



UNITED NATIONS
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WIDER Working Paper 2014/086

Cambodia's land management and administration project

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May 2014

Abstract: This paper presents the case of World Bank support to the mass titling component of the Cambodia Land Management and Administration Project. This was a project for which there was clear national demand, as evidenced by the fact that the Cambodian government had already attempted to implement mass titling a decade previously, but had lacked the human and technical resources to complete it. The case describes a consensus between donors and a host nation government during the planning and approval of the intervention, which dissolves into conflict during implementation. Ultimately, the case raises questions about the ethics of intervention. When governments want approximately the rules of the game suggested by donors (functioning institutions to facilitate markets) but do not want a level playing field, how should this be understood and resolved? Must donors always be passively complicit in elite projects until domestic politics hold them accountable to their own rules?

Keywords: Cambodia, land administration, land registration, political economy, tenure security, World Bank

JEL classification: O290, P260, P320, Q150

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This working paper has been prepared within the UNU-WIDER project 'Building State Capability through Problem-driven Iterative Adaptation (PDIA)' directed by Lant Pritchett and Matt Andrews, which is a component of the larger UNU-WIDER programme 'Foreign Aid: Research and Communication (ReCom)'.

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ISSN 1798-7237 ISBN 978-92-9230-807-0 <https://doi.org/10.35188/UNU-WIDER/2014/807-0>

Typescript prepared by Janis Vehmaan-Kreula at UNU-WIDER.

UNU-WIDER gratefully acknowledges specific programme contributions from the governments of Denmark (Ministry of Foreign Affairs, Danida) and Sweden (Swedish International Development Cooperation Agency—Sida) for ReCom. UNU-WIDER also gratefully acknowledges core financial support to its work programme from the governments of Denmark, Finland, Sweden, and the United Kingdom.

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The views expressed in this publication are those of the author(s). Publication does not imply endorsement by the Institute or the United Nations University, nor by the programme/project sponsors, of any of the views expressed.

1 Introduction

This case study concerns one of the central aspects of the transition to a formal market economy in Cambodia, namely a project to title all land in the country, thereby enabling the majority of the population to become the formal owners of the land that they had traditionally farmed, and facilitating a market for land. This initiative, as we will see, represented strong constituencies, both nationally and internationally. Nationally, the Cambodian government had been attempting to introduce private rights to property since the mid-1980s despite its overtly communist character. In February 1989 these included an attempt at mass titling which failed due to a lack of administrative capacity and experience. The Cambodia Land Management and Administration Project (LMAP) therefore represented international assistance seeking to enable the Cambodian government to succeed at the second attempt. Meanwhile, internationally, LMAP dovetailed perfectly with a supposed ‘Third Way’ to promoting development: in order to enable markets to deliver development it was necessary not to roll back the state indiscriminately, but rather to focus on strengthening the key state institutions that are required in order to enable markets to do their work (Fukuyama 2004).

As such, LMAP seemed to embody a consensus between the Cambodian government and donors around the goals and strategies of land reform, but in time key differences were exposed. These were sufficiently serious to lead, for a time at least, to a major breakdown in relations between the Cambodian government and the World Bank. At the time of writing (early 2014), the government is still struggling to bring order to land markets, and the World Bank no longer appears to be welcome as part of the solution to Cambodia’s land problems.

This case study thus examines the fault-lines which opened up between different actors, particularly the World Bank and the Cambodian government, in the course of the implementation of the LMAP project which sought to introduce market relations for land and to carry out a mass land titling programme.

2 Why land management and administration?

Land reform has long been a staple of international development. Historically, this has been a question of land *redistribution*, wherein a maximum area of land that can be owned private is decided upon. Any private holdings above this land ceiling are redistributed to people with little or no land (Lipton 2009). Often this has been seen as a key strategic step in national trajectories of development, as, for example, in South Korea. Redistributive land reform in South Korea had the dual effect of creating a reasonably equitable society (the rural population was assured a basic level of living which enabled them to start taking advantage of opportunities in the industrial sector) while also diluting the influence of the rural landowner class. Reducing the power of the rural elite was a prerequisite for the development of policies favouring the industrial sector which ultimately drove South Korea’s phenomenal national growth.

The current development orthodoxy does not, however, favour a strong interventionist state which redistributes assets from rich to poor, either for reasons of social justice and equality or to set in motion structural development processes. Rather, it is expected that the state will have a minimal set of functions which must be institutionalized and in which it must develop ‘capacity’ in order for market-oriented development to lead people out of poverty. In this climate the emphasis on land reform has switched from the redistribution of land to the *administration* of land: instead of the state seeking to take land from one group and redistribute it to another, the

state is assigned a role in mapping land assets, establishing a register to clarify who owns what, and providing formal legal processes whereby land (now defined by and as ‘property rights’) can be bought and sold through market exchange.

This emphasis on land administration is suggested to have three principle theoretical benefits (Deininger 2003):

1. Increased security of tenure resulting from legal recognition of ownership gives the land-owner confidence to invest in the land, resulting in increased agricultural productivity.
2. The granting of formal title provides the owner with a formal document which can be used to leverage credit, enabling the owner to invest either in the land or in other productive economic activities.
3. Clarity around ownership and transactions facilitates the operation of a market for land which enables the ‘invisible hand’ of the market to redistribute land to the most efficient farmers and also at the most efficient farm size.

