Using remedies to secure access to land – regularising occupation

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SUMMARY

Land administration systems in developed countries reflect land rights that axiomatically protect occupation and possession. For less developed countries this protection is a starting point for building their administration systems. For the rural poor in Asia Pacific Region countries, protection is hard to deliver. Building sustainable administrative systems capable of fitting into the complex arrangements of long established communities involves far more than borrowing the familiar tools of surveying, cadastres and registration. Land administration theory now recognises this difficulty and some new ideas are emerging. A land management approach suitable for APR countries would assist transitional processes. A sketch of this approach is provided for consideration.

1. INTRODUCTION

1.1 Legal support for occupation and possession

This paper follows on from an earlier paper on using remedies and relativities to regularise access to land delivered to the EGM at Nairobi (Wallace and Williamson, 2004). That paper described a land regularisation option for countries experiencing limited governance capacity that involved building up remedies for removal or ouster from land and tracking the application of these, as a preliminary betterment path to formal land rights. By drawing on the historical experience, the paper explained how English ownership was relative to situation, rather than absolute as in European countries that enjoyed a closer relationship to property theory in Roman law. This relative ownership allows English based systems to recognise a number of owners in the same land at the same time: the legal owner, the possessory owner, and later an equitable owner, a system very familiar in developing countries where competing claims are common. Its fundamental component is the availability of a remedy of trespass to land, later called ejectment, to protect possession. The early history of this remedy involved people who could not prove they were owners: all they could prove was the disturbance to their possession. The remedy remains to this day, though its name is changed and remedies protecting ownership are well established. English property law, over the centuries, invented management and priority systems within which the varying ownership claims distributed access to and possession of land.

The derivation of the early remedies protecting possession in the early English system lay in a very common experience of nations: failure of formal land law to deliver remedies needed by the land owners. In England, this failure is associated with the atrophy of feudal remedies, *writs of right*, in which tried title and with the invention of possessory remedies based on ouster, "ejectment" or trespass for an occupier of land. The systems that developed were not simple, and presupposed some capacity to govern. Their attraction lay in their low level initial formalism and capacity to delivery civil peace.

In the world of land administration projects which concentrate on title security and on its modern instrumentalities of land registration, surveying and cadastral mapping, this history is forgotten. Nor do Western lawyers familiar with the historical detail of land law feel comfortable finding virtue in a system that lacked familiar instrumental supports. However countries without these instrumentalities are as much in need of securing their land to alleviate poverty and deliver sustainability as are modern nations. Their ability to utilise the sophisticated paraphernalia of modern instrumentalities is not only variable at the initial stages, suspect in later stages of implementation. The doubtful sustainability of technical and instrumental approaches in many countries leaves an opportunity for simultaneously building a less instrumental system for protecting possession, managing land disputes and building these into formal systems. Indeed, if a nation were to follow the English historical model, dual systems would run parallel indefinitely.

1.2   Theoretical support for a broad approach

While historical lessons are useful, another theoretical support for a dual approach, even stronger than history, is available. This theoretical support borrows from a book by Professor William Twining and David Miers, **How to do Things with Rules**, 1976. The book remains one of the best examples of sustained analysis of the difficulties associated with using rules (or laws, for that matter) and how to manage them. Twining continued his efforts in explaining how law works in two companion articles dealing with legal transplants: that is the process of transferring a legal idea or structure from one culture to another (Twinning, 2004, 2005). The first article models twelve assumptions used in naive analysis of how transplantation works (summarised in Appendix 1). He shows that these assumptions are "neither necessary nor even characteristic attributes of the processes of diffusion of law" (Twining, 2004). The second article shows how analysis of transplantation tended to be conducted in disciplinary silos and argues for a multi-disciplinary approach.

This article takes up the same kind of broad approach to analyse transference of tenure security. Compared with Twining's contributions, it is a much more modest attempt to make tenures and their uses accessible to the people who need to work with them: land policy makers, land administrators and managers, land project designers and implementers, NGOs, and especially people who want their relationship with land to be articulated and respected. Its theme is that tenure is a creature of a culture as much as of a legal system, and that transferring tenure concepts to another culture

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requires multi-dimensional and careful planning. What is involved is in short changing how people think about and react to their land: sociology is more useful than law and engineering (Twining, 2005).

