

LAND TITLING EXPERIENCE IN ASIA

by

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Abstract

Drawing on over 12 years experience on large land titling projects in Asia, and a knowledge of activity in other parts of the world, the authors set out an overview of trends in land titling. These trends include:

- an increased interest in land titling;
- an increasing number of agencies involved in land titling initiatives;
- an increasing tension between long term and short term issues;
- an increasingly complex policy environment for projects;
- the exploration of alternative project arrangements.

The increased interest in land titling has to be viewed in the light of recent project experience, where projects have failed to achieve targets more often than they have succeeded.

The authors distil the experience and lessons learnt into BHP's Ten Pillars of Land Titling:

- land titling is a means to an end, not an end in itself;
- land titling needs commitment to national reform;
- land titling is about people not technology;
- land titling is more than a project, it is a way of life;
- technology provides the tools not the standards;
- successful land titling requires strong public support;
- get the runs on the board quickly;
- work from the part to the whole in developing land law;
- land titling requires a production orientation;
- an appropriate reward system for field staff is essential.

There is no question that an increasing number of projects will be implemented throughout the world over the next few decades. These projects will follow a number of patterns and achieve a range of outcomes. In the developed world most agencies responsible for land administration have undergone or are undergoing downsizing. This rationalisation in the developed world is already having an impact on the pool of expertise that can be applied to land titling initiatives in the developing world. Service providers and funding agencies are therefore going to have to approach the task in a different manner, or risk being left behind. A key element in this adaptation is learning from our past experience and the authors hope that, in this paper, they have contributed to this collective learning process.

1. Introduction

1.1 Overview of BHP Experience

BHP first became directly involved in land titling in late 1984 when, in association with four other Australian companies, it was awarded the contract to provide technical assistance for the first phase of the Thailand Land Titling Project (TLTP). BHP has seen this project, regarded as the largest and most successful of its kind, move from initial start-up to maturity. BHP has been project manager of the technical assistance program of the Indonesia Land Administration Project (ILAP) since that project commenced in 1994. BHP is also managing pilot activities in the Lao People's Democratic Republic in preparation for the planned implementation of a Lao PDR Land Titling Project (LLTP) in early 1997.

In the past decade BHP has been involved in land administration projects in Papua New Guinea, the Philippines, Fiji and Kazakhstan and has also been active in the development of land titling proposals in Russia, India, Venezuela and Bolivia. BHP is thus very familiar with international developments and has an understanding of land titling initiatives in many parts of the world.

This paper has been prepared to document BHP's land titling experience, particularly the large scale, operational experience in Asia.

1.2 Recent Land Titling Activity

Countries where titling activities have been undertaken this century range across the full political spectrum, from one party states in Cuba, Tanzania and Mexico, military regimes such as Peru and Argentina, to capitalist states such as Kenya and Thailand. Countries also cover the full development spectrum, from the poorest countries such as Malawi through to developed countries such as Japan and Taiwan. While these projects generally have common social and economic rationales, the lack of a consistent set of objectives and policies makes comparison and evaluation of the collective experience very difficult.

The World Bank has been active in a number of land titling initiatives, usually as a component of agricultural development projects, and in 1992 Wachter and English published an internal review of this experience. This review arrived at a final sample of 12 operations, with Bank approval dating from 1971 to 1984. In the sample was one project in Bolivia, five in Brazil, one in Colombia, one in India, one in Malawi, one in the Philippines and two in Thailand (including the Thailand Land Titling Project). They concluded that it '... is clear from the above review that of all of the discussed land titling projects or project components very few could be considered successful. Besides the Thailand Land Titling Project, the Brazil Agricultural Development and Environmental Protection Project and the Piaui Rural Development Project may be considered partly successful, while in the other projects various problems seriously hampered project performance. These problems cannot be neatly compartmentalized, but may be grouped into a number of somewhat overlapping categories:

- (a) an overall lack of political support;
- (b) conflicting bureaucratic priorities and/or infighting;
- (c) lack of institutional capacity or an unwillingness to commit adequate resources; and

- (d) *underestimation in the preparation phase of the complexity and/or cost of the tasks to be carried out, or other design weaknesses.'*

1.3 Structure for the Design of Land Titling Projects

Land titling is a policy intervention to introduce systems to formally recognise rights in land and enable the state and individuals to trade in these rights. These are central concerns in any society. Any intervention to improve systems to formally recognise rights in land must of necessity be underpinned by considerations of policy, the legislative framework, local administration, sociology and institutional strengthening, in addition to the technology needed to support the activity.

One of the reasons for the lack of success in many land titling initiatives has been the failure to recognise that the design of a project is an iterative process which needs to address issues at various levels. Based on our experience, we feel that there are three levels that need to be considered:

- **issues that directly relate to the intervention** - such as demographics and patterns of land use, current market activity in the trade of land rights (both formal and informal), institutional development, human resources, technology, the specification and costing of the resources necessary to support the intervention.
- **issues that relate to the immediate project environment** - such as land policy, the legislative framework, government institutions and their roles and responsibilities, systems for local administration, priorities and emphases of likely funding agencies.
- **issues that relate to the wider project environment** - such as linkages to other development activity, the wider development objectives of funding agencies in the country, interests in the wider community and community groups such as indigenous people, and the development objectives of special interest groups such as local and international non government organisations (NGOs).