This suite of theoretical benefits is, however, much contested. It is argued, for example, that:

1. Exposing relatively poor landholders to market relations makes them vulnerable to losing their assets through distress sales at low prices to wealthier actors (Cousins 2007).
2. Using land titles as collateral is only beneficial if land owners have a realistic opportunity and the capacities necessary to engage in successful business activity. Unsuccessful investments secured by a household’s residential property and productive agricultural land will result in impoverishment rather than enrichment. Alternatively put, that the poor are better served by being accorded a right to labour rather than a right to capital (Bromley 2009).
3. The benefits of titling rest on the assumption that pre-existing informal systems did not already adequately provide for tenure security, access to affordable credit and a means by which assets could be transferred. If these benefits were already provided by informal institutions then the benefits of formalization will be limited (Payne et al. 2009).

If there is a theoretical debate regarding the hypothesized benefits and costs associated with reforms that focus on formal property rights and the operation of markets, there is also a large empirical literature that contextualizes these debates and demonstrates how they work differently in different contexts. Leading figures at the World Bank have been responsible for much of this research.¹

However, policy reforms require a certain political momentum and a broad-based constituency in order to secure financial and political support. Mosse (2004) has argued that the demand for policies to satisfy all potential stakeholders, and the imperatives to gloss over potential conflicts and difficulties, are so pervasive as to ensure that they can never be implemented as originally framed; ‘good policy’, he suggests, ‘is unimplementable’. In this respect, Hernando de Soto’s work has been hugely influential with respect to the spread of land administration initiatives. In his book *Mystery of Capital* (de Soto 2000) he argues that rich nations are rich because they have a

¹ See, for example, Deininger and Feder (2009), who have summarized the literature in an even-handed and nuanced manner.

formal property rights system, and that the way for poor countries to become rich is to develop the same. His case perfectly fits the intellectual and political currents of the time, suggesting as it does that there is no problem of injustice, and therefore no need for restitution or redistribution. In de Soto's narrative, poverty itself is almost an illusion, as he portrays the poor as rich in assets and rich in entrepreneurial spirit and ability, handicapped only in the fact that their wealth is held in 'defective forms' which therefore constitute 'dead capital'. The problem of poverty is not at all intractable described in this way, and the solution is appealingly technical and straightforward. As such, while his methods and assumptions are subject to much academic critique, de Soto's ideas travel remarkably well in policy circles, and even respected academics in the field of land administration cite him to support their policy propositions (Deininger et al. 2009: 5).

As with other case studies in this series, the analysis here focuses on the problems that emerge when fundamentally political and 'adaptive' challenges are regarded instead as technical problems best addressed by foreign 'experts', and in which narrow metrics of 'success' (land titles dispersed) mask deep underlying discontent that, left unchecked, can come to compromise the effectiveness—indeed the very legitimacy—of the entire enterprise. The case of LMAP shows, graphically and painfully, how a policy idea—land titling—whose realization planners, donors and external advisers could imagine was largely a matter of technical assistance and logistics, was (and remains) in fact a deeply contentious issue mired in a complex and fluid mix of inequitable social relations and domestic politics of patronage.

3 Method

This case study draws on literature which focuses on the period 1998-2013. As such it begins from the time when peace in Cambodia was confirmed and when co-ordinated international assistance to land administration began to consolidate. It follows the passage of the 2001 land law, the initiation of the Land Management and Administration Programme (2002-09) with the mass titling programme as its centerpiece. It then traces the urban land conflict which led to a World Bank Inspection Report into LMAP, which exposed fault-lines between the government and the World Bank, and also some of the internal contradictions in the LMAP approach. Finally, it looks at the government's continuing initiatives to carry out titling and to address issues that remained unresolved within the LMAP approach.

In order to contextualize these more recent events, the earlier attempts to introduce market relations and land titling during the 1980s and early 1990s are also briefly reviewed.

4 The case

4.1 1955-98 burned by the Cold War: Cambodia's post-colonial history

During the 1960s Cambodia struggled to avoid being dragged into the Cold War conflict in Vietnam. Norodom Sihanouk, the young French-appointed king who had abdicated following independence in order to take over as Prime Minister, became an active member of the non-aligned movement and sought to tactfully decline overtures from both the United States and the North Vietnamese to commit Cambodia to the conflict on one side or the other. These powerful external pressures were eventually too much; Sihanouk gradually lost his grip on an increasingly impoverished and factionalized country (Osborne 2004). In 1970, while out of the country, he was deposed by a right-wing coup d'état; this plunged Cambodia into what has been referred to as the tragedy of its modern history. A five-year civil war ended with defeat for the right-wing government which was replaced by the even more disastrous Khmer Rouge rule of Democratic

Kampuchea (1975-79) when it is estimated that 1.7 million of a population of 7 million died as a result of the actions of the state, either through political executions or through starvation and starvation-related disease. Relief came in 1979 when a Vietnamese invasion ousted the Khmer Rouge and (for the first time in World history) replaced one communist regime with another. This outcome was intolerable for China and the United States who, with international support, continued to recognize the Khmer Rouge and waged a guerilla war against the Vietnamese supported government. Only following the fall of the Berlin Wall and the end of the Cold War did international interventions begin to support peace instead of war in Cambodia.

