

DIVERSITY IN
COMMUNAL
LAND TITLING
THAILAND, MYANMAR, LAOS, AND CAMBODIA

**MEKONG
LAND**
RESEARCH FORUM

RCSD The Regional Center for Social Science
and Sustainable Development
Chiang Mai University

In recent years, considerable interest has been shown amongst communities, non-government organizations and government agencies in what is commonly known as “Communal Land Titling” (CLT). The development of legal frameworks have, however, taken on various forms in different countries, due to a wide range of socio-cultural, legal and political factors. On 8th February 2017, a seminar was held at Chiang Mai University. Instigated by Professor Ian Baird from University of Wisconsin-Madison and hosted by RCSD (Regional Center for Social Science and Sustainable Development), it offered an overview on thinking about Communal Land Titling in Thailand, Myanmar, Laos and Cambodia. Different approaches were compared and contrasted, with the goal of assisting practitioners and academics in thinking about different ways to support Communal Land Titling in mainland Southeast Asia. This knowledge brief collects information from the presentations and discussions.

To take part in discussions on these and other related topics, join the Mekong Land Research Forum researcher network. To apply, please fill in the form found [here](#)

Our online resource can be found at: www.mekonglandforum.org

FEBRUARY 2017

(cover image from EU booklet outlining CLT process in Cambodia)



Influences on interest in communal land titling

- Conflicting claims for forest land in protected areas by farmers and state (residency or encroachment?)
- Advocacy for forestry rights in the 1990s and 2000s
- Marketization of land and commercialization of farming
- Inequality, with no limit on land ownership (see Bangkok Post article [here](#))
- Extensive landlessness
- Lack of specific rights for indigenous groups

Perceived benefits of CLT in Thailand

- Uses community knowledge to manage forests, acting as environmental benefactors
- Counters growing land inequality (e.g. through speculation) by increasing tenure security for local users
- Improves community participation in setting and enforcement of rules
- Land can only be transferred within communities



Under assistance from civil society groups such as the Northern Development Foundation, communities have developed their own CLT with the aim to promote the practice and gain national recognition. This is part of a collection of policies seen as central to improve farmer rights (see 4 Laws for the Poor developed by NDF, to the right). From 2009-11, the Democrat Party-led government of Abhisit Vejjajiva introduced CLT policy, including the issuance of certificates to four communities in Thailand. The present military government has introduced its own policy of 'communal land registration' that promises limited access to land and resources, but represents a watered down version of CLT. Communities must now decide whether to persist with the claim for more extensive CLT rights or accept national legitimised certificates (as in the case of Mae Tha in Chiang Mai province, which received the first certificate on 5th April 2015, or four communities in Nan Province, which received certificates in late 2016). The situation has been problematized by the stripping away of reference to community rights in a new National Constitution (supported by public referendum in August 2016).

4 Laws for the Poor

- Community Land Titling
- Progressive Land Tax
- National Land Bank
- Justice Fund

Presenter – Thanagorn Atradit, Northern Development Foundation

The Northern Development Foundation (NDF) is an NGO, which has been working for the past 20 years to develop the capacity of Community Based Organizations (CBOs) and Peoples' Organizations (POs) in the Upper North of Thailand.

NDF works to support village-based watershed and natural resource conservation and management through strengthening of POs and PO networks, organizational and personal development of NGOs and NGO workers, and the raising of awareness of the issues in the broader community.

For more information go to: <http://www.landjustice4thai.org/index.php>



CAMBODIA

The national Land Law (2001) allows for communal land titling, but only for those peoples legally defined as Indigenous Peoples (about 1-2% of the population of Cambodia). In particular, communal land titling is only offered to protect those with a culture of rotational swidden cultivation. Forests not used for swidden cultivation are not covered by communal land titles.



