

LAND POLICY AND TENURE IN SOUTHEAST ASIA, 1995 – 2005

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ABSTRACT

Land administration systems are now businesses. At one end of a wide spectrum land administration systems are being re-engineered engaging in business strategies, competition policies and formal professional standards. Examples include LINZ Landonline and Victoria's Land Channel; and modern, technically enabled infrastructures for use, storage and dissemination of spatial information. At the other end, developing countries in Asia Pacific are being advised on large internationally funded projects about the building blocks required to establish some of the basic operations of a land administration system. This paper focuses on the issues confronting countries at this formative stage and identifies major policy shifts affecting project designs and solutions.

Business in modern western society operates within tightly controlled formal systems to ensure equity, efficiency and effectiveness of performance. Land administration activities are engineered no differently. Land administration designs and conventional tenure typologies manufactured land arrangements for assimilation into formal property markets. However, in developing countries, the majority of the poor rely on systems of access to land sourced in social practice not law or government infrastructure. Formalisation of these socially derived access modes is proving problematic in many different jurisdictions in the developing world including the rural poor in Southeast Asia.

INTRODUCTION

Formalisation of the humankind to land relationship, in terms of use, ownership, distribution and valuation through land administration infrastructures is a common project response. Experts remain convinced of the wealth potential of land in both developed and developing countries (Wallace and Williamson, 2004; de Soto, 2000). This is based primarily on the assumption that a formal property system of recording land arrangements is necessary to provide sufficient tenure security in support of a land market. The aim of formalising land administration systems is to improve efficiency in processes of: regulating land and property development; land use and conservation; revenue gathering through land sales, leasing and taxation; and resolving conflicts concerning the ownership and use of land (Dale and McLaughlin, 1999). Old land administration strategies tended to apply identical remedies as doctrine irrespective of country's circumstances (UN-FIG, 1999). This view is now challenged, the policy agenda and stage of development and capacity of a country determines the limitation of a country to undertake large scale land administration and management projects (UN-FIG, 1999).

Focus on land policy development and institutional strengthening has improved land administration model designs. Almost three decades of development have broadened the economically driven philosophy behind the 1975 World Bank Land Policy to a more desirable and comprehensive land policy for poverty reduction and this has effectively changed the land administration paradigm. Land policy is now re-addressing the narrow and rigid policy guidelines of the past two decades, which promoted imperial property rights regimes based on private and state imposed rights and restrictions. During this time, State resource management was poorly undertaken and was proving unsustainable and insecure (Schlager and Ostrom, 1992). A new direction was sought.

This paper provides a brief review of recent changes to policy and development affecting land administration projects and reform in Southeast Asia. Stemming from this is an extended discussion on the effectiveness of tenure security delivered through land administration systems, as a means to alleviate poverty in both urban and rural environments. This paper suggests that while concerted efforts to achieve this objective from around the globe, few solutions have materialised that can be adapted for the poor in informal rural Southeast Asian areas.

LAND AND DEVELOPMENT POLICY SHIFT

International summits and global campaigns during the late 1980s and 1990s addressed issues on sustainable development objectives¹, indigenous culture and diversity², gender equity³, food security⁴, rural development and land administration as a poverty reduction strategy⁵.

¹ 1987 Brundtland Report followed up with Agenda 21, UN Rio Earth Summit 1992 and again re-emphasised at the World Summit on Sustainable Development 2002.

² 1989 International Labour Organisation Indigenous and Tribal Peoples Convention (No.169) adopted.

³ 1995 4th World Conference Women's Rights, Beijing.

⁴ 1996 World Food Summit, Rome.

⁵ 1996 United Nations Economic Commission for Europe (UNECE) Land Administration Guidelines 1996; The UN-FIG Bogor Declaration on Cadastral Reform, 1996; The UN-FIG Bathurst Declaration on Land Administration for Sustainable Development 1999; The Potsdam Statement on Rural Development 2000; and The Bonn Statement on Access to Land 2001.

These initiatives have dramatically changed the face of development accepting greater local participation and involvement in decision-making particularly in the area of natural resource management. Two highly instrumental initiatives emerged from the collaboration of United Nations members at the turn of the century. The Millennium Development Goals (MDGs) set overarching poverty reduction targets that are applicable to multiple development sectors. Secondly the UN-Habitat Global Campaign for Secure Tenure specifically addresses Target 11 of the MDGs (Box 1).