In 1991 the Paris Peace Agreements were signed, and after national elections in 1993 a new constitution was signed confirming Cambodia, formally at least, as a democratic state with a liberal market orientation. In the early 1990s progress along this new orientation was restricted by the failure to achieve complete peace. The United Nations Transitional Authority in Cambodia (UNTAC) had successfully repatriated the refugees along the Thai border and had organized elections. However, the Khmer Rouge had withdrawn from the process and continued fighting. Their demise did not follow until 1995-96 when a successful government policy inciting the rebels to defect was implemented, and finally, in 1998 the death of Pol Pot signalled the end of conflict.

4.2 1980s: Market solutions under communism

During the period of the People's Republic of Kampuchea (1979-89) Cambodia was a communist state, and for much of the early 1980s had a policy of redistributing land equally amongst the population and farming it communally. However, there was always a tension between rewarding productivity and ensuring all had adequate livelihoods, especially given the straitened circumstances of the country after the destruction of the 1970-75 Civil War, and even more so the 1975-79 rule of the Khmer Rouge. In order to stimulate local production, a certain amount of private ownership and trade was always permitted, and a considerable degree of flexibility was afforded to local officials in determining the extent to which communal rather than private arrangements should apply (Gottesman 2004). It was not until 1988 that the national leadership formally debated private occupancy and use of land, and in 1989 announced that private farming and private occupation of farm land was allowed, though the land was not to be traded and the state was still the owner. However, these national level decisions were hardly relevant as family farming was already common and while low land prices and a heavy dependence of farming meant that there were not many transactions, there had also been selling and buying of land throughout the 1980s (as research on landlessness during the 1990s made clear; see Biddulph 2000).

The decision to acknowledge private occupation rights—and as So (2009) notes, there was unlikely to be any distinction in the minds of the majority between occupation and ownership—was followed by an attempt to carry out a programme of mass land titling. Throughout the country households were encouraged to apply for title for all of the land which they possessed. When they submitted their application they were given in return a receipt with a small table on it. The table resembled a chicken's wing, so these receipts became known as chicken wing forms (*ban slap moan*). Official sources suggested that between 3.7 and 4 million applications were received, although this has not been verified and it may be that the figure was substantially lower. Of these it has been suggested that possibly as many as 10 per cent of these applications led to the issuing of title. There is insufficient evidence to be sure of this figure, but at most it suggests that 400,000 titles may have been issued (corresponding to about 3 per cent of the 12 million private plots in Cambodia according to current estimates).

A theme that has been intertwined with access to land has been that of corruption. During the early 1980s the national government received reports of local officials appropriating the best land for themselves and then distributing poorer land (Gottesman 2004); in the late 1980s and especially the early 1990s the arrival of international capital to Cambodia meant that limited titling resources were devoted towards providing titles to high-ranking officials, who in turn were securing deals with foreign investors (So 2009).

4.3 1990s: Land and social unrest

By the mid-1990s it became apparent that the government was succeeding in its strategies to undermine the Khmer Rouge as a fighting force. At the same time, land conflicts emerged into the public arena as a source of potential unrest. Conflicts typically occurred between groups of villagers who found that land which they considered theirs was suddenly in the hands of a military commander, or senior official, or a shadowy company whose identity and connections were difficult to identify. Often these dispossessed groups travelled to the national capital to plead their case outside parliament or at the house of a senior politician. Typically they would be placated with promises of action and gifts of rice and would return home to wait for an intervention which never came. This became a political issue, with the Prime Minister threatening officials and warning them not to spoil the country's development. This occurred at the same time that attempts to appropriate areas of land and forest were increasingly linked to senior politicians, including the Prime Minister's own relatives and friends (Cooper 2002; Williams 1999).

4.4 1998: A new ministry and a new start

The institutional arrangements for supporting land reform in Cambodia were somewhat unclear during the 1990s. At one stage it appeared that two land laws were under development, one at the Ministry of Justice with technical support from one donor, and the other at the Ministry of Agriculture with support from another donor. Meanwhile a number of donors were undertaking various pilots of methods that might be used to implement a new round of mass titling.

In 1998 a new ministry—the Ministry of Land Management, Urban Planning and Construction—was established and charged with the development of a new Land Law. This proceeded with civil society consultation via the Bar Association of Cambodia, which coordinated comments on successive drafts of the new law by a number of NGOs concerned with land issues. These NGOs focused on issues such as land grabs, native ethnic minority interests (for which communal land titling was proposed), and the welfare of inhabitants of informal settlements in the capital Phnom Penh, where people had informally settled what was formally state land for up to two decades.

4.5 2001: A new land law

The 2001 Land Law granted allowed people who had occupied land peacefully and without use of force for five years to develop an ownership right to that land. It thus removed any ambiguity between ownership and possession and paved the way for a mass privatization of land throughout the Kingdom. It also provided for native ethnic minorities (mainly hill-tribes living in the forested north-east provinces of the country and constituting less than 5 per cent of the overall population) to register as legal entities and then apply for communal land titles.

