

An incentivizing system of ownership and of usufruct rights

An ownership system, including a system of usufruct rights, that rewards individual initiative and toil.

It is feasible for farm/rural families to gain monetarily from risk taking and hard work

By Isabelle Tsakok

Summary

Sustained productivity growth, stretched over decades in which the majority of farmers participate in and benefit from, successfully transform agriculture. Such sustained growth requires broad-based public and private investments. Why would private households invest in farming year in, year out, unless they expect to gain monetarily and can easily raise the credit needed? Security of tenure is critical for farmers to invest for growth and profit. This is shown to be true where security of tenure holds and where it does not. While this insight is generally not controversial, what is often controversial is how to achieve it.

The case of China's agricultural and overall economic transformation, starting around 1979, is a dramatic example of the pivotal importance of private incentives anchored in tenure security and private profit. The Household Responsibility System (HRS) was a revolutionary measure in a China, which had implemented collectivized agriculture in accordance to Chairman Mao's conviction that it was, in fact, superior. In this system, farmers could not see the direct link between their effort and their remuneration. However, after some 30 years (1949-79) of determined collectivization, agricultural performance was still lack luster and poverty extensive.

This brief illustrates the power of land tenure security for sustained agricultural productivity and income growth; and the difficulties for political leadership to ensure such security.

Introduction

How important is the enforcement of property rights, and land tenure security whether based on private ownership or usufruct rights? There is a substantial literature which asserts that enforcement of private property rights is a fundamental anchor of a thriving, capitalist, market-driven system. However, in all countries, the state has enormous power to seize private property. The terms of the seizure are different. So, what does it mean for land policy, tenure security, and land being recognized worldwide as a key economic and political asset? There are different situations, including the following:

- In the West¹, even where private property registration and rights follow the Torrens system², there are legal boundaries to the sanctity of private property ownership. For example, in the United States—as in other countries in the Western tradition—there is the Law of Eminent Domain; also referred to as Compulsory Purchase (the United Kingdom, Ireland, and New Zealand); Land Acquisition (Singapore); Expropriation (many countries in Europe such as France, Germany, Sweden, as well as Canada, Chile, Mexico, and South Africa). Under terms to be specified and legally agreed to, the government can acquire private property for public purposes.
- In the People's Republic of China however, there is no private property: urban land is state-owned, and rural land is collectively owned by the village, which local governments oversee (Zhen, 2017).³ The Chinese equivalent of Eminent Domain is requisition, whereby government, whether central or local, can acquire land “in the public interest,” for “reasonable compensation.” The Rural Land Contracting Law (2002) reaffirmed farmers’ 30-year rights over land allocated

to them by the collective. However, security of tenure continues to be an unsettled issue: the expropriation of agricultural land by local governments without giving the farmers affected “adequate” compensation has continued to fuel thousands of protests, threatening the very stability of rural China.⁴

- Sub-Saharan Africa (SSA) is still land-abundant,⁵ but agricultural land tenure security is largely not assured. The bulk of land—some 90 percent—is under customary or communal ownership. In this system, insecurity of tenure of any individual household is common, not only because there is no registration, but more importantly, with increasing population and sharpening competition over land, land disputes continue to escalate (ACET 2017: 35).⁶ Tenure insecurity is particularly acute for women, a major component of the agricultural labor force for food crops, as they are discriminated against in the traditional system. Within this framework of land governance, the lease of huge areas to large investors (referred to as “land grabs”) raises further questions regarding the security of land rights of already vulnerable small holders occupying such land. (Deininger et al, 2011: xxxii-xxxiii).⁷

Despite this diversity of country situation, the one common element is the crucial importance of land tenure security for successful agricultural transformation. This is one of the five conditions common to cases of successful agricultural transformation (Tsakok, 2011: xxi).⁸ This Policy Brief discusses policies on agricultural land and tenure security in various contexts to highlight this point. Specifically, it focuses on the key opportunities and difficulties for using land policy as a key factor of agricultural productivity increase, and of poverty reduction.

