

# **Lessons from SE Asian Cadastral Reform, Land Titling and Land Administration Projects in Supporting Sustainable Development in the Next Millennium**

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**Presented at the UN-FIG Conference on Land Tenure and Cadastral Infrastructures for Sustainable Development, Melbourne, Australia  
25-27 October 1999**

## **ABSTRACT**

The literature paints a fairly common scenario for developing countries. It is one in which land is an increasingly scarce resource; where distribution is perceived to be unequal; where compensation for land required for infrastructure is unfair; where revenue through taxes is low and disproportionately shared; where land transactions are expensive and bureaucratic and where the levels of disputes concerning land are on the increase. Land titling projects are a response to this scenario.

Because of the long term nature of projects, the high cost and the critical consequences of failure there is a need to understand the context in which they are implemented and the factors which contribute to their success.

*Keywords and phrases:* sustainable development, cadastral reform, land titling

## **INTRODUCTION**

Much has been written about land titling as a component of cadastral reform. Our task as practitioners is to convert the theory into practice and this requires intervention in the policy, legislative, institutional, technological and social environment of a country.

The aim of a land titling project is to formally recognise rights in land and enable the state and individuals to trade in these rights. Confidence in the titling system is a central concern and SE Asian nations have committed a significant level of their limited resources into improving their systems. The investment is paying off and this is in no small part due to the successful projects which cause the interventions needed to bring about the desired change.

This paper is not about the social or economic development (sustainable or otherwise) worth of land titling - this is amply documented. With this, and the constant project performance monitoring, under the not altogether sympathetic scrutiny of special interest groups around the world, the justification is accepted for

the purpose the paper. The focus is on what makes for a successful land titling project.

The level of interest in land titling is increasing as is the complexity of the national environments in which they must be implemented. BHP's experience implementing large scale titling projects covers a population of over 350 million people comprising the SE Asian nations of Thailand, Indonesia, Lao PDR and Philippines. This experience has been distilled and offered in the form of BHP's Ten Pillars of Land Titling. The paper is based on the documented experience of Tony Burns, Bob Eddington, Ian Lloyd and Chris Grant - BHP Engineering.

## **BRIEF SUMMARY OF RECENT EXPERIENCE**

### **Thailand Land Titling Project**

During the period from 1960 to 1975 the average annual growth in agricultural production in Thailand of 5% was achieved mainly through an expansion of the area under cultivation. At the same time there was significant encroachment of areas declared as forest. In spite of this growth, real incomes in rural areas remained low and poverty was widespread. Land available for expanded cultivation was becoming increasingly scarce and it was recognised that continued growth in agricultural production would have to come from the more productive use of existing cultivated areas.

The TLTP was initiated to assist in redressing the rural issues of productivity and poverty. Recognising changing environments and community needs over the 16 years of the TLTP there has been a shift in focus towards urban reform, good governance and institutional strengthening.

The TLTP has largely met or exceeded the targets that have been set down. Also, over the period of the project there has been a significant increase in Government revenue collected by the DOL. This has been one factor that has contributed to the consistently strong support for the TLTP from policy makers, despite several major (and rarely smooth) changes in administration.

### **Indonesian Land Administration Project**

Under the pressure of rapid economic transformation a number of land related problems have become progressively more severe; not the least of these being social conflicts and disputes over rights to land. Among the measures to improve its capability for land management and planning, The Government of Indonesia (GOI) initiated the Indonesian Land Administration Project - a 25 year program begun in October 1994.

Unlike Thailand, which was never colonised, Indonesia was under some form of colonial rule for the 350 years before 1945. Land laws became a dualism between western systems, to meet the interests of colonial governments, and the traditional unwritten land laws, based on the customs of various regions. Again unlike Thailand,

where customary rights was not an issue, recognition of customary rights is an important element of the intervention in Indonesia.

Indonesia is the largest archipelago in the world with an estimated 55 million parcels of land of which 17 million are registered. With the number of parcels growing by some one million each year the task of registration would never be accomplished without some remedial intervention.

### **Lao PDR Land Titling Project**

The constitution of the Lao Peoples Democratic Republic recognises land use rights, and by decree these rights may be transferred and mortgaged. Since Lao PDR was formed in 1975 there has been little done to formally recognise these rights. In some places there is no social or economic justification. However, with the move to a market economy, the urban centres and more productive agricultural areas are in need of a formal system of land administration to reduce conflict over rights in land and to support economic development.

