

LAND REGISTRATION AND ADMINISTRATIVE REFORM IN SOUTHEAST ASIAN STATES: PROGRESS AND CONSTRAINTS

David S. Jones

ABSTRACT

An aspect of good governance is an effective system of land administration. A central component of this is the comprehensive registration of rural property title by the state to create more secure and legally protected tenure for farmers and cultivators. In response to the need for comprehensive land titling in rural areas in most states of Southeast Asia, major reform programs have been implemented to this end in recent years. However, constraints have been encountered, resulting in only variable progress in achieving comprehensive registration, especially of small land holdings. These constraints will be examined in the article in relation to both individual and communal tenure. Also considered will be institutional constraints that have impeded registration. In conclusion the article will explain the impediments in title registration in relation to three sets of factors: poor standards of governance, receptivity of traditional communities to title registration and policy capture of title registration by business and bureaucratic elites.

INTRODUCTION

An important aspect of good governance is an effective system of land administration. A central component of this is the comprehensive registration of property title by the state (sometimes called land titling). Registration has several benefits for both the landholder and the state. It clarifies the ownership or tenurial interest of the landholder, and provides a legal safeguard of that interest, so guaranteeing him/her security of tenure. This further encourages long term investment in the land, increases its marketability, simplifies and expedites the conveyance process, allows land to be used as collateral to secure credit, helps to resolve land-related disputes, and provides information for agrarian reform schemes, especially if they entail the redistribution of land. For the state, land registration supplies information to enable land to be valued for tax purposes, and to enable controls to be exercised over land use. It also facilitates decisions relating to compulsory acquisition and compensation for dispossessed landholders.

In view of these widely accepted benefits, in Southeast Asia, major reform programs have been implemented over the last twenty years or so to register property title. Those without title are often informal settlers in poor urban areas, small peasant farmers without formal occupancy rights, employees of former collective farms, and indigenous peoples who claim customary tenure over areas of forested land (Binns and Dale, 1995). However, progress has been variable. In some states, a good deal of occupied land has been registered, whilst in other states, such land in the main remains unregistered, with only a small fraction of landholders enjoying legal or formal title.

The article will focus on title registration within the rural populations of the region. It will examine the systems of rural land tenure that have existed over the years, and will consider recent reform programs to promote title registration. The article will then

discuss the constraints limiting the progress of the reforms in rural areas, including those affecting lands held under communal tenure, and those involving lands held under individual tenure. Another set of impediments considered are the institutional and bureaucratic obstacles to title registration. In conclusion, the article will explain the impediments to the land titling reforms in relation to three sets of factors: poor standards of governance, receptivity of traditional communities to titling of land, and policy capture of title registration by business and bureaucratic elites.

NATURE OF TITLE REGISTRATION

Land title registration involves identifying a parcel or lot of land and determining the person(s) (or organization) with an ownership interest (or title) in it, which are then recorded in a land register. The details entered include the serial number assigned to the parcel of land, and its location and boundaries, which are marked on a map. Also specified is the name of the person(s) with an ownership interest. It is usually required that the nature of the interest be specified, e.g., freehold, leasehold in perpetuity, leasehold for a period of years, life estate, or long term right of use. In return the holder of the title is given a certificate to prove such (Binns and Dale, 1995: 1, 4-5).

Ideally the entry in the land register indicates, as well, any easements and encumbrances attached to the land. Easements refer to the right given to others to enter and use the land, such as a usufruct or profit à prendre right (e.g. harvesting fruit from trees on the land, or grazing the pasture), or the right to cross the land for the purposes of reaching another parcel of land (right of way). Encumbrances are burdens or liabilities that arise from financial claims on the land such as a mortgage, a right to a share of the income from the land, or a right to exact a rent. Also detailed in the land register may be specifications on how the parcel of land should be used, in line with lease covenants or zoning requirements (Binns and Dale, 1995: 2-5).

The maps and the entry details relating to the parcel may be confined to a single document in the land registry, and/or be kept as separate documents in a folio. Alternatively and increasingly in many countries, the maps and information relating to the titling of a property are entered into an on-line title registration data base maintained by the registration authority.

Once title has been registered, based on the Torrens principle, the title holder has an indefeasible claim over the land that cannot be challenged or disputed. No further investigation is usually necessary to prove his/her interest, and no counter claim can be thus entertained. In that event, the title holder has a full legal safeguard of his/her interest, and this certainty is essential when the land is subsequently conveyed to another (Zevenbergen 1998; Binns and Dale, 1995: 2-5; McEwan, 2001). However, when the registration of a land parcel is first undertaken, it may not be possible to prove that the title is beyond challenge both as to boundaries and title holder. In such cases, presumptive title (in Malaysian called qualified title and in Vietnam provisional title) is initially awarded. Although the title holder is presumed to be the legal and rightful owner of the interest, and the boundaries correct, these can be challenged within a period of time, and if the counter claim is upheld then the presumptive title is vitiated. If the period elapses without any counter claim, the presumptive title is converted into a full or absolute title (Binns and Dale, 1995: 2-5).

The process of title registration involves a number of stages. At the outset, a landholder submits a claim for title registration, or a locality is earmarked for en bloc registration of the land parcels in it. Existing cadastral maps and records (a map and record of land parcels) are consulted, or a new cadastral map for the locality is drawn up (McEwan, 2001). This is normally followed by a survey of each land parcel which is the subject of the title claim, to determine its location, area, boundaries, usage and other features. At the same time, any documentary evidence submitted by the claimant(s) in support of the claim must be vetted. It is usual for on-site interviews to be conducted with the claimant, his/her neighbors, community leaders and other interested parties so as, to further assess the merits of the claim, secure agreement on boundaries, and clarify easement rights and encumbrances. This together with the parcel survey may be referred to as adjudication (to be discussed below), and may be essential if documentary evidence is lacking (McEwan, 2001). Following the survey and adjudication, a new cadastral map specifying the property(ies) of the claimant(s) may be drafted. As happens, there may be discrepancies in the information gathered which must be resolved, e.g. the boundaries of the parcel of land in the existing cadastral map do not tally with the boundaries indicated by the claimant (McEwan, 2001). Following this, a report is submitted to the registration authority to be vetted at different levels, and in some cases referred to other agencies for clearance. If there is nothing amiss, and after all matters have been resolved, formal title is then granted and recorded by the registrar or examiner of titles and a certificate of title issued to the claimant(s) (Zevenbergen, 1998).

One of two approaches may be adopted to land title registration. One is sporadic or ad hoc registration in which the occupant or user of a parcel of land, acting on his/her own initiative, requests that his/her claim to title be recognized and his/her title be then registered. In support of the application, a survey of the land would be undertaken, with the claimant submitting relevant documentary evidence to support the claim, coupled if necessary by verbal testimony from all interested parties. The other approach is systematic registration. Here the land registration is initiated by the land registration authority (not by the land holder or land user), as part of a concerted land titling program. The registration officials undertake a simultaneous titling of many land parcels across a community, going from household to household, conducting surveys and adjudications for each parcel. After the necessary vetting and endorsement by the registration authority and other relevant agencies (sometimes a lengthy process), the land holders are then awarded their individual titles at the same time (Hostein, 1996: 14-16).

FORMS OF TENURE PRIOR TO TITLE REGISTRATION

Informal individual tenure of peasant holdings

Over much of Southeast Asia (apart from the present and former Communist states), small scale peasant or family farming has been prevalent. Peasant households would claim de facto ownership of a land holding as a right deriving from their occupation and cultivation of the holding on a continuous and permanent basis. This right was reinforced by being recognized by the local community as the legitimate basis of ownership, but often lacked supporting formal documentation such as deeds of transfer, land use permits, or land tax receipts. Although reliant on community recognition, the

peasant farmer enjoyed wide discretion over the occupation, use, lease, inheritance and even sale of the land (Eaton, 2005, 39; Cleary and Eaton, 1996: 24-25, 62-67).

