TRANSFERRING OUR KNOWLEDGE AND SYSTEMS: TENURE FORMALISATION

K Dalrymple¹, J Wallace² and IP Williamson³

¹PhD Candidate
²Senior Research Fellow
³Professor of Surveying and Land Information Australia,
Head Department of Geomatics, The University of Melbourne, and
Director, Centre for Spatial Data Infrastructures and Land Administration

k.dalrymple@pgrad.unimelb.edu.au

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ABSTRACT

Land administration systems are key infrastructure for national growth. They deliver macroeconomic growth, allow greater market integration, provide security of tenure and investments, and increase the capacity to deliver welfare. However, land administration systems supporting these activities are complicated and limited. While advanced tools and principles may be borrowed by countries building local land markets, every situation requires innovative solutions in response to the unique and dynamic land administration environment.

Project designs must capture a wide range of people to land relationships and different socio-environmental circumstances. An investigation of different people to land and natural resource arrangements was conducted in a development scenario. Case study investigations took place in three rural villages in Cambodia undergoing different stages of land administration project implementation. These studies revealed a wide set of indispensable informal tenure arrangements outside the design scope for providing formal tenure security.

From 1990 to now, land projects design emphasis has moved from technological to institutional criteria. Further design change is still required, especially to deliver sustainability and social development. In particular land administration systems used in development scenarios must approach formalization of land tenure with more innovative approaches. This may also require an expansion of tenure security options beyond those currently included in formal systems. Formalised Western skills may be advantageous for delivering some services, but they must be complimented by a holistic understanding of local culture and capacity.

BIOGRAPHY OF PRESENTER

Kate Dalrymple is a Geomatic Engineering and Arts (Geography) graduate. Kate is finalising her PhD Candidature at the Centre for Spatial Data Infrastructures and Land Administration, Department of Geomatics, The University of Melbourne. Her research analyses the formalized response of tenure arrangements in rural areas with a view to incorporating more flexible definitions and transitional paths for secure access to land and natural resources. Kate undertook empirical research in Cambodia as part of her PhD.
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INTRODUCTION

Land administration systems are currently poorly equipped to contribute to sustainable development vision because they do not adequately reflect complex people to land relationships. This is most obvious when land administration systems deal with communal, indigenous and customary groups that exist in both developed and developing nations. Land administration systems are frequently used to address national poverty reduction and economic growth strategies in developing countries. A land administration response to people to land relationships beyond common private ownership is yet to be developed. Tenure arrangements are the social fabric of land administration systems, without these being fully incorporated into the project design land administration projects are doomed to fail. The difficulty of transferring knowledge about how to manage tenure arrangements constrains project success and sustainability.

Evolving Land Administration Systems

A historical review of Western humankind to land relationships depicted in Figure 1, shows the significance of accumulating wealth through land and the cadastral responses to this [Williamson, et al., 2001]. Economists believe land market-based administration systems that evolved over centuries are responsible for the wealth generation among capitalist societies today [de Soto, 2000]. The emphasis on building effective and efficient land administration systems for countries all over the world is driven by this economic justification.

![Figure 1. Main Phases of Western Humankind/Land Relationship, Williamson et al, 2001](image)

During the late 1970s and early 1980s the World Bank began the delivery of large land administration projects as a means of bringing prosperity, peace and poverty alleviation to developing countries. Project designs were implemented with an impetus on technical solutions and rapid delivery of market options for economic growth. Supported by the 1975 Land Policy, project designs focused on delivering tenure security principally through individual private land rights as an investment incentive.

Economic Land Administration Paradigm

Different schools of thought have emerged that justify the popularity of land administration projects to address economic growth and poverty reduction within the development sector; a number of these are now documented in land administration literature. The common economic land administration paradigm applied today comes from the work of Feder et al., [1988] and de Soto [2000] and their respective studies and highly acclaimed land titling projects in Thailand and Peru.

De Soto and many other followers are convinced that a formal property system relying on ‘knowledge by description’ rather than ‘knowledge by acquaintance’ is key to capitalist success [de Soto, 2000]. The theory rests upon representation of information in the form of inscription rather than consensus: be it land tenure by certificate of title; personal identity by a passport; or a person’s credit rating via a credit card. The ability to represent information unlocks complex yet endless functionality [de Soto, 2000]. Representation, for example by a Certificate of title, is the practice of formalising socially derived and informal arrangements through formal representation.

The representation of tenure in the form of a land ‘title’ (or deed) is considered imperative in a formal property system. The title allows more effective and secure means for communicating information, especially applicable when engaging in the formal land and credit markets. Agricultural economists interested in increasing labour and productivity from land
emphasise the need to access credit to improve farming procedures and productivity, for example through purchasing better seed quality, using fertiliser, or increasing land area. A land title in this instance can be used as collateral for obtaining credit to perform these activities (Figure 2). A land title can improve investment opportunities which not only lead to increased land productivity and therefore income, but some studies also revealed an increase in land value [Feder, et al., 1988].