1.3   Using the best land engineering tools

With this reservation about informing engineering with a little sociology, this article relies the straightforward approach of a much older discipline of engineering in which designing, building and testing models are the standard processes. In the last decade especially, visual tools for management of land information have developed in effectiveness and dropped in price. Despite this, existing land administration systems predominantly reflect a more conservative repertoire of tools designed in the days of paper systems. Some of the most attractive tools of modern land engineering are: satellite images, aerial photos and the more sophisticated orthophotos. These resonate with people in a way that descriptions of "titles" and "administration systems" do not. They are adaptable to household, village and region scales and are readily understood. They can form the beginning of formal recording systems and incorporate local land uses and delivery processes.

1.4   Delivery of security of tenure

For simplicity, this article deals with the role of major aid agencies in change, especially projects aimed at stabilizing land. Hence the context is international land administration projects, with high level advice, large scale administration, and support from national governments.   These demand quantifiable inputs, project plans, measurable outcomes and evaluation. The processes involved must be relatively transparent, high technical and neutral in terms of values. Their design should pursue values of impeccable international pedigree: poverty alleviation, sustainable development, and gender equity. The significant gaps remain in implementation.

Despite availability of new spatial tools, creation of tenure security is now more complex because of the last thirty years of LAPs. Since 1990 at least, tenure security has been a major policy deliverable sought by international aid projects aimed at economic advancement. Therefore much of the analysis of tenure is generated by economists who study relationships between land security and market efficiency. Most LAP outputs concentrated on using technical services of surveying and land administration (particularly registration systems). Delivery of security of tenure through LAPs using these older technical tools was rightly seen as an essential component of a structurally adjusted national economy capable of moving out of poverty and into a free market. However, after a mixed history during the last 30 years of trying, the issues are not so much with the aims of security of tenure, but with how to deliver it. If we are to follow Twining, it helps to identify the assumptions central to the history of LAPs:
- security of tenure is essential for land markets
- land markets are essential for economic development

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- tenure security is transferable
- the best tools for delivering tenure security are technical and effective land administration systems
- land projects to alleviate poverty are best aimed at producing land titles.

Once we identify these, we must admit an enigma. While these assumptions are clearly true for the successful economies; they remain problematic and difficult to apply in the context of aid projects. The essential point is however that the assumptions entertain an analytical naiveté even for developed economies. The naiveté is especially a result of having a far too narrow analytical framework for understanding land and how it works. All these assumptions are necessary for economic and social sustainability in democracies, but, neither singularly nor together, are they sufficient. **The tools used to deliver security of tenure are more than the total technical services of land administration**. This explains why so many technically competent land projects fail, and why it is so hard to build successful and sustainable projects. It also explains the blossoming of more successful, multi-disciplinary and flexible approaches that have recently informed in the international aid community's ability to work with people and their land.

The integration of diffusion theory in sociology (Twining 2005, 219-223) into project design and analysis will help. Projects are now constructed with sympathetic treatment of local contexts, cultures, traditions, and anticipation of potential resistance. Major problems are recognized: for example how would we manage the imposition of national formal legal frameworks such as national bankruptcy and credit laws, in a socio political context where normative principles are derived from social and not legal order (Asian values)? Questions for consideration include: when to encourage imitation and technical innovation, when to impose, when to lead by example (pilot projects), when to engage people and when to use national institutions and governments (the favoured route of IMF, WB and UN)? Much of the effort of the World Bank ESSD Week in 2005 was aimed at exploring these questions, especially in the context of the rural land section. The particularly relevant enquiry was measuring delivery of sustainable tenures within the Millennium Development Goals, (Wallace, 2005) a focus that would have been impossible to articulate even a decade ago.