In the Philippines, the bulk of the peasant population over the years were not independent landholders but tenants on large estates or *latifundia*. Over two thirds were sharecroppers who paid their rent by foregoing a portion of their annual crop, which was appropriated by the landowner (Guardian, 2003: 76; Cleary and Eaton, 1996: 63). Following land reforms instituted in 1972, it became possible for peasant farmers to pay a fixed cash rent instead, and also in some cases, to become owners of their land. The latter provision was significantly extended by the 1988 Comprehensive Agrarian Reform Program (CARP), which provided as well for the redistribution of large land holdings to landless and near landless peasants (Quizon, 1999: 11-12; Guardian, 2003: 72-73; Cleary and Eaton, 1996: 63, 75-78). However, resistance of many big landowners and numerous legal challenges has delayed the progress of the land reform program (Guardian, 2003: 79).

The type of farming where individual tenure predominates is sedentary. The parcel of land is cultivated from year to year, although, if the peasant farmer had more than one parcel of land, a limited form of rotation could be followed to allow the land to be regenerated after a period of cultivation. Under this type of farming, the productive capacity of the land could be improved too through capital inputs such as fertilizers, better seed strains, and the use of mechanized equipment, and irrigation and drainage systems. Sedentary peasant farming in Southeast Asia is associated with wet rice production, vegetable and fruit growing, and the small scale cultivation of tree crops. Such crops are often grown to earn the peasant household a small but important cash income (Cleary and Eaton, 1996: 24-25, 62-67).

Communal customary tenure

Large areas of Southeast Asia have also been cultivated on a communal basis under so-called customary tenure. Many types of customary tenure have existed but they share three common characteristics: the rules governing tenure have usually evolved over a long period, they have remained by and large unwritten, and the land belonged to a well-defined community and not to the individual. The community could be a tribe, clan, lineage or kinship group, living in close proximity in a village or longhouse settlement. Each household within the community was apportioned the right to use (but not own) a parcel of the communal land. The right to use land could not be transferred to another person outside the community (Ezizbalike et al, 1996).

Communal customary tenure was closely associated with shifting cultivation or swidden agriculture. After a period of cultivation, usually 1-4 years, land was abandoned by a household, necessitated by the depletion of soil fertility. In its place, the household was allocated another piece of ground, which it then cleared and cultivated, sometimes outside the immediate vicinity of the village. In due course, this land was also abandoned and so the process continued. The abandoned land was often left as fallow so as to regenerate the soil, and then in time - perhaps after 8 to 15 years - re-cultivated as part of a rotational pattern (Eaton, 2005, 7-10, 38-9, 89-90, 128-129; Cleary and Eaton, 1996: 23-26, 46-61).

In a study of shifting rice cultivation in four areas of Kalimantan, Indonesia, between 1962 and 1990, it was shown that every year most households cleared new sites for rice growing within an extensive area earmarked by the community, mostly in

virgin forest. Some of these sites were as much as 7 kms from the household residence. Other sites cleared had though previously been cultivated and then left fallow so creating a rotational pattern. The shifting cultivation of rice fields was governed by communal tenure, whereby the village as a whole regulated which sites were to be cleared. In addition, a rice field once abandoned reverted to the community, and the previous cultivator ceased to have any tenurial right over it. This meant that after the period of fallow, the parcel of land could be re-cultivated by any other household in the community (Colfer and Dudley, 1993).

Usually communal customary tenure included common tenure, in which part of the land was used by a village community in common and not divided into parcels. This arrangement was widespread amongst the more remote tribal and indigenous communities of Thailand, Indonesia, the Philippines, and Malaysia. In addition to cultivating parcels of land such peoples enjoyed common access to the forest for hunting and gathering and common use of rivers for fishing (Cleary and Eaton, 1996: 104-105; Eaton, 2005: 8-10).

Communal customary tenure can gradually evolve so that over time it accommodates individual ownerships rights. In one study of a district in Kalimantan, it was found that in the past council elders of the local *adapt* (customary) institution would allocate each year the right to use parcels of land, but increasingly in recent times households asserted permanent rights over the same parcel, in effect de facto ownership with few yearly allocations. This change was often linked to a decline in shifting cultivation (Moeliono and Limberg, 2004: 7).

Tenure in communist states

In two of the three Communist or former Communist states of the region, Vietnam and Cambodia, land tenure conformed to the Communist model which rejected private property rights and the land belonged to the state and the people.

In Vietnam, prior to the land titling reforms introduced at the end of the 1980's, all land was vested in the state under a system of collective farming, in accordance with the Communist model of state control of the means of production. Collective agriculture was introduced in the mid 1950s in North Vietnam shortly after the Communist Party came to power, and was then subsequently consolidated. Collectivization was also undertaken in South Vietnam in the mid 1970s after the Communists took power there, although in the Mekong Delta many peasant farmers owning their own parcels of land resisted being assimilated into large collective farms. Under collectivized farming, in its purist form, peasant households in a village locality (and sometimes in the larger commune area) relinquished their individual holdings (with the exception of the small plot adjoining the residence). They were then amalgamated to form one large holding. On such holdings, the peasant farmers became members of production teams or work brigades, who undertook either general farming tasks or specialist work such as installing irrigation systems. At the end of the 1970s, as the first step towards decollectivization, the household contract was adopted, whereby peasant households instead of being members of production teams, were allowed to individually cultivate parcels of land to meet production quotas set by the collective. This was in response to the chronically low levels of output on collective farms (Chu 1993: 151-164; Ravallion and de Walle: 2003, 1-3).

In the former Communist state of Cambodia, land tenure has been seriously affected by its recent history of civil wars, revolution and foreign occupation. Prior to the seizure of power by the Khmer Rouge in 1976, a formal title registration system existed, which recognized and recorded private ownership of individual parcels of land, although many peasant households continued to claim ownership under informal and customary tenure. Under the regime of the Khmer Rouge (1976-1979), all land was confiscated and vast numbers of both rural and urban dwellers were compelled to work the land collectively, under conditions of forced labor. After the Vietnamese invasion in 1979, small collective farms (*krom somaki*) were established, with peasant workers given an extra small plot of land adjoining or near to their residence which they could work individually. However, many peasant farmers were never assimilated into the *krom somaki*, returning to their family holding occupied prior to 1976. In addition, after a few years, quite a number of *krom somaki* were informally divided into separate parcels worked individually by peasant households (Ballard, 2006: 72).

After the Communists came to power in Laos in 1975, there was limited, and often short-lived collectivization of agriculture, with most peasant farmers holding on to their land. Over the extensive upland and forested areas, most of the land was occupied on a communal basis under customary tenure, with villages engaged in shifting cultivation and forest clearing (Yokoyama et al 2006; Soulivanh et al 2004: 19-21). In 2004 it was reported that about 40 per cent of the national population were still engaged in shifting cultivation despite the efforts of the Lao government to stop it (Evrard, 2004: 1).

REFORMS OF TITLE REGISTRATION

In three countries of the region, Brunei, Malaysia and Singapore, the system of land title registration has been well-established, dating back over many years to the colonial period. The outcome has been that all or nearly all properties have been titled. Contributing to this were committed and well-organized land registration authorities, which recognized the importance of title as enunciated in common law and land codes. This was facilitated too by land allocation and resettlement schemes in Singapore and Malaysia which provided opportunities for registration. In Malaysia, though, important questions remain about the titling of communal land, as discussed below. In the other states of Southeast Asia, a system of land title registration has existed, in some cases over many decades, but was based on sporadic registration and had minimum impact. Undermining registration were the lack of commitment of both government and registration authorities to titling land, especially of rural dwellers, and their insistence on requiring documentary proof of ownership. Further impeding registration were opaque and complex bureaucratic procedures in processing title applications. In consequence, only a fraction of rural holdings were registered. By the 1980's it was evident that the situation could only be redressed if land titling was reformed based on comprehensive land titling programs which promoted systematic registration and were initiated by the state. Various countries in the region responded to this need by introducing such programs aided by outside donor organizations.

