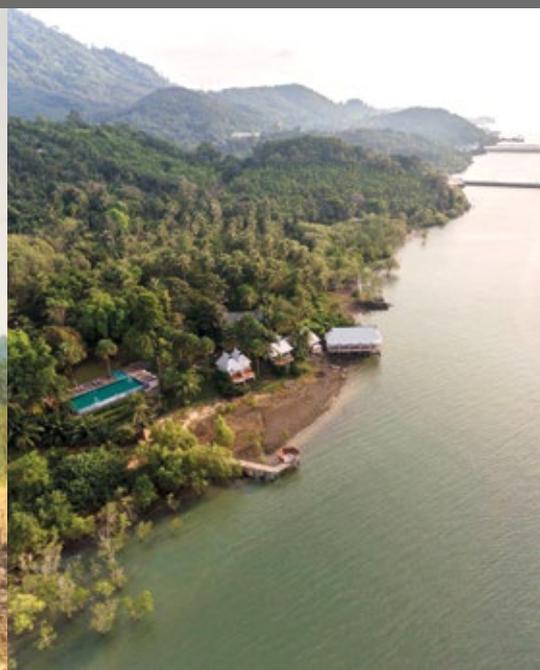




State of Land

in the Mekong Region



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Land securitization and the formalization of smallholder land tenure

The well-being of smallholders and their ability to leverage the productive potential of their agricultural land to achieve development outcomes depends to a large degree on the security of their tenure. Tenure security is complex, involving not only the status of individual documents that formalize rights to land holdings, but also social norms and traditional modes of resource management, the broader culture of land administration, and the strength of those bundles of

rights that enable and ensure access to, use of and control over resources. Tenure security regimes in each of the Mekong countries have changed considerably within the last two decades, and struggle to keep up with the pace of change associated with globalisation. Despite some positive developments, smallholder land tenure security continues to be undermined by overlapping and contradictory legislation pertaining to land administration, persistent gaps between legal frameworks and practice, and large domains of non-transparency and corruption. Patterns within and across these tenure regimes suggest some important points of comparison.

Land and the SDGs

—Eva Hershaw and Ward Anseuw, International Land Coalition and the Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD)

Collectively referred to as Agenda 2030, the Sustainable Development Goals (SDGs) are more comprehensive and universal than their predecessors, the Millennium Development Goals (MDGs), which expired in 2015. The SDGs include 17 integrated Goals, 169 specific Targets, and 230 proposed Indicators. The inclusion of several land-related Targets and Indicators in the SDGs marks a significant step towards the recognition of land as fundamental to, and indivisible from, the overarching principles of development outlined in Agenda 2030. There are 6 Targets and 7 Indicators that explicitly focus on land rights and land use, and an estimated 59 Targets and 65 Indicators that depend on the fulfilment of land-related indicators. Among these, three indicators have become a priority due to their transformative potential. Indicators 1.4.2, 5.a.1, and 5.a.2 address two elements that are prerequisite to the fulfilment of other land-related indicators: access to land and tenure security.

Indicator 1.4.2—to achieve No Poverty—measures two elements, disaggregated by gender and type of tenure: (1) The proportion of total adult population with secure tenure rights to land, with legally recognised documentation and (2) The proportion of total adult population who perceive their rights to land as secure. Indicator 5.a.1—to achieve Gender Equality—measures: (1) The proportion of total agricultural population with ownership or secure rights over agricultural land, by sex and (2) The share of women among owners or rights-bearers of agricultural land, by type of tenure.

Unlike the MDGs, the SDGs include a clear call for monitoring, evaluation, and accountability with the goal of increasing the availability of “high-quality, timely and reliable data,” disaggregated to reflect the characteristics of local context. This creates both an entry-point and a demand for greater civil society involvement in monitoring the SDGs. This is only possible to the degree to which governments and international agencies enable their effective involvement, and the degree to which reliable data is openly available. In the Mekong region, there are substantial concerns in this regard. While important strides have been made to improve the reliability and disclosure of key data and information, critical limitations remain. These limitations potentially undermine the achievement of the SDGs themselves by restricting public involvement and monitoring, which might help to improve development programming and outcomes, and also ensure that these outcomes are distributed equitably across society. There are also concerns about the degree to which civil society organizations are free to operate in the fulfilment of their purpose, both with regard to the SDGs and more broadly. Efforts to improve the openness and transparency of public data and enable civil society to support the SDGs may have a profound and transformative effect on land and land relations in the Mekong.

