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도시계획학 석사학위논문

Land Ownership Types across Countries

2015년 2월

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이 논문을 도시계획학 석사학위논문으로 제출함

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Abstract

This study aims to investigate the various forms of land ownership systems in the world. Land ownership status issues are being considered as one of the basic requirements for the countries' development; it is because the land tenure systems are the fundamental effort of human life conditions on land. Secure land ownership is fundamental to shelter and livelihoods as well as the realisation of human rights, poverty reduction, economic prosperity and sustainable development.

The objective of this research is to analyze the ownership systems in the world where the government, civil society, private sector and development cooperation initiatives have been implemented. Thus the problem definition can be formulated as a research question which is "How does the land ownership systems differ in the world?"

According to the literature surveys conducted for the research, the land tenure ownership represent countries with different culture, socio-economic, legal aspect and land-related histories. It can take various forms among countries, including statutory, customary, public, crown, communal, informal and formal forms of land tenure.

This thesis paper comprises five chapters. chapter 1 includes the introduction of the study, Chapter 2 provides reviews of the theoretical background through three key terminologies of the study: Land tenure, tenure security and land rights. It

illustrates definitions and concepts of the terminologies that are the background of the study. This chapter also conducts an extensive literature review, which address the importance of this research and points out the difference between previous studies and this thesis. Chapter 3 presents general context of existing tenure types across the world. Through this chapter, analysis of the land tenure systems and the categorization of existing ownership systems into institutional frames. Chapter 4 continues with analyzing study findings from the previous chapter and land ownership types. It demonstrates analysis and identifies the key factors of each land ownership typology. The analysis is able to delineate the advantage and disadvantage of each system. As a closing remark, this thesis ends with providing conclusion with implications of the study and suggestions of future study agenda.

Through the study, analysis of the land ownership systems and categorizing them into institutional frames: 'Statutory-private ownership', 'Customary-private ownership', 'Communal ownership', 'Religious ownership', 'Public ownership' and 'Informal ownership', it will provide an overview of existing land tenure systems across the world as a spectrum. The analysis is able to delineate the advantage and disadvantage of each type.

◆ **Keywords** Land tenure, Tenure security, Land right, Land ownership type, Land ownership categorization

◆ **Student number** : 2013-22004

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I . INTRODUCTION

1.1 Research Background and Objectives

1.1.1 Research Background

The land has been being increasingly recognized as an important governance issue. The world today faces many complex challenges, including poverty; rapid population growth; rapid urbanization; increased demand for natural resources; food, water and energy insecurity; natural disasters; and violent conflict. Many of these challenges have a clear land dimension: unequal access to the land; insecurity of tenure; unsustainable land use; weak institutions for dispute and conflict resolution and etc.(Fricska *et al.*, 2009).

In principal, such a tenure system is able to shape the fundamental conditions of people on the land. Leaseholds are based on the notion of rentals for long periods, in practice, the issuing of 99-years leases is considered to be as secure as an ownership system. The land belonging to one entity among an individual, collective or the state by contractual agreement, leased to another entity. The lease agreement is then registered against the title of that land to create real land rights that are enforceable(Economic Commission for Africa, 2004). Access to

land and the associated security of land ownership has significant implications for development and real estate market. Real estate is a major source of value in most of the countries in the world. For example, households in the United States have \$9.6 trillion of their wealth in real estate, which is about 16 percent of their wealth, Peruvian has about 70 percent of their wealth in real estate, and the World Bank confirms that in most economies, there are one-half and three quarters of wealth exist(Dam, 2006; Economic Research Service, 2005; De Soto, 1993; World Bank, 2006). However, a tenure system cannot be easily defined or derived as the following universal norms but rather adjusting to local conditions by considering history, culture, legal aspects and economic condition which may influence human's perceptions and behavior(Rudiarto, 2006).

Secure land and property rights are critical for reducing numerous global issues, such as poverty, enhancing economic development, gender equality and social stability. Secure access to the land provides a valuable safety net as a source of shelter, food and income in times of hardship. Secured land ownership is a prerequisite for poverty reduction, because when the land is improperly managed, the problems often lead to disputes, land degradation, and lost economic and development opportunities. Cases of poorly managed lands are found in many developing countries(United Nation, 2013). An estimated 700 million urban poor live in conditions of insecure tenure and an estimated 2

million people are forcibly evicted each year. According to the UN-Habitat, 900 million people live in informal settlements, which is expected as increasing to 1.4 billion by 2020 and to 2 billion by 2030. Secure tenure promotes investment in homes, neighborhoods, livelihoods and urban agriculture to urban poor(Fricska *et al.*, 2009). Proper developmental system of the landownership should be established to reorganize, utilize and conduct the unexploited land.

Countries which have been subject to colonialism have particularly complex tenure arrangements. Since non colonized countries also have very complex tenure as indigenous and imposed tenure patterns may exist at the same time in the same area. It is clear that land ownership systems are very diverse among countries and between the developed and developing countries. The form of systems can be various, including the statutory, customary, religious and informal forms of land ownership(Mends and Meijere, 2006).

The land tenure systems that have been being evolved over time, including the range of land rights that exist; the operation of the land markets, including the main constraints; and the institutions that regulate tenure and market(Fricska *et al.*, 2009).

Understanding the land ownership system in a country or a group of countries are related aspects of the country's historical background. Historical fact of being colonized or still

being semi-colonized by a country or community has a strong effect on the legal system of the country and community. The history determines the shape of institutions in present day. Over the time in the past, different forms of the land tenure have been established. In an overview of contemporary history of land tenure, it starts with the system of feudalism. Feudal tenure allows the lords to have full control over the land. At that time, land ownership implied their status in social wealth. The concept of feudal existed for a long period time of human history; it is similar to state owned property, which is also called the public tenure today.

After the end of dynasty rules the states, political power by members of the aristocracy diminished. Then, the two political view of states appears, two directly opposed concept of states: capitalistic states and socialist states. Transition countries seats in between the range of the two concepts, they are in revising process from socialist state to capitalistic state.

In capitalistic states, land, production and income are mostly or entirely owned by privates. All of the ownership and transactions on the lands are recorded, and restrictions and written regulations exist. The tenure system in capitalistic states have a similar characteristic with statutory tenure system, which is operated and controlled by written regulations. Statutory tenure has found in many capitalistic countries today.

Socialist states have a social economic system with social

ownership. It is characterized with production and co-operative management of the economy. In socialist states, there are no land market and land use decisions are made administratively. Land administration system in socialist state are similar to the public tenure system, where land is administered by the government or local authority.

Transition countries are known as the post-socialist transition countries from socialism to capitalism. The countries are located in central and Eastern Europe as well as former Soviet Union, which includes the 27 transition countries in Europe and North West Asia, such as China, Vietnam, Cambodia and Cuba are included. In those countries, the public land ownership remains significant, and those land is not effectively privatized. Lacking in management of the land limits growth of new businesses(Bezemer, 2006). In those countries market in land were very limited or in some did not existed. In some country like Poland, a market in rural land remained throughout the communist period but urban land was subject to strict State control. In Bulgaria, urban land is able to purchase with a price dictated by the government, but rural land is administered by a cooperative system with no ownership on the land for agricultural use(United Nation, 1996). In many transition countries, 'cadasters' vary in character but tend to incorporate a detailed classification of soil type and permitted land use. They are frequently maintained in a labor intensive manner faithfully

preserving the original character of the document. It is also generally the case that the uses to which the cadasters are put do not warrant the time and expense applied to their maintenance.

The subject of land registration has received much attention in most transition countries but in many, the situation remains less than completely satisfactory. Some of the underlying reasons are relevant to the design of property tax. Good land management will promote economic and social development in both urban and rural areas.

Even though the importance of the land ownership security is widely acknowledged and its urgency is recognized, this has not led to any consensus as to what it exactly entails and in what way it should be realized(Gelder, 2010). The land security in countries needs to be addressed at many levels. Land ownership security is important not only for urban community but also rural community. It allows people in the community to diversify their livelihoods by using their land as a real estate. They can deal and invest money in the property asset. There are several ways like using their land as collateral, renting it out or selling it. Tenure security also affect the everyday choices of poor rural people on their agricultural production, and it influence farmers to invest in their land. Land ownership security is just one step on the road to reducing global issues like poverty(International Fund for Agricultural

Development, 2012).

The aim of this study is to investigate the different institutional frameworks of land tenure system in many countries in the world. This study focuses specifically on investigating the state and different existing forms of land ownership at national and city levels.

1.1.2 Research Objectives

The objective of the research is to analyze the land tenure system that affects the land management and development status in the world. Analyze the tenure systems in the world where the government, civil society, private sector and development cooperation initiatives have been implemented. The land tenure system is increasingly recognized as an important governance issue. Acknowledging the land tenure system is the way of providing secure land right, which is very important for development and poverty reduction. Poverty issue is a well-known global problem, as well as the land governance problem at the country level across all regions. Those problems have a significant relationship with the land tenure systems.

Un-Habitat and GLTN define the terminology ‘Typology of Tenure’ as dominant land tenure prevailing either formally or informally. Country specific classification that is public ownership/ use, private ownership/use and indigenous and non-indigenous community tenure. In this thesis, the typology of

tenure is focused on land ownership status. Land ownership is the key component in terms of development and management. Without the ownership information on a property, no actions can be taken on the property.