1. The group of countries/regions usually referred to as the “West” includes western Europe, North America, Australia and New Zealand. They share a common Anglo-Saxon, and Romance cultural heritage.

2. The Torrens title is a land registration and land transfer system in which the state creates and maintains a register of land holdings which serve as conclusive evidence (termed “indefeasibility”) of title of the person recorded on the register as the proprietor (owner) and of all other interests recorded on the register. It was designed and introduced in 1858 in South Australia by Sir Robert Richard Torrens (1814-84), who was Premier then, (Wikipedia, last edited Aug 7, 2018 at 03.06 (UTC). Accessed Aug 14, 2018) https://en.wikipedia.org/wiki/Torrens_title

3. Zhen, Simon K. “Eminent Domain in the United States and China: Comparing the Practice Across Countries” in INQUIRIES, 2017, Vol. 9, No. 11, pp 1 (Accessed Aug 14, 2018) <http://www.inquiriesjournal.com/articles/1703/eminant-domain-in-the-united-states-and-china-comparing-the-practice-across-countries>

4. DW. Christoph Ricking. 11/02/15. “China introduces new land use regulations” (Accessed Aug 20, 2018)

<https://www.dw.com/en/china-introduces-new-land-use-regulations/a-18249498>

5. SSA has nearly 60 percent of the world’s uncultivated arable land (ACET, 2017: 35)

6. African Center for Economic Transformation. 2017. Agriculture Powering Africa’s Economic Transformation. The remaining 10 percent, typically the most valuable land, is registered under individual ownership, a legacy of the colonial powers which brought with them the Torrens system.

7. Deininger, Klaus, Derek Byerlee, with the assistance of Jonathan Lindsay, Andrew Norton, Harris Selod, and Mercedes Stickler. 2011. Rising Global Interest in Farmland: Can it yield sustainable and equitable benefits? World Bank. As of 2011, huge areas had been leased in Mozambique, Ethiopia, Nigeria, Liberia, and Sudan.

8. Tsakok, Isabelle. 2011. Success in Agricultural Transformation: What it Means and What Makes it Happen. Cambridge University Press.

The Taiwan Land Reform (1949-53): equitable access and secure tenure to land are key to Taiwan's successful agricultural transformation:

Cases of successful land reform are rare, but Taiwan's is one them. It is considered successful because the Kuomintang Government of General Chiang Kai-shek (CKS)⁹ was able to equalize access for the millions of small landholders and turn their newly distributed land into a productive- and income-increasing asset. It was however not just land redistribution and tenure security but the complementary policies taken both within agriculture and the broader open economy that made the determining difference.

Unlike land reform in the People's Republic of China, agricultural households in Taiwan became owners of their land and enjoyed tenure security. They obtained titles following the Torrens system (Chang, 2014:5).¹⁰ It was in fact a tenet of CKS's anti-communism that there should be private ownership. The land reform proceeded in three steps and was completed in five years: (Shen 1970: 56-64)¹¹

- Rent reduction (from April 1949);
- Sale of public lands (from 1951) to farm families who paid in the form of paddy field rice and sweet potatoes. These lands were purchased (in 1945) from the outgoing Japanese colonial administration, totaling roughly one-fifth of arable land;
- The Land-to-the-Tiller Program (1953) whereby landlords had to sell land above a certain limit to the government which then resold it to tenants. Landlords were paid in stock shares of four government

enterprises (30 percent of total payment) and in land bonds redeemable in kind (remaining 70 percent). Only administrative expenditures required monetary outlay, of which less than 10 percent were contributed by the Sino-American Joint Commission for Rural Reconstruction (JCRR).¹²

Following Sun Yat Sen's vision¹³ of a peaceful and prosperous Republican China, as set out in his Three Principles of the People, one of CKS's top priorities was implementing the Land-to-the-Tiller program successfully. His government was supported throughout by substantial American aid –financial, technical and military (Ho, 1987: 38).¹⁴ On agriculture and rural development, his government worked with the JCRR, and an "army" of able bureaucrats and technocrats who had previously served Japan's colonial government (1895-1945).

