

Towards a Conceptual Framework for Understanding the Protection of Farmers' Land Rights in China

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Abstract

Like in other parts of the world, land rights are crucial for farmers in China too for their livelihoods and well-being. However, farmers often face various challenges in protecting their land rights, such as unclear property rights, inadequate legal protection, and insufficient compensation for land acquisition. This paper aims to establish a conceptual framework for understanding the protection of farmers' land rights in China thus addressing the farmer' land rights problems in a better manner. The proposed framework which is built based on the review of existing literature and an analysis of the current situation of farmers' land rights protection in China focuses on legal, institutional, and social dimensions. The legal dimension examines the legal basis for farmers' land rights, their executions, and the effectiveness of the legal regulations in protecting these rights. The institutional dimension explores the roles and responsibilities of various government agencies and organizations in safeguarding farmers' land rights. The social dimension considers the impact of social factors, such as culture, tradition, and power relations, on the protection of farmers' land rights. When adopted the proposed framework could serve as a comprehensive guidance for the policy and decision-makers of the government, farmers, and other stakeholders to understand the protection of land rights.

Keywords: *China, Conceptual Framework, Land Rights, Property Protection*

1. Introduction

China is an agricultural powerhouse, and farmers are the cornerstone of Chinese society. However, Chinese farmers have long faced issues in protecting their land rights [1,2]. Historically, land ownership in China was based on collective ownership at the family or tribal level. That drastically changed following the implementation of nationalist policies in the mid-20th century, where land ownership became the property of the state. As a result, farmers are left as, as users of the land and unable to enjoy ownership rights. Against this backdrop, the issue of protecting farmers' land rights has become increasingly prominent.

Land issues have long been a sensitive political topic in China. Since the start of the reform and opening-up policy, the Chinese government has taken a series of measures to address the problem of protecting farmers' land rights. Among these

measures, the most important is the formulation and implementation of the Land Management Law (2019). This law stipulates issues such as the ownership, use, and operation rights of land, as well as land acquisition and compensation, providing a legal basis for protecting farmers' land rights.

In China, the farmers land rights are protected by (i) state law [3], (ii) customary law and ancestor rights [4]. However, despite the legal protections, the farmers still face a lot of challenges in upholding those rights [5]. For example, some local governments and developers illegally acquire farmers' land in pursuit of economic benefits, leading to the illegal occupation of their lands [6]. At the same time, the farmers enjoy restricted rights to use and operate the lands. Due to the fact that their lands are small in size, scattered, immobile, and located in rural areas, farmers are unable to effectively engage in agricultural production, affecting their economic income and quality of life. In addition, farmers' lack of awareness and ability to protect their land rights also limits their ability to speak out and defend their rights.

Therefore, establishing a conceptual framework for understanding the protection of farmers' land rights in China is of great significance for addressing the issue. This framework can analyze the issues and challenges of protecting farmers' land rights from legal, policy, practical, and cultural perspectives, providing reference and guidance for the development of more effective land management and protection measures. In addition, the framework can promote the improvement of farmers' awareness and ability to protect their land rights, enhance their ability to safeguard their rights and interests, and provide more effective protection for their interests and rights.

2. Literature Review

Globally, numerous scholars and past researches have recognized the importance of farmers' land rights and land security, in order to narrow the urban-rural gap, reduce poverty, and promote regional development [7, 8]. Many efforts, policies, and programs are designed and aimed at strengthening farmers' land rights protection and they, in turn have been subjected to rigorous evaluation using either qualitative or quantitative methods [9, 10]. Several measures have been developed to assess land rights, including the Global Property Rights Index (GPRI) and the Land Tenure Security Index (LTSI). The GPRI measures the legal and political environment for property rights, including the protection of property rights, the quality of land administration, and the impartiality of the judiciary. The LTSI, developed by the International Food Policy Research Institute (IFPRI), assesses the security of land tenure based on indicators such as the strength of property rights, access to credit, and the effectiveness of land administration institutions. However, it is often difficult to draw broader conclusions from these analyses because they use different definitions, indicators, and data.