2   TENURES AND POSSESSION

2.1   Informal tenures

Land policy making relies on using tenures. While tenures are predominantly a construct of socio/legal systems, for land policy, a practical and functional approach, rather than a formal legal approach, produces the best results because it incorporates opportunities to create and manage tenures outside the formal legal sphere, a situation far more common than most legal approaches recognise. Two consequences follow. The first is to use the broadest possible theoretical framework for law. The other is to incorporate in the analysis of tenures the socio/political tenures used in societies

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where law is undeveloped, especially if they are post-conflict, or traditionally organized. For the rural poor of the Asia Pacific Region, APR, informal tenures predominate. These arrangements fall more naturally under the description of "occupation" rather than possession of land, though we need say no more about the distinction. The previous article written for Nairobi suggested a **possessory remedies tool box** :

> Articulated and popular land policies
> Remedies to reverse aberrant behaviour
> Inclusion of customary, etc, tenures
> Transaction and inheritance tracking
> Overlaying occupation patterns
> Focus on local behaviour and capacity
> Betterment strategies
> Anticipation of hard cases

That article focused on using remedies to reverse aberrant behaviour, particularly interference of a person with quiet possession or occupation of another. This article focuses on betterment strategies in the context of rural poor in the APR and suggests, tentatively, changes needed to the familiar traditional approaches.

2.2 The Asian context

Land administration has yielded positive results in South East Asia: Thailand's LAP and Malayasia's LAS are highly regarded. Despite this, land administration in APR generally experiences difficulties. Consequently, a much more careful appreciation of local context is now evident in land administration literature and project designs. The evaluation of existing situations is axiomatic, as is the continuous evaluation and monitoring.

Asia presents particular issues for securing tenure. While there is a high degree of take-up of Western land administration instruments (including certification and registration of ownership), and tenure models (ownership and "leaseholds"), most Asian countries rely on different sources of land security and types of tenure (Glenn, 2005). Western systems do not translate happily or naturally. The APR countries use labor organisation to distribute access to land; therefore land and labour need to be treated coherently.

> "The common forms of tenure available to agricultural families are tenancies, and labour production rights, varying from share-cropping to itinerant arrangements dependent on provision of agricultural labour. Their common features are exploitation in form of high rents and low wages, insecurity and cyclical poverty. On a national scale, land used in this way seldom attracts the kind of improvements needed to increase crop production and improve nutritional welfare."

> Prosterman and Hanstad, 2000

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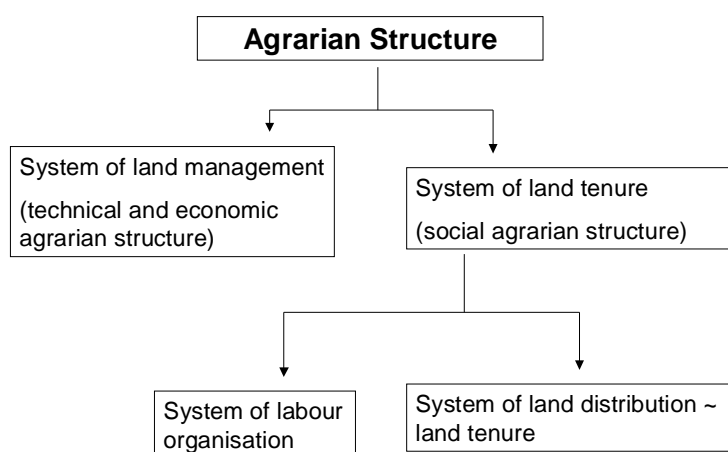
Classic Western tenures need modifications to reflect on-ground situations in the APR. Coincidentally, all countries vary tenure models – the West has developed generic approaches allowing administration systems and banking to reflect international norms despite the local variations. The translation of these tenure types into APR countries requires care. Deininger points out that rentals in Asia are variable in their use. "In the 1990s the proportion of tenant households (including pure tenants and owner-tenants) was high in Bangladesh, Pakistan and the Philippines; modest in Indonesia; and low in India and Thailand." (2003, p. 108) The reasons for differences also vary, including formal illegality of leases in parts of India. Leases are not therefore a universally available formal opportunity and they are tied into labour arrangements in many cases.

