods. Mike’s dissertation, *Territorial Affairs: Turning Battlefields into Marketplaces in Postwar Laos* (UC Berkeley, 2011) uses the case of Chinese agribusiness investment in northwestern Laos to examine the legacy effects of Cold War violence and state formation on agrarian enclosure regimes and the politics of investment regulation. His current research, which includes the material presented in this paper, focuses on the geography of land titling and property formalization in Cambodia and Laos.

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These were still the early days of capitalism, when ... large proprietors still depended a great deal on direct control of the state to support the process of accumulating land, extinguishing customary rights and redefining the right of property itself.

Wood & Wood (1997:135-136)

1 Introduction

In the middle of 2011, an important map of Cambodia was posted to a website maintained by the World Bank Inspection Panel. Produced a few months earlier, the map was part of the “management response” of the Phnom Penh World Bank office to a 2009-10 investigation of the Cambodian land titling project by the Bank’s own Inspection Panel.¹ The investigation had focused on the denial of due process – the right to title adjudication – to residents living around Phnom Penh’s Boeung Kak Lake, the site of a 133 hectare “development zone” that city authorities had declared in early 2007, shortly after the area had been selected to undergo systematic land titling under the World Bank-funded Land Management and Administration Project (LMAP). With evictions on the horizon, an “Enhanced Review Mission” in mid-2007 (Bekhechi & Lund 2009) had failed to sway Cambodian authorities (despite bringing in the Bank’s Lead Council from Washington DC), and two months later, a housing rights organization had filed the Inspection Panel claim on behalf of the area’s 4,250 families (COHRE 2009). The investigation that resulted was damning. It confirmed the petitioners’ claims that Bank management had failed to supervise the project adequately, and that the resulting abuses had been in direct violation of Bank safeguards (WBIP 2010).

The map that appeared online in early 2011 played a fairly minor role in all of this. It seems to have been produced as a defensive response by the Phnom Penh World Bank office, in order to distance the titling project from land conflicts that had sprung up in the *provinces* – but not the *communes* – where it was operating.² The map was nonetheless intimately related to the petitioners’ claim that the Boeung Kak conflict was “not an isolated case” (COHRE 2009: 5), and that the LMAP project deserved wider scrutiny for its treatment of project-area residents *outside* Phnom Penh, both inside the wider project area and on those living in other areas who were nonetheless effected by the project’s impacts on Cambodian land tenure in general (ibid.; Grimsditch & Henderson 2009).

Critical scrutiny of this wider geography had been slow in coming. The Enhanced Review Mission had acknowledged that poor and indigenous Cambodians had fared badly compared to the project’s accomplishments at the “institutional, legal and policy” level, but had portrayed the problem as fundamentally a rural-urban issue: “LMAP’s noteworthy successes in land titling in rural areas have not been matched in urban areas of project provinces where land disputes are known to be more common”, it concluded (Bekhechi & Lund 2009: i). Likewise, the management response to the Inspection Panel’s initial inquiry noted the project’s complicated geography, but insisted that LMAP had always been “a limited ... contribution to a very complex development problem”, and had never intended “to address all of the land transactions and conflicts in the Project provinces” (WB 2009: 26-27). A 2009 map of the project area that accompanied this response likewise emphasized Phnom Penh, depicting only the provinces where LMAP worked and showing little detail in terms of the project’s actual geography of operations (Figure 1, top). The map published in 2011 was a stark contrast (Figure 1, bottom). Included with the management response to the Inspection Panel’s “extreme concern” about “the large number of people who were forcibly evicted, displaced, or [who remain] under threat of eviction in [all] Project areas” (WBIP 2010: 72), the second map showed

¹ <http://go.worldbank.org/IUTVJ7CXG0>, Management Report and Recommendations, Map 1; dated 21 Jan 2011 (posted subsequently). On the World Bank Inspection Panel more generally, see Clark et al. (2003).

² This is inferred from a comparison between Maps 1 and 4 on the website referenced in footnote 1, as well as from language (quoted below) in the official response by World Bank staff in Phnom Penh to the Inspection Panel.

much more clearly where LMAP had been working, and where it had not.

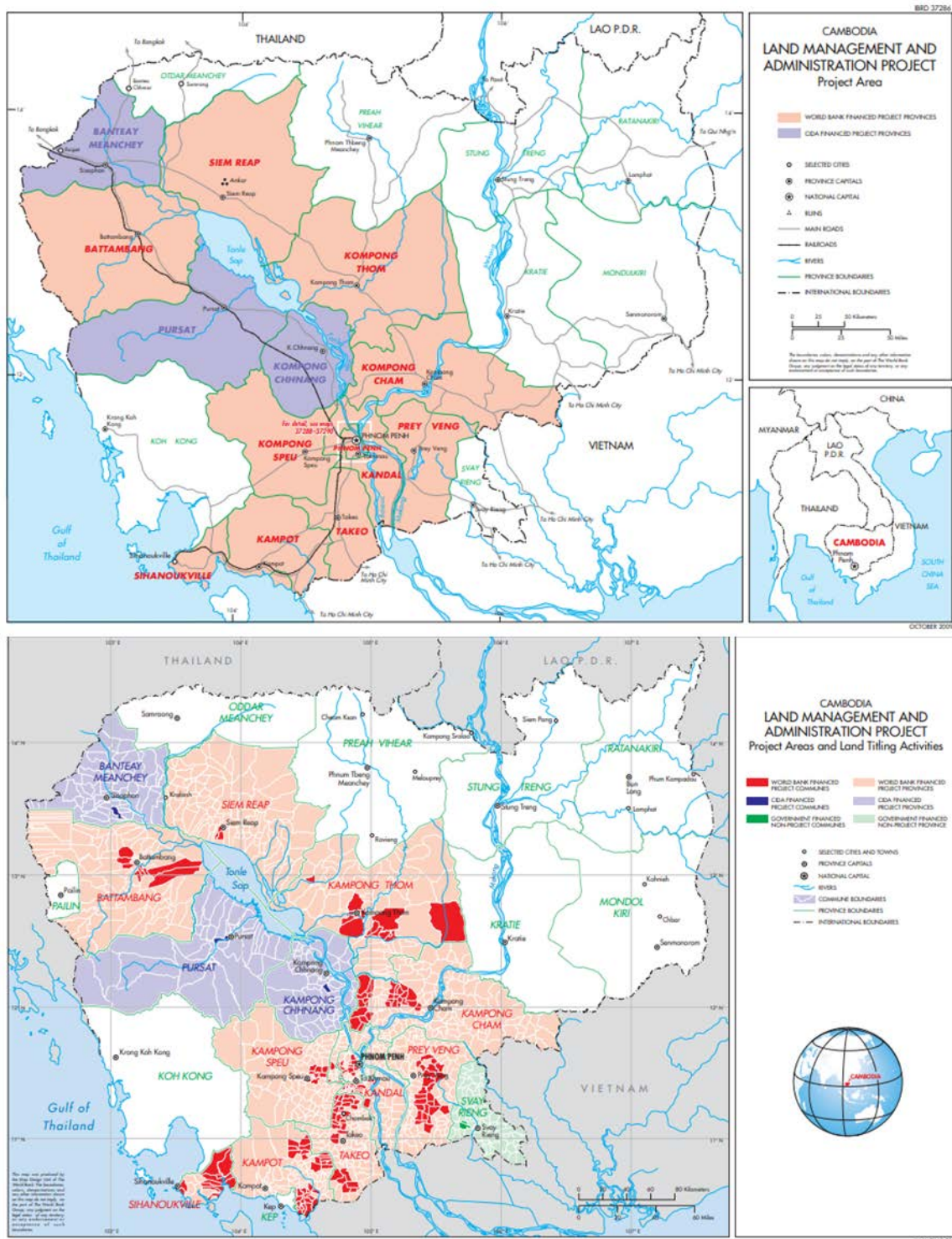


Figure 1. The publicly disclosed geography of titling in Cambodia before and after the Boeung Kak land conflict (top: October 2009, bottom: January 2011)
 Source: Both maps are available at the URL in footnote 1 (see “Map 1”, 2009 and 2011 versions).

Although the reason(s) for this added transparency in the project’s geography of operations can only be guessed at, the important point is that it came to light only *after* there was a significant problem, and even then only following sustained pressure from both civil society and the Bank’s own

Inspection Panel. (In addition to WBIP 2010, see Grimsditch & Henderson 2009; Pred & Bugalski 2009; LICADHO 2009; O’Keefe 2009; and Bugalski & Pred 2010). Through what it shows, as well as through the contested conditions of its production, the map at the bottom of Figure 1 provides an opportunity to examine the geography of land titling and property formalization more generally, an issue that is increasingly relevant in international debates about land grabbing and, conversely, just and sustainable agricultural investment. It also allows the politics of geographical transparency – a key dimension of this debate, given the lack of geographical transparency in many titling projects – to be included explicitly as part of the analysis.

The geographical transparency angle is worth emphasizing because Cambodia’s LMAP project has already attracted a great deal of scrutiny due to its stated intention to prioritize improvements in tenure security (WB 2002: 2) as well as its self-proclaimed success in serving Cambodia’s “rural poor” (Müller 2012: 3). Critiques of this position have been essentially geographical, focusing on the project’s targeting of areas with already-established “quasi-formal” land tenure systems (So 2009) while actively avoiding areas of *actual* tenure insecurity (Biddulph 2010). Indeed, the investigative report that accompanied the Center on Housing Rights and Evictions’ petition for a World Bank Inspection Panel investigation followed this line of argument, noting that because the project targeted “rural areas where land has *not* been sought by developers and speculators[,] ... recipients [of titles] have not necessarily been those in most immediate need of the security that a land title aims to provide” (Grimsditch & Henderson 2009: 4). Yet even as geography has been discussed, it has rarely been explicitly seen. The significance of the map at the bottom of Figure 1 is that it allows these criticisms to be substantiated in far greater spatial detail than has been previously possible; in doing so, the map highlights the politics of geographical transparency more generally as crucial not just for tracking land concessions (which have been widely noted for their lack of reliable data; see e.g., Borrás & Franco 2012; Anseeuw et al. 2012a), but in the arena of donor-funded land administration as well.

When paired with data on land concessions that have been collected, in the case of Cambodia, by concerned members of civil society, the map at the bottom of Figure 1 allows the analysis to move from a conceptual geography of titling based on categories like rural-urban, secure-insecure, and the closely related “core-periphery” model described below, to a concrete spatial analysis, along with a better view of the associated stakes and risks. Doing so not only shows the difficulties of what I call the “formalization fix” – the proposition that systematic property formalization is the right way to address the scourge of “irresponsible” agricultural investment that has been widely glossed as a global land grab. It also begs a series of questions about how transparency politics cross-cut formalization’s uneven geography; whether formalization is always a good thing; and how, in the absence of formal “lines on the map”, categories like state land retain their power. This paper addresses each of these questions in turn in the context of Cambodia’s experience with land titling and land concessions.