The land ownership systems are very complicated so one cannot predict a country's land system without an in-depth research of it. All the lands are under different status of the land tenure system, therefore understanding the current status is the key point to decide ways in managing the land. Thus the problem definition of the research can be formulated as a research question of "How does the land ownership systems differ in the world?"

The objectives of the research is based on the assumption of number of different land ownership types of tenure systems exists in the world: statutory, customary, public, religious, communal and informal tenure. This study would serve, on a worldwide level, as an analysis of ownership system typologies which provide an overview of existing land ownership systems across the world as a spectrum. Moreover, this study presents characteristics of each type in detail, it is able to delineate the advantage and disadvantage of each system.

1.2 Research Methodology and Organization of Study

1.2.1 Research Methodology

This thesis addresses the land tenure issues in the world, particularly land ownership status. To address the research objective of the study, this thesis is examined through literature survey analysis methodology, qualitative in nature. The purpose of the literature survey for this study is to collect a lot of number of publications and papers related to the study topic. Collection of the literature research was done through variety of resources including the articles of journals, published papers, thesis papers and published books.

A search has been conducted on the terms 'land tenure', 'tenure security', 'land right', 'land law', 'customary ownership', 'statutory ownership', 'communal ownership', 'religious tenure' and 'property ownership', in numerous database sources to complete review of literature for the proposed study, including on e-journals web-sites.

The information from literature survey research is illustrated in chapter two, three and four in this thesis, to review and collect information of the study topic. With the information from the literature survey, Chapter two clarifies the previous studies in similar topic to the thesis, and illustrates the

critical issues of this study that differentiate it from previous research. In chapter three, through the literature survey, it provide the list of current existing land tenure systems to classify the land ownership types in the world. This is based on the systems that are already published by other international organizations. In chapter four, it analyze the characteristics of each land ownership types.

1.2.2 Organization of the study

This thesis comprises five(5) chapters(Figure 1). Following Chapter one is the introduction, on the background, objectives and methodologies of this thesis. The introduction discusses general descriptions of the research outline, background, purpose, methodology and structure of the study.

Chapter two provides reviews of the theoretical background through three key terminologies of the study: Land tenure, tenure security and land rights. It illustrates definitions and concepts of the terminologies. This chapter also conducts an extensive literature review, which address the importance of this research and points out the difference between previous studies and this thesis.

Chapter three conduct analysis of the land tenure systems with two parts. First part, overview of the general context of the land tenure system typology and tenure system formation with analytical framework, and the second part is categorizing

the ownership systems into six types. There are global organizations works on land issues in the world. This thesis study on the land tenure systems that those organizations have announced. UN-Habitat, World Bank, and GLTN have reported different land tenure systems. From the published reports by the organizations, list of tenure systems are collected: freehold, delayed freehold, registered leasehold, public rental, private rental, shared equity, customary ownership, religious tenure systems- islamic, non-formal tenure systems, squatters, pavement dwellers, easements, sharecropping, community ownership and etc. Those land ownership systems in the world can be classified into the frame. Through this chapter, analysis of the land tenure systems and the categorization of existing tenure systems into institutional frames.

Chapter four continues with analyzing the research findings from the previous chapters. It demonstrates analysis of the each land tenure system types, and identifies the key factors of each land ownership types. The analysis is able to delineate the advantage and disadvantage of each system in development. As a closing remark, this thesis ends with providing conclusion of implications of the study and future study agenda.

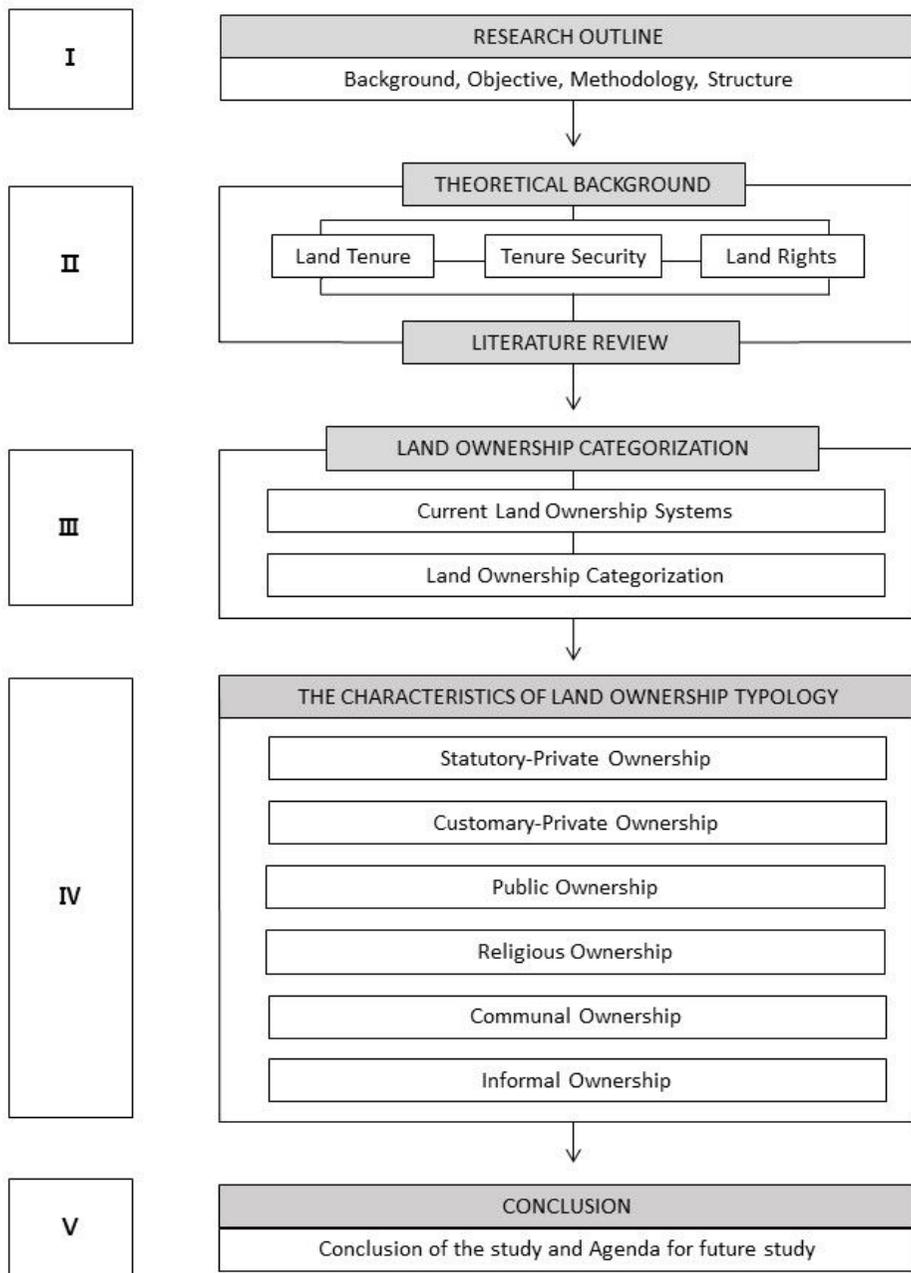


Figure 2 Research Framework

II. THEORETICAL BACKGROUND AND LITERATURE REVIEW

2.1 Theoretical Background

2.1.1 Land Tenure

The land tenure structures are complex and vary between and within countries, there are different definitions and concepts of it. The land tenure is derivative of the concept of natural resource tenure, which in essence refers to the terms and conditions under which natural resources are held and use (Bruce, 1986; Moyo, 1995; Shivji *et al.*, 1998). The concept of the land tenure lies on a social construct which defines the relationship between individuals and groups of individuals. The land tenure consists of the social relations and institutions governing access to and ownership of the land nature resources. It is rights and obligations defined with respect to control and use of the land (Costa, 2013).

In fundamental nature of the issues in human society, there are many definitions of 'land tenure' exist. UN-Habitat reports in 2008; defines it as the way land is held or owned by individuals and groups, or set of relationships legally or customarily defined amongst people with respect to land. In

other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings on the land. The Global Land Tool Network at UN-Habitat defines it more concisely as the relationship, whether legally or customarily defined, among people, as individuals or groups with respect to the land. Definition of 'Land tenure' is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land (The Food and Agriculture Organization of the United Nation, 2002). Rules of tenure define how property rights to land are to be allocated within societies. The rules of tenure define how rights to land are assigned within societies. They define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restrictions. In simple terms, the land tenure systems determine who can use what resources for how long and under what conditions (FAO, 2002). The land tenure may be defined as the terms and conditions on which the land is held, used and transacted (Adams *et al.*, 1999). In brief, tenure determines who can use what land and how (Lastarria-Cornhiel, 1995).

According to FAO report in 1995, the land tenure is often categorized as private, communal, open access and state land tenures. Private is the assignment of rights to a private party, as within a community, individual families or group of people may have exclusive rights to residential or agricultural parcels.

Other members of the community can be excluded accessing the resources without the consent of those who hold the rights. Communal is a right of commons may exist within a community, as members of a community may have the right to use independently the holdings of the community. Open access is specific rights that are not assigned to anyone and no-one can be excluded. It usually includes natural resources such as marine, rangelands and forests that are free to access. State land tenure is property rights that are assigned to some authority in the public sector.

