

Bundle of Property Rights and Land Tenure Security: Evidence from Anuradhapura District

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Abstract

Formalizing property rights through the issuance of state-guaranteed titles is widely debated in recent literature. Guaranteed property rights to land increase the security in tenure and provide incentives to land investments. This study focusses on to delineate the property rights in paddy land plots and to identify the association with tenure security. The perceptions on both use rights and transfer rights gathered through a survey from 936 farmers on 1230 paddy land plots from three selected irrigated settlements in Anuradhapura district of Sri Lanka were used as data for the analysis. The results reveal that the majority of the farmers perceived that they are enjoying only the use of rights while a few perceived on sell and mortgage rights. There is a significant difference in the perceptions between valid legal document holders and non-holders suggesting document holders are positively perceived on full property rights. Measures to improve property rights in the irrigated settlement are required to improve the positive attitudes of farmers by encouraging land investment to improve productivity.

Keywords: Property rights, Land tenure Security, paddy lands, Irrigated settlements, Sri Lanka

Introduction

The concept of property rights to land is widely discussed in natural resource management since land is the fundamental resource in every development. The relationship of land and property rights has been identified as a pre-requisite to economic development in a country. Economic advisors emphasize the existence of clear and secure private property rights as an essential foundation to persuade the land market. Insecure land rights act as a serious barrier in achieving economic opportunities. In some contexts, people believe that the concept of property rights in a narrow sense is mere ownership. Rights do not necessarily imply full ownership. However, it is obvious that property rights are broader concepts comprising a bundle of rights that are collectively fulfilling the concept of 'property rights to land'. In fact, property rights govern who and what can be done with resources. Property rights, therefore, explain the extent to which a person can exercise over an asset.

Different individuals, families, groups, or even the State often hold overlapping use and decision making rights over a resource based on the power governed by the given rights. In this scenario, several individuals or groups may have different kinds of rights over the same resource. Meinzen-Dick & Gregorio 2004, discussed a classic example, as all members of a community may be allowed to bathe in a river or collect drinking water, but only certain groups such as farmers who are cultivating lands surrounding the water body, may be allowed to draw water for irrigating fields and to decide how to distribute that water in the dry season, while the State may claim ultimate "ownership" of the water, including the right and reassigning to others.

Based on the above arguments, it is very much clear that the rights are not a relationship between a person and an object, but the relationship between people with respect to an object. Therefore,

Fabusoro *et al.* (2008) explains that the right to land is actually a social relationship or a contract determining how rights to use and not to use a specific resource distributed among people. Further looking into the following definition by Bromley, 1991, it is implied that property rights are very much associated with legal rights stipulated by legal enactments through a recognized institute in a country.

Property rights are defined as ‘a set of activities and behaviours that the possessor may not be preventing undertaking, in relation to a benefit stream’ (Bromley, 1991). Further, the definition elaborates ‘it is the capacity to call upon the collective to stand behind one’s *claim* to a benefit stream’. In a broader sense, this implies that if an individual possesses a property right, then the others have a *duty* to refrain from taking actions that interfere with the rights holder’s exercises. It is, therefore, the property rights specify both the proper relationship among people with respect to the use of things and the penalties for violating that proper relationship. This fundamental social relation discloses the full power or maybe the liability or no power and no liability; the possessor bears to exercise over land. Accordingly, if an individual has no rights, then others have no duties. One actor is having power to interpret that he can claim over the property rights.

This interpretation implies that institutions play a vital role in property rights since institutions are broadly defined as the providers of rules that govern property rights. Havel 2014, discuss that the property rights regimes and they are the integrated systems of property rights connected to land through the civil law, public law and another type of law that influence the property market. Institutions of collective action and systems of property rights shape how people use natural resources and these patterns of use, in turn, affect the outcomes of people’s agricultural production systems. In many developing countries there are state enacted and

enforced laws designating who owns and what right; therefore, the operator receives private property subjected to the sanction of State. The consequent important phenomenon is what impact does this transfer brought to the tenure of the land. There are arguments while the State law facilitate the security the restrictions involved in such law may create uncertainty among some groups of land holdings. Markussen *et al.*, 2011, points that the State authorities' intervene heavily in farmer's choice of crops in Vietnam while the State Land law decides the household rights to sell, mortgage, rent or bequeath their lands. If limitations increase the uncertainty, subsequently it is leading to insecure in tenure. A similar situation is observed in Sri Lanka which applied the land alienation as a strategy to overcome the landlessness in the country in the past decade. The next section is explaining the background.