Agriculture did well. Output rose by nearly 140 percent from 1952-72 (Tomich, Kilby and Johnston, 1995: 331)¹⁵ and mass hunger was eliminated. More than that, the government's macro and trade policies were able to promote a virtuous circle between agriculture and non-agriculture growth. Resource transfer from a growing agriculture to non-agriculture was significant. (Tomich, Kilby and Johnston, 1995: Tab 10.3)

The high productivity growth in agriculture was made sustainable by the overall economic transformation due to the 1950-68 macro and trade reforms, resulting in high growth rates of non-agricultural output, incomes, and jobs. Labor productivity in agriculture grew at an annual

9. Kuomintang (KMT) stands for Nationalist Party. General Chiang Kai-Shek was defeated by Mao Zedong's People's Liberation Army (PLA) in the Chinese civil war (1945-49), right after Japan was defeated in August 1945, after eight years of war (1937-1945). He fled to Taiwan in December 1945. Once in Taiwan, he staged a remarkable comeback, laying the foundations of a prosperous, unimodal agriculture and an export oriented, labor intensive economic transformation. See for example, Myers, Ramon H. 1984. "The Economic Transformation of the Republic of China on Taiwan", p 54-82 in Ravenhill, John (ed). 1995. China, Korea, and Taiwan. Edward Edgar Publishing Ltd. Vol.2. Also in the China Quarterly, 99, September, 500-28.

10. Chang, Yun-chien. 2014. "The Evolution of Property Law in Taiwan: An Unconventional Interest Group Story. (Accessed March 8, 2018).

<http://www.law.ntu.edu.tw/aslea2014/file/Evolution%20of%20Property%20Law%20in%20Taiwan%20140329.pdf>

11. Shen, T.H. 1971. The Sino-American Joint Commission on Rural Reconstruction: Twenty Years of Cooperation for Agricultural Development. Cornell University Press: Ithaca and London. The limit was a maximum of 3 ha of medium grade paddy land or 6 ha of medium grade dryland or equivalent amounts of paddy and dry land of superior and inferior qualities.

12. The JCRR was created in 1948, China Aid Act, Public Law 472, while the KMT was still on the Mainland. It then operated in Taiwan in the 1950s-1960s; became the Council of Agricultural Planning and Development in 1978, until it was merged with the Council of Agriculture in 1979. Lee Teng-Hui, President of Taiwan (1988-2000), worked with the JCRR as an agricultural economist in the 1950s.

13. Sun Yat Sen (born Nov 12, 1866) is considered the father of modern China by both the Nationalists and the Communists. He fought for the fall of the Manchu Qing Government (1644-1911). He was the founding father of the Republic of China (until his death March 12, 1925). His Three Principles were (1) Nationalism (no more Manchu rule); (2) Democracy, western style inspired by Abraham Lincoln – government of, by and for the people; and (3) the People's Livelihood, specifying land to the tiller. CKS considered himself a disciple of Sun Yat Sen, for whom realizing Sun's vision was "sacred trust". See Furuya, Keiji. 1981. Chiang Kai-Shek: His Life and Times. Johns Hopkins University Press: New York.

14. Ho, Samuel, P.S. 1987 "Economics, Economic Bureaucracy and Taiwan's Economic Development", p 32-54 in Ravenhill, John (ed). 1995. China, Korea, and Taiwan. Edward Edgar Publishing Ltd. Vol.2. Also in Pacific Affairs, 60, (2) Summer, 226-47. An estimated 4 billion USD in aid of which 60 percent or 2.4 billion was military, and 1.64 economic.

