China's rural development challenges
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Chapter 3  China’s land tenure in the reform era: a critical review

Abstract:

It is claimed that China’s economic success since the inception of the reform has impinged on its land tenure reform characterized by granting individual households long-term land use rights. However, increasing loss of farmland due to development and poor governance has become a thorny political issue in recent years. Policy-makers and scholars have emphasized the role of the property rights approach in averting farmland loss and accelerating agricultural development. This chapter provides a snapshot of the major debates on this issue and develops a framework for understanding the multi-faceted nature of land tenure and its linkages with village development and governance. It ends by proposing a more peasant-centred approach to the design of locally-based land tenure systems for the purpose of sustainable land use, development and governance—the inseparable components of pro-land tenure systems.

1. Introduction

This chapter focuses on China’s land tenure reform in the reform era, which is markedly different from the commune system implemented by the government in the 1950-60s as discussed in chapter two. Through harsh class struggle and land expropriation, vast areas of rural land were redistributed into the hands of the poor peasantry from landlords, rich and middle peasants by the 1950s. The reorganization of the Chinese countryside gained momentum with the advent of the People’s Commune, which was aimed at dramatically increasing agricultural production, social equity and political mobilization. In a nutshell, the success and degree of the land reform during this period had much to do with the strategy of aligning peasants’ economic incentives with politically-motivated class lines. To a certain extent, the socialist policy transformation appealed to the self-interest of the majority of peasants. However, at a later stage of the commune, a neglect or misunderstanding of the non-class-based social and political cleavages impeded progress towards social cooperation. Some incentive systems began to weaken and undermine the desired relations of production (Shue, 1980).
Against this backdrop, the Chinese government began to fundamentally change the commune model into the Household Responsibility System (HRS) that provides individual households with the desired long-term land use rights under collective landownership since the late 1970s. The HRS is assumed to be a driving force for more strengthened land and property rights of the peasants with increased incentives to adopt more efficient farming practices. Even so, rural poverty continues to be a fundamental challenge for socially equitable development, which bears upon the issue of how land ought to be better utilized and governed.

This chapter hypothesizes that the study of China’s land tenure system needs to shift away from a pure focus on land and property rights to the multi-faceted nature of land tenure that impinges upon issues of poverty, land use and management, development and governance. A failure to understand the interrelationships can only obstruct any attempt to tackle the structural challenges to sustainable rural development in China. However, there are few studies available to shed light on this complexity particularly from pro-poor perspectives. As China has reached a critical stage of development characterized by increasing social inequality, chronic poverty and depletion of natural resources, the government has emphasized the importance of scientific development for the achievement of a prosperous society since the beginning of the 21st century. To a large extent, this call bears upon the need to address the imbalanced rural-urban economic development, which is failing the poor whose meagre available assets such as land is on the path to destruction due to urbanization-induced projects.

As pointed out by Xiwen Chen, Director of the Office of Centre Rural Work Leading Group, “all regions with rapid economic development in China are areas where arable land and grain output has decreased. It cannot be considered correct to develop local economies in such ways, because we have yet to figure out the most feasible methods for scientific development, which means a comprehensive, coordinated, and sustainable development of economy and society” (Chen, 2009: 131).

Chen’s viewpoint clearly indicates the urgency for rethinking the current policy, its perverse impacts on local conditions; and moreover, the requirements of the rural poor in relation to the so-called scientific development in general and land use and governance in particular. Thus, this chapter argues that China’s land tenure reform would require locally-based approaches rather than the one-size-fits-all and ill-founded policy premises. Land reform is a negotiated process whereby the state, local communities, business and other stakeholders’ vested interests have to be balanced with the maximum benefits to the poor and their natural resources base.
Ultimately, how to make land work for the poor remains a research vacuum in the Chinese context.

This argument takes place against the backdrop of China’s economic transition towards more economic freedom for individual citizens. It is on this basis that their economic, social and political rights are assumed to be drastically improved to facilitate the development of the market economy. Gaining more economic and political rights for the Chinese peasantry has become a critical issue for a successful transition of the entire society and the goal of development with equity (Li & Bai, 2005). Where peasant land rights are weak, their capabilities for making the optimal use of the land are undermined. Furthermore, weak land rights and poorly developed and enforceable laws and regulations contribute to the lack of power of the peasants to defend their interests and participate in policy-making that concerns their livelihoods. Although many policies are aimed at giving more rights to the peasants, implementation on the ground remains ineffective (Chen, 2009; Van Rooij, 2007). This explains why one cannot fully rely on the property rights approach to improve the current situation. Rather, the factors constraining effective policy implementation are paramount. It is important to note that the current land tenure regime has an intrinsic weakness as characterized by fragmented land relations among smallholders who do not have sufficient social capital and other assets to defend themselves against any unfavourable conditions imposed on them. The political nature of land tenure further complicates China’s land policy reform agenda.

This chapter focuses on the land tenure-poverty-development-governance linkages with a view to explicating the weakness of current land policy directions. First, it provides a brief account of the natural resource and agricultural constraints on poverty alleviation. Second, it provides an overview of the land policy reform since the late 1970s to depict the trends and analyze the underlying issues of poor land governance and the failure to allow for institutional intervention in land issues. Third, it unpacks the key debates of land tenure reform from social, cultural, political economic perspectives in order to illustrate their complexity. Fourth, it suggests the importance of rethinking market-dominated and state-led approaches to land tenure reform in an attempt to explain these linkages. Finally, it explains why policy-makers should pay more attention to community-centred approaches to land tenure reform.
2. Arable land loss, natural resource constraints and policy responses

2.1 Arable land loss and natural resource constraints to development

The cultivation of tiny plots of land is not always conducive to the welfare of the peasants who used to pay various kinds of agricultural taxes and fees until their abolition in 2006. This major policy change was seen as a watershed and a major instrument for easing peasant burdens and poverty reduction. Since then, land has become a more valuable asset for the peasants. Their interests in the land were further boosted when the government decided to provide subsidies for farming to promote grain production. This is coupled with other policies aimed at improving the social security of the poor, many of whom find it more meaningful to cultivate their land rather than seeking off-farm employment when social security for them is lacking in cities. Although migration is taking place at an unprecedented rate across the country, land remains a basic asset for livelihoods for the majority of the poor peasantry. Nevertheless, all the favourable policies have played important roles in stabilizing the Chinese countryside where poverty requires drastic policy measures.