Land titling and land use certificates

Land titling—the formalization of tenure over particular land parcels in the form of a legally-recognised certificate—is commonly thought of as the strongest form of tenure security, in many cases sufficient to serve as collateral for loans and enable the transfer of land holding rights through sale or inheritance. Multilateral institutions such as the World Bank have pushed for the issuance of land titles as a necessary precondition for the establishment of land markets, seen as the basis of agricultural and rural development. In Mekong countries where land is regarded as the property of the state³³, land holding rights are formalized through the issuance of Land Titles or Land Use Certificates which have similar, though lower, status than titles³⁴. Land tenure formalization through titling and land use certificates is most advanced in Thailand, Vietnam, and Myanmar (Figure 15). In Thailand official figures indicate that 93 percent of agricultural parcels have been titled or certified to individual households. Similarly, Land Use Rights Certificates (or “red books”) cover 90.1 percent of agricultural production land in Vietnam. Similarly, in Myanmar, official figures indicate that land-titling coverage is robust, with 90 percent of eligible agricultural land under title. Land titling in Cambodia is lower, covering approximately 66 percent of

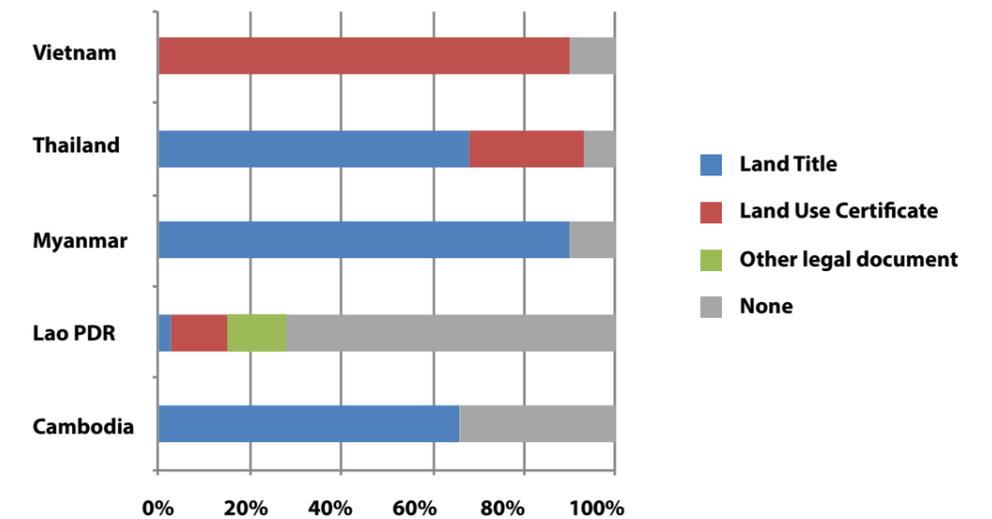
agricultural land holdings. Laos has, by far, the lowest coverage of agricultural land titles (less than 3 percent), though these are largely restricted to peri-urban areas.

There are a number of complicating factors associated with land-titling coverage. Principal among these is the way in which land eligibility for titling is constrained. In Myanmar, for instance, only agricultural lands as defined by the 2012 Farmland Law are eligible for titling, a definition which excludes all lands within state-identified Vacant, Fallow and Virgin (VFV) lands (which comprise the majority of land holdings by forest-dwelling communities). Similarly, in Lao PDR where coverage is already very limited, land holdings within forest lands are arguably ineligible for titling.

Myanmar also presents a unique case in the Mekong due to recent and ongoing conflict. Officially, administrative areas currently under conflict (so-called “black areas”) are ineligible for titling. However, the political institutions of the armed groups administering these areas have established separate mechanisms for tenure security that run parallel to the central State. The Karen National Union (KNU), for example, has issued more than 40,000 land titles within its areas of control.

Figure 15: Distribution of agricultural land with titles, land use certificates, or other legal documents in the Mekong region³⁵

Sources: see country chapters



While land titles and land use certificates function to formalize land claims, in all countries of the Mekong these have not been sufficient to preclude state expropriation of land, though they may influence the terms of expropriation and place landholders in a better position with regard to compensation. Secondary forms of documentation have also been

used to demonstrate land claims, including land tax receipts and temporary use certificates, though these are generally weaker, particularly where land claims are disputed or in areas where competition for land is high due to rising land prices or the presence of valuable resources.

³³ Or managed by the state on behalf of the people.

³⁴ Land use certificates are by their nature time-bound and contingent on renewal by state authorities.

³⁵ Land use planning has also been carried out extensively in Laos, though the effectiveness of this as a legal basis for tenure security is unclear and debated.