15. Tomich, P. Thomas, Peter Kilby and Bruce F. Johnston. 1995. Transforming Agrarian Economies: Opportunities Seized, Opportunities Missed. Cornell University Press: Ithaca, London.

rate (percent) of 4.5 (1961-70) and 6 (1976-81). (Myers, 1984: 65).¹⁶

Fast forward: Taiwan's economy has grown with equity. In 2014, the Gini coefficient in Taiwan was estimated at 0.33 while it was 0.465 (2016) in the People's Republic of China.¹⁷ According to the World Bank, it was 0.422 (2012).¹⁸ Taiwan's GDP/capita (2016/17) was around USD 25,000 whereas in PR China, GNI/cap (2017) was around USD 8,690.¹⁹

The People's Republic of China – the status of usufruct rights for farmers after the official endorsement of the Household Responsibility System (HRS).²⁰

The official endorsement of the HRS was only in 1983, years after it spread unofficially from Anhui Province (1978). By 1981, 45 percent of production teams had adopted it; by 1983, it was 98 percent. The HRS made each household – not the production team – responsible for the profit and loss of its farming enterprise. It was nothing but a return to a framework of private incentives for smallholder farming widespread all over Asia. In addition to these positive incentives, the government took other measures to make farming more profitable including raising official procurement prices; re-establishing rural markets, which lowered transactions costs; and liberalizing labor mobility to work in rural non-farm enterprises. China's agricultural and economic transformation was launched then – China actually did leap forward, unlike during the disastrous Leap Forward of 1958-61.

Today, farmers have usufruct rights guaranteed for 30 years. They can also rent out their land without losing their usufruct rights: a significant development given the substantial rural-urban migration since the early 1980s. The concern now is loss of farmland altogether as local governments sell farmland to developers in response to increasing urban expansion. Local governments

have a strong fiscal incentive to sell collective land; and compensate farmers in a way that they can keep substantial funds for themselves. Studies consistently show that local governments keep 30-50 per cent of land transfer fees for themselves (World Bank, Feb 2008:3).²¹ Thousands of land disputes have resulted from such land transfers. Legally, farmers cannot directly deal with potential purchasers of land, but must go through local governments. This stipulation gives enormous monopoly power to local governments over land transactions. Thus, despite the fact that the National People's Congress extended legal protection to all types of property – state, collective and private – through the Law on Property (March 2007), requisitions continue and grievances mount. What the Central Government calls "illegal land requisitions" is rapidly becoming a major source of social unrest in China.²² The critical importance of land tenure security and of good land governance more generally cannot be clearer.

Vietnam: Strengthening land use rights within Doi Moi (1986)²³

In Vietnam, the state also owns all land. In a break from the past, the Government provided for land-use rights for 10-15 years (1988). In 1993, and again in 2001 and 2003, these rights were revised and strengthened. The use rights were increased to five rights: transfer, exchange, lease, inheritance, and mortgage. These rights were extended for 20 years on annual cropland; and for 50 years for tree crops. On the basis of these laws, an entire regulatory framework was developed for land use planning, valuation, administration, cadastral surveying and mapping. On the basis of these, more than 11 million Land Use Certificates (LUCs) were issued. Through these land and related market-oriented reforms, the far-reaching transformation of Vietnam's agriculture and overall economy was launched. Vietnam has become the second largest exporter of rice, and other high value

16. Myers, Ramon H. 1984. "The Economic Transformation of the Republic of China on Taiwan", p 54-82 in Ravenhill, John (ed). 1995. China, Korea, and Taiwan. Edward Edgar Publishing Ltd. Vol.2. Also in the China Quarterly, 99, September, 500-28.

17. The CIA Factbook. <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html>

18. World Development Indicators. 2012. <http://databank.worldbank.org/data/reports.aspx?source=2&series=SI.POV.GINI>

19. For comparison, GNI/CAP (Atlas method) in Hong Kong (SAR) was USD 46,310 (2017) Source: WDI 2018

20. The HRS was the experiment of a small number of production teams in Anhui Province in 1978. It spread rapidly without official sanction from the Central Government, which officially endorsed it only in 1983.