However, the above-mentioned favourable agricultural policies were made in an overall context of farmland loss caused by urban expansion, natural resource constraints and chronic poverty that further obstructed peasant incentives and capacities in grain production. In 2000, China’s total arable land area was 128 million ha, equivalent to 0.11 ha per capita, which is less than half of the world’s average of 0.23 ha. From 1996 to 2005, farmland loss reached 8 million ha. In 2004, the average farmland per capita was only 0.09 ha. In the last decade, it was estimated that 1.5 million peasants lost their land on an annual basis. In 2005, the number of landless or unemployed peasants increased by 3.8 million (Liao, 2007: 163; Tan et al, 2005, 187-188). For instance, in Zhejiang Province alone, one of the richest provinces in China, from 1999 to March 2002, almost 1.7 million peasants were affected by land expropriation. In Shaanxi Province, one of the poorest, 980,000 peasants lost their land from 1996 to 2006. Among these landless people, 35 percent remained in agriculture; 19 percent stayed in the village but were not involved in farmland production; 19 percent migrated to cities, and 26 percent stayed back. The two provinces have seen increasing cases of peasants’ petitions to local

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14 Based on personal communication with local government officials during fieldwork in 2008 in China.
governments. These cases all pertain to an unjust land expropriation process in which their rights to sustainable livelihoods, due land compensation and distribution were denied. (DRC & World Bank, 2006: 16). It was reported that there were 87,000 mass incidents nation-wide in 2005, an increase of 6.6 percent in 2004 and 50 percent in 2003—a sign of social instability (People’s Daily, 2007).

Of the 31 provinces and autonomous zones in China, only 6 provinces have relatively ample farming areas. Over the last ten years, the total amount of reduced arable land is equivalent to the total size of the arable land in Shandong, Hebei or Henan provinces—the three important areas suitable for grain production (Chen, 2009: 129). Unemployment has become a major issue for the landless peasants, whose levels of incomes have been substantially reduced. This is not to mention those in poorer regions, even those in the more developed eastern and southern regions received an unfair level of compensation coupled with very little social security such as the provision of pension. Once they have lost their land, many seek employment in cities but they cannot enjoy the same social security benefits as urban residents (Li & Bai, 2005: 84). Relentless arable land loss has become a major threat to food security, which requires a minimum level of arable land to be maintained. It seems that the government is trying every means to avoid crossing this red line. In fact, China has already been unable to feed its 1.3 billion people, of whom 900 million are peasants, with limited agricultural resources. The reliance on food imports has been on the increase in light of increasing population and decreasing arable land. These economic and social costs of arable land loss have not been dealt with effectively.

China’s rapid economic growth also has a huge cost—natural resources and environmental degradation and depletion especially in the poor countryside. China is one of the countries in the world that has experienced the worst level of water and soil erosion. Land desertification is expanding at an unprecedented rate; and by 1999, it had covered 18.2% of the entire mainland. Loss of vegetation cover in these areas due to over-use of the natural resources is a main cause. China is also one of the countries with severe problems of water shortage and pollution. Fourteen provinces and municipalities’ per capita available water usage is below the international minimum line. About two-thirds of Chinese cities face shortage of water (Zheng, 2004: 32). China’s forest coverage by 2008 was 18.2 percent, far below the world average of 29.6 percent. Rangeland is also experiencing severe depletion. By the end of 2007, one-third of the rangeland had been degraded (Bao, 2009: 137).

These human-induced natural resource constraints reveal an inconvenient fact—the northern provinces with a less developed economy than the south have the largest
farming areas in spite of unfavourable climatic and natural conditions such as water shortages, soil and wind erosion. The southern provinces, where climatic and natural conditions are more suitable for farming, by contrast, have experienced the most severe level of arable land loss and decline of agricultural productivity. Agriculture has no longer been a priority for most regions along the eastern coastlines (Chen, 2009). This mismatch between natural resource endowments and agriculture represents a huge challenge for balanced economic development.

Rural poverty remains an issue of urgency especially at a time of current world economic crisis. In 2008, the annual net income per rural capita was US$ 697, and compared with 2007, its rate of increase has slowed down. China remains a developing country as it is becoming more difficult for the peasants to gain further income increases in the coming years. In particular, it would be demanding to maintain the current level of grain production. In general, the Chinese agriculture and peasants livelihoods are still vulnerable to the natural environment. Any unexpected severe flooding or drought may cause heavy losses of natural assets, which will threaten the fragile rural economy (Sheng & Bai, 2009). The urban-rural income ratio of 3.22:1 in 2005 pinpoints the increasing social inequality, which is a huge cost paid for China’s fast economic growth (Zhu, et al., 2006: 764).

2.2 Reform policy responses

The post-Mao era saw a reformist vision for China’s development led by Deng Xiaoping. Seemingly endorsing the neo-liberal approach, his policy for land de-collectivization seemed to work in the early stage of the reform. The HRS was introduced to secure land tenure security of the weak peasants and enhance their farming incentives. As a result, increases in agricultural production and improved livelihoods of the poor were evident (Oi, 1999). Despite its initial success, the HRS has not enabled agriculture to substantially lift the majority of peasants out of poverty. Major land policy changes that indicate the more liberal approach to land governance by the Communist Party are outlined in the accompanying box:
Box 3.1 *China’s land policy changes in the reform era*

- 1978-1986: The Household Responsibility System (HRS) replaced collective farming in several regions. Collectives still owned the land, but people were permitted to carry out private farming. Land Management Law was drawn up.
- 1998: China adopted the new Land Management Law, which upholds the limitation to rural land subcontracting and transfers.
- 2002: China adopted the Rural Land Contracting Law to protect the contractual use rights of peasant households and open the door to farmland market allowing for land use rights lease, exchange and transfers without changing their original uses. Non-villagers’ involvement was strictly limited.
- 2007: China adopted the Property Law, the first law to explicitly offer protection for private property rights. Farmland remains the property of the village collective.
- 2008: Central Party Committee (CPC) Decision on Major Issues Concerning the Advancement of Rural Reform and Development: further call for farmland transfer, lease, exchange and swap based on market-oriented mechanisms and peasant consent and willingness to enhance scaled farming and peasant incomes. Pilots on trading of collectively-owned non-arable construction land without first going through government acquisition were given the green light.
- 2010: CPC Opinions on Scaling Up Integrated Urban-Rural Development (No. 1 Document): Accelerating contracted land use rights transfers for scaled production; strengthening land management through registration of contracted land use rights; planning to complete registration of collective-owned land within 3 years.

