

Expert Group Meeting: New legal frameworks and tools

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International Federation of Surveyors
Fédération Internationale des Géomètres
Internationale Vereinigung der Vermessungsingenieure
FIG COMMISSION 7
Cadastre & Land Management



United Nations University
"advancing knowledge for human security and development"

Using remedies to secure access to land: regularising occupation

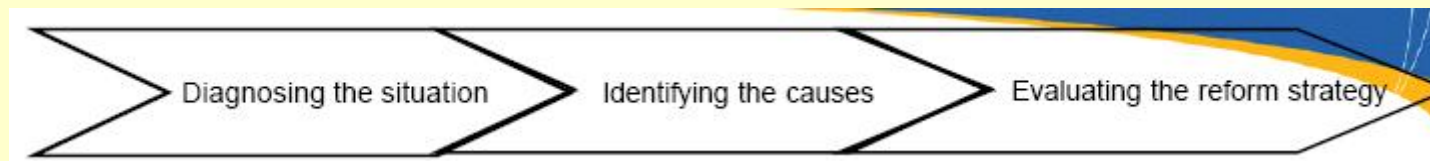
Jude Wallace



Austrian
Development Cooperation



The analysis of land markets produces useful models that can be adapted for other purposes. Problem here is that no reform strategy is identified



Relative, not absolute, ownership

Historical antecedent: English property law

Layering ownership: simultaneous recognition of many owners of the whole parcel (equitable, possessory, legal, shared, for life, on condition

(Layering also permits simultaneous resource, mineral, water and land rights in same land)

Functions of protecting possession

to cure a bad ownership administrative system (whole and part)

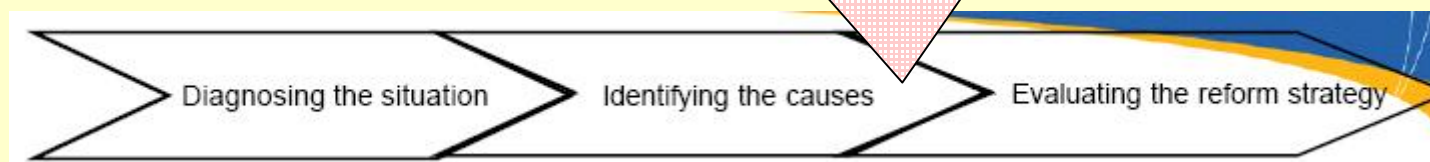
to provide evidence of ownership

to stabilise occupation and deliver civil peace.



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HOW DO WE REFORM?



Theoretical support for looking at pragmatic solutions

Twining's work: **How to do Things with Rules**, and transplanting legal concepts

Lessons:

Look before you leap.

Don't try to transport the untransportable.

“Land” is in people's minds.



BUILDING LAPS

Standard assumptions

- Security of tenure is essential for land markets
- Land markets are essential for economic development and poverty alleviation
- Tenure security is transferable
- Best tools for tenure security are LAS
- Poverty alleviation is best done by producing titles

Changes in standard assumptions

We know that people matter

We “scope” projects carefully, identify stakeholders, and take account of their aspirations and context

