

LAND TENURE SYSTEM IN THAILAND: ISSUES, CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Thailand is a country of mountains, hills, plains and a long coastline along the Gulf of Thailand and the Andaman. Land tenure refers to the set of rights and obligations that govern the ownership, use, transfer, and succession of land. Land tenure is crucial for environmental sustainability, social dispute resolution, food security, poverty reduction, and many other issues. This article reviews the land tenure system in Thailand with the main aim to illustrate the land tenure system in Thailand along with issues challenges and opportunities. It also aims to perform the SWOT analysis. The desk research is conducted, followed by a scientific literature review in the arena of land tenure in Thailand. Three different land tenure are adopted in Thailand which are ownership, leasehold, occupancy and legal rights. The formal land judicial system of Thailand is well established. The rapidly growing informal settlements in urban and peri-urban areas is one of the main causes in land aspect. Thailand continues its transition into a successful middle-income country and, at the national level, has already achieved many of the Millennium Development goals. Contribution of Asian Development Bank (ADB), Non-Government Organizations (NGOs) such as Asian Coalition for Housing Rights (ACHR) and other agencies is significant in improving the tenure system in Thailand.

1.INTRODUCTION

1.1 Country profile

Thailand is a country of mountains, hills, plains and a long coastline along the Gulf of Thailand (1,875 km) and the Andaman Sea (740 km), not including the coastlines of some 400 islands, most of them in the Andaman Sea. Its continental co-ordinates are latitudes 20°28' N and 5°36' S and longitudes 105°38' E and 97°22' Thailand is a country in Southeast Asia with an area of 513,120 sq. km and a population of 69.8 million. The Bangkok is the capital city and 'Kingdom of Thailand' is the formal name to represent it. The Kingdom of Thailand is at the center of the Indochina peninsula in Southeast Asia, bordered by Myanmar and Laos to the north, Cambodia to the east, and Malaysia to the south. The Gulf of Thailand lies to the south and east, and the Andaman Sea to the west. Formerly known as Siam, the kingdom was renamed 'Thailand' in 1939 (Fedral Research Division, 2007).