Moreover, the economic and land market functions inherent in Western ownership and lease characteristics cannot be automatically applied in tenure typologies appropriate for the rural Asian context. Rural ownership in APR generally carries complex communal and individual social and traditional obligations and restrictions (particularly on transfer and sale to outsiders), ignored in Western systems. Transitional processes and innovative responses are therefore essential.

> "Security of tenure does not necessarily require the provision of leasehold or freehold titles. It can be achieved through other procedures or arrangements." (Durand-Lasserve and Royston, 2002, p8).

The question is which processes and responses? The model below is suggested as a starting point for analysis, based on the agrarian structure built by GTZ in its report on Land Tenure for Development Co-operation, Guiding Principles (1998).

Agrarian Structure

- System of land management (technical and economic agrarian structure)
- System of land tenure (social agrarian structure)
  - System of labour organisation
  - System of land distribution ~ land tenure

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The advantage of this model is its reliance on land tenure as a key socio/agrarian structure comprised of two components: **labour organisation** and **land distribution**.

Away from urban and peri-urban areas, in APR the focus needs to be on delivering regularity of land access, rather than classic security of tenure through ownership and lease. Regularisation processes need to take into account the characteristics of people to land relationships in APR. The high degree of local variability requires detailed and extensive on-ground investigation before any LAP is conceived. Rural land to people relationships in APR include:

- Communal rather than individuated ownership, household, clan and village organisations
- High degree of informal land occupation, transactions and "ownership"
- Social verification rather than legal verification of "ownership", reflecting the strength of social norms and weakness of legal norms (and the rule of law) in the normative structure (for instance, see Asia Foundation, 2004)
- Spiritual and familial connections with land rather than economic commodification of land
- Complex and untracked inheritance patterns; similarly with entitlements lost and won on marriage, widowhood and divorce
- Entrenched intergenerational land disputation. Dispute management techniques permit "talking out" rather than definitive closure. Time limitation on raising of claims is not used.
- Vast numbers of urban slum dwellers – proportionately the world's highest and consequential pressure to ensure that the rural population remains as stable as possible
- Extensive reliance on swidden agricultural techniques
- Influence of colonial history, including large scale plantation farming, expropriation of land and extensive land owning elites
- Low levels of technical and organisational competency (Malaysia and Thailand are exceptions).
- Centralist, and communist, governments (see for instance, China, *Land Contracting Law, 2002*, Vietnam, *Land Law, 2002*, and the laws of Laos and Cambodia) where national ownership (control) of land contrasts with de-collectivisation of land as a means of production, to increase yields by permitting suppliers of labour to retain the benefits of their efforts
- Relative immaturity of relationship between land 'owners' and the nation state, together with high levels of distrust and lack of confidence in institutions
- Separate administration of forest and other land, practically removing land rights from forest areas
- Accelerated changes particularly in response to the Asian Financial crisis of 1999, to the de-collectivisation of land management in centralist economies,

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and to substantial deforestation and encroachment of cash crop plantations and other non-traditional land uses.

Within these contextual features, "property rights to land are not static, but evolve in response to changes in the economic and social environment", (Deininger, 2003, p 22). The Asian context therefore responds to an approach allowing decentralization of power from national to local levels, recognising the local distribution systems. A staged approach to regularization is more appropriate.

Moreover, reflecting relative levels of economic development and confidence in national or provincial governments, APR countries experience high levels of informalism even where formalised systems operate. Rent seeking behaviour in formal institutions infect institutional operations, particularly capture of derivative transactions and events, as in Indonesia and the Philippines. Capacity to run a formal system and parallel or underground informal systems is common in countries with land owning expatriates (Chinese, Indian and European) whose land owning opportunities are officially restricted. Informality is also common for other reasons, related to government capacity and the popularity of land investment. Vietnam's urban land markets are predominantly informal but nevertheless vital, extensive and effective, though not from the viewpoint of the government.