Irrigated settlements in Sri Lanka and the State intervention

Most of the land holdings in Sri Lanka are under some degree of State control and therefore, the land policies adopted in the country put the strong bearing on agricultural development. Most of the policies reflect the political, economic and demographic situation in the country. In the days of in which Sinhalese kings ruled the country the rights to land was subject to some service tenure arrangement and this system pivot the mechanization of the control on land through State administration. With the advent of Portuguese, Dutch and the British the system was changed. The introduction of the Crown Land (Encroachment) Ordinance N0 12 of 1840 and the waste Lands Ordinance No 01 of 1897, the peasantry in the country lost most of their lands. Since then the policymakers of the country were responsible for addressing the issues of land loss peasantry sector, and consequently, the programme of alienation of lands through irrigated settlements in the Dry Zone was initiated. The settlers were allocated five, three or two acres of low lands and highlands. Subsequently, those original lands were subdivided and transfer informally to the next

generations. The scholars pointed out that this situation may weaken the objective of the programme (Chandrasiri, 2010). Followed by the informal transfers, it is observed a variation of property rights distribution to each plot of low lands. To what extent the property owners are enjoying the full rights and live with secured tenure whilst some are living with insecure tenure has not been adequately addressed in the irrigated settlements of Sri Lanka. Farmers may acquire the rights through rules declared by the government or perhaps by the communal actions. However, what farmer perceives on the rights that can exercise over the land is far more influential on his behaviour in agricultural activities than what is assigned. Hence, the focus of this research is twofold as (i) to delineate the property rights of the low landowners in the irrigated settlements and (ii) to identify the causal effects on tenure security.

The link between property rights and tenure security

The land is a key asset in agrarian societies which empowered the people with social and economic power. Hence, property rights play a significant role in maximizing the benefits to be obtained from land. This is the reason that there is very little disagreement that property rights to land influence on the economic growth of a country. According to Heltberg (2002), land rights are a major determinant of productivity, income, investment and efficiency in agriculture and are a salient feature in political economy. Property rights have a closer relationship with land tenure. Tenure to land is a collection of bundles of rights. To be secure in tenure to land, rights to land should be of adequate duration to allow one to reap the rewards of investment and should be backed by an effective, socially sanctioned enforcement institution.

If property rights are to be poorly defined or cannot be enforced at low cost, individuals will not be compelled to use their land efficiently. It will be much harder to transfer the land between

different uses and do not support the development of markets for sale and rentals. Without secure rights, landowners are less willing to engage in agricultural employment for they feel uncertainty and thus reduce the agricultural productivity of the land

The existing literature identifies three channels through which land tenure security can in principle, induce agricultural productivity, namely: (i) able to enjoy the long-term benefits (ii) smooth the functioning of the land market (iii) facilitate access to credit or collateral arrangement (Feder,1988; Besly, 1995; Deininger, 2004). One of the stressed factors that the farm households' investment in practice could be enhanced the long term viability of agricultural production (Deininger and Jin, 2006; Fenske, 2011). Therefore, the sense of tenure security may boost incentives to invest in land improvement measures as conservation of soil, adoption of new technologies which ultimately may increase the farm productivity. The main argument behind this concept is that the individuals will not be interested in land improvement activities if others can seize the fruits of their investments. The bundle of rights an individual or a group bears over a land demarcates the extent of rights an individual can exercise over the land. Therefore, each individual right or the collective of such rights influences on the decision of the limits of actions that could be extended over a particular plot of land.

There are many combinations of such property rights. Property rights can be conceptualized as a multidimensional variable. Among the widely established literature, most authors focused their analytical studies on transfer rights (Besly, 1995; Feder and Onchan ,1987; Brasselle *et al.*, 2002;(Markussen *et al.*, 2011) rather than rights concerning the use. One reason for this is that usage rights are often implied by transfer rights because transfer rights imply the ability to sell, mortgage or rent the plot of land, and it is the superior right. On the basis of the available literature

(Besly,1995; Heltbreg, 2002; Fabusoro *et al.*,2008; Meinzen-Dick & Gregorio 2004) , the focus of this discussion evolves on both types of rights as follows.