The legal community, social science researchers, and practitioners of China often use different languages and concepts in describing farmers' legal land rights [11]. As a result, often, each study only provides a partial picture of the whole composition of farmers' land rights, at times leaving behind or missing the opportunity to identify factors that contribute towards strengthening this security.

A common conceptual framework is needed to establish a more complete picture of farmers' land rights, in order to understand the processes that affect farmers' land rights. This article proposes a conceptual framework for the factors that affect farmers' land rights protection. The aim is to clarify and define key elements related to farmers' land rights, in order to facilitate the aggregation of experiences and lessons learned from various studies and case analyses. Some studies only consider how policies or programs affect land rights protection in specific contexts, without providing sufficient information on social and cultural aspects. Based on a review of the literature, this framework summarizes the legal, institutional, and social dimensions that affect land rights protection in China. Additionally, because farmers' land rights protection is not static, the framework also identifies factors that may influence land rights protection, whether by strengthening or weakening it.

This paper acknowledges the importance of protecting farmers' land rights and focuses on identifying the factors that promote it. The researchers first discuss the concept and measures of land tenure security, followed by a presentation of the conceptual framework of factors that are likely to affect land tenure security. The final section discusses how this framework might be used.

3. Conceptual Framework

Establishing the farmers' land rights is the first and basic step to do before a claim that their rights either as a group or individual have been violated or upheld can be made. This naturally leads to the next question; who grants them those rights. Land practices around the world have shown that land rights are a very complex concept, and all land disputes stem from the intersection of rights inherited from traditional cultural practices, rights enshrined in legal codes, and rights specified in institutional texts. In China, land is collectively owned by the state, which grants various forms of land use rights to individuals, households, and enterprises. These rights can range from long-term leases to ownership of buildings on land. Additionally, informal land tenure practices, such as land use rights passed down through generations or village-level land management systems, also exist.

In making things more complicated than it already is, the land rights of China are and could be "possessed" by many parties. This is a contrast to the Western view of land rights, where all possible rights to a parcel of land are narrowed into a concept of ownership held by one person or entity. Because of the above, multiple individuals may have different rights over the same parcel of land. In the social science literature, this is often conceptualized as a "bundle of rights" [12] or a "web of interests" [13]. The concept suggests that there are multiple rights, which can be held by one individual or group, or the rights may be distributed among different individuals or groups. These facts encourage the researcher to explore further in examining and subsequently mapping those rights against groups and individuals. This is done by identifying which specific rights are held by which individuals or groups and how the different rights-holders are interconnected.

[14] proposed a widely cited framework for identifying the five elements of a bundle of rights. The Roman legal system proposed three elements for land property rights, including *Usus*, the right to use the land; *Abusus*, the right to alter the land

(Usus and Abusus together are defined by legal scholars as possession), and fructus, the right to enjoy the profit and bear the loss. However, the literature on Chinese farmers' land property rights does not neatly map onto either of these two frameworks. The land rights do not rise to the level of recognized rights in either the social or legal sense, but they still have value. For example, if the state or a company compensates a land user, they should compensate for the rights to that land, not just the legal rights.

Based on this, the framework proposed is more specific in attending to the specific issues related to the protection of land rights for farmers in China. The framework covers three broad areas (see Figure 1). Firstly, there is a legal foundation. Laws and regulations such as the Land Law and the Rural Land Contracting Law constitute the basis for safeguarding the land rights of farmers. In addition, the implementation of laws and the role of the judicial trial institution also play an important role in protecting the land rights of farmers and combating illegal infringement of their land rights.

Secondly, there is institutional protection. The land contracting system, land use rights system, land expropriation and demolition system, and other systems constitute the institutional framework for safeguarding the land rights of farmers. The standardization and implementation of the system directly affect the land rights of farmers.