*Source: Author’s own compilation, based on relevant laws and policies and Tong & Chen, 2008.*

It can be seen that the strengthening of land law enforcement and regulation implementation has been characterized as the current government policy focus on farmland protection and local governance accountability. The government claims that it has in place the world’s most rigid laws to contain arable land loss. The 1998 Land Management Law states that only the State Council and provincial government have the right to approve land acquisition plans-no other organ below that level. It also grants peasant households 30-year land use rights backed by written contracts. Again, enforcement of the law and rules have been largely unsuccessful due to local government manipulation, which is self-evident in the increasing number of reported cases of illegal land acquisition and local officials prosecuted. For instance, a sample study indicates that up to 40 percent of the households surveyed did not have the contracts in 1999 (Zhu & Prosterman, 2006). That was why the 2002 Rural Land Contracting Law and 2007 Property Law were promulgated to strengthen and provide a foundation for a land market. One should not be confused with the conception of land transfer and land market. In the current context, land sales are not allowed to take place among free individuals in the countryside, contrary to common practices of sales of real property. Farmland can only be transferred if it is turned into construction land first in accordance with local land use plans of the local
government. The latter acts as both a middle-man and dealer in approving the plans and deciding on the value of the land and compensation paid to the peasants. The laws simply attempt to provide better protection of peasant land use rights and collective ownership with view to safeguarding their interests in any land use changes launched by the local governments whose conduct in illegal land expropriation is also expected to be contained when the peasants retain more power.

The government seems to believe that more strengthened individual peasant land users’ rights would lead to their increased incentives in land investments. As the following figures show, there is a strong correlation between the percentage of household investment in land before and after the 1998 Land Management Law which requires the issuance of land use contracts and certificates to the peasant land users. Theses figures seem to suggest that land policy changes should reflect the government efforts in facilitating China’s transition to a market economy. The promulgation of the 2007 Property Law has been claimed to be a landmark for the protection of private property since the reform started in late 1970s. With a great improvement in the living standards of ordinary Chinese citizens, this kind of law is needed to safeguard individual property rights, although it went through substantial redrafting over at least a 14-year period. There was more critique against its potential attack on the nature of socialism. Eventually, the Property Law managed to strike a delicate balance between the need to continue the market economy and to satisfy those policy-makers who advocate upholding socialist ideals. It is a common claim that it is not aligned with the capitalist property system.

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<th>Table 3.1 Percentage of Households Investing in Land</th>
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Source: Zhu Keliang and Roy Prosterman 2006 “From land rights to economic boom”, China Business Review (online), July-August
Nevertheless, it is proven that the current land tenure systems of varying degrees of compulsory implementation have largely induced land tenure insecurity, chronic poverty and farmland loss. Despite the government’s efforts in enforcing policies and providing more formal recognitions of land rights of the peasants through more decentralized governance at the local level, peasants have gained limited real land rights. In essence, all those administrative and legal measures have limited roles in curbing corruption in land governance and safeguarding the interests of the poor households who often face land evictions (Van Rooij, 2007).

Many Chinese leaders and scholars are concerned that this law may backfire given the rising social inequality that strengthened private rights could aggravate. Their discontent also shows the hardship of the poor Chinese peasants who are facing forced eviction and their land falling into the hands of developers and local officials. Apart from the concern about the probability of land privatization that the law could ultimately lead to, they also doubt whether the law can actually play a major role in reversing the trend of land grabbing due to more intrinsic and complicated governance problems. The law contains explicit stipulations on the protection of private property rights of urban dwellers, but remains silent on the enforcement of peasants’ land rights (Fan, 2007).

To some extent, this new law was followed up by the Central Party Committee’s October 2008 rural reform policy to mark China’s 30 years of remarkable success in economic reform. It is reported that it is a further step of the Communist Party to allow peasants to lease or transfer their land in order to raise rural incomes and speed rural-urban migration. It will enable peasants to have substantial decision-making power over their land assets in the market, which will be set up to allow them to subcontract, lease and exchange their rights to use the land. This is seen as a major step to accelerate those practices that have already taken place but were not officially permitted by law. Some economists and rural affairs experts who back this change believe that it will facilitate the formation of larger and more efficient farms and thus the elimination of those inefficient family farms. However, given its concern over the forced transfer of farmland by local government, this policy clearly states that all land leases should be based on peasants’ willingness and that adequate compensation be paid to them. Moreover, it states that land used for farming should not be used for any other purposes given China’s pressing need to ensure food security. Like the Property Law, this policy is seen as another attempt to strike a

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16 This policy, approved at the 3rd Plenary Session of the 17th Central Party Committee on 12 October 2008, remains silent on land sales, which keeps the nature of collective ownership of land intact to avoid more controversies among policy-makers and experts.
balance between the liberal approach to full property rights for peasants and land privatization that could aggravate land losses for farmers (Wong, 2008).

Ineffective law enforcement and policy implementation have contributed to poor rural governance, unsustainable natural resource use and poverty. In the land sector with its multi-faceted nature, the government may not even have the intention to further its land reform but it may be paying lip service in order to balance the conflicting interests of all parties. On the one hand, it seeks to give more rights to the poor and undermine the power of the local government and businesses, whose resistance could raise immense problems for the central government. On the other hand, the collective institution is well placed to maintain its political and economic control on the ground. Moreover, the Party itself cannot divert its path from socialism to pure capitalism characterized by private property rights. Although this policy appears to be a marked shift from total collective control over land, its actual implementation cannot be overestimated given the immense power of the local government in deciding on ultimate land use plans.