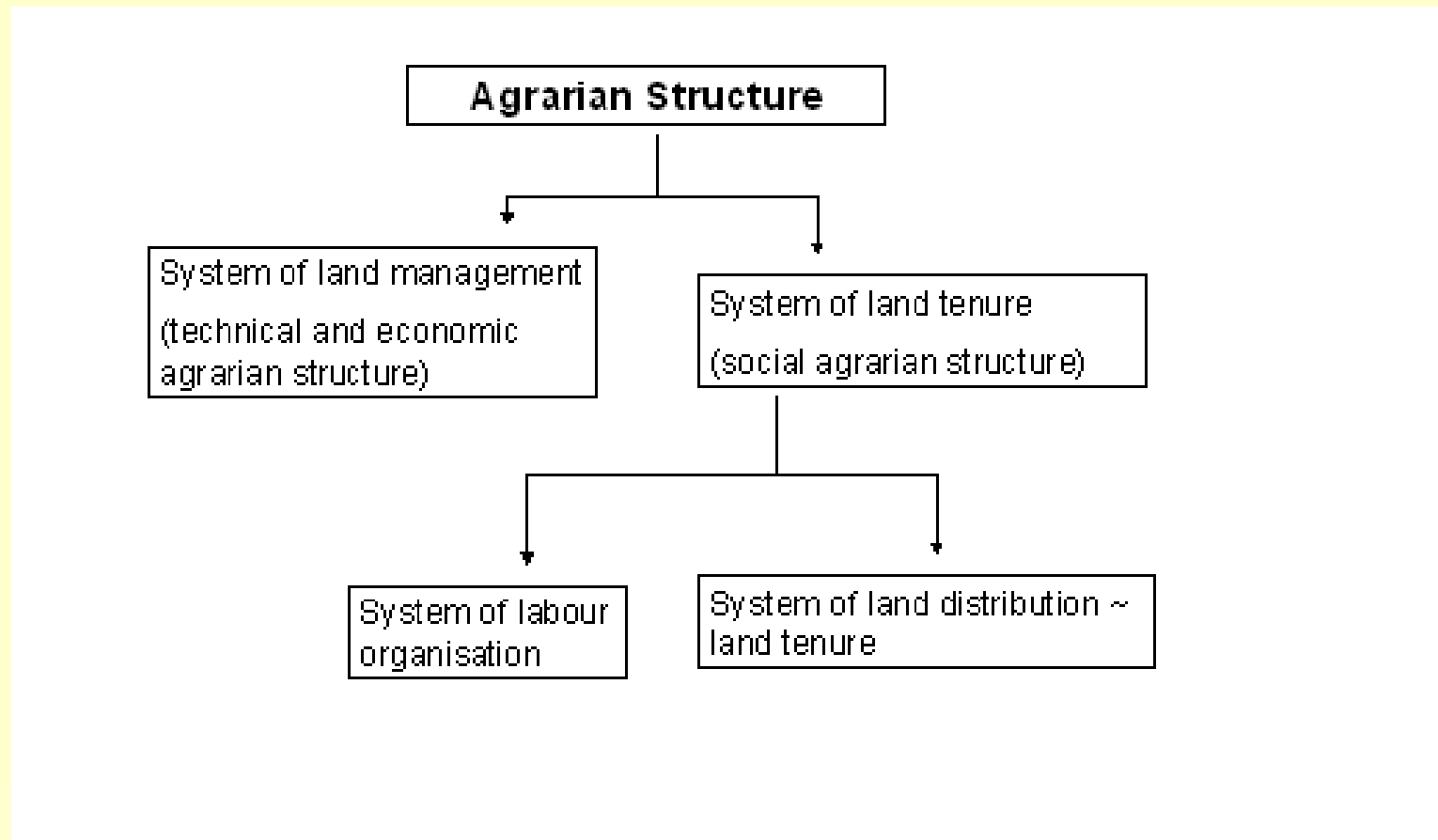
The socio/legal contexts are recognised.

One third of people enjoy sustainable lives through communal and collective systems.

Questions are how to proceed and what tools are best to use

The Asian context

Work and land are integrally connected.



Asian context (These are mere generalisations ... Look first, design next)

Communal land uses

Inheritance main land transfer means

Vast urban slums

Colonial history

Normative pluralism (rule of law low in hierarchy)

Centralist economies

TRADITIONAL LAND MANAGEMENT ANALYSIS

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.”

ASIAN LAND MANAGEMENT

- Relationship between patterns of land holding and production.
- Relationships between farm organisation, labour resources, production and land
- Impact of agricultural production reforms and land tenure reforms.
- Pathology of land disputes, particularly those generated by precipitated tenure changes
- Operation of land taxes and other broad taxes, and sources of funds to pay for reform.
- Emerging environmental problems and evolving solutions
- Natural disasters (disease, fire, wind, flood, earthquake)
- Information about conversion of peri-urban land from agricultural to urban use.



Dealing with informalism – urban model



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

Scoping a project - Identify:

- land uses (tree cropping, fruit and forest product taking, annual cropping, swidden and sedentary practices), and ancillary opportunities (fishing, charcoal production, animal production)
- disputes handling and processing processes
- transaction processes, especially informal.
- kinds of paper evidence regarded as reliable
- Identification of the “land holding” group
- allocation through inheritance, marriage, and exclusion
- immediate and medium term threats (particularly forestry practices for most Asian farmers and indigenous people)

Comparison of tools for LAS

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

Successful Asian tools

Qualified titles - Malaysia

Occupancy protection – East Timor

Housing bonds – South Korea

Ownership of buildings, not land – Timor Leste

Time limits for claims - Indonesia

Land use certification – Vietnam



Unsuccessful Tools

Land use planning – Indonesia, Philippines, Vietnam, etc

Land dispute management – India, Indonesia, Vietnam, China

Separation of land and buildings – Communist countries

Inheritance – Islamic areas

Anti land hoarding measures - General

Thank you

QUESTIONS?????