There was now, therefore, a legal framework which would enable the government to set about formalizing land ownership in Cambodia. In common with most legislation in Cambodia, the law was drawn up in general terms, but specific details were delegated to later sub-decrees and

guidelines which could be issued without requiring parliamentary approval. Among these were a sub-decree on demarcation of State Land, a sub-decree on Social Land Concessions (a mechanism for redistributing state land to landless and poor households) and a sub-decree on Economic Land Concessions (a mechanism for the government to encourage investment in productive land-based activities such as plantations).

4.6 2002: The LMAP project is launched

The LMAP Project was originally scheduled for 2002-07 and was extended to 31 December 2009. It was a Royal Government of Cambodia Project which received technical and financial support from the World Bank, the government of Finland (through a company called Finnmap) and the government of Germany (through GTZ).

LMAP's objectives as defined in the Project Appraisal Document (PAD) and Development Credit Agreement (DCA) were to assist the Royal Government of Cambodia to implement its 'program of actions, objectives and policies designed to improve land tenure security and promote the development of efficient land markets'. This government programme includes:

- (i) The development of adequate national policies, a regulatory framework and institutions for land administration;
- (ii) The issuance and registration of titles in rural and urban areas in the Project Provinces; and
- (iii) The establishment of an efficient and transparent land administration system.

To achieve these objectives, LMAP financed five inter-related components.

Component 1: Development of land policies and regulatory framework

Component 2: Institutional development

Component 3: Land titling programme and development and land registration system

Component 4: Strengthening of mechanisms for dispute resolution

Component 5: Land management

Of these the centre-piece was the land titling programme, which involved systematic titling. This means that a supply-driven process of mass titling took place. Instead of households applying for title, surveyors were dispatched to a village where, assisted by village volunteers, they mapped every plot of land in the village and provisionally assigned an occupier to each plot. This process generated a village map which was then put on public display for 30 days. During this period anybody who wished to dispute any of the provisional assignments was invited to come forward. Cadastral staff and local authorities would then seek to resolve as many disputes as possible within the display period.

Following the public display, ownership titles would then be prepared for all of the plots of land that were not contested. Contested plots would remain untitled and would be dealt with through a separate adjudication process. This was an example of the Cambodian programme being able to benefit from the experience of earlier programmes which had foundered because no titles had been issued until all conflicts had been resolved. In Cambodia, the small number of disputed plots which could not be titled immediately were not allowed to disrupt or delay the titling of the remainder of the village.

By using computerized systems and, again, benefiting from lessons learned from earlier programmes, LMAP was able to develop computer systems and human resources such that the mass titling programme could be rolled out in 11 provinces. Production costs of approximately US\$11 per title were low by international standards (World Bank Inspection Panel 2009). Recipients were charged a nominal fee of 1 riel per square meter of agricultural land and 100 riels per square meter of residential land, which meant that the title to a hectare of agricultural land would cost about US\$2.50 (average household agricultural land in Cambodia is less than a hectare) and a large household plot of 20 meters x 40 meters would cost US\$2 to title.

Surveys of beneficiaries were conducted and repeatedly found that the vast majority of people receiving titles were satisfied with the process and were happy to have received their titles (Deutsch 2006; Deutsch and Makathy 2009).

4.7 2005-07: A driver of national development

During the middle years of the LMAP project, a number of analyses produced by the World Bank suggested that the systematic land titling programme had the potential to significantly impact on Cambodia's national economic development.

The World Bank's 2006 Poverty Assessment, for example, suggested that Cambodia's current economic growth was being driven by the garment industry (which had grown from nothing to be an employer of 300,000 people in little more than a decade) and by tourism at Angkor Wat (which had grown from less than 120,000 visitors in 1993 to over 1.5 million visitors in 2005). However, it was suggested that a third driver was required if the economy was to lift the population out of poverty. Smallholder agriculture, it was suggested, had the potential to provide that third driver. However, the key constraint on the smallholder agriculture sector was the lack of investment, which in turn was linked to a lack of tenure security. Land titling, then, was represented as having the potential to transform smallholder agriculture in Cambodia by removing the 'primary binding constraint' to agricultural growth, namely 'ill-defined property rights' (World Bank 2006) enabling the emergence of agriculture as the third driver of growth in Cambodia.

Such expectations were encouraged by the results of research conducted by a senior World Bank researcher in Cambodia. Klaus Deininger examined the results of the 2004 Cambodia Socio-Economic Survey, paying particular attention to the difference between the productivity of households reporting that they had land titles and the productivity of households without titles. He contended that titled land would in consequence deliver yields that were 73 per cent greater than untitled land, meaning that the issuance of one million titles would enable 438,345 individuals to escape from poverty and would reduce the national poverty rate by 3.36 per cent.

Even as LMAP was proving itself year by year through its efficient delivery of reasonably priced land titles to the satisfaction of their recipients, and appeared to be well-placed to make a significant impact on national poverty, events were unfolding in Phnom Penh which would transform the way that the project was viewed.