Local government can easily adapt relevant land laws and policies to its own needs in the name of economic development, as it exerts overtly control over the whole land management process in which laws and policies are not understood or even supported by the affected communities. For instance, according to the Land Management Law, it is forbidden to transfer farmland or lease it to other uses unless the latter complies with the general land use plans of local government, or the land has already been in use by an enterprise that has gone bankrupt or has merged. In addition, the 2002 Rural Land Contracting Law explicitly provides peasants with stronger rights to hold onto their contracted land and it guarantees stronger legal protection. The law stipulates that the landowner (implicitly referring to the rural collective) shall not take back the contracted land during the contract term. Despite all the measures to strengthen land use planning, local government adopts various tactics to deal with these measures. This explains why farmland loss is still on the increase.

In addition, there is a lack of provision relating to the transfer and lease of use rights to housing land, especially in peri-urban areas where houseowners often need to either exchange or simply sell their properties to cope with urban employment (Wang, 2005). However, as the land and home are managed by two different departments—land and housing respectively, it is cumbersome to seek the approval of both departments to receive proper status of registration. This is compounded by the levying of high fees on the homeowner. As a result, it is common to find that many homeowners without the proper registration certificate as required by law.
A major step to address the lack of formal documentation of land rights is the promulgation of the Land Registration Methods by the Ministry of Land and Resources (MLR) in January 2008. Where rural collective land is concerned, it refers to the registration of collective ownership of farmland and construction land, while leaving aside the registration of farmland contracting rights.\textsuperscript{17} Registration certificates are issued to the collective for its title as an overarching responsible entity that is encouraged to invest in land shareholding arrangements. It stipulates that the collective proprietor should submit the documentation for registration approval without indicating who the collective is. Furthermore, it allows for the registration of use rights to farmland by third parties, which makes it ambiguous in terms of the difficulty in understanding whether the land is contracted land in the first place. If it is, then what would be the relationship between the third party and the original land user? Strikingly, this policy puts forward articles on land rights protection allowing for transparent land registration process in which registered materials can be openly accessed. It was reinforced by the 2010 No. 1 Document that stresses the task of completion of collective land registration within three years in order to improve land management. Overall, it seems a stride towards meeting the need for land registration to build up a modern land management system in order to further protect peasants’ land rights. Nonetheless, it is doubtful whether it will be effectively implemented given the issues discussed earlier especially regarding landownership, lack of coordinated management between land and other agencies as well as societal buy-in. Subject to the societal choice in the acceptance of this land management system, it could become an empty institution that lacks credibility in terms of meeting the demands of society and the goals of land management itself (Ho, 2005; Ho, 2003). Furthermore, contrary to Western juridical features, the Chinese legal culture presents a blurred distinction between juridical and administrative powers. This is characterized by the fragmentation of law, the dependency of the courts on local government and the subordination of law to policy (Dicks, 1996).

In a nutshell, current land laws and policies have not effectively resolved the issue of the role of the state in land management processes in which it has abused its power in deciding on land transfer in the underdeveloped market. As a result, the state manages to take farmland at low prices and transfer it to businesses at a much higher value with little compensation given to the poor land users. By doing so, it can extract rent from the deals, which is a major factor for urban sprawl coupled with corruption. For the evicted peasants, the land expropriation process lacks

\textsuperscript{17} Registration of farmland contracting rights falls under the responsibility of the Ministry of Agriculture.
transparency and fairness. Moreover, the current legal framework does not explicitly stipulate the conditions under which forced removal is allowed. This further disadvantages the peasants whose legal awareness and power to exercise their legal rights remain extremely weak. These issues all indicate the weakness of the current legal framework: first, most institutional arrangements for land acquisitions enable the local government to take the law into its own hands to its benefit, although it does not explicitly contravene the law. Second, local government seems trapped in this. On the one hand, it cannot stop land acquisition in the name of economic development. On the other hand, it lacks the real power and will to confront its own irregular land behaviour (DRC & World Bank, 2006). The latest land-related policies seem to grant the village collective more leeway in transferring their non-arable construction land, which might trigger more discontent of the local government with the central government as the former’s power can be undermined (Tong & Chen, 2008). However, to what extent the local government can bypass or adapt to this policy is beyond the scope of this chapter. The issue remains as to what social and political parameters can actually shape the outcomes of the current policy and legal framework; and moreover, under what conditions the overall land management system can be improved.

Moreover, what impacts these policy developments will exert on the poor, how the latter react to the developments, and what other reform measures are needed to make land profitable for the poor ought to be researched. Although it is hard to predict these issues at the very early stage of policy implementation, one can gain insights from the effectiveness of past policy implementation and the extent to which that it has an impact on the poor. It is important to understand the issues underlying the constraints to effective policy implementation, which serve as the basis for understanding of the policy improvements needed. The preceding brief account of legal and policy changes concerning land tenure indicate that these policy changes have paid little attention to the causes of poverty where land is inextricably linked with the natural resource constraints on poverty. A good understanding of the complexity of land use in improving the livelihoods of the poor should be developed. Improper land use can cause further natural resource degradation and impoverishment of the poor. However, how to make the optimum use of the land from the perspectives of sustainable development and peasants’ needs remains to a large extent a policy vacuum.
3. Debates on land ownership and property rights

Many policy-makers and scholars have focused their discussions on the lack of clarity and transferability of rural land ownership as the key to the failure in economic and sustainable land use and chronic poverty as already discussed. The currently predominant ownership of land by the collective is claimed to be the fundamental hindrance to scaling up agricultural development in China, since it is ambiguous in nature and often leads to local elite rent-seeking and corruption through illegal land expropriations. Local and regional land use plans are easily manipulated by the local government in pursuit of lucrative deals in land sales. As Wang (2005:73) states, “the most practical path for future legal reforms is to focus on who is the real owner. How should the owner exercise its ownership of land?” He sees the lack of clarification of land ownership as a fundamental issue that conflicts with economic growth and social welfare. As a result, the current laws and policies have actually tied the peasants to their tiny parcels of land which are nonetheless economically unproductive for meeting the possible long-term needs of the country. Yet, Wang points out that it would be futile to hold public debates on land privatization which is not favoured by the state and many other stakeholders. He proposes that it would be more useful to strengthen land use rights and downplay land ownership, while establishing a transparent and efficient land market for the development of land use rights in rural areas.

