Land Tenure Issues: Tenure Security and Need for Land Tenure Reforms

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Major land tenure reforms studied

- Land-to-the-tiller reforms,
- Market-assisted land redistribution reforms,
- Tenure security and land market enhancing tenure reforms,
- Forest tenure reforms,
- The needed future reforms to address the challenges arising from the recent sharp increase in demand for land many places (“land grab”).
Relevance for: The situation in Myanmar (Burma) I:

- Land is formally the property of the state
- Customary land rights are not formally recognized
- Land sales were prohibited until 2012
- Land has been taken from indigenous people and given to investors ("entrepreneurs") on 30 year lease contracts
- Part of a strategy to undermine opposition groups that have depended on land resources to finance the civil war against the military government (jade → timber → rubber)
- Command and control policies (market control): Rice production requirements and quota delivery to military regime at low price
- Tenure insecurity, low investment, unsustainable production (deforestation, land degradation), unequal land access
The situation in Myanmar (Burma) II:

- What are the plans of the Opposition on land tenure?
- What are realistic things to do in the short run? (given the political situation, resources available, etc.)
- What should be the more long-run goals for a land tenure system in Myanmar (Burma)?

- We may get your views on this now and also come back to it towards the end after I have presented some experiences from other countries:
  - Including failures and successes
  - Good intentions are not enough to ensure success
The Farmland Bill

- This law was passed in 2012
- 2008 Constitution that all land is to remain property of the State
- The Farmland Bill allows a person with ‘land use rights’ to transfer, exchange, or lease their land. Before this bill came into effect, it was common for citizens to sell their land and this was done openly, however this was officially illegal. Since 2011 these transactions have become legal.
- The Farmland Bill is currently being discussed: many people are worried about the rights of farmers who lack proper documentation for the land they occupy

7. The following conditions shall be complied with in respect of the right to work farmland:

- (a) any person shall work farmland in accordance with the provisions of this law;
- (b) land-tax and other taxes in respect of farmland assessed by the Ministry shall be paid;
- (c) farmland shall not be fallow without a sound reason;
- (d) the prescribed registration fees shall be paid and farmland be registered at the Department;
- (e) service charges shall be paid at the relevant departmental office for leasing, exchanging, pawning, inheriting, donating, and permanent transfer of farmland;
- (f) farmland shall not be used for any other purpose without permission;
- (g) farmland shall not be worked without the permission of the relevant farmland management body;
The situation in Myanmar (Burma) III:

- Are rural people who currently use land for agriculture but do not have legal documents;
  - Able to get legal documents?
  - Protected by the fact that they are using the land? (recognized as users)
Amendment to the Land Law?

List of 17 demands they plan to submit to legislators in a bid to amend the country’s land laws and provide greater protection against forced evictions:

- “end to the arrest and charging of farmers [involved in land disputes] and the people who are helping them, fair investigations of farmers’ claims, and for authorities to stop using the term ‘compassionate grant’ instead of ‘compensation’ for grabbed land”

- Farmers also demanded that authorities compensate them directly for lost land, discuss plans with them first before proceeding with project implementation, and identify undeveloped land for them to farm in the event that their property is to be used for a project.
The situation in Myanmar (Burma) IV:

- How much of the land is formally registered and with users that have land use certificates (“owners”)?
  - How good are the data bases on land?
  - How competent are local land administrations?
  - Can land administrations be trusted or is corruption a big problem?
  - Are local elites controlling such systems and likely to resist pro-poor reforms?

- What is the need for capacity-building and research on land tenure issues in the country?
  - Are rural household surveys carried out that collect relevant data?
The situation in Myanmar (Burma) V:

- Should the indigenous people who have lost land be given back their land or be given another land or be compensated in another way?
  - What is feasible?

- Are there Expropriation and Compensation Laws that
  - Determine under what conditions land can be expropriated (e.g. for road building, other public purposes)
  - Determine an appropriate compensation for those who lose their land due to expropriation.