2. Brief Summary of Recent Experience

It is not the intention of the authors to document in detail recent project experience. The TLTP in particular has a long history and has been the subject of numerous papers. Separate papers on TLTP and ILAP are also presented at this conference (Attakorn, Eddington and McFadzean (1996) and Walijatun and Grant (1996) respectively). However, it is helpful to briefly detail the land titling initiatives in Thailand, Indonesia and Lao PDR to put the lessons learnt into perspective.

2.1 Thailand Land Titling Project

The TLTP is a 20 year program begun by the Royal Thai Government (RTG) in late 1984, with the objectives of:

- the acceleration of the issuance of title deeds to eligible land holders;
- the improvement of land administration systems, both in Bangkok and in the provinces;
- the production of cadastral mapping in both urban and rural areas;
- the improvement in the efficiency of the Central Valuation Authority in the valuation of land and buildings.

The TLTP was planned in four phases. TLTP I (1984-1990), TLTP II (1990-1994) and TLTP III (1994-1999) have all been funded by RTG counterpart funding, loans from the World Bank and grant assistance from AusAID.¹ The project will enter its thirteenth year on 1 October 1996 and thus has a significant track record.

In 1982 the population of Thailand was estimated at 48 million. The total area of the country is about 513,120 square kilometres, with about 37% legally classified as private land, a significant proportion of which was undocumented in the early 1980s.

In 1984 the majority of the Thai labour force was in the agricultural sector. During the period from 1960 to 1975 the average annual growth in agricultural production was 5%, achieved mainly through an expansion in 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 Land Code of 1954 provided a strong legal basis for administering rights in land, although recent land laws and changes in policy have complicated the situation (principally the forest laws of the 1960s and the land reform laws of the 1970s). Private rights in land were administered by the Department of Lands (DOL). In 1984 the DOL had over 700 offices throughout the country and over 10,000 staff, with nearly 8,000 having tertiary qualifications. The project thus had a strong legal, institutional and human resources base on which to build.

A major difficulty that inhibited the issuance of land titles to eligible land holders was the lack of a suitable survey and map infrastructure throughout the country. It was estimated that DOL would require some 200 years to distribute title deeds to all eligible land holders with the resources and procedures available in the early 1980s. In the major urban areas, particularly Bangkok, the DOL did not have mapping at a suitable scale to support existing, well-developed land registration procedures.

In TLTP I there was a significant emphasis in the technical areas in an effort to address the identified weaknesses. Although it was recognised that the existing legal framework was strong, some changes were required (mainly a simplified certification procedure and the introduction of an office process to convert certificates of utilisation to title deeds).

Over the 12 years that the project has been implemented there has been a shift in the focus of the project itself and the technical assistance program, from the support of key technical areas, into more fundamental areas such as the preparation and implementation of strategic planning, IT planning, human resources development and planning and more recently, the introduction of re-engineering programs to improve DOL service to the public and Government within an overall environment of declining staffing levels (see Attakorn, Eddington and McFadzean, 1996).

The TLTP has largely met or exceeded the targets that have been set down. The TLTP production of title deeds is summarised in Figure 1 and the unit cost of title deeds in Figure 2. The unit costs set out in Figure 2 are based on the total real costs recorded against the activity by the project office and include all operational costs and procurement (including the substantial cost of aerial photography). These costs do not include the salary costs of official staff. In 1995 it is estimated that the unit salary cost per title deed was about 250 baht (about US\$10).

There has been a significant increase in the 1996 project output, due in large part to new arrangements for the management of the field teams. It is anticipated that this level of annual output will be required in order to achieve the completion of the project in the planned 20 year period.

¹ The Australian Agency for International Development, previously AIDAB, the Australian International Development Assistance Bureau.

Over the period of the project there has been a significant increase in Government revenue collected by the DOL (see Figure 3). This has been one factor that has contributed to the strong support for the TLTP from policy makers, despite several major changes in administration over the 12 years of the project.

The current issues faced by the DOL include:

- increasing difficulties with land classification (particularly between land classed as forests and land reform areas)
- serious human resource constraints, having to service an expanding land office network, offer improved service and meet increased project targets.

2.2 Indonesian Land Administration Project

With GDP growth in Indonesia averaging more than 6% over the last 25 years, land use patterns are changing rapidly. 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. The Government of Indonesia (GOI) has initiated various measures to improve its capability for land management and planning. Included in these is the Indonesian Land Administration Project.

ILAP is a 25 year program begun in October 1994. The project consists of three parts:

- Part A: acceleration of Land Titling and Registration;
- Part B: improvement of the institutional framework for land titling and registration;
- Part C: development of land management policies.