The policy of the Government of Lao PDR is to shift from a centrally planned economy to a market economy. The country has about 4.6 million people, of which some 87% are employed in agriculture. The average per capita annual income in 1994 was US\$290, and the development policy places emphasis on the use of the nation's natural resources to raise living standards, commensurate with sound resources management.

At the highest level of land policy there are deficiencies in dealing with the status of land belonging to families who fled overseas after the liberation. These lands are formally considered State land but the identification of such land is now very difficult. This is exacerbated by lack of policy to ensure that land transactions are registered, and unclear policy on the status of documents issued prior to 1975. The implementation of land titling activity is also made the more difficult because of the rapidly developing, and mostly informal, urban land market. Further, the human resources to overcome the shortcomings in policy, land law and the lack of regulations and procedures are limited, both in numbers and depth of experience, education and training.

### **Philippines**

The Republic of The Philippines is in the early stages of preparing for a land titling program. They have similarities with their ASEAN counterparts at the conceptual level, but these are outweighed by the differences at most other levels. The RP inherited a good system of land registration from the period of American colonisation in the early part of this century. A large number of communities were cadastrally surveyed however through the ravages of war and poor maintenance many of the records are now lost.

While the land administration system is somewhat more mature than other SE Asian countries, the land market in the Philippines is seriously threatened by the growing lack of confidence, primarily the result of the duplication of titles, in the system of property registration. Access to land records difficult and there is a high transaction

cost which discourages registration and is a disincentive for investment. The growing level of informality adds to erosion of confidence in the entire titling system.

The Government of the Philippines is considering implementing a Build Own Operate (BOO) system as a way of improving the records in its Land Registration Authority. This unique approach will attract attention as alternative financing mechanisms are being explored. It places the land registration system in the category of any other capital infrastructure investment in which the private sector is invited to invest in modernisation in return for a share of the revenue increases it is able to generate through greater efficiency.

## **SUMMARY OF PROJECT EXPERIENCE**

A key point emerging from our experience is that while the long term goals are similar - a land administration system to foster an efficient land market - the environments in which this goal must be achieved is always different.

All projects require considerable investment and it salient to recognise that governments, with many competing demands on limited resources, continue to devote so much of these resources into the establishment of an improved land administration system. Even at the height of the Asian financial crisis the land titling projects remained amongst the investment priorities of the respective countries. At the heart of the matter is the recognition that unless there is confidence in the property market all other development advances are in danger of imploding.

As de Soto (1993) observed only about 25 countries throughout the world have systems in which property is recognised by law and have market systems where these rights can be confidently traded. He observed that this lack in other countries was the greatest single impediment to their future development. The collapse of communism and the move from command to market economies has been one factor that has had a strong bearing on the increased interest in land titling.

## **LESSONS - BHP'S TEN PILLARS OF LAND TITLING**

Given the size of interventions in land titling, the huge costs involved and the importance to the development and well-being of the countries in which they are undertaken, there is strong motivation for success. The literature in the World Bank is scattered with failures for reasons ranging from an overall lack of political support, conflict at the bureaucratic level, lack of institutional capacity to a simple underestimation of the complexity and cost of the task.

Based on our experience we have distilled the lessons into what we call BHP's Ten Pillars Of Land Titling.

### **PILLAR 1 - Land Titling is a Means to an End Not an End in Itself**

The success of land titling is ultimately dependant, not on the elegance of its geodetic adjustments, the sophistication of the technology introduced, or even on the vast

numbers of certificates distributed, but on the extent to which it effectively meets the land administration needs of society.

An early failing in land titling was that it was delivered as a series of technical activities aimed at maximising the distribution of title certificates and the recording of these certificates in a system of registration. While important outcomes these are simply the means employed to achieve a land administration climate where land resources are more effectively managed, peoples property rights are secure, transactions are economically and fairly recorded, and social conflict over land is minimised.

Unless the land titling is continually demonstrated to be in support of the fundamental quality of life issues confronting developing nations, the commitment from government will waiver and the participation and confidence of the community will be difficult to achieve.

## **PILLAR 2 - Land Titling Needs a Commitment to National Reform**

Success in land titling requires an environment where there is a commitment to change at the highest level. A clear and consistent policy and legal framework is important to guide and sustain this change. This framework must provide the economic as well as the social rationale for reform.

The environment in developing countries is invariably one in which land is an increasingly scarce resource; where it is perceived to be unevenly distributed, where registration of rights is expensive and bureaucratic, where a climate of socially disruptive disputes is emerging and investors are not confident in the legal status of land transactions. Land titling is a large investment which is only contemplated because the existing systems of land administration, and the institutions responsible, are unable to cope.

