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*Document Version*

Publisher's PDF, also known as Version of record

*Publication date:*

2015

[Link to publication in University of Groningen/UMCG research database](#)

*Citation for published version (APA):*

Li, L. (2015). Adoption of the international model of a well-governed land expropriation system in China: problems and the way forward. Paper presented at Linking land tenure and use for shared prosperity : annual world Bank conference on land and poverty, Washington DC, United States.

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# Linking Land Tenure and Use for Shared Prosperity

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
WASHINGTON DC, MARCH 23-27, 2015



## **Adoption of the international model of a well-governed land expropriation system in China —problems and the way forward**

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**Paper prepared for presentation at the**  
**“2015 WORLD BANK CONFERENCE ON LAND AND POVERTY”**  
**The World Bank - Washington DC, March 23-27, 2015**

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## **Abstract**

Based on the current international documents on a good governance of land tenure, a four-level participation procedure in land expropriation can be summarized. Although it is a combination of all the good experience from different countries which constructs an ideal model for expropriation, it is conducive to the improvements in current systems of specific countries, even in the developed countries. In the case of China, the lack of participation of affected parties is obvious throughout the expropriation process, especially in the first and the fourth stage—the participation prior to the approval of an expropriation decision and the participation of farmers in monitoring the use of the expropriated land. Overall, at least six issues have to be resolved in order to improve the current expropriation system. Although the central government keeps strengthening the land rights of Chinese farmers including a right to participate, the key question is that procedural rules which can secure this participation are not enough, and sometimes not available. In the future legal reform, in addition to a further acknowledgement of Chinese farmers' substantial rights to collective land, more procedural rules are supposed to be established to enforce their procedural rights in land expropriation.

**Key Words: international model of participation; expropriation; China; land rights; procedural rules**

## **1. Introduction**

The governance structure of farmland use in a certain country depends heavily on its development imagination. Under a “development at any cost” thinking, it is conceivable that a large number of private interests have to be sacrificed in the name of public interest—economic growth of the country. This is inevitable in countries suffered from severe poverty and backwardness before such as China and India (Huang, et al., 2012),<sup>1</sup> in which the social system including the land system is designed for supporting its economic growth. The dual structure of Chinese society and the unequal urban and rural land use are typical examples. In order to satisfy the needs of national and local economic construction projects for land, the state is endowed with a power of expropriation by the Constitution of the PRC. What is more notable is that with little restriction on this state power, the exclusion of farmers in expropriation process is a reality. Characterized by a strict government control, little private autonomy is allowed concerning the use of rural collective land in China and farmland conversion in particular. Neither can the affected private parties effectively participate in the use and disposition of their own rights. To some extent, it is because of the lack of an actual and effective participation of the affected parties that the land expropriation system in China is so problematic. As the land expropriation system is a country-specific issue, which means every country has its own set of rules, the understanding as well as the scale of participation is consequently diverse across the world. In such a case, certain international criteria for measuring the effectiveness of the participation of affected parties in expropriation process are significant. In this contribution, after the redefinition of expropriation from a governance perspective, a four-level model of participation in land expropriation from international experiences will be introduced. Then, based on the current expropriation system in China, problems and feasible measures that can be adopted to improve the Chinese situation will be proposed and analyzed. In comparison with this international model, at least six issues should be highlighted in China. The last section is the conclusion.

## **2. A governance perspective for land expropriation**

Whether in countries where a private landownership is adopted or in countries that accepts a state land ownership, the state is given a power to acquire land for public purpose. Usually it is accompanied by a requirement for a fair compensation. This expropriation power is either directly conferred by the

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<sup>1</sup> After the original centrally planned and independent development (China from 1949 to 1978 and India from 1947 to 1991) in two countries, both of them opened their economies to international trade and adopted a market-oriented reform. In China, it is the “Reform and Open” policy since 1978. Now, China and India are the biggest two economies in the developing countries. However, drawbacks with the land system supporting the economic development are increasingly evident at the same time. For more information on the development of China and India, please see Huang et al. (2012).

Constitution such as China, the Netherlands and the US, or recognized by a separate legislation—land expropriation law/act, such as India.<sup>2</sup> Although expropriation has different synonyms across the world like the compulsory acquisition in the UK and takings in the US, it is usually based on the state power of eminent domain (Verstappen, 2014). I will not go into details regarding the evolution of this power in this contribution. As mentioned, a traditionally defined expropriation must involve a public purpose and a fair compensation for the affected people. However, this is far more enough to support a fair, transparent and especially participatory procedure, through which the private rights and interests involved can be better protected, and a proper balance between such private interests and the public interest concerned is much likelier to be realized. In such a case, a governance perspective in land expropriation issues is significant. The international guidelines on the governance of land expropriation provide a good starting point for the redefinition of expropriation from a governance perspective.

## **2.1 What is good land governance?**

The most influential and recent documents concerning the governance of land issues, and land expropriation in particular, are the Voluntary Guidelines of FAO on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (2012, usually named as VGGT), the Land Governance Assessment Framework of World Bank (2012, usually named as LGAF), and the Working Paper I of the GLTN (Global Land Tool Network)—Evictions, Acquisition, Expropriation and Compensation: Practices and Selected Case Studies (2013). Earlier documents include the Land Tenure Studies of FAO No.9—Good governance in land tenure and administration (FAO, 2007) and the Land Tenure Studies of FAO No.10—the Compulsory Acquisition of Land and Compensation (FAO, 2009). The latter provides a relatively inclusive guide regarding the procedure of land expropriation.

