

<p>Institution: Birkbeck, University of London</p>
<p>Unit of Assessment: LAW</p>
<p>Title of case study: Promoting the role of land law in economic and social development and changing law and practice in developing and post-conflict countries.</p>
<p>1. Summary of the impact</p> <p>Professor Patrick McAuslan’s research changed the international development community’s view about the role of land law reform in sustainable development and poverty alleviation. Until his research identified how policy-makers should and could use land law reform to achieve their development aims, international agencies did not consider that land law reform had a significant role in furthering economic and social development.</p> <p>McAuslan disseminated and continued his research during many consultancy assignments for the World Bank (WB), the EU, UN agencies, DFID and other international development bodies. He also reviewed planning and land law in many countries, often significantly shaping the resulting legislation.</p>
<p>2. Underpinning research</p> <p>This case relates to research undertaken by Professor McAuslan at Birkbeck School of Law between 1993 and 2011. His research examined the role that law plays (and should play) in development, concentrating on land tenure and urban planning.</p> <p>McAuslan argued that poorly functioning land markets contribute to informal arrangements for land settlement – and such informal settlements are not an outcome of poverty (as generally perceived by development agencies) but a <i>contributing factor</i>. Lack of formal registration of land, an inability to reliably identify specific lots, and insecure ownership prevent occupiers from using “their own” property as collateral to borrow money. Improving the security of land rights (whether by formal or local/informal registration) is thus an important tool for economic development, since it serves to increase land-related investment (and hence the efficiency of this prime factor of production), as well as facilitating access to credit.</p> <p>During 1995-1998 fieldwork in the Gambia, Swaziland and Namibia for the UN’s Food & Agriculture Organisation (FAO), McAuslan analysed land acquisition and registration. He used his findings to develop principles for best practices which could be promoted by the FAO and used by governments, regardless of their political persuasion or the underlying basis of their legal systems.</p> <p>McAuslan’s research during this period is discussed in outputs 3.1, 3.2 and 3.3, describing the evolution of policies and laws on tenure security in Africa, and demonstrated how the colonial legacy shaped current needs. He studied the tension between the external donors’ goals to improve land law and create a more efficient market for land; and the country’s internal pressures for secure tenure by informal arrangements. He also examined what inhibits governments from completely supporting reforms that enable or help informal settlements.</p> <p>In the late 1990s, McAuslan considered how realistic it was to use land law reform as a vehicle for radical social reform, based on his experience of drafting new land laws in Uganda and Tanzania (3.4) and his subsequent observation of their frustrated implementation. He noted that certain conditions - a lack of capacity or political will to implement the legislation effectively; very slow or limited dissemination and awareness of new rights; personal disincentives for officials in central government to implement the new laws – impeded reform or created a situation where only those with the resources to employ lawyers will benefit.</p> <p>These insights (included in 3.1) informed McAuslan’s approach to land management reform in</p>

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subsequent contexts, e.g. Afghanistan 2007 (see section 4) where strong vested interests impeded the effective implementation of new laws.

McAuslan also significantly contributed to the recognition of the importance of customary land tenure and the need to accept the plurality of legal systems in many parts of the world. His research (specifically output 3.3) stimulated debate and pointed the way forward on these matters for the UNDP and CGIAR (the Consultative Group on International Agricultural Research, see section 4). His research (3.5) also discussed how different social, religious and political circumstances pertaining in different countries affected women's ability to access land.