The concepts and definitions of the land tenure are presented by various institutions and scholars over in-depth studies. The importance of the land tenure is acknowledged as the land tenure system encompasses in community and country level. Understanding and addressing issues of secure land tenure is critical elements in any developmental strategy.

2.1.2 Tenure security

Tenure security is a means of recognizing the rights of the poor by extending a sense of permanence and stability to previously marginalized people, allowing them to design shelter and survival strategies on the basis of their protected human rights(United Nation, 2004). Providing security of tenure for a wide range of the land rights has proved surprisingly resistant to resolution. For example, there are an estimated 700 million

people living in informal settlements without security of tenure(UN-Habitat, 2003). It implies that the right of access to and use of the land and the property is underwritten by a set of justifiable rules.

In both theory and policy, the idea of tenure security for low-income settlement dwellers is encountered in three distinct forms: tenure security as perceived by dwellers, tenure security as a legal construct and de facto tenure security(Van Gelder, 2009). This is from the 'tripartite view': conceptualization of tenure security. In all legal approaches, tenure security refers to the legal status of tenure and its protection backed up by state authority. The de facto view of tenure security is based on the actual control of property, regardless of the legal status in which it is held. De facto tenure security can best be defined by the elements that compose it or contribute to it, such as the length of time of occupation, the older a settlement, the higher the level of legitimacy and protection, the size of the settlement, and the level and cohesion of community organization as the better the organization, the higher the probability of a successful strategy of non-compliance(Durand-Lasserve, 2006; Payne, 1997, 2001; Varley, 1987). The third form of tenure security encountered in the literature regards security as it is perceived by dwellers. Generally, this takes the form of a household level chance estimate towards the perceived probability of eviction by the state or the landowner sometimes complemented with other

factors that may cause involuntary relocation such as threats from and land conflicts with neighbors, gangs or family members(Van Gelder, 2007, 2009).

Different communities experience different levels of tenure security, and the importance of tenure security is widely acknowledged. According to Fricska(2009), The benefits of tenure security include: increased investment by people in their homes, farms, villages and neighborhoods; increased agricultural productivity, food security and more sustainable use of natural resources; improved livelihoods for the urban poor, particularly for women, through home-based enterprise and less time spent protecting their asset(home); increased incentives for inward investment in both rural and urban areas; more efficient land markets; improved health and quality of life, particularly in informal settlements; increased Government revenue from land-based taxes that can be reinvested in improved service delivery; and improved social solidarity. In addition to its role in protecting the fundamental right to land and houses, tenure security provides numerous additional benefits. Most importantly, as security increases, families invest more savings and sweat equity to improve their housing. Increased security is also associated with greater political strength and ability to demand services(Ehrenberg, 2006).

Without secured tenure, residents' sense of insecurity prevents them from investing significantly in their own shelter,

in consenting to pay the relatively large connection fees for water, sanitation, and electricity, and from contributing labor or money to upgrading or maintaining minimally adequate environmental conditions and equipment within the community. Insecurity of tenure also serves to make residents more vulnerable to exploitation by criminals, politicians, or local bosses. Money that might otherwise be invested in housing or land a form of saving is instead spent on obtaining promises of protection from eviction(Wstendorff, 2009).

2.1.3 Land rights

The land is a critical asset, because it provides a means of livelihood through the production and sale of crop and other products. In any country, the types of tenure can be expressed as a 'continuum of tenure' or as a range of the land rights. These rights vary greatly with regard to what a person holding such a right can do with the land(Fricska *et al.*, 2009). The land right is also called as property right. The nature of the property rights has been shown to have an observable impact on a wide range of economic outcomes. Thus, enforcement of property rights through legal or social structures is a prerequisite for production, investment and exchange in the economy. Property rights require governance institutions strong enough to enforce them, but at the same time these governance institutions have to be constrained enough to limit

expropriation(Levine, 2005; Riedinger and Yadav, 2011).

The rights related to the land and property include rights to possess, use, manage, alienate, transfer and gain income from property. In brief, there are three rights apply on the lands: use rights, control rights and transfer rights. The rights are an instrument of society and derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others(Demsetz, 1967).

Use right is a right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc(FAO, 2002). Every rights required to be registered, to have the force of the law. National assembly of Socialist Republic of Vietnam states that registration of the land use right means the recording of the lawful land use right with respect to a defined parcel of land in the cadastral file aimed at creating the rights and obligations of the land user. This is similar to most of the socialist countries.

Control right is the components of ownership that comprise personal control and consumption of a resource(Christman, 1991). It is to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of crops and etc. Chsistman(1991) also have mentioned that the grant of full control rights to individuals will directly affect the well-being of surrounding individuals.

Transfer right is a right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights (FAO, 2002). Tribal, feudal, colonial, capitalist, socialist and religious societies have all evolved distinctive concepts concerning the use right, control right and transfer right of land.

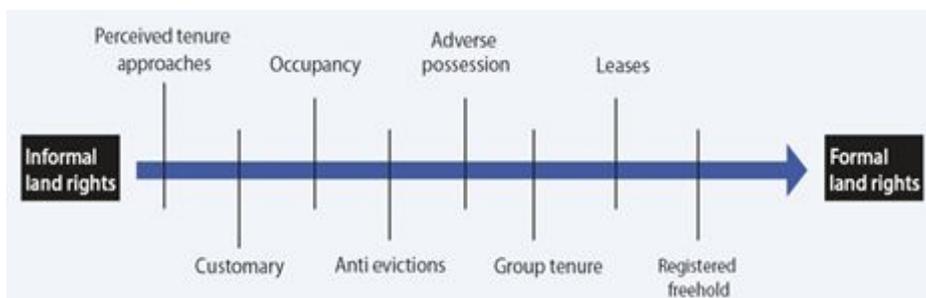


Figure 3 continuum of land rights

(source: *UN-Habitat, 2008*)

The Figure above illustrates the land right situations found in many countries in the world. It clearly demonstrates the degree of tenure types and the range of land rights in the world. UN-Habitat (2008) express the range of possible forms of tenure as a continuum, and each of them provides different degrees of security with different sets of rights. However, there are limitations in this linear presentation, as it despite that there are many other categories of other tenure systems. There are

systems offer equally high levels of security and legality as registered freehold or equally low levels of security and legality as perceived tenure approaches. Also it implies that customary tenure system is relatively informal, but it vary depend on the land and tenure situation.

2.2 Literature Review

This analysis of the land tenure system types presents relevant information that can benefit future land practices. The purpose of this thesis is to provide a framework for the land ownership types in the world and to describe the characteristics of them. The purpose of this study is outlining typology of the land ownership systems through the process of literature survey. This research is important from an academic point of view. Much has been published on the land tenure, but none of the previous studies present the land tenure systems only focus on ownership status. Meaning, they are largely executed without understanding the critical relationship of the land development and the land ownership system. There are few previous efforts to analyze the land tenure systems, as number of published documents provide general information of the land tenure. There are many publications related to the land tenure that focuses on a specific country, group of countries with similar backgrounds, developing countries, or religious point of view.

There are previous studies try to identify and emphasis the importance of each country's land tenure system, property security and its related policy and laws(2004; 2011; Abdulahi, 2007; Afridi and Baryalay, 2010; Ali et al., 2014; Anderson, 2006; Arko-Adjei, 2011; Aumann, 1974; Barry *et al.*, 2007; Besley, 1995; Boggs, 2007; Chevalier, 1967; congress, 2007; Cotula, 2006; De Vany and Sanchez, 1979; Development, 2010b, c, e, a, d; Dixon, 2009; Durand-Lasserve, 2012; Ensminger, 1997; Firman, 1997; Gebeyehu, 2013; Gil, 2000; Hanstad and Duncan, 2001; Institute, 2004; Kong, 2012; Brandt *et al.*, 1998; Lusugga Kironde, 2000; Grosjean *et al.*, 2011; Ampadub *et al.*, 2011; Ollennu, 1962; Place and Otsuka, 2001; Programme, 2012; Renger, 1995; Rudiarto, 2006; Salerno, 2011; Savant-Mohit, 2004; Thirkell, 1996; UN-Habitat, 2005a, b, c, d, 2014; Wily, 2011; Wily, 2003; Choi and Jung, 2008).

There are literature reviews on the land tenure which pays attentions on a specific country, group of countries with similar cultural, socio-economical, religious backgrounds or developing countries point of view(Baranyi *et al.*, 2004; Bertaud *et al.*, 1995; Boydell *et al.*, 2008; Chauveau and Cotula, 2007; Cousins and Claassens, 2004; Crais, 2006; Dam, 2006; Development, 2012; Doebele, 1987; ECE, 1996; Fernandes, 2011; Franzsen, 2002; Hofstee, 1972; Kajoba, 2002; Kasper, 2007; Khamaisi, 1995; Menezes, 1988; Napier, 2002; Okoth-Ogendo, 2000; Payne, 1997; Programme, 2010; Quizon, 2013; Rakodi and Leduka, 2004; Roth and Haase, 1998; Sait and Lim, 2006; sait and Peters, 2011;

Tannous, 1951; UN-Habitat, 2005, 2010; Wiener Bravo, 2011; Zimmermann, 2011).

