



Does uncertainty exist where transparency is missing? Land privatisation in Mongolia

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ABSTRACT

Land privatisation has been initiated in many transition countries to provide land ownership rights to citizens in order to facilitate the socio-economic development of the country through enhanced access to land. However, the implementation of land privatisation laws is still problematic in many transition countries because of the uncertainty involved.

Mongolia is an example.

The aim of this paper is to provide a conceptual framework for understanding uncertainty as it exists in land privatisation and to determine the best way to respond to this uncertainty.

An extensive literature survey and a pilot study in Mongolia have shown that “transparency” is the key to understanding uncertainty and that increased transparency might be the solution required for successful implementation of land privatisation in transitional economies.

The pilot study demonstrates that the current land privatisation process is incomplete and slow due to a lack of access to information, weak coordination between the organisations involved and considerable duplication in procedures.

This paper concludes that access to information, participation and corruption are key elements to describe transparency with respect to uncertainty in data and processes and those elements are critical to test the following research proposition: “More transparent land allocation procedures will result in more efficient and effective implementation of land privatisation law in uncertain circumstances”.

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Introduction

Modern land administration systems in developing countries should facilitate the achievement of the Millennium Development Goals (MDGs) as proposed by the United Nations (UN). Issues such as tenure security, pro-poor land management, and good governance in land administration are all key issues to be advocated as part of the process of reaching these goals (Enemark, 2007). Land reform is a key component in achieving these goals and will require measures to tackle the problem of lack of access to land resources and lack of control over those resources by the landless and near-landless rural and urban poor (Fort et al., 2006). Land privatisation is a form of land reform and has been initiated in many

transition countries, including Mongolia, to provide individual land ownership rights to citizens in order to enhance their access to land and other land-related benefits. However, transition countries face uncertainty in the development of policy and the implementation of land privatisation to support these goals, and we are interested in determining the best way of tackling this uncertainty. Uncertainty is a well known concept in information system research (Arun and Hindi, 2000), in water and natural resources management (Refsgaard et al., 2007), as well as in other areas such as engineering and system design and in decision-making processes (van Asselt, 2000; Walker et al., 2003). However, uncertainty is a complex issue and is still the subject of research (Schultz, 2008). How uncertainty relates to privatisation processes is a subject that remains unexplored.

This paper first discusses the general concept of uncertainty, which helps to understand uncertainty as it exists in land privatisation. Swinnen and Vranken (2005) state that land reforms have been completed in many transition countries but still not effective because of gaps in our knowledge and lack of true understanding of the land markets. In addition, Lerman and Shagaida (2007) emphasise that data on land transactions in transition countries are rare and land registration procedures are too complex: therefore, uncertainty in land privatisation takes the form of ‘epistemic’

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uncertainty because of inaccurate and inaccessible parcel data as well as incomplete knowledge about the land privatisation phenomenon. The discussion in this paper leads to a proposal for an appropriate method for tackling uncertainty in land privatisation.

In general, Hood and Heald (2006), Cooney and Lang (2007), and Schultz (2008) emphasise that greater transparency reduces uncertainty and – as is well known – it is one of the universal methods for responding to uncertainty. Globally, international bodies such as the United Nations Economic Commission for Europe (UNECE), the Food and Agriculture Organisation (FAO), the United Nations Human Settlements Programme (UN/HABITAT), the International Federation of Surveyors (FIG, 2008), the Asian Development Bank (ADB, 2009) and practitioners in the field have recognised that transparency is an important issue when developing a system of property rights and it helps to improve the effectiveness and efficiency of land privatisation in transition countries. Therefore, a lack of transparency in land privatisation has a negative impact on the development of a land market in transition economies. Many researchers have stated that transparency is vital for the allocation of resources (such as land) in transition countries (Rosset, 2001; Deininger, 2003; Bellver and Kaufmann, 2005; Uddin, 2005; Hood and Heald, 2006; Lerman and Shagaida, 2007; Nixon and Walters, 2006).

In this study, “transparency” is considered to be a situation where all citizens have access to all organisations (in this case that means notaries, the land registry, the property registration office, banks and survey organisations) as well as to relevant information concerning parcels of land. This entire system is regulated by laws, combined with strong participation by the aforementioned organisations and by citizens to implement land privatisation successfully.