2.3 Taking a land management approach

a)   A theory of land uses

A clear and agreed approach that might be called "land management" does not exist. It probably never will because the core idea is to build systems to suit. For Asia, land management type approaches suggest we should examine *land use typologies* and build up tenure analysis from these, rather than impose tenure classifications from outside.

In developed countries, such as Britain, the land tenure arrangements are remarkably simple: the UK Analysis of Holdings, statistics break tenure down into "rented" and "owned". The UK database modules for the OECD CEEC/INIS Agricultural Database includes as its final and Ninth Module "**Structure of Agricultural Holdings**". For Asia, this dichotomous approach is simply too unsophisticated, even if the predominance of informal land holdings and associated practices is recognised. Pending development of tenure categories, land use categories provide essential information about agricultural land without raising issues about tenure: the UK categories might provide a start, with plantations, rice fields and other APR uses added:

> Bare fallow
> Tillage – (broken down into length of time)
> Grass
> Arable land (tillage and grasses under 5 years old)

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Tillage and grass (excluding rough grazing)

Rough grazing sole rights

Rough grazing collective rights

Woodland on agricultural holdings

Set-aside

All other land in agricultural holdings.

A lesson from observation of Asian practices is that "layering" of land uses is common, that is multiple, simultaneous and variable land uses are permitted by traditional systems, though not in national systems. Traditional layering includes access rights (by villagers and strangers), rights to fruit from trees, ownership of trees, taking sticks and fire wood, wood for houses, grazing small animals and spiritual ceremonial uses can all coexist. The parcel based approach familiar in the West provides a major problem of spatial representation of these arrangements within a formal system. What is needed is a systematic way to formalise uses, and consequentially access to and security of land that allows the flexibility to survive and prosper.

b)   The land management approach

According to the UN ECE (2000),

> "Land management is the process by which the resources of land are put to good effect. It covers all activities concerned with the management of land as a resource both from an environmental and from an economic perspective. It can include farming, mineral extraction, property and estate management, and the physical planning of towns and the countryside. It 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."

This definition is too formal for APR countries, though identification of the core ingredients of comprehensive sustainable management is invaluable. Keeping in mind the UN ECE model as an end state, the APR countries need to approach LAS at the earlier stages of deliver of civil peace and land security. Again, land management theory offers some guidance. Particularly, since 2000, land management theory has achieved flexibility, reflecting the greater interest in the informal systems used around the world: about one third of the people of the world use communal type tenures. An

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African land management approach relies on understanding how people relate to land, choosing those methods which can be "scaled up" and building on them, particularly by using flexible and sensitive rural land tenure maps (Lavigne Delville, 2005) capable of reflecting the traditional complexities. An Asian land management approach could adapt similar tools to include different characteristics of the people to land relationship, focusing on -

1   Determining the relationship between patterns of land holding and production and identify which tenures work best in local situations.

2   Understanding the relationships between farm organisation, labour resources, production and land in local situations.

3   Understanding and predict the impact of agricultural production reforms and land tenure reforms.

4   Understanding the pathology of and develop solutions for land disputes, particularly those generated by precipitated tenure changes, typically involved when land used for small holder farms is converted to plantation.

5   Understanding the contribution, through land taxes and other broad taxes, of rural land to the national economy and identify sources of funds to pay for reform.

6   Understanding emerging environmental problems and evolving solutions.

7   Assisting recovery from natural disasters (disease, fire, wind, flood, earthquake).

8   Providing information about conversion of peri-urban land from agricultural to urban use.

c)   *Scoping a project*

The scoping programs needs to be designed to suit the local context. The following activities are suggested as a beginning.

- Identify systems of allocation of land uses (tree cropping, fruit and forest product taking, annual cropping, swidden and sedentary practices, ancillary opportunities (fishing, charcoal production, animal production), remembering much of the access will be organised through labour arrangements, rather than land arrangements.
- Capture information about disputes handling and processing.
- Capture information about transaction processes, especially tracking the informal processes.
- Identify the kinds of paper and objective evidence regarded as reliable, including how non-residents are regarded as remaining in the "land holding" group.
- Especially, trace the processes of allocation through inheritance, marriage, and exclusion from the group as these will be more determinative of entitlement than sale of land or formal transactions.