The first five year phase is being co-financed by a World Bank loan, counterpart funding by the GOI and a grant for technical assistance by AusAID. Responsibility for implementation is with Badan Pertanahan Nasional (BPN), or the National Land Agency. BPN is an agency of 26,000 staff operating from over 300 land offices throughout Indonesia.

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. The enactment of the Basic Agrarian Law (BAL) in 1960 ended this situation, and the review of regulations which were promulgated under this Law are a priority in Part B of ILAP. Recognition of customary rights is an important element of this review and the project is funding more than one study into the status of customary land law.

Indonesia is the largest archipelago in the world with an area of some 1.9 million square kilometres and a population of about 200 million people. There are estimated to be 55 million parcels of land in Indonesia with only 17 million registered. With the number of parcels growing by some one million each year the task of registration would never be accomplished without some remedial action. One of the objectives of ILAP is to accelerate registration by introducing a process of systematic adjudication and registration of rights over the country. In the first phase the target is a relatively modest 1.2 million parcels with the target increasing as the technical, legal and institutional framework is established for subsequent phases.

The design of ILAP has drawn on the experience of the TLTP. The first phase provides for two pilot projects to test the systematic adjudication procedures and the regulatory framework which supports their implementation. These pilots have been successfully completed and provided many lessons for

the full scale implementation which is now commencing. Apart from the operational experience with systematic techniques, the general lessons for implementation have been:

- enhanced community awareness must be given priority attention through improved Customer Relations and Service (CRS) programs;
- the socio-cultural impact of the project on the community must be continually assessed rather than studied on a before and after basis over time;
- flexibility in project implementation must be maintained by use of Ministerial regulations rather than more formal laws and regulations;
- private sector resources are essential to meet the cadastral survey activities of ILAP;
- resources required for project management support (planning, budgeting and general mobilisation) have been underestimated.

A feature of the early stages is the extent to which NGO groups, both local and international, have focused attention on the project. Surprisingly there has been strong criticism arising from the experimental work done in the first of the two pilot projects, which reflects a disagreement with the rationale for land titling.

2.3 Lao PDR Land Titling Project

The constitution of the Lao PDR (1991) recognises land use rights, and by decree these rights may be transferred and mortgaged. Since Lao PDR was formed in 1975, after the struggle for independence, there has been very 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. This process commenced in 1986. 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. There is not yet a land law, but water, forest and land laws have been drafted during the first half of 1996. The first national conference on land titling was held in July 1996, with resolutions to begin the issuing of land titles and to establish a high level committee on land management and land and forest allocation.

Land administration functions are largely decentralised to the provincial level. The provincial offices of finance are responsible for operations related to the land administration functions of land registration, cadastral surveying, land adjudication, land valuation, land taxation and state land management. The central government's Ministry of Finance is responsible for regulating these functions, monitoring performance and supporting the provinces to implement change. A key issue is that the number of staff assigned at the Central level is less than 40 and few have education or training in land administration. The National Geographic Department of the Prime Minister's Office is responsible for the geodetic datum and national mapping.

The LLTP has the objective of providing secure land use rights and developing a land valuation capacity. It will begin disbursements in January 1997 and the first project is funded through a World Bank loan (7 years) and an AusAID grant (5 years). The LLTP has been preceded by a Pilot Land Titling Project (the 'Pilot') that commenced in July 1995 to prepare the institutions and staff for the LLTP and to demonstrate a successful approach to overcoming the obstacles to land titling in Lao PDR.

The real obstacles have been more clearly seen and appreciated by the implementing agencies through the Pilot. 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.

In 1994 the Government undertook a test in systematic land registration which only realised a rate of 10% of actual land parcels being registered. The Pilot learned from this test and the experience from other land titling projects, to design and implement a systematic registration pilot. Making effective use of the existing Government staff and through the participation of local people and village leaders, using appropriate technology, training on standard procedures, and the support from a technical assistance team, a success rate of 85% was achieved within five villages in Municipal Vientiane. This has given the Government the confidence in the approach as a basis for the main LLTP, and has ensured the determination of a realistic pace for implementation. It is planned that over the seven years of the LLTP some 250,000 land titles will be issued. Most importantly, a complete legal and operational framework for land registration will be established, land administration practitioners within the public, private and education sectors will be given education opportunities and job specific and general skills development, and a sound basis for land related revenue collection will be created, particularly in urban areas.

2.4 Summary of Project Experience

A key point emerging from our experience is that the design of the TLTP was largely confined the first level of issues set out previously. The main reason for this was, at the time, Thailand had good land law, reasonably clear land policies, and importantly, a single national agency responsible for land administration. However, in the later stages of the project issues from the other levels, such as land policy and overlapping roles and responsibilities have become critical and will have to be addressed in the design of TLTP IV.

On both ILAP and the LLTP all three levels of issues have needed to be addressed. Pilot land titling projects on these two projects have played a key role in building a systematic land titling capability.

3. Trends in Land Titling

3.1 Increasing Interest in the Developing World

There is an increasing interest in land titling projects, reflected in an increased number of land titling projects. The World Bank alone has in excess of 30 projects at various stages of development in its project pipeline.