In a similar vein, Schwarzwalder (2001) argues that insecurity of land tenure currently represents the greatest obstacle to Chinese peasants’ ability to compete in the international agricultural marketplace. As informal land readjustments among the peasants take place often to accommodate demographic changes especially in very poor areas, conflicts occur among themselves and between the peasants and local leaders. Wang (2005) even argues for more political reform in rural democratization to allow peasants to choose their own leaders in a better way so that decisions on their land can be made by those who represent the peasants’ own interests. Moreover, these questions all boil down to the fundamental issue of what institutional arrangements will provide the proper incentives to encourage farm production from a land base that remains under the state or collective property, as land rights are not only the result of legal and policy construction, but also of social and economic development.

The preceding views on land tenure insecurity resonate with a lack of well-defined land management structure that weakens policy implementation and good governance. In essence, peasant land rights have never been clarified sufficiently. The term collective ownership does not delimit the administrative unit in terms of who
really owns the land—natural village, administrative village or township government, which are all collective entities. Where individual peasants stand at these levels and how they can exercise their rights at what level is left unclear. This ambiguity also leads to conflicting policies of different public sectors which find it difficult to coordinate themselves and thus produce cohesive policies that can effectuate efforts in sustainable land management for the poor. In strict terms, collective ownership is not public ownership; rather it is a type of communal arrangement. Thus, this ambiguity is made intentional to avoid political sensitivity towards private ownership. To use Ho’s term, this is “deliberate institutional ambiguity”. As a result, local governments see it as a perfect fix to facilitate urban and spatial planning. When land disputes between collectives and local governments occur, courts face a lack of legal rules rather than administrative measures of unclear legal status which hinder sound judicial judgment (Ho, 2003; 2005). In such situations, it is tempting to be guided by the concerns over the loss of the dormant political ideology, which holds nobody responsible for their actions. Thus, there is a need for more clarity on land rights structures that enshrine property rights for individual peasants, who should be given the ultimate decision over the type of land rights they prefer over time and space (CBR, 2007).

To deal with the landownership issue, some scholars made explicit calls for land privatization, which is deemed necessary for substantial agricultural improvement. According to the China Newsweek (2007), an influential public policy magazine, land reform in China is at a cross-roads which has to be tackled swiftly. This will allow peasants to extend their land rights to buy and sell land freely, which will help to combat illegal land seizures and build an orderly land market under the rule of law. Economists are concerned about a lack of impetus of rapid agricultural growth under the current land law and policy which limit technological advances in agriculture by preventing peasants from accumulating land. To improve agricultural productivity, it is necessary to entrust the peasants with the rights to sell, subcontract or merge their land with others in shareholding companies. These views resonate well with that of De Soto who believes that private ownership is essential to economic development. The state ought to protect property rights in a formal system where ownership and transactions are clearly recorded. This reflects the view that capitalism must give greater independence for individuals to protect their assets from community arrangements (De Soto, 2000). As Zhu and Prosterman (2006: 834) assert, “China should consider going beyond a tenure system of thirty-year rights by either providing farmers with full private ownership rights to land, or nationalizing agricultural land and giving farmers perpetual use rights”. Pieke (2005: 107) further affirms that the one-size-fits-all land policy is not suitable for China, especially for those relatively developed regions where agriculture plays a minor role in rural
development. As many peasants are not allowed to dispose of their land, they continue to keep their land under grain rather than other uses. This economic inefficiency in land use contributes to the developmental stalemate currently confronting regional agriculture. Alternatively, Pieke suggests that the peasants should be allowed to freely mortgage or sell their land use rights to raise money for commercial ventures or other purposes.

There is no doubt that safeguarding and strengthening individual peasants’ land and property rights represent the elements of good land governance in China. However, this does not necessarily lead to either land nationalization or privatization. In fact, many peasants across the country oppose privatization or even extended land tenure because they enjoy overall income security under the current form of collective landownership. Moreover, local peasants have developed heterogeneous ways of land management, which means that policy-makers are not the final arbiters in land management (Rozell et al., 2005; Qiao, 1997). Were land to be re-nationalized as in the case of the era under planned economy, the market economy that China has adopted would be pointless. If land were to be privatized, one should not overestimate its potential advantages. According to Wang and Xu (1996: 202-203), in the Chinese context, land privatization would have its inherent problems. First, it would not drive agricultural modernization, since it would tie individual peasants to their fragmented land that hinders large-scale farming. Second, it could lead to changes in the existing rural land relations in such a way that landlords and tenants could reemerge. This would lead to poverty and deprivation of the majority of peasants. Only under public ownership can the majority of peasants be protected from exploitation, and can social equity be realized to ensure common prosperity. Therefore, Wang and Xu hold the view that land tenure reform must guarantee peasant rights under the current household responsibility system (HRS). In order to improve land productivity and agricultural growth, there is a need to realize economies of scale in agricultural production through collective means instead of land privatization. And social equity must be ensured for all peasants. No group should be better off at the expense of others.

Given the international experiences in the failure of agrarian reform, the issue of landownership and property rights never ceases to lose importance. De Soto’s theory relying on the standard economic assumption that human nature is universal, excludes the fact that different cultures have developed their own legal and political systems. In Asia, like the case of China, personal relationships and family ties have helped foster rapid economic growth, security and trust in economic relationships. This implies that economic growth can be accelerated without a well-developed commercial legal system like that of the West (Harrison & Huntington, 2001). In the
case of China, exclusive individual landownership is not essential to agricultural development. Instead, village organizations and property relations should ensure economic benefits for the poor. Collective landownership provides the conditions that enable peasants to move back and forth to their land in response to changing conditions in the wider economy (Bromley, 2008).