In the VGGT of FAO, with the aim of promoting responsible governance of tenure of land and other resources, founding principles including recognize and respect all legitimate tenure rights, safeguard these tenure rights, promote and facilitate the enjoyment of rights, provide access to justice, and prevent tenure disputes, conflicts and corruption opportunities are proposed. That is to say, a responsible governance of land is a holistic and interconnected system (FAO, 2007:6). Regarding the transfers of tenure rights including expropriation and compensation (Part 4 of the Guidelines), apart from a prior legal recognition and allocation of tenure rights and duties (Part 3 of the Guidelines), an effective administration of tenure (Part 5 of the Guidelines) should also be available to safeguard and facilitate the transfers. A good land governance framework is definitely indispensable, yet how to assess the effectiveness of such an

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<sup>2</sup> See the Constitution of the PRC, Article 10; the Constitution of the Kingdom of the Netherlands, Article 14; and Fifth Amendment to the United States Constitution.

interlinked and complicated system is more significant. The LGAF in this case can be regarded as a proper tool for this assessment. Specifically, following the methodology used by the Public Expenditure and Financial Accountability (PEFA) assessment tool, a 21 Land Governance Indicators (LGIs) covering the five thematic areas of good land governance is created (Deininger et al., 2012:39).<sup>3</sup> Under the 21 indicators regarding the basic principles of good land governance, there are 80 dimensions in total further clarifying each indicator/principle.

It is understandable that there must be some overlaps between the content of VGGT and the indicators under the framework of LGAF, as both of them deal with the framework of good land governance. In the meantime, they can supplement each other if certain cooperation can be available. Generally, good land governance structures involve the legal recognition and enforcement of tenure rights, management of land use and transfers, management of public land, as well as land administration. Although overall well-functioning governance does not mean that each item above must meet the highest standards, at least they should be available and work effectively in practice.<sup>4</sup> Meanwhile, as showed by the LGIs, good land governance should be cost-effective and efficient, which means the whole governance structure is supposed to build upon a right balance between efficiency and fairness. This also applies to the governance of land expropriation. To some extent, the governance of land expropriation is as good or as bad as the overall land governance is.

## **2.2 A redefinition of expropriation from a governance perspective**

Different from the traditionally defined land expropriation, under this overall land governance framework—an interconnected and balanced system, more elements are supposed to be added into the expropriation system. Namely, a newly defined (land) expropriation is needed with the improvement of land governance. As discussed above, a holistic perspective is included in a responsible/good governance of land. In addition to seeking a balance between private interests and public goals involved in specific issues, it also emphasizes the interactions among different parties concerned. A more holistic consideration of expropriation necessitates a prior examination on the necessity of the expropriation itself as a way to acquire the desired land, which means in certain cases, expropriation may not be the best way to achieve a public purpose. In other words, acquiring desired land on free land market should be the first

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<sup>3</sup> The five thematic areas covered by the LGIs are legal and institutional framework; land use planning, management, and taxation; management of public land; public provision of land information; and dispute resolution and conflict management. And the 21 indicators further show the basic principles of each topic. For more information, please see the table “LGAF Dimensions, Ordered by Thematic Areas” in Deininger et al. (2012: 40-45).

<sup>4</sup> It is worth noting that the LGAF, more accurately, the LGIs are not designed for ranking land governance structures through the score of each indicator. As a matter of fact, it is used as a tool to guide discussion about assessments from the dimensions of certain expert panels and drawing of lessons from good practice in different countries. Ibid, 46.

choice of governments (Verstappen, 2014:17). Additional methods for determining the public purpose and a fair compensation are also needed. From the perspective of the affected parties, this new understanding of expropriation essentially signifies a broader participation of these private parties. No matter in which phases of expropriation, their effective participation helps to realize a balance between the efficiency and fairness of the overall process—a goal pursued by good land governance.<sup>5</sup> It is worth noting that in the VGGT of FAO (Section 16 Expropriation and compensation), the LGAF of World Bank (LGI-13 and LGI-14) and especially the Working Paper I of the GLTN on evictions, acquisition, expropriation and compensation, elements in this new definition of expropriation have been mentioned and discussed.<sup>6</sup> With this new perspective in expropriation, the pursuit of fairness will be the focus of related programs later. Meanwhile, the efficiency here does not only refer to the speed of completing the expropriation process. It primarily means the efficiency in the use of the land expropriated in previous programs. In this sense, the goal of efficiency consists with the requirement for fairness in specific land expropriation process. This will be further discussed in section 4.3.

### **3. An international governance of participation in land expropriation**

It is obvious that a broader participation of the parties involved is the key to understanding and realizing the newly defined expropriation.<sup>7</sup> Also, because of this governance perspective, the content of the affected parties' participation becomes much richer. In accordance with the different stages of expropriation, there are at least four levels of participation involved in specific programs. Specifically, it includes the participation prior to the approval of an expropriation decision, the participation prior to the approval of a compensation and resettlement plan and after the expropriation decision is approved, and the participation in the implementation of the program after the compensation and resettlement plan is approved. Moreover, even after an expropriation process is completed and the desired land has been acquired by certain agencies, the affected party can also play a big role in monitoring the use of the acquired land. Although these different levels of participation have been stated somewhere in the international documents mentioned above, none of them has provided a systematic stipulation as to this

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<sup>5</sup> In accordance with Verstappen (2014), apart from the requirements for a public purpose, a fair compensation and the prior examination on the necessity of expropriation itself, the redefinition of expropriation from a broad governance perspective also includes the public participation in the planning and process for expropriation; judicial review of the expropriation process, especially the supposed public purpose and the determined compensation; develop new standards for compensation and provide for a process by which the land is valued fairly, given all circumstances; and so on.

<sup>6</sup> In the conclusion as well as the annex part of this Working Paper (van Eerd and Banerjee, 2013), the definition and determination of public interest and compensation are particularly discussed and an initial idea for redefining expropriation is proposed. For the discussion on the determination of public purpose, please see page 58, 78-79, and 81-83. For compensation, it is on page 59-61, and 79-80.

<sup>7</sup> The expropriation here refers to the administrative expropriation, instead of the judicial expropriation or statutory expropriation.

four-level participation. Comparatively speaking, the VGGT and the Study on compulsory acquisition of land and compensation of FAO provides a comprehensive guide to the participation of parties involved in land expropriation.