Of more significance is the increasing interest at a policy level amongst governments throughout the world. As de Soto (1993) notes, only about 25 countries throughout the world have systems in which property (not simply land) is recognised by law and have market systems where rights in this property 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.

3.2 Increasing Number of Funding Agencies

Ten years ago the World Bank was virtually the only multilateral funding agency supporting land titling activity. In the past decade there has been a marked increase in interest in land titling activity by other funding agencies. The Asian Development Bank has at least two projects (Bangladesh and Vietnam), and the Inter American Development Bank has a significant and growing program in Latin America.

Bilateral agencies have also been particularly active, with AusAID, USAID, CIDA, ODA, SIDA and JICA funding or considering funding land titling activity.

UN agencies are also active in supporting land titling activity, particularly the UNDP and FAO. However, this interest has tended to concentrate in the preparatory stage rather than implementation stage of land titling projects. It has also focussed on the development of policy with, for example, the resolutions made at the recent UN Habitat II Conference in Istanbul in June 1996, or the recent paper by FAO on gender and land tenure (see du Guerny and Topouzis, 1996).

Even NGOs have been active in supporting land titling initiatives. A quick review on the Internet indicates NGO land titling activity in Peru,² Nicaragua,³ El Salvador,⁴ and Guatemala.⁵ Most of these initiatives are small and many have an underlying objective of protecting the interests of indigenous groups and the environment, but this activity is an indication of the broadening range of players involved in land titling.

3.3 Increasing Tension Between Long Term and Short Term Issues

Traditionally, land titling projects have been designed over reasonably long time frames. The TLTP is being undertaken over a 20 year time frame and ILAP has been designed over a 25 year time frame. In many respects these time frames reflect the need for formal, participative, legal/administrative processes to evolve and become sustainable. However the long time frames can also create tension amongst policy makers anxious to achieve results.

In 1992 the RTG funded from its own budget a 'Four Year Project' to undertake land titling activity in areas of Thailand that were not planned for titling activity until TLTP IV (after 1999). This additional activity was assigned to the DOL and placed an additional constraint on the allocation of the limited resources available in the Department. The Four Year Project resulted largely in response to impatience from some politicians with the long time frame set down for the TLTP.

In Indonesia a similar desire for the benefits of land titling, sooner rather than later, is being met by implementing the methods developed for ILAP in a series of smaller initiatives in land offices outside the designed project area. While this reflects a commitment to the objectives of land titling it can place further strain on the already stretched resources.

In many countries undergoing more radical social and economic change, there is even less tolerance from the policy makers to delayed output. In the early 1990s President Yeltsin issued a series of Presidential Decrees that established the basis for private rights in land in the Russian Federation and required that registers of these rights be established throughout the country in two years.

² The Center for Cultural Survival's activities among the Urarina peoples in northeast Peru, Institute for Liberty and Democracy (ILD) activity in Lima, Conservation International work in Tambopata.

³ The Center for Cultural Survival's activities among the Sumo Indians of Awasi Tingi.

⁴ ILD activity in urban areas.

⁵ Mennonite Central Committee work with the K'ekchi indigenous group.

3.4 Increasingly Complex Policy Environment

The development of the policies needed to support land titling can be a difficult task, with many complications. These include:

- inconsistencies in development and investment priorities;
- a lack of appreciation of the importance of focussing on policy development compared to more tangible infrastructure development;⁶
- vested interests;
- bureaucratic inertia and ill-defined political will.

The policy environment for land titling projects is becoming more complex, and a range of issues must now be addressed if a project is to pass through a Multilateral or Bilateral funding agency's approval process. These include, impact on gender, impact on the environment, re-settlement requirements and impact on indigenous groups.

An indication of this increasing complexity can be gauged by studying gender issues in World Bank Staff Appraisal Reports (SAR). On the TLTP, gender issues warranted one paragraph in all three SARs so far. They all contain the statement '*Because women already play an active role in land transactions when they do have title, no special effort would be needed to ensure their participation in the project.*' On the other hand one page was devoted to gender issues in the 1994 SAR for ILAP, and the draft SAR for the LLTP sets out strategies to ensure that the existing rights of women, which are very equitable, are protected as the project is implemented.

There has also been an increasingly vocal group of special interest groups that have an active interest in the over-sight of multilateral and bilateral land titling projects. A quick search of the Internet reveals: a report by an NGO called FOCUS of an inspection of the Lao PDR proposal for land titling in September 1995; activity by the Rainforest Action Network to support the Macuxi indigenous group in Brazil and also in support of the Consejo Aguaruna and Huambisa communities in Peru and Ecuador; activity by the Center for Cultural Survival and the National Resources Defense Council in the Amazon basin in Ecuador; and very active correspondence against the World Bank funded Rondian Natural Resources Management Project in Brazil.

ILAP is also under close NGO scrutiny, with an umbrella NGO organisation called KPA seeking an active role in the design, implementation and monitoring of the project. KPA has been very active in lobbying the international NGO community, the World Bank and AusAID and has made use of the media in Indonesia.

