

## **Context in Land Matters: Access Effects and History in Land Formalization**

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This paper considers the influence of context on the outcomes of land formalization. We examine how contemporary and earlier forms of land formalization, some starting as early as the colonial era, have affected often disadvantaged social groups: ethnic and racial minorities, women, and land users who seek their livelihoods through mobile practices such as pastoralists, swidden cultivators, and migrant laborers. While drawing our examples from selected African and Southeast Asian nation-states, the paper addresses questions that are historical, yet fundamental to understanding how formalization unfolds in contemporary contexts. We sought answers to questions such as "How have institutions governing access to land been formalized over the last century and a

half?," How have conflicts over land control, access, and use been affected by formalization?," "Who were the beneficiaries or losers when land management and ownership institutions were changed?," and "How did early practices and ideologies of governance, including colonialism, nation-state formation, and non-capitalist political systems, influence expectations and practices toward land and livelihoods of diversely positioned subjects?." Land continues to have profound and diverse sociological and psychological meanings to its tillers, owners, and aspirants. Formalization has the potential to affect social and socio-environmental relations far into the future; a historical approach can help assess new initiatives, literally putting them into context.

Following Hall, Hirsch, and Li (2011, 28), we define formalization as, "the recognition and inscription by the state of rights and conditions of access within specific boundaries." That said, "land formalization," as it has been used since the turn of the 21<sup>st</sup> century, has generally meant two things. Formalization is, first, a technical mechanism for registering ownership rights with state authorities, usually a step toward commoditizing land or instruments of access to land, enabling parcels to be bought, sold, mortgaged, leased or otherwise transferred through financial transactions in markets. Second, in that process, formalization establishes or re-establishes the rule or authority of state institution(s) over land administration and the rules governing all transactions and allowable transfers of rights (Weber 1978; Lund 2008). This is accomplished by creating titles, maps, or other documents of formal, and written, recognition for parcels or tracts of land, granting rights and assigning responsibilities to the recognized holders of the land, and administering the land through a formal state organization, such as a Ministry or Department of Lands, Interior, or Natural Resources.

Most nation-states today administer land, managing transfers, means of holding, and monitoring land uses, through a variety of property and governance forms: for individuals or groups, as private, common, or state property, or in trust for the nation's citizens. State institutions make and enforce new laws and rules to supervise practices of buying and selling, to transfer land or access to land through sale, gifts, or inheritance. They determine permitted land uses through zoning or

ownership categories and maintain records proving ownership and taxation, and documenting various public and private transactions. Many of these administrative procedures also create state territories—jurisdictional spatial zones of state authority over land. State territorializations can take many forms and involve other land management institutions or individuals. They are also in constant tension with each other and with land or land-based resource users, even after territories have been bounded and demarcated or legislated (Vandergeest and Peluso 1995; Paasi 1996).

Our discussion of formalization refers primarily to formalizations that have been initiated, legislated, or decreed at the level of *national* states, although they may be implemented or administered through state or provincial-level authorities. Some of these formal land controls were first conceived and applied as *colonial* state initiatives, though we recognize that colonial territories of land administration did not always map cleanly on subsequently constructed nation-state territories. The kinds of land formalization we address in this paper are those in which government records become the ultimate legal evidence of land rights and rights-holders. Though sometimes non-territorial rights, such as a timber concession's rights to harvest certain trees, are associated with plots of formalized, registered land, boundaries drawn on the land (or its proxies in maps and images) generally encompass and define the limits of the non-territorial components, rather than the reverse, as we show in examples below. The "governance" of land refers to state authorities' disciplining of people. Those who resisted, and who were neither elites nor collaborators were called "*indigenes*" and subjected to another set of land laws. People's behavior in regard to their rules concerning the various parcels and tracts of land, or of state subjects' self-disciplining resulting from the state's bio-political controls, that is, "the conduct of [their] conduct" or "governmentality" (Foucault 1978).

Formalization has become a widespread tool for states to document, legalize, normalize, and make legible to themselves land rights on the ground, for purposes of transactions under the capitalist political economic conditions that dominate global interactions; they also rationalize in-state transactions and transfers of land

according to the same (predominantly Western in origin) global standards. Occasionally, formalization takes place under socialist and other non-capitalist state regimes or under post-socialist and transitioning regimes. We use historical and contemporary examples from Southeast Asia and Africa to examine some of the processes, problems, and surprises experienced in implementing formalization. States' attempts to formalize land rights in these regions date back to the nineteenth century, the era of widespread territorial colonialism in the colonies of England, France, and The Netherlands. The break-up of European colonial empires in the second half of the twentieth century gave rise to a plethora of new nation-states under socialist, communist, authoritarian, capitalist, and other regimes. We argue that earlier experiences of territories within contemporary nation-states continue to affect formalization dynamics, and thus have important lessons to teach us what we might expect in terms of the processes, problems and surprises that emerged in implementing formalization.

Formalization has become a common development intervention and, in many cases, a prerequisite to international aid, loans, or grants. It is an intervention that has been promoted or encouraged by international governance and funding institutions, including UN organizations, the International Development Banks, the IMF, the EU, and many bi-lateral aid donors. Due to sovereignty doctrines governing national territories, and "land" being an unmovable resource that falls within globally recognized national territories, international institutions work through national level institutions on issues pertaining to land, its formalization, or its commodification. Nevertheless, formalization of land or other resources has been required of some nation-states being subjected to structural adjustments, and is strongly touted by the World Bank and other international lending agencies as a poverty-alleviating measure (de Soto 2003), (Deininger 2011). Many analyses of formalization's capacity to reduce poverty, however, have reported the fallacy of such a claim, and the failure to achieve that desired objective (see. e.g., Bues 2011). Researchers have also shown that formalization is more likely to create poverty by facilitating and finalizing smallholders' losses of their land through willing transfer, violent seizure, or forced sale in the wake of even minor financial hardship or

shocks (e.g. Bruce et al. 2007; Borras and Franco 2011; Borras 2008; de Schutter 2011; Li 2011). Even the strongest proponents have had to recognize the overwhelming systemic and contextual risks of land formalization despite the best of intentions (Deininger 2011, is particularly telling).

Formalization of property rights guarantees neither fair nor equitable distribution of land and land-based resources. Rather, it is no more than an instrument of registration, a technical fix that empowers the state as much as providing state backing to the formal rights holder. This is one reason that we caution against basing all property rights in land-based resources on a single owner, single use model; nor do we think all rights can or should be subsumed under territorialized forms of management alone. Our review of the literature, not all of which can be adequately represented here, refutes the claim that a commonly applied formalization rubric can benefit all people equitably. Rather, no single process or concept, even a robust idea with poverty alleviating capacities (which formalization is NOT) can guarantee the same benefits and results in any and all historical, political, or environmental contexts. The outcomes of land formalization programs—the variations in their effects--differ *because of* the varied historical, geographical, and social contexts within which they have been applied. Any formalization program will articulate with, change, or be changed by pre-existing legal, political, social relations and institutions, as well as with the differences characterizing any social, economic, or political system. New waves or forms of formalization will inevitably be changed and reinterpreted through practice by those subjected to its rules and constraints, through their own diverse memories and experiences. Thus, answering the question of whether formalization is a potential solution to resource or land conflicts requires contextualized, empirical, historical research. Neither the law nor any social relations operate in a vacuum. The answer, however, lies not in formalization itself, but in how and under what conditions it is applied.

Strangely, the promoters of land formalization rarely, if ever, heed what has been called "the social value of land," "the meaning of land," or the "fictitiousness of land as a commodity" by philosophers, theorists, and policy analysts as diverse in

their political leanings as Karl Polanyi, Max Weber, and Karl Marx, by national leaders such as Thomas Jefferson, Emil Zapata, and Commandante Marcos, or by promoters of land reform in Indonesia, for example, as former president Sukarno, Prof. Gunawan Wiradi, or Dr. Noer Fauzi Rachman.

Land has had great meaning across many political economies. The United States of America was built on Jeffersonian ideals of smallholder (yeoman farmer) land ownership, even though its founders did not shy away from the commoditization of land or from enslaving and commodifying human bodies (Carney 2002). Land was important symbolically in constituting the nation of settlers (and dispossessing the native inhabitants) and in creating white male settlers (and later black male former slaves) as voting citizens of the nation. The ideal of individual land ownership was fundamental to the revolutionary formations of nation-states across the Americas, even amongst people who did not own land. The American and French Revolutions inspired anti-colonial, anti-feudal revolutions that were fought around the world to ensure the citizenry's control of land. Socialist and communist regimes generated different ideas about how land would be owned and whether or how it could be commoditized; nevertheless, broad-based access to land was a foundational, and motivating, principle in their revolutions and in their governing. As the expression "tierra o muerte," (from the Mexican revolution) demonstrated, land is and has been one of the most emotional "things" with which "people" have been imbricated (Foucault 1978). Yet the influential texts of (de Soto 2003) Deininger (2011) and others promoting land formalization presume simplistic and straightforward relationships between land registration, poverty alleviation, and the production of capital, without recognizing land's much broader meanings outside the market.