Because land is such a basic resource, and rights in land is such a sensitive issue, reforms are not always understood or accepted as necessary. As a result land titling is subject to increasing scrutiny and, especially in the case of ILAP, criticism from special interest groups and NGOs. Unless the benefits are clearly articulated and delivered such groups can have an adverse impact on public confidence in the land titling process.

At the institutional level the environment is invariably one of overlapping responsibilities and duplication. Experience shows that institutional change is unlikely to occur solely as a result of a decision to implement land titling. Institutional change must be stimulated by a mandate from government to achieve the national objectives. Unless these objectives are clearly set out and the roles played by responsible agencies are unambiguously assigned there is little imperative for reform at the institutional level.

The freezing of staff levels in government agencies is a positive example of policy causing desired change at the institutional level. It has caused agencies in Indonesia and Thailand to examine ways to manage human resources more effectively. A

similar policy in the fiscal area is needed to cause agencies to manage financial resources more effectively. For example, in ILAP a study of the fees charged for land administration services is examining the revenue implications of subsidising the systematic registration process. Beyond the question of fees, the study has highlighted the fragmentation of the management function within the National Land Agency, and the lack of financial and production statistics upon which to base decisions to effect change. However without a mandate from Government to achieve (say) 'cost recovery' there is no stimulus for change.

### **PILLAR 3 - Land Titling is About People Not Technology**

The application of ready made technological solutions is seductive to developing countries faced with monumental land administration problems. It is tempting for example to apply information technology to land records, but experience in most developing countries is that the data to be converted is unreliable and the existing systems for gathering and maintaining the records are ineffective. No amount of computerisation will help overcome these basic problems. Moreover developing countries are usually classified as such because they have a limited base of skilled resources available to address their development needs. The initial emphasis must therefore be on process improvement and expanding the skill base, with a particular emphasis on the development of future leaders.

### **PILLAR 4 - Land Titling is More than a Project, it is a Way of Life**

Agencies responsible for land administration are usually large, hierarchical, regulated and generally conservative organisations. The Department of Lands (Thailand) and the National Land Agency (Indonesia) have in excess of 13,000 and 26,000 staff respectively, widely distributed in land offices throughout the country.

Into these environments considerable, and growing, levels of resources are being channelled in the form of development assistance projects. Most of these projects address some component of the land administration process and many are specifically computer oriented. Land titling is usually introduced as yet another less glamorous project with specific aims and a dedicated budget over a finite period of time. Notwithstanding the size and scope of the work, land titling is considered to be a temporary activity and staff are accordingly assigned on a part time basis. Attention to the project can therefore be distracted by the demands of routine work and other development projects.

Land titling is however a long term program aimed at bringing about reforms to the national system of land administration. Thus it is not a series of activities and procedures which will disappear once the time or the budget has expired. Rather it is a series of activities and procedures which, while initially developmental, must progressively become embedded into the routine activities of the agency.

To be successful, people and institutions need to change. This change needs to be driven by leaders with vision so that the project becomes a 'way of life'. The challenge for the individuals responsible for project implementation is to provide the management of the change through better institutional linkages and integration.

## **PILLAR 5 - Technology Provides the Tools Not the Standards**

There have been many examples where technocrats have attempted to set the standard rather than provide the tools necessary to meet the requirement set down by policy. Technology has a vital role to play in land titling but it has to be looked at within the overall objective of establishing a land administration system. Decisions on technology made in land titling can have a major impact on the successful integration of the records into the land administration system.

Often, in an endeavour to introduce new technology, existing procedures, and the reasons behind them, can be overlooked. Land administration is strongly influenced by the bureaucratic, social and cultural environment, and overlooking existing practices often leads to the failure of the proposed changes.

High technology equipment such as satellite positioning systems and automated mapping systems have been successfully introduced in the TLTP and are being introduced on ILAP. But this technology has only been introduced after a careful assessment of the overall management, environment and especially local work practices. Where it could be shown that new technology could overcome a production bottle-neck, and that the new technology was sustainable, then it was carefully integrated into the agency. Associated with this introduction was a carefully planned program of in-country and overseas training. However, of equal significance to the overall success of the projects have been the review of existing manual procedures such as the simplification of a dealings form, or the streamlining of an administrative procedure.

## **PILLAR 6 - Successful Land Titling Requires Community Support**

A land titling project is initiated by the State. The State decides the procedure that is to be followed, the schedule of the procedure and the roles and responsibilities of the various participants. However, it is important to note that land titling will only successfully result in sustainable land administration if the project has strong community support.