3.5 Increasing Interest in Alternative Intervention Arrangements

Project approval is time consuming and from time to time the prospect of funding outside the established bilateral and multilateral channels has arisen. In discussions with authorities in various countries over the past decade the possibility of alternate sources of funding has sometimes arisen. A commercial return on land set aside for foreign investment, or a levy on land registration fees are two examples of alternative funding schemes.

⁶ the Economist of May 25 1996, page 16 states 'recent studies now show that market friendly policies work best: secure property rights, reliable enforcement of contracts, a liberal trade regime, low taxes and public spending, ... the key to economic growth is granting producers and consumers the economic freedom to face and respond to incentives.'

One organisation that has been exploring alternative funding for land titling initiatives is the Instituto Libertad y Democracia (ILD) in Peru. This organisation has sought to implement land titling by formalising, at the community level, the informal land market. ILD has explored various models of private involvement/funding to support these initiatives and has been active in Peru and El Salvador.

4. Lessons - BHP's Ten Pillars of Land Titling

BHP has distilled the lessons learnt from experience into what it calls BHP's Ten Pillars Of Land Titling.⁷ These Pillars are set out in the following sections.

4.1 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, in some but not all cases, 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. In short an environment for effective and equitable national development.

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.

4.2 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.

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 with the pressures of development. The environment in developing countries is invariably one in which land is an increasingly scarce resource; where it is perceived to be unevenly distributed (too much owned by too few); 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.

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, in the case of ILAP, criticism from special interest groups such as NGOs. Unless the commitment to national reform of land administration systems is clearly articulated at the policy level, supported by law and sensitively implemented, the pressure applied by such groups can have an adverse impact on public confidence in the land titling process. A principle area of concern is the transition between recognition of traditional rights to land and those rights which are supported by land titling.

A fundamental policy is the requirement necessary to establish a right to land, and in particular the balance between long term peaceful occupation and a right on the basis of documentary evidence. In Indonesia there has been an historical requirement for documentary proof, but this is recognised as

⁷ With due apologies to T E Lawrence.

unreasonable in many situations, particularly in cases where occupants are less educated. In many cases rights are now linked to continued personal use, or use by a predecessor. Recent changes in regulations provide for documentary evidence in the form of a declaration from reliable witnesses as to the claimants right to land and acceptance of that right by the community. The approach in Thailand is a more pragmatic one and the Land Code⁸ states *'in the absence of such notice of possession, that person shall still be deemed to desire to acquire the rights to such land if he or his representative escorts the official to make the cadastral survey on the day and at the time specified by the official.'*⁹ Both these approaches place strong reliance on the participation by the community in the systematic adjudication process.

At the institutional level the environment is invariably one of overlapping responsibilities and duplication. In Indonesia at least seven agencies in addition to BPN have been identified as having some land related function. In Thailand the disputes between DOL and the Royal Forest Department over jurisdictional boundaries have effectively quarantined large areas from land titling - much of which has been peacefully settled for several generations. 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 being undertaken to examine 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 BPN, 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.

4.3 Land Titling is About People Not Technology.

The application of technology is attractive to developing countries seeking to address land administration problems and many development assistance programs are based on the application of ready made technological solutions. It is tempting for example to apply information technology to the 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. This is certainly the case in Lao PDR, where the total staff involved in land administration throughout the country at all levels of Government is 601, with very few having any training or education in land administration. The initial emphasis must therefore be on expanding this skill base, with a particular emphasis on the development of future leaders.

At the start of the project in Thailand, the DOL did not have a division responsible for training. The project itself did not provide assistance directly in this area until the second phase and then only on a limited basis. Considerable technological change was successfully introduced to the surveying and mapping activities needed to accelerate the issuance of titles. Overseas training was built around the traditional surveying course offered by Universities with courses in geodetic science being a favourite. The local university course for survey engineers was modified to include cadastral studies for land titling, but the bulk of the students sponsored by the project went straight into the private sector. The experience showed clearly that land titling was not sustainable unless the technological changes

⁸ Section 27 (tri)

⁹ With the adjudication process being conducted in a public manner, with local officials as witnesses and the adjudication results being publicly displayed and subject to appeal.

introduced in the early development stages was matched by development of the people who must ultimately manage this technological change.

In ILAP the experience has been applied and a high priority has been given to human resources development (HRD). The scholarships for overseas study (40 masters degrees) emphasise development of management skills and the majority of staff are attending a course especially tailored to meet the land administration needs of a developing country (see Forster, Trinder and Nettle, 1996) rather than one selected from the traditional offerings. Training in management and administration disciplines may appear less attractive in developing communities, but these skills are always in short supply in large undertakings like land titling.

Very few agencies responsible for land titling today would not have some form of program to train staff. Experience suggests this is rarely the same as a program of human resource development. The former is often aimed at meeting course targets; the latter is about matching staff resources to organisational needs. The implication of course, is that the organisational needs are clear, but since land titling is concerned with changing the organisation, this is rarely the case.