There are also existing studies that tried to conduct ways of the land reform in studying countries(Barraclough and Reform, 1999; Besley and Burgess, 2000; Brown, 2004; Bruce, 2006; Coldham, 1995; Deininger and Feder, 2009; Fairley, 2013; Johnson, 1998; Kalabamu, 2000; Lee, 2000; Marsh and MacAulay, 2002; Thompson and Wilson, 1994; Lee, 2001).

There have been numerous researches on the land tenure system and the land ownership to deduct implications for the reunification of countries like North and South Korea, problem of poverty, or issues related to urbanization as well(Alchian and Demsetz, 1973; ALIYU, 2009; Augustinus, 2003; Bell, 2006; Bezemer, 2006; Bruce, 1998; Christman, 1991; Claassens, 2014; Cohen, 2006; Congressi, 2009; Cotula et al., 2004; Creekmore, 2000; Cymet, 1992; Deininger, 2003; Demsetz, 1967; Development, 2012; Dunning, 1990; Durand-Lasserve, 2006; Durand-Lasserve and Royston, 2002; Durand-Lasserve and Selod, 2009; ehrenberg, 2006; Ellickson, 1993; Engels, 1999; Enterprise, 2009; Evans, 1921; Evers, 1984; Feder and Noronha, 1987; Firman, 2004; Greene, 2005; Grindle, 2004; Ho, 2001; Huffman, 1998; Jimenez, 1984; Johnson, 1972; Kameri-Mbote, 2005; Kehoe, 1976; Khemro and Payne, 2004; Kivell and McKay, 1988; Kombe and Kreibich, 2000; Loyns *et al.*, 2000; Kameri-Mbote *et al.*, 2007; Mennen, 2012; Montalvo and Ravallion, 2010; Nations, 2014; Norfolk and Tanner,

2007; Fricska *et al.*, 2009; Payne, 2001, 2004; Payne and Durand-Lasserve, 2012; Pottier, 2005; Powell, 1998; Programme, 2012; Report, 2013; Rural Development and Land Reform, 2013; House *et al.*, 2005; Secretariat, 2008; Sietchiping *et al.*, 2012; UN-Habitat, 2008, 2012; Van Gelder, 2010; Westendorff, 2009; White and Martin, 2002; Wright, 1989; Yiri, 2006; Lee and Lee, 2004; Choi and Lee, 1998).

In brief, there are previous studies focus on one specific country, groups of them with similar cultural or historical backgrounds. There are also studies to give implications on a land related global issues. All of these factors suggest the great importance of this thesis, as well as the need for documenting the land tenure security system across the countries in the world. Therefore, this thesis can stimulate discussion and future efforts to research the land systems. Categorization of the land tenure system in the world, description of each system type's characteristic, and qualitative analysis of advantage and disadvantage of each type are the critical issue of this study which differentiate it from previous researches.

III. Land Tenure Categorization

3.1 Current Land Tenure Systems

There are numerous international organizations and institutions that study on global concerns related to the land issues. UN-Habitat, World Bank and GLTN are the well-known global organizations that works on the land tenure security in the world. The global organizations have announced the numbers of different land tenure systems.

The United Nations Human Settlements Programme, UN-Habitat, is the United Nation agency for human settlements and a member of the United Nations Development Group. It is mandated by the United Nations General Assembly to promote socially and environmentally sustainable lands and sustainable urban development. It has a goal of providing adequate shelter for all. UN-Habitat works in more than 70 countries in five continents focusing on seven areas: Urban Legislation, Land and Governance; Urban Planning and Design; Urban Economy; Urban Basic Services; Housing and Slum Upgrading; Risk Reduction and Rehabilitation; Urban Research and Capacity Development.

UN-Habitat(2008) has analyzed the land tenure systems:

freehold, delayed freehold, registered leasehold, public rental, private rental, shared equity, co-operative tenure, customary ownership, religious tenure systems, intermediate or temporary tenure systems and non-formal tenure systems. The table below (table 1) is from UN-Habitat report in 2008, shows each form of tenure system, its characteristics, benefits and limitations in different contexts. It provides an overview of some of the distinguishing features of the different approaches. The range of tenure system categories include a wide range of legal, semi-legal and non-legal categories, and serves different demand and needs of various socio economic groups. As shown in the table, some systems are often not documented and can vary in degree of security.

Table 1 Land Tenure Systems

Tenure system	Characteristics	Advantages	Limitations
Freehold	Ownership in perpetuity	High degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value, potential for	Costs of access generally high. Collateral value may not be relevant if incomes are low or financial institutions are

		increases in asset values.	weak. Property values can go down as well as up.
Delayed freehold	Conditional ownership. Title is granted on payment or when developments have been completed.	Same high degree of security as freehold when payments are made on schedule or developments are completed. Freedom to dispose, or use as collateral for loans. Maximises commercial value, potential for increases in asset values.	Default in payments or developments may result in eviction and loss of funds invested. Collateral value may not be relevant if incomes are low. Property values can go down as well as up. Expectations of increased values can divert investments from more productive

			sectors.
Registered Leasehold	Ownership for a specified period from a few months to 999 years.	As secure as freehold, but only for the period specified in the lease.	Requires legal framework. Costs of access generally high.
Public rental	Rental occupation of Stateowned land or house	Provides a high degree of security, providing terms and conditions of occupation are met.	Limited supply may restrict access. Often badly located for access to livelihoods. Terms often restrictive. Deterioration may result if maintenance costs not met.
Private rental	Rental of privately owned land or property.	Good security if protected by legally enforceable contract.	Open to abuse by disreputable owners. Deterioration may

		Provides tenants with flexibility of movement.	result if maintenance costs not met.
Shared equity	Combination of delayed freehold and rental in which residents purchase a stake in their property (often 50%) and pay rent on the remainder to the other stakeholder.	Combines the security and potential increase in asset value of delayed freehold and the flexibility of rental. Residents can increase their stake over time, ultimately leading to full ownership.	Requires a proper legal framework and efficient management.
Co-operative tenure	Ownership is vested in the cooperative or group of which residents are co-owners	Good security. Maintains social cohesion.	Requires a proper legal framework. Restrictions may reduce incentives to invest. Requires double

			registration first of land and of association
Customary ownership	Ownership is vested in the tribe, group, community or family. Land is allocated by customary authorities such as chiefs.	Widely accepted. Simple to administer. Maintains social cohesion.	May lose its legal status in urban areas. Vulnerable to abuse under pressure of urban and market development. Poor customary leadership may weaken its legitimacy.
Religious tenure systems (e.g. Islamic)	Islamic tenure has four main categories: 'Waqf ' is religious trust land and addresses landlessness; 'mulk', is full individual ownership;	Facilitates family/group tenures and accessible and affordable land management procedures	Because they are outside the commercial land market, waqf lands are often inefficiently managed. Inheritance

	<p>`miri', is state owned/controlled land which carries usufruct rights, whilst `musha/mushtarak', is collective/tribal ownership.</p>		<p>disputes can cause land conflicts</p>
<p>Intermediate, or temporary, tenure systems</p>	<p>There are many pragmatic arrangements, including land certification, 'Certificates of Comfort', Temporary Occupation Licenses, etc.</p>	<p>These provide reasonable security for households to invest, whilst protecting long term public interest options for change.</p>	<p>Costs may be incurred by authorities or residents if relocation is required. If these prove excessive, redevelopment can be inhibited.</p>
<p>Non-formal tenure systems</p>	<p>These include many categories with varying degrees of legality or illegality.</p>	<p>Some of these non-formal categories, such as squatting, started as a response to</p>	<p>As demand has intensified, even these informal tenure categories</p>

	<p>They include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In some cases, several forms of tenure may co-exist on the same plot, (e.g. tenants and sub-tenants), with each party entitled to certain rights.</p>	<p>the inability of public allocation systems or formal commercial markets to provide for the needs of the poor and operated on a socially determined basis.</p>	<p>have become commercialized, so that access by lower income groups is increasingly constrained.</p>
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(source: *UN-Habitat, 2008*)

The World Bank and GLTN also have announced the number of different land tenure systems. The World Bank is an United Nations international financial institution that is

component of the World Bank Group, also a member of the United Nations Development Group. This organization provides loans to developing countries for capital programs, with a goal to achieve by 2030 which is ending extreme poverty by decreasing the percentage of people living on less than \$1.25 a day to no more than 3 percent (World Bank, 2008; 2011). There had been voluminous studies and reports published by World Bank related to poverty to improve the land usage.

The Global Land Tool Network (GLTN) is an alliance organization of global regional and national partner facilitated by UN-Habitat. It contributes to poverty alleviation, improved the land management and security of tenure. Its main objective is to contribute to poverty alleviation through the land reform, improved the land management and security of tenure, with principles in the development of the land tools that are; pro poor, good governance, equity, subsidiarity, sustainability, affordability, systematic large scale and gender sensitiveness.