The paper proceeds in six additional sections. In section 2, I examine the centrality of property rights formalization to one proposed solution to the “land grab” problem – the operationalization of the FAO, IFAD, UNCTAD and World Bank’s 2010 First Principle for Responsible Agricultural Investment (RAI), namely the respect for established property rights. I examine the RAI document’s articulation of what I call the “formalization fix”, and suggest that while the *geography* of property formalization has emerged as a key problematic (as priorities have shifted from de Soto-esque capitalization to tenure security), it has nonetheless remained largely out of public view.

Section 3 returns to Cambodia, and compares the geography of land titling to that of land

concessions (or, as they are called there, economic land concessions) at the national scale.³ Here the contrast – and indeed, the almost complete non-overlap – between systematic titling under the LMAP project and the conceding of state land to investors supports the charge that titling has, at least from a tenure enhancement perspective, actively avoided precisely the areas where it was needed most. (Ironically, this critique is supported not just by the historical data, but by a recent government effort geared toward un-doing this spatial mismatch in time for an upcoming election.) In relating the individual titling conducted under LMAP to other forms of property formalization – including “social” land concessions, communal titles for indigenous groups, and the recent “Leopard Skin” efforts to undo the stark mismatch that emerged under LMAP – section 3 shows that the spatial politics of titling have been, and remain, both paramount to the governmental efforts of the Cambodian state and largely beyond the reach of foreign donor influence.

Section 4 turns to the question of property formalization *outside* Cambodia’s titling zone, drawing on a now-infamous agro-industrial land grab in Koh Kong province. This case not only gestures to the high stakes of tenure insecurity in many hinterland areas where LMAP titling did not occur; it also shows that the formalization of state land – rather than being a “fix” to land grabbing – can be actively deployed in support of it. While section 4 is not a refutation of the formalization fix *per se*, the case presents an example of how property formalization can be on both sides of the land grab issue. The case thus highlights the importance of selective and strategic formalization to Cambodia’s concession-granting regime to date, and argues that state land needs to be examined not just in its moments of selective formalization, but in its normal illegible context as well.

Section 5 extends this theme by presenting three vignettes of state land creation “off the map” – examples that show how state land is produced as a social fact even as it remains scarce in the arena of formal cartography. These vignettes focus on key stakeholders in Cambodia’s land sector: first, landless people, who are targeted by state education efforts enticing them to buy into the country’s new legal land regime; second, future administrators, who are examined as the subjects of state efforts to reframe “land grabbing” as something that happens not to the poor, but to the state; and third, the international community, whose acceptance of the “fact” that Cambodia is 75-80 percent state land is both troubling and confusing.

The conclusion reflects briefly on the lessons presented here for observers of the global land grab, and argues that the call for a formalization fix be transformed into a critical debate about the uneven geography of property formalization. Doing so, I argue, would enlarge the debate substantially from *how* titling should occur to how to best deal with the problem of unmapped state land and the regulatory abuses and confusions that are widely associated with it.

This paper is based on fieldwork conducted in June, July and August of 2011, mostly in Phnom Penh; it draws largely on documentary, interview, and ethnographic methods. Much of the terrain examined here has been covered – albeit in less explicitly spatial terms – by concerned advocates and scholars, notably around the Boeung Kak case (Grimsditch & Henderson 2009; Pred & Bugalski 2009) and in wider concern with the systematized inequality associated with economic land concessions (Adler et al. 2006; Hughes 2008; LICADHO 2009; Un & So 2009; Biddulph 2010; BABSEA 2011; Cock 2010; Un & So 2011; Bugalski 2012). The paper thus speaks largely to audiences outside Cambodia – audiences for whom Cambodia is an important case in the wider debate about what I call the formalization fix – although Cambodia specialists may benefit as well from the additional spatial and ethnographic analysis provided below.

³ Preferring to maintain the negative connotation of the term “land grab” (a la Hall et al. 2011), I use the administrative terminology of land concessions instead, deliberately leaving the “land grab” status of the deals in question open to empirical investigation.

2 Land Grabbing and the Formalization Fix

In the last few years, land titling has emerged as a central yet often implicit point of contention in the “global land grab” debate.⁴ While land titling and land administration more generally have been enmeshed in policy and academic discussions about agrarian change and poverty alleviation for some time (Borras 2007), property rights formalization has assumed a key role in the recent effort by the United Nations Food and Agriculture Organization (FAO), the World Bank, and others to define and promote “responsible” investment in the agricultural sector.

Responsible agricultural investment is a highly contested term. In the FAO et al.’s 2010 discussion paper, which sought to define the term authoritatively by capitalizing it,⁵ Responsible Agricultural Investment (“RAI”) is a delicately calibrated term. On the one hand, it acknowledges the reality of the global land rush, which in 2008 and 2009 caught the FAO and World Bank off guard as the “innovative solutions” envisioned by FAO director Jacques Diouf in June of 2008 began to morph into something far different only a few months later (Diouf 2008; Lamb 2009). On the other hand, amid rising concern about what Diouf called “the risk of a neocolonial pact”, the RAI document sought, along with the World Bank study issued later the same year (World Bank 2010), to maintain policy space for large-scale agricultural investment – if it was conducted under the right conditions.

Despite concerns that the “RAI Principles” published by the FAO et al. were insufficiently concerned with mechanisms and procedures (see note 5), one thing the RAI document is quite clear about is the goal of systematic property formalization on an immense scale in order to counter the problem of land grabbing. The formalization of property rights emerges early on in the proposed implementation steps of the first principle of RAI, which states that “existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected” (FAO et al. 2010: 2). This is, as the authors acknowledge, easier said than done. Echoing critiques by Cotula et al. (2009), Borras et al. (2011) and others, the authors note that:

Many investments requiring access to land on a large scale focus on areas that outsiders have often considered to be “empty” or “marginal”. Yet it is important to recognize that there are few areas truly “unoccupied” or “unclaimed”, and that frequently land classified as such is in fact subject to long-standing rights of use, access and management based on custom. Failure to recognize such rights, including secondary ones, will deprive locals of key resources on which their wealth and livelihoods depend. ...

In many countries of interest to investors, the state “owns” large amounts of land, which may make it easier to transfer such land to outsiders in less than fully transparent ways, even if it is still occupied by traditional users. The fact that governments often do not know the extent or location of their holdings, or that by law all land that is not “productively used” can administratively be transferred to other uses, increases such dangers.

FAO et al. 2010: 2, 3

The RAI authors thus frame the essential problem as a conflict between the weak formal claims of states (which “own” land but don’t *actually* own it since they don’t know where it is; also see

⁴ This paper presumes that readers are familiar with the land grab debate. See Borras and Franco (2012) and Anseeuw et al. (2012a) for two recent and complementary overviews, as well as special issues of the *Journal of Peasant Studies* (vol. 39 nos. 2 and 3-4), *Globalizations* (vol. 10 no. 1) and *Development and Change* (vol. 44 no. 2).

⁵ Shortly thereafter, an effort to define “responsible agricultural investment” (this time in lower case) in ways that more clearly specified mechanisms was begun by the intergovernmental Committee on World Food Security (HLPE 2011: 39).

Deininger et al. 2012) and traditional or common property-based claims “to which no formal records exist” (ibid.: 3). The solution proposed is that this complex array of competing entitlements – the “statutory or customary, primary or secondary, formal or informal, group or individual” rights of communities and individuals, and the “ownership” claims of the state – be sorted out and reconciled through a process of adjudication and formalization. The first two steps to realizing principle 1 are thus given as “(i) the identification of all rights holders” and “(ii) [the] legal recognition of all rights and uses, together with options for their demarcation and registration or recording” (ibid.: 2). While the authors acknowledge that this is an ambitious undertaking, they make it clear that their long-term vision is “a countrywide systematic identification and registration of rights” (ibid.: 3).

Despite this grand vision, the question of priorities emerges immediately. In stating the long term desirability for formalization everywhere, the authors nonetheless suggest that “countries with limited resources may do well to initially focus efforts on areas with high agro-ecological and infrastructure potential and expand from there” (ibid.). This is a notable statement, and it is the only reference to the geography of titling in the entire document. It is important because it gestures to the herculean task that property rights formalization entails, and acknowledges that there will be tradeoffs as certain areas (and types of rights) are selected first. Even more importantly, it outlines a proposal for how a socio-spatial prioritizing of titling might best address the problem of farmland grabbing: it says, in a word, that titling should focus on the fertile and accessible areas that are being targeted by land concessions throughout the global South (cf. Cotula et al. 2009; Borrás et al. 2011; Anseeuw et al. 2012b). This is, as this paper illustrates for the case of Cambodia, a dramatic reorientation of the way that titling’s spatial prioritization was envisioned before the emergence of the land grab debate. Although details are hard to find – and indeed this is a key dimension of the problem (see below), many titling projects have seemed to operate via the spatial logic laid down by Hernando de Soto. De Soto, whose book *The Mystery of Capital* (2000) is often seen as the bible of the land titling movement, prioritized the creation of legal collateral and tended to focus on the *favelas* of the peri-urban periphery. As titling has made its way into Southeast Asia, it has branched out to include wealthier households as well, but as Phil Hirsch notes, it has tended to focus more on “core agricultural areas where land and its produce have been commodified for longer than in more peripheral areas” and only then to work its way out “into the margins” (Hirsch 2011: 5).

Unfortunately, the actual geographic progression of land titling programs is difficult to track due to the lack of publicly available data. Hirsch’s assertion of core-to-periphery expansion and the “growing ... geographical overlap” between titling and land grabbing is more a hypothesis than a result; with the exception of Boeng Kak Lake, his examples – of untitled swidden land, grazing land, and teak plantations that are increasingly at risk of concession expansion (ibid.: 9, 11) – tend to fit the pattern of separation that he calls the central conundrum of land titling: “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-recognized 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” (ibid.: 15). In my own efforts to figure out the geography of titling in Laos, I came up against maps similar to the one shown at the top of Figure 1. Figure 2 shows a comparison between one of these and an internal map from the National Geographic Department in Laos, which shows a much finer-grained geography of titling – and a much thinner distribution of titles. A World Bank website oriented toward providing transparency to the public shows a similar lack of spatial detail (Figure 3).⁶ In this sense, the map at the bottom of Figure 1 – the spatially

⁶ As indicated in Figure 3, many projects give no information in the mapping tool. One exception is the Philippines Land Administration and Mapping Project (LAMP), phase II, where six locations are shown in the World Bank’s on-line mapping tool (<http://www.worldbank.org/projects/P073206/land-administration-management-ii-project?lang=en>). The level of detail given is comparable to the “public” maps shown at the top of Figure 1 and the right of Figure 2.

elaborated LMAP map – is quite exceptional.

