

Land rights in China

Promised land

In China, illegal evictions disenfranchise farmers and threaten agricultural development. The government claims to have introduced the world's strictest measures to protect farmland and improve farmers' lives, but with minimal results. As rural land remains in the hands of the state, is land privatization the solution?

By **Yongjun Zhao**

The Chinese government has forced millions of farmers from their land without proper compensation. These evictions make land available for the expansion of urban development. A 2005 report by the Chinese Academy of Social Sciences revealed that more than 40 million farmers had lost their land, and that this number was increasing by 2 million annually. Land loss poses a severe challenge for the future of Chinese farming.

Although numerous policies and regulations are aimed at safeguarding farmers' land rights in China, they function ineffectively. The landmark 2007 Property Law, for example, does not include private ownership of land. Rather, the state and village committees remain the proprietors of land in urban and rural areas, respectively. The village committee, the lowest level of government in China, allocates plots and grants farmers long-term land use rights, but the farmers cannot sell the land or use it as collateral for bank loans.

Corruption is rampant and local governments gain tremendous benefits from land dealings. The Ministry of Supervision and the Ministry of Land Resources recently reported ten cases in which village administrative committees and higher-level government bodies nationwide had acquired land illegally. These illegal acquisitions make it difficult for the government to preserve enough arable land to ensure adequate food supplies. With its growing population and its farmland increasingly used for urban development, China could be facing a real crisis in the coming years.

Addressing the land issue will be critical for China to transform to a more equitable society with a developed market economy. Chinese policy makers and international organizations must begin to think critically about the existing approaches to this problem. To see why, we must first look into the systemic nature of property and the contexts in which property relationships and property practices are embedded.

The private ownership approach

The most effective approach to the land issue, according to *China Newsweek*, would be to extend farmers' land rights and allow them to buy and sell land freely. This would help to combat illegal land seizures, which is necessary to build an orderly land market under the rule of law.

Chi Fulin, director of the China Institute for Reform and Development (CIRD), also advocates land privatization. The current system grants farmers 30-year land rights. Fulin believes the system severely limits technological advances in agriculture by preventing farmers from accumulating land. Instead, he argues that farmers should have the right to sell, subcontract or merge their land with others in shareholding companies. This reform would improve agricultural productivity.

Hernando de Soto, president of the Institute for Liberty and Democracy in Lima, Peru, also believes that private ownership is essential to economic development. He notes that 'an important characteristic of capitalism is the functioning state protection of property rights in a formal property system where ownership and transactions are clearly recorded'. Capitalism requires greater independence for individuals to protect their assets from local community arrangements.

But not all commentators agree. Lawrence Harrison of Tufts University and Samuel Huntington of Harvard University claim that de Soto's theory relies on the standard economic assumption that human nature is universal. However, different cultures have their own legal and political systems, of which property law is a part. Not all cultures need the same systems. In Asia, for example, personal relationships and family ties have helped foster rapid economic growth, security and trust in trade relationships. This means that economic growth can be accelerated without a well developed commercial legal system like that of the West.

Similarly, Daniel Bromley of the University of Wisconsin-Madison does not view exclusive individual ownership as essential to agricultural development. Rather, he thinks that village organizations and property relations should ensure economic benefits for the people. Collective control of land in China provides the conditions that enable farmers to move away from and back to their land in response to changing conditions in the wider economy.

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Land reform in China has taken many forms (see box on page 9), but none of these efforts has led directly to increased agricultural productivity. Chris Bramall of Sheffield University argues that it is government intervention, technological advancement and natural conditions that have favoured agricultural production. The small-scale household farming system has caused major problems, such as the fragmentation of land and conflicts over access to irrigation systems, making it extremely difficult to increase agricultural production through mechanization. Land is valuable to farmers because of price support for agriculture – government subsidies aimed at maintaining food prices. Land is not valuable because of the efficiency of the many small-scale farms.

Impact on farmers

Roy Prosterman of the University of Washington and Timothy Hanstad of the Rural Development Institute in Seattle think land policy debates overestimate the benefits of greater land use rights in improving conditions for farmers. Such debates, they claim, fail to reflect the rural reality – chronic poverty, unproductive land and often difficult relations among farmers, local state officials and other actors. Instead, farmers should be able to make their own choices about the use of their land.

A 2001 CIRD case study on Sichuan, a poor province in Southwest China, supports this argument. With an average of 0.81 *mu* (1 hectare) of arable land, farmers there have shown little interest in obtaining land use contracts, or in investing in the land. They are concerned about the heavy land-related taxes and fees they would have to pay if land use rights are officially granted. Local government adds an extra burden on farmers by allocating various costs that reduce their benefits from the land even further.

Every three years, each village committee undertakes land reallocations to take into account demographic changes, even though the practice is illegal. A reduction in the number of family members in a household, for example, can mean the loss of plots of land. This process creates conflict among farmers, as many are unwilling to transfer their land. Some farmers actually abandon their land rather than transfer it to someone else.