From these initiatives a much greater appreciation of different humankind to land relationships and changing economies are understood. The importance of developing a policy dialogue within countries is acknowledged in the World Bank's recent change to lending arrangements from Adjustment Lending to Policy Development Lending. This aims to reduce 'blueprint' reform that has resulted in the failure of many projects because of inappropriate implementation and a lack of ownership that evokes investment towards long-term change.

Box 1. Millennium Development Goal, Target 11

'Have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers'

Slum dwellers exposed to high risks and deprivation

Slums are the stage to the most acute scenarios of urban poverty, physical and environmental deprivation. Approximately one-third of the urban population globally live in these conditions. Typical slums in developing countries are unplanned informal settlements where access to services is minimal to non-existent and where overcrowding is the norm. Slum conditions result in placing residents at a higher risk of disease, mortality and misfortune. 94% of the world's slum dwellers live in developing regions, which are the regions experiencing the most rapid growth in urban populations and with the least capacity to accommodate this growth. Where available, trend data indicate that this problem is worsening. UN-HABITAT estimates that there are currently 924 million slum dwellers in the world and that without significant intervention to improve access to water, sanitation, secure tenure and adequate housing this number could grow to 1.5 billion by 2020.

<http://www.developmentgoals.org/Environment.htm#target11>
[Accessed 24th September, 2004]

Overarching poverty reduction policies nonetheless maintain strong capitalistic ideals through economic and agricultural productivity growth, market and trade integration, and globalisation participation. Localising strategies to improve growth and performance of all these development sectors is a key issue addressed in the recently released World Development Report 2005.

The circumstances faced in developing countries will typically produce problems which do not allow easy transition to the standards of operation enjoyed by Western countries. An emerging modern land administration paradigm and recently delivered policy shift by the World Bank offer greatly expand opportunities to use transitional approaches to development, housing, land and environmental management issues.

HUMANKIND TO LAND RELATIONSHIPS

The Bathurst Declaration (UN-FIG, 1999) identified the need to incorporate pre-existing arrangements in terms of the wide and dynamic humankind to land relationships and the development stages and capacity of a country when designing land administration systems. The land administration 'toolbox' concept by Williamson (2002) responded to new demands on land administration system deliverables and provided a vision and framework of key cadastral tools: land policies, legal principles, tenure and institutional arrangements and

technical surveying and registration solutions. This new literature aims at land policy that is increasingly more sensitive to existing land arrangements, provides more sustainable directions and guides formalisation strategies rather than imposing them (Figure 1). Land tenure, a component of the land administration toolbox, is freed from its property rights focus and opened to a more comprehensive understanding of land tenure practices in the social context of informal and formal arrangements. Tools with a social component are often difficult to accommodate within rigid formal systems because of diverse and dynamic arrangements, biased interpretations and limited availability of innovative devices that might avoid the crude assimilation of tenure systems and culture.

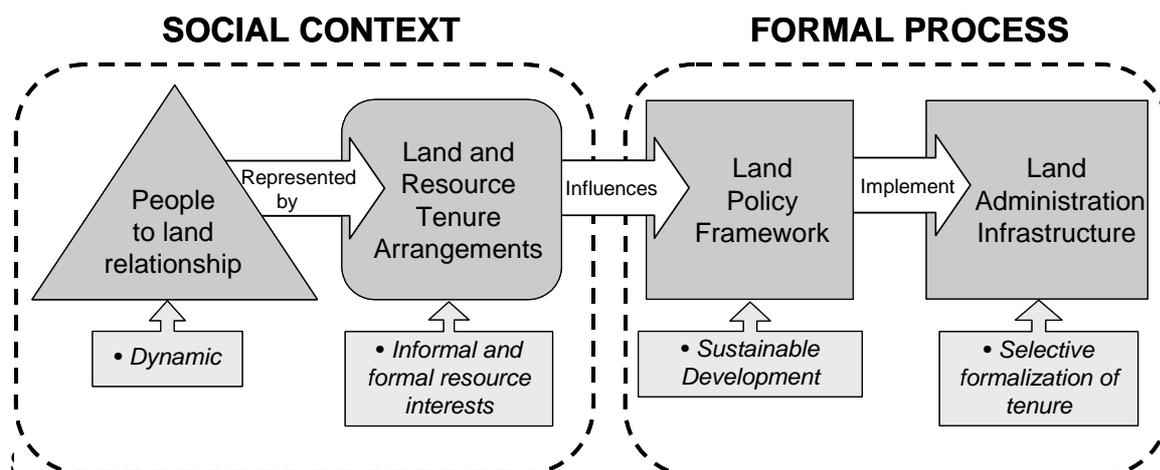


Figure 1. Tenure Approach to Land Administration

Most commonly in the western world formal land tenure typologies describe *legal* interests between people and natural resources, including private or state ownership, common property rights and open access. Systematic and unambiguous organisation and identification of people to land relationships are then easily integrated within government administration and market based activities. Formal records of tenure for long term planning are required for taxation, compensation, administration of transactions, land use and natural resource management, risk assessment and valuation purposes. However in many regions of Southeast Asia these do not meet the requirements of the rural poor who are detached from formal systems and institutions and rely on systems of access to land and security sourced in social practice.