Systematic land titling programs

In Thailand, the first serious steps to provide formal land title began under the 1954 Land Act. Different certificates giving partial recognition of tenure were issued for

those who reported their holdings and provided sufficient proof of long term usage. One was *Sor Kor 1* (SK1) which acknowledged possession but not title, and the other was *Nor Sor 2* (NS2) or 'Pre-Emptive Certificate', which permitted temporary occupation. From 1967 two further certificates could be issued known as *Nor Sor 3* (NS3) and *Nor Sor 3 Kor* (NS3K), which were 'Certificates of Utilization' and provided in effect qualified title and thus more secure tenure (Slaats, 1999: 95-96).

In 1985, a comprehensive systematic land titling program was initiated assisted by the World Bank, and implemented by the Department of Lands in the Ministry of the Interior through 76 provincial land offices, 272 branch provincial land offices, and 758 district land offices. The program was divided into four phases and facilitated by the use of modern mapping and surveying equipment, use of satellite data, and the computerization of maps, survey data and cadastral records, as well as a large pool of well trained professional personnel. It drew upon comprehensive cadastral records and cadastral and base maps already in existence. However, much field work was still undertaken in terms of on-site surveys and adjudication. (Holstein, 1996: 26; World Bank, 2003: 9-11).

Under the land title project, the utilization certificates NS3 and NS3K could be upgraded to full title or *Chanote Nor Sor 4* so long as a survey measurement was undertaken to determine the area of the land parcel. The SK1 and NS2 certificates could likewise be upgraded to NS3 or NS3K but with a field survey to indicate land use. Other documents can also be used in support of a claim including land tax receipts and documents from local authorities. If the title claimant cannot provide any of the certificates mentioned above, title can only be considered if he/she can show evidence of '10 years of peaceful, open possession', but 'minimal proof needs to be offered to the local Department of Lands official to support such a claim'. The intention is to provide secure legal title to nearly all rural dwellers across the income spectrum (Leonard and Ayutthya, 2003; World Bank, 2003: 8).

In Indonesia, title registration was initially authorized under article 19 of the Basic Agrarian Law of 1960. However, it remained largely sporadic and generally did not include small peasant farms. Thus, only a fraction of rural holdings were registered in the years following (an estimated 7 per cent of all properties were registered) (Slaats, 1999: 97-99). However, in 1995, a major reform of land registration was instituted with the introduction of the World Bank assisted Land Administration Project (LAP). Its remit was to undertake systematic registration coupled with mapping and surveying across different communities, with a view to giving landholders full ownership title (*hak milik*). The agency responsible for implementing the registration program was the National Land Agency (BPN).

Under LAP, teams of adjudicators and surveyors visited selected areas, going from house to house gathering verbal evidence of the occupation and use of the land. The household together with its neighbors were left to mark out the boundaries. If agreement was reached, then a report could be submitted recommending that the land be registered and the household given a title certificate. If agreement was not reached, the land remained unregistered. The title registration includes not only the name of the owner, location and boundaries of the land, but also encumbrances and usage restrictions attaching to the land (Heryani and Grant, 2004; Slaats, 1999, 99-100; Permanent Committee on GIS Infrastructure for Asia and the Pacific [PCGIAP], and Fédération Internationale des Géomètres [FIG], 2008). In keeping with the decentralization of

public administration in Indonesia in 2001, much of the day to day work of registration has been passed from the BNP to District Authorities, although it still retains responsibilities for monitoring and checking land registration (Heryani and Grant, 2004).

In the Philippines, land registration began at the beginning of the last century, but down the years was largely confined to urban properties, large estates and plantations, and undertaken sporadically (on request). A major impetus was given to land registration by the CARP in 1988. The tenants and landless groups who became owners of land or were allocated land have been given ownership certificates and eventually titles. Also under CARP, work is in progress to award land titles to small independent peasant farmers, outside the large estates, informally occupying holdings on public lands. When title registration is completed under CARP, the area of land in which holdings have been registered will comprise 6.8 million hectares (Quizon, 1999: 11; Guardian, 2003: 73). However, the delays in transferring and distributing land, referred to above, as well as protracted administrative procedures, have slowed the process of title registration.

In Vietnam, a land titling program followed a different course from that in most other states in Southeast Asia, being closely linked to the break up of collective farms under market reforms introduced by the Vietnamese government, known as the *Doi Moi* policy. The 1988 Land Law and the key implementing directive, Resolution 10, authorized the full scale division of the collective farms into individually worked parcels, vesting the assignees with land use rights over their parcels for 10-15 years (Iyer and Do, 2008, 537; Ravallion and de Walle, 2003: 4-6). Under the Land Law of 1993, these land use rights were formally converted to formal land use titles and the term of tenure was raised to 20 years for annual crop land and 50 years for perennial crop land. The land use rights could also be transferred, exchanged, bequeathed, rented and mortgaged. In effect, this amounted to granting the peasant population leasehold ownership. To ensure a reasonably equal distribution of land, limits were set on the amount of land allocated, which depended on the number of labor units in the family and the type of farming undertaken (Ngo, 1993, 178; Iyer and Do, 2008: 538). Land use titles on the same terms were also accorded to peasant households in the south east and the Mekong Delta, who had not been assimilated into collective farms, and therefore continued to cultivate their own parcels of land. They were allowed to retain the parcel of land they had cultivated, but their informal ownership of the land was replaced by formal right of land use (Ha 2007, 10; Iyer and Do, 2008, 537; Ravallion and de Walle, 2003: 8). Following a process of surveying and adjudication, households who had been allocated a land use right were issued with a land use right certificate (sometime called a land tenure certificate or red book). The registration and red book, as well as specifying the area of the land parcel, and its location, stipulated how it was to be used, and the period of tenure (Ha, 2007: 9; Iyer and Do, 2008: 537-539).

In Laos following the commitment made in the 1980's to introduce market based reforms (which included the break up of the collective farms), two major land registration programs began in the 1990s. One of them known as the Land Titling Project, begun in 1997, allocated only land use rights to households and organizations, since, within a Communist state as in Vietnam, all land belongs to the people. This though is similar to a leasehold ownership title, since it confers upon the household a full range of land rights, viz. to use, develop, sell, sub-lease, bequeath and mortgage the land on an indefinite basis.

Parallel with the land title project in Laos has been the Land and Forest Allocation Program began a year or two before. In contrast, this program applies to the many rural areas of Laos subject to customary communal tenure and shifting cultivation. Partly with the aim of reducing shifting cultivation, it seeks to allocate settled land parcels to individual households, and to formalize their tenure rights over them. These parcels include those already held on a settled basis such as paddy fields, and additional ones cut out of the area of shifting cultivation, with the total area subject to upper limits based on the total number of labor units of the household and the type of farming undertaken. To mitigate the attendant restrictions on shifting cultivation, households may be allocated up to three holdings on which they may follow a short fallow rotation. The household is given at first a temporary certificate of land use, which in theory after three years, can be converted to a full land use title certificate (Fujita, 2004 4: 11-12, Yokoyama et al, 2006; Evrard, 2004: 2-3; Soulivanh, 2004). This is provided the "land has been used in conformity with objectives and regulations, and if there is no objection or claim, or those claims have already been settled" (National Assembly of Lao PDR, 2003). However, reports have indicated that there has been considerable delay in converting the temporary certificates to the full certificates, and only a few have so far been converted.

In Cambodia, in 1989, as a first step to reform, a law was introduced by the Communist government, permitting private rights to occupy residential land (up to 2,000 square meters) and to use farm land (up to 5 hectares) though not ownership title (Ballard, 2006: 72-73; PCGIAP and FIG, 2008). Following the establishment of a new democratic constitution, land titling began on a limited scale, authorized by the 1992 Land Law. The registration formally recorded both residential occupancy and usage rights in rural areas, with the corresponding issue of land occupancy/use certificates. The occupancy and usage rights were then converted into ownership rights under the 2001 Land Law, leading to the registration of ownership title. With the destruction of nearly all the previous title and cadastral documents during the civil wars and Khmer Rouge regime, the recognition of a household's ownership title to a parcel of land in the registration system was based on practical and current evidence of land use. The requirement was to provide proof in the adjudication process of having farmed the land for five years, during which time occupation was 'peaceful and uncontested' (Ballard 2006: 72-73; PCGIAP and FIG, 2008).