4.8 2006 to present: the Boeung Kak Lake controversy

In May 2006 public notices were posted initiating the titling process in a commune near the centre of the capital Phnom Penh called Sras Chok. The commune included the Boeung Kak lake and its shores where, according to government census data, 4,250 households were resident. Survey teams worked in the commune until January 2007 and then their provisional assignments

were posted on a public map from 4 January until 2 February 2007. However, the lake and its shores were recorded as a single block with the owner listed as ‘unknown’ and the possession rights of the people living on the shores unacknowledged.

The 2001 Land Law provided for two sorts of state land; state public land which the state is not allowed to allocate for private use, and state private land which may be issued as economic land concessions or may be transferred into the private sector through the mechanism of a social land concession. Sub-decrees passed in 2005 with support from LMAP technical assistance outlined procedures by which demarcation of state land and reclassification of state land would take place in an open and transparent manner and would be recorded on a publically available register. No such procedures were followed in the case of the Boeung Kak lake.

A private company called Shukaku, Inc. had been promised the opportunity to develop the Boeung Kak lake area in 2005. In January 2007, during the public adjudication period, the municipality signed an agreement leasing the lake and surrounding area to Shukaku for 99 years for US\$79 million. A lease was signed with the company in February 2008 and six months later, in August 2008, a sub-decree was issued reclassifying the lake from state public to state private land. One year later, on 10 August 2009 residents around Boeung Kak began receiving eviction orders which gave them one week to accept one of three compensation options, none of which met the requirements of either international law, or of the LMAP Environment and Social Guidelines which included a Resettlement Policy Framework (Grimsditch and Henderson 2009).

In April 2009 a number of NGOs working with the communities living on the shores of Boeung Kak requested an inspection of LMAP on the grounds that the affected communities had suffered serious harm from the design and implementation of the project. The Inspection Panel did not formally respond to this request until December 2009, but in the meantime the World Bank commissioned a special evaluation or Enhanced Review Mission (ERM) to review the project. The ERM supported the view that safeguards had not been complied with. In September 2009 the Cambodian government cancelled the World Bank loan for LMAP and continued the mass titling project without further World Bank support.

The Inspection Panel report dated November 2010 and released publically in early 2011 found that the LMAP management had failed to act on information it had received about the threat to households at Boeung Kak and said that LMAP management should have detected the ‘grave harm’ caused by the evictions and insisted on the Resettlement Policy Framework being applied. At the same time the Inspection Panel recognized the importance of land as a development issue in Cambodia, and regarding the issue of state land management ‘commended the Bank for pursuing this difficult policy issue in the Cambodian context’ (World Bank Inspection Panel 2010). The Inspection Panel also highlighted the internal contradiction between the LMAP project documents situation analysis, which emphasized tenure insecurity and land conflicts as the problem to be addressed, and the implementation plan, which was to only implement titling in areas that were free of dispute.

4.9 2010: The evasion critique

The Boeung Kak case, which effectively halted the World Bank engagement in mass titling in Cambodia, highlighted the extent to which the Cambodian political elite was systematically excising high value urban land from the registration process. The people, many of them very poor, living on this land were therefore excluded from the benefits promised by the land titling programme.

Biddulph (2011) argued that the entire roll out of the LMAP titling in rural Cambodia reflected a similar evasion of the problem that was to be addressed. His research suggested that in rural Cambodia the land titling was being implemented in established rural rice farming villages where tenure was already secure, but not in former forests and battle-fields in the north-west where most of the land conflicts and tenure insecurity LMAP claimed to be addressing were located. He used the detailed examination of a lowland rice village where the titling had been implemented to cast doubt on the economic benefits of titling. In this case study village he found that villagers had not been worried about losing their land before titling, still were not worried about losing it after titling, and that they had not in any way changed their farming practices since the titling process. They were very satisfied with the process and with the titles that they had received, but they did not experience any change in tenure security, nor did they experience any change in the terms on which they could access credit before and after they had received titles. Having been unable to identify any agricultural improvement as a result of titling, Biddulph asked officials at commune, district, provincial, and national level if they could direct him to cases where titling had led to any change in agricultural practice or productivity, but none were able to do so. The lack of a systematic monitoring and evaluation system meant that there was no broader based data from the project which could invalidate this claim regarding the lack of economic impact generated by the project.

4.10 2012-13: The Prime Minister's land titling programme

Mass titling continued after 2009 without the involvement of the World Bank, and following the same broad implementation patterns, namely rapid progress in smallholder farming areas, slow and troubled progress in urban areas and an avoidance of the former commons beyond the villages. A year before the 2013 national elections, however, came an unexpected initiative which demonstrated the political currency invested in land titling and in the ability to diffuse land conflicts (Milne 2013).

In the face of ongoing criticism of the non-transparent issuance of large scale economic land concessions on former commons claimed by the state, the Prime Minister Hun Sen announced a personal programme of land titling to address the tenure insecurity of poor people living on such land. Financed by the Prime Minister's office, the 5,000 student volunteers recruited to the programme were given military uniforms and sent to remote provinces accompanied by cadastral officials with LMAP experience to survey the land occupied by poor people. The Prime Minister explained that land titles would give tenure security, meaning that any concessions issued by the government in the future would not displace them, and (in true de Soto style) that the title would enable them to raise loans from banks to invest in their farms (Milne 2013). The initiative was accorded high profile, with the students being interviewed regularly on national television, and being rewarded with a lavish party in Phnom Penh. As yet there has been little research to analyse whether this hybrid of strongman gesture politics and technical property rights intervention had any significant impact in either winning political support (the ruling party did much more poorly than expected in the election but it is not clear what approval levels the titling programme had) or in addressing issues of land conflict and tenure security. Given the rapid rate of migration from settled agricultural areas into the agriculture-forest frontier, and the powerful incentives for officials and entrepreneurs nationally and locally to claim and trade land, it seems highly unlikely that the Prime Minister's initiative will have made a significant dent in this complex policy problem. It does seem clear, however, that foreign technical assistance is not currently welcome to address this issue, as 'government officials involved in the initiative were told not to speak to journalists or foreign advisors' (Milne 2013).