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- Determine immediate and medium term threats (particularly forestry practices for most Asian farmers and indigenous people) and how these should be approached.

These processes are distant from formal titling systems, but unless the titling system is devised in the context of the local practices, the formal process will be thwarted. This will be so even if the costs of the proposed system are low and confidence in the system is high – which, unfortunately, are usually faint goals.

Within this process, tenure alternatives need to be devised on the basis of land management rather than immediate introduction of individual ownership, allowing transitional options or scaling up to convert informal to formal tenures. Scaling up approaches for high value, industrial, commercial, retail and residential land, taking them to standard tenures, can be incorporated.

d)   *Scaling up*

The processes involved in scaling up also need to be adapted. Affordable tenure strategies for the urban poor require innovative approaches. Likewise with the rural poor. A starting point is the international literature about tenure regularisation for urban slums. Graphic representation of some essential components of this approach was developed by HABITAT in the Pro Poor Land Management booklet (UN-HABITAT, 2004, p 14) in **Figure 1, Continuum of Rights in urban slums,** below. Comparison of this with the **Figure 2, Recognition of occupation of rural poor in APR**, below, helps illustrate the differences between urban and rural, and Asian and other situations. The record of LAPs in APR in using innovative approaches, even within standard technical designed projects, is growing though none of them adopt the scaling-up approach illustrated in **Figure 2**.

CONTINUUM OF RIGHTS

Legal or formal rights

Registered freehold

Leases

Group tenure

Adverse possession

Anti evictions

Occupancy

Customary

Perceived tenure approaches:
- Political statements
- Services without legal tenure

Illegal or informal rights
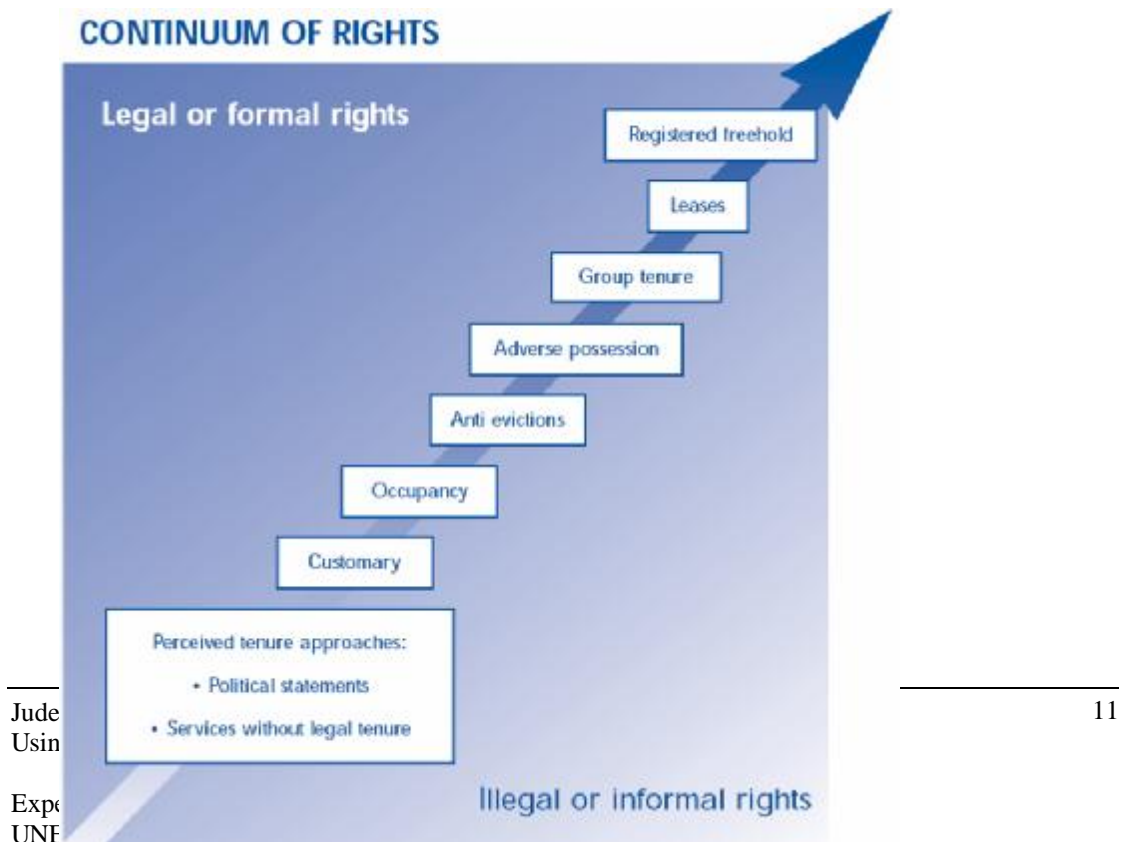
Figure 1. Continuum of rights for urban poor