Adjudication

In the above states, a key principle adopted in the reforms is the concept of adverse possession, necessitated by the absence of documents, maps and surveys. According to this principle, an interest in land may be claimed on the basis of a reasonable period of occupancy and/or usage which has not been challenged as to the occupier and boundaries. In Indonesia, to claim title under the adverse possession principle, the requirement is a minimum period of 20 years of occupancy in "good faith" and "a recognition of occupancy by the surrounding community" (Brits et al, 2002: 7).

To verify an ownership interest by this criterion, the reforms specified the need for proper on-site adjudication. An example of how this is undertaken is provided by Cambodia. When a claimant applies for a title, a sub-committee is formed consisting of the commune head, the local village chief, officials of the local registration office, and one respected elder in the village. A notice of the application for title is posted in the village for 10 to 15 days, to allow any objections to be raised. The site is then visited by

a team of cadastral officials, who survey the land, measure its area and demarcate its boundaries, the claimant being required beforehand to erect monuments where he/she thinks the boundaries should be. The neighbors are consulted to ensure their agreement with the boundary demarcation. If agreement is forthcoming, an inspection agreement form is completed by both the neighbors and members of the sub-committee. The next step is an interview with the claimant about his/her family circumstances, length of time the land has been occupied and the means by which the land was acquired (e.g., inheritance or purchase). Also determined in the interview and in consultation with neighbors and members of the sub-committee is the existence of any usufruct or easement rights held by others. If they exist, they too are specified in the inspection form. The form containing all the necessary details and signatures, is counter-signed by the commune head and forwarded to the district land registration office with a recommendation to issue a certificate of title (Sophal et al, 2001: 27-28; Lor and Suan, 2001: 6).

CONSTRAINTS ON LAND TITLE REGISTRATION

Variable progress in title registration

The progress in registering title has been variable. In some of the states of the region, such as Indonesia and Cambodia, only a small proportion of land has been registered (10 to 20 per cent). Even in the Philippines and Thailand, where land titling programs have been implemented for more than 20 years, the proportion of land registered is estimated to be between 60 and 75 per cent. No precise figures are available for Laos and Vietnam, but there is evidence that in Laos, large sections of the upland rural population have yet to receive titles to land. Only in three states has land titling to all intents and purposes been completed, viz. Singapore, Brunei, and Malaysia (PCGIAP and FIG, 2008). However, in Malaysia the question of titling communal land remains unresolved. It is evident that major constraints have been encountered. These may be divided into three categories: those relating to communal land, those concerning land held under individual tenure, and those arising out of institutional limitations within the agencies responsible for registration.

Land held under communal tenure

One of the major drawbacks in land titling reform programs in Southeast Asia has been the failure in several states to incorporate land held under communal tenure. Two options are available to redress this: a) to divide the land held under communal tenure into individual holdings and grant title to each household for the parcel(s) of land allocated to it; b) to recognize collective tenure of such lands and record common title for the community, treating it as a distinct legal entity.

Recognizing individual title on communal land

Laos has taken significant steps in applying land registration to communal areas, choosing, as mentioned above, the first option, viz. the allocation and titling of individual holdings on communal land. For various reasons, other states in the region have not been prepared to do this and follow Laos's example.

One reason are the practical constraints on registering individual title on communal land. Where a community is engaged in shifting cultivation, continually moving from

one patch of land to another, it is obviously difficult to register any one patch of land, let alone establish precise boundaries. A second reason may be the reluctance of a traditional community to accept individual as opposed to collective title registration. Where land is considered a resource commonly and properly belonging to a community, an individual household cultivating a parcel of land may demur at the prospect of receiving exclusive property title for that parcel. Indeed individual title may be perceived as jeopardizing communal ownership and thus undermining a key foundation of the traditional community. As Binns and Dale have stated, "...members of a community that holds its land on a communal basis, or on the basis of what is known as an extended family, may reasonably object to any attempt to define the rights of individuals in terms of the land they actually occupy". They may "fear that registration may introduce some unwanted change in a traditional system of tenure" or may create rights "inconsistent with the existing social grouping". The resistance may be reinforced if "the true ownership is believed still to vest in some long-dead ancestor" (Binns and Dale, 1995: 20).

Further increasing the aversion to individual title on communal land is the possibility that the end result could be a reduction in shifting cultivation. Individual title registration may only be granted if households are prepared to cultivate their allocated land parcel on an on-going basis, and thus engage less in shifting cultivation. This may be perceived as reducing access to land. With the depletion in soil fertility on the cultivated parcel and less access to other land, productive output from the land may decrease affecting the household's subsistence and cash income (Fujita, 2006: 13-14). This has further increased resistance to individual titling on communal lands. As one report on land registration in Laos put it:

Villages (usually the more remote ones) that have not yet been affected by land allocation seem to become more and more reluctant, because they are aware of the difficulties encountered by their neighbours. Moreover, they also consider that their customary system is more flexible and fairer than the new system. This can be a reason why the pace of land allocation process (as measured by the number of villages where land allocation is performed each year) is slowly decreasing during the recent years (Evrard 2004: 6).

Recognizing collective title on communal lands

The alternative to individual titling is of course to recognize and register collective tenure of the indigenous group. However, only limited progress has been made in doing this. This is either due to the unwillingness of certain governments to recognize collective title to land held under communal tenure, or to major administrative difficulties in undertaking such registration even where collective tenure has been recognized.

The Indonesian government refuses to recognize collective title under communal customary or *adat* tenure. The Basic Agrarian Law broadly acknowledges *adat* land tenure, but its application is limited in three ways. One is that *adat* rules have never been codified so that it is not certain what types of tenure can be recognized, and which communities and individuals can claim title under *adat* rights. In addition, the Law and the policy of the Indonesia government does not recognize or permit collective title, nor does the government allow title in forested areas which covers much of the land occupied by indigenous groups under communal tenure. In a few cases, recognition has been given by the regional authority to the collective right of a

traditional community to use a defined area of forested land. This though falls well short of recognition of an ownership or lease title and leaves traditional communities without secure tenure (Burns, 2006: 19, 42, 117).

Even more resistant to legal recognition of collective tenure has been the Thai government. The Land Titling Program in Thailand is only applicable to non-forested areas, with forested land, as in Indonesia, considered as belonging to the state. The exception are certain forested areas which have been cleared (encroached forest) and occupied by individual households at the time of the Agricultural Reform Act of 1975 (Nabangchang, 2006: 85). Excluded are though the hill tribes and other groups who are the main occupants of the forested areas, especially in the upland areas of the country, and hold land on a communal basis. Thus, the communal territory of each tribe cannot be legally recognized and granted collective title (Leonard and Ayutthaya, 2003: 7-8; World Bank, 2003: 3-4; Brits et al, 2003: 4-5). However, the Thai Royal Forestry Department has allowed communities occupying and cultivating land in the forests usufruct rights. This means that cultivation, hunting and gathering can continue so long as they do not erode the forest resources under a five year renewable usufruct (known as *Sor Tor Kor* or STK) licence (Nabangchang, 2006: 85; Burns et al 2003: 31, 46, 78). As in Indonesia, this provides little protection if the land is required by large companies or the state for commercial or infrastructure purposes.

The Malaysian government too has been reluctant to recognize collective title to communal land occupied by indigenous groups such as the Orang Asli in Peninsular Malaysia and the Dayak tribal groups in Sarawak. In Peninsular Malaysia, the indigenous groups have been considered as only tenants-at-will of the forest areas they occupy. However, a number of important court rulings in recent years have stipulated, on the basis of common law principles and precedents from other Commonwealth jurisdictions, that such groups have collective and secure land rights. A landmark judgment in 1997 stated that aboriginal peoples in Malaysia 'have their rights over their ancestral land protected under common law' on the following grounds:

They have been in continuous and unbroken occupation and/or enjoyment of the rights of the land from time immemorial. This gives them the right to live on their land as their forefathers had lived and this would mean that even the future generations of the aboriginal people would be entitled to this right of their forefathers (Malayan Law Journal [MLJ] 1997: 418; Colchester et al, 2007: 16-18).