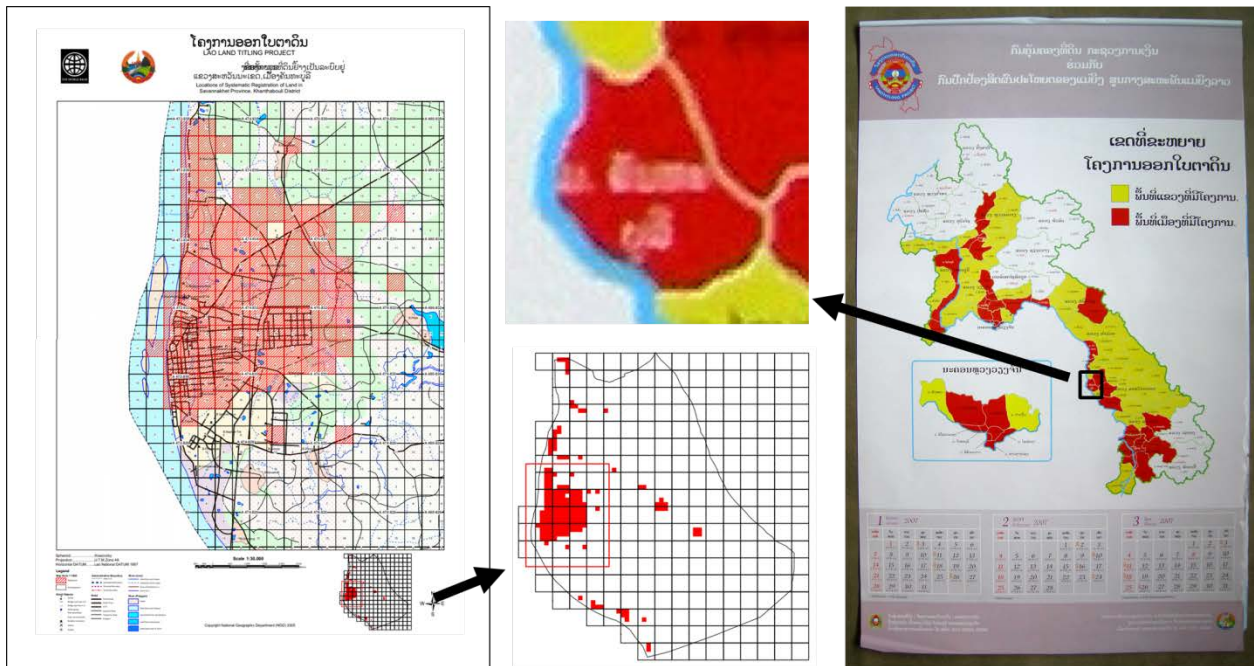


Figure 2. Internal versus public representations of Laos’s zone of land titling coverage (anonymous source, left, and author photo, right). The maps overlap in Kaysone Phomvihane District in central Laos’s Savannaket province. (Figure by the author based on author’s field data.)

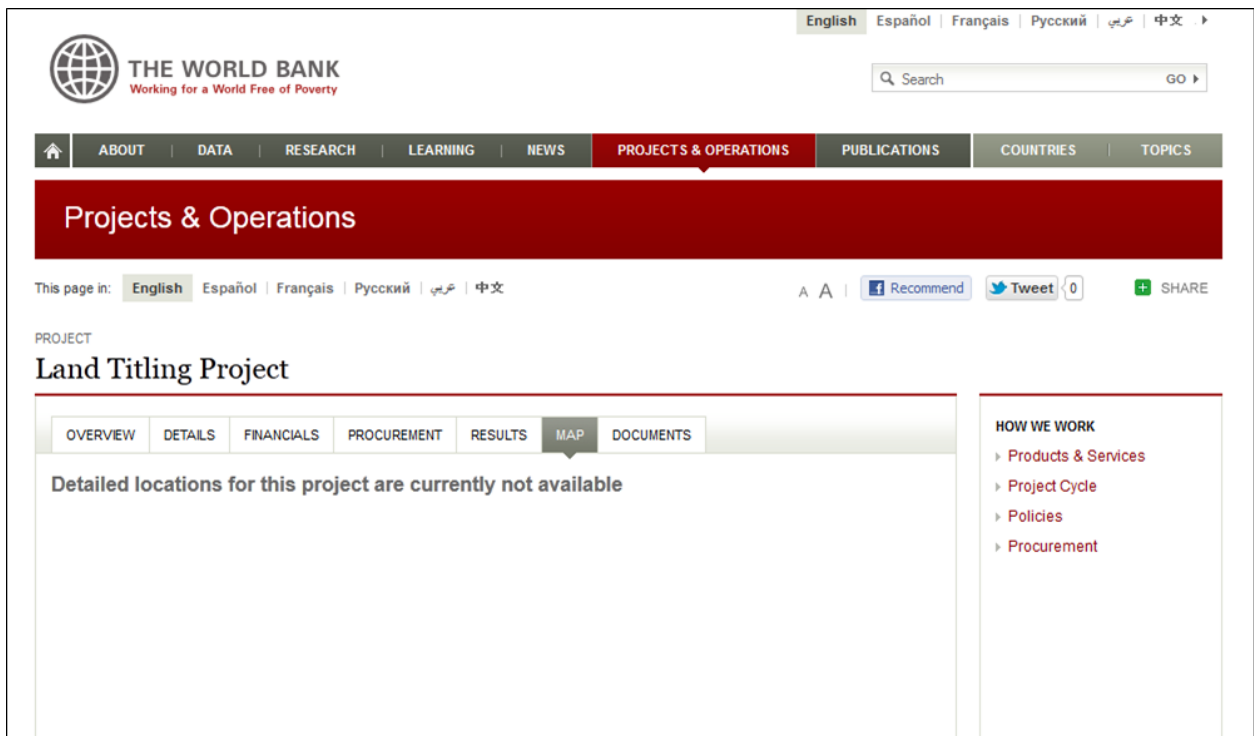


Figure 3. “Detailed locations for this project are currently not available”. This is the screen shot for Laos’s Land Titling Project, first phase.⁷ Similar results appear for Lao project’s second phase, as well as for similar projects in Ghana, Indonesia, Thailand, and Zimbabwe.

⁷ <http://www.worldbank.org/projects/P004208/land-titling-project?lang=en> (accessed early 2012).

A second dimension of Cambodia's importance as a case stems from the fact that land grabbing was on the radar from the beginning of the titling project. While LMAP followed a "core-first" geography in the sense described by Hirsch (and critiqued by So 2009; Grimsditch & Henderson 2009; Biddulph 2010; and others), it did so in full cognizance of the dangers that lurked at Cambodia's property periphery, where substantial areas of unmapped state land were believed to exist. One of the project's core components was this mapping of state lands (WB 2002) – an attempt that by all accounts failed spectacularly (Ballard 2006; WB 2009; Grimsditch & Henderson 2009; WBIP 2010). Unlike areas where land grabbing has emerged as a more recent phenomenon of concern, Cambodia's land grab dangers were identified back in the 1990s (Council for Land Policy 2002; Le Billon 2000; Hughes 2008). The geography of formalization that emerged in the 2000s was chosen with the land grab debate in full view.

3 The Geography of Formalization: The Case of Cambodia

Scrutiny of the spatial dimensions of Cambodia's land titling project is not new. Although the issue erupted into exceptionally public view with the Boeung Kak case and the World Bank Inspection Panel investigation that followed it, Cambodia's uneven geography of tenure formalization has been the subject of investigation and criticism for over half a decade. The tenure conservatism of systematic land titling – its preference for "precisely the areas in which preexisting tenure systems are best embedded, where the least conflict occurs, and where the interests of the poorer majority are least at risk" – has been widely noted (Adler & So 2012: 88; also see So 2009; Biddulph 2010). This has been explained in a number of ways, beginning with the project's official documentation, which declares the intention to avoid "areas where disputes are likely" until the status of the land in question has been resolved (WB 2002: 24; Grimsditch & Henderson 2009). While the choice was framed early on as a capacity-building measure – an effort to "begin the program in areas where it would be likely to succeed" (Biddulph 2010: 98)⁸ – it has been subsequently solidified through a mix of patronage politics and quantification-oriented "performance" metrics.

Robbin Biddulph notes the importance of provincial state authority in deciding the where titling takes place and when:

According to the relevant legislation [a 2002 sub-decree], it is provincial governors who must allocate an adjudication area and determine its boundaries, before initiating the work of officials of the Ministry of Land Management Urban Planning and Construction to conduct the registration process. At this stage, therefore, strategic choices may be made about project location on the basis of the sort of vested interests and networks that order the economic development of contemporary Cambodia .

Biddulph 2010: 99

Biddulph thus refers to provincial authority as "a decentralized safety valve which ensures that systematic land titling only travels to places which government feels comfortable with" (ibid.). As Brett Ballard has pointed out, there is a public transcript as well that justifies spatially selective titling: project design. In 2007, Ballard and his colleagues at the Cambodia Development Research Institute (CDRI) interviewed provincial officials about how titling areas were selected. They found that:

⁸ Biddulph, who has studied the question extensively, recounts an interview with the LMAP project director: "He used the metaphor of a cock-fight to explain the process and said that if a cock is sent to fight and loses, that will be the end of the cock with no second chances. So it is always wise to send the cock out to fight against some weaker opponents first to get some victories and become stronger before fighting a stronger opponent. For this reason, he argued that it is beneficial that the systematic land titling program has been implemented in areas where tenure is already secure" (Biddulph 2010: 98).

“Most [provincial] administrators were reluctant to title land in areas that were further away from market centers and had poor access, and where there tended to be more disputes. They felt that they could not issue titles as quickly in such areas and that they would receive poor performance ratings, as performance was evaluated on the number of titles issued.”

Ballard 2010: 3

Grimsditch and Henderson, in their investigative report cited above, likewise echoed the emphasis on performance rather than impact on tenure: “LMAP has evaluated the success of the titling program largely based on its outputs, particularly the number of titles issued, rather than its impacts, such as clear improvements in tenure security and a reduction of land-grabbing and disputes” (Grimsditch & Henderson 2009: 4). In contrast to the capacity-building argument given above, Biddulph argues that this pattern of focusing on easy areas is in fact endemic in titling projects throughout Southeast Asia – a claim that, if true, has important implications for efforts to reorient titling to the frontier spaces targeted by land concessions:

The assertion that risk-aversion (only taking the tenure security program to already secure lands) is only a temporary phase at the beginning of a project whilst the project becomes “strong” should be treated with some skepticism. Cambodia’s systematic land registration resembles earlier titling processes also supported by the World Bank in Thailand and Indonesia, where it has been argued that the main lessons learned were “ways to avoid complex tenurial situations, as well as complex land types such as forests, so as to be able to concentrate on reaching high production targets in non-contested areas”.