The motivation for land administration systems in poor developing nations is to initially infiltrate benefits through secure tenure. Secure tenure in land and resources is achieved if a persons' interest in land can be successfully defended when challenged. This includes protection against risks, particularly eviction, and not living in fear or threat of having claims denied (Augustinus, 2003). In terms of a sustainable future, evidence shows that long-term tenure security encourages better resource management decisions (Feder, 1988; Otsuka and Place, 2001) and is imperative for civil peace, equity and food security (de Soto, 2000; Lavigne Delville, 2002). Secure tenure is an essential condition; however it is not sufficient to achieve broad policy objectives and ensure the poor have access to affordable shelter and reasonable livelihood conditions (de Soto, 2000; Payne, 2001).

Land administration projects in Southeast Asia primarily concentrate on delivering security of tenure to privately held land for fast, simple and unambiguous title registration. Securing

large areas of rural land for communally settled groups and sustainable local resource management has been overlooked in land administration designs in Asia. These issues of accommodating people on the ground are overshadowed by foreign investment, large corporation and corrupt local government interests. There is also a very fuzzy area concerning the recognition of 'indigenous' groups and a range of debates about various orthodoxies and approaches in common property discourse.

POVERTY: RURAL AND URBAN COMPLEXITIES

'Secure resource tenure is known to be a vital link between food security, sustainable resource management, peace and security, and the eradication of poverty' (ILC, 2004). Identification and securitisation of land and natural resources is imperative for survival of the rural poor and the human population at large. Understanding land arrangements practiced by the rural poor and providing security for continuation of these practices are an incentive for sustainable and best use development.

In other words, sustainable development is about the way people organize their political, economic and social systems to determine who has the right to use which resources, for which purposes, under which conditions, and for how long. (ILC, 2004)

However in reality security conditions are inadequately met in rural regions (Rauch et al., 2001).

Formal typologies of tenure exist in rural and urban environments. Informal arrangements are derived through social practices and are not recognised in statutory law. An observation of informal tenure arrangements among the urban and rural poor reveals many differences. Poverty predicaments of both urban and rural societies are a function of prioritising immediate needs. Satisfying basic security and livelihood requirements is associated with different economic, social and environmental circumstances and therefore independent investigation of urban and rural settlements is essential. People suffering poverty in **urban** areas are more likely to live among dense populations and in a more progressive economic environment, based on manufacturing, trade and services (World Bank, 2003). On the other hand rural landscapes nurture a variety of relationship values between humankind, land and other resources especially among traditional and customary groups. Rural people and their resources are vulnerable to environmental risks directly related to production and resource degradation. Therefore there is profound interest in sustainable land and resource tenure security as it also secures entitlements to additional benefit streams, such as food security, through continued access to resources for food production, and social security, from inheritance patterns and collective arrangements (Maxwell and Wiebe, 1998). Rural land tenure security in agrarian society is analogous to livelihood security because both are intrinsically dependent on the right of access to, and use of, land and natural resources.

A greater need to provide equitable access and tenure security to land and natural resources, particularly for the rural poor and marginalised in society, is due to intensified competition on diminishing and degrading resources. Rural tenure arrangements are vulnerable and continually challenged by external forces. The rural poor benefit from tenure security in the use of land and other natural resources through: village level assurance in access to use, production and extraction of resources; security of investment in land both of labour and

capital; and, security in lineage entitlements, which is a high priority in agrarian societies. Problems in these socially derived systems most often arise from a lack of defence and acknowledgement of informal methods when challenged by claims outside the local system. This also undermines traditional authority and social cohesiveness.

Customary tenure systems are typically found in communities in rural and remote areas. Pressure on these communities economic, political, social, cultural and environmental arrangements are minimally influenced by external modernities such as commercialization and institutionalization. Traditional tenures ever present in rural and remote areas are defined by long term practices that transcend generations, while customary tenures rely on similarly inherited tenure practices and are shaped in a history of cultural or religious beliefs identifiable to particular groups, tribes, or clans (Brazenor et al., 1999).