Thirdly, there are social factors. Cultural traditions, social public opinion, and other factors also affect the land rights of farmers. In addition, the level of farmers' land knowledge, organizational ability, legal awareness, and other factors also have an important impact on the protection of farmers' land rights. These three aspects interact with each other to form the framework for protecting the land rights of Chinese farmers, which is of great significance for safeguarding their land rights.

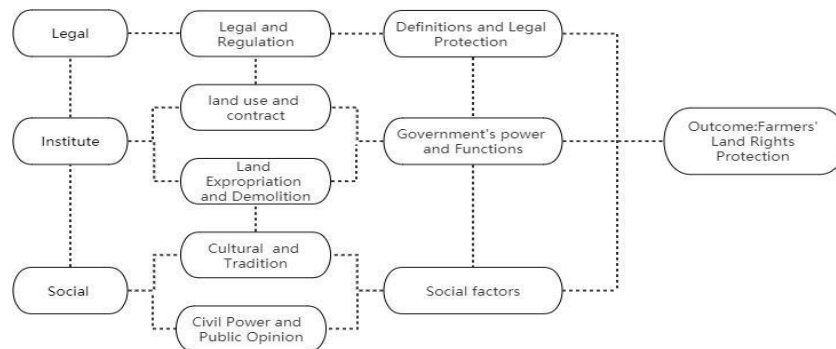


Figure 1. Conceptual Framework of Factors Affecting Farmers' Land Rights protection.

3.1. Legal Foundation

Legally, the Land Law and the Rural Land Contracting Law, among other laws and regulations, constitute the foundation for protecting the land rights of farmers. According to the Land Administration Law (LAL), the ownership of land belongs to the state, but rural collective economic organizations and farmers are entitled to

possess, use and enjoy the land in accordance with the law. Rural collective economic organizations may possess, use and enjoy the land owned by the collective, while farmers may possess, use and enjoy their own land and enjoy the appreciation income. This provision safeguards the rights and interests of farmers in terms of land use and income. The right to use and operate land can be realized through renting, transferring, and other means. At all times they must comply with the requirements of laws and regulations and the overall planning of land use. In terms of land use and management rights, farmers have equal rights and opportunities and can participate in land management activities through leasing, contracting, and other means, promoting the optimal allocation of rural land resources.

Additionally, the state may expropriate land based on the needs of public interest. However, before that is carried out, the legal system mandatorily demands state to announce and hold a hearing to reasonably determine the scope and standards of expropriation, and protect the legitimate rights and interests of those being expropriated. At the same time, reasonable compensation, including monetary compensation and other forms of compensation, must be provided for the expropriated land to safeguard the interests and rights of those being expropriated. This provision guarantees the rights and interests of farmers in terms of land expropriation and compensation. It has established a land registration system to improve the transparency and efficiency of land transactions. The government has also implemented measures to strengthen the protection of farmers' land rights, such as establishing a mechanism for public supervision of land acquisition and improving the system for resolving land disputes. For example, the term of land use rights should be no less than 30 years, but it must comply with legal regulations and the overall plan for land use. At the same time, the renewal of land use rights should comply with legal regulations and the overall plan for land use, ensuring the long-term stability and sustainability of farmers' land use.

3.2. Institutional Protection

In China, farmers' rights are restricted because they cannot own land, only use and operate it. This institutional arrangement has greatly weakened the protection of farmers' land rights. It implements the "separation of three rights" policy, which separates land ownership, use rights, and management rights. Despite the above, the policy mechanism above allows farmers to obtain land use rights through transfer, leasing, and other forms, enabling them to better utilize land resources, improve land use efficiency, and promote rural economic development. At the same time, the government has also launched the work of certifying and registering contracted land management rights, which provides protection for farmers' land use rights. This policy has played a positive role in promoting the protection of farmers' land rights.

In terms of land management rights, the government has implemented a "land contract management system" that grants land contracts to individual farmers or households and allows farmers to transfer land management rights through land circulation for compensation. This arrangement enables farmers to independently manage their land, improve land use efficiency, and raise agricultural production levels. At the same time, the government has also launched a rural land contract

management right mortgage loan policy, allowing farmers to use their land contract management rights as collateral for corresponding loan support. This policy has played a positive role in improving farmers' land management rights.