First and foremost, with regard to the decision-making of a proposed expropriation, usually it is controlled by the government and on the basis of a public purpose. With the aim of limiting the expropriation power, the public purpose shall be clearly defined in law (FAO, 2009:10-11). As the determination of public purpose is usually controlled by governments, measures such as a SIA surely can restrict this government power of land expropriation, especially in countries where there is no clear definition of public purpose in legislation. Meanwhile, even if the land is acquired for public purpose, possible alternative approaches to achieve this purpose maybe discovered through an effective participation of all stakeholders. That is, attempts to acquire the land in question through voluntary transactions should be made before exercising the power of expropriation (FAO, 2009:54). In developed countries such as the Netherlands, spatial planning and local zoning plans in particular play a key role in determining a purpose is a public one or not. To some extent, the public purpose required by expropriation is secured by an active as well as effective participation of affected people in the making and modification of zoning plans (Verstappen, 2014:11). In the event that the intended use in the zoning plan differs from the actual use, the government is entitled to expropriate the land concerned, which is followed by a series of procedural requirements for the involvement of affected people. The final decision to expropriate land is made by a democratically elected council of the municipality, whose legitimacy is further ensured by a judiciary review.

As stated by 16.2 of the VGGT, states should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Namely, a fair, transparent and especially participatory procedure shall be followed by the acquiring authority concerning the administrative procedure prior to an expropriation decision. Issues involving an effective and equal participation in this decision-making, the access to information, people who can participate in the procedure and forms of participation are supposed to be clarified beforehand (Hoops, 2014). Firstly, in accordance with 3B.6 of the VGGT, existing power imbalances between different parties should be taken into consideration. In other words, certain measures are needed to secure equal opportunities for the vulnerable people to participate. In particular, a relatively fair representative mechanism is supposed to be established based on the free will of the affected rights holders. Secondly, in order to facilitate an effective participation in this decision-making, the provision of related information is indispensable. The acquiring authority is encouraged or even obliged to provide such information in a timely manner. Thirdly, regarding the range of participants, parties who will be



directly affected like the landowners or leaseholders definitely are included. The participation of other stakeholders depends on specific jurisdictions.<sup>8</sup> As required by 3.6 of the FAO study on compulsory acquisition of land and compensation, the participation of individuals and groups in related decision-making should be active, free, effective, meaningful and informed. Last but not least, the most crucial issue in this stage concerns the forms of participation, which directly determines the result of the participation. In the FAO study on compulsory land acquisition/land expropriation, an impact assessment in the planning phase of proposed projects is strongly promoted. Based on a comprehensive investigation on the social, economic and environmental impact of the project on local community, together with an effective participation of all stakeholders, such an assessment helps to decide whether and how to continue with the project (FAO, 2009:19). The Social Impact Assessment (SIA) adopted in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR) of India is a typical example in this respect.<sup>9</sup>

Second, in addition to the requirement for a public purpose, another prerequisite for expropriation in most national laws is a fair compensation. This concerns the second level of participation. 16.3 of the VGGT requires that the state shall ensure a fair valuation and prompt compensation in accordance with national law. As a fair compensation generally means the market value of the desired land, the valuation of land is thus critical to the amount of a final compensation. In the FAO study on compulsory acquisition of land and compensation, certain assistance is encouraged so that owners and occupants can participate effectively in negotiations on valuation and compensation (FAO, 2009:17). Whether the valuation is undertaken by the acquiring agency or by independent commissions, the affected rights holders should be allowed to determine the value of their land through hiring their own valuers (FAO, 2009:25). And this cost ought to be covered by the government. In the later VGGT, as a part of land administration system, the establishment of a fair and timely valuation system for expropriation is regarded as a responsibility of national states. Instead of focusing on the assistance for the affected people, it highlights the transparency, quality and training of certain national standards for valuation (18.1-18.5 of the VGGT). However, this does not preclude the participation of the affected people. If they do not trust the valuation result, chances to apply for an administrative and/or judicial review of such decisions should be provided (6.9 of the VGGT). Meanwhile, if it is possible, alternative land ought to be used as an appropriate compensation. As

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<sup>8</sup> In accordance with 3.6 of the FAO study on compulsory acquisition of land and compensation, the provision of notice of the intention to compulsorily acquire land should be served to all owners, occupants and other affected people (FAO, 2009:20).

<sup>9</sup> This new Act was approved in September 2013, and replaced the Land Acquisition Act adopted in 1894. As a matter of fact, a SIA as a preliminary investigation for determining the social impact and public purpose of specific projects is also required in the old act. However, it is optional. In the new act, it becomes compulsory and a much more inclusive procedure covering the preparation of the SIA study, public hearing for SIA, publication of SIA study, appraisal of SIA report by an expert group, and the exemption from SIA is provided.

showed by the experience in Denmark, through participating in the negotiation process for identifying alternative land for compensation, the affected farmers are less likely to appeal against the land expropriation. To some extent, providing suitable land can help to reduce objections to the process and reduce the total costs of compensation (FAO, 2009:38-39). The use of alternative land as compensation certainly depends on the population pressure on land in specific countries. Even within a certain country, its use still rests with the situation in local areas or in specific projects. Besides, the legislation may also need to provide for the basis on which compensation is allocated between landowner and the real land users (FAO, 2009:32)

Third, even if the expropriation decision as well as the compensation plan have been approved by the competent agency, in the implementation process, the participation of affected parties is still significant. Here the participation mainly concerns the monitoring of the competent agency in implementing the agreed compensation and resettlement. In many Constitutions or special legislations, it is only mentioned that the payment of compensation should be prompt. There is no (clear) provision for the period in which payment is to be made (FAO, 2009:26). In order to ensure that the whole compensation can be paid on time, the legislation should require that only after the entire compensation or a substantial percentage of it has been received by the affected people, can the acquiring agency take possession of the land. Besides, in the case of delay in payment, people concerned shall be entitled to claim for the overdue money as well as the interests on it (FAO, 2009:27). In the meantime, people who has to vacate their land and/or houses is supposed to be given enough time to clear out the land or move to the resettlement housing, before the acquiring agency enters the land. For farmers who rely on agriculture for a living in particular, certain period of time should be set aside to recoup their investment in land including the growing crops in the field (FAO, 2009:44).