In another case, in 2002, the Shah Alam High Court decided that the proprietary interest of aboriginal people in their customary and ancestral land was an interest in the land (MLJ 2002: 591; Subramaniam, 2008). Each of these judgments have been upheld on appeal. In the last two years, the Federal Court of Malaysia has re-affirmed the collective land rights of indigenous groups in Sarawak, with most recent court decision in May 2009 allowing tribal groups to sue the government of Sarawak over logging concessions on communal land (Central Law Journal: 509; Colchester et al, 2007: 19; Associated Press, 2009: 5). There appears to be an emerging body of jurisprudence in Malaysia that upholds the legal validity of customary claims to communal land. Unless overridden by parliamentary statute, this may provide the basis for eventual collective title registration. This though will take time as it would necessitate surveying, mapping, gazetting of lands and a complex adjudicatory and administration process.

In contrast to other states, Cambodia has recognized collective tenure of indigenous and tribal communities mainly in the northern and northeastern parts of the country, under the Land Law of 2002. Such communities can now be treated as legal entities for the purpose of collective title registration (Guttal, 2006; Ballard, 2006: 75). However, this was only a first step, and significant challenges remain. These include surveying, delineating and mapping indigenous areas, identifying customary authorities, and securing agreement amongst traditional village communities on boundaries of their territories. Also required is an interpretation of customary laws of tenure, a formulation of the terms under which title can be granted, and the establishment of the institutional mechanism to manage the communal land and protect it against encroachment by outside interests (Ballard, 2006: 75). Such details can only be amplified in sub-decrees and a comprehensive set of implementing regulations.

The Philippines has gone furthest in Southeast Asia in recognizing collective tenure of indigenous peoples (otherwise called indigenous cultural communities). Under the Indigenous People's Rights Act (IPRA) of 1997 collective ownership may be vested in such communities with respect to their ancestral domains, usually found in the forested and upland areas. The legislation affirms the concept that such domains are "private but community property which belongs to all generations" of an indigenous community, and "cannot be sold, disposed or destroyed". It does, however, allow for land to be transferred within the community. To further underline their protected ownership status, the Act asserts the right of an indigenous community "to stay in the territory and not be removed therefrom", and "to develop, control and use lands and territories traditionally occupied, owned or used" (COP 1997: ss. 4-12; Llanto and Ballesteros, 2003: 203).

However, the implementation of the IPRA has been far from straightforward, and various difficulties have arisen. The most serious are numerous boundary and access disputes between indigenous communities with contiguous lands. Further complicating matters are claims made by sub-groups within an indigenous community with little supporting evidence, to be a separate indigenous cultural community, and so entitled to their own lands (Burns, 2006: 40, 76, 157).

Land held under individual tenure

Title registration of individual parcels of land can be readily undertaken in areas where sedentary peasant agriculture predominates. The cultivation of a parcel of land by the same family for more than a generation and agreed boundaries between parcels usually provide a sufficient basis on which ownership title can be recognized. However, even in these communities, difficulties can arise with respect to lack of documentation and land disputes.

Lack of documentation and unclear criteria

An impediment to title registration of individual parcels of land is lack of documentation in possession of the occupant to support or verify his/her claim to be the rightful owner. In some cases, registration officials require such documents as transfer deeds, formal wills, tax receipts, business records, and land occupation and land use permits. Documentary evidence is particularly important in sporadic registration, when stricter criteria in verifying the ownership title may be applied. In such cases the person requesting registration may be expected to produce written evidence to show long term occupancy and usage, Physical evidence of present land occupancy and usage, and even verbal testimony of others may not be considered sufficient. Even in

systematic registration, documentary evidence, although not always essential, helps nonetheless to facilitate the process and supplement the on-site surveys and verbal testimonies in the adjudication process. In fact, when disputes arise over boundaries and rival claims, supporting documents may help to resolve the matter.

All too often, in peasant communities characterized by low levels of literacy and informal transactions, expressed by word of mouth, documents such as business records, deeds of transfer, legal wills and land use certificates, may not exist. If they are outside the property tax system, then tax receipts may not be available either. The culture is such as not to lend itself to such formal processes (Holstein, 1996: 4, 10). The situation is made worse if a country has been subject to violent upheaval as a result of which both personal and official documents may have been destroyed or lost. Lack of documentation has been particularly noticeable in Cambodia. After the overthrow of the Khmer Rouge regime, some peasant farmers returned to their old land holdings, but documents to prove their right to the land either never existed or had been destroyed or lost. Those that worked on the small collective farms, mentioned above, were eventually allocated land, which was "informally divided among villagers. In terms of documentation, some villages recorded the distribution outcomes by hand, but in most cases such records were not kept or were subsequently lost" (Ballard, 2006: 72). A survey of households in Cambodia conducted in 1998 (sample comprising 1,040 households), showed that 74 per cent of rural households lacked any documentation to support their claim to land title (Sophal et al, 2001: 42). This particularly impeded sporadic registration and also created delays in systematic registration. By contrast, systematic land registration in Thailand has been expedited by the ability of many claimants to show evidence of ownership through the various land occupation and use certificates issued after 1954, as mentioned above.

Land disputes

A further constraint on reform programs to promote title registration are the frequent conflicts that arise between claimants and others, which may seriously delay or even block the process. An obvious source of conflict is disagreement over boundaries with neighbors and usufruct rights claimed by others, though, through conciliation, these may be resolved at the adjudication stage. Occasionally, divisions arise over rival title claims to the land. Some of these claims may emanate from other members of the family and carry some legitimacy, but without proper historical documentation from either side, they may be difficult to resolve and can retard the titling process. Other rival title claims may be filed by someone not presently occupying or using the land, who, nevertheless, can show an official document giving him/her rights of tenure. This stems from the practice in some countries of the region for different state agencies (apart from the title registration authority), to take it upon themselves to issue documents or certificates that authorize possession or usage of the land. In some cases, as mentioned below, such documents may be forged either by the rival claimant or the issuing organization.

Another problem are disagreements between claimants and forestry and land management authorities over the boundaries of protected state land which are inalienable, usually protected forest areas. Often such boundaries are ill-defined and out-dated, especially when forests have been degraded through shifting cultivation and eroded through logging. Disputes then arise if the claimant's land encroaches on protected land demarcated by ill-defined and out-dated boundaries. This pits the

claimant against the state, and may be a serious obstacle to a land title award. Perhaps the most bitter cause of discord in land registration arises when claimants, having been in possession for more than a generation, learn that their lands overlap with or are situated in an area on which concessions to logging and plantation companies have recently been granted, or which are earmarked for such concessions. As a consequence, title claimants may be denied title, and even if title is granted, it may be of no avail in guaranteeing security of tenure in the face of the influences of these companies. Such disputes were reported in an FAO report on land tenure in Southeast Asia in 2008:

Many cases of conflict have been recorded where national forest reserves of various categories overlap with areas already claimed by local communities or individuals. Increasing number of cases is being reported where concessions for mining and commercial crops have been granted for land already occupied often by small-scale holders (Nabangchang and Srisawalak, 2008: 9).

Indonesia has been especially earmarked as a country where there has arisen a "high level of land related conflict", which is "arguably the worst" in the region (Brits et al, 2002: 5; Heryani and Grant, 2004: 5; Burns, 2006: 143). Cambodia is hardly any better. One report in 2000 alluded to the 'explosion of land disputes' which 'now represent one of the most pressing governance issues in Cambodia'. As a result, 'public protests over land disputes have become common' (Kato et al, 2000: 37). In both these countries, the major causes have been the encroachment on peasant farms of areas of land on which concessions have been granted, and disputes with authorities over the boundaries of protected forest land. In Laos, where individual land use titles have been granted on communal land, serious disputes have arisen over the territorial boundaries of neighboring village communities. The imposition of officially designated 'spatial village units' has not resolved the issue (Evrard, 2004: 6).