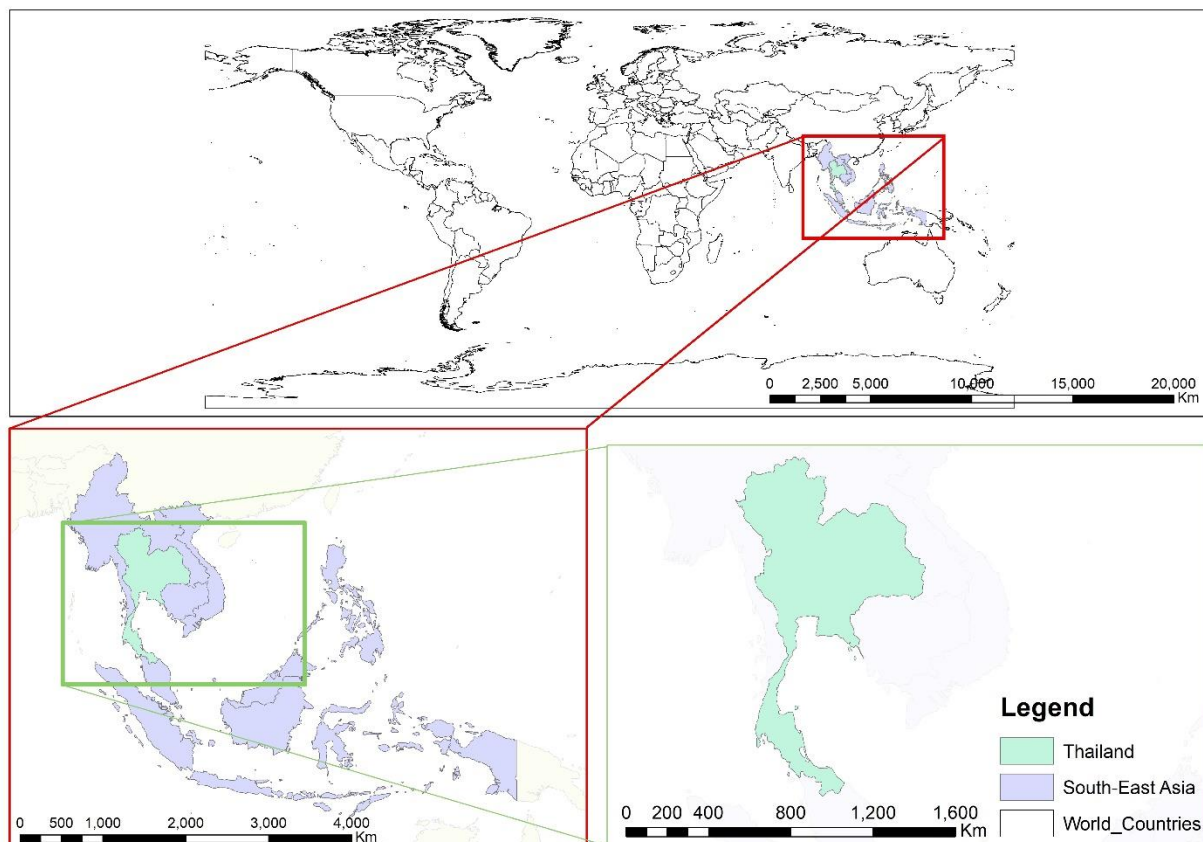


Figure 1. Location Map of Thailand

1.2 Background

Land is a fundamental natural resource for living, an economic asset for production, legal entity with multiple rights over it and a societal factor for self-actualization in particular. Accordingly, land tenure is multidimensional and complex issue involving overriding, overlapping and complementary interests between man and land (Harisharan Nepal & Anil Marasini, 2018).

Land tenure refers to the bundle of rights and responsibilities under which land is held, used, transferred, and succeeded (Croix, 2002). It may be expressed as the mode of holding the land property and is frequently based on social structure and religious belief. Land tenure often plays a crucial role in the individual's sense of participation in a society as well as in the investment of labor and capital on any piece of land. Thailand can be used as an illustration of a country where the interaction between these factors shape and re-shape land tenure systems (Nabangchang-Srisawalak, 2006).

Between 36 and 40% of total land in Thailand is classified as agricultural. Forty-one percent of the working population is engaged in agriculture, and the country is one of the world's largest exporters of rice. Thailand's law defines land as either private or public. Private land is owned by individuals, groups, or entities. Thailand recognizes the following tenure types: Ownership, Leasehold, Occupancy and use rights (USAID , 2010).

2.OBJECTIVE

The paper aims to demonstrate the land tenure system in Thailand along with issues, challenges and opportunities. Strength, Weakness, Opportunities and Threats (SWOT) analysis will be performed for the study.

3. METHODOLOGY

The desk study followed by the scientific literature review in the field of land tenure in Thailand is carried out. Scientific literature such as journal articles, books and documents are used for the purpose of this study and are mentioned in reference section.

3.1 Literature Review

Desk Study was carried out to gather the information about Land Tenure system in Thailand. The Historical background, Land laws Land rights, Land Registration System of Thailand is studied and a brief overview is explicated in this section.

3.1.1 Historical Background

The legal pattern of Thailand's land tenure is a product of long historical process. In 1872 King Chulalongkorn introduced procedures to recognize private rights in land and later on the concept of individual ownership of the land was introduced during his period, beginning in 1901 formal title could be acquired (Yano, 1968).

The titling of land in the mid-1980s was based on a land code promulgated in 1954. The 1954 code established eight hectares as the maximum permissible holding except where the owner could manage a larger holding by himself. This limitation was generally ignored, however, and was rescinded four years later. A title deed (*chanod tidin*) giving unrestricted ownership rights ordinarily was issued only after a cadastral survey. After 75 percent of the land had been cultivated, the landholder could secure an exploitation testimonial (*nor sor*) (Nabangchang-Srisawalak, 2006).

This gave king the right to occupy the land permanently and to pass the property on to heirs, in effect it was an assurance that a title deed eventually would be forthcoming. Transferring the land through sale, however, was extremely difficult, and the exploitation testimonial was not usually accepted by banks as collateral. In the case of squatters, a special occupancy permit (*sor kor*) could also be obtained, unless the land was in a permanent reserved forest or was intended for public use and satisfactory development could then lead to the issuance of an exploitation testimonial and ultimately a full title deed.