Timeline

- | | |
|---------------|--|
| 2001 | Land Law recognises Indigenous Peoples and enshrines the notion of CLT |
| 2009 | Sub-decree 83 states that when registered as an indigenous community, the community is eligible for communal land titles |
| Until present | Fourteen villages have completed the process of registration both as peoples and for titles. Many others are part way through the process. |

Advantages

- Protects land within a system of swidden cultivation
- Cambodia became the first country in mainland SE Asia legally to recognise the concept of Indigenous Peoples
- The introduction of legislation supports legal pluralism

Disadvantages

- CLT is only available for Indigenous Peoples
- CLT only protects swidden cultivation practices (therefore excludes forest areas, resulting in limited coverage of community land)
- It is a complex time-consuming and expensive process to register Indigenous communities and complete the communal land titling process
- There is a reliance on international donors for support, as the costs of completing the process are very high
- There is a lack of government funding (only enough to cover 10 villages a year, of which there are an estimated 573 communities in the country)

Presenter - Professor Ian Baird, University of Wisconsin-Madison

Ian G. Baird is an Associate Professor of Geography at the University of Wisconsin-Madison. He has been working on natural resource management and Indigenous issues in Cambodia, Laos and Thailand since the early 1990s. In Cambodia, he mainly works with the Brao, Kreung, Kavet, Lun and Lao peoples in Stung Treng in Ratanakiri Province, in the northeast of the country.



At the national level there lacks an established legal framework supporting the recognition of customary tenure and community land titling. At the present moment, there is uncertainty in how to operationalize the recently adopted National Land Use Policy. In general the wording of communal land titling is not being used in Myanmar, with a focus lying in the potential enactment of customary rights in any national-level policy development. However, aspects of CLT can be viewed in the promotion of customary rights at the sub-national level, as demonstrated through the case example of the Karen State.

Land policy in Karen State

The KNU (Karen National Union – the de facto government in much of the Karen State) implements its own land registration policy, which is reviewed every 4 years. These include rights that relate to communal land titling:

1. Individual Land Titles that cannot be sold or transferred without the consent of the local community (and can't be sold to outsiders). More than 65,000 titles have been registered in Karen State.
2. Customary 'kaw' tenure – a community-based management system of land and forest resources that builds upon existing indigenous practices.
3. Salaween Peace Park – the promotion of land rights within the promotion of an indigenous and environmental protection zone. This responds to proposed plans for the construction of the Hatgyi Dam, and is at least partially designed to resist plans to build the dam.

Advantages

- With a lack of a strong national legal framework and governance mechanism, ethnic-state titling allows for some acknowledgement of rights and control over resource use through community management
- Setting up an ethnic-state titling system (as in the KNU Land Registration System) allows for political manoeuvring to establish federal government

Disadvantages

- Uncertain recognition of KNU-issued land titles/policies by Central Union government (although talks are taking place)
- Titles exist in KNU-controlled and mixed areas (not in Burmese-controlled areas), and may exclude non-KNU supporters
- Demarcation of land in titling could lead to conflicts with certain spiritual practices



Presenter – Saw Ma Bu Htoo, Karen Environmental and Social Action Network (KESAN)

KESAN is a community-based, non-governmental, non-profit organization that works to improve livelihood security and gain respect for indigenous peoples' knowledge and rights in Karen State, Burma.

For more information go to: <http://www.kesan.asia>



Context

In the Lao People's Democratic Republic (Lao PDR or Laos), land is officially owned by the people but managed by the state. However, since the 1990s, permanent individual use rights have been recognised, with certificates mainly issued in urban and peri-urban areas.