The table below (table 2) is the list of the tenure systems which the organizations has announced. The list of existing tenure systems by UN-Habitat includes both leasehold and ownership in countries, where the list by World Bank is more focused on leasehold system and GLTN presents more connoted list of tenure systems. The hierarchy of the land tenure systems are different between the organizations. Each serves different sections of demands and needs of different

Table 2 Announced Land Tenure Systems

UN-Habitat	World Bank	GLTN
1. Freehold	1. Squatters	
2. Delayed freehold	2. Pavement dwellers	
3. Registered Leasehold	3. Occupants in unauthorized land subdivisions	
4. Public rental	4. Holders of temporary permits to occupy	1. Statutory/ formal tenure
5. Private rental	5. Holders of long-term or renewable permits to occupy	2. Customary tenure
6. Shared equity	6. Leaseholders with no contract	3. Informal tenure
7. Co-operative tenure	7. Leaseholders with formal contract	4. Rental, Easements
8. Customary ownership	8. Long-term leaseholders	5. Sharecropping
9. Religious tenure systems -Islamic	9. Freeholders	6. Community or group owner-ship
10. Intermediate, or temporary, tenure system		
11 .Non-formal tenure systems		

society groups. Some systems exist under different tenure systems. For example, public rental, private rental and registered leasehold are restored to tenure systems. Also, different length of leasehold systems can be suggested into concise tenure systems. The table 3 is the list of the land tenure systems after

eliminating the duplicates. The combined list of the systems announced by the organizations.

Table 3 Existing Land Tenure Systems

Existing Land Tenure Systems
1.Freehold
2.Delayed freehold
3.Leaseholder (Registered leasehold, tenant with contract)
4.Rental (public, private)
5.Shared equity
6.Co-operative tenure
7.Statutory tenure
8.Customary tenure (formal tenure)
9.Religious tenure system (Islamic)
10.Communal tenure (community or group ownership)
11.Public tenure
12.Intermediate or temporary tenure system
13.Non-formal (informal) / squatter tenant/ extralegal tenure

3.2 Land Ownership Categorization

The land systems from the list of existing land tenure systems can be re classified into four categories: rental(use right), uncertain ownership, collective ownership and individual ownership. Table 4 shows each tenure system with its use right status and ownership status clearly. This thesis is to investigate

Table 4 Categorized Land Tenure Systems

Rental (use right)	Uncertain ownership	Collective ownership	Individual ownership
Freehold	Informal tenure	Religious tenure system	Statutory tenure
Delayed freehold		Communal tenure	Customary tenure
Leaseholder		Public tenure	
Rental (public, private)			
Shared equity			
Co-operative tenure			
Intermediate, temporary tenure			

and analyze the existing land ownership system in the world, acknowledging the importance of the land ownership in reducing global issues like poverty, development and improving real estate market. Focusing on the ownership status, those published existing tenure systems can be differentiate between rental and ownership.

The figure 3 illustrates the land ownership categorization process in flow. Through the analysis of the pilot studies on the land tenure systems, the systems could be categorized into institutional frames: Statutory-private ownership, Customary-private ownership, Public ownership, Religious

ownership, Communal ownership and Informal ownership. Each ownership system differ in radical facts, such as whether the land has cadaster or not, to whom and how the land is registered and managed, and who has the ownership to the land.

The tenure systems landscape in both industrialized and developing countries consists of a patchwork of government/state, communal/private and individual/private property rights arrangements(Bruce, 1986). Dual or multiple land tenure systems may co-exist in many countries depends on several factors: statutory law alongside informal, customary practices, religious law and etc. A range of customary, statutory and hybrid institutions and regulations having de jure or de facto authority over the land rights co-exist in the same territory, a phenomenon referred to as legal pluralism(Cotula *et al.*, 2004, 2). The ownership typology provides an overview of the existing land tenure systems, which may improve the accessibility of development process. Approaches to land development differ case by case, but having the knowledge of the land ownership status of the land allows easier access for decision making.

IV. The Characteristics of Land Ownership Typology

4.1 Statutory-Private Ownership

The concept of private property rights is an integral part of the legal structure of European society(United Nations, 1973). The ‘Statutory-Private ownership’ system prioritizes individualization of the land ownership. It is the official system of people’s relationship to the land, embedded within legal documentation and upheld through an administrative system for creating and maintaining the land rights. It is enforced by written certificates and formally kept land registries.

According to Food and Agriculture Organization of the United Nations(2002), statutory-private system assigns rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.

The statutory-private ownership system can be illustrated as a synonym with the formal written law. Administration

system of statutory tenure system prioritizes individualization of the land ownership that is assigned to some authority in the public sector. The land is protected by legally enforceable contract. With a legal framework and efficient management, the system has good security.

The statutory-private ownership system for the land management usually operate with considerable possibilities for negotiation(Chauveau and Jean-Pierre, 2007). The system provides a high degree of security, as well as a freedom to dispose or use as collateral for loans. It can maximizes commercial value, enabling people to realize substantial increase in asset values.

4.2 Customary-Private Ownership

Customary-private ownership systems has its use and allocation of the land are under control of a community; it may be determined by the tribal leaders or by tradition and restricts what occupants of the land may do with it. The customary systems are usually managed by a land or village chief, traditional ruler or council of elders. The customary-private land ownership system is characterized by its largely unwritten nature, as it is generally connoted with the informal land arrangements. The system is based on local practices and norms, and is flexible, negotiable and location specific. Its

principles stem from rights established through first clearance of the land or conquest. This tenure type is not static, but continually evolving as a result of diverse factors like cultural interactions, socio-economic change and political processes. It reflects the particular needs of the local community, mirrors the cultural and social values of the group.

As Fisher(1993), has noted, the major characteristic of customary tenure is that the land is regarded as belonging not to the individual but to the whole social group. The customary land is not subject to personal ownership, although use-rights are alienable within and between members of the community. There is a birthright to subsistence opportunity for each family head; each family is granted use-rights of habitation and cultivation according to their need.

The customary-private land ownership type evolved from largely agricultural societies in which there was little competition for the land, and therefore the land had no economic value in itself. In the system, the land is regarded as sacred, and man's role is considered to be one of stewardship, to protect the interests of future generations. A single person usually administers the land on behalf of the group or country member. Allocation, use, transfer and other land related activities are determined by leaders of the community according to its needs, rather than through payment with token, beer, money or cattle(Payne, 2001). A recent reports from FAO and

UN-Habitat calls these customary chiefs a 'living cadaster' and customary systems 'the most enduring and flexible mechanisms for the majority of people to secure access to the land and resolve conflicts'. Yiri(2006) has defined the customary lands as comprising of lands owned by stools, skins, clans and families. The lands follow traditional rulers who are the occupants of stools and skins. Under the chieftaincy all citizens of the state have access to the land.

The tenure type is found in most parts of Africa, Middle East, Melanesia and once upon a time in North America. Customary forms of tenure are also recognized in Indonesia, Thailand, several Pacific Island states, including Papua New Guinea, and in several Central and Latin American countries including Brazil, Ecuador, Honduras and Mexico(Fricska *et al.*, 2009). In Rwanda, the customary ownership systems are well suited to resolving conflicts within a community but face much greater difficulty in reducing conflict across groups, ethnicity, and type of land use such as pastoralist and sedentary agriculturalists(Gershon and Klaus, 2013).

In this context, traditions are continuously reinvented to back conflicting claims of different social groups(Cotula, 2006). Under customary law, the rights of individuals to plots of the land were usufructuary only, though individual farmers could pass the land on to their heirs. Ownership was generally vested in a lineage or clan, and a chief or a group of elders controlled

the lands held by such groups(Dunning, 1990).

In Malawi, the powers of customary authorities over the land cease. In addition, except with the consent in writing of the Allocation Officer, no person or customary owner can proceed with or take cognizance of any dispute concerning land. Then, at the second state of the process, a demarcation officer entertains claims on the lands, allocated pursuant to the terms of the allocation statutes. Form of law and government(Dunning, 1990).

Countries like Botswana and Namibia has similar land ownership system. The customary land right for residential and arable purposes are secured by an Act, Customary land grant certificate. Under the Act, the customary land right may be cancelled with board approval, in several cases such as for failure to observe the land use restrictions, when the land is required for public use, to ensure fair and equitable land distributions, when the use of land in contravention of the customary land law, and for failure to cultivate or develop the land within a specific period. Under the customary law, the government operate within each tribal territory allocating the land for residential, arable, industrial, commercial and other purposes. In both Botswana and Namibia, they require the written consent of the traditional authority when transferring the customary land rights(USAID, 2008).

In Kenya, the collective land holding systems exist over

sixty-five percent of the country. Lack of legally enforceable rights to trust land caused general land problems, such as vulnerability to interference or setting apart of customary rights by the government, difficulty in securing credit and other development finances using the land as collateral, lack of administrative support for the customary system of land rights, making the position of the occupants of the vulnerable, and lack of enforceable customary land rights to grant community land in exchange for money or to bolster their personal power. Legal insecurity makes it difficult for people to protect their land. The demand for a regime of community land tenure has resulted from whether from setting apart, or any other form of compulsory acquisition

There have been recognitions of the need of documenting and mapping the existing customary land ownership systems to derive broad policy principles that facilitate the customary law. It will establish a clear legislative framework, protection of the customary rights to land and land-based resources. National Land Policy Formulation Process, NLPFP, is to establish framework to operate the land market more efficiently and effectively. The most important of providing framework for the management and administration of the community land of the customary land law has significant implications for security of the land ownership of the majority of Kenyans who derive livelihoods from community held land

and the land-based natural resources(The Constitution of Kenya, 2007).