Such a custom had long been in practice but in 1901 king Rama V introduced the modern idea of land ownership, legally distinguishing realistic accompany from ownership, and he created a system in which no protection is given to accompany but only ownership. This led to a confusion in Thailand's land tenure system. In 1936 a more flexible land law was legislated and since then the system has become stabilized. The current land law *kotmaai thiidin, phoo.soo.2497* which was legislated in 1954, adheres in its essentials to the idea of the 1936 law, recognizing (Yano, 1968).

3.1.2 Thailand Legislative Frame work:

Land Law focuses on supply and scientific use of land. It looks to facilitate how an owner of land may use it or moderate how others do so; this relationship can develop into 'interests' in the land. In Thailand, following five major pieces of legislation constitute the core of Thailand's land regulation and governance framework (Thiland Land Department , 2012).

a. Thailand's Constitution

According to Thailand Constitutions, it states that land distribution shall be fair and provide farmers with rights to land for farming. It also provides that the state shall adopt land policies.

b. The Land Code of 1954

Land Code of 1954 identifies various tenure types, including ownership and use rights. It established a national Land Allocation Committee responsible for identifying land for allocation and reallocation and implementing land reallocation plans for state and private land. It also identifies requirements for cadastral surveys and land titling and registration, set a ceiling on landholdings ranging from 8 hectares of agricultural land to 0.8 hectares for residential holdings. It also imposed ceilings on an individual basis.

Landowners had seven years from the date of the Land Code's enactment to sell or otherwise dispose of ceiling-surplus land. The state is authorized to purchase any ceiling-surplus land and distribute it to landless and near-landless households. Permits foreigners to hold land in lesser amounts than citizens.

c. The Agricultural Land Reform Act of 1975

Agricultural Land Reform of Act 1975 addresses the high rate of tenancy in certain regions of the country. It supports for the allocation of state and private land to landless and near-landless households and closed a loophole in the land-ceiling provision of the Land Code by setting household-level ceilings. To implement the reforms, the Act created the Agricultural Land Reform Office (ALRO) in the Ministry of Agriculture and Cooperatives.

d. The Land Development Act of 1983

The Act Authorizes the committee to: engage in land-use planning, develop programs to support farmers, conduct surveys, create strategies for the improvement of soil

e. The Land Readjustment Act of 2004

It established a national Land Readjustment Committee charged with developing policy and identifying areas for readjustment and also governs processes for land re-plotting and development in order to improve land utilization. It also established the regulations for the formation of Land Associations comprised of landowners in readjustment regions, as well as Provincial Committees to oversee the process.

3.1.3 Thailand Land Registration System

Land registration can be described as “official, systematic process of managing information about land tenure” (Nichols, 1993). It refers to the process of legally recording ownership, occupancy,

and other rights in land (typically with a government agency or department) in order to establish evidence of title, expedite transactions, and prevent illegal disposal.

Thailand follows Title Registration system where the registration is of title itself and the registers describe the current property ownership. Despite the fact that the registration method is complicated and requires highly trained staff, it gives reliable proof of registration.

3.1.4 Thailand Land Rights

Land rights are strongly tied to human rights since they sustain a huge population's subsistence in developing countries.

Title Deeds in Thailand may be categorized into 4 groups: (Land Development Department , 2008)

a. Chanot (Nor Sor 4):

This type of title deed, registered at the Land Department in the province in which the land is located, grants the holder of the document's full rights over the land. It is, therefore, the strongest type of title deed. The title document includes a legal description of the land boundary markers, which have been meticulously determined and are supported by satellite pictures.

b. Nor Sor 3 Gor:

This land title designates ownership of land with fairly certain boundaries.