Institutional factors hindering land title registration

Many of the difficulties in titling land have been aggravated by shortcomings in the agencies responsible for land administration. These shortcomings are essentially bureaucratic obstacles, corruption and capacity limitations.

Bureaucratic obstacles

In several countries of the region, land title registration has been hindered by bureaucratic obstacles comprising too many procedures, formalities and approvals that may involve several agencies. These may seriously delay the process of registration, and be a source of confusion to claimants from smallholding communities. They also increase the risk of arbitrary decisions by officials to impede registration, and in response, may give rise to bribery to expedite the titling process.

A measure of the bureaucratic obstacles is provided by the World Bank's *Doing Business* portal, which only applies to the procedures in registering title and the time taken when a business property changes hands, and not to the initial registration of a rural farm property. The figures provided are instructive nonetheless. In Indonesia, Philippines, Cambodia and Laos, between 6 and 9 procedures must be followed. In Laos it takes 153 days for the procedures to be completed, while in Cambodia it takes 56 days. All these countries are ranked above 80 out of 181 countries in the ease of registering title in buying a business property (the higher the rank figure, the more

difficult to register). It is not hard to assume that equally difficulties are encountered in securing initial title to a small peasant farm. By contrast Singapore and Thailand require only 2 or 3 procedures to be followed which can be completed in a matter of a few days. In fact, Thailand is considered a benchmark in the region for having the most streamlined system for registering title, and is ranked as high as 5 out 181 countries in terms of ease of registration (World Bank, 2009).

A number of studies and reports have also referred to the red tape and procedural complexity in registering initial title to land in Southeast Asia. One such report on land titling in Laos referred to "an unreasonably conservative approach that included inefficient committee procedures for checking documentation and onerous requirements for authorization signatures" (Virachit and Lunnay, 2005: 8).

Three key factors have contributed to this: the necessity for multi-layer approvals in a deconcentrated registration system, the necessity for multi-agency approvals, and in some cases the obligation to obtain judgments and endorsements from the courts. One example is Cambodia. The head of the commune recommends the award of the title, which is then forwarded to the district office of the Ministry of Land Management, Urban Planning and Construction. After being vetted, it is passed on to the provincial office of the Ministry and finally to the General Department of Cadastre and Geography within the Ministry 'to verify legalities and that procedures have been properly followed'. In addition, at the provincial level, there is the necessity to seek clearance from other agencies such as the Department of Agronomy and Agriculture Land Improvement, and the Department of Forestry Administration (Sophal et al, 2001: 27-28; PCGIAP and FIG, 2008).

A similar situation exists in the Philippines. In the case of title application for an informally held parcel of land outside the agrarian reform program, the adjudication and survey undertaken by officials from the Department of Environment and Natural Resources (DENR), must be checked and verified at the different layers in the decentralized structure of the Department (community, province and region). Then if nothing is amiss, the Department can issue a land patent (evidence to justify title). The patent is then submitted to the Land Registration Authority (LRA) to be converted into a certificate of title, conditional upon beforehand a further process of vetting and administration (Land Equity International 2002: 16, 67; PCGIAP and FIG, 2008).

In the case of land titling under the Agrarian Reform Program, the survey and adjudication is undertaken by officials of the Department of Agrarian Reform (DAR). The survey must then be checked and verified by DENR. After this, if all is in order, the matter is then returned to DAR, which issues a certificate of land ownership. This is then forwarded to the LRA for conversion to a certificate of title (Land Equity International 2002: 16, 67; PCGIAP and FIG, 2008; Llanto and Ballesteros, 2003: 204-205). As a measure of the difficulty in securing full title under the Agrarian Reform Program, only 1.57 million tenants and other rural dwellers on big estates had been granted emancipation patents and certificates of land ownership in 2008 out of the 2.4 million who had been granted ownership of land between 1972 and 2008. It would be reasonable to suggest that an even smaller number had actually received final certificates of title (Department of Agrarian Reform, Philippines 2009).

Not surprisingly, one FAO report described the procedures for registering a new title in the Philippines as "multiple and complex" and based on an 'enormous number of rules and regulations without regard to consistency' (Antonio, 2006: 75; Olano, 2003:

9). To make matters worse, according to another report by the FAO, "...there are 19 agencies involved in land administration, but their operations are not coordinated and information integration is poor. There is considerable overlap and fragmentation of institutional responsibilities among land agencies" (Llanto and Ballesteros, 2003: 204-205).

It is ironic that a decentralized system of title registration in which field officials and local leaders make recommendations on title, has resulted in lengthy and complex bureaucratic procedures. The problem is that they are only recommendations and still require to be vetted and endorsed at each of the superior layers of authority: district provincial and central government, so extending the bureaucratic process. This perhaps reflects a conundrum in the decentralized systems of administration in Southeast Asia. Whilst governments have been committed in theory to decentralization and have created decentralized structures, central government authorities still retain control out of fear that mistakes and abuses could occur at the local level. In other words, the all important trust in the competence and probity of officials at the local level, essential in the genuine delegation of authority, remains to some extent absent. Hence the need for multiple layers of vetting.

Corruption

A further problem in land registration in several countries of Southeast Asia, as elsewhere, is corruption (Holstein, 1996: 7). For example, in Cambodia, the long chain of approvals that are required "provides officials with vast opportunities for rent seeking". The claimant must obtain signatures from the head of the commune, the head of the district authority, the provincial land title office, the provincial forestry department and provincial fisheries department. As a matter of routine claimants must pay 'unofficial fees' for each signature (Kato et al, 2000: 39; Global Advice Network [GAN], 2008). This increases the costs of registration to the extent that claimants who are smallholders may find them more than they can afford. Bribery allows too those who otherwise have no basis to claim title to obtain it.

A similar degree of corruption affects title registration in the Philippines. It is regularly expected that a claimant to effectively pilot his claim through the complex range of procedures is required to pay 'facilitation' fees or bribes; otherwise the processing of the claim will be halted or delayed. In one report, it was stated that an applicant for title received it in two weeks after paying a bribe, whilst another who refused, had to wait for two years before receiving title, and then after a special plea to the President. Amongst the most culpable were the provincial offices of the Registry of Deeds within the Land Administration Authority (Development Academy of the Philippines [DAP], 2007, 96, 100; Department of Justice, Philippines [DOJ], 2002: 1, 34; GAN, 2008). A further concern is that agencies involved in the registration process, issue certificates indicating title or ownership which are not authentic or without proper legal basis, often obtained through bribes. Equally serious is the submission by bogus claimants of fake or doctored documents so as to acquire title. Such certificates or documents often carry false signatures. Not surprisingly, it is not uncommon for two or more land certificates to be issued for the same parcel of land to different people (DAP, 2007: 10, 15, 26-27, 82, 85, 98, 102; DOJ, 2002: 40, 59).

A further source of corruption is the award of titles to cronies and political associates. In Vietnam for example, Communist party cadres and their family members have obtained a disproportionate share of land use titles allocations. One report alluded

to the benefits of reform being 'captured by self-interested local cadres' resulting in "complaints about corrupt party cadres" (Ravallion and van de Walle, 2003: 5). This pattern of favoring personal and political cronies, and family members, has been evident in other states of the region too.

Capacity limitations

A further constraint on the reform programs to promote land titling is the capacity limitations of the implementing agencies. One of them is a shortfall of skilled and professionally trained personnel essential to the title registration process (possible exceptions being Malaysia and Thailand). These include cartographers, land surveyors, property lawyers and professionally qualified land registration officials. This is highlighted by a comparison of the number of land surveyors and lawyers involved in cadastral work in certain countries of Southeast Asia with that in developed countries with well-established registration systems. The comparison is based on enumerations provided by the International Federation of Land Surveyors. In Australia and Switzerland there are 55 land surveyors per one million people; in Korea the figure is 134. By contrast, in Indonesia the number is 24 per million, in Cambodia 18 per million, and, even worse, in the Philippines 9 per million. A similar contrast exists in relation to the number of lawyers involved in cadastral work. In Australia there are 188 per million, Switzerland 68, while in Indonesia the figure is 9 per million and in Philippines 10 (PCGIAP and FIG, 2008).