5 Interpretation

How then are we to interpret the case of LMAP? In 2007 this was a successful technical assistance project with hundreds of well-trained, highly motivated government surveyors providing a good quality, efficient and popular service which, it was suggested in 2006-07, carried the potential to release smallholder agriculture from its binding constraints and provide a third engine of economic growth for Cambodia, generating up to 70 per cent higher agricultural productivity. Yet by the end of 2009 the project had closed down and the government and the World Bank were barely communicating with each other. Why did this happen? Was this a lamentable failure, or can it actually be interpreted as a success? Could or should anything have been done differently?

5.1 Elite agenda vs. donor agenda

The way in which the Cambodian elite operates is well-documented. The Prime Minister Hun Sen, following patterns that can be traced back to the 1980s, has consolidated his power by ensuring that the political elite and the economic elite are, if not the same people, then at least in very close co-operation. An accomplished political operator, Hun Sen has always utilized off-budget resources and informal networks to ensure that he has relatively unfettered political power. The sources of revenue for the elite are multiple, including various branches such as hotel and casino developments and fuel retailing, however the disposal of land and forests has long been a central and controversial element of Hun Sen's and the Cambodian People's Party's (CPP) power (Global Witness 2009; Gottesman 2004; Heder 2005; Le Billon 2000; Subedi 2012). The monopoly of major economic opportunity is complemented by a form of patronage politics whereby the elite seeks legitimacy through providing economic improvement to the population, often on highly personalized terms (Pak 2011; Pak et al. 2007) which strengthen the sense that the current leadership is not easily replaceable.

For the elite, then, land titling in settled rural areas with relatively low economic potential provides a way of generating political legitimacy without incurring undue costs. The higher lands beyond the rice belt, however, are an important source of discretionary power. It makes no sense, given the trajectory of Cambodian politics, for the ruling elite to willingly relinquish its power to dispose of this land on its own terms. It therefore makes perfect sense that the government would support a campaign of land titling but ensure that the land titling programme does not place constraints on its management of state land.

In this context it becomes interesting to speculate on the agenda of the World Bank. To what extent was the Bank aware that there was a political logic in allowing the mass titling to proceed while foot dragging over elements of the reform relating to state assets? It is possible to speculate that many of those involved in LMAP saw their remit as technical and not political. As such it would make sense to concentrate on surveying and the management of the computerized cadastral register, but to avoid political issues such as land-grabbing and land conflicts. Certainly any such compartmentalization would be reinforced by government officials, who would have a keen sense of a difference between technical matters (which are appropriate for discussion and for foreign advisors to have opinions on) and political matters (which are not appropriate to discuss with foreign advisors and which arguably only Secretaries of State and higher would consider themselves as empowered to discuss freely).

There are parallels here with the classic work of James Ferguson, *The Anti-Politics Machine* (Ferguson 1994). This is a study of an intervention in Lesotho. Ferguson draws a contrast between the way that the intervention (a collaboration between the Canadian government and the World Bank) describes the people it works with in Lesotho as rural farming communities,

and the way that Lesotho would be more commonly understood as a labour reserve for the South African mining industry. Ferguson is fascinated by the way that somebody with a rudimentary understanding of Lesotho would understand that its modern history is one dominated by its subordinate relations with South Africa, yet the highly educated people involved in the intervention managed to see it differently. He argued that people working in development need to see the places where they work as amenable to intervention in order to legitimize their work. It would not be possible to design a project to reconstitute the relations between capital and labour in the South African mining industry for the sake of Lesotho's rural development. So the development industry represents Lesotho as agricultural, primitive (not in contact with the modern world), and as a national economy governed by a development oriented state. Framed in this way it is possible to design interventions which the development industry can deliver (Scott 1998).

One paradox in Ferguson's argument is that while the entire logic seems to be a self-serving one developed by people working in the development industry to enable them to justify their work, he claims that this is not a deliberate process. Rather, he suggests (following Foucault) that this is a discursive process which takes place 'behind the backs of the actors'. This is of course an empirical question, but one which does not readily yield an answer, given that it essentially asks whether development practitioners are credulous or complicit.

The evasion thesis suggests that when donor ambitions are not in harmony with elite strategies, that donors will not be turned away, but instead will be channelled to places where their interventions make no significant difference. This geographical evasion is then concealed by reference to quantitative progress which effectively draws a veil over the evasions. Hence, in this case, land titling was pursued in places where tenure was already secure, and progress in relation to the narrative was reported in terms of the number of titles issued.