Biddulph 2010: 99, citing the work of Shawn Williams; also see LCG 2002

The map of Cambodia’s titling zone that was published in 2011 gives spatial clarity to this line of critique. When compared to data on economic land concessions (ELCs) that Cambodian NGOs have collected in recent years, the mismatch between ELCs and the systematic titling under LMAP is striking. As Figure 4 shows, only two areas of overlap are visible at national scale: one in central Cambodia’s Kampong Thom province (Figure 4, center), the other in Preah Sihanouk province, located in the southwest (Figure 4, lower left). While there may be areas of overlap not visible here – areas that, like Boeng Kak Lake, are too small to see at national scale – Figure 4 gives an indication of how systematically the articulation of tenure conservatism, territorial discretion by provincial authorities, and performance-based evaluation has maintained land titling and economic land concessions as spatially separate domains. Boeng Kak is, in this sense, the exception that proves the rule: it is one of the few spots in the country where these factors *failed* to keep titling and ELCs from converging.

In parallel with the individual titling pursued under LMAP, Cambodia had two other important forms of smallholder-oriented property formalization that were rolled out during the 2000s: social land concessions and indigenous communal titles. In contrast to LMAP’s focus on more densely populated areas (see Figure 4, blue dots), both of these were geared toward the less dense regions of the country – regions where land concessions have proven remarkably capable of covering as well.

Both indigenous communal titling and “social” land concessions date from the rewriting of Cambodia’s Land Law in 2001, which was an effort to place property-making (including economic land concessions, which were already in existence) on a firmer legal and bureaucratic footing. Communal titling has focused largely on northeastern Cambodia, depicted as white space in Figure 1 and containing one of the country’s heaviest densities of ELCs (see Figure 4; LICADHO 2012). Communal titling has nonetheless been mired in bureaucracy, including the procedurally onerous requirement that communities be declared indigenous before they can apply for a title. Only three villages had received titles as of early 2013 (Pickardt et al. 2013: 5; also see Ironside 2011), and as a new land formalization scheme (described below) has arrived during the last year, indigenous

communities are increasingly facing the dilemma of whether to wait for the long-delayed communal titles or try to make due with something else (Milne forthcoming; Cambodia Daily 2012, 2013c).

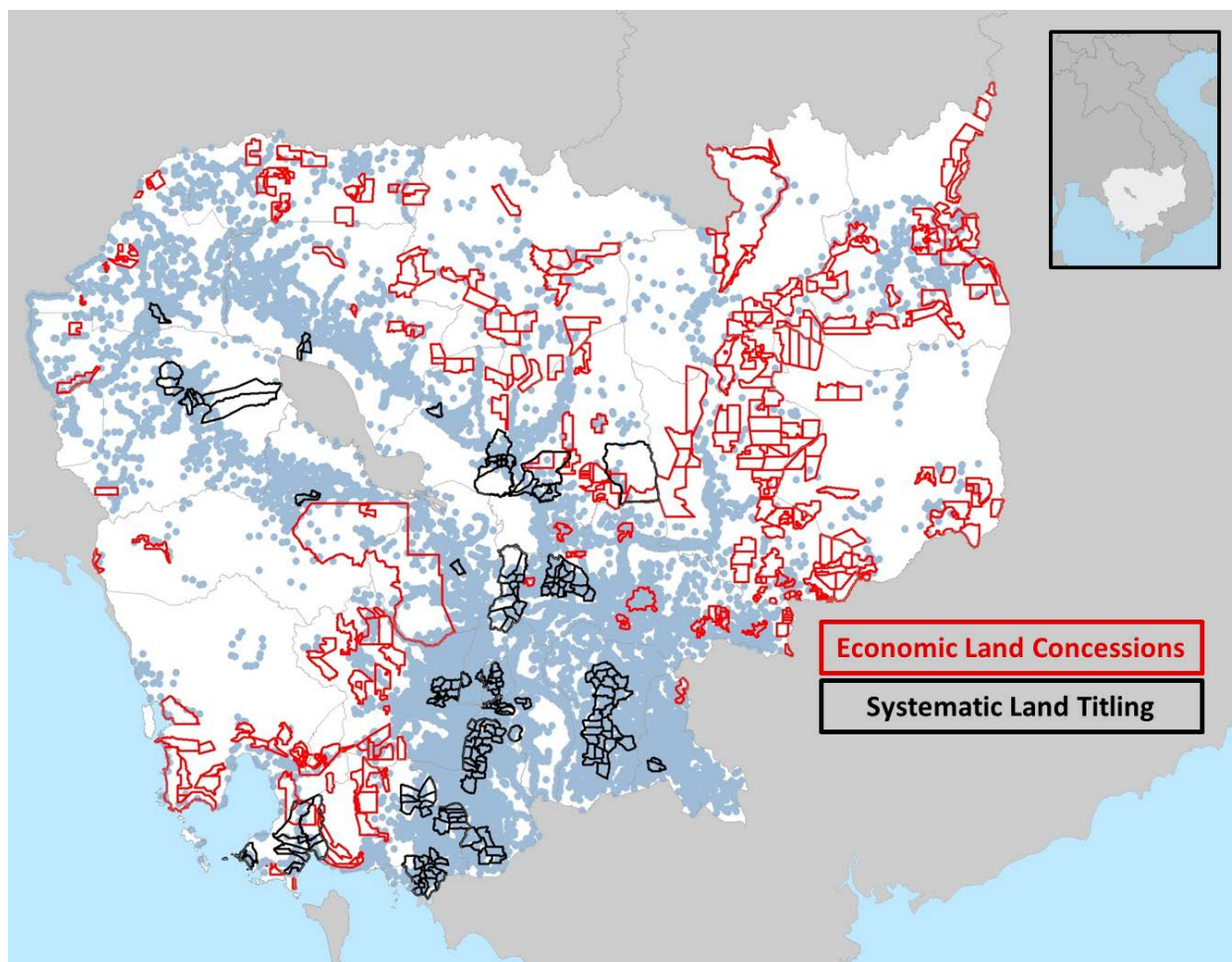


Figure 4. Titling zone versus Economic Land Concessions (with official villages in blue)
(Figure by the author using data from LICADHO [ELCs, 2012] and the World Bank.⁹)

The Social Land Concession (SLC) program, despite receiving its operationalizing sub-decree before the ELC program, has produced equally minimal results, despite the deployment of the (post-LMAP) Land Allocation for Social and Economic Development (LASED) project in 2009. As the LASED project's top foreign advisor complained in his paper for the 2012 World Bank Conference on Land and Poverty,

Whereas 1.7 million hectares have been officially reported to be distributed as economic land concessions (ELCs) for about 200 rich and powerful investors, only 6 thousand hectares were made available for 1,614 rural poor households as social land concessions by the end of 2011 through ... donor [support]. In addition, a few thousand retired military staff and their families received land through a so-called "national SLC program" without donor support. As a gross summary it has to be stated that 99 percent 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 percent share.

Müller 2012: 3-4

⁹ The black polygons are communes where LMAP operated, and were extracted from the World Bank map at the bottom of Figure 1 (digitizing by the author).

With elections approaching and a string of high-profile land conflicts, including the killing of forest activist Chut Vutty and a record number of land-related arrests in 2012 (Milne 2012; Cambodia Daily 2013a), the lack of tenure security in concession areas has prompted a Polanyian-type reversal by Cambodian prime minister Hun Sen, whose so-called “Leopard Skin” policy is attempting to keep contested ELCs land in the hands of smallholders.¹⁰ This idea has been linked with a number of specific proposals, including pairing ELCs with SLCs (Müller 2012; Neef, Touch & Chhengthong 2013), recognizing existing smallholdings within ELC areas (Phnom Penh Post 2012a; MAFF n.d.), and, most recently, deploying “some 2,000” student “volunteers” to the countryside with the intention of issuing 1,200,000 hectares of 5-hectare micro-ELCs to smallholders living inside investor-held concession areas (Phnom Penh Post 2012b). How this latest intervention is playing out is anything but clear. The campaign has been called “full of ambiguity” on the grounds that the “volunteers” have no authority to adjudicate land conflicts (Phnom Penh Post 2012b), and yet the project is targeting “land that was once covered by forest, canceled economic land concessions, [and] existing land concessions being disputed by local villagers” (Cambodia Daily 2013b). Like LMAP prior to 2011, the new campaign is geographically opaque; beyond the land categories specified above, the only public details are aggregate statistics: numbers of titles handed out, numbers of hectares, and numbers of families involved. As these numbers balloon into the hundreds of thousands – 125,000 titles, 214,000 hectares, and 74,066 families as of January 2013 (ibid.) – it is clear that rural land entitlements, and indeed the entire relationship between ELCs and smallholder land titling, are currently being reworked. As western donors are largely excluded from this process,¹¹ the great irony is that the Cambodian state is pursuing a version of the formalization fix – far later and less transparently than many would have liked – largely on its own.

One of the shortcomings of the LMAP project, as has been widely pointed out (Grimsditch & Henderson 2009; WBIP 2010), was its failure to implement what was known as Component 5: the systematic demarcation and formalization of state landholdings. The lack of a state land inventory (also see Sar 2010) meant that the demarcation of state land was largely conducted on an ad hoc basis, often through the formalization of economic land concessions. Section 4 examines this phenomenon in the context of a well-known land grab in western Cambodia. By focusing on the formal dimensions of this process, section 4 shows how the formalization of property rights – in this case, state property rights well outside Cambodia’s titling zone – can be deployed in *support* of land grabbing. In doing so, it highlights the failures of the formalization fix as it has been previously described, and shows a different type of “fix” that formalization can perpetuate.

4 Formality Politics Outside the Titling Zone: A Case Study

Western Cambodia has emerged in the last few years as one of the country’s most notorious areas for agribusiness-related land grabbing. This is due in part to the rise of sugar as a new “boom crop” (BABSEA 2010; also see Hall, Hirsch & Li 2011), and in particular to the influence in Koh Kong, Kampong Speu, and Oddar Meanchay provinces of Ly Yong Phat, a ruling party senator and “one of Cambodia’s most influential businessmen” (BABSEA 2010: 2). According to researchers who have helped bring the story to an international audience, Ly and his business associates have been able to “flout the law at will” in their development of at least 60,000 hectares of sugar plantations in these three provinces, leading to “serious and widespread human rights abuses and environmental

¹⁰ http://www.cdc-crdb.gov.kh/cdc/third_cdcf/opening/shs_third_cdcf_en.htm; see paragraph 27.

¹¹ See especially Müller (2012: 12), which outlines an approach to addressing the titling exclusion problems described above that was supposed to “ready by” June 2012 as part of GIZ’s ongoing collaboration with the Cambodian Ministry of Land Management, Urban Planning and Construction. Rather than beginning this “milestone process” upon which ongoing German support would have been “made contingent”, the Ministry of Land Management was enrolled in the student campaign, which began in the same month (June 2012) the GIZ program was supposed to be ready to begin.

damage ... affecting more than 12,000 people” (ibid.: 1, 2). One of those cases – a pair of side-by-side ELCs in Koh Kong’s Sre Ambel and Botom Sakor districts – forms the backdrop for the analysis presented here.