- Use rights- the rights to derive benefit from land (includes *income rights*, i.e. the rights to derive income from the resource, *capital rights*, i.e. the rights to invest, consume the resource)
- Transfer rights- the rights to give away the land (includes rights to *sell*, rights to *mortgage*, rights to *rent* and rights to *bequeath* the resource)

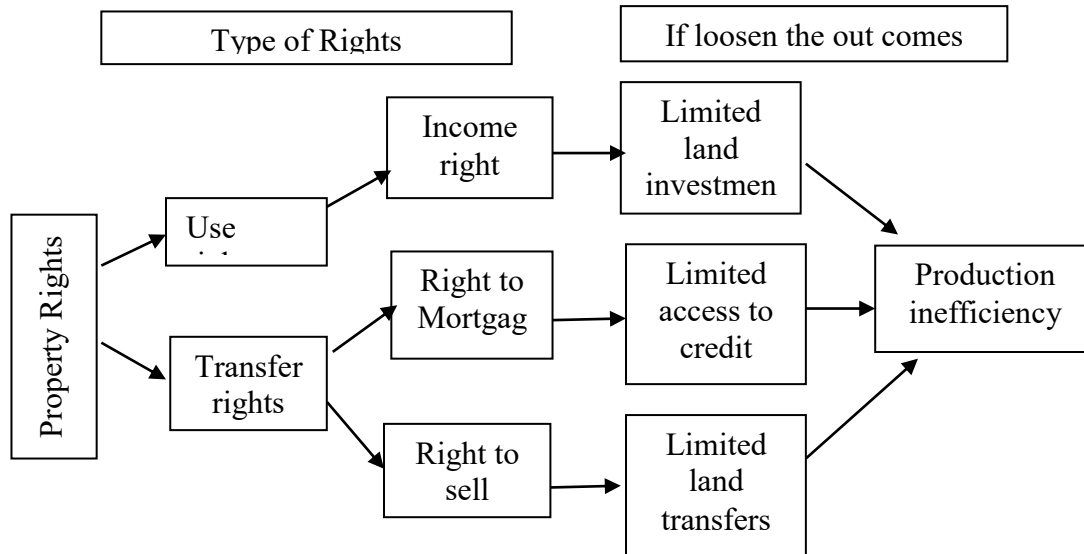
Based on the theory and available literature those linkages can be modelled as in Fig. 01.

The conceptualized model in Fig 01 illustrates the links between property rights, and if unavailable the outcomes or the results. It clearly presents that the majority of the rights stem from the transfer rights, and hence, it explains that transfer rights are stronger in the context of achieving better land productivity. The same link can further illustrate combining with the tenure as follows.

Feeble land rights → Tenure insecurity → Poor land investment →
Reduced land productivity

Strong land rights → Tenure security → incentives to
investment → increased land productivity

Fig. 01



Source: Compiled by the author, 2018

The discussion shows that if landholders of a country are living with feeble rights to land, then their tenure to land is insecure. Some of the developing countries have been introduced certain strategies like land distribution programmes with the intention of addressing the issues related to poverty and hunger among the landless peasant sector. To protect the landholder from losing land immediately in a crisis, the government holds some of the land rights. This strategy in the long-term may produce unnecessary burden of having the uncertainty in the rights and thus, live with insecure tenure like in Sri Lanka.

Methods

As identified in the literature review this study collected the perceptions of paddy landowners on the defined six types of property rights discussed in Fig.01 and are used as data. Although the observation unit was the farmer who operates the land at the time of the investigation, the data were collected on a plot level. Data gathered using a structured questionnaire from a selected random sample of 936 farmers operating on 1230 plots in three selected irrigated settlements in Anuradhapura district namely Kagama-Katiyawa, Mahakanadarawa, and Rajanganaya in Sri Lanka. The questions raised to collect the perceptions on each right were used for the analysis to delineate the different property rights enjoyed by each paddy landowner.