However, it is not yet a full land title (*chanot*). A final official measuring is required by the land department along with the placing of official markers. This type of land title may be sold, transferred, or mortgaged. If the landowner submits a request at the Land Department, land surveyors will measure the property and the title may be changed to *Chanot*.

c. Nor Sor 3:

Although ownership of the land covered in this title is relatively ascertained, the Land Department has never measured or recognized the boundaries. Therefore, boundary markers are normally placed by property owners rather than government authorities. Accordingly, the main risk is whether the boundaries and size of the land are accurate or not.

d. Possessory Right:

This is usually an inherited land right proven by tax payments at the local administrative office. It is one of the weakest types of land rights.

e. Sor Por Kor 4-01: This is an agricultural title deed, usually found in rural areas. Government land is transferred for agricultural purposes to needy families. A residence is allowed on a portion of the land. It is difficult for a non-Thai to obtain an interest in this type of land deed.

One of the most important factors underlying the steady growth of the Thai agriculture sector is the expansion of the area under cultivation. Being agriculture-oriented nation, most of the forest has been cleared so as to accommodate for cultivation.

3.2 DISCUSSION

In this section we discuss current land tenure, opportunities, challenges and issues of Land Tenure System in Thailand's. To analyze the land tenure system in limited time frame through desk research, SWOT analysis could be an appropriate method. In this paper, SWOT analysis has been performed to discuss the Land Tenure System in Thailand along with issues, challenges, opportunities and threats. SWOT refers to Strength, Weakness, Opportunity and Threats and is a comprehensive technique to analyze and compare external and internal characteristics of an organization, of an organizing system or project (DE VRIES, 2016).

3.2.1 Current Land Tenure System in Thailand

At present Thailand recognizes the following tenure types:

a. Ownership: Landowners have freehold rights to exclusive use and possession of their land. Land held in ownership can be freely transferred and mortgaged. Ownership rights are evidenced by Freehold Title Deeds (known by the acronym NS-4). About 71% of Thailand's agricultural land is held in private ownership. The highest percentages of ownership are in the South, where about 83% of land is freehold (Natthapat Teeranantawanich and Wanno Fongsuwan, 2014).

b. Leasehold: Both private and public land can be leased, with the terms subject to negotiation between the parties. Leaseholds terms may be up to 30 years; leases over three years must be registered. Between 11 and 30% of agricultural land is under some form of tenancy.

About 25% of agricultural land in the Central region is leased, while only about 2% of land in the South is leased (Natthapat Teeranantawanich and Wanno Fongsuwan, 2014).

c. Occupancy and use rights: Several types of occupancy and use rights are recognized in Thailand. Landholders with an Exploitation Testimonial (NS-3K) certificate and Certificates of Use (NS-3) are usually beneficiaries of land allocations who have made use of their land for a prescribed period of time. Holders of Exploitation Certificates or Certificates of Use have the right to use, possess, sell and transfer their land. The holders can mortgage the land and can apply for freehold title. Preemptive Certificates (NS-2) allow temporary occupation of land, and transfers of rights are limited to inheritance. A Claim Certificate (SK-1) acknowledges possession of land.

The certificates are non-transferable, although the land itself can be transferred to another party who then applies for a new certificate. Certificates of Right to Farm (SPK 4-01) are granted to beneficiaries of land allocations. The right to transfer is limited to inheritance. The government has granted Five-Year Usufruct Licenses (STK) for plots up to 2.4 hectares encroaching on forestland. The holder cannot convert the license into a title deed or transfer the land, except by inheritance (Natthapat Teeranantawanich and Wanno Fongsuwan, 2014).

The structure of the current land law indicates the influence of two factors: customary law concept (*latti-thamnian*) on land possession, abided by for generation and the modernization of land law launched at the beginning of the 20th century. Although customary laws appear to have adjusted to the modern one, both often conflict with the farmer's concepts. Theoretically all land was supposed to belong to the king, the framers being allowed to acquire land on the condition that they exercised *de facto* occupancy and cultivation. The *de facto* occupancy accompanied by cultivation gave rise to the right to own land which in turn led to right to legal protection. At present, The Land Code Promulgating Act was issued in 1954 and was most recently amended in 2008. One of the most important factors underlying the steady growth of the Thai agriculture sector is the expansion of the area under cultivation. Being agriculture-oriented nation, most of the forest has been cleared so as to accommodate for cultivation (Yano, 1968).

3.2.2 Analysis

SWOT analysis has been performed to analyze the status of land tenure system in Thailand.

Strength, Weakness, Opportunity and Threat has been described below.