However, land titling is more than formal training of people to implement the new systems developed or equipping them with new technological tools. Because of the nature of the work itself, people are displaced from their normal employment environment and this often takes them outside the traditional career and reward systems. They may also be regarded with some scepticism by their peers because of the changes which land titling introduces into the organisation. The systematic registration of land rights is a labour intensive activity requiring deployment of large numbers of trained staff throughout the country. Alternative policies for deployment of staff which minimise disruption and provide appropriate levels of recognition for participation in the program cannot be over-emphasised.

4.4 Land Titling is More than a Project, it is a Way of Life.

In our experience in Thailand, Indonesia and Lao PDR, the responsibility for land registration and administration was clear. While there are overlaps in responsibility and some duplication amongst agencies having land related functions (such as forestry in Thailand, local government and agriculture in Indonesia) the agency responsible for implementing land titling was essentially clear. Thus the competition for functional responsibility within the bureaucracy, which is a factor in other jurisdictions (Kazakhstan for example) is not an issue. Nevertheless the internal agency issues are significant in themselves.

Agencies responsible for land administration are usually large, hierarchical, regulated and generally conservative organisations. DOL (Thailand) and BPN (Indonesia) have in excess of 13,000 and 26,000 staff respectively who, in both cases, are widely distributed in land offices throughout the country. For historical and geographical reasons they are slow to change.

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 project with specific aims and a dedicated budget over a finite period of time. Notwithstanding the size and scope of the work (it is estimated that ILAP will consume 10-15% of BPN's total resources once it is fully operational) land titling is considered to be a temporary activity and staff are accordingly assigned on a part time basis. Attention to land titling can therefore be distracted by the demands of routine work and other development projects. More than that, assignment to land titling can be regarded by staff as being taken 'off-line' in the organisation, and outside the normal promotional and incentive stream.

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 objectives are achieved or the time/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 land administration agency.

By way of example, the systematic registration procedures which drives land titling is a not only a new process in itself, but it will result in a change in the work patterns of the agency after it is completed. The profile of routine work will shift from first registration of rights to land (now undertaken by sporadic registration) to one in which right holders seek to exercise their rights through subsequent dealings (transfers, subdivisions, mortgages, etc) on a transaction basis. In Thailand this shift was accompanied by a significant increase in demand for service with a corresponding increase in the workload of land office staff. In anticipation of this in ILAP the responsibility for systematic operations, and the integration of the related activities into the land office, is being assigned to the respective land offices from the outset.

Maintaining the necessary contacts and information flows throughout the period of adjudication (and registration) is time consuming but very essential. The private sector can be very important to the success of the project, and often becomes a recipient of technology transfer as part of the change process. For example, in LLTP some 60% of staff planned for deployment on the 19 systematic adjudication teams will be from the private sector. In ILAP all cadastral surveying will be undertaken by the private sector thereby effectively creating a completely new component in Indonesia's surveying industry. Most of these staff will be taking on new jobs which will therefore require extensive training.

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.

4.5 Technology Provides the Tools Not the Standards.

The authors have seen many examples where technocrats have attempted to set the standard rather than provide the tools necessary to meet the requirement set down by policy. Examples include the specification of coordinates to four decimal places of a metre, and the specification of particular software tools in Government regulations.

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. One of the major objectives of the TLTP has been the production of a new series of large scale cadastral maps in urban areas. These maps over Bangkok are now complete and in use, however the new maps were not introduced without difficulty. One of the main indices in a land office is the map parcel number and new maps meant new indices. The previous system was servicing the demands of the office without the new maps. Most urban land offices are under-staffed and very busy, and initially no funds or additional resources were allocated to the introduction of the new maps. It is not surprising that until funds and resources were provided, the new maps were little used in the land offices.

High technology equipment such as satellite positioning systems, automated mapping systems and analytical stereoplotters has 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.

4.6 Successful Land Titling Requires Strong Public 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 public support.

In Thailand, Indonesia and Lao PDR 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, and the results of the adjudication are publicly displayed. Formal public ceremonies are held to distribute certificates to the community.

The authors have not experienced any country where the community does not look to the authorities to resolve issues concerning rights to land. However, in many cases it is necessary for the Government to actively convince the general public of the benefit of participating in the land titling program. In the first pilot in Indonesia, a few land holders refused to participate, one reputedly stating he did not trust anything from the Government which was so cheap! This reflects the general lack of knowledge in the community, due in large part to BPN's history of not being able to provide efficient, low cost services to the general public.

In this situation an active program of Customer Relations and Services is required. This program needs 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 general public.

The Government also needs to be sure that any impediments or disincentives to public participation are avoided. The fee system is a major incentive and needs to be simple and low. In Thailand the fee is about 100 baht (US\$4) per title deed and is collected on distribution of the certificates, so that participation in the field adjudication is not hampered by the need to collect fees. It should be noted that this fee is lower than the cost of the service,¹⁰ so the Government is, in effect, providing a subsidy to land owners. In Indonesia the maximum fee has been set at 25,000 rupiah (US\$10) although it has been lower in practice. In Bolivia one proposal for the agrarian field adjudication process was to assess land use as part of the land titling activity and to subsequently revert any unused land to the State. This proposal is hardly likely to foster active participation by land holders.