- How have land disputes been resolved traditionally? Is it possible to build on such traditional systems to develop a new system for land conflict resolution?
The situation in Myanmar (Burma) VI:

- What are the views on the role of land markets in Burma/Myanmar?
  - Land rental (lease) markets?
  - Land sales markets?

- Should land sales be legalized? Should there be restrictions?
  - If yes, why?
  - If no, why not?

- Should there be restrictions on land renting/leasing?
  - If yes, why and how?
  - If no, why not?
General advise: Land Governance

- Seek assistance from International Organizations:
  - The **Land Governance Assessment Framework (LGAF)** (World Bank, UN-Habitat, ++)
  - **Voluntary Guidelines** on Land Tenure and Natural Resources (FAO, ++)
Problem: Unequal land access:

PART I: Land Redistribution Reforms

- Caste Discrimination, Land-to-tiller Reforms and Land Market Performance in Nepal
  - Jeetendra P. Aryal and Stein Holden

- Does Sharecropping Affect Long-term Investment? Evidence from West Bengal’s Tenancy Reforms
  - Klaus Deininger, Songqing Jin, and Vandana Yadav

- Would Small be More Beautiful in the South African Land Reform?
  - Henrik Wiig and Henning Øien

- The Economic Effects of Land Redistribution: The Case of Community Based Rural Land Development Project in Malawi
  - Franklin Simtowe, Mariapia Mendola, Julius Mangisoni, Hardwick Tchale, and Clement Nyirongo
Problem: Weak Tenure Rights and Tenure Insecurity: PART II: Tenure Security and Transfer Rights Enhancing Reforms

- Welfare Impacts of Land Certification in Tigray, Ethiopia
  – Stein Holden and Hosaena Ghebru

  – Luu Duc Khai, Thomas Markussen, Simon McCoy, and Finn Tarp

- Land Market Participation and Farm Size-Productivity Relationship: Implications of Land Tenure Reforms in Uganda
  – Alex Tatwangire and Stein Holden
PART III: Forest Tenure Reforms

- From Deforestation to Reforestation: The Evolution of Community Forest Management in the Dang District of Nepal
  - Nayayan Poudel, Nobuhiko Fuwa, and Keijiro Otsuka

- Tenure and Forest Management in India: Impacts on Equity and Efficiency of Van Panchayats in Uttarakhand
  - Ashokankur Datta and Gunnar Köhlin

- Tenure Security and Investment Effects of Forest Tenure Reform in China
  - Stein Holden, Yuanyuan Yi, Xuemei Jiang and Jintao Xu,

- Forest Management Decentralization in Kenya: Effects on Household Farm Forestry in Kakamega
  - Maurice Juma Ogada, Wilfred Nyangena, and Geophrey Sikei

- Impact of Land Certification on Tree Growing on Private Plots of Rural Households: Evidence from Ethiopia
  - Alemu Mekonnen, Hosaena Ghebru, Stein Holden, and Menale Kassie
Risk of Land Grab: PART IV: New Challenges & Future of Land Tenure Reform

- The **Rise of Large Farms** in Land Abundant Countries: Do They Have a Future?
  - *Derek Byerlee, and Klaus Deininger*

- Using the **Land Governance Assessment Framework** to Help Secure Rural Land Rights: Framework and Experience Thus Far
  - *Klaus Deininger and Thea Hilhorst*

- Conclusions
  - *Stein Holden, Keijiro Otsuka, and Klaus Deininger*
Sources and effects of tenure insecurity

**Sources of risk**
- Unclear borders
- Encroachment
- Conflicts

**Rights**
- User rights
- Limited investment
- Limited access to credit
- Limited land transfers
- Production inefficiency

**Tenure insecurity of owners**
- Private
- State

**Expropriation Redistribution**
Tenure insecurity and land tenure reforms

Sources of risk
- Unclear borders
- Encroachment
- Conflicts

State:
- Expropriation
- Redistribution

Private:
- Tenure insecurity of owners

Rights
- User rights
- Limited investment
- Limited access to credit
- Mortgaging rights
- Transfer rights
- Limited land transfers