In all these arrangements full private ownership as we understand it is not necessarily required or would even be beneficial, instead access rights, use entitlements and occupancy recognition within the community and by outsiders is of greater value and importance.

REALISATION OF ALTERNATIVE STRATEGIES

The emphasis on understanding humankind to land relationships and the mission to provide tenure security are tried and tested in all regions of the globe in various circumstances to improve poverty and living conditions. However, these activities have delivered a relatively low success rate thus far. Development situations are unique due to particular history, culture and attitude, economics, environment, governance, and social stability. Thus both conventional and unconventional approaches are required to address access to land and tenure security issues in the different forms as they arise: from urban slums in South Asia; overnight land settlement invasions in Latin America; reconstruction of post war states of Central and Eastern Europe; customary land rights of indigenous Pacific Islanders; to rural land and natural resource management in Africa.

Formalization of land rights to help engage the poor in burgeoning property markets is the economist driven response of de Soto for improving security of tenure for the poor (de Soto, 2000). This has been largely successful in an informal settlement in Peru using a titling registration regime tapping into the wealth of a formal land market, improving accessibility to obtain credit and provides a guarantee of tenure. A similar formal systems approach was taken in the co-financed Thailand Land Titling project commenced in 1984. The success of this long-term project was due to a combination of factors including, strong political support, institutional capacity and commitment, stable legal order, and national economic progress (Feder, 1988; Rattanabirabongse et al., 1998). China and Vietnam are making significant progress towards limited private land markets through recent changes to constitutions and laws. These tentative and carefully engineered shifts in property theory for these countries and while it is too early to predict the effects on the economy and livelihood of people across both countries, closely monitoring development will certainly reveal benchmark results.

Cambodia and Philippines have recently commenced co-financed national land administration and management Projects learning valuable lessons from other projects in the region. For Cambodia particularly, issues of community participation and decentralised local planning are a major focus of the operations. Community titles and address of claims of

indigenous and customary land dealings remain contentious issues challenging investment economics, ethnicity and customary practices, and natural resource management and sustainable development. Statutory and customary ownership systems are being amalgamated in some African countries where traditional land use practices perpetuate while incorporating marketable opportunities created during colonial periods. A number of African and Pacific Island states have attempted the amalgamation of these two ideologically different tenure systems with mixed results. Canada, Australia and New Zealand have for decades attempted formal recognition of indigenous culture and land claims. While Southeast Asia has begun formal acknowledgement of indigenous issues within legal text (Xanthaki, 2003), actual implementation of these laws is rather slow.

There are often circumstances where societies, act largely outside the formal framework, are experiencing a rapidly changing institutional landscape, and have an ineffective legal system (Augustinus and Barry, 2004). In these situations a softer systems approach as suggested by Barry and Augustinus (nee Fourie) (2004) may respond better because they allow human behaviour, as opposed to legal and technical solutions, to be placed at the centre of the analysis. These approaches were the focus of UN-Habitat urban settlement campaigns. The main differences in these approaches lie in their acknowledgement of the dynamism in the environment, variable and flexible tenure arrangements and provision of progressive stages of improvements that gradually assimilate informal urban systems into a formal framework. Providing sewerage and infrastructure, introducing anti-eviction laws; acknowledging contractual agreements written and/or oral; recognising local records, registers, bills; obtaining local authority cadastral information; and eventually issuing title or deeds registration are progressive strategies to improve tenure security for the urban poor (Augustinus, 2003).

THE CHALLENGES FOR THE FUTURE

There is clearly no blueprint for an effective and efficient land administration system that nation's policy makers can "pull down and use". As with any business proposal, any specific solution must be moulded to meet the needs of its beneficiaries and work within the capacity and limitations of the local institutional and social environment. This message is now built into the revised land policy agenda where more weight is given to multi-disciplinary approaches to designing systems for administration and management of land and natural resources.

Property market-based approaches are popular in Asia and may define the direction of country's development towards a rights based system and progressive economy. This paper briefly identified complexities in humankind to land relationships which allow formal and informal norms to coexist, and the different requirements of urban and rural landscapes. Understanding entrenched relationships and interactions between communities and their natural environment demands more localised and participatory action, especially for the rural poor. Lessons can be learnt from African cases of customary tenure registration and UN-Habitat's soft systems approaches, on the condition that they are appropriately re-engineered to fit the context of poverty alleviation for the rural poor in Southeast Asia.

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