Results and Discussion

As explained in the earlier paragraph it should be noted that the lands in the irrigated settlements are subjected to rules and regulations provided by the Land Development Ordinance No. 19 of 1935. Any transaction of these lands is subjected to the approval of the Divisional Secretary of the respective area. However, this analysis focuses on the perceptions of the paddy landowners on the property rights that they believe they are enjoying. During the survey, it was identified that there are several operational patterns

exist. The analysis focusses on the two major categories of rights, i.e. ‘use rights’ and ‘transfer rights’ as explained in Fig 01. Table No 01 presents the distribution of use rights and transfer rights according to the recognized operational patterns.

Table 01 presents five types of paddy land operational patterns available at the time of the investigation. The operational types can describe as follows. Category type 1 indicates the original owners or those who have received the land through inheritance and obtained the valid document to prove the tenure. Category type 2 presents, although land has been transferred to the next generation yet haven’t received a document due to several reasons. There are some illegal transactions happened, and the Category type 3 comprises with those operators. Some of the lands were mortgaged to private owners, and category type 4 includes the mortgagors who operate the lands at the time of inspection. Category type 5 presents the number of plots currently being ‘rent in’ to farmers.

Table 01: Distribution of Property Rights According to the Operational Pattern

Operational Pattern		Types of Property Rights					
		Use Rights		Transfer rights			
		Income Right	Capital Rights	Right to Rent	Right to Bequeath	Right to Sell	Rights to Mortgage
1	Operate with a legal document	Yes	Yes	Yes	Yes	Yes	Yes
2	Transfers through inheritance and operate with no document	Yes	Yes	Yes	Yes	No	No
3	Purchased with no legal document	Yes	Yes	Yes	Yes	No	No
4	Mortgage interest	Yes	Yes	Yes	No	No	No
5	Rent in lands	Yes	No	No	No	No	No

Source: compiled by the author -2018

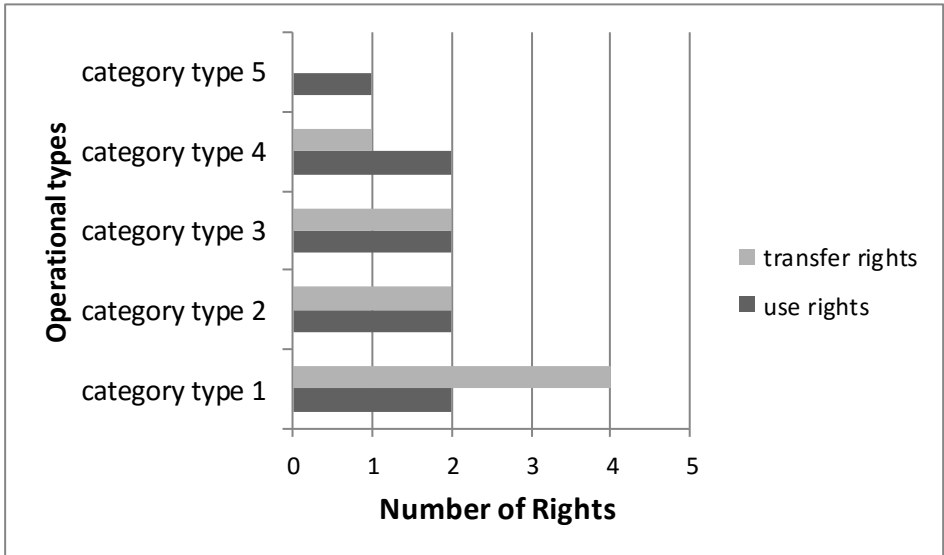
Yes - Implies the right is available

No - Implies the right is not available

Table No 01 presents the perceptions of farmers belongs to each operational pattern and ‘yes’ always implies that they believe they enjoy the rights and ‘no’ indicates that the farmers believe they are not enjoying the particular right. The distribution presents only the category type 1 perceives that they are enjoying the full rights. This is the category comprised of original owners or the farmers processing with a valid legal document. None of the transfer rights is enjoyed by category type 5, and it may be the worst operational pattern. A comparison between the two types of rights can be illustrated to view a better picture of how the rights are distributing in each operational pattern. Figure No 02 presents the comparison between the two main types of property rights distributed according to the operational pattern.