Fourth, with regard to the monitoring of the land use after the expropriation is completed, usually this is supposed to be the responsibility of certain government agency. However, when such an agency is not available or it cannot really work in practice, the monitoring from private parties such as NGOs or even social media may play an important role.<sup>10</sup> Besides, the affected people may also help to supervise the use of expropriated land. In the event that the land is not used in accordance with the purpose of the initial plan, or the land is not needed due to changes of plans afterwards, the original rights holders have a first opportunity to re-claim the land (16.5 of the VGGT). It is noteworthy that as one part of a land governance system, an appropriate monitoring mechanism is indispensable for improving the overall

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<sup>10</sup> Regarding the role of NGOs in land expropriation process, please see FAO (2009: 50-51). Besides, the monitoring role of social media in reducing corruption in land departments is increasingly important, especially in India (Bong et al., 2012; Arpit, 2012).

structure of governing land tenure.<sup>11</sup> Specific to the monitoring regarding land expropriation, one principle objective is to safeguard the legal rights and interests of the affected people. Another noteworthy goal is to curb and reduce corruptions in governing land use. The establishment of a specialized court or a tribunal that mainly deal with disputes over land rights can in part contribute to the protection of the affected people's rights, thus ensures the fairness of an expropriation process.<sup>12</sup> The creation of a special monitoring agency for violations including corruptions concerning expropriation may also help to protect this fairness, which can ensure the use efficiency of the expropriated land at the same time. According to the LGAF of World Bank, the time-efficiency of expropriation processes can be guaranteed if the majority of land that has been expropriated in the past 3 years has been transferred to its destined use (LGI 13 ii). This is, however, not the normal case in countries where the management of land use is dominated by the need of industrialization or economic development, such as China. As analyzed below, a new governance structure for land expropriation is urgently needed in China.

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<sup>11</sup> According to 3B.10 of the VGGT, states should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programs and secure on-going improvements. Then, the monitoring of related policies, legal and organizational frameworks by national states and other parties (civil society, private sector and academia) (5.8), the state monitoring of the outcome of land allocation programs (8.11), the monitoring of information on market transactions and information on market values (11.4), the effective monitoring of the implementation and impacts of agreements involving large-scale transactions in tenure rights (12.14), the monitoring of redistributive reform programs (15.10), and monitoring of the regulated spatial planning (20.1 and 20.4) are mentioned in sequence, but not specifically on the monitoring of land expropriation.

<sup>12</sup> In addition to the creation of a specialized court or tribunal which can professionally deal with disputes over land issues, the VGGT also promotes the establishment of a special tribunal that can handle disputes over regulated spatial planning, land surveys and valuation (21.2 of the VGGT).

Figure 1 The international model of a well-governed land expropriation system



#### 4. A new governance structure for land expropriation in China

As discussed in the introduction, design of a land governance system is deeply influenced by the development imagination of a certain country. In order to get rid of poverty and promote industrialization, land rights and interests of Chinese farmers were sacrificed for the development of urban area. On the basis of a bifurcated land system, the use and transfer of rural land use rights are greatly restricted, especially by the disordered land expropriation system (Chen, 2013). Through the amendment to Article 10 of the 1982 Constitution in 2004, now the state may only for the public interest, expropriate or take over private property of citizens for public use, and pay compensation in accordance with the law. However, the definition of public interest, the legal procedures for expropriation and the way of land compensation are still not well defined in law. Land takings in rural areas through the state eminent domain have grown rapidly, resulting in increasing numbers of land-losing farmers every year in China and causing a great number of controversies, conflicts or even violent confrontations between land-losing farmers and powerful local governments (Zhu et al., 2007: 804). However, when it comes to the further

reform of land expropriation system, it is not just limited to a further recognition of farmers' land rights in law. A closer look at the actual participation of affected farmers in land expropriation is also needed.

#### 4.1 Participation prior to the expropriation decision

In accordance with the Decision of the Central Committee of CPC (CCCPC) on Some Major Issues Concerning Comprehensively Deepening the Reform adopted in November 2013 (the 2013 Decision), a major strategic judgment that development is still the key to solving all problems in China is proposed. This means economic development is and will be the central task of future reform in China. Meanwhile, the development here will not merely focus on the increase of efficiency ensured by an overarching control of governments, but a more fair and market-oriented development.<sup>13</sup> This new development strategy certainly will influence the reform of expropriation system, as land expropriation is regarded as the main way to acquire the land with a view to promoting local economic development since the Tax Sharing Reform in 1994. The future expropriation procedure is supposed to be based on a right balance between the overall efficiency and the fairness deserved by the affected parties. Currently, the expropriation process is overall dominated by local governments/acquiring agency, thus it is mainly an administrative procedure. The role of judiciary in expropriation is rather limited. What is more notable is that the affected farmers cannot object to the expropriation itself. With a vague definition of public purpose, the necessity of expropriation is barely questioned. As long as there is a need for land in the name of developing local economy, an expropriation of land is justified. This leaves no room for the involvement of affected rights holders. To some extent, there are two types of land expropriation in China. The first one is certainly the widely acknowledged “expropriation for public purpose”, which is regulated by Article 10 of the Constitution. Only for the public interest, the state may expropriate or requisition land for public use and pay compensation. However, the second type of expropriation is not for the public interest. In accordance with the law, investors cannot directly negotiate and buy the collective construction land from the collective. Only after the desired land is expropriated and converted into state-owned land, may it be granted (*chu rang*) to investors by the land and resources departments of local governments (Article 43 of the 1998 LAL). This can be named as “expropriation mainly for private interests”. Although it is hard to measure the proportion of each type of expropriation, the rapid urbanization as well as the recently exposed “Ghost Town” in a majority of local governments show that

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<sup>13</sup> According to the Explanatory Notes for the Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform (中共中央关于全面深化改革若干重大问题的决定), an appropriate handling of the relationship between the government and the market is the core issue of the reform of the economic system. On the one hand, the market should play a decisive role in allocating resources; on the other hand, the functions of the government should be improved to promote further economic development. For more information, please visit [http://www.china.org.cn/chinese/2014-01/16/content\\_31215162.htm](http://www.china.org.cn/chinese/2014-01/16/content_31215162.htm), accessed on 18-08-2014.

the scale of the “expropriation mainly for private interests” is huge.<sup>14</sup> One may argue that the land expropriation for urbanization is for public interests, the unrealistic pursuit of urban expansion and the resulting abuse of expropriation power is definitely not for public good.