Although the 2003 Rural Land Contracting Law gave equal rights to women, divorced or widowed women run a high risk of losing their land. Both men and women have inheritance rights, but these are almost impossible to secure with the frequent land reallocations. Farmers are granted 30-year land use rights, but they do not know how to use the law to protect themselves against unexpected expropriation by local government officials. Sichuan also has a high rate of out-migration, so that women, children and the elderly are often left alone on the land.

The village collective-state-corporation alliance poses a major threat to farmers' land rights. Farmers are marginalized and vulnerable to evictions with unfair compensation. Widening economic and social divisions among farmers contribute to a lack of effective village democratic governance. The main form of village organization, the regular village congress, often fails because the village collective is less able to rally support than it was in the past. Around 30% of farmers do not participate in village elections, while the other 70% do not know how to deal with corrupt village leaders. These factors contribute to tensions between individual villagers and the village collective.

New policies for security of land tenure to promote increased agricultural production may conflict with the current property rights system, according to Janet Sturgeon of Simon Fraser University,

Vancouver. Sturgeon provides ample evidence of the current policy failure for indigenous communities in Yunnan in Southwest China. There, farmers value their community as defined by collective resources, communal land projects and equitable distribution of resources. Property 'is not a relationship between people and things, but a relationship between people, embedded in a cultural and moral framework and their particular vision of community'.

Rangeland governance in China is another example of current policy failure. Li Yang of the Inner Mongolia University says that contracting rangeland to individual households has worsened the degradation of the land. But Yang does not view the policy itself as problematic. Rather, the problem is how the policy is implemented and monitored, aspects that are often ignored by policy makers.

The rights issue is paramount. However, as the pastoralists have managed their rangeland based on communal rules developed over the course of their history, the current way of marking boundaries of their land is flawed. Yang advocates for a collective treatment. Pastoralists should be given the right to utilize the resources in ways that best suit their interests through cooperative management. And government should protect these rights and interests.

Pro-poor approaches

The land rights issue is interwoven with existing social, economic and political factors. A DFID-commissioned report on the land rights of the poor in a global context describes the changing nature of land rights. The report explores the changing contexts, relationships and rights to land in China. It argues for examining the changing relationships between land, poverty and how people cope with rural-urban change. This focus would help identify the entry points for policy interventions. The Western legal approach to land rights de-emphasizes inseparable social and political relationships. According to the DFID report, the links between land rights, social processes and structures and political and economic organization should be studied in more depth. 📖

The World Bank and UN agencies regard the land rights issue as

Chinese land reform efforts

- **1949:** The Communist Party came to power and implemented its land-to-the-tiller campaign, giving farmers full ownership of their farms.
- **Mid-1950s:** Private land ownership was made illegal. The government institutionalized the collectivization of farming. As a result, agricultural production plummeted between 1958 and 1962.
- **1978-1986:** The Household Responsibility System (HRS) replaced collective farming in most regions and private farming was permitted. The Land Administrative Law was adopted.
- **1999:** China adopted the new Land Administrative Law, which limited the buying, selling and subcontracting of farm land in rural areas.
- **2003:** China adopted the Rural Land Contracting Law to protect the contractual land use rights of farming households.
- **2007:** China adopted the Property Law, the first explicitly to offer private property rights.

critical for China's social and economic transformation, but this has produced no prominent results. While overemphasizing the private ownership approach, these institutions assume that secure land rights are essential for agricultural development and poverty alleviation. Thus, they focus on the formalization of land rights and establishment of effective registration systems. The DFID report contends, 'Issues of social differentiation and inequality are still given little attention by the World Bank, while Hernando de Soto's ideas have recently revived interest in the property rights approach within donor organizations and developing country governments, particularly as a route to tenure security, economic development and poverty reduction in urban and peri-urban areas'. The land registration and titling programmes of these organizations in both sub-Saharan Africa and Southeast Asia have not brought about the changes needed for agricultural development.

Addressing the factors that limit the ability of the poor to pursue land claims requires a pro-poor approach. These factors include land policy and structure of land rights, the changing role of land in people's lives and local social and political relations. The DFID report cautions that land policy formulation and implementation are political processes. The donors must develop a broader way of thinking about how to engage with issues of poverty and power.

Improved land rights will not resolve all the problems due to poor governance. More effective reform would include the building of a more accountable state that incorporates the poor into land policy reforms processes. Moreover, local approaches to drastically improving governance in land-people-state relations should be fostered. Three approaches to policy revision could be considered. The first approach is to assess current land policy impacts on the poor. Second, identify stakeholder interests in land policy reform and get stakeholders to participate in designing demand-driven models of land management. Lastly, establish mechanisms for supervision of land administration by all sectors, especially the media and civil society. ■

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