In Mozambique, formalization of customary ownership is only available at the community level, not the individual level. The communities are free to abide by their own customary rules and governance structures within their collective holding and adapt them as needed. There are only single form of the land right established by the land law in Mozambique, referred to as a 'DUAT', *Direito de Uso e Aproveitamento de Terra*, which is the right of use and benefit to the land. In the system of DUAT, there is a recognition of long-standing occupancy, which is the customary occupation. It is the occupation of the land by individual persons or by local communities with the accordance of customary norms(Norfolk, 2009). The DUAT system affords communities and good faith occupier's perpetual use and exploitation rights. With the system, right holders are able to transfer their rights to the land to others. The right to the land are vested in all adult member of the community which can be established by documentary proof and through the oral testimony of community members(Norfolk, 2009; USAID, 2008).

In customary-private ownership system type, all the land are allocated by customary authorities like chiefs. People living under customary ownership systems, place more importance on equity and respect for cultural traditions. The benefit of

customary ownership is minimization of the transaction costs and it is simple to administer(boydell *et al.*, 2008). It maintain their traditional power and social responsibilities to allocate the rights to use, resolve conflicts and carry out overall management of the customary land. It results vulnerable to abuse under pressure of urban development. Also, poor customary leadership may weaken its legitimacy. The customary ownership also has vulnerability in markets, as customary ownership exist mostly in rural land of countries, rural land markets are highly limiter, the customary landowners are asset-rich, cash poor and have very little information on the real opportunity cost value of their land(Anderson, 2006; Anthony, 2010).

4.3 Public Ownership

Public ownership is a system applies on the public land, in the custodianship of state, municipality or local authority. It is known as the outcome of socialist ideology. In socialist countries, all rights are vested in the state. The concept of public land ownership enable all sections of society to obtain access to the land(Payne, 2001). The public or private domain of the state and of local government(Lasserve and Selod, 2007). Virtually all societies acknowledge the concept of public land ownership to some degree. Buildings for public institution,

government office, and national parks in any countries vest in public ownership. In its extreme form, some countries like in Africa, the state may own all of the land and also allocate rights to access, use, development and transfer, a situation(Duncan and Hanstad, 2001).

Public Ownership may be reserved for areas of strategic importance or benefit for community. It also may be reserved in case of future need. Public ownership reduce the inequity between the land owners who do or do not receive development permission, and for ensuring that the community gains the overall financial benefit(Kivell and Mckay, 1987).

On the other hand, the concept have limitations of the demands which it places upon the capability and integrity of administrative systems and their ability to respond efficiently to changes in demand. It has rarely achieved high levels of efficiency due to bureaucratic inefficiency. Difficulties in practice have raised the costs of land management and constrained level of investment and development which would have benefited lower income groups(Payne, 1996; 2001).

The lands in socialist countries like China and Vietnam are under public land ownership systems. In Vietnam, seventy percent of the population lives in rural areas, primarily working in agriculture, and about one-third of the land area is in agricultural use. The land in Vietnam belongs to the population as a whole, and is administered by the state on the public's

behalf. Citizens and organizations rely upon the land-use rights, but do not own the land. They only have usufruct rights, meaning right holders may use the land, but land ownership is not allowed. The use rights include the right to a state-issued land-use right certificate, called LURC. It entitles holders to sell, rent, exchange, mortgage and bequeath their use rights, and to exclude others from the land. The certificate is for secured tenure, formal land transactions, access to formal credit and legal protection of the land use right(United States Agency International, 2010). The land law governs the powers and responsibilities of the State as representative of the ownership of the land by the entire people for uniform administration of the land and the regime for administration and use of the land; and the rights and obligations of the land users. China has achieved a great success in reducing poverty through economic growth since the economic reforms that started in the late 1970s. Local administrative allocation of the land therefore, cases of landlessness is very rare in China(Montalvo *et al.*, 2010). The land belongs to the entire people with the State as the representative owner.

The State shall exercise the right of disposal with respect to the land when deciding land use purposes by passing decisions and by considering and approving the land use zoning and the land use plans, deciding the quotas on allocation of land and on duration of land use, deciding allocation of land, lease of

land, land recovery and permission for conversion of land use purpose and determining land prices. State carries out uniform state administration of the land as representative of ownership of the land by the entire people. The State shall issue certificates of the land use right to the people when they allocating land by or leasing land from the State, except for leases of agricultural land to use for community purposes of a commune, ward or township (Socialist Republic of Vietnam, 2004).

4.4 Religious Ownership

Many literatures have been studied on religious tenure, which is different from the 'religious ownership' in this thesis. The religious ownership which this thesis defines is the land belongs to the king, emir, royal lineages or sultans. In most of the countries, the royal regime has been eliminated, but countries like Saudi Arabia, Bhutan, Brunei, United Arab Emirates, and etc. still remains some degrees of the monarchy and their land ownership system. King of Morocco, Sultan Quaboos of Oman, King Abdullah of Jordan, the Emir of Kuwait and Sheikh Hamad of Qatar are the cases of the royal lineages. The prevalence of the ruler as the ultimate owner of the land is typical in those countries. Those rulers are the largest individual land owner. With a monarch at its head, the state that claims ownership of

all land and is feudal in its conception and often totalitarian(Cahill, 2011). The central level decisions often override their local management functions, it bases on the normative framework which has inconsistencies. More than 3/4 of all land is public land in the countries, and those land remains not completed. Being partial interest or secondary land rights are neither registered nor robust, results issues of insecurity(Zommermann, 2011).

UAE is a federation of seven emirates: Abu Dhabi, Ajman, Al Fujayrah, Dubai, Ras al Khaymah, Sharjah, and Umm al Qaywayn. Each has its own government, which functions in tandem with the federal government. The largest emirate, Abu Dhabi, has its own central governing body, the Executive Council, chaired by the crown prince. Similar to other emirates the National Consultative Council functions like the Federal National Council, and local departments carry out various administrative functions(library of congress, 2007).

UAE has a very rapid growth in terms of population and economy. For example, fifty years ago, the status of Dubai was an insignificant, poverty-ridden settlement of 30,000. Today it is a city-state of 1.4 million people expanding its global outreach and undertaking a range of high-profile investments and acquisitions. The religious ownership functions as the key factor of in success of the rapid development. UAE has a very unique development record. It has been government-led development,

which means the government, not the private sector, takes the lead in the development.

The decision-making structure in UAE is extremely centralized. Although not a democratic ideal, centralization allows for fast decision making and significant coordination of development activities and investments. In decision making and in implementation, speed has become a trademark of Dubai, and it allows much tighter integration and easier decision making. Centralized approach is one of the defining characteristics of the developmental state paradigm in Dubai- has been reinforced by the traditional tribal(patrimonial) leadership style. This has enabled the city-state to carefully build a portfolio of complementary assets that possess significant backward and forward linkages in the economy and thus secures a high developmental impact for Dubai(Hvidt, 2009).

The known religious land tenure system is a concept of dual ownership. With its religious terms, all property and land vest in God, but are temporally enjoyed by human with responsibility. Literatures refer the religious tenure as an Islamic land tenure system. Under Islamic theory, the state's role in land management is seen as supervising land ultimately belonging to God. Lim(2006) defines, Islamic property rights framework conceives of land as a sacred trust but promotes individual ownership with a redistributive ethos.

Both of the religious ownership and the religious land

tenure share a common character of Islam, the monotheistic and Abrahamic religion articulated by the Qur'an. Islam is the world's second largest religion. Over 1.6 billion or about 23.4% of the world population are Muslims, and it is dominant religion in the Middle East, Africa, and some countries of Asia. Religious Property rights across the 57 Muslim majority countries. Cannot be generalized about or too easily attributed to religious influence or history alone. It is conditional on the requirement that property not be used wastefully or exploitatively, or in a way that will deprive others of heir justly acquired property. Religious ownership lands are outside of the commercial land market, so is often inefficiently managed.

4.5 Communal Ownership

What 'communal' generally means is a degree of community control over who is allowed into the group, thereby qualifying for an allocation of land for residence and cropping, as well as rights of access to the common property resources used by the group (Claassens *et al.*, 2004). With the means of communal, communal land ownership system is characterized as a territory in possession of that under a communal system. The communal encompass right of commons may exist within a community with right to use independently the holdings of the community.

The general characteristic of communal land tenure system type is that rights to the land and natural resources are shared and relative. The rights have flexible boundaries between a variety of social units, and it exist within a hierarchy of social levels. The communal land rights and the communal land regimes refer to the tenure patterns amongst communal groups of people(Ostrom, 2001). The communal land tenure system refers to multiple levels of community decision making around local land issues such as the land rights and access, spatial arrangements, the land use management and governance practices(UN-Habitat, 2010).

Under the system of communal ownership, traditional leaders such as chiefs, family heads and community leaders control individual economics. The leaders are who decide, as a whole, how the village land will be managed. The land tenure in the community is heavily influenced by the traditional precedents, and its management determined by communal decision making conducted in a traditional framework(Powell, 1997). As the tribal chiefs and headmen play key roles in the land administration, the land is allocated and administered by traditional authorities. Most southern African countries have communal land management system where local communities participate in management activities. Communal tenure deny public investment in infrastructure, industrial and agricultural development. This has resulted concentration areas of the poor

and underdeveloped communities, highest levels of unemployment, and lowest level of literacy.