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

Figure 2, Scaling up occupation of rural poor in APR

e)   Adapting the tools

Particularly after United Nations special session to review and appraise Habitat Agenda five years after Habitat II, held at Istanbul, June 2001, a body of literature and research material appeared in which "simplified registration procedures, collective or cooperative ownership, partnerships between formal and informal actors, collective tenure rights and protection against evictions are seen as essential steps in the (usually long) road to tenure regularization" (Steinberg, 2004).   Incorporating these innovations requires a pro-poor tools rather than market tools to be included in LAPs, along the lines in **Table 1, Developing pro-poor and market tools,** below.

Deliverable	Pro Poor Projects	Market Projects
Access to land	Socially derived system	Legally derived system
Sources of authority	Social system	Legal system

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Sources of protection	Social practices	Legal rights
Disputes	Local system and authority	National and highly formalized system
Formality levels	Low, secondary evidence	High
Starting point	Secure access	Secure rights
Evidence	Observable practice, oral	Formal documents and registration
Transition	Inheritance systems	Transaction systems
Boundary delineation	Observable and practical: levees, paths, marked trees	Formal systems: surveys and maps
System	Land management devices	Land administration system
Cognitive capacity	Socially internalized	Market understanding

Table1 : Developing pro poor tools and market tools

f)   Borrowing successful ideas

Developing transitional paths or scaling up processes from the pro-poor tools to market tools, and from informal to formally registered titles needs imagination and spontaneous identification of opportunities. Successful innovations from APR countries include:

Qualified titles. Malaysia uses a registration system capable of rapid application and extension by allowing certification qualified both as to title and as to survey. The system allows surveying qualifications to be removed systematically (but very slowly). Meanwhile, trading in qualified titles and using them as security is highly successful.

Occupancy protection.   Post conflict countries require immediate settlement decisions, verifying an existing situation, and allowing for later longer term solutions. The UNTAET administration in East Timor provides the most recent example (Fitzpatrick, 2001; 2002).

National land initiatives with consultation. Despite persistent suggestions for immediate and general solutions, (Marquardt and Unruh, 2002) Timor Leste has proceeded with deliberate slowness allowing space for much more consultation and engagement of local people.

*Housing bond*s: South Korea's use of housing bonds as part of the development process has provided funds for poor housing.

Ownership of buildings. Ownership of buildings was the first step of property rights in Timor Leste. In post conflict countries, this offers some immediate stabilisation. Separation of land and buildings in a property rights system is not recommended. Nor is running of dual land and building registers.

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Time limits for claims. Indonesian land registration regulations, on advice from Indonesian LAP, now include a time period for claims, allowing quiet possession to mature over time.

Land use certification. The nationalisation of land is common in APR, requiring land use rather than land right certification systems. While there is no scope here for detailed analysis of this form of ownership, treatment of land use certification as equivalent to land right certification for purposes of national markets is sensible. Land use certification has no deleterious long term land market impact, provided administration models are effective.

g)   Anticipating the problems

APR countries share the panoply of problems of poor nations generally. The regional problems include:

Land use planning. Very poor capacity to manage land use planning and land development is common. Most LAPs concentrate on delivery of land through titling, while the planning systems remain separate.