Modern design and analysis of land projects is more tentative. Designers realise that a successful land system relies upon a number of conditions: a sophisticated and functioning legal system; standardization; participation; and the ability to leverage from representation. These attributes will raise the local and informal consensus that originally provided security to a nationally and possibly internationally recognised level of security. The effectiveness and economic potential of this system rely heavily on the ability to treat land as a commodity by securing and guaranteeing rights and interests and making them transferable between owners whether they are held privately, by a corporate entity or by the State. In addition the functioning market idea is also based on these rights and interests being valued and used as collateral for credit and investment opportunities. It is for these reasons that de Soto [2000] argues why 1 billion people of the capitalist world triumph economically and more than 5 billion people in developing and former Soviet Union countries fail.

While informal and formal land markets in urban areas may flourish where trade and entrepreneurial skills are instinctively developed; similar conditions among poor and traditionally organised groups are unlikely to develop into functioning markets because of significant conceptual and administrative barriers. These ideas are demonstrated as part of a case study conducted in Cambodia.

**Land Administration Paradigm towards Sustainable Development**

The economic paradigm driving land administration systems for development is being re-engineered and slowly replaced with a stronger vision for sustainable development; meeting the needs of the present without compromising the ability of future generations to meet their own needs. This requires land administration systems to deliver functions which support a more holistic perspective considering issues from economic, social and environmental contexts. Through this holistic vision, land administration projects are now made more accountable as responses to a country’s poverty reduction strategy.

Accountability and the importance of effective land administration systems in terms of sustainable development were no better illustrated than through the Bathurst Declaration [UN-FIG, 1999] and more recently in the World Bank’s Land Policy review publication, “Land Policies for Growth and Poverty Reduction” [Deininger, 2003]. This policy strongly reflects the potential of effective land administration systems over a long term period to enhance livelihoods through social stability, equity and secure access to land and natural resources.

This policy review is a vast improvement and reflects the changing social conscience and development responsibilities since the World Bank Land Policy of 1975. As a leading institution on land issues, development and foreign assistance the Bank’s review takes a positive and open approach to development engineered specifically towards poverty reduction that respects international developments: the adoption of the International Labour Organisation Indigenous and Tribal Peoples Convention (No.169), 1989; international adoption of Agenda 21; women’s and children’s rights; UN-Habitat Human Settlements campaigns for adequate shelter and tenure security for all, 1999; and, most recently the unanimously adopted Millennium Development Goals (MDGs) by United Nation member states, September 2000.
Refocussing Land Administration System Delivery

Early land administration system development attracted significant efforts towards technology solutions. More recently designs focussed on incorporating criteria demanding institutional strengthening and capacity building. In current policy models, land administration designs must incorporate national sustainability and social development strategies. These goals require a reformed appreciation of non-fiscal values in land reflecting a greater awareness of social and environmental issues.

Popular advocacy on capacity building and the selection of appropriate tools from the land administration ‘toolbox’ are viewed as core components of the design of a successful project. The applicability of systems is conditioned by historic context and capacity of a country, the willingness and support of governments, and the ability to enact and apply technical, institutional and legislative changes. Many of the functions that a land administration system aims to deliver rely on service delivery, public participation in formal institutions, and the strengthening of practices through policy development and statutory laws.

Realising the Land Administration Social Dimension

In the context of devising a land administration system for a developing country, significant effort is required to transform informal and extra-legal activities into a formal system. This process involves a large degree of technical, institutional and good governance facilitation, but a vast proportion of effort needs to be directed at encouraging users and beneficiaries to participate in official and regulated systems. The difficulties in changing attitudes and behaviour of people when adopting a new system or procedure are well known phenomena in change management theory. These difficulties are likely to be critical in national land administration system project delivery. Understanding the people relationships and impacts of changes on people are especially central to the success of land administration systems operating in poor rural areas where the people to land relationship is very strong and closely entwined with livelihood security.

Therefore if land administration projects attempt to change or impose a new element on existing people to land relationships, particularly among the rural poor, project designers must gain a detailed understanding of tenure arrangements and the social fabric of any proposed land administration system, prior to implementation. To provide a more effective and sustainable direction in development, designs should steer towards transitional strategies (Figure 3) which integrate both existing social practices and policy visions, and selectively choose suitable tenure arrangements that are ready for formalisation. Imposition of private titling procedures as a blanket solution is unlikely to succeed.

Integration of social and cultural dimensions into development is an underlying theme of international trends influencing the review of land policy. Consequently these dimensions play a key role in building land administration systems for sustainable development. If our administration and management of land are to be driven by sustainable development we must comprehend and integrate all land tenures, including communal arrangements, and involve the local conditions prior to designing and impressing systems on local populations.

Figure 3. Tenure Approach to Land Administration, Dalrymple, et al., 2004
In particular land administration systems used in development scenarios must approach formalization of land tenure with more innovative approaches. This may also require an expansion of tenure security options beyond those currently included in formal systems. Formalised Western skills may be advantageous for delivering some services, but they must be complimented by a holistic understanding of local culture and capacity.