Wherever we look, the political economy of land is saturated with complex moral economies, whether or not rights to land have been formalized. To many peoples and their most poetic representatives, land has a mystical or sacred quality. Of the original "fictitious commodities" that Polanyi (1944) spoke about, i.e., land, labor, and money, land, as a "thing" that could be bought and sold without emotion or ceremony, was a more complex and "weird" notion than even the

commodification of human labor or money. As Polanyi showed, when subjected to unregulated mechanisms of capitalism, these fictitious commodities of land, labor and money will be destroyed. "Paradoxically enough, not human beings and natural resources only but also the organization of capitalistic production itself had to be sheltered from the devastating effects of a self-regulating market" (Polanyi 1944, 138).

Contrary to expectations, land formalization is becoming a means of enabling wealthy international and elite domestic actors to acquire land and benefit from its productions or from speculation (Deininger 2011; de Schutter 2011; (Hall, Li, and Hirsch 2011). For its intended beneficiaries, formalization has been neither an empowering move nor a poverty-alleviating move. The implementation of land formalization has turned out to be highly complex, reinforcing or creating new inequities, and often turns violent. Though in theory, formalization facilitates the legibility of social relations on the ground (Scott 1998), and can be a means of writing more equal rights (e.g., for women or ethnic minorities) into national law, the on-the-ground actualities rarely match the formalized paper record (Hall, Hirsch, and Li 2011).

Reporting on formalization by land administration institutions and their supporters tends to assess the legal formalities, acreage, and other dimensions of the process that can be accomplished at a distance. At the 2011 Annual World Bank Conference on Land and Poverty, for example, the Millennium Challenge Corporation (MCC) claimed that "1,055,000 hectares of rural land had been mapped ("cadastrated") and 39,600 rural parcels legally formalized, while 2,500 urban parcels had been legally formalized." By simple metrics of absolute territory formalized, Brazil, China, and India led the way in the creation of new, national state-administered private property rights, according to the MCC. They are among the largest countries, obviously. The MCC's presentation did not mention historical formalizations or transformations of land rights that had occurred in these places, nor did it examine the goals of implementation, or any of the problems faced in implementing formalization. The presenters never revealed that the concepts, laws, and practices of state-authorized formal property rights and territorially zoned

lands were not new to any of these three countries. They also did not follow up on whether the land formalized had remained in smallholder hands or been consolidated by domestic or international interests, or whether the products (including capital and other financial instruments) of the formalized land had benefited the formal land owner or were exported, or whether the land was being held for speculation or abandoned. These questions are of fundamental importance to proponents of land formalization hoping to generate positive local development and economic benefits through formalization, particularly in light of statistics reported in public media consolidated by the International Food Policy Research Institute (IFPRI) on land "exchanges" or "grabs": that between mid 2007 and 2009 more than 10 million hectares were exchanged between Northern and Southern or across Southern countries (von Braun and Meinzen-Dick 2009).

We purposely did not set out to find the most accurate statistics on land formalization for this study; other scholars are documenting those. Instead, we focused on what has been reported in the literature about outcomes of the sedimented and dynamic histories of formalization and re-arrangements of property rights in and access to land. Though not much has been written on these dimensions of current formalization programs, this is partly because the definitions of formalization are so narrow. We turn to earlier periods and patterns of formalization, under colonialism, nation-state building, socialism, and all the "posts" that go with those eras. Which groups have been affected negatively and which have benefited? How and why have various actors shaped or tried to influence the shaping of formalization programs? What have been the territorial, conflictual, differentiating, and other effects of formalization programs? In what ways have the contexts, assumptions, and interests involved in implementing formalization programs affected their outcomes, such as those debated in the context of current "land grabs?" (see, e.g., Deininger 2011; De Schutter 2011, (Borras and Franco 2011; Hall, Li, and Hirsch 2011).

The remainder of this report discusses the difficulties of defining land formalization, and demonstrates how it has played out under selected historical and contemporary contexts, including territorial colonialism, post WWII nation-state



building, and socialism and its aftermaths. Though our analysis is not a systematic or comprehensive comparison, we draw on examples from Kenya, Tanzania, Cameroon, Ethiopia, Indonesia, Cambodia, Vietnam, and Thailand. In the conclusion we reconsider the differentiating livelihood effects of formalization, the problems that seem to be perennially associated with it, and the few instances where fewer problems have emerged.

***Formalizing land rights: The need for context***

One difficulty with trying to compare the effects of land formalization across nation-states has to do with the varied bases for governing land. Each nation-state as part of its constitutional philosophy defines how land within the territory of the nation will be governed and administered. New political economic forms are always emerging that challenge generalization across states. One obvious, and major, difference in forms of formal land administration has been that between communist or socialist systems and states with capitalist economies. Under socialist regimes, such as those in Ethiopia, Kenya, and Tanzania of the past, the nation's land is owned by the people, managed by the state through various non-market mechanisms; land cannot be bought or sold. Nation-states with market economies generally have full or partial land markets, mixed up with state administration of some lands held in "trust" for the people of the nation. Yet, in China and Vietnam, for example, socialist governments are maintaining CP control over the state while reintroducing markets, including land markets. Under different regimes of governance, formalization is necessarily defined and plays out differently, given the different institutional conditions and political-economic constraints affecting both national political economies as a whole and legal-constitutional constraints of the broad categories of formalized land.

Even within a single nation-state, the territory is organized into various land use zones, each of which is subject to different rules and expectations governing land management, mechanisms of access, and the ability of individuals and groups to "own" land and to exclude others from access to it. In other words, diverse state territories are governed by different, and mutable, bundles of rights and

philosophical underpinnings. For example, administrative areas zoned as national forests, national parks, or conservation reserves are different kinds of "political forests" and, across nation-states, managed by a variety of government institutions (Peluso and Vandergeest 2001). National forest lands are divided into different political/jurisdictional categories, including but not limited to production forests where private or state enterprises can lease concessions; protection forests having specific associated low- and no-impact uses and rights; and community forests, where access rights are generally determined by adjacent communities. In all of these, the rules of access to, conversion or transfer of, and management of land vary.

When we multiply this variety of different sets of rules or even "types" of land by the number of countries engaged in formalizing exercises, we get a slight indication of how difficult comparison can be. In addition, different political and cultural histories provide more reasons that generalization is difficult, even where common models of land formalization are being implemented. For example, it matters whether and by which European country a nation-state territory was colonized because the legacies of thinking about land administration, or resisting it, will live on beyond that colonial era. It also matters how many and varied political regimes have been in place since the establishment of the nation-state, how varied the ecologies of the lands being formalized are, and whether all or parts of the nation-state have recently been engaged in political violence within or outside its territorial borders. Formalizing legislation almost never sufficiently considers the ways commoditizing land through the creation of formalized private property freights the non-market values associated with land. In other words, the simple passing of formalizing laws does not erase these histories or the feelings of entitlement generated by the institutions and ideologies that animated them.

The recent formalizing work of the World Bank, much of which is associated with the restructuring activities of the IMF, follows principles Hernando de Soto (2003), laid out in his book, *The Mystery of Capital*. The World Bank has made land formalization one of its most important programs, and, as mentioned above, makes sweeping claims about its potential to "capture the dead capital of untitled properties held by the poor," to paraphrase de Soto (2003; see also Deininger 2011).

Nevertheless, despite his "discovery" of "dead capital" in the collective assets of the poor, De Soto's principles are not new. They follow long-established principles of private property formation and land governance under capitalism that emerged in Europe centuries ago. Moreover, they have been highly contested both in terms of their internal logic as well as the empirical evidence in sites where they have been explicitly tried in the last decade (see, e.g., c.f., Bruce et al. 2007; Li 2011; Bromley 2008; Bues 2011). de Schutter 2011; de Schutter 2008; As James Scott (1999) has pointed out, states prefer legibility: simple forms of management and conceptualization. When land "assets" within a nation-state's territorial boundaries are formalized, homogenized, and made legible to the state and managed by it, the state is expected to "see" more clearly, but can also earn revenues: from registration, transaction fees, and taxes. Such formalization generally criminalizes previous mechanisms of claims-making and changes the terms of and channels for "unauthorized practices," further empowering state authorities in the process (Agrawal 2001; Peluso 1993). However, although documents like deeds and land titles are more legible in government cabinet drawers or on computers, they are often less efficient at explaining continuing conflicts over registered pieces of land. Although some of the key goals of the WB formalization program include eliminating conflict and erasing overlapping claims and uses of land, these are exactly the problems that continue to motivate serious land disputes after formalization (de Schutter 2011; (Durand-Lasserve and Selod 2007; Sjaastad and Cousins 2008; Bromley 2008).