Moreover, it is argued that the root of the problem has nothing to do with either land privatization or public ownership but to the realization of peasants’ collective rights. The law makes clear stipulations on land rights, but lacks details on how the peasants can actually exercise their rights and how they can protect their rights. Although land is collectively-owned, it is managed by individual households. But it is hard to assess the extent to which peasants are able to exercise their land use rights. This actually makes the land difficult to put on the land market, which is predominantly controlled by the government. The crux of the matter is that the issues of how to restrain the abuse of power of government and how to deal with the powerful groups with vested interests in land remain a challenge (CBR, 2007). It is obvious that local governments can use the latest land policy on land transfers to satisfy their need for land enclosures in the name of the pursuit of scale-farming to accelerate rural development.

Two additional factors have not been given enough attention in the current debates. It is a simple fact that China’s small-scale farming and its associated low efficiency is a major hindrance to the achievement of economies of scales in agricultural production. Farming for most rural residents means subsistence more than making profits through large-scale production, which is impossible under current institutional arrangements. When other economic opportunities arise, peasants may probably forgo their land to pursue better rewards. With little land in their hands, leaving the land to the local government and businesses in return for compensation is not a bad deal sometimes, especially for young people who are more likely to invest the compensation money in local businesses. With few alternative opportunities except farming, most peasants are in a desperate position to pursue efforts in search of a quick relief from poverty whenever they are available. All these factors are actually conducive to the local government’s attempt to acquire land for profit-seeking non-agricultural purposes. In developed regions in particular, because finding off-farm employment is easier, peasants are more inclined to give up their land as long as compensation and social security are paid to them.

The other factor is the HRS as a direct determinant in this pattern of agricultural production, as land is about equally distributed to individual households. Some contend that the improvement in the HRS is needed to develop rural land rental
markets in order to facilitate land use efficiency and migration, which are essential to meet the changing needs of the economy. The healthy development of this market would require more secure peasant land rights and further reduction in the scope for discretionary intervention by local officials. This will lay a basis of scale farming in the future (Benjamin & Brandt 2002; Deininger & Jin, 2005). However, large-scale agriculture based on the current HRS may not suit the Chinese context in which a large population relies on very limited land. Even taking migration into account, it will not help much as the Chinese cities are already over-populated. Building small towns adjacent to rural areas remains a challenge as mentioned in the so-called integrated rural-urban development to address the rural-urban gap. However, Chen (2009) does not believe that the HRS should be blamed, because the fact of the 900 million rural population living on extremely limited arable land is the root of the problems. And any attempt to instigate large-scale agriculture is unrealistic because all of the peasants simply need a piece of land in order to survive. Furthermore, he warns that the call for free land rentals and sales can most likely trigger land concentration as Chinese history shows. Land concentration is seen as a major factor for social inequality and instability. Even so, the HRS has a fundamental weakness as compared with the People’s Commune in the 1960s, which has not received attention. As the rest of the chapters show, the HRS fragments social, political and economic rural relations, which weakens the power of the peasants to claim their rights and cooperate in farming and marketing their produce. Confronting land expropriation, their power to collectively defend their common interests remains very limited. Moreover, the departure from collective action has led to more vulnerability of the poor to the weakening condition of natural resources, which require more community-level decision-making and action. To Chen, the solution would be simulate the experiences of Japan, South Korea and Taiwan by trying out specialized cooperative organizations on the basis of the HRS. By organizing peasants in agricultural production and marketing, the cooperative is seen as a more effective institution to achieve the goals of scaled agriculture than simply the realization of land privatization.

4. Economic, social and political dimensions of land tenure reform

The current development policy has a strong focus on rural development, that is, modernization of agriculture, which is deemed necessary for the overall modernization of Chinese society. This is reflected by Premier Wen Jiabao’s recent article on the imminent problem of food supply. He points out that current agriculture has reached a difficult stage, at which rural social and economic development still
lags far behind. This is further compounded by the danger of a food shortage, which is critical to economic development and social stability. Wen states that food security should be put on top of the political agenda and the resolution would be subject to ensuring stable agricultural growth in order to substantially increase peasant incomes. Unavoidably, all these issues relate to how to deal with the land. He indicates that it is necessary to deepen the rural reform. In this reform, various kinds of land operation and management to achieve economies of scale are allowed, but these must be carried out on the basis of peasants’ willingness under the rule of law. It is forbidden to force them to partake in it, and caution must be taken to guard against arrangements such as land shareholding and long-term leasing practices. As long as their contracted land is kept intact, at least they will have minimum guarantee of the land on their return from the cities. Premier Wen simply sends a signal that great caution should be taken in implementing the Party’s policy that encourages land transfers as described earlier. It may be confusing to many, but it becomes clear when he mentions the importance of comprehensive rural reform that prioritizes the basic completion of township reform by 2012 to greatly improve the role of the township government in social management and public service delivery (Wen, 2008). He actually indicates the social and political challenges for rural development in which land rights are interwoven. Essentially, political reform must be geared towards the realization of social equity and balanced rural-urban development. It is these two goals that have spurred the concerns of Wen and other leaders who are afraid of any negative consequences of the land reform policy.

The establishment of land shareholding cooperatives can be seen as an apparently durable solution to the reality of small landholdings in China. This institution reflects a policy compromise between pro-market and pro-socialist advocates. On the one hand, it is assumed that it would facilitate the operation of the market in land use and management to boost land use efficiency and large-scale agricultural production. On the other hand, it would ensure that the village collective and local government continue to play a dominant role in managing and controlling this institution. Land cooperatives would further facilitate land consolidation and mechanization from economic perspectives as well as the activation of land rental and sales markets, which could trigger increases in land inequality and landlessness. But it could eventually lead to accelerated rural-urban migration, which is important for averting the trend of declining farm sizes and facilitating non-farm economic development (World Bank, 2007).