3. References to the research

- 3.1 S. Keith, R. Knight, J. Lindsay, P. McAuslan, P. Munro-Faure, D. Palmer & L. Spannenberg. (2009) '[Compulsory Acquisition of Land and Compensation](#)' *FAO Land Tenure Studies* 10. Peer-reviewed by a multinational panel of FAO experts before publication.
- 3.2 McAuslan, Patrick. (2006) '[Improving Tenure Security for the Poor in Africa](#)' LEP Working Paper No. 1, Rome, FAO. Used by FAO as its submission to the *UN Commission on Legal Empowerment of the Poor* (2006-2008).
- 3.3 McAuslan, Patrick. (2002) 'Tenure and the law: the legality of illegality and the illegality of legality' in Payne, G. (ed) [Land, Rights and Innovation](#), pp. 23 – 38. Peer-reviewed edited collection. ISBN-10: 1853395447 ISBN-13: 978-1853395444.
- 3.4 Tanzanian [Land Act](#), and [Village Land Act](#) (both 1999). These laws have been commended in Cotula, L., et al., *Land tenure and administration in Africa: lessons of experience and emerging issues*, International Institute for Environment and Development, 2004 (see section 1.4 which describes the new laws in Tanzania and Uganda as part of "a new generation of land policies and laws in Africa ...representing important innovations" because of their efforts to capture all land rights in records); and in Palmer, R. "The Tanzanian Land Acts, 1999: An Analysis of the Analyses," (see 5.6, pg. 2) Oxfam, 1999. More recently, and significantly, these laws have been held up by FAO as exemplars of good practice (see section 4 below).
- 3.5 McAuslan, Patrick. (2010) 'Personal reflections on drafting laws to improve women's access to land: is there a magic wand?' *Journal of Eastern African Studies* 4:114. Peer reviewed journal. <http://dx.doi.org/10.1080/17531050903556683>. Reprinted as chapter in *Land Law Reform in Eastern Africa: Traditional or Transformative? A critical review of 50 years of land law reform in Eastern Africa 1961 – 2011*, McAuslan, Patrick, Routledge, 2013

Other general indicators of quality are that Professor McAuslan is repeatedly requested for further assignments by commissioning bodies; that his reports are uniformly accepted by commissioning bodies; and that he has long been regarded as a leading global expert by the UN and World Bank as can be corroborated by the individuals in section 5.

Professor McAuslan was awarded the MBE in 2001. His nomination by the Permanent Secretary of DFID was in recognition of Professor McAuslan's contribution in Uganda, drafting and supporting the implementation of the Land Act.

4. Details of the impact

Significance and reach: Professor McAuslan sets the standard for land law in areas such as customary tenure, women's access to land and resettlement. He converts his research into practical guidance, policy advice, or actual legislation via his many consultancies for the World Bank, the UN and others. This case study focuses on a few representative assignments but McAuslan's reach extends beyond those. During 2008-2013 he also advised on, and drafted new legislation for Albania, Maldives, Somaliland, Cambodia, Ghana and Bangladesh.

Impact on land law legislation: Tanzania, Kenya, Laos

McAuslan's Tanzanian land laws (3.4) were established as a benchmark for good practice in lawmaking for customary land rights by the FAO's Development Law Service in a 2010 review of best practices in legislation (see 5.5). It commended the laws as "good examples for future laws in other nations" specifically for governance issues (pg. 224); and for safeguards against discrimination/abuses of power (pp. 225-6).

Significant parts from the Tanzanian Land Act can be found unchanged in the Kenyan Land Act 2012, demonstrating that although he had no personal involvement in the land reform process in Kenya, McAuslan's principles and approach were influential.

McAuslan discussed his experiences of drafting Tanzania's forestry legislation in 2002 at a conference in 2009, which led directly to his appointment in 2012 as a UNDP-funded policy and law advisor to the President of the Economic Planning and Finance Committee of the Laos National Assembly. McAuslan's role was to support the President of the Committee in making amendments to the national land policy then being drafted by the government, about which she had significant concerns. McAuslan's intervention was successful in preventing further progress with that draft; and (drawing once again on the principles framework published in 3.1 and 3.2) he prescribed how to strengthen and improve future drafts (see 5.4).

Impact on development policy

McAuslan's research on customary land tenure (3.3, 3.4) has had a significant influence on development policy, establishing that the importance of customary land tenure must be recognised, as must the need to accept the plurality of legal systems in many parts of the world (see 5.8, 5.1). 5.1 comments that McAuslan directly influenced the drafting of several sections of the FAO's Voluntary Guidelines on Land Tenure (2012) which he advises are now considered among the most important international statements on land governance.