Figure No 02 presents that each type of categories is enjoying the two types of ‘use rights’. Hence, considering the use rights all are enjoying and perceived that they have such right. It is presenting that category type 1 is the sole group who are enjoying transfer rights and perceive as they have full rights. Category type 2 and 3 are enjoying the same number of transfer rights. The comparison indicates that the majority of the operators are enjoying the partial rights and only category type 1 is qualified on full rights. Nevertheless, it does not entail that those plots are eligible for an open market sale.

Figure No 02: Comparison of Use rights and Transfer rights as per the operational pattern



Source: Compiled by the author 2018

The deviations of rights among the operational pattern and the comparison are well identified in the above table and figure. Next, it is expected to identify the number of plots that are qualified according to delineated property rights. Table 02 presents the frequency distribution of the plots according to the delineated rights.

The results of Table 02 designate that around 90% (i.e.1104 plots) of the plots are having the use rights, i.e. operator can exercise on both income and capital rights. This interprets that the owners of those plots are eligible to enjoy the income (full benefits) and has the right to make the capital investment while consuming the land. Then the question arises as who do not have such rights.

Table 02: Distribution of Number of Plots According Property Rights

Category of rights	Types of property right	Availability	No of plots	Percentage
Use rights	Income right	Available	1104	89.8
		Not available	126	10.2
	Capital right	Available	1104	89.8
		Not available	126	10.2
Transfer rights	Right to sell	Available	362	29.5
		Not available	868	70.5
	Right to rent	Available	1104	89.8
		Not available	126	10.2
	Right to mortgage	Available	362	29.5
		Not available	868	70.5
	Right to bequeath	Available	821	66.7
		Not available	409	33.3

Source: Compiled by the author 2018

There are lands operating under ‘rent in’ and the operators under this category do not have full user rights. To be qualified for completed use rights, there should be access to full income rights and to capital rights. Since they operate the land on rent, they are eligible only to receive 3/4th of the yield. Therefore, they do not have full access to income right. On the other hand, those operators have no power to invest in the land without the permission of the owner. Such power is given by rights. For example, during the survey, it was found that the majority of the operators of ‘rent in’ lands were not satisfied with the amount of chemical fertilizer that they receive as the subsidy from the government. They were on the opinion that the plots need more chemical fertilizer than the subsidy to recoup a better yield from the land. The additional fertilizer should buy from outside whereas the owners’ does not grant permission or either do not provide the cost of buying the additional fertilizer. This reveals that the operators of ‘rent in’ lands lose both the income right and capital right; hence, not eligible for full user rights.

The data presented in Table 02, appeared that only around 30% of the plots are enabled with the rights to 'sell' and 'mortgage'. This delineation is based on the definition given by the Ordinance as a land with a valid deed has transfer rights subjected to the sanction of the Divisional Secretariat of the respective administrative division. Out of the 1230 plots surveyed, there are 362 plots which have a valid deed. Consequently, they have the rights to all transfer rights, i.e. to sell, mortgage, rent, and bequeath the plot. As explained by Markussen *et al.* (2011), a property having transfer rights implies that they are automatically entitled to the use rights too. Hence, having transfer rights stand as superior rights to exercise over a piece of land. Therefore, the analysis reveals that the 363 plots with a valid deed have the power to exercise on both use rights and transfer rights. Alternatively, the important message underlines with this analysis is there are only 363 (30%) plots with both use and transfer rights, i.e. qualified with full rights to land.