Why does formalization lead to conflict, rather than solving it, as its promoters claim? Land titling, especially when done to identify and empower a single user/owner, superimposes formalized land rights as a new layer of claims atop pre-existing ones. The myriad ways these claims manifest before and after titling are almost never given sufficient consideration—simply because they complicate the formulas and make implementation too difficult for the implementers. Yet practices associated with rights recognized by earlier authority regimes continue even when new formalizations render them criminal acts, even when the formal consequences are severe. Time and time again, scholars have

documented that the shifts in property rights do NOT in and of themselves alter historical memories or feelings of having had prior rights in land usurped by formalizing practices (Lund and Sikor 2009)Lund 2006. The formation of national parks, forests, and biosphere reserves without the acquiescence of residents and previous land users is only one of the more recent examples we can offer (Neumann 1999; Peluso 1992, 1993; Brockington 2002; Brockington 2008; Kelly 2011) Whether private or state property, criminalization of previous practice by new laws and legal codes, of course, produces criminals and crime, a fact that, since early European transitions to capitalism, has been documented time and time again—with the creation of both private and state properties (Hecht and Cockburn 1989; Peluso 1992; Thompson 1975; Hay et al 1975; Schroeder 1999; Federici 2004; Peluso and Vandergeest 2001; Greenough 2003).

In sum, land formalization for the exclusive access of individuals, households, or corporate units is a *political*, not merely a *technical*, act; it has distributional effects. Even a rudimentary knowledge of any country's history suggests that heterogeneous claims are more the rule than homogeneity. A single piece of land can have many different overlapping claims to its use; defining a single "owner" generates conflict. As a result, the formal instruments--the cadaster, the map, the registries, the computer files—rarely reflect what is actually happening on the ground (Hall, Hirsch, and Li 2011).

***The effects of "national" histories on contemporary land ideologies and property regimes: Colonial-era legacies***

Most nation-states in the Global South experienced colonialism by European powers or the US, some for several hundred years. In Southeast Asia and Africa in particular, many of the nation-states in which land formalization projects have been implemented recently were constituted only since World War II. Some of these have experienced considerable periods under socialist or communist regimes, and some of these, further, have abandoned portions of their foundational legal and institutional framings to embrace or engage with capitalist markets. In addition,

former member states of the Soviet Union have experienced diverse transformations in their land relations since the fall of the Berlin Wall.

One of the few ideas that the world's nation-states share is that "national sovereignty" legitimates their governing authority over the territory encompassed within their land-based boundaries. Yet, definitions of national territory vary widely. The multiplicity of national territorial claims extending 12 or 200 miles from their coastlines, the inclusion of water bodies circumscribed or defined by archipelagos and other island configurations, the extension of "extra"-territorial rule over citizens living in another nation-state's territory, all suggest a convoluted mix of nation-state sovereignties, histories, and geographies, rather than commonalities that allow for common means of formalization to produce the same effects.

As we argue, site-specific histories matter profoundly, at multiple scales and through various domains of law and everyday practice, as well as in individuals' or institutional memories (see also, e.g., Sjaastad and Cousins 2008). Just as historical narratives influence conceptions of sovereignty and economy, they also influence the cultural politics of what are considered ethical practices in allocating and adjudicating rights to land. In this section of the paper we look in a more detailed manner at some of the effects of land formalization under colonial, national, socialist, and post-socialist regimes. We trace several instances of nation-states whose complex histories illustrate the legacies of previous political economies on contemporary formalizations and the differentiating or equalizing effects of various land codes. This approach is also suggestive of the ways that both revolutionary and evolutionary transitions can affect the implementation and effectiveness of formalization. Timing matters: when, in relation to other programs of formalization and in relation to a nation's own historical regimes, is a formalization program put in place?

### ***Colonial interventions: First forays into formalization***

Scholars have long documented the profound legacies left by colonial regimes on nation-states' legal and institutional mechanisms for claiming, holding and administering land, in a literature far too vast to review or even cite here.

Colonial administrations were often the first to formalize land administration as a step in the capitalist development of their colonized territories, some through the development of general land codes based on common or civil law, others through legally pluralist systems. Among other effects of these imposed formal-legal systems to register and administer land, colonial land administrations often contributed to the production of static ethnic, racialized, and territorial identities of their subjects. By creating laws applicable to particular groups of people according to their alleged places of origin or places of settlement at the time of colonial contact, and their "recognition" of racially/ethnically "different" people as "exceptional," they set in motion dynamics of cultural and territorial naming and claiming that have spiraled into the future (see, e.g., Povinelli 2002; Stoler 1995; Li 1999; Moore 1999). Thus it is important to try and understand how colonial ideas interacted with pre-colonial practices of land access and control, and with conflicts developed before, and in the wake of, colonial conquests.

The variety in colonial interventions that produced territorial and racialized associations of colonized peoples is too extensive to document in detail here but we have written about these in regard to the construction of "political forests" and "customary rights" elsewhere as have other authors for various parts of the world (Peluso and Vandergeest 2001; Vandergeest 2003; Sivaramakrishnan 1999). However, a brief example from colonial Indonesia illustrates one of these. In the Dutch colonies that later were consolidated into the nation-state of Indonesia, law was regulated by legally plural systems based on ascribed "races," thus racialized many aspects of everyday life, including land ownership (Furnivall 1944; Hooker 1978). In the Netherlands East Indies (NEI), legal pluralism recognized certain people as "indigenous" or in the words of their time, "natives," (*Inlanders* in Dutch), and others as "aliens" or "foreign." Besides Europeans, most famous and numerous among the aliens were people from the countries now known as China, India, or Yemen. NEI residents of partial Chinese, Indian, Yemenese, or Arab descent were considered aliens if their fathers had been of those ethnicities, even if their mothers were "native." Thus a gendered dimension entered into the ethnicities and

racializations of these named groups, one which carried over into domains of the state's recognizing or authorizing land claims as subject to customary rights.

Names and categories were crucial as no "aliens" were allowed to own land in the NEI. This prohibition was believed to benefit the "true natives," deemed "sons of the soil," (another term that was sexist in English but illustrative of colonial authorities' focus on the male's ethnicity in any household. In Indonesian, the term "*pribumi*" does not delineate gender). Creating certain territories as customary land and recognizing all land in the colony as the territorial legacy of the true natives (even some 600 different language-speaking "native groups") was believed to protect them from the allegedly more industrious, possibly rapacious, aliens cum migrants cum outsiders who had risked long, uncertain journeys to make their lives and fortunes in the islands then occupied or claimed as part of the NEI.

However, the concept of customary land was as much a detriment to the locals as it was a benefit, a double-edged sword. It contributed to "the myth of the lazy native" (see, e.g., Alatas 1977; Stoler 1995; Li 1999; Povinelli 2002), and the impression that the industriousness of foreigners was necessarily competitive with the efforts of natives. The focus on the father's ethnic line for ascribing a racialized category of legal practice contributed to later legal forms (colonial and post-colonial) that put property in the name of the household head, a position normalized as the husband/father in the household (if he died, the widow could become household head and usually inherit property). In addition, colonial-era regimes of ethnic, racial, and gender recognition influenced how local people came not only to see difference among themselves, but to normalize difference and rights through legislation and practice. These histories of racialized and gendered land rights carry over into current regimes of land titling by continuing old rifts or creating new ones along similar lines amongst people who disagree with how land has been meted out.

Colonial governments willing to recognize at least some pre-existing land regimes often chose which groups among conflicting claimants could control jointly used lands or overlapping claims on ancestral lands. Where colonial formalizations included "recognizing" some forms of collective property rights, other users' over competing or complementary land claims could be lost. In Kenya and Tanzania, for

example, British colonials adopted legally pluralist approaches to land rights. Many transhumant pastoralists had long-standing arrangements with settled agriculturalists along their grazing routes, and territorial claims were often seasonal and complementary, with both types of uses over the course of a year (Homewood et al, 2008; (Alatas 1977). Yet the British viewed overlapping rights as complicated to understand, administer, and register. Pastoralists have suffered as a result.