3.2.2.1 Strength

The formal land judicial system of Thailand is deeply grounded. Courts are organized at municipal, provincial, and national levels. The Land Titling Program also streamlined the country's land administration system, which is renowned for its efficiency and transparency. Despite the challenges of the 1997 Asian financial crisis and the 2004 tsunami, Thailand has made significant progress in reducing poverty. (Nidhiprabha, 2007). About 8.5 million people live in informal settlements. In January 2003, the government of former Prime Minister Thaksin Shinawatra implemented the Baan Mankong and Baan Ua-Arthorn initiatives to provide low-income and poor households with secure land tenure and improved housing (USAID, 2010).

3.2.2.2 Weakness

A changing pattern of land use that is inconsistent with land use plans and does not correspond to land capabilities. Due to political uncertainty in 2009–2010, the government's ability to protect all residents' property rights stalled. Evolving pattern of land use that is inconsistent with the land use plans and utilization of land doesn't accord with land capability (USAID , 2010). Rural women, who are at the forefront of issues involving land, environment, and natural resources, are particularly vulnerable, since they are excluded from public discussions and decision-making, as well as being denied from adequate protection (Chandran, 2017).

3.2.2.3 Opportunities

The Asian Development Bank (ADB), as part of its Sub-Regional Development Plan for Tsunami-Affected Areas, is working to foster sustainable use and management of land resources and the rebuilding of local livelihoods by focusing on community-based tourism, plantation agriculture, and fisheries. NGOs such as the Asian Coalition for Housing Rights (ACHR) have supported the rights of tsunami-affected landowners to defend their rights to land or enter into agreements for replacement land or land-sharing. Almost every organization's manifesto contains the issue of land reform and are willing to address the issue of informal settlements and landless people. Northern Peasants Federation (NPF) and the Village Development and Strengthening Organization (VDSO) have joined with the Peoples' Movement to press for community land titles, progressive land taxes, and a National Land Bank to assist with land redistribution. Organizations are conducting consultations among people to put forward their demands. On 7 June 2010, the government passed the Prime Minister's Office Regulation on Community Land Titling with the aim of addressing the long-standing conflict between communities and the state on the issue of land and resource use, and also with the intention of ensuring sustainable livelihood to the communities (USAID , 2010).

3.2.2.4 Threats

In this analysis section, threats are described in context to issues and challenges. The rapidly growing informal settlements in urban and peri-urban areas is one of the main causes in land aspect. Natural-resource degradation has occurred as a consequence in rapid urbanization and industrialization. Discrepancies in the information in the use of land caused by difference in scale and blurred boundaries is also the main issue in Thailand Land Tenure System. Impact of government interventions on land tenure and local responses to tenure insecurity. An estimated 12

million people live and work on Thailand's forestland; some of these resided on the land prior to its classification as forestland and claim rights to the land under customary law (USAID , 2010). Almost 30% of land in Thailand is classified as forest and has been the subject of contested rights for decades. Conservation interests, forest communities and mining companies vie for control of forestland and resources. In anticipation of the passage of the Community Forest Act and programs granting forest-dwellers some type of formal long-term rights, the Forest Department has increased efforts to bring land under protected status. The government recognizes the positive role that participatory forestry rights could play in the sustainable management and preservation of forest resources, but legislation is stalled and the impact of community forest programs limited by the lack of a legal framework (USAID , 2010).

4.CONCLUSIONS

This paper analyzed the land tenure system, its history, present status and finally examined the strength, weakness, opportunities and threads through SWOT analysis. Three different land tenure are adopted in Thailand which are ownership, leasehold, occupancy and legal rights. Thailand continues its transition into a successful middle-income country and, at the national level, has already achieved many of the Millennium Development Goals. But, due to political uncertainty in 2009–2010, the need for government to ensure the property rights for all citizens have slowed down. Organizations are conducting consultations among people to put forward their land demands and rights. The rapidly growing informal settlements in urban and peri-urban areas is one of the main causes in land administration aspect. It should always be remembered, however, that changing land tenure arrangements to improve environmental conditions, to promote gender equity, to resolve conflicts, or to facilitate economic development. Such changes may result in fundamental shifts in the power structure within a family, within a community, or within a nation.

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