

Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia

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Land Tenure, the Land Grab and Responses of International Development Agencies

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The response of the World Bank is typical. A major report (Rising Global Interests in Farmland 2010) recognizes the extent of the phenomenon, explains it as the result of an unanticipated convergence of several factors, and assesses it as both an opportunity (needed investment) and problematic (for its overriding of claims of local communities and the poor bargains struck with investors). Excellent work has been done (for instance by IIED) on the inadequacies of the investment process and contractual arrangements. The development agency assessments suggest that the solution lies in improving the quality of the investments and agreements, respecting community rights and redirecting benefits to local communities. What those assessments fail to acknowledge is how badly the cards are stacked against that project of improvement.

The international development agencies, to the extent that they do want to improve the situation, are not funding the process and so lack leverage to redirect it. These are mostly investor-government deals using private capital. Development agencies are for the most part unable to do more than advise and seek to persuade. Declarations of good practice standards lack teeth and warnings of reputational risk do not carry much weight with many of the international investors and even less with domestic land grabbers.

How could they do more? Is there a root cause of the vulnerability of many developing countries to the land grab, a policy or implementation failure that the international development agencies could seek to address and thereby deal with some of the worst problems of the land grab? The author's sense of this has been formed largely by experience in Africa, but it may have some relevance to this region. It has increasingly been realized in discussions of land grabbing in Africa that the root problem is the extensive state ownership of land in countries of investment destination and the failure of those governments to recognize community rights on those lands. This creates a fundamental vulnerability. Its potential contribution to the land grab is realized through the endemic corruption in government land sector agencies. The allocation of state land to users at relatively nominal costs creates a classic opportunity for rent-seeking: the difference between the nominal price and what people are willing to pay for access can be accessed "under the table" and goes into the pocket of allocators. The land grab is this long-standing pattern writ large, with an international dimension added.

What local communities lack is a property right that provides them with the standing to say "no" to investment proposals, which provides a basis for serious bargaining. "Consultation" and formulae such as "free and informed consent", while valuable, are a poor substitute. How did the international development agencies miss the opportunity, in past decades of development efforts, to prioritize providing rights in land to the communities who use them? The problem of lack of tenure was recognized in the '50s but it was assumed by the World Bank and many other donor agencies that what was needed was private ownership on a western model, with individual rights affirmed, surveyed and registered, capable of transfer and mortgaging. The model is expensive, slow and laborious to implement, and implementation efforts have produced very limited coverage, mixed economic and social results and a long debate on "land registration". These modest efforts were overtaken by events, i.e. the land grab.

The alternative, registration of the community right, was simpler and relatively inexpensive to implement, and would have given communities the base for defending themselves against the land grab. There were some good practice examples (Tanzania, and more recently Mozambique) but they did not fit the individualistic economic paradigms of the development agencies, with the exception of a few bilaterals. On the left, many remained enamored of state ownership, underestimating its potential for abuse of government officials. And to be fair, few researchers and policy commentators appreciated the urgency of the task, failing to anticipate the huge growth in global demand for farmland.

The land grab itself has redirected attention to these community tenuring models, and there are important initiatives to promote community land ownership led by NGOs (e.g. NAMATI). A few

countries are moving (Liberia in a bill now before the legislature) to recognize customary ownership of state land. The international development agencies are now getting behind these endeavors. In Africa, both the World Bank and USAID, long resistant to solutions other than individual private ownership, are now supporting or discussing supporting registration of community rights in Tanzania, Ethiopia, Mozambique and Liberia. But the extent of that task, so long neglected, is huge, and large amounts of land are already under concessions and similar arrangement. In some countries it feels like a race between tenuring local communities and the granting of concessions, each pursued by different government agencies with different mandates.

Tenuring local communities in the land they use is the ultimate solution to the land grab, insofar as there is any one solution, and the donor community should be pursuing it more broadly and more urgently. Much land, however, is already locked in concessions and other long-term arrangements. What can be done about these? Almost certainly, few will use all they hold and few will provide government with the revenue projected. Can they be revisited at some point? Of course, as experience shows, even where demands for changes by government arguably have no very clear legal justification. This comes at a cost in terms of scaring investors, but as long as the new arrangement are fair, it will not have a lasting impact.

What changes, specifically on tenure, would be helpful? It might be possible, if the political will exists, to substitute the community for the state as the entity to whom the land will revert at the end of the agreement, or even substitute the community for the state as the landowning party to the agreement. Rentals imposed on a per hectare basis can discourage the appetite of investors for large, speculative land acquisitions and their desire to hold onto land which they cannot use. Land not developed can be divested and returned to local communities when renegotiations take place.

It is worth noting in conclusion that the attitude of the international development community on returning lands appropriated illegally or irregularly is changing, as indicated by Articles 4.9 and 14 of the FAO-developed Voluntary Guidelines on restitution, which treat restitution as a general remedy for illegitimate takings rather than a specialized remedy for loss of land by refugees and displaced persons. There is need for more strategic thinking in this area, laying a basis for effective remedial action when the opportunity presents itself in the future.

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International Conference Paper Series

The purpose of the 2015 Chiang Mai conference is to contribute to *deepening* and *broadening* of our understanding of global land deals, resource conflict and agrarian-environmental transformations – in the specific regional context of Southeast and East Asia, with special attention to climate change mitigation and adaptation policies as well as the role of China and other middle income countries (MICs) within the region.

The Conference Paper Series aims to generate vibrant discussion around these issues in the build up towards the June 2015 conference – and beyond. We will keep these papers accessible through the websites of the main organizers before, during and after the conference.

About the Speaker

John W. Bruce has worked and published extensively on land policy and law in Africa and East Asia. Dr. Bruce researched land tenure issues during the 1970s in Ethiopia and Sudan, and later served as Director of the University of Wisconsin-Madison's Land Tenure Center. In 1998 he joined the World Bank as Senior Counsel (Land Law)/Senior Land Tenure Specialist. He retired from the Bank in 2006 and currently consults, based in Beijing.