To illustrate the handicap caused by staffing constraints, when land titling programs began in Laos in 1995, there was a mere handful of technically and professionally trained staff capable of undertaking the responsibilities required (Virachit and Lunnay, 2005: 8). In Cambodia, provincial land title staff were described as having "extremely low capacities" (Kato et al 2000: 39). The paucity of professional staff not surprisingly has led to delays, and in some cases, inaccuracies in surveys and mistakes in title awards.

Capacity is limited as well by a paucity of modern technology that can be used in mapping, surveying, and data storage and retrieval. These include GPS devices, digital plotters and photogrammetric and photomapping equipment, as well as software for cadastral mapping and records. For example, in Cambodia, the provincial land title offices were described as suffering from a "serious lack of facilities as well as storage capacity for data and documents" (Kato et al, 2000: 39). Even where equipment is available, there is often a shortage of personnel with technical skills to use them and the absence of proper routines for maintenance and servicing. This points to the need for professional and technical training to upgrade the caliber of personnel involved in registration work. As one report indicated in Laos, "operational delays were frustratingly made worse by the failure to budget the time and money for regular maintenance and rotation of equipment for servicing" (Virachit and Lunnay, 2005: 8).

CONCLUSIONS: EXPLAINING THE OBSTACLES TO TITLE REGISTRATION

Three sets of factors help to explain the difficulties and slowness in registering land title in the rural areas of Southeast Asia. They are poor standards of governance, the nature

of traditional peasant community, and policy capture by bureaucratic and business elites.

Firstly, many of the institutional obstacles that have impeded title registration have emanated from the poor standards of public governance in several Southeast Asian countries. These include, amongst others, a disparate and uncoordinated institutional framework, cumbersome and complex administrative procedures, leading to excessive red tape, weak institutional capacity, and widespread corruption. As much as these shortcomings have affected government administration in general, they have had a detrimental impact on land title administration. One aspect of good governance has been evident in some land titling programs, viz. community consultation through the adjudication process, examples being Cambodia and Thailand. Public consultation has had though a limited impact in other land titling programs, such as those in Laos and Indonesia.

Secondly, traditional peasant communities may not always be receptive or able to adapt to the norms of a modern administrative system, as imposed by title registration, which require precision, individualism and formalism. For example, purposely ill-defined parcel and community boundaries and ambiguous land rights are features of such communities. Title registration requires precise demarcation and clearly stipulated rights, and so invariably has given rise to disputes within and between communities over land boundaries and tenurial rights. Likewise, many traditional peasant communities are characterized by cooperation, sharing and in some case communal tenure. This may lead to resistance to title registration which promotes individual tenure, and the autonomous rights of individual households. Furthermore, such communities, where interactions are informal and personalized may not readily adapt to the necessity to follow formal bureaucratic procedures and paper work. This is often reflected in the failure once title has been awarded to inform or involve the registration authority when land is subsequently transferred

Thirdly, it is evident that title registration has fallen prey to policy capture by key elites, who have sought to work the process to their own advantage or impede it so as to serve their own interest. This is reflected in the resistance to collective title for indigenous groups in valuable forested and upland areas. The fear is that if such title is granted, logging, plantation, mining and holiday resort companies could be obstructed in exploiting or developing such areas. In Thailand, Indonesia, Malaysia, Cambodia, and Philippines, powerful business elites have actively lobbied both central and sub-national governments, and in Malaysia, state governments themselves acting on behalf of business groups have sought to argue against collective title in the courts. The influence of business elites has also been shown in the granting of concessions on land which has already been titled or earmarked for title. In addition, policy capture by bureaucratic elites is evidenced by the creation of multiple procedures and the involvement of different agencies, which serves their self-interest by increasing bureaucratic power, enhancing career opportunities and creating opportunities for rent seeking. As one report in 2000 stated with reference to Cambodia, "...the present system also creates large incentives for local officials to maintain the current titling system or obstruct any new land system that eliminates opportunities for rent seeking" (Kato et al., 2000: 39).

David S. Jones, Ph.D., Professor, University of Brunei: dsjones@brunet.bn

REFERENCES

- Associated Press. 2009. "Malaysian Court Backs Land Rights of Indigenous Peoples", Taipei Times, 11 May: 5.
- Antonio, Danilo. 2006. "Instituting Good Governance in the Land Administration System – The Philippines Perspective" in M-P. Törhönen and Paolo Groppo eds, Land Reform Land Settlement and Cooperatives, Land Reform Bulletin 2006/2. Rome: FAO: 72-83.
- Ballard, Brett. 2006. "Land Tenure Database Development in Cambodia" in R. Grover, M-P. Törhönen and D. Palmer, eds., Land Reform, Land Settlement and Cooperatives, Land Reform Bulletin 2006/1: 70-81.
- Binns, Bernard and Peter Dale. 1995. Cadastral Surveys and Records of Rights in Land, FAO Land Tenure Studies 1. Rome: FAO.
- Brits, Anne-Marie, Chris Grant, and Tony Burns. 2002. "Comparative Study of Land Administration Systems," paper presented to Regional Workshops on Land Policy Issues, Asia Program, Wollongong, NSW, Australia, 4-6 June.
- Burns, Tony. 2006. Land Administration Reform: Indicators of Success and. Future Challenges. Wollongong, Australia: Land Equity International.
- Chu Van Lam. 1993. "Doi Moi in Vietnamese Agriculture", in William Turley and Mark Selden eds., Reinventing Vietnamese Socialism. Boulder, C.O.: Westview Press: 151-164.
- Cleary, Mark, and Peter Eaton. 1996. Tradition and Reform: Land Tenure and Rural Development in Southeast Asia. Oxford: Oxford University Press.
- Colchester, M., A. P. Wee, M. C. Wong, and Thomas Jalong. 2007. Land is Life: Land Rights and Oil Palm Development in Sarawak. Moreton-in-Marsh UK: Forest Peoples Programme and Perkumpulan SawitWatch.
- Colfer, Carol and Richard Dudley. 1993. Are Shifting Cultivators Marauders or Managers of the Forest? Rome: FAO.
- Congress of the Philippines. 1997. Indigenous Peoples Rights Act, Republic Act No. 8371. Manila: Author.
- Current Law Journal. 2007. Superintendent of Land and Surveys, Miri Division, and Anor v. Madeli Salleh, 6: 509.
- Department of Agrarian Reform, Philippines. 2009. Beneficiaries: Statistics. Manila: Author: http://www.dar.gov.ph/beneficiaries_statistics.
- Department of Justice Philippines. 2002. Land Laws and Regulations: Policy Study Final Report Volume 1. Manila: Author.
- Development Academy of the Philippines. 2007. EC-OMB Corruption Prevention Project: Integrity Development Review of the Land Registration Authority: Final Report. Manila: Author.
- Eaton, Peter. 2005. Land Tenure, Conservation, and Development in South East Asia. New York: Routledge Curzon.

Evrard, Olivier. 2004. La Mise en Oeuvre de la Réforme Foncière au Laos: Impacts Sociaux et Effets sur les Conditions de Vie en Milieu Rural, LSP Working Paper, 8. Rome: FAO.

Ezizbalike, Chukwudozie, M.T. Rakai, and I.P. Williamson. 2006. Cultural Issues in Land Information Systems, Pt 1, Land Reform Bulletin 1996. Rome: FAO.

Fujita, Yayoi, and Khamla Phanvilay. 2004. "Land and Forest Allocation and Its Implication on Forest Management and Household Livelihoods: Comparison of Case Studies from CBNRM Research in Central Laos", paper presented to the Tenth Biennial Conference of the Association for the Study of Common Property: "The Commons in an Age of Global Transition: Challenges, Risks and Opportunities", Oaxaca, México, 9 – 13 August.