In accordance with the international governance structure on the participation in expropriation, anyone that likely to be affected is entitled to participate in the planning of expropriation projects. As long as the parties that likely to be affected can prove that there are alternative ways to realize the proposed project, the desired land then cannot be expropriated. This provides an opportunity for private parties to challenge the public purpose claimed by the acquiring agency. However, the transition from a totally government-controlled decision-making to a participatory one under the Chinese context is not easy. In particular, not all the parties involved are capable of conducting a comprehensive survey and thus propose convincing proofs as to the impracticability of the proposed project. In this case, these private parties may hire certain experts themselves and get reimbursement from the government if they can succeed in halting the expropriation project. A more pragmatic resolution is the design of a Social Impact Assessment (SIA) provided in the new land acquisition act of India mentioned above. According to Article 4 (4) of the LARR, the SIA study should include an assessment on the purpose of the proposed expropriation, estimated number of affected families and affected properties, whether the amount of desired land is a bare minimum, and whether there is an alternative land for realizing this project.<sup>15</sup> The overall costs incurred by the SIA study as well as the project should be lower than the benefits generated by the project. Views of the affected families will be recorded and included in the SIA Report through a compulsory public hearing held by appropriate governments (Article 5). More importantly, the final SIA Report has to be appraised by an independent multi-disciplinary Expert Group. If the project is identified as inconsistent with the public purpose that clearly defined in the Act,<sup>16</sup> or the overall costs exceed the expected benefits, a recommendation that the project shall be stopped will be made (Article 7). It can be said that the SIA study created here makes the involvement of affected people in the identification of the purpose of proposed expropriation projects possible.

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<sup>14</sup> According to one survey of the Reform and Development Center of Cities and Small Towns (城市和小城镇改革发展中心) of the National Development and Reform Commission in 2013, in the surveyed 156 prefecture-level cities and 161 county-level cities from 12 provinces, 92.9% of the prefecture-level cities and 41.6% of the county-level cities proposed the construction of new cities and new districts. Moreover, most new constructions have been put into action, instead of being in the local planning (T. Li, Y. Fan, 2013).

<sup>15</sup> The full content of the LARR (English version) is available at: <http://rural.nic.in/sites/downloads/general/ls%20version%20of%20larr%20%20bill.pdf>.

<sup>16</sup> Article 2 of the Act provides a detailed list of the purpose that can be identified as a public purpose in land expropriation projects. The English version of this Act can be accessed on <http://indiacode.nic.in/acts-in-pdf/302013.pdf>.

The practice in the Netherlands provides another way of securing the public interest in the change of land use. Through a firmly guaranteed participation in the making and the modification of local zoning including land use plans, the public purpose or the land use agreed by the public can be secured. Put differently, land expropriation in the Netherlands is primarily based on the change of zoning plans.<sup>17</sup> Different from the Netherlands, expropriation in China is merely initiated by governments based on an ambiguous public purpose—mostly in the name of local economic development. The way adopted in the Netherlands certainly is more effective in terms of securing an efficient and sustainable use of land, which is on the basis of a developed land use planning system. When it comes to the Chinese land use planning system, it is more complicated. In general, there are three types of plans in policies concerning spatial planning and territorial development in China—socioeconomic development plans, national spatial plans (land use plans), and urban and rural plans, which are managed by three different departments of the State Council.<sup>18</sup> In accordance with the law, especially the 1998 LAL, the Overall Land Use Plan shall be regarded as the basis for the making and modification of other related plans (Article 22). Based on the Outline of an Overall National Land Use Plan (2006-2020) issued in 2009 (the 2009 Outline) by the State Council, together with the other special planning regarding land consolidation and reclamation, now a relatively complete system of land use planning is available in China. However, this overall land use plan did not obtain an effective legal status and thus protection.<sup>19</sup> The current legal regulations relating to land use planning are too simple to attract local governments' attention and restrain illegal land use.<sup>20</sup> Besides,

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<sup>17</sup> It is noteworthy that the change of local zoning plans does not mean that the landholders have to change the land use immediately. However, if the landholder concerned wants to change the land use purpose which is different from the new plan that has become effective, the land must be used for the purpose stipulated in the zoning plan (Cheng, 2010). In other words, while the change of land use plans does not necessarily lead to expropriation, any expropriation must be based on a changed land use plan. The change of land use plan is a necessary but not sufficient condition for expropriation of land.

<sup>18</sup> Socioeconomic development plans are drafted at the national, provincial, and county levels. National spatial plans (land use plans) are drafted at the national, provincial, prefectural, county, and township levels. Urban and rural plans can be divided into: urban system plans (which serve to link different urban areas together), plans that link cities with towns, and plans that link townships with villages. Urban and rural plans are drafted at the national, provincial, prefectural, and county levels. Quoted from the website of the Ministry of Land, Infrastructure, Transport and Tourism of Japan, [http://www.mlit.go.jp/kokudokeikaku/international/spw/general/china/index\\_e.html](http://www.mlit.go.jp/kokudokeikaku/international/spw/general/china/index_e.html).

<sup>19</sup> So far, three nationwide overall land use plan has been carried out in China. The first one started from 1986 (after the pass of 1986 LAL) and finished around in the end of 1996. The second round started in 1997 and ended in the early 2001. The third (the current) overall land use planning is initiated by the MLR in June 2005. Based on the latest data from the second nationwide land survey which commenced in 2007, this plan was completed in 2009 and approved by the State Council at the same year. According to Yan Jinming, who was the member of National Land Use Planning Panelists, the first plan was basically not implemented. Beijing, Jiangxi, Tibet and other regions even did not compile an overall land use plan. The second round also did not play a real role in practice. The quality of planning in local areas is rather uneven. In accordance with Wang et al. (2012), the conversion of farmland from 1998-2003 largely increased from around 5.5 million ha to 28 million ha, which in part shows the poor implementation of the (second) Overall National Land Use Plan.