Land tenure reform

Production inefficiency

Welfare outcomes

Limited land transfers

Production inefficiency

Welfare outcomes
Some of the complexity of land tenure reform analysis: Context specificity

- Cultural norms
- Political history
- Land rights & Land tenure reform
- Factor endowments
- Operational farm size distribution
- Land market characteristics
- Non-land factor market characteristics
- Production efficiency
- Technology characteristics
- Welfare distribution outcomes

Context specificity
Land-to-the-tiller policies and impacts

Sources of risk
- Unequal land distribution
- Limited land access for land-poor
- Limited land transfers

Rights
- Limited access to credit
- Limited land transfers
- Limited investment

Tenure insecurity of owners
- User rights
- Mortgaging rights
- Transfer rights

Land-to-the-tiller policies
- State
- Private

Expropriation Redistribution

Unclear borders Encroachment Conflicts

Production inefficiency

Poverty

User rights

Limited access for land-poor

Limited land transfers

Transfer rights

Mortgaging rights

Limited access to credit

Limited investment
Nepal Land-to-the-tiller reform: Land Reform Act of 1964

- Nepal: With a history of caste discrimination
- First comprehensive land reform program in Nepal

Objective:
- Ensure a fair share of the production to the cultivators by putting exploitation to an end
Main Features of Land Reform 1964

- Redistribution of surplus land (land acquired after the imposition of land ceilings) to land-poor/landless farmers
- Security of tenancy rights
  - Cannot evict tenant without proper reasons
  - Later on, interpreted as: registered tenants can claim ownership rights on 25% of rented land (land-to-the-tiller)
- Fixing of rent: Maximum 50% of production
- Abolition of sub-tenancies
Achievements of Land Reform 1964

- Granted tenancy certificates to 300,000 tillers
- Acquired nearly 31000 ha surplus land (land obtained by imposing ceiling on land holding)- nearly 2% of total agricultural land
### Table 1 Proportion of Tenants and Area under Tenancy (in percentage)

<table>
<thead>
<tr>
<th>Description</th>
<th>Year</th>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Tenant households</td>
<td>40.4</td>
<td>19.0</td>
<td>9.5</td>
<td>15.9</td>
<td>12.2</td>
</tr>
<tr>
<td>Area under tenancy</td>
<td>25.5</td>
<td>15.9</td>
<td>6.2</td>
<td>8.5</td>
<td>8.7</td>
</tr>
</tbody>
</table>

Source: Ministry of Land Reform and Management (2006)
Weaknesses of Land Reform 1964

- Due to weak implementation,
  - Large land owners got time to sell (or redistribute among close relatives) their land above the ceiling
  - Many landlords evicted tenants

- Dual ownership of rented land: As tenants can claim ownership rights to 25% of the rented land, it created dual ownership of rented land by landlord and tenant.
  - Increased conflicts between landlords and formal tenants
  - Increased informal short-term tenancy as landlords fear to rent out land using written contract
Figure 1: Analysis of the farm size productivity relationship using local polynomial regression

Land Tenure Reform in Nepal
Consequences of Land-to-the-Tiller Reform in Nepal

- Distorted land rental markets
- Created a loss-loss situation for tenants (Bhandari, 2006)
  - Did not get enough land from redistribution (because only 2 % land was acquired)
  - Reduced access to land through land rental market
Low-cost land registration and certification impacts

- Sources of risk:
  - Unclear borders
  - Encroachment
  - Conflicts

- Tenure security of owners:
  - User rights
  - Mortgaging rights
  - Transfer rights

- Rights:
  - Investment
  - Access to credit
  - Land transfers

- Food security:
  - Production efficiency

- Low-cost land registration and certification
  - Expropriation
  - Redistribution
  - State
  - Private

- Impacts:
  - Low-cost land registration and certification
  - Rights
  - Food security
  - Production efficiency
  - Access to credit
  - Land transfers
  - Investment
  - Mortgaging rights
  - Transfer rights
  - User rights
  - Tenure security of owners
  - Sources of risk