In Kenya, Maasai pastoralists' land uses, and colonial rulers' interpretations of their activities as productive of land degradation eventually led the British colonial government to create Maasai reserves, that the Kenyan national government called "group ranches" after independence. The reserves were intended to formalize and recognize specific territories as Maasai, increasing herd productivity in the process, and control (at least to limit the extent of) what colonial scientists perceived as degradation, while sedentarizing these pastoralists used to traversing hundreds of miles. Maasai traveled long distances in adapting their grazing practices to the conditions created by the arid climate, seeking water and food for their herds. By allocating them reserves separate from settled agriculturalists, the colonial state expected their land governance practices to become more legible and the spaces and people more "governable" (Scott 1998; Watts 2003). State attempts to more permanently settle the mobile Maasai, and to limit their herds' access to land only within the reserves, constituted them as a territorial people, creating new, fixed notions of Maasai territories. Sedentarization, however, required Maasai to change land and resource rights, in part because of the ways in which their practices on the land had to change in their more constricted work and living spaces. Though reserves were large, they were not as extensive as the vast distances over which the pastoralists had previously led their herds.

These colonial land formalization policies and practices, and extensive changes in the precolonial landscape, have had reverberating effects into the present, through several national regimes. With their sedentarization on the "group ranches" after independence, Maasai experienced changes in their lives, livelihoods, and practices beyond the immediate effects of confinement to formally demarcated and recorded lands. Sedentarization increased rather than decreased the pressures



on the grazing resources within the group ranches, and intensified competition among some of the newly settled Maasai. Formalization of land rights without addressing herd sizes (a more complex practice to limit and monitor) also opened the way for increased class differentiation; better-off herders kept larger herds on the common lands. Elites on some ranches thus created the kinds of scarcities associated with open access resources, i.e., degraded land, water, and grass. Such scarcities were greater relative burdens on the owners of smaller herds. Some of the less-well-off Maasai pressured the government to individualize land rights within the ranches (Mwangi 2001).

Widows also favored the subdivision of land within group ranches because subdivision would allow them to become landowners by inheriting their deceased husbands' shares in the group ranch. Such arrangements would lend them greater independence and control of some resources within the group ranch (Hodgeson 2011). Nevertheless, in general, sedentarizing Maasai on group ranches increased conflict, resource scarcities, and declines in people's, animals', and the land's well-being, even though the colonial formalization of the reserves had purported to take "cultural factors" (groups grazing extensive territories) into account in their design.

Individualization or redistribution of group-held rights, in this case to try and deal with the problem of unequal herd sizes confined to common spaces, can be seen also as an unintended consequence of collective land use's formalization of a titled group ranch. Though individual aspects of collective resource use or sharing were not unknown to local property regimes before colonialism, formalization changed them from temporary or short-term conditions of use to more permanent but not more beneficial or effective practices and principles. Prospective or intended land use in the wake of formalization thus matters—especially in contexts where policy makers want to be understood as fair, democratic, or otherwise accountable to the land-holders. Kikuyu and Luo agriculturalists of Kenya already had forms of land tenure moving towards private or individual tenure before colonialism but these had not been as important to other more extensive land-users (Mwangi 2001). So-called "communal" land tenures amongst [individualist] shifting

cultivators also have some distributive characteristics in common with both pastoralists and more privatized or individual systems (Dove 1983).

Some colonial governments also left legacies of certain kinds of "settlement" processes, meant here as the settlement of claims, a process to arbitrate among multiple claimants to specific plots or tracts of land before formalization is set in motion (Peluso and Vandergeest 2001). Settlement processes were meant literally to determine who at the moment had the strongest prior claims to a piece of land. Settlement procedures often require(d) a public announcement of the dates that people should come to register their claims to plots in a specific location; announcements could be made in a newspaper or over the radio. In 1950s Sarawak, for example, after the Borneo territory had become a formal British colony, settlement announcements were made in colony's newspaper. *The Sarawak Gazette*. Such announcements generally fell on blind eyes: what did or could they mean to colonized peoples, many who had no concepts of land markets, especially where the idea that land could be owned or alienated and sold to complete strangers was anomalous? That claims had to be publicly made and a proof of claim presented to new and often distantly located government authorities, were even more bizarre concepts. Most people, except those well-connected or who had managed to become literate, did not understand what was about to happen—i.e., that these newspaper announcements meant that new authorities would soon have the tools to control the locals' land (Hong 1986; Cramb 1992). As in Tanzania when land on Kilimanjaro was being commodified and subjected to new rules, most people did not realize that the process could sever their ties to this land forever ((Moore 1986; Neumann 1999; also see, Moore 1999). Unfamiliar circumstances and uncertain outcomes such as these caused land disputes to occur well after settlement processes were "over."

During settlement, or in the creation of a cadaster or another type of land register, records were made to allegedly create more legible information for governments planning to tax the landholders. The Germans wanted to formalize land in order to more easily tax land transactions in Cameroon, but they were not alone in this objective (Harbeson 1971, 233; Coldham 1978, 93). The French in

their colonies in Africa and Indochina were also eager to levy taxes—which they did, but mainly in the lowlands. British in Africa and Asia, as well as the Dutch in the NEI—during the first global "liberal" period—began taxing landholdings, and requiring payments in cash, not in crops, corvée labor, or kind (Njoh 1997).

In Cambodia and Vietnam, then part of what was called French Indochina, the French favored large landholders over smallholders, and granted large tracts of land through various mechanisms to either French colonists or Vietnamese collaborators/middlemen/brokers. Similarly, local people who collaborated with the French in Cameroon were allowed to hold private property. By the 1930s in the Mekong Delta, a small group of landlords owned much of the land, and 80 percent of the cultivated land was farmed by tenants (Scott 1976). In the words of Charles Keyes (1995/1977), "whether he be tenant, a sharecropper, or a wage laborer, the Vietnamese who worked land he did not own was a product of the colonial period" (Dang 2010, 77) Taken at face value, this statement demonstrates the land alienations and massive landlessness caused by formalization and the creation of land markets.

In some Vietnamese villages prior to colonialism, access to communal rice fields had been rotated among the men in the village. Where colonial power took the least hold, some of these communal practices survived, but the French pushed for full privatization of holdings, which led eventually to highly uneven land distribution. Just before the Geneva Accord was signed in 1954, some 3% of Vietnamese owned 52% of the land, while 60% of the farmers in North and South were landless (Do and Iyer 2008, 534). In the South of Vietnam, during the war, the American-backed Republic of Vietnam government (1954-75) eliminated communal lands and other local property regimes, pushing for private property and returning previous landlords the expropriated lands that had been redistributed to tenants by the revolutionary movement. These moves did not endear the South's government and its backers to the majority poor and landless, pushing them toward the National Liberation Front (Kerkvliet 2006, 286; Sansom 1970, 66-9, 228-45). The NLF controlled whole areas of the south, in which they had redistributed land. In response, in 1970, the South Vietnamese government launched the "Land to the

Tiller" program, backed and funded by the US. Both in light of its previous strong defense of private property and landlords in Vietnam and its shift from Keynesian to Reaganist neoliberal domestic policies, the US's funding of this land reform (and a similarly successful one in South Korea) paradoxically provided support for the position that formalized private property does not guarantee equity and is not necessarily the best basis for development. By 1975, some 1,136,705 hectares, nearly half the rice land in the South, had been redistributed and 77% of tenants became landholders. About 70 percent of the populations in the Mekong Delta that same year were recorded as "middle landowners" controlling some 80% of cultivated land (Dang 2010, 78-9)(Do and Iyer 2008, 534).

In Java, a somewhat different situation came about under their colonization by the Dutch. Famous for their "recognition" of customary law and rights, certain areas in Java, as elsewhere in the Netherlands East Indies, were designated customary land, and the rest was made available for lease by private and government entrepreneurs to produce plantations of export crops in the early nineteenth century. Instead of taxing land at this time, they taxed labor and required the delivery of quotas, calculated by village, of designated crops (Fasseur 1992). In the best forest districts, teakwood was the product delivered by quota (Cordes 1888). The required labor to cut and deliver teak trees to the colonial Resident was a tax levied only on landholders. These labor taxes could be so onerous that some village landowners chose to designate some of their privately held rice growing land to be used as rotating "communal" plots, thereby increasing the number of village residents with access to land, and increasing the pool of landholders eligible to provide *corvée* labor in logging (Peluso 1992). This is a clear example of how the formalization of certain customary practices as "Customary Rights" changed or even invented these traditions (Peluso and Vandergeest 2001). Villagers developed new customary practices to deal with the hardships imposed by individualization and taxation.