The details of the Koh Kong sugar concessions have been extensively documented, and are summarized here as a prelude to the analysis of formality and formalization presented below. In mid-2006, a pair of adjacent ELCs were demarcated and allocated to Ly Yong Phat and Chamroon Chinthammit, a Thai businessman who, along with a third (unnamed) Taiwanese partner, have since developed them into large-scale sugar plantations (BABSEA 2010: 2). Each was for approximately 9,500 hectares; totaling 19,100 hectares,¹² their separation was “an apparent attempt to circumvent” Cambodia’s legal ban on ELC holdings larger than 10,000 hectares (ibid.). Since then, project operations have been disturbingly reminiscent of Marx’s classic account of primitive accumulation: documented impacts include loss of farmland and grazing land, destruction of crops (including tree crops), confiscation and shooting of livestock, exclusion from forest areas and water sources, and impoverishment and lack of alternatives to the point that children have been pulled from school, and adults forced to take jobs with the company (a process which entails their renouncing any compensation claims) (ibid.: 3; also see UNCOHCHR 2007; cf. Marx 1873: 873-913). Adding insult to injury, sugar from these and the other concessions in the region have been receiving duty-free access to the European market under the European Union’s “Everything But Arms” trade provisions (BABSEA 2010: 8-9; Danish Church Aid 2011; Clean Sugar Campaign 2012).

There is another important lesson here as well. The “on-paper” geography of the Koh Kong sugar concessions provides a useful illustration of formalization politics in practice. Not only does it exemplify the pattern of geographical separation shown in Figure 4; it takes the analysis a step further by showing how state land formalization has been pursued selectively and strategically, to the exclusion of other possible formalizations, including (as we will see) counter-formalizations of the sort described above.

The boundaries for the two sugar concessions were demarcated in a pair of survey maps that, based on their dates of approval by government authorities, seem to have been made sometime in early 2006.¹³ These maps – one of which is shown here as Figure 5 – were replete with all the trappings of formality, including an official-sounding title, embossed stamps and signatures of office. These maps were made to impress, if not with their cartography (see below), then at least with the array of authorities whose approval they symbolically marshal.

¹² See <http://www.opendevdevelopmentcambodia.net/company-profiles/>, “Koh Kong Plantation Company Limited” and “Koh Kong Sugar Company Limited” (accessed June 2013). This information was formerly available (accessed mid-2011) at <http://www.elc.maff.gov.kh/en/profile/17-kkg.html> but has since been taken down.

¹³ The approval dates are in late April 2006; copies of these maps are in the author’s possession.



Figure 5. Survey map with accompanying symbols of authority

Figure 6 locates the two survey maps in the wider landscape shown above in Figure 4. As the more zoomed-out maps show, the two sugar concessions are located well away from the systematic titling zone farther to the east. As evidenced by the intermediate-scale map, the concessions appear to have been carved out of territory just north of a string of villages that line one of western Cambodia’s main roads (shown in blue). Zooming in even closer, based on the black-and-white portions of the upper-right map (the yellow, brown and green polygons are discussed below), the concession areas appear to have been demarcated in such a way as to avoid the large areas of dark space as well. The map legends (not shown here) label these dark areas as “evergreen forest”, and specify a few different types of white space which are not visible on the photocopies shown here. The legends classify the areas inside the two concession polygons as follows:

	West (left) ELC	East (right) ELC
Evergreen forest	918ha	812ha
Other forest	122ha	572ha
Land without forest	9,288ha	9,159ha
Total	10328ha	10,543ha

These numbers track closely to those on the final concession contracts, and provide strong evidence that the ELCs were formally allocated on the official rationality that they avoided the high-quality forest represented by the category “evergreen”. Once the evergreen forest is removed from the numbers above, the west concession comes out to be 9,410 hectares, while the right measures 9,731. The two concessions allocated to Ly Yong Phat and Chamroon Chinthammit, according to the contracts, are 9,400 and 9,700 hectares respectively (ibid., note 12). What this says is that the formal geography for these two concessions comes primarily from the domain of forestry, and that the official rationale in laying down lines of exclusion was not an effort to avoid smallholder land, but rather to avoid relatively intact (and also state-owned) forest (also see Dwyer 2013).

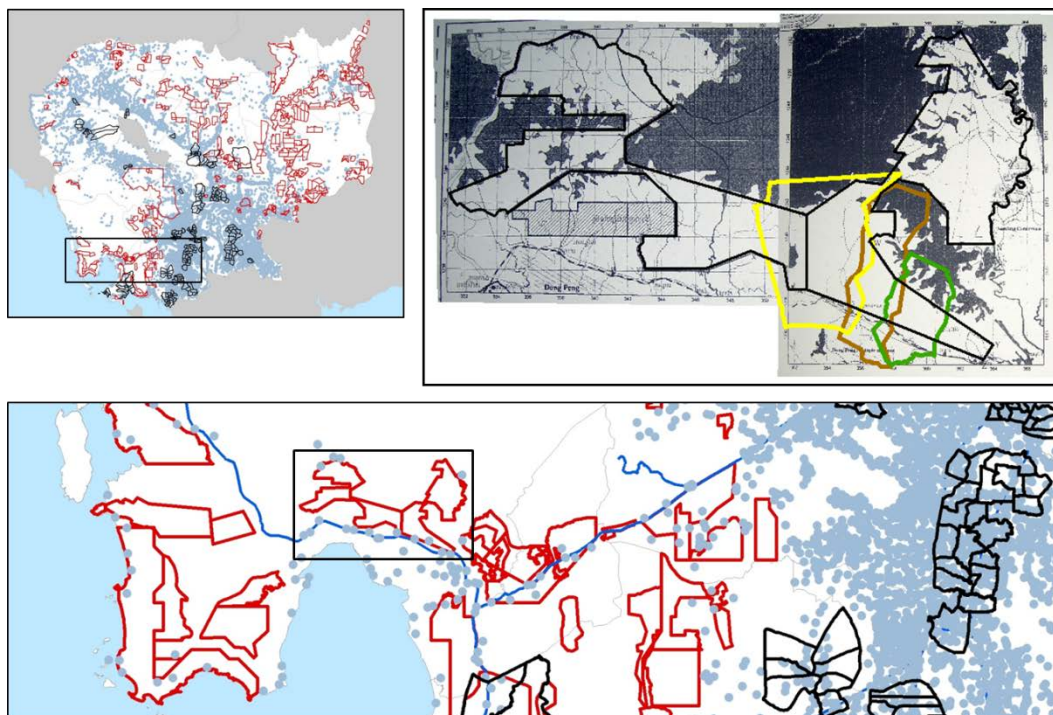


Figure 6. Location and survey maps of Koh Kong sugar concessions (see text for details)

In this attention to forest exclusion, the ELC demarcation process is notable in that it is doing something that was intended to occur as part of the LMAP project, but which did not happen (Bekhechi & Lund 2009; Grimsditch & Henderson 2009; WBIP 2010): *it is inventorying large parcels of state land*. But it is doing so in a very selective and particular way. As shown by the categories above, the purpose of the survey is not to address the “state land problem” identified by the FAO et al. – the worry that states “own” large tracts of un-demarcated land and thus risk dispossessing smallholders if they act on those rights (see section 2). Rather, what is happening is an effort to distinguish high-value forest, which Cambodian land law classifies as inalienable “state *public* land”, from other areas (classified here as “other forest” and “land without forest”) that surveyors regarded as “state *private* land”, which can legally be alienated to ELCs.¹⁴ (This distinction is also echoed in the policy rhetoric of using ELCs to (re)develop “degraded forest” land in the aftermath of the 1990s logging boom (see Le Billon 2000).

The formal geography of the Koh Kong concessions thus shows a very different set of priorities being applied to the formalization of hinterland property rights than what is intended by proponents of the formalization fix. In fact it shows a different sort of formalization fix entirely. Rather than formalizing property rights *in advance* of large-scale concessions in order to protect smallholders and delimit state claims to land, what we see here is the use of the concession process to *create* state land legibility – just in time for it to be alienated to private concession-holders. Formalization thus becomes a technology for writing smallholders out of the legal picture, creating a “fix” not in the FAO et al.’s sense, but in that described by David Harvey’s (1982) notion of the spatial fix – a way for capital to overcome a social barrier to commodification – in this case, the barrier posed by small-scale land users.

In addition to showing the “just-in-time” formalization of state land, this case is notable in a second and more unique way, too. Just prior to the ELC survey, three villages in the eastern concession were deliberately documented as land under smallholder use. Cambodia’s Commune Land Use Planning (CLUP) program grew from a donor effort to promote Decentralization and Deconcentration (“D &

¹⁴ Land Law (2001), art. 16-17 and 48-62.

D”) as part of Cambodia’s post-conflict reconstruction process. Although CLUP was not widely implemented, one place it *was* deployed was in three of the villages that line the southern edge of the soon-to-be Koh Kong Sugar concession. The three colored polygons in Figure 6 above are the outlines of three CLUP maps produced in February and March of 2006; these maps, as evidenced by Figure 7 and Figure 8, show the areas inside them to have been in use for a variety of smallholder land uses. Figure 7 highlights the CLUP process’s attention to detail – detail that resulted in the GPS points that provided the basis of the geo-referencing done by a local NGO.¹⁵ Figure 8 shows an example of this geo-referencing, which enabled the overlay of the three colored polygons shown in Figure 6. Together, Figures 5-7 represent an example of an effort to launch a “formalization fix” in the sense described in section 2. As evidenced by the impacts summarized above, however, this effort has been largely unsuccessful (at least so far).

The two ELCs examined here thus provide a compelling challenge to the “formalization fix” proposal elaborated in section 2. Indeed, the case shows the formalization of *state* property being deployed for almost opposite ends, as the closely managed relationship between legible and illegible property rights is used to paper over the unsavory operations of a plantation company. Managed illegibility paired with the just-in-time delivery of formalized state land is surely not what proponents of the formalization fix had in mind; nonetheless, it has emerged as a functional piece of what scholars call the neo-patrimonial resource politics of the contemporary Cambodian state (see Hughes 2007; So 2009; Biddulph 2010; Cock 2010; Springer 2011; Adler & So 2012). Indeed, the legal-cartographic manipulations and exclusions on display above are one important piece of the “neo” dimension of patrimonial politics: they show how elites are able to mobilize legal-bureaucratic mechanisms in order to support and legitimize dubious business operations.



Figure 7. CLUP map detail

¹⁵ Anonymous interview, Phnom Penh, 1 Sept. 2011.