In the communal ownership areas, reforms have been bogged down by an uneasy balance of power between local government and traditional authorities, limited independent civil society organization, and a continuing lack of certainty by government on which approach to adopt. The communal land rights are increasingly circumscribed and limited by government regulations. A distorted and legally insecure form of communal tenure resulted (Claassens *et al.*, 2004). Communal tenure and their African communal ethic of 'universal access' to the land have resulted constrained emerging between rich and poor peasants, peasants and proletarians.

In brief, on one hand, the retention of a form of communal tenure facilitated cheap labor policies and cost-effective control of rural populations from above; on the other, systems of the communal land rights underpinned independent land-based livelihoods, and facilitated resistance to policies of exploitation and external control, and were therefore often actively defended by rural communities. Rural struggles sometimes showed the 'emancipatory possibilities' of invocations of custom and community (Mamdani, 1996). The communal tenure practices tend to discourage the existence of an active urban land market which help corporates and institutions to develop the urban land and individuals to gain access to the

urban land(UN-Habitat, 2010).

Between 1994 and 1998, tenure reform have been created by Department of Land Affairs, to secure the rights of labor tenants and farm workers, also to create new form of legal entity for holding land rights in common. In 1996, Communal Property Association Act 28 was established, which intended as a temporary measure to secure the rights of people occupying the land without formal documentary rights, pending the introduction of more comprehensive reform. In the absence of such legislation, the Act has been extended annually and remains in force.

Most controversial remains the issue of traditional authority and its role in communal tenure regimes. Political deals may have informed the rapid progress of the Communal Land Rights Bill through Parliament, but the long-term prospects for chiefs and headmen are not at all clear(Claassens *et al.*, 2004). This has resulted in wider acceptance of the core features of communal tenure: rights to the land and natural resources are shared and relative, flexible boundaries exist between a variety of social units, and rights are nested within a hierarchy of social and administrative units or levels(Okoth-Ogendo, 2002).

In most of the rural African communities are under communal tenure system, communities operate to express an order, ownership, possession and access to regulate use and

transfer of the land under the communal land tenure policy.

In Ethiopia pastoralism is extensively practiced, as more than 60 per cent of the total landmass of the country and are home to pastoral communities. The pastoralist communities under socio-economic and cultural systems are based on communality. Pastoralism is, one of the many socio-economic strategies based on herding domesticated livestock on grazing lands communally owned and used by the communities and their members. The land is held traditionally under the collective possession and ownership of their community. Their communal land tenure arrangements have traditional rules and regulations that aim at harmonizing ecological, economic and social benefits. Traditional elders are at the core of communal natural resources management, as the land for pastoralist communities are also communally owned and administered by traditional elders. Thus, communal property rights are simply group property rights, but sometimes, common property is logically extended to public property or state property—with the community being the country as a whole (Abdulahi, 2007).

Dam(2006) points that although the land systems today unquestionably differ greatly from country to country, even within a region such as in Sub-Saharan Africa, all communal ownership is so inefficient that it is an obstacle to economic development.

4.6 Informal Ownership

Informal ownership applies on the land remaining unregistered, which are not under the official land management system, therefore there are no or only little information in settlements. Informal settlements are synonym for unofficial, unceremonious, intimate, irregular, unplanned, spontaneous, unpretentious, squatting and unauthorized settlements. The concept of 'informal ownership' is an umbrella term which is used to capture variety situations of the insecure land tenure. Within a category of informality there are various situations, including numerous tenure types such as owners without registered titles, "squatting, unauthorized subdivisions, and unofficial rental arrangement." Informal tenure exists without official approval, it can be described as unwritten customary tenure system(Lamba, 2005; Sliuzas, 2004p.3; UNHSP, 2002).

There are variety of ways to define informal settlements, on one hand there is general agreement on their core characteristics such as most houses are self-built by the families occupying them using initially temporary building materials, the settlements are illegal in some way, the settlements lack in basic living services, and they are mostly occupied by people living in situations of poverty(Gilbert and Gugler, 1992; Napier 2002).

Informal tenure system has various situations such as

owners with or without registered titles, possessors with written proof of purchase, possessors who bought an irregular or clandestine plot through a contract that is not valid to transfer the property, the land occupiers who are converted into owners when the time for prescription of the rights of the original owners have elapsed, buyers of plots or public housing by means of the transfer of a document of proof of purchase not recognized by the state, and informal owners who use front-persons to register their properties(UN-Habitat, 2005).

Informal settlements and slums are both under the informal ownership system, but they are slightly different in a way. According to the OECD, informal settlements are in the areas where groups of housing units which have been constructed on the land that the occupants have no legal claim to or occupy illegally; they are unplanned settlements and areas where housing is not in compliance with current planning and building regulations. Informal ownership has very insecure tenure characteristic which induce problems such as urban poverty, lacking basic housing services and health problems. UN-Habitat defines slum as an area in a city characterized by substandard housing and squalor and lacking in tenure security. The characteristics of slum area vary between geographic regions, they are inhabited by poor people and socially disadvantaged people. Similar to informal settlements most of the slums lack in clean water, electricity, sanitation and other

basic living services. Slum dwellers have no choice but to rely on informal service providers. The services are provided at a cost that is much higher than that which other urban households pay, although the informal settlements has no choice of relying on the services(Alain Durand-Lasserve, 2006).

Poor people who lives in informal tenure settlements are often located on marginal land, including riverbanks, steep gullies and mangrove swamps, and/or on land with disputed ownership. Those settlements in such locations are at a greater risk of being affected by natural disasters such as flooding. Poverty induces insecure tenure, which itself worsens the poverty in slums. It has structural negative impact on the situation of the poor in numerous ways such as precariousness, vulnerability to harassment, poor access to basic services and health problems. Insecure tenure also has a negative impact from the governments' point of view, it influences on the rate of tax recovery through local taxation on property and on economic activities. Government has difficulty in cost recovery for services and infrastructures without proper identification of urban services beneficiaries(Chand *et al.*, 2008).

UN-Habitat(2006) has announced that in 2005, an estimated 934 million people lived without secure tenure in informal settlements in the urban areas of developing countries. To improve land ownership security, informal settlements must be registered and regulated. Informal settlement issues has been

observed in many developing countries and Africa. The security of land ownership is one of the most important land issues, as it is the key factor of the right for quality of available infrastructure, develop the land and provide social and physical basic services to the land.

Urban growth and development increase the pressure on such social institutions. They weaken and break down, and lead to increased tenure insecurity. To improve the security through policy and practice, a better understanding is needed of how the informal systems through which half or more of the residential land in cities is delivered operate, are evolving and interact with the formal land administration systems(Leduka and Rakodi, 2004).

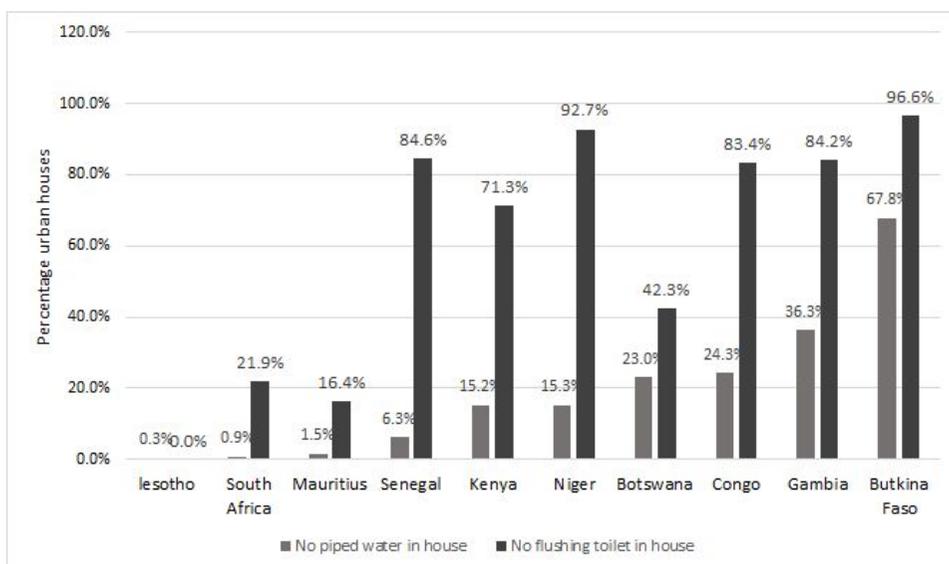


Figure 4 Urban Housing Units by Water and Toilet Facilities

(source: Napier, 2002; UNCHS, 2001)

It is clear that residents are regularly exposed to the harsh realities of spatial and environmental marginalization that accompany living in informal settlements. Also in the context of rapid urbanization, growing income poverty and human poverty and a lack of appropriate responses by governments are factors driven by urban expansion. The African continent has range of forms of informal settlement. Especially sub-Saharan Africa is known to have a highest percentage of people living in poverty and insecure settlements that have vulnerability to a wide range of environmental hazards (Fourie, 1999; Napier, 2002; UNCHS, 2001).