These colonial-era practices provide some examples of how identities connected with particular territories were created, reinforced, embodied, and mapped in colonized African and Southeast Asian countries. The identity-territory-

legal nexus played a fundamental role in colonial land administrations because most settler or territorial colonies were established with agricultural production and "improvement" in mind (Li 2007). The dilemma historically, of course, is that not only "shifting cultivators" moved from place to place. Even the assumed-to-be-well-settled Javanese had histories of whole settlements moving because of wars, epidemics, or because one village strongman provided better protection than another (Fasseur 1992; Dove 1985). Some of the "customary lands" in Java and the NEI more broadly had in fact not been held from time immemorial; some had only come into being in periods just prior to the arrival of Dutch customary law encoders (Pigeaud 1960; Dove 1985). In Kenya and Tanzania, colonial authorities were confused because Swahili speakers seemed to be too "permeable"; they wanted "pure Africans with a rural, 'tribal mentality' who might be easily relegated en masse to a native reserve" (McIntosh 2009, 56 citing Allen 1993:4). In [French] Cameroon the racialization process was political in a different way: Cameroonian (African) subjects in favor of or collaborating with the French colonial government were called "*assimilés*" and subjected to one set of land laws. Those who resisted, and who were neither elites nor collaborators were called "*indigenes*" and subjected to another set of land laws (Njoh 1998). Some of these categories have had very long lives and material effects, fodder for intense contemporary debates.

Colonial identity categories erected atop preexisting, though more mutable, associations of cultural difference and political allegiance produced new or harder social boundaries between groups, not least by inscribing them on the land in ethnically proscribed or racialized territories. The racialized and sometimes gendered categories and associated practices implied that differences were natural rather than political, while at the same time formalizing those territories. Differentiated and formalized identities served also as controlling mechanisms. By connecting certain identities with control of territory, authorities sought to encourage "indigenous" or "native" subjects to collaborate with colonial authorities, often pitting them against "migrant" or "alien" groups who could not "own" land (Moore 2005; Li 1999; Schroeder 1999; Vandergeest 2003).

The census both created and reinforced the notion of the formalized household, and made it a category of every day life and of governance (Collins 1986; Anderson 1984). The household head, usually male, was most frequently recorded as the landowner. This posed not insignificant problems for women who were widows, divorcees, or unmarried, especially those without sons (or with disloyal sons!). Women's rights in colonized areas were subjected to the biases and cultural expectations embedded within formalization projects. For example, women became juridical minors and dependents under the British colonial regime in Kenya and thus were progressively denied rights to own land or livestock, and to manage resources. Censuses were taken of households settled on the land, and registered as resident in villages, reserves, and other kinds of territorial districts. It was not only the colonial government in that era that created uncertainties and insecurities for women, minorities, and the poor. Other powerful and disempowering institutions accompanied, preceded, or followed the formal colonizers; and had effects on where people farmed and lived: Catholic missions, Protestant evangelicals, and Anglicans.

Who colonized and why also made some difference. For example, Germans were in Cameroon from the early 19<sup>th</sup> century to make a profit and not to institute territorial rule. They were more interested in markets than in settlements or land control. French and British colonizers were given authority over different parts of Cameroon after the Germans were defeated in WWI, arriving at a time when ideologies of "protecting" the rights of native citizens of the country prevailed. This timing, and the circumstances in Cameroon prior to their arrival (the horrific behavior of the Germans) influenced the language of their formalization schemes (to benefit the local populations, the "white man's burden." In Dutch colonies of the late 19<sup>th</sup> and early twentieth century, it was the dawn of the so-called "ethical policies"). Yet, in Cameroon, as in the NEI, the late nineteenth century was a time of formalization, enclosures, and state territorializations that came about as part of the shifting and spreading colonial-era capitalist market relations.

Many of these practices on the land, institutions, and associations, as well as ideas about cultural constitution and rights, remained when the colonial yokes were

thrown off. Yet in post-colonial settings, they became tools for legitimating national state powers.

### ***Nation-state legacies***

The creation of national regimes under socialist or capitalist authoritarianism, or democracy, produced "new" ideological frameworks imbued with or attempting to counter colonial-era ideas for recognizing rights to land on the nation-state's terms. Once a region was constituted as a nation-state, whether it had been formally colonized or not, the territorial emphasis on national authority and the concern with property on the land and how it should be held and administered under the new regime varied. Nevertheless, whatever the political system adopted, and whichever units of ownership formalized under colonial rule were retained or rejected (individual, household, collective, or state), the practices and processes of formalization under the rule of the nation-state required shifts in cultural and political ideologies around land.

Recognizing land control as an important means of gaining and maintaining social/political control, many post-colonial governments (the leaders of which had often benefitted in some way from the status quo of colonial governance) took land formalization in similar directions to those of the colonizers. Some reproduced or changed (several times) the conditions under which winners were winning and losers losing land and land rights. These shifts in regimes left enduring marks on many people's willingness to trust constantly changing national governments and their formalizing, property-producing processes. Though it is not possible to address at length in this paper, it is important to note that revolutions and other forms of political violence influenced institutional and individual memories as much as did human attachments to the land.

Centralization of land control and administration by a state agency at national or provincial levels are among today's legacies of colonial practice. Even moreso than under colonial power, independent, nationally centered states gained power over territory, as translated into land and its disputes. National authority was legitimated by either winning revolutions [as, e.g., in Vietnam, Cambodia, Indonesia,

or by creating national geobodies to which colonial authorities transferred power (as in Ethiopia, Tanzania, Cameroon, Kenya). Unfortunately, state institutions and actors could also become parts of new problems: predatory, privileged, and armed. In Southeast Asia, dominant lowland ethnic majorities tended to take the reins of power and act as neo-colonials vis-à-vis upland minorities (Vandergeest 2003, Reid 1989). In Africa, dominant positions generally went to members of settled agricultural groups as opposed to migrants and pastoralists. Under both socialist and capitalist regimes, therefore, the land rights of upland minorities and pastoralists were over time recast in the images of the lowlands and settled agriculture.

Ethnic, class, gendered, and political histories influenced greatly how formalization schemes that began in the colonial period were carried over into the post-colonial period. For example, following the Mau Mau rebellion in Kenya, the land consolidation program put in place as part of the Swynnerton Plan was meant to reward colonial loyalists, make rebels landless and stabilize a conservative middle class of Africans. The Kikuyu who fought on the side of the colonial government and against other Kenyans were thus favored in the handing out of land-- in the end 45% of all land in this resettlement program were given to Kikuyu (Homewood, Coast, and Thompson 2004, 569).

*Where there was no territorial colonialism and no socialism: Thailand*

Thailand, or Siam, was never formally colonized by European colonial occupation, but leased its teak forests to the British colonial foresters and engaged in a bit of colonial-era land-grabbing of its own (the Lanna and Lao kingdoms in the north of the country) (Thongchai 1994). Siam's king engaged with the western colonial powers in his region, with an eye to modernizing Siam and to both maintain and extend the kingdom's sovereignty in relation to the British and French citizens and Siamese subjects living inside and around the kingdom's territory (Larsson 2008, 15). As early as 1861, private property rights were recognized or created by King Mongkut when he decreed the end of all land owned by the monarchy (Nartsupha and Prasartset 1981, 191, cited in Peluso and Vandergeest 2001: 778).



King Chulalongkorn modernized further by moving taxation practices away from labor services and toward taxpaying citizens, adopting "western-styled" modern state, legal administration ideas from English, French, and Belgian legal experts (Feeny 1989, 292-295). The 1892 Siam land law that, according to Feeny (1982, 94), called for a "comprehensive system of property rights," never was implemented, and the 1901 and 1908 versions introduced some tenure uncertainties into the system (Larsson 2008, 6). Nevertheless, some titling began after the 1901 law, and even more was accomplished after 1936, when the Civil and Commercial Code set out new laws on private property. In addition to the monarchy, a parliament was established in the 1930s and addressed many issues related to land.

Siam/Thailand is thus an unusual site, not only for its never having been formally colonized, but because it voluntarily engaged in the development of European laws and concepts of land rights and property well before World War II. It is a bit misleading of the Bank to celebrate it as an exemplary pilot project for Asia. The World Bank's privatization/formalization project was established in Thailand in 1984. Not only was it widely considered a success story, but it was also meant to become a model for other Asian formalization projects (Feder and Onchan 1987). The contextual factors that caused the Bank to select Thailand in 1984, however, demonstrate that the lessons learned (and the successes) had no chance of being reproduced elsewhere.