In this paper, we look at the progress of the implementation of the Land Privatisation Law, reveal evidence of illegal distribution of land and review the organisational aspects of land privatisation procedures in the city of Ulaanbaatar in Mongolia. The results of the pilot study in Mongolia show that uncertainty as identified in data and procedures has to be taken into account in the implementation of land privatisation. It is important to provide land information (where, how much, how) to the public as well as access to personal information when implementing a land privatisation process. Citizens are also uncertain about the legal steps they need to take in order to become the owner of a privatised piece of land. This uncertainty also applies to the organisations involved. This research therefore assumes that transparency can be selected as a method of reducing the uncertainty that exists in land privatisation. It is then possible to identify specific key issues with respect to transparency, such as access to information, participation and corruption. The existence of corruption can be considered as a negative consequence of the lack of transparency. However, so far, little rigorous analysis has been done on how transparency can reduce uncertainty in land privatisation.

Brief theoretical background to uncertainty and transparency

Uncertainty and associated terms such as ‘error’, ‘risk’ and ‘ignorance’ are defined and interpreted differently by different authors; the definitions and interpretations typically vary across different disciplines and depending on the purpose concerned (Refsgaard et al., 2007). Even within the different fields of decision support (policy analysis, integrated assessment, environmental and human risk assessment, environmental impact assessment, engineering risk analysis, cost benefit analysis, etc.) there is no unique terminology nor agreement on what ‘uncertainty’ is (Walker et al., 2003; Refsgaard et al., 2007). For example, Walker et al. (2003)

explored a conceptual framework for the systematic treatment of uncertainty in decision-support activities in integrated assessment and Schultz (2008) analysed the role of uncertainty in forest policy. The approach to defining uncertainty is also different from discipline to discipline. In this study it is not possible to use a specific terminology of uncertainty – as defined by other researchers in different fields – due to the different purpose and context of land privatisation. However, uncertainty experts agree that assessing the nature of uncertainty may help to understand how uncertainty can be addressed. Walker et al. (2003) explain that the nature of uncertainty can be categorised into:

- *Epistemic uncertainty*: uncertainty due to a lack of or incomplete knowledge.
- *Variability (otherwise known as ‘stochastic’) uncertainty*: uncertainty because of inherent variability, e.g. a variable climate.

The level of variability uncertainty cannot be reduced because the uncertainty is inherent in the situation, which is especially the case with a natural system such as the weather (Refsgaard et al., 2007). However, epistemic uncertainty includes limited and inaccurate data, incomplete knowledge, measurement errors, imperfect models, and subjective judgment (Cooney and Lang, 2007) and can be reduced by more studies comprising research and data collection (Walker et al., 2003; Refsgaard et al., 2007). This paper focuses on the reduction of uncertainty; therefore it would be illogical to use ‘variability uncertainty’ for this research. The nature of uncertainty in land privatisation is also very similar to ‘epistemic’ uncertainty, because of the inaccurate and inaccessible parcel data and the incomplete knowledge of land privatisation, and the current land privatisation procedures are complicated.

Moreover, epistemic uncertainty is about how to conceive of a complex phenomenon. This type of uncertainty arises from structural uncertainty (van Asselt, 2000). With respect to land privatisation, therefore, there is a much greater link to the structural uncertainty that exists in a complex situation.

However, in complex, interdependent decision-making environments, there is always a considerable degree of uncertainty (Walker et al., 2003). Rosset (2001) and Lerman and Shagaida (2007) argue that complicated, non-transparent and long transaction procedures appear to have a negative impact on the implementation of land privatisation. Land privatisation is complex because countries in transition introduced ownership rights for the first time in their recent history and the property issue is new in such societies.

How should one respond to uncertainty with respect to land privatisation?

Transparency is a mixed and complex concept and is difficult to deal with (TI, 2009). However, there are reasons why we choose transparency as a solution to uncertainty in land privatisation.

Firstly, as well as being about having government data available for everyone to inspect, transparency is also about clarity in procedures and disclosure of other facts (UN/HABITAT, 2008). UN/HABITAT has explicitly stated that a high degree of corruption appears to be common in the allocation of land and that it extends to the lack of clear and credible information on land availability and transactions, and to the poor dissemination of public information on land rights and policies. For example, in Mongolia, due to the lack of information in relation to land allocation and planning, citizens cannot get the land they desire or cannot invest in land because of the unclear situation in land privatisation (PCGIAP, 2007). The Russian case shows that one of the constraints on land registration and land transactions relates to a lack of land information (Lerman and Shagaida, 2007). Therefore, land information – especially the “how (rights), where (location) and how much (size)” – must be available to the public. Otherwise, there is the risk of uncertainty amongst

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