21. Land Policy and Administration Notes. Feb 2008. "China: Integrated Land Policy Reform in a Context of Rapid Urbanization" by Guo Li, Jonathan Lindsay, and Paul Monro-Faure. Issue # 36. # 42697. World Bank. (Accessed Aug 21, 2018) <http://documents.worldbank.org/curated/en/476941468340830730/pdf/426970BRI0CN011Box0327331B01PUBLIC1.pdf>

22. John Ruwitch. Reuters staff. May 14, 2013. "China Ministry urges end of 'forcible' land requisitions: paper". (Accessed Aug 21, 2018) <https://www.reuters.com/article/us-china-land/china-ministry-urges-end-to-forcible-land-requisition-paper-idUSBRE94E04320130515>

23. Do, Quy-Toan and Lakshmi Iyer. Aug 2003. Land rights and economic development. WPS # 3120 "Doi Moi" literally means "change and newness". It was the launch of gradual but fundamental market-oriented reforms in Socialist Republic of Vietnam. <http://documents.worldbank.org/curated/en/52012146877562791/Land-rights-and-economic-development-evidence-from-Viet-Nam>

commodities, and poverty declined from 58 percent to less than 20 percent (1993-2004). Vietnam has become one of the most open economies with international trade nearly 160 percent of its GDP. It has received more net FDI commitments than its close neighbors of Indonesia, Thailand and the Philippines combined (World Bank Group, 2011: 2-3).²⁴ Though devastated by wars until re-unification in 1975, Vietnam is today a lower middle-income country—GNI/per cap USD 2,170 (2017).²⁵

Land governance and tenure security for smallholders in Sub-Saharan Africa: basic institutional requirements

The critical importance of good land governance in Africa was recently emphasized by Hamdok.²⁶ This is certainly true for agriculture as SSA is the only region in the world where the rural population and rural youth is predicted to grow past 2050. Rural SSA is predicted to have 53 percent more people in 2050 than in 2015, with an annual population growth of around 1.7 percent over the next decade. Much of this increase is due to the youth bulge. Youth (age 15-35) currently constitutes some 60 percent of the rural labor force. (Jayne et al, Dec 2017: Fig 1, p 3-4).²⁷ The concern is that an increasing number of youth, in particular, women, cannot inherit sufficient land to make farming viable as was possible some 30-50 years ago. Thus, with increasing competition for agricultural land; and with the imperative for sustained and broad-based agricultural productivity growth, and therefore investment, it is essential to clarify rights—ownership and / or use rights—and enforce them.

At the outset, it is important to understand that “Throughout Africa, the State remains the primary owner, landlord, manager, and auditor of land resources” (Land Policy in Africa, 2011: 22).²⁸ The similarity with the People’s Republic of China and Vietnam is thus striking. China’s and Vietnam’s recent historical experiences are however vastly different. From a developmental point of view, two basic issues must be addressed.

One key issue is the co-existence of customary or communal systems and western legal systems imported by the colonial powers. In this dual system, customary systems predominate—about 90-95 percent of land. Western legal forms have been either under freehold or under leasehold. Governments of independent SSA have tended to give disproportionately more infrastructural and development support to areas under freehold and leasehold (Land Policy in Africa, 2011: Tab 1). As a result of this relative neglect, rights under customary systems remain uncertain, hence insecure, providing a fertile ground for disputes, discouraging investments in productivity-increasing technologies despite the fact that several countries have launched exercises to register communally held land; including Botswana, Ghana, Mozambique, Namibia, South Africa, Tanzania and Uganda. For example, in Uganda half of the case load concerns land disputes; in Ethiopia, one third to one half; and in Ghana, about half of total civil cases (ACET, 2017: 35). As frequently pointed out, tenure insecurity also undermines the ability of the smallholders to use land as collateral for raising credit, which further undermine their ability to invest.