Thailand was selected *because* it had already had experience with creating private property in land and land codes (Burns 2004). Some land had been redistributed in 1975 through a Land Reform Act, allowing landless settlers to migrate to degraded forest lands in the north and farm them. No legal pluralism existed in Thailand, as it did in many former colonial sites. Even ethnic Laos in the Northeast and Malay-speaking subjects in the southern part of the country were considered full Siamese subjects; no ethnic reserves governed by customary practices had ever been set up for them. After titling spurred by 1936 code had slowed down a bit, new Land Codes were established in 1954, 1967, and 1971 (Rattanabirabongse et al 1998, 2-7). Various certificates and title documents were distributed with each code, causing confusion of course, but also allowing the

general populace to be accustomed to thinking about land as a commodity, to certificates that represented ownership, and to create land markets across a wide swath of the country (Ganjanapan 1994, 617-619; Vandergeest and Peluso 1995, 405).

The intention of the WB's titling program was, among other goals, to strengthen already existing formal land rights, to facilitate the acquisition of credit by landholders, and to stimulate agricultural development and investment. The WB wanted to give stronger titles to already legitimate land occupiers, as 49 % of the country's agricultural lands were held with weaker legal documents (though written, government issued property documents nonetheless). Thailand was already strongly aligned with the US and not averse to moving toward more neoliberal processes. Partnering with the Royal Thai Government and the Australian Agency for International Development, therefore, the project began in 1984 and was declared completed in 2004.

How successful was it? In 1984, Thailand had issued approximately 4.5 million land deeds. By the end of 2001, over eighteen million titles had been issued and covered about 11.3 million hectares or some 22 % of Thailand). (Burns 2004:7). By 2004, approximately 40 percent of the total land area of Thailand had been "upgraded" as private property with stronger, more market-ready titles (Nabangchang-Srisawalak 2006, 84). Records, though, as to how many titles were actually issued are very hard to come by. Perhaps because one WB economist said in 2004 that it might take as long as 200 years to issue titles for all of Thailand (Giné 2004, 5 cited in Immigration and Refugee Board of Canada 2008, 1).

Thus it was not only the lack of a colonial legacy that led to the program's success—or to the specific problems that, for example, Ganjanapan (1994) began to identify about halfway through its twenty-year term. Rattanabirabongse et al (1998, 15-16), for example, claim that success was due in part to the pre-existing conditions of land administration already in place: dealing (only) with the long-established Department of Lands in the Ministry of Interior. Even more unusual according to this account was that the staff of the DOL was "highly capable"—not the kind of comment that is usually attached to discussions of such programs [(see,

e.g., de Soto 2003), in which he goes on ad infinitum about the inherent problems of existing bureaucracies). Ganjanapan's critiques have largely to do with the conceptual underpinnings of the program and their realization—the taking of land out of the control of families and villages and putting control in the hands of the national state and the market (1994:62). In addition, he notes, business people often knew in advance about the impending titling of particular areas and would rush to buy land before it arrived (ibid). Interestingly, some of these critiques would later be echoed as late as 2012.

### *The effects of socialist interventions*

Though different from one another, socialist regimes generally sought to radically “level the playing field” after enduring especially repressive and inequitable regimes, as in Ethiopia, after severe colonial oppression as in Tanzania, Vietnam, and Cameroon, and after excessive land-grabbing or violent atrocities by privileged groups when capitalist development ensued after colonialism, as in Cambodia. Socialism, like capitalism, re-ordered spatial and social relations to make people and their productions easier to manage by state agencies, but in different ways. The Ujamaa project in Tanzania was one well-known example of village collectivization in Africa, while collectivization was imposed by Vietnam's communist state both within Vietnam, where it lasted officially into the late 1980s and was imposed by Vietnamese regime in the People's Republic of Kampuchea (PRK) from 1979-89. The communal farming arrangements of collective agriculture worked relatively well in the ethnic minority areas of Vietnam but also in the PRK, where some family members who survived the Khmer Rouge period (1975-79) slowly returned to the lands of which they had been violently dispossessed.

Nation-states that experienced socialist interludes or where government is still organized under socialism, also saw their people strongly influenced by ideologies of justice and equity; land formalization's acceptance and form was influenced as well. Ethiopia, Tanzania, Vietnam, and Cambodia saw drastic shifts in their educational systems, access to government, general ideals of equity and fairness, and division of access to resources during their socialist regimes. Even in places

where communist parties did not take over the government but were permitted as one of many parties, as in Indonesia, socialist ideas left a strong mark on ideas of equity and justice, and rightfulness of land claims; these remain a part of Indonesia's land affairs having been enshrined in the Basic Agrarian Law of 1960 which promotes ceilings on land holdings and land reform; they can also be noted in the language of the constitution and the nation's Five Principles (*Pancasila*).

Not all memories of collective agriculture and land formalization are positive. The residues of land formalization and "villagization" left a bitter taste in Tanzania where it was used as a method for controlling and oppressing the population under both colonialism and socialism, making it more difficult today to integrate new formalizing practices because citizens remain suspicious of government motives.

Cambodia experienced multiple post-colonial, wartime, and post-war regimes that quashed to start a new formalization program assuming a "clean slate" after the signing of the Paris Peace Agreement in 2001. The purported clean slate was not devoid of shocking, horrendous memories; rather, since all formal land records had been destroyed by the Khmer Rouge and the PRK did not recognize land claims from before 1975. The French colonial government had introduced private property during the mid-late 19<sup>th</sup> century. After Indochina's war with the colonial French and independence in 1954, the Sihanouk royal family took power. In 1975, the Khmer Rouge took over and for the next four to five years instituted the notorious regime that invalidated all previous property arrangements, destroying land records, cadastral maps, and titles in the process (Roughton 2007, 584). As part of the Khmer Rouge's imagined "agrarian utopia," collectivization was violently forced on the population; millions died of starvation and overwork (Bugalski, Grimsditch, and Pred n.d.; Chinnery 2009, 170). In 1979 the Vietnamese invaded and established the People's Republic of Kampuchea, a government that lasted for a decade. During that time, some people apparently tried to return to the family lands occupied prior to 1975, or found new ones, but no one had papers to prove ownership or claims (Un and So 2011:292). The Vietnamese set up small-scale communal farms, with land allocations to be based on family size and the ages and abilities of laborers. These communal farms did not last very long, as Biddulph (2011, 227) explained,

"...sometimes only for the year or so that it took to overcome the acute shortage of rice seed, draft animals, and other inputs." Slocomb (2003, 263) said that, counter to expectations, the decade between 1979 and 1989 was "a time when the free market flourished; the PRK encouraged the family economy and made this the foundation of its rural legitimacy." Land on communal farms with about ten households each was meant to be distributed equally based on the size and age of the families (Biddulph 2011:227). Even after a new constitution for Cambodia was signed in 1989, land was distributed on a per person basis. Observers generally agree that distribution was equitably done, except in some sites where political elites received more or better quality land (Ledgerwood 1998, 129-130 in Guttal 2006; Un and So 2011:292).

The WB-style formalizing program, accompanied by IMF structural adjustments, arrived with UNCTAC, the United Nations Transitional Authority in Cambodia, after the 1991 Paris Peace Agreement and elections. With the new nationally and internationally backed private property, new laws for forest, state public land, state private land, and other kinds of private lands went into effect and conflicts, rather than being settled, broke out everywhere. The documents for land redistributed between 1989 and 1991 were considered weak and insufficient to solidify claims; people who had already lost and regained old or new lands for their families saw their documents and their claims invalidated overnight. Biddulph (2011:227, citing Biddulph 2000 and Van Acker 1999) described it as follows, worth citing in full to illustrate the chaos unleashed by formalization and the return of "democracy."

An unequal struggle emerged between people who had connections to state authority, and those who did not have such connections despite their informal occupancy rights. These poor villages suddenly discovered that land between the villages which previously 'had no owners' in their eyes, was now privately owned...Small areas of communal land held in trust by local authorities rapidly became the private property of village chiefs and their families, while vast areas of forest and scrub were turned over to national and international business interests as agricultural or forestry concessions.

Moreover, the fresh memories of the Khmer Rouge's violence, and the wars with the French and the US, clearly prevented the poor and powerless from challenging government officials whether rural, urban, provincial, or national. This was neither a "clean slate" nor a replica of the conditions in 1984 Thailand. A decade later, the 2001 Land Law created new state public lands, state private lands, private and collective properties. Plots on private lands could be based on having held possession during the PRK period, but having had no papers to prove it, "the stage was set for land grabbing and power abuses" (UNDP 2007, cited in Un and So 2011). Subsequent multiple titling programs on various kinds of private lands and indigenous lands have been plagued with problems, including requirements for mountain based indigenous groups to fulfill scores of bureaucratic requirements for gaining their collective rights. Only three indigenous land claims have been processed and those are government pilot villages (Grimsditch and Henderson 2009; Biddulph 2011; Un and So 2011).