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18 For details, see Chapter 5.
However, there has not been any pro-poor model that provides the right incentives for all actors to conserve the scarce land resources and substantially improve peasants’ socio-economic and political rights that can lead to poverty alleviation. The so-called land cooperative model can be easily manipulated by the local elite and may lead to further farmland loss due to the weak voice of the poor and the lack of representative institutions for the poor. Furthermore, it is important to unravel the underlying social and political complexities that shape land rights structures and peasants’ choices of land management and rural development as a whole.

In remote poor areas in particular, land is primarily used for subsistence by the majority of peasants, which requires its equal distribution to accommodate demographic changes. Land readjustment is a common practice to this end, despite the restriction by law to avoid induced conflicts. In fact, peasants in these areas may not show great concerns about their land rights in terms of obtaining land use contracts, or in investing in the land. They are more concerned about how to make the land meet their basic needs rather than seeking their economic and political rights embedded in their land. To a certain extent, land is not always seen as a lucrative asset, as peasants did not want to bear land-reduced taxes and fees imposed on them especially before 2006. Obviously, the current legal framework has not been effective in dealing with this issue. Although it aims to ensure security of tenure through limiting this kind of informal land rights exchanges and swaps, its simplified dictations cannot tackle the social complexities inherent in land relations (Zhao, 2008).

The village administrative allocation of land has been strongly criticized for its negative impact on peasant incentives in land investment. Thus, more secure land rights through the registration of peasant land rights is strongly advocated (Zhu and Prosterman, 2006). However, this simplistic approach characterized by the formalization of land rights underestimates the complexity of village governance. The marginalization of the peasantry by the local elite further deters peasant incentives in land investment. And lack of social capital and access to various economic and political resources contribute to their inclination to maintain their low economic, social and political profiles. As a result, they are unable to forge alliance in their daily struggles against poverty. Neither would they be much interested in participating in village governance, which has shown an increased tendency of reduced peasant support for either government policy or development programmes (Zhao, 2008).

For indigenous communities, property rights carry a different meaning as compared to that found in “modern” communities. Some indigenous groups value their communities as defined by collective resources, communal land projects and
equitable distribution of resources. Unlike the common connotation of property as something reflecting a relationship between people and things, it is a relationship between people, embedded in a cultural and moral framework and their own vision of community (Hann, 1998). For instance, for pastoralists in Inner Mongolia, rangeland is managed in line with communal rules developed over the course of their history, which does not lie in the delimitation of the land each household uses as mandated in the HRS. It is found that the latter does not mitigate the “tragedy of the commons”; instead, it has exacerbated rangeland degradation. It demonstrates the fact that new policies for land tenure security to promote agricultural production may conflict with the systems of the vulnerable communities and these policies have triggered fragmentation of community cohesion and land degradation. A collective treatment is needed so that the indigenous communities can be given the right to utilize their resources in ways that best suit their own interests through the establishment of small-scale collective property systems, which government should foster and protect (Li et al, 2007; Sturgeon, 2004; Yang, 2007).

Furthermore, taking China’s land reform as a revolutionary movement, it is necessary to understanding how Chinese society has evolved. This necessitates the development of insights into how peasants’ traditional cultures have changed in relation to land, how the logic of political culture has shifted, and why and how the state and peasants have collided in political movements time after time. As Zhang points out, the land reform itself as reflected in the process of collectivization, the formation of People’s Communes, the Four Clean-ups Movement and de-collectivization, and so forth, were not what peasants themselves had expected or would have chosen. Rather, they were in part imposed on villages by the Party and its political power (Zhang, 2004). Given the fact that the majority of peasants are in favour of the current practice of land contracting and the improbability of land privatization, the rural collective ownership of land will remain the major element of socialism (Ho & Lin, 2003).

The underlying economic, social and political dimensions of land tenure schemes are critical for sustainable land use, rural development and governance. Although the current HRS grants the peasants strengthened land use rights, it has its intrinsic weakness in facilitating people-centred approaches to land use and management. To certain extent, it contributes to chronic poverty, poor rural governance and loss of natural resource bases, as fragmented land relations constrain peasant organization and participation in farming, natural resource management and politics. The inseparable social and political factors for land tenure reflect how state and society interacts. It is important to explore the changing contexts, relationships and rights to land and examine the changing relationships between land and poverty and how
people cope with rural-urban change. In this respect, the links between land rights, social processes and structures and political and economic organizations deserve further attention. The study of land laws and policies can shed light on issues of social differentiation and inequality. This would require a re-thinking of the formalized approaches to land governance centred upon land titling and registration, which has not brought about the expected changes in agricultural development as seen in many transitional economies. In order to understand the factors that limit the ability of the poor to pursue their own rights, a pro-poor approach can be explored to investigate the changing role of land in peasant livelihoods and local social and political relations, which can reveal more practical ways of dealing with poverty and power (DFID, 2007).

5. Land tenure and village governance reform

To use the pro-poor approach in land policy, there is a need to understand the linkages between land and sustainable development and how institutional arrangements can be made to foster and stimulate development initiatives that benefit the poor. As many scholars have argued, the basic problem of China’s development is population growth and its associated substantial decrease in natural resources including the land. Industrial and urban development could contribute to rural development in terms of reducing human pressure on the resources (Tawney, 1966; Fei, 2006). Over the past decades, development policies remain bi-polar in terms of the co-existing and unsupportive elements of subsistence agriculture and national food grain self-sufficiency on the one hand, and the commercialization of agriculture, industrialization and urbanization on the other (Pieke, 2005).