4.7 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 or are insufficient. In these circumstances there will be many problems and many issues that have to be addressed. There will also be many different opinions on how this should be done.

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. This has been important in Lao PDR where the rights to land are complicated by such factors as the unclear rights to the land of Lao nationals who fled the country after the change of administration in 1975.

To get results quickly it is best to identify as clearly as possible what features of the land titling process are to be tested and to geographically confine the initial pilot activity.

¹⁰ See Figure 2.

One of the difficulties in the pilot program proposed by the Bolivian Government to address problems with agrarian tenure, was the fact that the pilot activity was spread over 15 areas throughout the country, including areas that were very inaccessible and areas over which the Government had limited jurisdiction.

4.8 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. Prior to the TLTP there were major problems in the cadastral control network as there was no single control network, but 29 local networks based on arbitrary datums, and each local network was built up by successive individual traverses. Unacceptable errors accumulated in these networks and these were only removed when the national UTM coordinate system was adopted as the overall framework and the cadastral control connected to this framework (working 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 and feedback sought from the participants.

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 (BAL) and the major regulations that underpin it, (particularly Government Regulation PP10/1961, which sets out the principles for the registration system and the systematic registration of rights in land).

In developing the pilots in ILAP, BPN had to work within the constraints of BAL and PP10/1961, 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.

In parallel with the first two pilots, over the first two years of the project, a large team was working to revise PP10/1961. This process involved substantial work within BPN, followed by inter-departmental seminars, before the draft regulation could be submitted to the Secretary of Cabinet, the step prior to authorisation by the President of the Republic. The lessons learnt in the pilot and the Ministerial Decrees assisted in the revision of PP10/1961.

A considerable delay in the project would have resulted had BPN waited for a revised PP10/1961, and the revision would have also been completed without the experience of the two pilot studies. Although the Ministerial Decree was prepared solely to support the pilot study in West Java, the improvements in the process are such that they are being applied to other projects elsewhere in Indonesia.

This process of a lower level instrument, pilot, 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, prepared specifically to support pilot activity in the Vientiane Prefecture. The decree is being revised for subsequent pilot land titling activity and will provide a practical basis to the development of higher level legislative instruments.

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.

4.9 Land Titling Requires a Production Orientation.

The processing of sporadic registration requests by individuals 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 (see Figure 4, for a diagram of the systematic process planned for LLTP). 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. A important factor in the marked increase in TLTP output in 1996 (see Figure 1) has been an increase in production targets. These increased targets have been supported by changed management arrangements, simplified certification and title distribution procedures, more temporary field staff, but with no significant change in the overall field process.

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.

4.10 An Appropriate Reward System for Field Staff is Essential.

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. At the start of the TLTP the field allowances were set at a level of approximately twice the base salaries and there was no trouble in attracting field staff. Over time the allowances have become less attractive, contributing to the current difficulties in staffing field teams.

It is important that field allowances are not too high or there can be an impact on the normal or routine activities in the agency.

In Indonesia, BPN has adopted an innovative approach to the field allowances. Allowances are budgeted on the basis of the appropriate Government daily rates, but using the production targets, these rates are converted to a rate per parcel. Field staff are then paid their allowances on the basis of output and this reinforces the production orientation. In Lao PDR the field adjudication staff working on the pilots receive an additional payment above their salary, based on two components: a daily allowance and a bonus per completed parcel. Office staff responsible for the first registration receive a bonus per parcel, without a daily allowance.

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. These factors can seriously impact on the land titling program and how it is perceived by land office staff, land holders and the general public.

5. Conclusions

There is a growing market for land titling services. However this market is becoming increasingly impatient with the traditional approach to land titling and particularly the time-frames that have been associated with land titling initiatives. At the same time, in the developed world, there has been a significant rationalisation in the provision of government services and most agencies that provide land administration services in the developed world have gone through, or are going through a process of down-sizing. This rationalisation in the developed world is already having an impact on the pool of expertise that can be applied to land titling initiatives in the developing world. This means that service providers and funding agencies are going to have to approach the task in a different manner, or risk being left behind. A key element in this adaptation is learning from our past experience and the authors hope that, in this paper, they have contributed to this collective learning process.