Further, analysis observed a difference between the number of plots with the 'right to rent' and 'right to bequeath'. Except the number of plots operates as 'rent in' lands, all other types (i.e. owner operate with a legal document, owner operate but no document, purchased with no legal interest and mortgage interest) are having the 'rights to rent' the land. The issue for the difference is associated with the plots comes under the categories of owner operate but no document, plots under Mortgage and plots under 'rent in' lands. When the plot is mortgaged it will be released someday to the original holder; hence, the operator of those plots cannot exercise bequeathing the plot. In the same way, the plots operate as 'rent in' lands lose the right to bequeath the plot. Alternatively, there are plots without bequeathing rights under the category of 'owner operates with no document' too. The reason why they do not have the bequeath rights is because of the rotate basis of transferring the plot (i.e. in one season it is operated by one person and in the next season by another). This implies that

nobody receives the land on a continuous basis. This is common in the families where there are many children who wait to depend on the paternal inheritance. Therefore, if the land is either on operating under mortgage basis or operating under 'rent in' basis or else in the 'shifting operation' basis, then the 'rights to bequeath' exclude within the delineated boundary of rights to those plots. Table 02 indicates that 409 plots do not have access to the right to bequeath.

Property rights and tenure security

Provision of a valid legal document offers the operator with complete rights, giving rise to two kinds of socially beneficial effects. One is static, and the other is dynamic. The static effect follows once the land has full rights it will be transferred to more dynamic farmers thereby avoid subdivisions. Dynamic effects result from increased willingness and ability to invest in the land hence, tend to apply productivity enhancing operations such as soil conservation methods. This, in turn, eradicates the uncertainty of recouping benefits and provides the security in tenure. As illustrated in Fig.6.1, next it is analyzed how the rights contribute to delineate the appropriate security to land, and the results are presented in Table 03.

Table 03 pointed out the path of the land acquisition, delineated land right with the corresponding security in tenure in the total three settlements. The results specify that the majority of the lands in the irrigated settlements operated with inadequate guaranteed property rights while the minor number is living with full rights. Those who are having full rights are very much confident that they gained the returns of their investments in future. Inadequate guarantee follows the emergence of weak property rights.

Table 03: Demarcation of tenure security with respect to the appropriate property rights delineated according to land operating pattern

Operational pattern	Property Rights						Rights (Strong/Weak)	Tenure Security
	Use Right		Transfer Rights					
	I	C	S	M	R	B		
Inheritance/Government*							Strong Rights	Secured
Inheritance**							Weak Rights	Insecure
Informal Sale							Weak Rights	Insecure
Rent in							Weak Rights	Insecure
Mortgage							Weak Rights	Insecure

Source: Compiled by author-2018

I = Income rights, C = Capital rights, S = Sell rights, M = Mortgage rights, R = Rent out rights, B = Bequeath rights

*Owner operates with a legal document, **Owner operates but no legal document

A major argument of the property rights school is that a primary function of property rights is that it provides guiding incentives to achieve a greater level. About land rights, this principle implies the prediction that individual property rights will gains incentives from individual titles. In the absence of such security, the tenure becomes insecure. It is widely debated in the literature that the features of insecurity in property rights may hinder the investment to land thus reduce productivity.

Conclusion

The paper intends to delineate the appropriate property rights (or land rights) related to low lands in irrigated settlements in Anuradhapura district in Sri Lanka. It is extensively discussed in the literature that adequate property rights to resources such as land, plays a fundamental role in governing the pattern of the management of the resource. Property rights are far more than ‘ownership’, and they encompass a diverse set of tenure arrangements.

According to the outcomes of the study, it is revealed that a minor number around 30% of the plots found with full rights. These are the lands with a valid legal document and represent the prescribed rights by the Land Development Ordinance. The ordinance defines that land with a valid legal document in the irrigated settlement is enriched with transfer rights whereas theoretically, a land with transfer rights have the use rights too. Therefore, the minor number has full rights and paved the way to secure their tenure providing an investment induced environment. On the other hand majority, i.e. the rest 70% have partial rights hence represent weak property rights leading to insecurity in the tenure. This 70 % comprised of lands with seasonal variation in ownership pattern, operate on an illegal size, informal sales, rent in lands and mortgaged to private owners. Insecurity in tenure not only discourage the investment on land but also impedes the use of land as collateral to access the credit market. It does not facilitate the transferability of the land allowing dynamic farmers to use the land.

Land policies will need to be addressed with the intention of ensuring the economic opportunities open to land while facilitating with measures to increase the tenure security. Therefore, institutions drafting policies to improve the property rights would play a major role in promoting the security of tenure to the low lands in irrigated settlement to provide incentives to encourage investment and thereby improve productivity.

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