CHAPTER 3

The Role of Property Rights in the Debate on Large-Scale Land Acquisitions

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Abstract

The initial reaction to the sudden increase in large-scale leases and acquisitions of farmland in developing countries has been to promote titling schemes, allowing land-users, often poorly protected under customary forms of tenure, to be recognised as fully fledged owners of their land—allowing them to decide whether to sell, to whom, and under which conditions. This chapter places this transformation in a historical and global perspective. It recalls why titling was advocated in the 1990s as a development tool, and why—during the mid-2000s—doubts began to emerge with regard to such an approach. It then reviews alternatives to the simple transposition of Western conceptions of property rights; alternatives that may better serve the needs of rural households currently facing the threat of eviction and displacement, as a result of the race for farmland that we have witnessed in recent years. The chapter notes the importance of avoiding confusion between the need to ensure security of tenure, on the one hand, and the creation of markets for land rights on the other, the latter of which processes—when considered in a dynamic perspective—may not be advantageous to the poorest rural households. For these households, which depend on agriculture for their livelihoods, true security of tenure ultimately should be understood as the right to live decently from the agricultural activities that feed them.

1 Introduction

We have witnessed in recent years an unprecedented rise in the sale or lease of large areas of farmland, particularly in developing countries. The regions concerned are those where both land suitable for cultivation and water are abundant, the workforce is cheap, and access to global markets relatively easy. The investors are either the local elites or, increasingly, foreign investment funds or agribusiness corporations. But they also include the governments of cash-rich but resource-poor countries seeking to outsource food production
in order to ensure a stable and reliable supply of food for their populations (Haralambous et al., 2009; Cotula et al., 2009; Deininger and Byerlee, 2010; Kugelman and Levenstein, 2009; Center for Human Rights and Global Justice, 2010). Of course, the recent wave of large-scale acquisitions or leasing of farmland is not entirely unprecedented. But the speed at which the phenomenon has been developing recently and its overall scope are. In addition, the significance of this current surge is different from what was seen in the past: in many cases, rather than investing in countries that present certain comparative advantages in agriculture in order to supply international markets at the most competitive conditions, the buyers or lessees of land seek to ensure access to a stable supply of agricultural commodities in order to circumvent international markets, which have become increasingly unreliable. A global market for land and water rights is thus rapidly taking shape (Mann and Smaller, 2010).

The main problem, as many commentators see it, is that in many of the regions targeted by these new investments, the rights of land users are not properly secured. As a result of systems of tenure inherited from colonial rule, much of the land in rural areas is formally owned by the government, and land users have no property titles on the land they cultivate. This situation creates legal uncertainty. It also implies that land users will not have access to legal remedies, and will not receive adequate compensation if they are evicted from the land they cultivate, for instance after their government has agreed that foreign investors may take possession of the land.

The answer to the threat of ‘land grabs’, it would seem then to follow, is to strengthen property rights, or to transform informal use rights into formalised property rights. Titling schemes could be implemented in order to protect land users from the risks of unjustified eviction or eviction without fair compensation. Titling their property would allow land users to decide under which conditions they want to sell, and to whom, and would ensure that if their land is taken by the government for reasons of public interest, they will have access to courts in order to challenge the conditions under which this expropriation has taken place. This is the approach that characterised the 2001 Land Law (No. 197/C) in Cambodia, for instance, which allowed for the registration of property rights that had been enjoyed in peaceful, uncontested circumstances for a period of at least five years, while at the same time defining ‘state public’ and ‘state private’ property and imposing a prohibition on the sale or exchange of the former—that is, state property that serves a public purpose (Art. 15) (Special Rapporteur on Adequate Housing, 2006).

We now understand that such an approach underestimates the challenges associated with the commodification of land rights: the rolling out of rural