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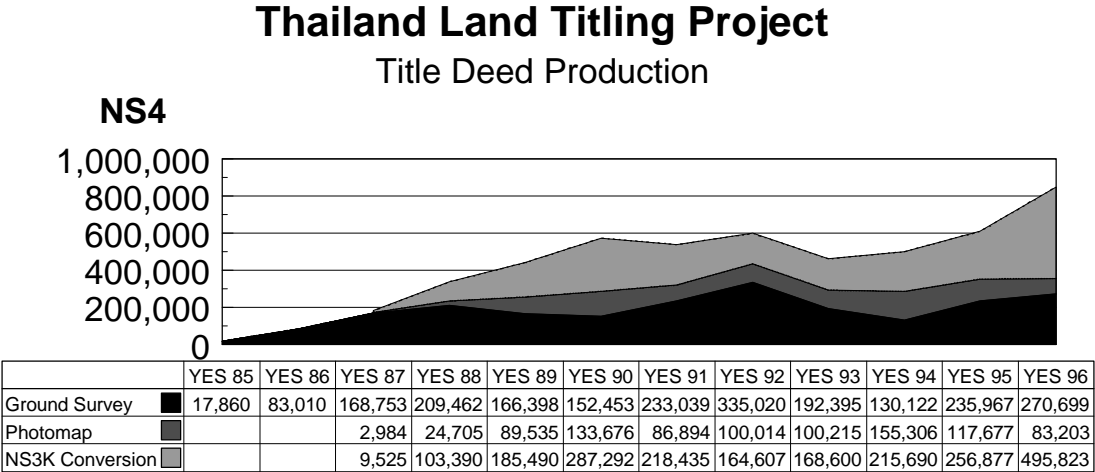
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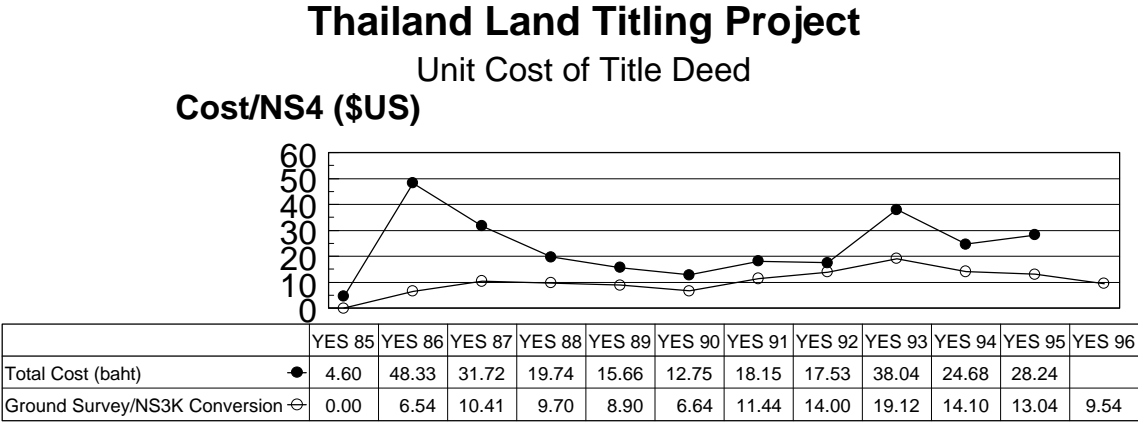
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Figure 1



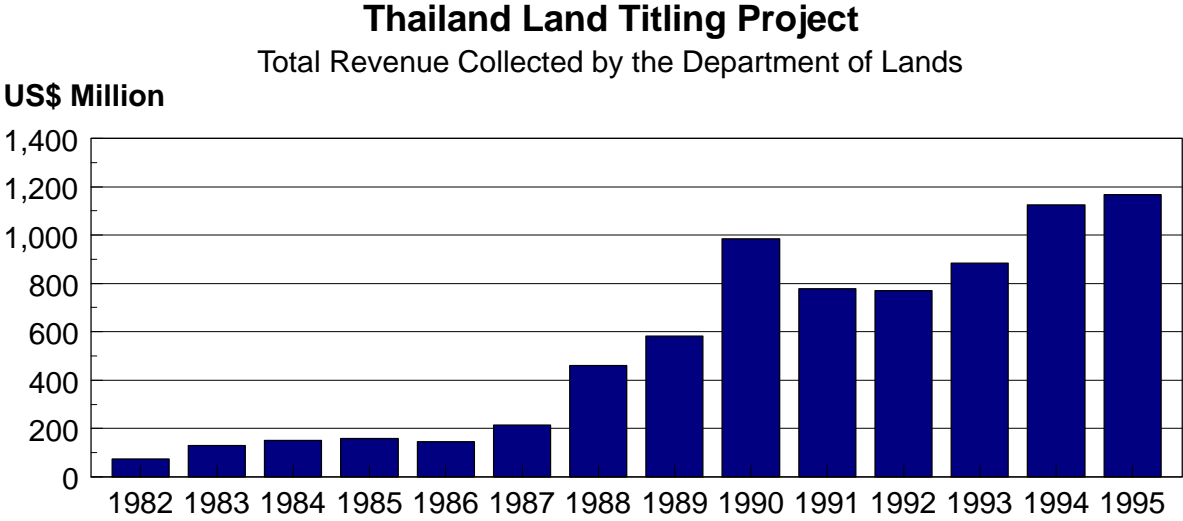
YES = Year ending September 30
 The figures for 1996 are to the end of August.

Figure 2



Converted to US\$ at US\$1 = 25 baht
 YES = Year ending September 30
 The 1996 figures are incomplete and preliminary

Figure 3



In 1995 the total cost of running the Department, including the cost of the project, was about US\$112.3 million.

Figure 4

Outline of Proposed Field Process - Lao PDR Land Titling Project