Chronic land disputes. In Vietnam, Indonesia major litigation and dispute is about land acquisition (taking), and payment of value. China is also showing the similar pathology. Land is acquired from farmers and reallocated to commercial or residential use with concomitant increase in value. Farmers receiving low end or even derisory compensation are unhappy with the arrogation of development rights and commodification of these rights into profit streams by the land taker or developer.

Separation of land and buildings. The separate treatment of land and buildings might make sense at an initial stage of normalisation as, for instance in Timor Leste's initial property law, but raises problems for any land administration system.

Informal land markets. Informalism in APR countries never disappears. Informal markets can be economically spectacular: witness Hanoi market where prices are "as high as Tokyo". But they lead lack of government engagement to capture transaction and other taxes.   APR registration programs fail particularly because informal practices survive without the ability for management of dual systems.

Oral transactions.   Land transactions in Asia are undertaken on good faith and familiarity not formalities and registration. In legal systems where oral transactions are normal (as in Indonesia), no registration program can reflect realites.

Inheritance. Programs of formalisation in APR are generally unable to coherently capture land changes on death.

Land hoarding. The fear of land hoarding leads to restrictions on land ownership by foreigners, corporations and controls on individuals and families. In countries with relatively poor administrative capacity, these are ineffectual and create opportunities for informed land grabbers (Lohmann, 2002; Leonard and Ayutthaya, 2003). For economists they represent a point of tension between market ideals and government intervention. The balance of national opinion in APR countries is squarely in favour of more and better restrictions, not less.

Confusion of land administration initiatives with land reform. Even the most conservatively and technically designed LAP has political consequences and is

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difficult enough. Using LAPs to run land reform initiatives is much more difficult (Prosterman and Hanstad, 2000b).

CONCLUSIONS

Land administration as a discipline is capable of providing much more flexible answers to questions of how a nation should manage its rural land. The LAP experiences of the previous twenty years have produced examples of remarkably good results. Meanwhile, the discipline experts have grown more comfortable with building projects to fit the beneficiaries' needs. Adjusting programs for APR countries is far from easy, because their contexts challenge the individuation of land and demand sensitivities to communal, traditional, and highly unusual patterns of land use and access. The newer tools of land management and spatial identification provide options which will work. Thus far, no project has expressly been built around a land management approach. Perhaps none should be: a better solution is probably continuing the process of localisation of projects that is apparent in the modern approaches of the international agencies and building on land administration theory until we explain a clearer "scaling up" approach.

APPENDIX 1 NAIVE ASSUMPTIONS ABOUT DEVELOPMENT
A number of widespread, but not universal, assumptions underlying contemporary discourse about 'reception', 'transplants', or 'transposition' of law taken together constitute 'a naïve model of diffusion of law'. These assumptions are that:

(a) there was an *identifiable exporter and importer*;
(b) the standard case of a reception is export-import between *countries*;
(c) the typical process of reception involves a *direct one-way transfer* from country A to country B;
(d) reception involves *formal* enactment or adoption;
(e) the main *objects* of a reception are legal rules and concepts;
(f) the main *agents* of export and import are *governments*;
(g) reception occurs *at a particular moment of time*;
(h) the standard case is export by a *civil law or common law 'parent'* legal system to a less developed *dependent (e.g. colonial) or adolescent (e.g. 'transitional')* legal system;
(i) the object of reception *retains its identity without significant change* after the date of reception;
(j) the received law either *fills a legal vacuum or replaces* prior (typically outdated or traditional) law;
(k) most instances of reception are *technical* rather than political, typically involving 'lawyers' law';
(l) each reception either 'works' or 'fails'.

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This paper argues that, if one adopts a global perspective and
a broad conception of law, each of the twelve elements in this
model can be shown to be neither necessary nor even
characteristic attributes of the processes of diffusion of law.
This represents a first step towards renewing a conversation
with the social science literatures on diffusion.

<div align="right">(Twining, 2004, abstract)</div>

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