Fujita, Yayoi, Kaisone Phengsopha, Thouthone Vongvisouk, and Sithong Thongmanivong. 2006. "Post-socialist Land Reform in Lao PDR and its Impact on Community Land and Social Equity," paper given to The Eleventh Biennial Global Conference of the International Association for the Study of Common Property, Bali.

Global Advice Network. 2008. Business Anti-corruption Portal: Country Profiles – East Asia and the Pacific. Copenhagen: Author: available at: <http://www.business-anti-corruption.com>.

Guardian, E.A. 2003. "Impact of Access to Land on Food Security and Poverty: The Case of Philippine Agrarian Reform", in Paolo Groppo, ed, Land Reform Land Settlement and Cooperatives, Land Reform Bulletin 2003/2: 71-82.

Guttal, Shalmali. 2006. Land and Natural Resource Alienation in Cambodia, Land Research Action Network.

Ha Thuc Vien. 2007. "Impacts of Land Allocation and Land Titling on Rural Livelihoods: An Examination from the Southern Uplands of Vietnam", paper given to International Agricultural Trade Research Consortium, Symposium Beijing, July 8-9.

Heryani, Erna, and Chris Grant. 2004. "Land Administration in Indonesia", paper given to 3rd FIG Regional Conference, Jakarta, Indonesia, 3-7 October.

Holstein, Lynn. 1996, Towards Best Practice from World Bank Experience in Land Titling and Registration, Washington: World Bank.

Iyer, Lakshmi, and Quy-Toan Do. 2008. "Land Titling and Rural Transition in Vietnam", Economic Development and Cultural Change 56, no. 3 (April): 531-580.

Kato, Toshiyasu, Jeffrey Kaplan, Chan Sophal, and Real Sopheap. 2000. Cambodia: Enhancing Governance for Sustainable Development. Manila: ADB.

Land Equity International. 2002. Land Laws and Regulations Policy Study: Final Report: vol. 1, Melbourne: Author.

Leonard, Rebecca, and Kingkorn Ayutthya. 2003. Thailand's Land Titling Programme: Securing Land for the Poor, Monitoring Paper. Oakland CA: Land Action Research.

Llanto, G.M., and M. M. Ballesteros. 2003. "Land Issues in Poverty Reduction Strategies and the Development Agenda: The Philippines" in Paolo Groppo ed., Land Reform Land Settlement and Cooperatives, Land Reform Bulletin 2003/3 (Special Issue), Rome: FAO : 201-218.

- Lor, Davuth, and Sopha Suon. 2001. "Reforming Land Registration In Cambodia", paper given to Fédération Internationale des Géomètres Conference: New Technology for a New Century, Seoul, Korea, 6–11 May.
- McEwen, Alec. 2001. The Significance of Land Title Registration: A Global Perspective, paper presented to the 75th Annual Meeting of the Institute of Surveyors of Sri Lanka, Columbo, September.
- Malayan Law Journal.1997. Adong bin Kuwau and 51 Ors v Government of Johore, 1: 418.
- Malayan Law Journal. 2002. State of Selangor and Ors v Sagong bin Tasi and Ors, 2: 591.
- Moeliono, Moira, and Godwin Limberg. 2004. Fission and Fusion: Decentralization, Land Tenure and Identity in Indonesia, Bogor, Indonesia: Center for International Forestry Research.
- Nabangchang, Orapan.2006. "Land Tenure Data in Thailand," in R. Grover, M.-P. Törhönen and D. Palmer eds, Land Reform Land Settlement and Cooperatives Land Reform Bulletin 2006/1: 82-93.
- Nabangchang, Orapan, and Eathipol Srisawalak. 2008. Good Governance and Natural Resources Tenure in South East Asia Region, Land Tenure Working Paper 4. Rome: FAO.
- National Assembly of Lao PDR. 2003. Land Law, No. 04 /NA. Vientiane: Author.
- Ngo Vinh Long. 1993. "Reform and Rural Development: Impact on Class, Sectoral, and Regional Inequalities", in William Turley and Mark Selden eds., Reinventing Vietnamese Socialism. Boulder, C.O.: Westview Press: 165-208.
- Olano, J. N. 2003. "Land Conflict Resolution: Case Studies in The Philippines" in Paolo Groppo ed., Land Reform, Land Settlement and Cooperatives, Land Reform Bulletin 2002/2. Rome: FAO: 84-97.
- Permanent Committee on GIS Infrastructure for Asia, and the Pacific and Fédération Internationale des Géomètres. 2008. Cadastral Template: A Worldwide Comparison of Cadastral Systems. Melbourne: Author: available at <http://cadastraltemplate.org>.
- Quizon, Antonio. 1999. "Agrarian Reform in the Philippines: Where are We Now, and Where are We Going?" in GBZ, Land Policy - Tenure Rights in Development Cooperation: Policy; Challenges and Opportunities, GBZ Special, Author: 10-16.
- Ravallion, Martin, and Dominique van de Walle. 2003, Land Allocation in Vietnam's Agrarian Transition: Part 1: Breaking up the Collective Farms, IFS Working Paper, EWP03/03. London: The Institute for Fiscal Studies.
- Slaats, Herman. 1999. "Land Titling and Customary Rights: Comparing Land Registration Projects in Thailand and Indonesia" in Toon van Meijl, and Franz von Benda-Beckmann eds., Property Rights and Economic Development : Land and Natural Resources in Southeast Asia and Oceania, London: Kegan Paul: 88-109.
- Sophal, Chan, Tep Saravy, and Sarthi Acharya. 2001. Land Tenure in Cambodia: a Data Update, Working Paper 19, Phnom Penh: Cambodia Development Resource Institute.

Soulivanh, B., Anothai Chantalasy, Phounsavat Suphida, and Florian Lintzmeyer. 2004. Study on Land Allocation to Individual Households in Rural Areas of Lao PDR. Vientiane, German Technical Cooperation.

Subramaniam, Yogeswaran. 2008. "Light at the End of the Tunnel?" Aliran Monthly, 6.

Virachit, Vilaphone, and Chris Lunnay. 2005. "The Lao Land Titling Project - Innovative Land Tools in Lao PDR", paper given to Expert Group Meeting on Secure Land Tenure: "New Legal Frameworks and Tools", UNESCAP, Bangkok, Thailand, 8-9 December.

World Bank. 2003. Comparative Study of Land Administration Systems – Thailand Case Study. Washington DC: Author.

World Bank. 2009. Doing Business: Measuring Business Regulation. Washington: World Bank: available at <http://www.doingbusiness.org>.

Yokoyama, Satoshi, Koji Tanaka, and Khame Phalakhone. 2006. "Forestry Policy and Swidden Agriculture in Laos", paper given at SEAGA Conference, Singapore, 28-30 November.

Zevenbergen, Jaap. 1998. "Is Title Registration Really the Panacea for Defective Land Administration in Developing Countries?" Paper given to International Conference on Land Tenure in the Developing World, Cape Town, 27-29 January.

ABOUT IPMR	
IPMR	<p>The International Public Management Review (IPMR) is the electronic journal of the International Public Management Network (IPMN). All work published in IPMR is double blind reviewed according to standard academic journal procedures.</p> <p>The purpose of the International Public Management Review is to publish manuscripts reporting original, creative research in the field of public management. Theoretical, empirical and applied work including case studies of individual nations and governments, and comparative studies are given equal weight for publication consideration.</p>
IPMN	<p>The mission of the International Public Management Network is to provide a forum for sharing ideas, concepts and results of research and practice in the field of public management, and to stimulate critical thinking about alternative approaches to problem solving and decision making in the public sector.</p> <p>IPMN includes over 600 members representing sixty different countries and has a goal of expanding membership to include representatives from as many nations as possible. IPMN is a voluntary non-profit network and membership is free.</p>
Websites	<p>IPMR: http://www.ipmr.net/ (download of articles is free of charge)</p> <p>IPMN: http://www.inpuma.net/</p>