From 2006, the Prime Minister's Decree on the Implementation of Land Law (No. 88) indicates that "collective land" can include land collectively managed by village communities, and that titles can be issued. In recent years there has been a growing utilisation of the decree, with titles issued as shown in the following examples:

1. Sangthong District in Vientiane Province – in 2012, communal land titles were issued to support bamboo forest management. They were issued with the promise that they would be made permanent if there are no disputes within three years, although the title states that the land cannot be sold.
2. Nakai District in Khammouane Province – in 2013, CLTs were issued for new land provided to residents resettled due to the Nam Theun 2 Hydropower Dam Project. All land not designated as individual or state land has been included in the title. The community has been involved in the organisation and implementation of land management tools.
3. Viengxay District in Houaphanh Province – in 2016 villages received collective land titles with land reallocated within communities, in some cases every 3-5 years.



Through this practice of titling witnessed in Laos, two forms of land use can be recognised:

- Collective Land (*din louam mou*) defined as the land of cooperatives, registered production and interest groups or associations.
- Communal Land (*din xoum xon*), traditional or customary land - land that is jointly used by villagers of any ethnic group, such as village ponds, forest areas, spiritual or cemetery forests.

From 2014, a Prime Minister's instruction on land registration and titling (MoNRE No. 6036) distinguishes between "collective" and "communal" land. Procedures for CLT are yet to be defined.

Advantages

- Legislation is inclusive in that it could be applied to all land types, land uses, and peoples beyond ethnicity

Disadvantages

- The legal framework remains in limbo as stakeholders wait for the new Party Resolution and Land Law to be ratified
- Even if strong laws were developed, a weak system of governance is not conducive for implementation
- There remains a dependence on donor support

GENERAL ISSUES FROM DISCUSSION

- Different terminology (communal, community, customary) is being used around the region, and in different ways.
 - The availability of CLT varies in different countries. For example, it is limited to Indigenous Peoples in Cambodia, but has potential for use by all in Laos.
 - CLT refers to different land types and land uses depending on the country (e.g. swidden uplands in Cambodia; agricultural and forest land in Laos, although swidden cultivation is discouraged by the government).
- Communal Land Titling offers a way to protect local users and resource management systems within formalised systems, and against land expropriation by the state and companies. This can assist with the recognition of customary land, although in itself does not guarantee increased security for local users.
- Communal Land Titling can represent a means to move for political legitimacy. For example, in Myanmar the KNU is promoting a decentralised system of land governance within a federal state.
- The influence of conflict has a great bearing on the ability to set up titling systems, historically in the region but particularly to see in present day Myanmar.
- Differences can be seen in the role of civil society for communal land titling. They have actively promoted communal rights in Thailand, Myanmar, Cambodia, and less so in Laos. However, there is a risk that national policy may undermine localised efforts to promote CLT (for example, the promotion of 'communal land registration' in Thailand, potential legislation in Myanmar against federal policies, and no possibility for CLT for non-Indigenous Peoples in Cambodia).
- Conflicts may occur within communities around competing interests and claims in regards to opting for an individual or community title. For example, in 2012 residents in Namone village Laos abandoned collective paddy land (with a three year rotation system perceived as detrimental to land maintenance) in favour of private titles. As a result, rice production eventually increased. In Cambodia, the promotion of private titles (as part of Order 01, 2012) serves to undermine CLT as some individuals opt for individual titles now rather than waiting for CLT later.
- CLTs are often dependent upon donors. How can CLT be established in a cost-effective manner that also negotiates a path through the complexity of land administration systems? It is important that legal education is improved, but also that CLTs are not promoted in areas without demand.
- It must not be forgotten that for many people in the region, titling may not be seen as important, perhaps due to the presence and maintenance of customary systems. Such a perspective may shift as outside influences (agribusiness, FDI) encroach further or titles become attractive as a form of collateral (e.g. for micro financing programs in Cambodia).
- How can CLT accommodate both individual and communal claims to land within customary systems? Can they exist side by side as different sides of the commodification versus non-commodification coin?
- Communal land titling can also become embroiled in ministerial turf wars (for example, promoting agricultural land use over forestry in Cambodia, and more recently in Laos).

There are many ways of approaching notions of CLT. There is much that the different countries can learn from each other, providing alternative and innovative ways to protect and secure communal land.