In SE Asia land titling is being undertaken in a systematic, public manner in a whole jurisdiction at a local level. The process is public, open to all, actively involves village officials, the fees are transparent and the results of the adjudication are publicly displayed. Formal public ceremonies are held to distribute certificates to the community.

In this situation an active program of Customer Relations and Services is required. This program needs to communicate to the public the benefits of land registration in general, and land titling in detail and needs establish procedures for the agency and the staff in the agency to respond to the requirements of the community.

### **PILLAR 7 - Get the Runs on the Board Quickly**

The fact that a Government is considering a land titling project indicates that there is a recognition that the current systems to administer rights in land do not work. In these circumstances there will be many problems and many issues that have to be addressed. An important point to remember is the fact that not all problems need be solved at once. However it will re-assure policy makers that land titling is viable if some key early results can be demonstrated.

### **PILLAR 8 - Work from the Part to the Whole in Developing Land Law**

A basic principle in surveying is to work from the whole to the part. However in developing the law, the reverse can almost be true - it is better to work from the part to the whole. This is not to say that the work can be undertaken without a basic policy and legal framework, but in the early stages of the development of a systematic registration capability, many of the difficulties and problems will not be apparent until the procedure is tested in the field.

It can take a considerable time to develop and implement high level land law. In Indonesia it took a concentrated effort over 12 years to write the Basic Agrarian Law and the major regulations that underpin it, especially the Government Regulation which sets out the principles for the registration system and the systematic registration of rights in land.

In developing the pilots in ILAP, the National Land Agency had to work within the constraints of BAL, but as a streamlined systematic registration process was developed, this process was regulated by a lower level instrument, a Ministerial Decree. After the first pilot was completed, the process was reviewed and amended and a new Ministerial Decree issued prior to the second pilot. The second pilot largely confirmed the new process.

A considerable delay in the project would have resulted had it been necessary to wait for a revised regulation, and the revision would have also been completed without the experience of the two pilot studies. This process of a lower level instrument, pilot study, revision of the instrument, followed by a second pilot has been repeated in Lao PDR. In this case the lower level instrument is a Provisional Ministerial Decree

In a situation where land policy and land law is unclear, the practice of implementing a low level instrument has proved successful in quickly providing a legal basis for pilot activity. This pilot activity then enables land policy and the procedures to be tested and a comprehensive law developed.

### **PILLAR 9 - Land Titling Requires a Production Orientation**

The processing of sporadic registration, ie registration on request by individuals in the community, is usually conducted in a service environment. Land titling on the other hand is a production process that requires a series of coordinated actions be undertaken, either sequentially or in parallel. This pipeline of activities contains events which may take some years to complete before field work can commence.



Field teams must be formed, private sector input procured, staff trained and deployed. All this requires coordination and a production approach to the task.

A key element in a production process is the setting of output targets. The target is a fine balance between what is realistically achievable in the environment yet ensures that output is maximised since staff will tend to work to the target, not to capacity. Small changes in production targets can have significant impact on staffing requirements and/or the overall duration of the project. It is important that there is quality control and monitoring ensure that field staff are not by-passing areas of difficulty or areas which do not easily contribute to achieving the target outputs.

The field activity in Thailand works so well because there are well established standards for adjudication output per field team per month. These output targets are accepted by the staff, the Department and the RTG Budget Bureau. Funds are provided on the basis of planned output, with a degree of flexibility in how the funds are applied.

### **PILLAR 10 - An Appropriate Reward System for Field Staff**

Land titling can involve spending long periods in the field, working from temporary field offices, over many years. In Thailand staff are assigned to the field for periods of up to 10 months and many have been involved for longer than 5 years. Land titling work is production oriented, unlike the usual land office situation, so field staff are required to work to stricter time constraints. There is a higher level of responsibility and risk in the work - in Thailand staff are personally responsible for their work. Staff will only do this if they are adequately rewarded.

The setting of reward systems is not a simple process, as there are usually stringent civil service requirements. However, if field staff are not adequately rewarded there will be repercussions either in the quantity or quality of their work, or in the manner in which they seek to establish an informal reward system.

### **CONCLUSION**

The implementation of the theory of land titling, in the form of large scale projects in developing countries, is a major undertaking. The interventions at the policy, legal and institutional level are not without risk. It is to the credit of those countries in SE Asia who are reforming their land administration systems that they do so in the face of considerable financial and social challenges. It is incumbent on us, as practitioners in cadastral reform, to do all in our power to assist in achieving the national goals they have set. We have built a significant level of practical experience much of which is summarised above.

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