The workings of decollectivization in Vietnam provide insight into both the challenges and achievements of collectivization during the late 1970s and 1980s. During and after the "American" war (which ended in 1975) South Vietnamese were not enamored of collective farming (Dang 2010, 87). They had, however, applauded the National Liberation Front's land reforms that took place before collectivization, a move that led to the "Land to the Tiller" reforms of the 1970s, backed by the US government (Ibid, p 78-79). Collective farms did better and lasted longer in the North but by the mid-1980s many in the northern regions were "collapsing from within" (Kirkvliet 2006:209). Resolution 10 in 1988 declared the end of collective farming and farm households made into the economic units of the countryside '(Luat Dat Dai' 1987, Article 27.1; Ban Chap Hanh Trung Uong 1988). Quotas by collective were scrapped by 1989 (Akram-Lodhi 2004:762), and a 1993 Land Law, built on Resolution 10, allowed people to obtain Land Use Certificates for time periods of 20 years for rice land and up to 50 years for perennial crops. Various kinds of certificate transfers—through inheritance, sale, and mortgaging—were allowed as well. Use right certificates were thus commodified. By 2002, some 10.6

million households reportedly held certificates for six million hectares of agricultural land—almost 90% of all agrarian households had formal access rights to some land for farming (World Bank and ADB, 2002:47 cited in Akram-Lodhi 2004:762). Another law (Resolution 6/1998) allowed for higher ceilings on household land holdings and certificate transfers, as well as provisions for farm households to hire labor (Akram-Lodhi 2004:763). This moved the agrarian economy in a more liberal direction, deepened the land market and virtually eliminated a foundational tenet of the socialist regime, i.e., "Land to the Tiller." The land today still belongs to the "entire people of Vietnam" and is managed by state institutions, many of which are at local levels, but land holders pay taxes without paying to buy the land itself. Use rights not ownership rights prevail, these have time limits attached, and there are ceilings on maximum allowable holdings; certain crops may be required to be grown on certain lands (Kerkvliet 2006, 288-89). While there have been some abuses and corruption by cadres, these perversions are not unique to former socialist or transitional socialist political economies as we know. As far as differentiation, the introduction of LUC markets makes this somewhat inevitable but some constraints on extreme differentiation afforded by government regulation. Some researchers found, in fact, that only the most land poor households sold their distributed rights, but that ultimately, "the transition process favored the 'land-poor'" (Ravallion and van de Walle 2003:22). The latter go on to say, "this must be understood in the context that this process favored households with long-term roots in the community, with male heads, better education, and with more non-allocated land being those households that were favored (Ravallion and van de Walle 2003:22). In Black Thai and some other "indigenous areas," found that differentiation trajectories varied (2001:926). Thus, both the expectations of people on the ground, governmentalized over time into notions of equitable access to land based on factors other than the availability of capital to buy land, and the socialist principles of government kept in place during an almost comprehensive overhauling of the economy, have led to different outcomes of formalization in Vietnam. Villagers were found to have "incorporated elements of the new legislation while preserving certain features of socialist land relations" (Sikor 2006:627). It is the context and history that have led

to this finding, as it was those in Cambodia and Thailand and the countries of Africa that we have discussed above—not simply the fact that formalization of some kind was imposed in all these sites.

### *Authority effects*

Whether they are socialist, authoritarian, or state capitalist, nation-states' formal powers have been strengthened by formalization in several ways. Land registration, the institution of cadasters, and the creation of private property have strengthened state power and reach by giving national states formal-legal control and the authority to take action to manage people, resources, and land in distant sites as well as sites close to national capitals and provincial centers of government. States have to stay involved in the process of protecting property as they enact and enforce the law, backed up by the national military and police.

As under colonialism, land registration and formalization laws have also made one or more national or provincial state agencies the ultimate arbiters of land rights for claims, transfers, and control of uses. Land registration with state underwriting was meant to eliminate overlapping claims and facilitate the state's governance of land. However, no one has accomplished this goal simply through registration (Blomley 2003). Rather, registration remains a significant source of conflict, as we saw in the discussion of the differences emerging between the new elites and non-elites on group ranches in Kenya.

On the other hand, the informal arrangements that often prevail on the ground remain unknown to the formal agencies meant to administer the law. Many women in Kenya and Tanzania, for example, go through customary avenues rather than formal ones to resolve land disputes. Perhaps influenced by equity-seeking ideologies of socialist governments, after socialism ended in Tanzania, the Village Act gave women more property rights in land than they had ever had under customary land governance. This law has rendered invalid any customary law that denies women, children or persons with disabilities lawful access to ownership, occupation or use of any such land (Harbeson 1971, 243). It also presumes that spouses are co-occupants of land and requires that women give their consent before



their husbands can alienate matrimonial land (Roughton 2007, 583). The Village Council is required to consider the effects of a land grant on women before approving a right of occupancy (Roughton 2007, 583). Women's rights are at least codified into law, where they were not before. Despite their being given formal rights, many women still prefer to work through customary channels because they do not have the money, literacy, or understanding of law that would facilitate their interacting with the state. Even though customary authorities and practices tend to be biased against women as landowners, their procedures are more flexible than formal procedures. Whether these rights will be actually supported by village men also remains to be seen.

One of the most recurrent issues with formalization under nation-state authority is that, in combination with various free trade arrangements and other globalizing connections, it facilitates the takeover of land—large tracts—by wealthy foreign and domestic investors, in ways that may have been guarded against explicitly [through law, ideology, and normative practice] when land rights were adjudicated by local courts, decentralized controllers, or nationalist administrators. Creating exclusive property rights in land is often the origin of localized or broader categories of "landless" and "landlessness," through familiar processes of enclosure and exclusion (Thompson 1975; Hall, Hirsch, and Li 2011). These categories are increasingly gendered female and racialized as ethnic minorities [e.g., among other national ethnic majorities].

Since formalization has become more oriented toward investors and exporters, reformist ideas of "land to the tiller" or nationalist ideas of "land for the nation's citizens" have gone by the wayside for most governments. Yet we have seen that the citizens brought up on these ideologies still often hang onto them or demand accountability from officials in terms of these ideologies; as social/cultural meanings and non-market values of land remain critical to the majority of the people.

In sum, the effects of the nation-state form on contemporary land formalization programs are still unfolding. Thailand is actually not an appropriate exemplar even for other Southeast Asian countries embracing neoliberal policies in

the 1990s and 2000s. By the time the World Bank and its partners started the titling program there, Thailand had already put in place formalizing, private property supporting mechanisms within the bureaucracy. Many of its citizens—not only elites—were eager to have their lands registered. The country already also had a significant middle class, credit could be obtained with land certificates, it had even had a land reform. Land rights had been administered as private property by the state Department of Lands for one-half to three-quarters of a century. The WB, in effect, only had to give the titling program a little push to get it off the ground running. It is unreasonable to expect a formalization program to land seamlessly in place in Cambodia or Vietnam, with the upheavals and turmoils of their agrarian histories since colonialism, enduring wars, other political violence, and repeated agrarian transformations. The Vietnam case shows that strong state involvement and protest from communities worried about too many private property rights can protect against the most dangerous pitfalls of unregulated land markets.

***Final thoughts: Implications of formalization for livelihoods***

Who wins and who loses under formalization of land requires attention to both the contexts and the forms or procedures of formalization. What economic, political and social factors have allowed which people to benefit from land formalization? We have found that formalization, whatever its era of introduction or transformation, has been a frequent source of confusion and conflict, and the source of new or continued marginalizations: of mobile peoples such as pastoralists and swidden cultivators, women more than men, and people defined as "ethnic minorities," within nation-states with one or more dominant ethnic majorities. This is because history matters! It is not just the ideas of what happened but the actual experiences of historical actors—ordinary, notorious, and distinguished that influence what will happen. How did formalization programs articulate with colonialism, socialism, nation-state building, legislation, and revolutions or other violence; and what do these articulations bode for the future?

Sedentarization and "improvement" in land use and productivity are among the expected political and economic outcomes of formalization. But formalization

alone cannot guarantee that they will come to be. Colonial governments in Cameroon, Indonesia, Burma, India, Malaysia, and elsewhere argued that unused land or land that appeared "vacant" should be made available for "productive use" or "improvement" by other people. This had massive social as well as ecological effects as people tried to make land look used and or not vacant. The law favors crop agriculture.