The evasion hypothesis that Biddulph derives from the LMAP case provides a possible framework for understanding how host country elites and development practitioners can find common ground, but again leaves open the question of whether development workers turn a blind eye because they are unaware of the evasion, or because they are cynically taking the easy road, or because they (perhaps rightly) see themselves as impotent to take on national elites:

If the development industry attempts to extend rights which host nation governments are not prepared to enforce, the result will not be a rejection of the industry's programs. Rather they will be welcomed, but channeled to places where those rights do not make a difference. This 'geography of evasion' will be concealed by policy facades which measure success according to outputs and do not acknowledge the process of spatial marginalization (Biddulph 2011).

5.2 Seduced by their own rhetoric?

However, the question of the economic potential of land titling is also worth reflecting on. There does not seem to be any empirical basis for the claims that were circulating in 2006-07 on the basis of Deininger's study. Is this a case of 'good policy [being] unimplementable', in Mosse's terms? In other words, do all policies have to exaggerate their own potentials (and gloss over potential conflicts) in order to be able to get sufficiently broad support to be implemented? While it seems unlikely that a scholar of Deininger's reputation and abilities would deliberately misrepresent titling's potential (his assessments of land registration generally do tend to acknowledge its mixed results and context dependence), it also seems that a deal of wishful thinking must have prevailed in order to allow such an optimistic calculation to go unchallenged.

The fact that the lack of a monitoring and evaluation system for LMAP was remarked upon year after year, but that this was never adequately addressed, tends to reinforce the argument that those involved in launching LMAP were more in search of narratives and data that would legitimate and generate support for it than they were intellectually curious as to whether land titling really had the powers that were claimed for it. One is reminded of another classic book-length study of development failure roughly contemporary to Ferguson's, where researchers observed the way in which the Australian sponsors of the Magarini resettlement project in Kenya were able to renew a failing project by carrying out a cost-benefit analysis which concluded that the internal rate of return would be 1.4 and was therefore worth pursuing (Porter et al. 1991).

5.3 As good as it gets? LMAP as a site of accountability

Relations around the project broke down because of conflict between the national elite which sought to retain its discretion to dispose of state land as it saw fit and in accordance with its own priorities (which may be interpreted in terms of national or factional or private gain), and the World Bank which was wedded to a set of regulations that demand impartiality and safeguards for those who may be damaged by development.

In some ways it appears that the World Bank operated in an ethical vacuum. There were two clear positions, either of which it could have reasonably taken. It could have said (more or less explicitly) that the project was principally concerned with titling land that was not under dispute and that it would not be engaging in activities where internal politics made titling unwelcome or controversial. Alternatively, it could have taken the position that it would only support LMAP if it was fully and impartially implemented. As such it could have refused to proceed with the titling until the arrangements for demarcation of state land and the administration of state land were followed in accordance with the project document, the government's own legislation and the World Bank's policies. In practice, it did neither. Rather it simply went along with the partial implementation of the programme until shamed into doing otherwise by NGO advocates working with people threatened by eviction in LMAP adjudication areas.

The latter may appear pusillanimous and unworthy. However, it is also possible to argue that it represents a rare introduction of the rule of law (albeit the enforcement of the World Bank's internal regulations) on Cambodian territory in relation to land. It is also possible that by being held to account it is enabling the communities threatened by eviction to gain some leverage over the government and to obtain a better deal for themselves. Would the people living around Boeung Kak have been better served if the World Bank had abandoned the LMAP project as soon as it became apparent that the Cambodian government was not committed to transparent management of state assets? Would they have been better served if the World Bank had kept itself rigidly and conservatively within technical parameters and made absolutely sure that it did not stray into territory where elite interests were engaged? Or was this messy, contentious and ignominious ending to LMAP actually as good a result as can be expected from a multilateral development organization engaging in complex policy reform in places like Cambodia?

6 Conclusions

The case study is primarily about the tension between host country political elites and the imperatives of donors promoting policy reforms. Neither elites nor donors have agendas which are readily reducible to a single set of positions or interests, but it *is* clear that what may initially appear to be a common problem reducible to technical solutions is often in fact a far more complex and contentious undertaking. The attainment of narrow objectives (e.g., land titles

dispersed) can mask a rising discontent that, left unchecked or inadequately addressed, can undermine not only the legitimacy of the project in particular but the basic compact binding citizens and state. Land administration and land reform are challenging tasks for even the most sophisticated governments; they are not problems for which there is a standard 'tool kit' of solutions that can be imported and implemented by experts from abroad, but rather tasks requiring the patience and persistence of teams of professionals willing to explore context-specific solutions imbued with local content, legitimacy and durability.

This case highlights the importance of a number of important if unresolved questions for both researchers and practitioners. When governments do want approximately the rules of the game suggested by donors (functioning institutions to facilitate markets) but do not want a level playing field (rather want 'graduated sovereignty'), how can/should this be understood and resolved? Must donors always be passively complicit in elite projects until domestic politics holds them accountable to their own rules? Or are there ways in which elite agendas and donor agendas can meet and find compromise?