<sup>20</sup> It is noteworthy that the law (the LAL) only defines the basic principle of land use planning and the obligation of governments for drawing up planning, there are no regulations on the legal status and legal force of the planning. In practice, some local governments adjust the land use planning freely in its implementation process. In particular,

these regulations as well as the agencies in charge of specific planning are rather dispersed, such as the urban and rural planning is adjusted by the URPL, the forest land use planning is adjusted by the Forest Law, and so on. More notably, as the most essential principle of an effective planning, public participation has not been fully legalized in detail. As it can secure the impartiality and fairness of the planning, and especially improve the knowledge and awareness of the affected people to the whole planning procedure, it should be refined further in law. It is noteworthy that a unified legislation on Urban and Rural Plans—the Urban and Rural Planning Law (the URPL) has been passed in 2007. Certain local areas also issued special regulations on land use planning, such as the Regulation of Guangdong Province on Land Use Planning in 2009 and the Regulation of Zhejiang Province on Land Use Planning in 2011. These local experiments may facilitate the formulation of a national land use planning law.<sup>21</sup> Nevertheless, the making of this law as well as its effective implementation cannot be realized in the near future,<sup>22</sup> needless to say the establishment of a strict and highly participatory planning system. In order to ensure the public purpose of land expropriation, apart from the making of a more participatory land use planning, Chinese government should also consider the introduction of a SIA at the beginning of expropriation projects. Meanwhile, in order to facilitate the assessment of the purpose of specific expropriation projects, public purposes which may justify expropriations should be clearly enumerated in law. With regard to the attempt of acquiring agencies to purchase the desired land before using its expropriation power, it is unrealizable under the current legal system as the collective land can only be transferred/sold to investors after it is expropriated and turned into state-owned construction land. Current pilots concerning the market transfer of collective construction land for profit-oriented use may start offering such a possibility.

#### **4.2 Participation prior to the approval of compensation and resettlement plan**

In addition to the lack of private participation in determining the purpose of expropriation projects, participation of parties in the implementation of expropriation plans is also limited in both law and practice. According to the most recent document on expropriation—the Notice of the MLR on Further

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when the land use planning is inconsistent with other construction planning, usually the land use planning is forced to give way to the construction project. It cannot be obeyed effectively in reality (Dong, 2013).

<sup>21</sup> According to Dong (2013), the director of Planning Division of the MLR, three key issues should be tackled in the future land use planning legislation. First, functions and responsibilities of every levels of planning should be clarified. The national and provincial planning should focus on the macro and strategic issue. For the prefectural (city) level, it is the policy and structural issue. Planning of the county and township government should emphasize the implementation of various land use structure and direction, in order to put the specific land use control policy into practice. Second, relationships between the land use planning and other relevant planning should be rationalized in law. The dominant role of the overall land use planning law ought to be upheld. Third, the rights and obligations in the land use planning should be determined. In particular, through the creation of a detailed public participation mechanism, a fair and effective planning system is supposed to be realized.

<sup>22</sup> According to the plan of the MLR, firstly articles regarding land use planning in the LAL will be amended. Then, a special regulation on land use planning will be made to better implement those articles in the LAL. Based on all those regulations, a special law will be formulated (Ji, 2014).



Improving the Management of Land Expropriation in 2010 (国土资源部关于进一步做好征地管理工作的通知, the 2010 Notice of the MLR), in order to shorten the implementation time of the approved plan, under certain conditions, the compensation and resettlement plan made and announced after the expropriation plan is approved can be implemented together with the approved expropriation plan. There is no need for another approval for the compensation and resettlement plan from upper governments. Specifically, the conditions include the announcement of the expropriation plan, the confirmation of the information received by affected collectives and farmers, and a hearing (the first hearing)<sup>23</sup> for objections to the proposed expropriation plan have been finished; in the meantime, confirmation of related information on the desired land and registration of confirmed compensation have been completed before the expropriation plan is submitted for approval. To some extent, this simplified procedure is very similar to the anticipated expropriation proceedings in the Dutch Expropriation Act.<sup>24</sup> In such a case, a full and effective participation of the affected parties in the making of the expropriation plan before it is submitted for approval is significant and indispensable. Meanwhile, in accordance with the provisions in other documents of the MLR such as the Measures for Announcement of Land Expropriations (2010 Revision) (征收土地公告办法), the affected parties still are only allowed to apply for a hearing (the second hearing) regarding the later compensation and resettlement plan, instead of the initial expropriation plan. In essence, the first procedure can better secure the participation of affected farmers from the beginning of an expropriation process. The second procedure mainly applies to the situation in which no chances were provided for the affected parties to challenge the compensation and resettlement standard before the expropriation plan is submitted for approval. Take those provisions literally, the central government does not intend to provide two chances of hearing to the affected parties. Moreover, even if the affected party might challenge the expropriation decision of local governments in the first hearing, it happens very rare in practice. The implementation of the second hearing is not satisfactory either.<sup>25</sup>

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<sup>23</sup> As it is a hearing for the expropriation plan before it is submitted for approval, I name it the first hearing in a specific expropriation project. As a matter of fact, this first hearing has been provided in the Decision of the State Council on Deepening Reform and Strengthening Land Administration (国务院关于深化改革严格土地管理的决定) in 2004.

<sup>24</sup> According to the Expropriation Act of the Netherlands, two types of expropriation proceedings are provided. One is the “regular” proceedings, in which the amount of compensation is determined in the final expropriation judgment. The other one is the anticipated expropriation proceedings, in which the expropriation decision is made before the compensation is settled. The second one is most often followed in practice (Sluysmans, 2015). It is noteworthy that in the two procedures in China introduced below, the compensation is determined after the expropriation decision is approved. That is, the “regular” proceeding does not exist in China.