Some 1.9 million hectares of Ethiopian rangelands were converted to agricultural (crop) production in 2003 alone (Flintan 2010, 156). Many converted lands were subsequently labeled "empty" or "badly used" pastoral lands to justify the government's making them available to large, sometimes foreign owned or operated, commercial farms. Because the Ethiopian government, like those of Kenya and Tanzania, regards a sedenterized lifestyle as a prerequisite for becoming a "developed" or "modern" person, pastoralist lifestyles were discouraged by the government's methods of land formalization. Because no specific national legislation to protect pastoral landholdings exists, and because the government regards pastoralist lifestyles as barriers to development, both investors and agriculturalists are protected by default when competition arises over pastoral lands (Flintan 2010, 158).

Other than in the Afar Regional State, there are no policies for managing tenure arrangements in pastoral areas (1978, 99). In Tanzania, pastoralists are also losing their land to sedentarized land users such as tourist hotels and lodges near the Ngorongoro Crater and other popular tourist spots (Flintan 2010, 158). Pastoralists have been alienated from their lands to make way for plantations and national parks by both colonial and post-colonial governments (Homewood, Coast, and Thompson 2004, 592). In Kenya where pastoralist land is rapidly being converted into land for cultivation (Odgaard 2002, 81). Boone estimates that in the past, Kenyan herder may have utilized 5000 square kilometers to access forage for his/her animals but today the same herder may only have access to only 80 square km within 5 kilometers of the village, greatly diminishing his/her ability to find enough forage (Homewood, Coast, and Thompson 2004, 570).

Neither customary nor formalized land control practices favor women, ethnic minorities or outsiders to a community; formalization may simply reinforce discriminatory—though customary—practices and norms or it might provide opportunities for women to equalize their standing. In some codes where women had no customary rights previously, though, some improvements in the law have been reported, as briefly discussed above. In Kenya, Coldham (Thompson 1975; Hall, Hirsch, and Li 2011) showed that the rights of women in relation to men, that is, as widows, wives, mothers, or daughters, are difficult to accurately define, and family interests are still not well-protected by Kenyan law. Instead, by registering land only in the name of the household head, he is made the absolute owner and women's rights are put in danger of being extinguished altogether. As mentioned above, household heads are usually listed as holders of private lands, but inheritance patterns—e.g., between girls and boys—may still be subject to customary and religiously guided practices, all of which come to change each other as they come together. Muslim doctrine, for example, states that family property should be inherited two-thirds by the sons and one-third by daughters. In many Muslim-dominated parts in Indonesia, however, these tenets are softened by deeper cultural predilections for a fifty-fifty division of property between boys and girls, or by the practice of leaving the household's land to whomever takes care of the parents in the latter years of their lives, whether they are male or female. Moreover, even though most Southeast Asian societies were not matrilineal, strong uxorilocal tendencies—the tendency for the male marriage partner to reside with the female in her home village or compound, or to be given land by her parents to farm—also influences the division of inheritance. Where it is more likely to become a problem for a Muslim woman is in the case of divorce.

The situation in Ethiopia has been painted as quite rosy by some writers on land formalization questions. By the state's 1997 Proclamation, for example, Ethiopian peasants gained the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. This right includes the right to alienate, bequeath, and where the right of land use expires, to remove property,

transfer title or claim compensation for it. Yet, individuals are prohibited from selling or exchanging land.

The rights of women and children are also enumerated, discrimination is prohibited; equality of rights to use, transfer, administer and control land are laid down in Articles 25 and 35. Article 6 also requires that regional land administration laws be free from gender bias. Flintan finds, for example, that regional land laws have reflected the emphasis drawn at federal level and have strengthened equality in inheritance rights and provided for better rights for women on divorce or the death of their husbands (Flintan 2010, 157). Amendments made to the land policy in 2007 grant women equal rights with men to possess, use, and administer land under joint ownership; both men and women, however, are free to have his or her individual land with an independent certificate (Flintan 2010, 164). In some regions these include provisions for polygamous marriages which --although not recognized by federal law-- are given separate attention with certificates for some landholdings being issued in the wives' names, with their husbands having only secondary interests recorded (Ibid. 157).

In an article praising the Ethiopian experience, the situation was presented as ripe for intervention (Holden, Deininger, and Ghebru 2009, 370; Belay 2010, 22). The reasoning was that before land certification, more than half the population feared losing their land due to future redistributions. Yet, after 2006, some 84% of households stated that their perceived risk of being evicted from their land had been reduced due to land certification; 78% stated that certification has increased the probability that they will get compensation in the case of land takings, and 75% of households perceived border disputes to have been reduced by certification (Ibid.)

According to World Bank-associated writers, the Ethiopian case showed significant and positive investment and productivity effects of land certification (Hall, Li, and Hirsch 2011). This process reduced tenure insecurity and undermined investment incentives (Holden, Deininger, and Ghebru 2009, 360). However, this was because of the process by which formalization took place, and the relative lack of money and corruption associated with it. The Ethiopians did not feel, for example,

that they had to carry out expensive cadastral surveys using satellites and GPS, but instead used hand-written registry books, students as registrars with simple training, and strong local participation. Some more modern [read: high tech] support is now being implemented, but at the beginning it was mainly very low-tech (Holden, Deininger, and Ghebru 2009, 360).

World Bank consultants also concluded that Ethiopian land certification had a positive effect on land improvement and land related investment in the study region (Holden, Deininger, and Ghebru 2009, 361-2). It was found that there was better maintenance on homesteads and larger plots, that land certification stimulated more tree planting, including planting eucalyptus even with land restrictions on tree planting on arable land. It also reportedly contributed to better soil management and conservation structures. Certification increased productivity on lands with certificates by around 45% (Belay 2010, 44; Holden, Deininger, and Ghebru 2009, 361-2).

Although these things may vary in their implementation, now or in the future, they are codified in law, which is a first step. However, it is too early to tell how things will be implemented and enforced. What has not been explained by recent celebrators of Ethiopian success, was why the Ethiopian government, at the end of 2011, leased 25,000 hectares of recently formalized land to a Saudi billionaire to grow rice for export. Famine and suffering had swept the nation that year. A BBC report stated that officials explained, "it is better to have people employed and able to buy food." They did not acknowledge that that was not the motto that Saudis were following; food produced in suffering Ethiopia was being exported to Saudi Arabia (<http://www.pri.org/stories/world/africa/in-famine-stricken-ethiopia-a-saudi-company-leases-land-to-grow-and-export-rice-7663.html>). The anomaly raises questions about whose dead capital is helping whom in the wake of an allegedly "successful" formalization.

Formalization, despite claims of its capacity to generate capital for the poor, to empower the poor, to unleash the potential of the poor (de Soto 2003), tends to do exactly the opposite when it is uncontrolled: it creates "the poor" by creating the conditions for rapid expropriation or purchase of their land the instant crisis or

uncertainties strike. Formalization under capitalism does not include automatic tenets for land reforms or redistributions; it formalizes claims extant at any particular moment, and then only some claims (de Schutter 2011; (Hall, Hirsch, and Li 2011). The definition of the term should make these expectations clear: formalization makes claims on the land legal, titled, and legible to and by government. As time goes on, more "poor" are criminalized for having no formal titles and are thus harmed by the neoliberal era's push for formalization.

We found that formalization tends to benefit outside investors, government land managers, men in general, local elite men in particular, and more sedentarily occupied people. Formalization is less beneficial to the poor, the marginalized, females, ethnic and other minorities, mobile peoples, and others whose rights are most easily expropriated in formal markets. Formalization projects, in and of themselves, have no inherent ability to recognize multiple or overlapping claims and rights. Nation-states' necessary assumption of monitoring, enforcing, and allocating roles creates a catch-22 for formalization programs, best framed as the classic property question: "Who will watch the watchers?" International organizations have to work through national states and their institutions, and land laws have to be instituted and implemented by states. But state actors are often predatory. Those insiders who have historically benefited (often multiple times) from successive forms of land governance, and from previous privatizations and formalizations of land or other resources, tend also to benefit most from titling and other new formal arrangements.

As a policy, formalization does not seem to be going anywhere in the near future, but it needs to be improved. For example, one of the major weaknesses of land formalization over the last two centuries is that formalizers rarely if ever take into account either the myriad symbolic meanings of land or its history. What we stress is that this must be considered in order to design, implement, or predict positive outcomes for formalization. Vietnam's case has shown, perhaps unexpectedly, that some benefits are possible if property rights are recognized as overlapping and administration is done flexibly and not only to benefit potential investors. The lesson from the instances cited in this paper is that formalization has unintended

consequences that derive from different histories and lead to different outcomes. Proponents of formalization need to be more cognizant of the likely pitfalls that will be faced under any circumstances. There really is no such thing as a clean slate (or a free lunch), only sedimented histories, cultural practices, and expectations.



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