References

- Biddulph, R. (2000). 'Making the Poor More Visible: Landlessness and Development Research report', No. 4. Phnom Penh: Oxfam GB.
- Biddulph, R. (2011). 'Tenure Security Interventions in Cambodia: Testing Bebbington's Approach to Development Geography'. *Geografiska Annaler. Series B, Human Geography*, 93(3), 223-36.
- Bromley, D.W. (2009). 'Formalising Property Relations in the Developing World: The Wrong Prescription for the Wrong Malady'. *Land Use Policy*, 26(1), 20-7.
- Cooper, G. (2002). 'Land Policy and Conflict: The Cambodia Portion of an Eight-Country Study by the North-South Institute for the World Bank'. Phnom Penh: World Bank.
- Cousins, B. (2007). 'Land and Agrarian Reform in the 21st Century: Changing Realities, Changing Arguments?' Paper presented at the Global Assembly of Members, International Land Coalition, from http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/land_agrarian_reform_in_c21.rtf
- Deininger, K. (2003). *Land Policies for Growth and Poverty Reduction*. Oxford: OUP/World Bank.
- Deininger, K., D.A.A. Ali, and T. Alemu (2009). 'Impact of Land Certification on Tenure, Security, Investment, and Land Markets'. University of Gothenburg: Environment for Development.
- Deininger, K. and G. Feder (2009). 'Land Registration, Governance, and Development: Evidence and Implications for Policy'. *The World Bank Research Observer*, 24(2), 233-66.
- de Soto, H. (2000). *Mystery of Capital*. New York, NY: Basic Books.
- Deutsch, R. (2006). 'Beneficiary Assessment of Land Title Recipients under the Land Management and Administration Project (LMAP)'. Phnom Penh: Ministry of Land Management Urban Planning and Construction.
- Deutsch, R. and T. Makathy (2009). 'Beneficiary Assessment (BA-II) for the Land Administration Sub-Sector Program (LA-SSP)'. GTZ Land Management Project (PN 03.2250.3). Phnom Penh: GTZ.
- Ferguson, J. (1994). *The Anti-Politics Machine*. Minnesota, MN: University of Minnesota Press.

- Fukuyama, F. (2004). *State Building: Governance and World Order in the Twenty-First Century*. Ithaca, NY: Cornell University Press.
- Global Witness (2009). *Country for Sale: How Cambodia's Elite has Captured the Country's Extractive Industries*. London: Global Witness.
- Gottesman, E.R. (2004). *Cambodia After the Khmer Rouge: Inside the Politics of Nation-building*. Bangkok: Silkworm.
- Grimsditch, M. and N. Henderson (2009). Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector. Phnom Penh: COHRE.
- Heder, S. (2005). 'Hun Sen's Consolidation: Death or Beginning of Reform?' *Southeast Asian Affairs*, 114-30.
- Le Billon, P. (2000). The Political Ecology of Transition in Cambodia 1989-1999: War, Peace and Forest Exploitation. *Development and Change*, 31, 785-805.
- Lipton, M. (2009). *Land Reform in Developing Countries: Property Rights and Property Wrongs*. Milton Park: Routledge.
- Milne, S. (2013). 'Under the Leopard's Skin: Land Commodification and the Dilemmas of Indigenous Communal Title in Upland Cambodia'. *Asia Pacific Viewpoint*, 54(3): 323-39.
- Mosse, D. (2004). 'Is Good Policy Unimplementable? Reflections on the Ethnography of Aid Policy and Practice'. *Development and Change*, 35(4): 639-71.
- Osborne, M. (2004). *Before Kampuchea: Preludes to Tragedy*. Bangkok: Orchid Press.
- Pak, K. (2011). 'A Dominant Party in a Weak State: How the Ruling Party in Cambodia has Managed to Stay Dominant'. Canberra: Australian National University.
- Pak, K., V. Horng, N. Eng, S. Ann, S. Kim, J. Knowles, et al. (2007). 'Accountability and Neopatrimonialism in Cambodia: A Critical Literature Review'. Working Paper 34. Phnom Penh: CDRI.
- Payne, G., A. Durand-Lasserve, and C. Radoki (2009). 'The Limits of Land Titling and Home Ownership'. *Environment and Urbanization*, 21(2), 443-62.
- Porter, D., B. Allen, and G. Thompson (1991). *Development in Practice: Paved with Good Intentions*. Milton Park: Routledge.
- Scott, J.C. (1998). *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.
- So, S. (2009). *Political Economy of Land Registration in Cambodia*. DeKalb, IL: Northern Illinois University.
- Subedi, S.P. (2012). 'A Human Rights Analysis of Economic and Other Land Concessions in Cambodia'. Advance version, 24 September. Phnom Penh: Special Rapporteur on the Situation of Human Rights in Cambodia.
- Williams, S. (1999). *Review of Land Issues Literature in Cambodia*. Phnom Penh: Oxfam GB.
- World Bank (2006). 'Cambodia Poverty Assessment 2006: Halving Poverty by 2015?' Phnom Penh: World Bank.
- World Bank Inspection Panel (2009). Report No. 51921. Report and Recommendation. Cambodia: Land Management and Administration Project (Credit No. 3650-KH). Washington, DC: World Bank Inspection Panel.
- World Bank Inspection Panel (2010). Investigation Report Cambodia: Land Management and Administration Project (Credit No. 3650 - KH). Washington, DC: World Bank Inspection Panel.