<sup>25</sup> According to the China Land and Resources News, the proportion of expropriation projects that have been heard before implementation is relatively low. In some local areas there has been no hearing held, even after the enactment of the Provisions on the Hearings in Respect of Land and Resources of the MLR in 2004. In all the submitted expropriation plans for approval of certain provinces, more than 90% of landless farmers abandoned their rights to a hearing. This may be partly attributed to farmers’ low awareness of the hearing for expropriation, while more

The second issue concerns the determination of compensation and the valuation of land involved. In accordance with the international governance structure, the compensation should be based on a market value of land and the affected parties may hire an independent assessment agency themselves if necessary. However, this is not applicable to China, as the land concerned is owned either by the state or the collective. In the 2010 Notice of the MLR, a new and unified compensation standard is proposed. Specifically, a unified annual output value of agricultural land (统一年产值标准) and an integrated land price within districts (区片综合地价) are required to be made and announced in local areas. According to the Provisions on the Hearings in Respect of Land and Resources (国土资源听证规定) (Provisions on Hearings) of the MLR in 2004, a hearing must be organized in the case of formulating or modifying the regional compensation standards (Article 12). That is to say, when the annual output value of land or the integrated land price within districts is calculated based on the statistics collected from field investigation, a hearing is supposed to be held to solicit opinions from the people involved. Even if a unified annual output value or an integrated land price is decided, it may be adjusted and increased every two or three years based on the growth rate of local income per capita (2010 Notice of the MLR). Meanwhile, measures that can guarantee a fair, full and prompt compensation are also introduced. For instance, when a new construction project is submitted for pre-examination,<sup>26</sup> the approving agency shall make sure that a full compensation has been included in the budget estimate. For the desired land within the same region where a unified annual output value is adopted or the same district where an integrated land price is applied, the compensation level should be basically consistent, regardless of the purpose that the expropriated land will be used.

In addition to the improvements in compensation standards, a diversified resettlement system is also promoted by the MLR. According to the 2010 Notice of the MLR, various resettlements including resettlement with alternative farmland, resettlement with development right return and providing social security for landless farmers shall be provided for the affected farmers. In rural areas where farmland has been increased through land remediation and areas where the collective set aside extra farmland for readjustment, the affected farmers shall be resettled with alternative farmland firstly. In practice, these resettlement schemes have been experimented in certain local areas (Li, 2013; Zhu and Prosterman, 2012). Nevertheless, an active participation of the affected farmers in this stage of expropriation is still limited nationwide.

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importantly, there is no proper procedure available for them to attend the hearing. Sometimes affected farmers were not told their rights to request for a hearing. To make matters worse, they were asked to sign a proof of waiving their rights to be heard without their own consent (Yang, 2014).

<sup>26</sup> The Administrative Measures for the Pre-examination on the Use of Land for Construction Projects (2008 Amendment)( 建设项目用地预审管理办法(2008 修正)), Article 2.

One more important issue here is the availability of judicial review of the administrative decisions involved in land expropriation. In accordance with law, disputes generated by expropriation can be settled through administrative reconsideration or litigation.<sup>27</sup> However, neither the administrative reconsideration nor the litigation is well applied in practice. With regard to the reconsideration, it mainly concerns the making of expropriation decision/the approval of expropriation project and the decision on the compensation and resettlement plan. In terms of the approval of the expropriation project, in accordance with the Law of the PRC on Administrative Reconsideration, the affected party shall first apply for administrative reconsideration if he disagrees with the approval of the expropriation decision. For the decision on the compensation and resettlement plan, in accordance with the Regulation on the Implementation of the Land Administration Law, the approval agency of this plan is the municipal or county government. And where a dispute arises over the compensation rates, coordination shall be carried out by local governments above the county level; where coordination has failed, ruling shall be resorted to by the government that approved the expropriation. In other words, the compensation and resettlement of the government which is obviously an administrative act, is considered as a civil act in current regulations. Moreover, the way through which the government that approved the expropriation can make a ruling is not clear. In accordance with relevant legislation, it should include administrative reconsideration. It can be said the existing rules on the administrative reconsideration and litigation of disputes concerning expropriation are seriously incomplete.

#### **4.3 Participation in the implementation of the expropriation plan**

In addition to the focus on the overall efficiency of expropriation projects, measures aimed at protecting the legal rights and interests of affected parties are introduced in laws and recent policies. First, in order to prevent delinquency in compensation, certain amount of payments based on the expropriation scale and compensation standard is required to be pre-stored by the requiring body (companies or local governments applying for land) before the project is submitted for approval. After the expropriation is approved, and after the final compensation is determined in accordance with the approved plan, a refund for any overpayment or a supplemental payment for any deficiency has to be made (2010 Notice of the MLR). Second, without a full payment of the compensation for the affected party, the acquiring agency cannot take possession of the land (2004 Decision of the State Council). Payment of various expenses for land expropriation should be made in full within 3 months starting from the date of approval of the compensation and resettlement plan (Article 25 of the 1998 Regulation on the Implementation of the

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<sup>27</sup> The Law of the PRC on the Mediation and Arbitration of Rural Land Contracting Disputes, Paragraph 2 of Article 2 (The disputes arising from expropriation of collectively owned land and the compensations therefor do not fall within the scope of acceptance by the rural land contract arbitration commission, they may be settled by means of administrative reconsideration or lawsuits).

LAL). Third, funds earmarked for compensation and resettlement must and only be used for the designated purpose (Article 26 of the 1998 Regulation on the Implementation of the LAL). Provincial governments shall guide the distribution of the compensation within the collective, in accordance with the principle that the compensation is mainly for farmers directly affected by land expropriation (2010 Notice of the MLR). The collective whose (part of) land is expropriated shall publish the balance of the compensation and accept supervision by its members (Article 49 of the 1998 LAL). After receiving the full compensation and resettlement subsidy, the affected farmers are supposed to vacate their land within the time prescribed in the expropriation announcement. In the event that the affected farmers do not vacate the land within the time limit, the competent department of land administration can make a decision asking farmers to hand over the land; if the farmers refuse, the department may apply for a mandatory enforcement to the court (Article 45 of the 1998 Regulation on the Implementation of the LAL).<sup>28</sup> To sum up, measures that may secure a full, fair and prompt compensation and resettlement for affected parties do exist in law and especially in various central policies. However, they are too simple and dispersed. The overall efficiency of expropriation is the focus of the whole system. In the future reform, more attention is supposed to be put on the fairness of an expropriation procedure. Efficiency of the whole process has to be ensured at the same time. As emphasized above, a well-governed expropriation procedure involves not only the planning and implementation stage, but also the use of the expropriated land. It can be imagined that after the 27 years application of the current expropriation system<sup>29</sup> characterized by efficiency and speed, large amount of (collective) land has been expropriated and transformed into state-owned construction land. A critical issue is that whether those construction land have been used efficiently or not.

