

LESSONS LEARNT, CHALLENGES AND OPPORTUNITIES

Land Administration in the Asian Region

The degree of success of Land Administration projects in Asia varies. It is beneficial to take activities that have worked in one project and build them into others. Likewise, activities that have not worked need to be assessed to determine what benefits might emerge should they be made to work in another project. The author presents opportunities arising from lessons learnt in Asia.

Land administration is a series of processes and not an end in itself. It aims at more effective management of land resources, securing of people's property rights, economical and fair recording of transactions, and minimisation of social conflict over lands. Conventional approaches have been criticised and often characterised as inefficient and ineffective. This has been largely attributed to inter alia rigid and costly regulatory frameworks, poor land recording systems, overly complex legislation, and multiple regulatory agencies. These factors in turn worsen the problems. It is also claimed that conventional approaches are unable to effectively deal with the complexities of Land Administration Systems (LAS) that incorporate a country's socio-cultural, political, economic and historical fabric.

Achieving Aims

Innovative approaches are needed in the implementation of LASs, such as using them as a tool for improved land-policy development and linkages with socio-economic benefits. Although any application of LASs should be country-specific, case studies from the Asian region (Thailand, Lao PDR, the Philippines, Indonesia, India - Karnataka) highlight guiding principles for effective and efficient LASs: what works and what does not. The case studies have different geographical and socio-economic characteristics and represent diverse challenges and opportunities. Attempts to redress the inadequacies of legal frameworks comprise positive steps directed at improving the level of transparency, efficiency and equity with which individuals and societies have access to land and land governance. Generating and sustaining the support and commitment of key stakeholders within these new legal frameworks is necessary to ensure meeting the aims of improved security, taxation, access and use in land administration reform.

Response and Change

Since rights are often restricted to non-forest land, many Asian countries exclude indigenous populations. Asia has large and diverse forest areas, including one quarter of the world's tropical forests. In Thailand, the Philippines, Indonesia and Lao PDR land is classified into forest and non-forest land, which affects the definition of forest boundaries. Logging, plantations and agribusiness have resulted in deforestation and degradation. Also, the rights of indigenous communities are uncertain and/or unrecognised, intensifying pressure over the definition of forest boundaries. Defining forest boundaries and usage rights of forest-dwellers is complex in most countries, and a matter that has yet to be satisfactorily addressed on any land administration project. Policy and institutional and legal frameworks on forest protection remain far removed from reality on the ground. LASs may be generally characterised as being over-regulated and under-enforced, and therefore systems do not sufficiently adapt to the changing needs of society and a changing land-resources situation.

Minority Groups

Some countries exhibit dualism in Land Laws between colonial and customary rights. Indigenous rights are often very different from "western" individual rights. Typically, they cannot be adjudicated and mapped using the same approaches and techniques. The spatial conceptualisation of indigenous people often differs from western ideas; they lack current cartographic knowledge. The key is to develop a land-administration infrastructure that accommodates both forms of tenure. Although constitutionally most countries acknowledge all ethnic groups as being equal before the law, legislation protecting minority groups from exploitation is not always convincingly enforced (as in Karnataka, India). In practice, not all minority groups have equal access to means of production such as land. Many land-administration projects fail to address the issue of communal rights adequately, if at all.

Gender Equity

Women's access to land is a major issue that needs to be addressed in any land administration project. Often women's rights to land are protected through customary law and religious beliefs and laws. However, changes in socio-economic conditions and the introduction of legislation that provides formal legal rules and legitimacy of land-administration activities can create conflict between the old and the new, between customary and legislative systems. Gender issues have not received high priority on many land administration projects, and when they have this has been more as an afterthought. Women's rights should be protected not only through legislation but also through education and information-dissemination programmes, preferably developed at the outset of any project and supported through local women's groups. In most countries there are no restrictions on women having equal access to land rights; however, this information needs to be communicated.

Technology and Skills

An early failing was that a series of technical activities were delivered aimed at maximising the distribution of title certificates so that there would be an increase in recording of these certificates in a registration system. While this is important, it is simply the means employed to achieve land administration. Low levels of technology and staff skills are indeed critical issues. Coupled with this is the perception that lack of access to technology lies at the heart of most land-administration problems, whereas incorrectly conceived and applied technology is likely to be a problem rather than a solution. Underestimation of human-resource training and development programmes and expansion of programmes across the private sector is a critical technical issue. Most Asian countries continue to use lower levels of technology, in part because some high-technology measures have been tried, tested and have failed.

Systems are mainly paper-driven and generally decentralised. An exception is the Land Management and Administration Project in Cambodia, where digital orthophotography and GIS are applied for production of cadastral index maps and land certificates. In Thailand the level of technology is reasonably high, although the strength lies in the practicality, flexibility and robustness of the manual records systems. Indonesia and Lao PDR, like other countries in the region, are faced with human-resource constraints in both operation and technical support. In Indonesia internal reward systems have acted against the introduction of new technology in government and much use has been made of the private surveying sector. In Laos several approaches have been developed for the collection of survey data for land parcels. This has provided some flexibility for systematic survey staff, but limited technological expertise reduces overall effectiveness. In the Philippines dated technology and procedures hinder the use of new technology. There is a strong private survey sector and survey procedures are over-specified but under-regulated. India is now showing interest in modernisation. Two recent initiatives in Karnataka have been pilot projects to computerise Rights, Tenancy and Crop Inspection records and cadastral maps in some areas.

Decentralisation

The challenge is to ensure that the approach is sustainable. The focus needs to be on improving the efficiency of services and accuracy of the land register. Technology has a vital role to play but has to be looked at within the context of the overall objective of establishing LAS. Land administration is strongly influenced by the bureaucratic, social and cultural environment, and overlooking existing practice and capacity often leads to failures in adopting new technology. Of equal significance is review of existing manual procedures, leading to their simplification and streamlining.

Core land administration functions are the registration of rights in land, and survey and mapping of the extent of boundaries of these rights. Key to the efficiency of any LAS is the institutional structure. The LASs in Thailand, Indonesia, Karnataka, Lao PDR and the Philippines are all decentralised and operate through the various provincial/district land offices. Decentralisation facilitates user access, particularly public access to land administration services, and less supports the information needs of local authorities. A decentralised system relies on a central authority to establish policies, ensure quality of products and services, to provide or co-ordinate training and implement personnel policies.

Concluding Remarks

Emphasis should be on reforms through capacity building, strengthening of institutions, decentralisation of functions and education and training. Participation needs to be encouraged by generating ongoing commitment and support through making stakeholders aware of the benefits. Social issues need to be addressed so as to ensure the whole community benefits and problems such as forest areas and communal rights become part of mainstream activities. Technology must be pitched so that it is sustainable with ongoing in-country support. Finally, revenue must be addressed as part of effective, efficient and transparent LASs.

Further Reading

- Brits, A; Grant, C; Burns, T; Comparative Study on Land Administration Systems, Regional Workshop on Land Policy Issues, Phnom Penh, 4th to 6th June 2002.
- World Bank, Doing Business in 2005 – Removing Obstacles to Growth, World Bank, 22.11.2005.
- World Bank, Comparative Study of Land Administration Systems - Global Synthesis of Critical Issues and Future Challenges, February 2003.