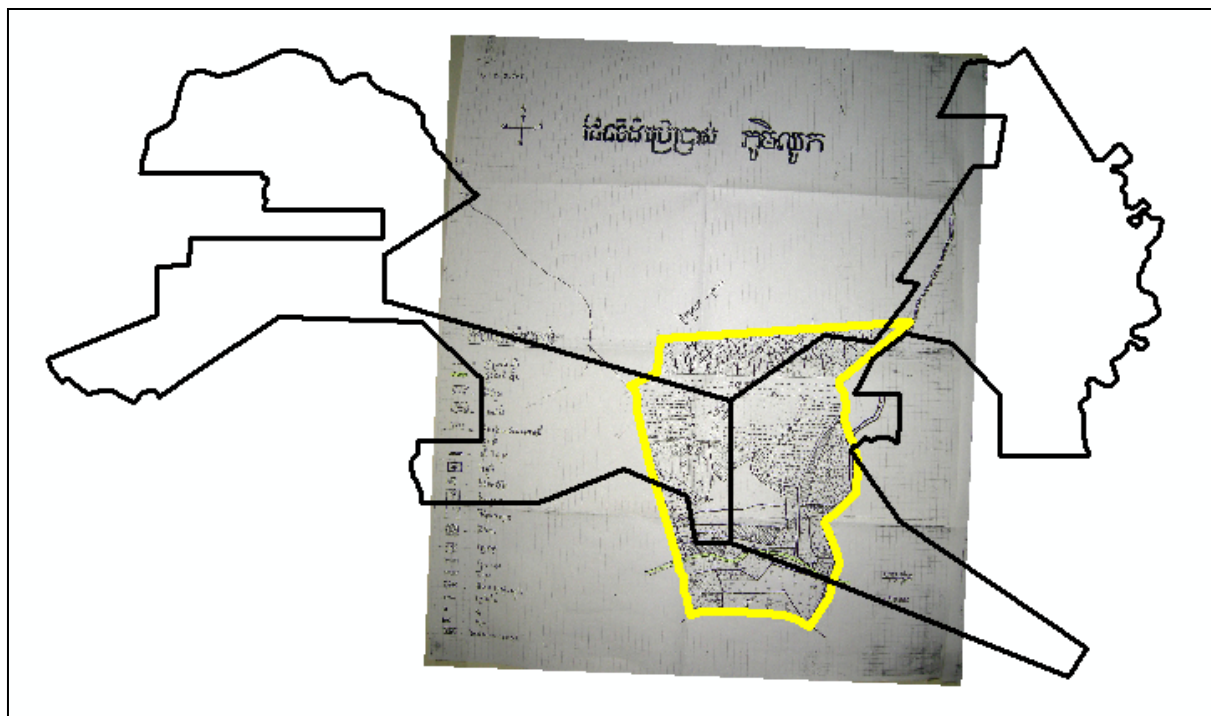


Figure 8. CLUP map overlay with ELC

As evidenced by the “student volunteer” campaign described above, however, ad hoc state land formalization opens up its own set of problems. One thing that has helped maintain it as an effective tactic, however, is an abiding belief that state land exists as such even prior to its formal demarcation. In the next section, I present three brief examples of other ways in which the belief in state land is cultivated. Given the dearth of state land mapping outside the ELC process, and given the negative associations that ELCs have come to carry, these types of “off the map” work are likely to play a significant role in maintaining the legitimacy of state land as a social fact.

5 Conjuring State Land: Three Vignettes

[Land] policy requires broad agreement to make it a consensual undertaking which has the support of people in all walks of life, whether they are farmers, fishermen, loggers, builders, soldiers, government officials, lawyers, bankers, tourism operators, industrialists, or workers. It needs the support of minorities and the poor or least visible members of society. With consensus, policy can be implemented in a way that will encourage confidence and security, and foster trust and transparency.

Council for Land Policy, Interim Strategy Paper (2002: 4)

The formalization apparatus examined in section 4 is deeply unstable and prone to crisis, as evidenced by both the wider pattern of land conflict in Cambodia (NGOF 2008, 2009, 2010), and by the overtly political efforts to address it that tend to creep up before elections (Un & So 2011) – most recently the student campaign mentioned in section 3. At the center of this instability is the fact that state land often appears in a highly dubious light when it is brought concretely into cartographic view, as illustrated in section 4. While state land is also created at the edges of systematic titling efforts (which map small state land parcels like schools in addition to private land plots), these are much less visible; more often, visible state land comes in the form of ELCs. This gives state land a legitimacy problem. Section 5 thus examines three sets of processes that have been occurring in parallel – “off the map” so to speak – and that are oriented toward creating state land in more positively (or at least neutrally) connoted and abstract ways. Focusing on landless people, future

government workers, and foreign donors, the vignettes below provide glimpses into ongoing efforts to convince three key constituencies that state land already exists objectively, and that mapping it is thus merely a technical matter.

The first vignette focuses on the official representation of a key figure in Cambodia’s land regime: the landless person, who exemplifies the “poor and least visible members of society” whose consent is required for the system to work (Council for Land Policy, above). The second focuses on a 2011 “summer school” on land policy in Phnom Penh, and examines how, despite donor efforts to fight land grabbing and promote human rights, future land administrators are taught that land grabbing is something that victimizes not poor people, but the Cambodian state. The final vignette focuses on the international community, and critically deconstructs the widely circulated statistic that the majority of the Cambodian countryside – between 75 and 80 percent of the national territory – is state land, despite not yet having been mapped as such. These vignettes are intended as snapshots of processes that are far more complex than what can be presented here, but that nonetheless illustrate the degree to which state land is not just a product of cartographic work and enclosures at the margins, but of everyday political work in the center as well.

5.1 Educating Uncle San

“Sorry uncle!” These are the words of a cadastral officer who appears at the beginning of *Land is Life*, an educational booklet produced by the Cambodian Ministry of Land Management and handed out to local residents at the beginning of the systematic titling process (LASSP n.d.). The cadastral officer has just told an elderly peasant named Uncle San that his and his son’s plans “to clear the bush for planting” are strictly forbidden (ibid., all quotes in this section). Previously, Uncle San had owned a plot of farmland, which he had mortgaged and lost due to a combination of “drought, flood, disease and destitution.”

Uncle San saw a cement marker (Geodetic Marker), and was about to remove it. While getting ready to remove it, suddenly a neighboring teacher arrived at the scene, telling him not to do it because it was public property and that the action was illegal. After having words, they decided to go to the commune chief. To be clear, the chief brought them to see the cadastral officer for resolution.

After his apology, the cadastral officer continues: “Since the enactment of the Land Law on August 30, 2001, ‘... absolutely no encroachment of land can take place within the private property of the state and public legal entities. Occupation of possession shall end when this law comes into effect.’” Uncle San asks him what will happen if he clears the land anyway. The officer again quotes directly from the 2001 Land Law.

“After this law comes into force, any new occupant without title to an immovable property belonging to public bodies or private persons shall be considered as an illegal occupant and shall be subject to the penalties provided in Article 259 of this law.” In case of clearing the land for [farming], according to the law, “An infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or imprisoned from one to five years.”

After hearing about the additional fines and jail time for “removing, moving or destroying a cement marker, topographic point, or the position of a cadastral sign”, Uncle San and his family are “extremely scared.” The elderly man expresses gratitude for having been prevented from breaking the law, but wonders nonetheless how he will feed his family. “I promise to give up the idea of clearing forest land; however I’m still concerned because I have no productive land.”

The cadastral officer reassures him – “Don’t be worried, Uncle!” – and then launches into another long passage from the Land Law, this time about the distribution of state land to landless people.

Aware that he is speaking legalese, the officer then translates this into common language: “Social land concessions are granted to poor families needing lands for agricultural practice. So your family also fulfills the conditions for securing a land concession. Don’t worry anymore!” The episode ends with Uncle San and his family “expectantly and hopefully” requesting a social land concession and in the meantime “determining to continue their ordinary living” – Uncle San by working for wages “to feed his family”, his wife by “baking cakes for his children to sell.”

This episode appears at the beginning of a document that devotes the vast majority of its attention to people *with* property. What follows the (4-page) story of Uncle San is a 35-page account of one family’s journey through the multi-stage process of systematic title adjudication: community education, parcel registration, the cataloging and resolving of disputes, and ultimately the production and handing out of formal titles. The story is a morality tale that illustrates the systemic benefits of written transactions and legal conformance – a mode of thinking and action that administrators call “the culture of land administration.” After his opening vignette, Uncle San reappears only once, his new clothes and home-grown produce conveying the fact that his social land concession has lifted his family out of poverty. His story remains in the background, however, through the presence of his son, who marries into the main (propertied) family featured in the booklet. Through this liminal presence, Uncle San thus completes a key message of *Land is Life: By working hard, “giving up old ideas”, and forging ties to the propertied, even the landless can benefit from the post-2001 land regime.* Uncle San’s trajectory from encroacher to stakeholder makes it clear that although he is not the story’s protagonist, his participation and consent are nonetheless central to its happy ending.

5.2 Reframing the Land Grab

In August 2011, I sat in on a five-day Summer School on Land Management and Land Tenure, the fourth of its kind put on by the Royal University of Phnom Penh (RUPP), the Technical University of Munich (TUM), and the German Agency for International Cooperation (GIZ). Aimed at students in the RUPP’s Faculty of Land Management and Land Administration, the summer school provided Cambodia’s future land administrators with lectures and workshops on comprehensive spatial planning, the importance of inter-ministerial cooperation, and a human rights-based approach to land administration. Challenging the entrenched technocratic view that land administration is essentially about surveying, the lecturers from TUM emphasized the essentially political question of “how to allocate the right land to the right people, in the right places, at the right time;” the mantra for the course was that “it’s all about people, places, politics.” Afterward, the event was dubbed “a great success”, and plans were made to repeat it again in 2012.¹⁶

Despite a number of positives, the summer school nonetheless highlighted the degree to which debate about authoritarianism and patronage remains constrained in official spaces, despite regular newspaper coverage of evictions, land deals and the like. Since the 1990s, Cambodian political discourse has exhibited a robust opposition between government worries about “anarchic encroachment” on state lands by smallholders and, in contrast, a broader concern by both civil society and state actors about land grabbing by the wealthy and powerful. While dynamic and often asymmetrical in their deployment, these narratives of encroachment and land grabbing have long been reliably opposed, providing, for example, a central rationale for interventions like LMAP (WB 2002; Council for Land Policy 2002). In contrast, in my three days at summer school, I heard about a dozen references to land grabbing, and about half as many to encroachment. Only once or twice were the two concepts differentiated; more often, their default meaning was the same: both referred to the “grabbing” of state land. Rather than something that happens to the poor, land grabbing was portrayed largely as something that happens to the state.

¹⁶ See <http://www.landentwicklung-muenchen.de/master/>, entries for 26 Aug. 2011 and 3 Sept. 2012.

This convergence between “encroachment” and “land grabbing” emerged on the second day, after a presentation by a ministerial representative who had the difficult task of discussing government efforts to inventory state property without dwelling on either the persistence of patrimonialism or LMAP’s failure to inventory state lands. He managed this by speaking without slides, and by discussing the privatization campaign of the mid-1990s first; only afterward did he go into the history of specific inventory campaigns – in 1993, 2004 and 2009. These, he said, produced some success “with vehicles, furniture and things like this.” But with land and buildings, the campaigns had run into “challenges on the legal aspects” because “some of them had been taken – you know our country’s history.” Despite being indirect, this resonated with participants. During the question-and-answer session that followed, a visitor from Laos had asked if it was possible “to do anything about the grabbing of state public land” when “so many people disrespect the law.” This triggered a follow-up from one of the professors from TUM, who, echoing the donor community’s concern about land grabbing in the more conventional sense (BMZ 2012; Müller 2012: 7), asked “what about state *private* land grabbing?” The representative from the ministry either missed this critical reframing or deliberately ignored it; he replied simply that “they” – the encroachers – “grab *both* state private *and* state public land.”