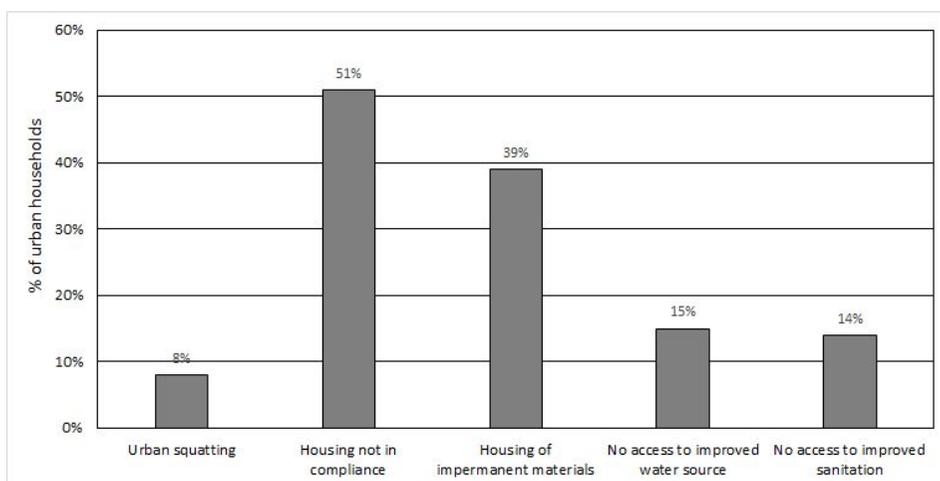


Figure 5 Summary of informal settlement levels in the sub-Saharan region

(source: Napier, 2002)

More than 50 percent of the peri-urban population in Africa live under informal ownership system. also about 40 percent in Asia live in informal settlements, and around 70 percent of Kampala's residents in Uganda live in slums(Dam, 2006; Deininger, 2003). In Jamaica has a large number of squatters, 20% of the population, lives below the national poverty line. USAID announced that the land tenure in Jamaica can be classified into legal, extralegal, and customary. The informal land delivery processes have provided a high percentage of all residential land in Benin City. The informal sector has dominated the land market, and it appears to operate unfettered for a very long time(Justin, 2012).

Inhabitants live under informal ownership systems, their occupation of the land and housing is illegal. Under the informal ownership, there are slum settlements which is the generic term used to classify informal, illegal or unplanned settlements(UN-Habitat, 2006).

V. CONCLUSION

5.1 Summary of Major Findings and Implication of the study

Access to the secure land and housing is a prerequisite for reducing the global land issues such as poverty. There are millions of people living without sufficient security and under threat of eviction. They suffer from the insecure land tenure and are limited to the basic living services on their land. The secure land ownership is fundamental to shelter and livelihoods as well as the realization of human rights, poverty reduction, economic prosperity and sustainable development.

The objective of this research is to analyze the land ownership systems in the world where government, civil society, the private sector and development cooperation initiatives have been implemented. The land ownership system is very complicated so one cannot predict a country's system without an in-depth studying. The problem definition formulates a research question: "How does the land ownership systems differ in the world?"

Many organizations and institutions have been reported about the land tenure systems in many aspects, but no studies

have focused on all of the existing ownership systems in the world. There are previous studies try to identify and emphasis the importance of each country's land tenure system, property security, and its related policy and laws. There are literature reviews on the land tenure systems which pays attentions on a specific country, group of countries with similar cultural, socio-economical, religious backgrounds or developing countries point of view. There were also existing studies that tried to conduct ways of the land reform in their studying countries. There had been numerous researches on the land tenure system and the land ownership to deduct implications for the reunification of countries like North and South Korea, problem of poverty, or issues related to urbanization as well. Categorization of the land ownership system with an institutional frames and describing each types' characteristics are the critical issue of this study that differentiate it from previous research.

According to the literature surveys have conducted, many different types of the land tenure system were found, as many national organizations and institutions have published voluminous literatures on the land tenure. Those existing tenure types are condensed through this thesis. The land ownership and the land rights vary within cities and countries under their tenure system. Each ownership types have advantages and limitations with their characteristics and background of them.

To classify the land ownership, as this thesis focuses on the land ownership status issues, first the existing land tenure systems can be divided into two groups of rental and ownership. The ownership group can be classify into small groups according to who has the land ownership: individual, collective and no ownership. Then, sorts them into minor groups depends on its status, whether the land is regulated or not and who controls the land. Through the classification, the land tenure systems have been categorized into six types: 'Statutory-private ownership', 'Customary-private ownership', 'Public ownership', 'Religious ownership', 'Communal ownership' and 'Informal ownership'. This study serves on a worldwide level, as the categorized ownership systems provide an overview of the land tenure systems across the world as a spectrum.

The statutory-private ownership system is the basic system that applies on western preoccupations with the rights of the individual. The land ownership system prioritizes individualization of the land ownership. It is the official system of people's relationship to the land, embedded within legal documentation and upheld through an administrative system for creating and maintaining the land rights. It is enforced by written certificates and formally kept land registries.

The customary-private ownership systems has its use and allocation of the land are under control of a community; it may be determined by the tribal leaders or by tradition and

restricts what occupants of the land may do with it. The customary ownership systems are usually managed by a land or village chief, traditional ruler or council of elders. The customary land tenure is characterized by its largely unwritten nature, as it is generally connoted with informal land arrangements. The system is based on local practices and norms, and is flexible, negotiable and location specific.

Public ownership is a system applies on the public land, in the custodianship of state, municipality, or local authority. Public Ownership may be reserved for areas of strategic importance or benefit for community. It also may be reserved in case of future need. Public ownership reduce the inequity between the land owners who do or do not receive development permission, and for ensuring that the community gains the overall financial benefit(Kivell and Mckay, 1987).

The general characteristic of the communal land tenure system type is that rights to land and natural resources are shared and relative. The rights have flexible boundaries between a variety of social units, and it exist within a hierarchy of social levels. Under a system of the communal land tenure, traditional leaders such as chiefs, family heads and community leaders control individual economics. The leaders are who decide, as a whole, how village land will be managed. The land tenure in the community is heavily influenced by the traditional precedents, and its management determined by communal

decision making conducted in a traditional framework (Powell, 1997).

There are variety of ways to define Informal settlements, but there is general agreement on their core characteristics such as most houses are self-built by the families occupying them using initially temporary building materials, the settlements are illegal in some way, the settlements lack in basic living services, and they are mostly occupied by people living in situations of poverty(Gilbert and Gugler, 1992; Napier, 2002).

There has been growing trend to afford legal recognition to governing the land tenure. Access to the land and the associated security of tenure have significant implications for development and real estate market. Real estate is a major source of value in most of the countries in the world.

5.2 Future Research Agendas

There are number of research limitations in this thesis. To address the research objective of the study, this thesis is examined through literature survey analysis methodology, qualitative in nature to collect a lot of number of publications and papers related to the study topic. The collection of the literature reviews have been done through variety of resources including the articles of journals, published papers, thesis papers

and published books.

In qualitative research the Information collected is in the form of analytical narratives rather than statistically treatable data. Qualitative research method also requires training and experience. Conducting the literature survey, there have been limitations in time frame. The qualitative research generally takes more time to collect the data when compared to quantitative research, data analysis is often time consuming. There are many previous studies related to the thesis topic which have not been reviewed and analyzed. There were also issues in collecting the literatures, due to the language restriction, there are only English and Korean literatures used in the thesis. Having access to more languages permits wider-ranging review of the collected documents. Enhancing those limitations of the research will improve the quality of the study as well as be able to present more in-depth study.

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국문초록

세계 토지소유권 유형에 관한 연구

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각 나라의 토지이용형태는 그 도시의 역사적, 경제적, 사회적 구조의 배경에 영향을 받기 때문에 국가마다 토지이용형태 및 규제는 매우 다양하다. 토지는 삶의 터전이며, 생산 요소 가운데 매우 중요한 부분으로 사회성, 공공성이 강한 재화이므로 타재화에 비해 공적개입의 필요성이 특히 강조된다.

즉, 토지는 이에 대한 종합적인 관리기반이 필요하고 이는 토지대장의 필요를 뜻한다. 토지대장은 토지의 현황을 명확하게 하기 위한 공부로서, 토지에 관한 일체의 사항이 등기되어 있는 대장이다. 이는 대상 토지의 소재, 지번, 지목, 지적, 소유자, 주소, 성명 또는 명칭, 지상권의 목적인 토지의 경우 지상권자의 주소, 성명 또는 명칭 등의 내용을 포함하고 있다.

이 연구의 목적은 첫째, 토지대장의 존재여부가 불분명함을 인식하고 세계의 토지법제를 파악하는 것이다. 둘째, 세계의 제도들의 비교를 통하여 토지소유권을 여섯 가지로 유형화하며, 각 토지소유권이 어떠한 양상으로 나타나는지 분석하고자 한다. 즉, 각 나라의 토지이용과 그 나라의 토지소유권이 제도화되어 있는지를 문헌검토를 이용한 비교법적 고찰을 통해 현황을 파악하고 세계의 토지소유권을 유형화하는 연구이다.

연구 결과, 세계의 토지제도는 법적 토지 소유권, 관례적 토지 소유권, 공동 토지 소유권, 종교적 토지 소유권, 공공 토지 소유권, 불분명한 토지 소유권의 여섯 가지로 유형화할 수 있다. 본 연구는 각 제도유형의 특징을 바탕으로 이루어진 비교분석을 통하여 그 제도의 문제점과 시사점을 도출하여 추후 토지개발 및 관련 연구에 기초자료를 제공하고, 길잡이 역할을 할 수 있다는 점에서 연구의 의의를 찾을 수 있다.

◆ **주요어** : 토지 보유권, 토지 권리, 토지 소유권, 토지 제도, 토지 소유권 유형

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