Expert Group Meeting: New legal frameworks and tools

Bangkok
8-9 December 2005

Using remedies to secure access to land: regularising occupation
Jude Wallace
The analysis of land markets produces useful models that can be adapted for other purposes. Problem here is that no reform strategy is identified.
Relative, not absolute, ownership

Historical antecedent: English property law

Layering ownership: simultaneous recognition of many owners of the whole parcel (equitable, possessory, legal, shared, for life, on condition

(Layering also permits simultaneous resource, mineral, water and land rights in same land)

Functions of protecting possession

to cure a bad ownership administrative system (whole and part)
to provide evidence of ownership
to stabilise occupation and deliver civil peace.
The analysis of land markets produces useful models that can be adapted for other purposes. Problem here is that no reform strategy is identified.

HOW DO WE REFORM?
Theoretical support for looking at pragmatic solutions

Twining’s work: *How to do Things with Rules*, and transplanting legal concepts

Lessons:

Look before you leap.

Don’t try to transport the untransportable.

“Land” is in people’s minds.
BUILDING LAPS

Standard assumptions

• Security of tenure is essential for land markets
• Land markets are essential for economic development and poverty alleviation
• Tenure security is transferable
• Best tools for tenure security are LAS
• Poverty alleviation is best done by producing titles
Changes in standard assumptions

We know that people matter

We “scope” projects carefully, identify stakeholders, and take account of their aspirations and context

The socio/legal contexts are recognised.

One third of people enjoy sustainable lives through communal and collective systems.

Questions are how to proceed and what tools are best to use
The Asian context

Work and land are integrally connected.
Asian context (These are mere generalisations … Look first, design next)

Communal land uses
Inheritance main land transfer means
Vast urban slums
Colonial history
Normative pluralism (rule of law low in hierarchy)
Centralist economies
TRADITIONAL LAND MANAGEMENT ANALYSIS

embraces such matters as:

• Property conveyancing, including decisions on mortgages and investment;
• Property assessment and valuation;
• The development and management of utilities and services;
• The management of land resources such as forestry, soils, or agriculture;
• The formation and implementation of land-use policies;
• Environmental impact assessment; and
• The monitoring of all activities on land that affect the best use of that land.”
ASIAN LAND MANAGEMENT

• Relationship between patterns of land holding and production.
• Relationships between farm organisation, labour resources, production and land
• Impact of agricultural production reforms and land tenure reforms.
• Pathology of land disputes, particularly those generated by precipitated tenure changes
• Operation of land taxes and other broad taxes, and sources of funds to pay for reform.
• Emerging environmental problems and evolving solutions
• Natural disasters (disease, fire, wind, flood, earthquake)
• Information about conversion of peri-urban land from agricultural to urban use.
Dealing with informalism – urban model
CONTINUUM OF SECURE ACCESS

Secure Access

*Formal* – registered "qualified as to title" and "qualified as to boundary"

*Graded formalism* for individualised parcels "qualified as to boundary"

*Communal perimeter boundary demarcation* "general boundary" method

Recording of dispute processes

*Occupied parcels, non agricultural uses* – household protected by recognition of occupation, adverse possession, anti-eviction, image based identification, communal verification

*Occupied parcels, agricultural uses* – communally managed, protected from outside intrusion by recognition of occupation, adverse possession and anti-eviction, image based identification, communal verification

Political Statements – occupancy regularised

Land access models, including access through labour

Insecure Access
Scoping a project - Identify:

- land uses (tree cropping, fruit and forest product taking, annual cropping, swidden and sedentary practices), and ancillary opportunities (fishing, charcoal production, animal production)
- disputes handling and processing processes
- transaction processes, especially informal.
- kinds of paper evidence regarded as reliable
- Identification of the “land holding” group
- allocation through inheritance, marriage, and exclusion
- immediate and medium term threats (particularly forestry practices for most Asian farmers and indigenous people)
## Comparison of tools for LAS

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Successful Asian tools

Qualified titles - Malaysia
Occupancy protection – East Timor
Housing bonds – South Korea
Ownership of buildings, not land – Timor Leste
Time limits for claims - Indonesia
Land use certification – Vietnam
Unsuccessful Tools

Land use planning – Indonesia, Philippines, Vietnam, etc

Land dispute management – India, Indonesia, Vietnam, China

Separation of land and buildings – Communist countries

Inheritance – Islamic areas

Anti land hoarding measures - General
Thank you

QUESTIONS??????