Project designs must capture a wide range of people to land relationships in different socio-environmental circumstances, for example temporary urban housing, family-scale farming, communal village areas and forest dwelling communities. Each of these requires different approaches to formalisation. An investigation of different people to land and natural resource arrangements was conducted in a development scenario in rural Cambodia. These studies revealed a wide set of indispensable informal tenure arrangements outside the design scope for providing formal tenure security.

**Investigation of Tenure Realities – Cambodia Case Study**

Research in Cambodia investigated a current land administration project for rural poor development. This project focused too heavily on the delivery of individual tenure security. This focus limits the delivery of sustainable development objectives because it undervalues the informal, common property, communal, and indigenous tenures found in rural environments so essential to existence of these societies. This research focused on exploring methods for understanding fundamental people to land relationships and tenure regimes to underpin land policy decisions and influence the choice of technical and institutional tools adopted in land administration project designs.

Establishing a framework for delivering security of people’s interests in land and natural resources within the local environmental and social context of the rural poor in developing countries is challenging. A single international solution is not available. Differences between cultures, countries, landscapes, and development, make comparisons and generalisations difficult. A focus on Asia helps to obtain some consistency on these issues.

An investigation of land policy was initially undertaken to develop a framework capable of incorporating a range of tenure arrangements in support of sustainable development. Simultaneous desk studies were made looking at land administration systems incorporating sustainable development objectives for development project designs. Rural societies were made the focus because treatment of urban and rural land demands different strategies, tools and transitional change management. The problems experienced by poor rural societies attempting to adopt formal tenure systems were investigated during field research studies in Cambodia.

The investigation involved empirical field studies in three rural villages in Cambodia undergoing various stages of a land administration project. These studies revealed a wide set of indispensable informal tenure arrangements outside the design scope of providing formal individual tenure security. Observations revealed complexities in informal systems that would be confronted by anyone attempting to deliver secure formal tenures:

- Vulnerability entwined with survival;
- Authorisation of extra legal powers;
- Key factor being access to resources and not necessarily ownership;
- Communal approaches to land use, occupation and management;
- Land distribution being social and unique;
- Remoteness;
- Land in conflict; and
- Product, food and labour (not credit) markets.

The initial village, which was recently partly titled, continued with communal extraction and use of resources that await classification. Within the village area there were also claims of owning distant parcels of land as part of a seasonal migration trend. These remained accepted, arranged and secured through traditional user rights. The second village group were rapidly experiencing the forces of a formal system with barely any integration. A new geodetic control mark was the first sign of formal mapping; however major forest access issues, land grabbing and disused government granted land were
a few problems that required immediate solution. Incomplete and disordered land ownership records were of little importanc
Dualism occurs in Africa where customary and statutory tenure systems concurrently govern land relationships. The success and social acceptance of these systems are debateable and are difficult to measure. Initial attempts at building traditional people to land relationships and practices into the formal system are being discussed and piloted throughout land administration development programs; however they are yet to become fully functional both in reality and on paper.

Informal systems observed in poor rural societies rely very heavily on tools and resources immediately available. Repeated traditions and land use practices, oral agreements and basic and temporally assigned delineation are responsible for maintaining secure tenure. A formal approach assigning sophisticated and rigid people and spatially-based relationships, particularly using terminology such as land ‘rights’, creates a large gap in both identifying and utilizing additional benefit streams from new tenure.

**Proposed Transitional Path to Tenure Formalisation**

Land management strategies provide more tangible and immediate solutions to the needs of the rural poor. These strategies build on the existing knowledge and resources available to the beneficiaries. Land management unavoidably considers the local context and does not require excessive unfamiliar resources or an understanding of abstract concepts. Where land is often the most important benefit stream for a rural household and remains closely attached to the family group the possibility of risking the land for credit is inconceivable. Often this last resort is used as a short term option in desperate times however this can lead to even longer periods of landlessness and further entrenched poverty. Incentives to build on and formalise existing land management strategies as depicted in Figure 4 are designed to strengthen tenure arrangements and security, and eventually permit regularisation of these patterns and the interests they incorporate.

![Diagram](image)

**CONCLUSION**

Increasingly land administration projects fail to meet poverty reduction objectives and different components of the project design are being questioned. Many projects fail to build the essential capacity; investment in standards and tools is aimed beyond the level of local competence and consumes far too high a proportion of the funds; restructuring of institutional arrangements is resisted and good governance is generally unavailable. While these barriers are significant, social acceptance, public participation and meeting the needs of people on the ground are the ultimate tests of a sustainable land administration system. Effective knowledge transformation is a two way process: respect, recognition and perception of existing processes; and facilitation, mentoring and education of new processes. Land administration systems will continue to lack adequate translation, especially among the poor, if they continue with the dominant focus on individual and privately titled tenure. Greater likelihood of success involves placing more emphasis on articulating existing situations and building transitional paths out of poverty based on local capacity and contextual arrangements including land management practices. Expansion of tenure security options beyond those currently included in formal systems is a first, but essential step. Formalised Western skills may be advantageous for delivering some services, but they must be complemented by a holistic understanding of local culture and capacity.
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