McAuslan's views on decentralisation and his FAO proposals (3.1) inform the land reform policies in an important 2013 report by key stakeholders, produced to spearhead the preparation and implementation of the framework and guidelines of land policy for Africa. (See 5.9, the authors of which are the FAO; the Land Policy Institute of the African Union Commission; the UN Economic Commission for Africa; and the African Development Bank.)

Impact on policy and practices relating to resettlement – Afghanistan

McAuslan's research (especially 3.1) was instrumental in the World Bank's decision to devise and impose regulatory impact assessments and action plans as necessary conditions for receipt of World Bank funds for projects involving resettlement.

In 2007 the World Bank asked McAuslan for his opinion on Afghanistan's legal framework on land acquisition and resettlement required for proposed WB-funded infrastructure projects. This led in 2010 to its request for McAuslan to advise the Afghan Ministry of Energy and Water (MEW) on resettlement practices. Subsequently, he drafted a Resettlement Policy Framework (RPF) for the MEW's submission to the World Bank for a \$140m project to repair and expand small scale water and irrigation works in Afghanistan. This RPF was approved by World Bank and is now used to determine compensation for locals. McAuslan has drafted further RPFs for the Ministry of Mines (mining development project) and again for MEW (major transnational electricity transmission project stretching from Kyrgyzstan to Pakistan). These RPFs have been used by those Ministries to prepare action plans to required World Bank standards (see 5.3).

Not only have these RPFs enabled the Afghan government to fulfil the conditions for World Bank funding for those projects, but the RPFs themselves have helped build expertise and good practice amongst Afghanistan officials involved in land acquisition with respect to compensation for displaced locals.

Other work in Afghanistan met with some resistance to change the status quo. For example,

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McAuslan's work to review Land Acquisition Law and Land Management Law for the Afghanistan Land Authority (AZARI) was accepted by the World Bank, but met with local resistance. However, AZARI's continued use of his expertise suggests that opportunities for influence persist, and 5.2 can confirm McAuslan's recent and ongoing engagement with the Afghan government, advising it on revisions to its Land Acquisition law. McAuslan's contribution during the impact period laid the groundwork by presenting model solutions and effecting debate amongst stakeholders on actions which might be implemented at a more conducive time.

Impact on women's access to land

McAuslan's research on women's access to land (3.5) was the basis for a key checklist in a FAO guide (5.7) on how to ensure gender-equitable legal drafting. The FAO guide was the first in a series of technical guides on governance of tenure, to provide advice on "mechanisms, strategies and actions that can be adopted to improve gender equity in the processes, institutions and activities of land tenure governance". McAuslan's research was also the source of information on the disadvantages of appeal mechanisms involving courts or tribunals (pg. 35); and of the principle adopted by the guide that land and family law should be reformed together (pg. 29).

5. Sources to corroborate the impact

- 5.1 World Bank, Lead Counsel: Land and Natural Resources [contact details provided].
- 5.2 World Bank, Senior Development Specialist [contact details provided].
- 5.3 Independent political economist specialising in land tenure issues [contact details provided].
- 5.4 World Bank, National Safeguards Assessor [contact details provided].
- 5.5 [*Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation*](#), Knight R, FAO 2010.
- 5.6 Palmer, R. [*The Tanzanian Land Acts, 1999: An Analysis of the Analyses*](#), Oxfam, 1999
- 5.7 [*Governing Land for Women and Men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure*](#), Daley E et al, FAO 2013.
- 5.8 [*Land Reform In The Broader Context Of Southern Africa*](#), keynote presentation by Robin Palmer, at *Land Reform from Below: Decentralised Land Reform in Southern Africa* conference, Johannesburg April 2008.
- 5.9 [*Securing Africa's Land for Shared Prosperity*](#), International Bank for Reconstruction and Development /The World Bank, 2013.