3.3. Social Factors

The issue of protecting the land rights of farmers is a complex social problem that involves the influence of multiple factors. Among them, the relationship between culture, tradition, power, and land protection is an important social factor, and these factors are intertwined, having a profound impact on the protection of farmers' land rights. Culturally, many view land as important traditional legacy left by ancestors, with familial and emotional value. Therefore, land is seen as the core asset and survival basis for farmers.

In land system, local governments play an important role in land circulation and requisition. However, in some cases, local governments may use their power to violate farmers' land rights, such as illegal land requisition and forced demolition. Additionally, due to the division of China's land system and land use rights, some local governments may also use planning control and law enforcement to restrict farmers' land use rights. The accelerated urbanization in China, the demand for land is increasing, and rural land resources are becoming more valuable. This has prompted some developers and local governments to try to obtain farmers' land through illegal means, resulting in a large number of illegal land requisition and demolition incidents.

In addition, in rural China, some customs and traditions also have an impact on farmers' land rights to some extent. Many land transactions need to be completed through intermediaries, such as village committees, township governments, real estate developers, etc. In some areas, land transactions do not require formal written agreements, but are achieved through verbal agreements between the parties. In rural society, social relationships are usually very important, and this is also reflected in land transactions. The parties to the transaction often need to have some kind of relationship, such as relatives, friends, or fellow villagers. In addition, due to the interests involved in land transactions, many parties to the transaction will remain cautious and avoid disclosing transaction information to outsiders.

4. Conclusion

Based on the literature review and analysis conducted, it is evident that farmers' land rights protection in China is a complex and multi-dimensional issues that requires a conceptual framework for a comprehensive understanding. The Chinese government has implemented several policies and laws to safeguard farmers' land rights, including the Land Contract Law, the Property Law, and the Rural Land Circulation Pilot Program. However, the implementation of these policies has been hindered by various challenges, such as corruption, lack of transparency, and inadequate enforcement mechanisms.

The conceptual framework proposed in this research finally embed three important and major factors that are integral in protecting and upholding farmers'

land rights in China. Legal frameworks must be strengthened to ensure that farmers' land rights are adequately protected. This includes improving the implementation and enforcement of existing laws and regulations, as well as developing new policies and laws where necessary. Another is an institutional role in ensuring the effective implementation of legal frameworks. This includes establishing transparent and accountable land management bureaus and courts, as well as promoting the participation of farmers and civil society organizations in decision-making processes. Also, cultural attitudes towards land use and ownership, as well as social pressures, must be considered in efforts to protect farmers' land rights.

The proposed framework highlights the importance of a multi-faceted approach to farmers' land rights protection, which requires addressing legal, institutional, and social factors. It emphasizes the need for strengthening legal frameworks, improving institutional arrangements, and promoting social awareness and participation to enhance the protection of farmers' land rights in China.

In conclusion, farmers' land rights protection is a critical issue in China that requires concerted efforts from the government, civil society, and international organizations. The proposed conceptual framework provides a useful starting point for further research and policy development in this area. By adopting a multi-faceted approach, China can improve the protection of farmers' land rights and promote sustainable rural development. Researchers, policymakers, and practitioners should consider how to protect farmers' land tenure rights; it is fundamentally different to develop ways to strengthen farmers' land tenure rights when their rights are infringed upon, compared to when they are particularly disadvantaged based on their vulnerability.

By identifying the conditions and processes through which farmers' land tenure rights are strengthened, we can better learn how to achieve these goals. Finally, the framework returns to where we started, considering how we conceptualize and measure the protection of farmers' land tenure rights so that we can better understand and compare land tenure security across contexts and develop programs and policies to strengthen it. Additionally, while a full application of this framework across multiple cases is beyond the scope of this paper, in part because of the fragmentary evidence base in existing studies, it provides the basis for future research to provide a more complete picture of individual case studies.

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