China’s land reform is part of its economic transition marked by market-oriented approaches with a Chinese character, although the latter has never been clearly defined by the government. Collective landownership can be seen as socialist and will not change its nature in the foreseeable future no matter how developed the market economy becomes. This trajectory also explains why the institution of the land cooperative has been proposed, and this underscores the socialist and market mechanisms in agricultural and land management. Thus, land reform is led by a mixture of state and market-led approaches and the predominance of the state in land governance. However, the strong presence of the state in the Chinese countryside and the tensions between the central and local levels over conflicting interests in land utilization have undermined the effectiveness of policy implementation in meeting sustainable rural development goals.
As seen in other transitional economies, the introduction of private property rights has brought about the breakdown of the earlier cohesion of village life with its often elaborate, though informal, structure of rights and obligations (Myrdal, 1968; Todaro, 2000). The current HRS in China has effectuated land fragmentation and a dismantling of the interwoven village relations. The loosening of intra-community relations has certainly affected collectively-organized economic activities as seen in the pre-reform era. This also indicates that the current village collective can no longer act as a genuine entity representing the interests of the whole village. Thus, the role of the HRS in facilitating market-oriented approaches to land tenure reform and sustainable rural development cannot be overestimated. It serves much more the interests of the local government rather than those of the peasants. This also explains why village governance is so poorly developed and fails to bring rigorous sustainable development solutions. China’s rural land tenure structure gives immense power to the village collective and local government in de facto terms. In this sense, China shares the same experiences as other developing countries. As Todaro contends, “the ultimate impoverishment of the peasantry was the inevitable consequence of this process of fragmentation, economic vulnerability, and loss of land to rich and powerful landlords” (Todaro, 2000: 377). Thus, “a more democratic, or at least accountable, land planning regime in China could potentially provide a way out of the bureaucratic infighting and stalemates that have characterized China’s land policies for so long” (Pieke, 2005: 100).

How to make land contribute to sustainable rural development and an improvement in the livelihoods of the poor presents an ultimate challenge for land governance. As the Chinese peasants lack a voice in land use and management, promoting inclusiveness is important to induce their participation in this process. This can foster the creation of village-based institutional arrangements for pro-poor land management in the overall context of rural development (World Bank, 2003). However, the issues remain as to whether there is a need to create new institutions or to improve the current institutions that can drastically represent peasants’ land rights and benefits. In any case, institutional development can provide ways for people to say what they think and need, support the implementation of policies that meet the needs of the poor, provide public services that reduce discrimination against vulnerable groups, and offer peasants the opportunities to question the laws and policies that affect their decisions on land use and management (DFID, 2006).

The dilemma facing institutional development in rural China can be seen from the limited progress made in village governance—village elections that are aimed at enhancing peasants’ political, economic and social rights. Although it has exerted an impact on improving political accountability, it has few effects on the empowerment
of the poor in the face of the political monopoly of the village collective and local government. Party manipulation of the elections has failed the village collective in providing a significant counterweight to officialdom. Furthermore, lack of internal conditions such as democratic rules, procedures and capacity of the peasants are hindering the entire village governance process (Lee & Selden, 2007; Van Rooij, 2007; Xu, 2003; Zhao, 2008). Although the current institutional framework provides the space for institutional innovation such as the creation of peasant economic cooperative organizations, water users’ associations and so forth, these organizations can hardly exert a major influence on village governance. This means that further improvement in land law and policy ought to take this institutional dilemma as a major point of departure in order to foster more genuine local institutions that represent the interests of the poor.

6. Conclusions

This chapter illustrates the rural development challenges underpinned by various landed factors such as natural resource constraints and land tenure, and the progress made and challenges for improvement in land law and policy that can benefit the poor. The current land tenure regime has to a large extent not favoured the poor in terms of chronic poverty and weak rural governance. This is exacerbated by rising population pressures, natural resource degradation and small landholdings. This issue is explored from a wide range of perspectives that take land rights as multi-dimensional complexities, where the solution does not lie in simply emphasizing the need to strengthen law and policy to clarify landownership and implementing relevant reforms to facilitate scale farming. It is important to note that it is not an issue of whether scale-farming is needed. Rather, it is about what institutional arrangements can be made for what patterns of agricultural development. In this respect, the forms of land management through nationalization, village collectivization and privatization all have their advantages and disadvantages in the Chinese context, in which local economic, political and social conditions differ. Obviously, there are no one-size-fits-all solutions (Huang, 2008). The market approach can also be as costly as the state-led approach. To deal with it, it is necessary to effectively coordinate the actors involved in the land reform process through decentralized and demand-driven implementation (Hall, 2008). In this sense, it is more helpful for policy-makers to identify and foster approaches from the angle of local initiatives.

Land institutional design in China can be tested with a greater attempt to revitalize the overall agricultural sector through peasant innovation in order to put in place their
own institutions that work better than the existing ones. This requires a rethinking of the role of the collective in land management and rural development. It is important to note that this does not refer to the strengthening of the existing village committees, although their more effective functioning is needed. Neither does this indicate a return to the commune, which failed not only in China, but also elsewhere. The new approach to land collectives would ensure peasant voluntary action groups. They would be established by relatively socio-economically homogenous groups of peasants who would be willing to participate in decision-making to ensure that labour and benefits would be shared equally among themselves. In this way, “these collectives would be built on very different principles from the failed historical examples, and would also offer an alternative to atomized/individual private enterprises” (Agarwal, 2008: 2).

Although this proposed approach presents a challenge to current institutions, it is not a total departure from them. It can contribute to the ongoing decentralization process that is aimed at enhancing government accountability. It can provide a new impetus for peasant participation in land policy-making and management processes to improve their more equitable land use. And it could revitalize the village relations for the formation of truly democratic local institutions. Therefore, it contributes to overall rural sustainable development. It would deepen the current debates on landownership and its importance to land management by providing the feasibility of more inclusive arrangements for land titling that reflects the willingness of and creates the incentives for peasants to design their own programmes. In this respect, future land laws and policies may need to give due attention to peasant participation in decision-making and actively support their initiatives in determining the types of land rights they need for a specific type of land use and management. Even so, the stranglehold of local elites may hinder this approach. The solution would be to align peasants with the wider public in promoting their land development agenda. First, there is a need to understand local development dynamics that pose both opportunities and constraints to sustainable land management. Second, peasants’ perspectives and cultures should be taken into account in land use planning and policy-making processes to ensure that they are supportive of any policy changes. Third, civil societies should be encouraged and empowered to participate in this process and given more space for advocacy and supporting peasant-centred approaches to land use and rural development as a whole. The realization of the three approaches will allow for more incentives for peasant participation, which will hold the government and businesses more accountable for sustainable land management. China will continue to struggle with the complex relations between state, market and community before participatory, people-led and state-supported land reform can really take shape.
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