The grabbing of state land also figured prominently in the official presentation, also by a ministerial representative, of Circular 02, issued in 2007 to assist with the recovery of “illegally held state land” (RGC 2007). Despite its imposing title, Circular 02 begins by gesturing to what I have called the state land problem, acknowledging that “so far most state land, both State public land and State private land, has not been identified, mapped (with clear boundaries and demarcation), classified and registered”. The circular therefore states the government’s intention “to address each case [of encroachment] separately [using] approaches besides law enforcement” (ibid.). Circular 02 was thus presented to participants as “softer” than the Land Law, which, the presenter noted, implied that people who grab land from the state should be imprisoned. In pursuing ad hoc means rather than “law enforcement”, Cambodia was “drawing a lesson from Singapore”, where “illegal” had been recognized to be “too heavy” a label, and “unauthorized” deemed more appropriate.

These examples converge on the use of the “land grab” frame to shore up the expansive possibilities of state land rather than rein in the potential for state-mediated dispossession (cf. FAO et al. 2010). The reframing on display here thus not only excludes the other – the mainstream – understanding of land grabbing. It also works in support of the enclosure process illustrated in section 4 and the political project of Circular 02, rhetorically joining to Cambodia’s legal regime the ad hoc flexibility of neo-patrimonialism. (As scholars use that term, the “neo” is significant in precisely the sense intended by the Circular: to mesh “traditional” patron-clientelism with more “modern” legal-bureaucratic institutions (Cock 2010).) The softening of the Land Law’s bite through Circular 02 was thus a way to formalize flexibility while also maintaining sovereign power as an option. Circular 02, the presenter emphasized, was not a discarding of law enforcement, but a rationale for trying other solutions first. It gave land administrators legal grounds for showing special lenience – for example, “if people are poor”. But if solutions fail to present themselves and disputes persist, cases will still be, the presenter reminded participants, “referred to the courts for legal action.”

The understanding of land grabbing as something that happens first and foremost *to* the state was thus one of the implicit take-home messages that at least *some* of the summer school presenters sought to impress upon students.¹⁷ This was not simply an academic exercise. Many of 2011’s

¹⁷ Although they are not the focus here, the foreign organizers were complicit in this as well. Despite arguing eloquently for a justice-based approach to land management, TUM and GIZ failed to bring in any NGO representatives to counter the land grab framing described above. One TUM organizer told the group that he was “very disappointed that there were no NGOs here this year. We had a few last year, but not this time. It’s

summer school participants are almost certainly out in the field as participants in the “student volunteer” campaign discussed above. Indeed, the 2012 summer school was cancelled due to the lack of participants:

*[The] TUM-RUA Summer School in Cambodia [was] cancelled due to [a globally] unique surveying campaign. As per [the] decision of the Prime Minister Hun Sen, 350,000 families should receive security of tenure through land titles within one year. All human resources available are thus being devoted to this extremely ambitious and relevant goal. ... The consequence of this campaign: The teaching faculty stands still, and the Cadastral offices in the provinces and districts are also almost empty. A Summer School in empty classrooms had become impossible!*¹⁸

5.3 80 Percent State Land

In addition to landless people and future administrators, the donor community comprises a third key constituency in the hegemony politics of state land. Despite a history of attempts to rein state land in as an operational category, the international “community” (such as it is) remains stuck on both sides of the issue, as should be clear from a number of examples above,¹⁹ as well as from recent debates among donors (see, e.g., HBF 2011; BMZ 2012). A final vignette concerns the estimation of state land on a national scale. Despite the widespread acknowledgment that state land remains largely unmapped (e.g., Circular 02, quoted above; Sar 2010), the statistic that roughly 80 percent of Cambodia is state land remains in wide circulation.²⁰ The genealogy of this number is significant, given that one of its clear implications is to counterbalance public outrage at the concession boom by pointing out that much of the country is “in fact” state land. Where this number comes from and how it has come to be so widely and uncritically cited are thus of substantial importance.

The immediate source of the 80 percent statistic is the 2002 Interim Land Policy Strategy paper quoted in the epigraph to section 5 (and cited elsewhere above). The statistic itself appears on page 14, in the middle of a passage called “types of ownership and land rights”, and is presented in a language that is by now familiar:

A shortage of accurate information and issues of classification make precise definitions difficult, but general estimates indicate that about 80% of land area in Cambodia now falls under State ownership categories, and 20% falls under private ownership. State property is divided into the public domain of the State and the private domain ...

Council for Land Policy 2002: 14

What is immediately clear from this passage (and the surrounding language, not quoted here) is that

really unfortunate when NGOs don’t follow the rules, because if they did they would have a real chance to affect the course of things. I know they were invited but they did not attend.” At the time of the summer school, Cambodia’s human rights NGOs were dealing with a proposed “NGO Law” requiring the registration of their individual staff members’ names and addresses, as well as the harassment of two well-known organizations for allegedly failing to follow bureaucratic rules – harassment widely believed to stem (ironically) from land grabbing-related advocacy. The professor’s comments suggest that despite good intentions, the organizers failed to grasp a key dimension of the political context in which they were operating.

¹⁸ <http://www.landentwicklung-muenchen.de/master/>, entry for 3 Sept. 2012 (first sentence) and <http://www.landentwicklung-muenchen.de/entwicklungszusammenarbeit/Cambodia%202012/Summer%20School%202012%20in%20Kambodscha.pdf> (second sentence) (accessed late 2012).

¹⁹ USAID, for example, provides funding for an important source of land-related civil society advocacy (see <http://OpenDevelopmentCambodia.net>), yet has also funded a series of “provincial investment profiles” which help provincial governments advertise, among other things, their abundant land reserves to prospective investors (see <http://www.investincambodia.com/Provincial%20Investment%20Profiles.htm>).

²⁰ According to one of the German summer school instructors, the figure for Bavaria is roughly 30 percent.

the 80 percent statistic is not only hedged by uncertainty, but also unaccompanied by *any* form of evidence, citation or description of the “general estimates” referred to by the Council. We are thus forced to dig a bit deeper, and it is here that the donor community comes centrally into view.

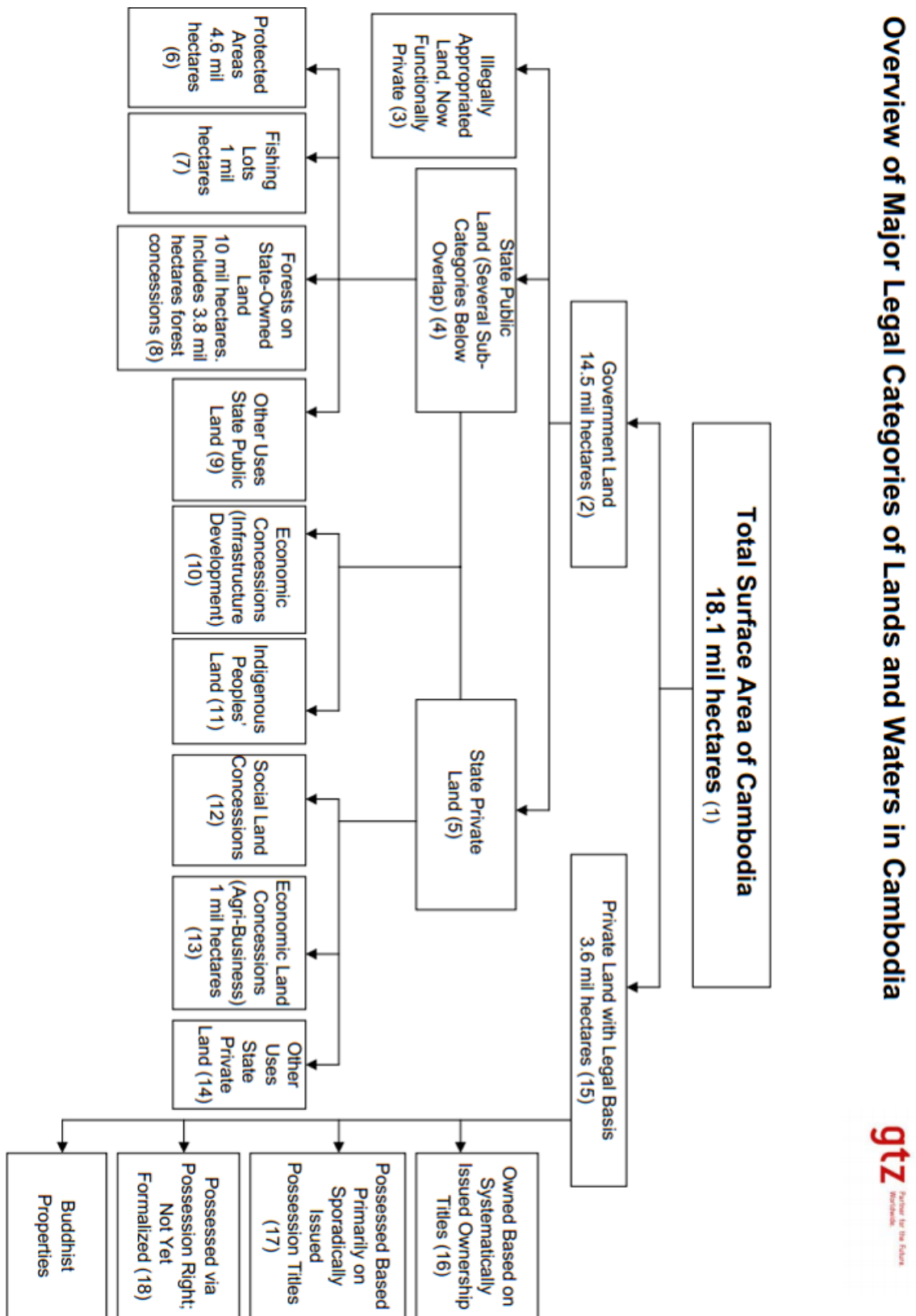


Figure 9. GTZ estimate of various legal land categories in Cambodia (reproduced from GTZ 2006)

In 2006, GTZ created a 5-page “Overview of major legal categories of lands and waters in Cambodia” (GTZ 2006). Although not attached to any official publication, the document was circulated within Cambodia’s professional development community, is cited by NGOs (e.g., Grimsditch & Henderson 2009: 56), and has ended up partially or fully reproduced in places like GTZ’s Watershed Management Resource Kit and the UN World Food Program’s Food Security Atlas. The first of these cites the document as “unpublished” and accompanies it with the disclaimer that it “does not consist of any legal advice” and “is the work of a consultant.”²¹ The second merely reproduces the key piece of the document – a box diagram shown here as Figure 9 – which is paired with the unqualified statement that “the state owns 14.5 million hectares (80 percent) while 3.6 million hectares (20 percent) are with private entities.”²² The 80 percent figure is attributed to GTZ in a number of other sources as well, including Cambodia’s Human Development Report 2007 (Ministry of Planning & UNDP 2007: 44), a high-level government report from the same year on Land and Human Development (SNEC 2007: 13), and USAID’s 2011 country profile on Property Rights and Resource Governance (USAID 2011: 6).