Another basic issue that needs to be addressed is the weakness of land administration itself (Land Policy in Africa, 2011: 37). The complexity of the task—its time- and resource-consuming nature—can be daunting. The few cases of success show that political leadership was a key ingredient. Rwanda is a case in point. Rwanda regularized land tenure all over the country in 2012/13 at a unit cost of less than USD 6 per parcel (D.A. Ali et al, June 2016: 6-7).²⁹ Strengthening land administration also needs recurrent effort as Rwanda fully realized: in 2014 and 2015, the government launched large information campaigns, as well as the deployment of Sector Land

24. World Bank Group. Nov 7, 2011. Vietnam Country Partnership Strategy 2012-2016. Report # 85986

25. WDI 2017. Compare it with India which had been at peace since independence in 1947, and has done relatively well in the early 2000s. Its GNI/Cap was USD 1,820 (2017)

26. UNECA. Mr. Abdalla Hamdok, Addis Ababa, Nov 17, 2017: ‘In opening remarks to the conference, ECA Deputy Executive Secretary and Chief Economist, Mr. Abdalla Hamdok, said there was no doubt that good land governance was key to Africa’s transformation and central to livelihoods and sustainable development. “Land forms the basis for agriculture, forestry, mining, industry, tourism and urban development. But to maximize on the benefits of land and its resources, inclusion of land users in decision making on how land is governed and managed is crucial,” said Mr. Hamdok. He said equitable access and utilization of land and its resources was vital for sustainable economic growth, increased agricultural productivity and the development of a robust agribusiness on the continent.’ (Accessed Aug 22, 2018)

<https://www.uneca.org/stories/land-governance-key-africa%E2%80%99s-transformation-says-hamdok-opening-land-policy-conference>

27. Jayne, Thomas, Felix Kwame Yeboah and Carla Henry. Dec 2017. The future of work in African agriculture: Trends and drivers of change. ILO. Research Dept, Working Paper # 25. (Accessed Aug 22, 2018)

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_624872.pdf

28. Economic Commission for Africa, African Union, and African Development Bank. 2011. Land Policy for Africa: A framework to strengthen land rights, enhance productivity, and secure livelihoods.

29. Ali, Daniel Ayalew, Klaus Deininger, Marguerite Duponchel. June 2016. Using administrative data to assess the impact and sustainability of Rwanda’s land tenure regularization. WPS # 7705

<http://documents.worldbank.org/curated/en/722291468195545378/pdf/WPS7705.pdf>

Managers to bring land services closer to the clients (D.A. Ali et al, May 2016).³⁰ SSA may also want to look into Malaysia's success in giving land tenure security to millions of smallholders in a relatively short period (1980-2016). Malaysia was colonized by Great Britain and has a complex system of land administration with both state and Federal governments having jurisdiction over land. In Peninsular Malaysia, states have jurisdiction over land matters including in agriculture, but the Federal Government has jurisdiction over such areas as cadastral mapping, irrigation and drainage, and town and country planning. Despite such complexities, Malaysia built comprehensive and reliable land administration services by (i) issuing qualified and final titles to smallholders; (ii) investing in ICT—internet and communication technologies; and (iii) computerizing records (World Bank Group, Nov 2017: 9-10, 24-26).³¹

Conclusion: How best to guarantee the enforcement of land ownership and usufruct rights, in particular for smallholders?

Although there is overwhelming evidence that farmers the world over require secure ownership and usufruct rights to be productive and profitable, there is little consensus on how to bring about such a situation. Disputes over land are some of the most intractable to resolve, as the dramatic recent cases of Zimbabwe and South Africa amply show. Doing so effectively requires substantial resources including financial, technical, administrative, and above all, political leadership, because the few cases where they have been solved clearly show that visionary and determined political leadership was essential. China's case shows that even when usufruct rights are formal, legal, and long-term, smallholders are still vulnerable to land seizures if political leadership at any level chooses not to enforce the rights.

30. Ali, Daniel Ayalew, Klaus Deininger, Marguerite Duponchel. May 27, 2016. Improving the sustainability of land administration through decentralized service provision: The Case of Rwanda. Development Research Group. World Bank.

31. World Bank Group. November 2017. Public Sector Performance: Malaysia's experience with transforming land administration. Global Knowledge and Research Hub in Malaysia (Accessed Aug 22, 2018)
<http://documents.worldbank.org/curated/en/928151510547698367/pdf/121243-REVISED-World-Bank-Report-06-Land-Administration-FA-FULL-Web-V2.pdf>

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