- Low-cost land registration and certification impacts
Links between Tenure Security and Food Security: Evidence from Ethiopia
Background

- **The Radical Land Tenure Reform of 1975 and the Derg Period**
  - All land is state land
  - All residents in a community have a constitutional right to access land
  - Land was distributed in an egalitarian way within communities
  - Maximum farm size of 10 ha
  - Land and labor markets were illegal
  - Land redistributions to maintain the egalitarian land distribution

- **1991 Change in Government and More Market Friendly Reforms**
  - Land remained state land
  - Land renting and labor markets were allowed
  - Land sales and mortgaging of land remained illegal
Background, continued

- **Land Registration and Certification 1998-99**
  - Low cost approach
  - Granted user rights to land into perpetuity
  - Enhanced household tenure security, land productivity, investments and land rental activity

- **New Land Law Reforms in Tigray 2006-2010**
  - Established local Land Administration Committees and Land Courts
  - Restriction on land rental at 50% of farm size
  - Confiscation of land from households who have been away for more than two years
Land certificates in Tigray

- Simple one-page certificates
  - Name of head of hh (husband not wife usually)
  - Name, size and location of plots and names of neighbours
Impacts of Land Certification in Ethiopia

- Increased Land investments and Productivity
  - Holden, Deininger and Ghebru (AJAE, 2009)
  - Deininger, Ali, Holden and Zevenbergen (WD, 2008)
  - Deininger, Ali and Alemu (LE, 2011)

- Reduced land border conflicts

- Increased land rental market participation
  - Holden, Deininger and Ghebru (JDS, 2011)
  - Deininger, Ali and Alemu (LE, 2011)

- Positive welfare impacts (income, food security, nutrition)
  - Holden and Ghebru (2013)
  - Ghebru and Holden (2013)
Why was the Ethiopian Land Tenure Reform Successful?

The Ethiopian land registration and certification has been successful for several reasons:

– Low-cost approach
– Scalable with limited training
– Strong local participation (local ownership)
– High local demand
– No political elite that resisted the reform
Large Farms vs. Small Farms: What to prefer?

- Where labor wages are high: Large mechanized farms dominate
- Where labor wages are low and labor is abundant: Small farms dominate
- Tropical agriculture: An inverse relationship between land productivity and farm size is frequently observed
  - Higher labor intensity on small farms (family labor dominates)
- Superiority of large farms for some cash crops due to economies of scale in processing and marketing
  - Contract farming on small farms is often feasible in such cases
Land Market Participation and Farm Size - Productivity Relationship: Implications of Land Tenure Reforms in Uganda

By

Alex Tatwangire and Stein T. Holden

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An Inverse Farm Size – Productivity Relationship

- Caused by
  - Land quality differences
  - Imperfections in land and labor markets:
    - argument for redistributive land tenure reforms or land tenure reforms that enhance land market development that would be good both for efficiency and equity (Holden, Otsuka and Place 2008)
    - Or simply an artifact caused by measurement error? (Lamb 2003)

- We use household panel data from Uganda to assess the extent of IR in different tenure systems (mailo, freehold and customary tenure systems)
The Inverse Relationship and Land Market Friendly Reform

- The recent Ugandan land tenure reform has attempted to strengthen individual land rights including rights to sell land.
- We assessed the IR in different tenure systems in Uganda and use the IR as an indicator of how successful the reform has been in making land markets to work
Key results: Inverse Farm Size-Productivity relationship in different tenure systems in Uganda