In its full form, the diagram shown in Figure 9 is accompanied by four pages of footnotes, one paragraph of which pertains to the box that lists “government land” as comprising 14.5 million hectares out of a national total of 18.1 million. This box has the advantage of at least attempting to trace its origins:

[The] Council of Ministers on pg. 13 of “Strategy of Land Policy Framework, Interim Paper” (2002) wrote that about 80% of Cambodia’s land area is government land, 20% private. These percentages, applied to 18.1 million hectares, produces the 14.5 million government and 3.6 million private figures used [here]. Very roughly speaking, private lands would be urban lands plus cultivated lands, which in [the] “Forest Policy Assessment” (1996) by World Bank, UNDP and FAO are about 4 million hectares, and are about 3.7 million on page 3 of [the] “Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to the Kingdom of Cambodia for a Land Management and Administration Project [LMAP]”, January 29, 2002 (GTZ 2006: 2).

Unfortunately, by opening this paragraph with the statement that “various sources draw the same approximate conclusions on figures for amounts of government versus private lands” (ibid.), the GTZ document suggests that there is more than one source of actual (primary) data, and conveys the impression of a consensus. In fact, the citations given by GTZ all appear to lead back to two remotely sensed land cover data sets, from 1992-3 and 1996-7. These were produced by the Cambodian Ministry of Agriculture, Forestry and Fisheries (with assistance from the Mekong River Commission), and were analyzed by the Cambodia Development Research Institute in a 2001 study (Chan et al. 2001: 5, 27). (This was cited in the World Bank Project Appraisal Document cited in turn by GTZ as the source of the 3.7 million hectares of *non-state* land in the preceding paragraph.²³) The CDRI study, however, provides a very different assessment of the data than that presented by later authors. Emphasizing the “tentative and provisional” nature of their inferences (Chan et al. 2001: 2), the CDRI researchers took great care to distance themselves from the MAFF data with which they were working. Noting its inconsistencies and incompleteness, they presented it with the repeated

²¹ http://www2.gtz.de/snrd/wmrk/1Basics/133TA_Legal_Categories_Land_and_Water_Cam.pdf

²² <http://www.foodsecurityatlas.org/khm/country/assets/physiographic>

²³ I have been unable to obtain a copy of the 1996 Forest Policy Assessment mentioned by GTZ; a publicly available book chapter based on it does not include the numbers in question. Nonetheless, based on the timing of the study and the tabular data provided by CDRI (Chan et al. 2001: 6), the figure of 4 million hectares of urban and cultivated (i.e., non-state) land seems to have come from the first of these remote surveys. Somewhat understandably (aside from the larger problems flagged here), subsequent authors like the World Bank (2002), GTZ (2006), and in all likelihood the Council for Land Policy (2002) used the later number (3.7 million hectares) because they believed it was more reliable.

caveat that the data were “reproduced without formal editing” (ibid.: 6, 7, 8, 11, 13), and emphasized that “*the reason that [the data] are reproduced here is ... that [they] are all that is available in the public domain*” (ibid.: 7, italics in original). Moreover, they emphasized the importance of not conflating land cover with land ownership. Noting the absence of reliable boundary data (ibid.: 5), the researchers concluded that “for sure, no major conclusions are possible in the absence of more detailed cadastral surveys” (ibid.: 6). Much of the donor community, unfortunately, seems to have lost this cautiousness through the citation chain, and now accepts as unproblematic the statistic that Cambodia is 75-80 percent state land.

6 Conclusion

This paper has presented three lines of evidence through which Cambodia’s experience with property rights formalization challenges the “formalization fix” proposed by the FAO et al. (2010). First, I examined the geography of systematic titling on private land, using evidence released in the wake of the Boeung Kak conflict to support critics of Cambodia’s land titling project who have argued that it has focused on the wrong areas. This section of the paper highlights the competing priorities that are often rolled into formalization projects, and foregrounds the need for greater geographical transparency in land administration schemes. Second, I examined the problem of selective and uneven property rights formalization at the scale of a single agribusiness concession, showing how the formal geography of ELC surveying can be used to paper over a land grab when the authority to formalize state land rights is held in the wrong hands. This case highlighted the importance – but also the difficulties – of pursuing more democratic and locally grounded methods of redirecting land uses in the name of the common good. Third, I examined a trio of practices that have been used, in some cases intentionally, to try to make state land more legitimate, given its highly visible problems in the arena of economic land concessions. The vignettes presented here point to the need to pursue the land grab debate into the halls of official state practice, education, and donor assistance. Despite rising concern and recent action, serious concerns remain.

The case of Cambodia is instructive, and provides a basis for comparative investigation elsewhere. Despite the problems examined above, the visibility of land grabbing and the geographical transparency of both titling and concession-making make the country somewhat exceptional in the literature on the “global land grab”. The overlap between land titling and agribusiness-related land grabbing seems to be widespread if examined *at the scale of countries* (Figure 10). The case of Cambodia has begun to resolve this “overlap” into finer spatial detail, revealing, as shown above, a profound *lack* of overlap. What is the situation in other countries where titling and land grabbing are both operating? Is there a clear relationship, whether positive or negative? What has been the fate of state land formalization efforts, both on and off the map? The case of Cambodia provides some provisional answers, but also raises important questions.

Finally, notwithstanding the substantial work that has gone into bringing Cambodia’s land problems under greater public scrutiny, it is worth pointing out that the study that most alarmed the World Bank Inspection Panel was never published. This was conducted in early 2006, and found that “at least a fifth of households (19.6%) in 13 of the adjudication areas visited are being adversely affected by the systematic land titling process, usually through the refusal to register land in household possession or use” (O’Leary, cited in WBIP 2010: 49). The reason for this exclusion was that “the LMAP demarcation teams flatly refused to register either their ‘claim or possessory rights’ to some of ‘their’ land due to it being ‘State land’” (ibid.). In light of the analysis presented here, this should not be surprising. Formalization may be part of a sustainable fix to the problem of land grabbing. But without critical scrutiny of past efforts, and without addressing the question of state land head on, a naïvely deployed formalization fix will surely only produce more of the same problems, or worse.

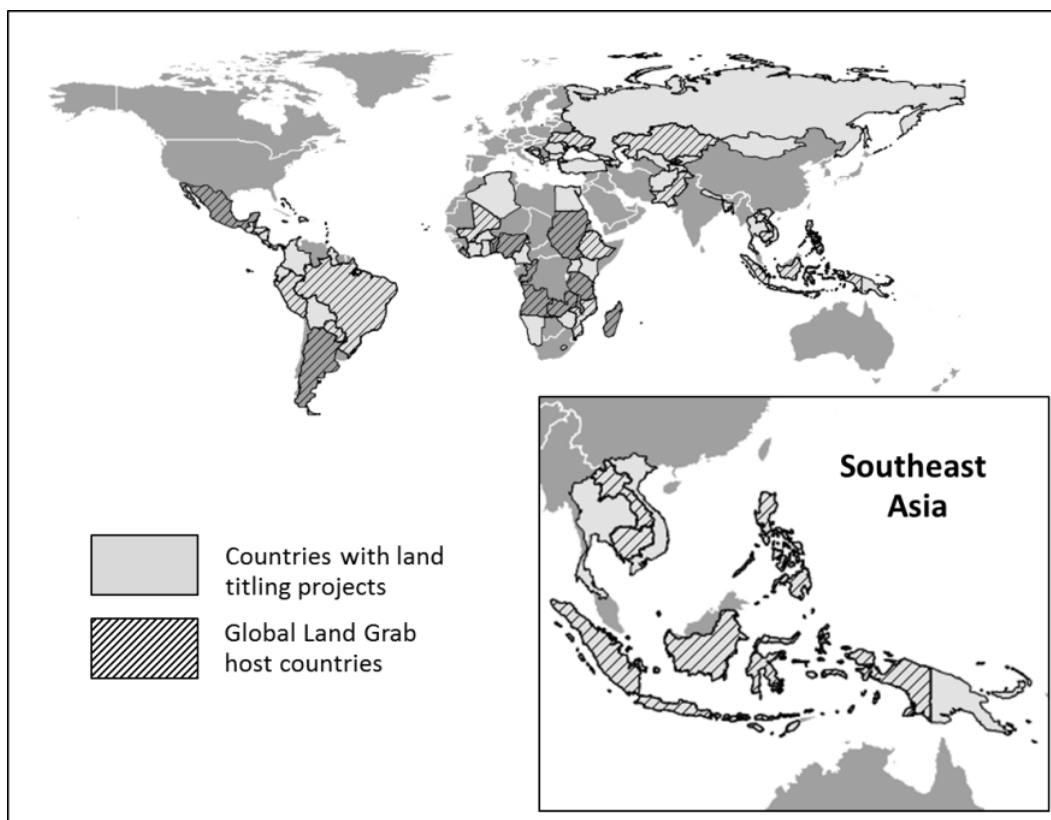


Figure 10. Country-scale overlay of land titling projects and the global land grab. (Figure by the author; titling project data is from Johnson 2012; land grab countries are from Liversage 2010.)

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A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase ‘global land grab’ has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an ‘engaged research’ initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: ‘what do they do to each other?’, and ‘how do changes in politics get shaped by dynamic ecologies, and vice versa?’ The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

The Formalization Fix? Land titling, state land concessions, and the politics of geographical transparency in contemporary Cambodia

In their widely read discussion paper, the FAO, IFAD, UNCTAD and World Bank propose systematic property rights formalization – “the identification of rights holders, the legal recognition of rights and uses, and their demarcation and registration” – as a central first step in addressing the problem of irresponsible agricultural investment. This paper examines the case of Cambodia, one of at least a dozen countries where systematic land titling and large-scale land grabbing have proceeded in parallel in recent years. Cambodia’s experience exemplifies the challenges of what I call the “formalization fix”, and highlights the geography of land titling (and property formalization more generally) as a question that, despite substantial debate in Cambodia, has yet to receive adequate attention internationally. Examining three dimensions of Cambodia’s less-than-successful “formalization fix” efforts – (i) the spatial separation of systematic land titling and agribusiness concessions; (ii) the fact that property formalization can also be a means of land grabbing; and (iii) the political arena of efforts to legitimize “state land” – this paper questions the formalization fix as a policy solution, argues that the problem of unmapped state land needs to be addressed head on, and calls for greater geographical transparency in property formalization efforts in the global South.



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