<table>
<thead>
<tr>
<th>Right hand side (RHS) variables</th>
<th>Log of total value of crop production per acre operated farm size (in Ug.shs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Panel <strong>Fixed-Effects</strong> (FE) Models</td>
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<tr>
<td></td>
<td>Panel <strong>Random-Effects</strong> (RE) Models</td>
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<tr>
<td>Different land tenure systems</td>
<td>Different land tenure systems</td>
</tr>
<tr>
<td>Freehold</td>
<td>(1)</td>
</tr>
<tr>
<td>Mailo</td>
<td>(2)</td>
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<tr>
<td>Customary</td>
<td>(3)</td>
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<tr>
<td>Freehold</td>
<td>(4)</td>
</tr>
<tr>
<td>Mailo</td>
<td>(5)</td>
</tr>
<tr>
<td>Customary</td>
<td>(6)</td>
</tr>
<tr>
<td>Log of farm size</td>
<td>-0.480***</td>
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<tr>
<td></td>
<td>-0.885***</td>
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<td>-0.757***</td>
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<td>-0.735***</td>
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<td>-0.616***</td>
</tr>
</tbody>
</table>
The Inverse Relationship in Uganda

Scatterplot, lowess, and local linear regression

Log value of crop output/operated farm-size (Ug.shs) vs. Log of farm size (area under crops) in acres.

- **Actual Data**
- **Lowess**
- **Local Linear**
Key findings from the Uganda study

- Found robust evidence of an inverse farm size – land productivity relationship in the freehold, *mailo* and customary systems.

- The relationship was less inverse in the freehold system, consistent with the evidence of better functioning land markets there.
Market assisted land redistribution and impacts

Sources of risk:
- Unclear borders
- Encroachment
- Conflicts

Tenure security of owners:
- State
- Private

Market-assisted land redistribution:
- Unequal land distribution
- Land access for land-poor

Rights:
- User rights
- Investment
- Access to credit
- Production efficiency
- Mortgaging rights
- Transfer rights
- Enhanced land transfers

Investment impacts:
- Production efficiency
- Poverty reduction

Market-assisted land redistribution and impacts
Forest tenure reforms and impacts

- Unclear borders
- Encroachment
- Conflicts

Sources of risk

- Private
- State property

Deforestation and forest degradation

Communal tenure rights

Individual tenure rights

State property

Forest tenure reform

- Expropriation
- Redistribution

Population pressure, economic development

- Forest tenure reform

Rights

Forest management

Forest investment

Forest production efficiency and sustainability

Welfare outcomes

Population pressure, economic development

Deforestation and forest degradation

Expropriation

Redistribution
Tenure Security and Investment Effects of Forest Tenure Reform in China

By Stein Holden*, Yuanyuan Yi**, Jintao Xu** and Xuemei Jiang**

*Norwegian University of Life Sciences (UMB)
** Peking University, Beijing
Forest Tenure in China

- Two ownership types
  - **State**
    - ~42% forest area and 68% volume;
    - Managed by state forest enterprises and farms
  - **Collective**
    - 58% area and 32% volume
    - Growing share of timber production
    - Diversified management schemes
Timing of forest plot allocation to hhs

Kernel density estimate

Kernel = epanechnikov, bandwidth = 1.2146
Inside each forest certificate is a map of the forest plot, which was done by surveying (not GPS).
Lessons from the China study

- More valuable forest land; i.e. forest plots located closer to roads, having less slope, and having access to irrigation water; were more likely to have been allocated to individual households.

- Forestland certificates strengthened the feeling of tenure security on plots and stimulated investment in forestry, which may be the most significant finding of policy relevance.

- Since the surveyed households only had forestland certificates for about 15 percent of all forest plots, expanding such certification can be recommended.
New demand for land and need for land governance

Unclear borders, Encroachment, Conflicts

Private

Investor demand for land

State

Expropriation, Redistribution

Tenure security of owners

Land governance reform

Investor rights

Customary tenure rights

Statutory tenure rights

Investment

Land transfers

Production efficiency

Welfare outcomes

International institutions

Sources of risk

Rights
Some concluding remarks

- There exist no “silver bullets”
- Good intentions is no guarantee for success
- It is possible to learn from history but every country and time period is unique
- New technologies have reduced the costs of formalization of land rights
- Increasing land values and weak governance increase tenure insecurity and beg for reforms that can improve land governance