#### **4.4 Participation of farmers in monitoring the use of expropriated land**

In accordance with the 2009 Outline, the area of idle land including the desired land that has been approved for expropriation but not yet supplied is nearly 266,700 ha, which is more than twice big of the

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<sup>28</sup> In accordance with the Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases Involving Rural Collective Land in 2011, this application for a mandatory enforcement of the court shall comply with the following conditions: (1) the expropriation plan has been approved by competent agencies in accordance with law; (2) the expropriation plan has been implemented by the acquiring agency in accordance with law; (3) the affected party has received compensation and/or has been resettled or refused to accept the compensation and resettlement without proper reasons, and refused to hand over the land, which affected the normal expropriation process; (4) other conditions that have to be met concerning the mandatory enforcement of an administration act.

<sup>29</sup> In the 1982 Constitution, Article 10 endows the state with a power to requisition (equals to the current "expropriate") land in the public interest for its use in accordance with the law. In the 1986 Land Administration Law, Article 2 further clarifies that the state may requisition collective land in the public interest for its use according to the law. That is, after 1986 any constructions that may need collective land (except the collective land used for the construction of farmers' houses and public infrastructure in specific collectives) must go through an expropriation process. Until now, it is already 27 years.

built area of Beijing. Besides, the floor area ratio (FAR) of the land for industrial projects nationwide is only from 0.3 to 0.6, which signifies a low efficiency of land use. It can be said that the use efficiency of certain amount of expropriated land in China is pretty low. Nevertheless, the low use efficiency of expropriated land in practice does not mean that there is no regulation on it. As a matter of fact, two significant institutional systems have been established and improved in terms of dealing with idle land. One focuses on the disposal of idle land; the other one concerns an *ex-post* supervision of the idle land, which is included in the State Land Supervision system created in 2006.

First, in accordance with the 1998 LAL, no units or individuals are allowed to leave farmland unused or let it lie waste. Otherwise, certain charges have to be paid or the land has to be taken back. Moreover, if the land is not used for two consecutive years, the original landholders—collective or individual households are entitled to reacquire and use the land after it is taken back (Article 37). This right to reacquire the unused land is further confirmed in the former Measures for Disposal of Unused Land (闲置土地处置办法) issued by the MLR in 1999 (Article 4). However, it is greatly restricted in the new Measures for Disposal of Unused Land issued in 2012. To be specific, first with the aim of better disposing of the idle land, situations that the idle land can be attributed to governments are provided. In particular, in the case of the land use planning or urban and rural plans is modified later which affects the development of acquired land, the conditions for land development agreed in the contract can be updated according to the new plan. In other words, the developer/the transferee is permitted to continue to use the expropriated land if the expropriation purpose is changed along with new land use plans.<sup>30</sup> Secondly, in the cases that the developer shall take responsibility for the idle land, 20% of the transfer fee has to be paid if the development has not been started for one year after the land is transferred. Or the idle land has to be taken back freely by the government, if the development has not been started for two years after the land is transferred (Article 14). Thirdly, for the recovered idle land, it can be transferred to a new developer to use, or it can be included into the land reserve of local governments. Only if the farming conditions is unspoiled and no recent construction projects can be arranged for the recovered land, the recovering agency may entrust the former collective or individual farmers to resume farming (Article 19).

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<sup>30</sup> As stated by Article 8 of the 2012 Measures for Disposal of Unused Land, situations that the actions of governments make the land development according to the original contract impossible include governments' delay in delivering the expropriated land to land users; modifications of land use planning or urban and rural plans which affect the development of acquired land; conditions of developing land have to be changed due to new land policies; the land cannot be developed because of objections from affected farmers, military control or protection of cultural relics; and so on. Apart from these cases, land developers/transferees must take responsibility for the idle land. In the case of land idle caused by the government, the government can decide to extend the time limit to commence the development, update the conditions for land development agreed in the contract according to the new planning, buy back the transferred land use rights, or replace the land concerned with another piece of land with the same value and purpose, based on a negotiation with the land users (Article 12). The full content of this Measure (English version) is available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=14949&CGid=>.

It can be said that once the land has been expropriated, it is impossible for the collective or individual households involved to reacquire their land.

The second institutional system concerning the monitoring of land use is the State Land Supervision system, which focuses on an *ex-post* supervision of the land use and administration of provincial governments. More notably, the Measures on the Supervision of Farmland Conversion and Approval of Land Expropriation (农用地转用和土地征收审批事项督察办法) is issued in 2008 by the Chief Inspector of State Land. This means the farmland conversion and expropriation projects approved by the State Council and provincial governments will be supervised by a specific land supervision agency since 2008. Specifically, depending on the approval authority and the approved items, the provincial governments shall copy all the related documents to the Bureau of State Land Supervision concerned for a record, when such documents are submitted to the State Council or the MLR for the record (Article 5-7). The Bureau may also check and copy other related materials. However, in the case of violations of the approval power, the punishment that the Bureau may impose on the government involved is quite limited. Only when the violation is particularly acute or the rectification required by the accredited Bureau concerned is too poor, may the Chief Inspector order another rectification with a prescribed time limit. Nevertheless, as stated by the Announcement of the Chief Inspector of State Land (国家土地督察公告) from 2007 to 2014, this supervision system indeed plays a role in inhabiting illegal land use.<sup>31</sup> Meanwhile, through this series of announcements, the public becomes more familiar with the land supervision system and actually is provided with a formal channel to help the supervision agency monitor the land use of local governments. For instance, among the seven illegal use of land disclosed in No.2 Announcement of the Chief Inspector of State Land in 2008, three of them were found based on tip-offs from local people. However, there is still no specific regulation on the supervision of the use of expropriated land by the public including the affected party. It is noteworthy that in order to strengthen the effect of the supervision of the State Land Supervision system, a draft for a Regulation on State Land Supervision is expected to be published in the near future. If the role of the public in monitoring the land use including the use efficiency of expropriated land can be confirmed in the coming Regulation, it will be a great step forward.

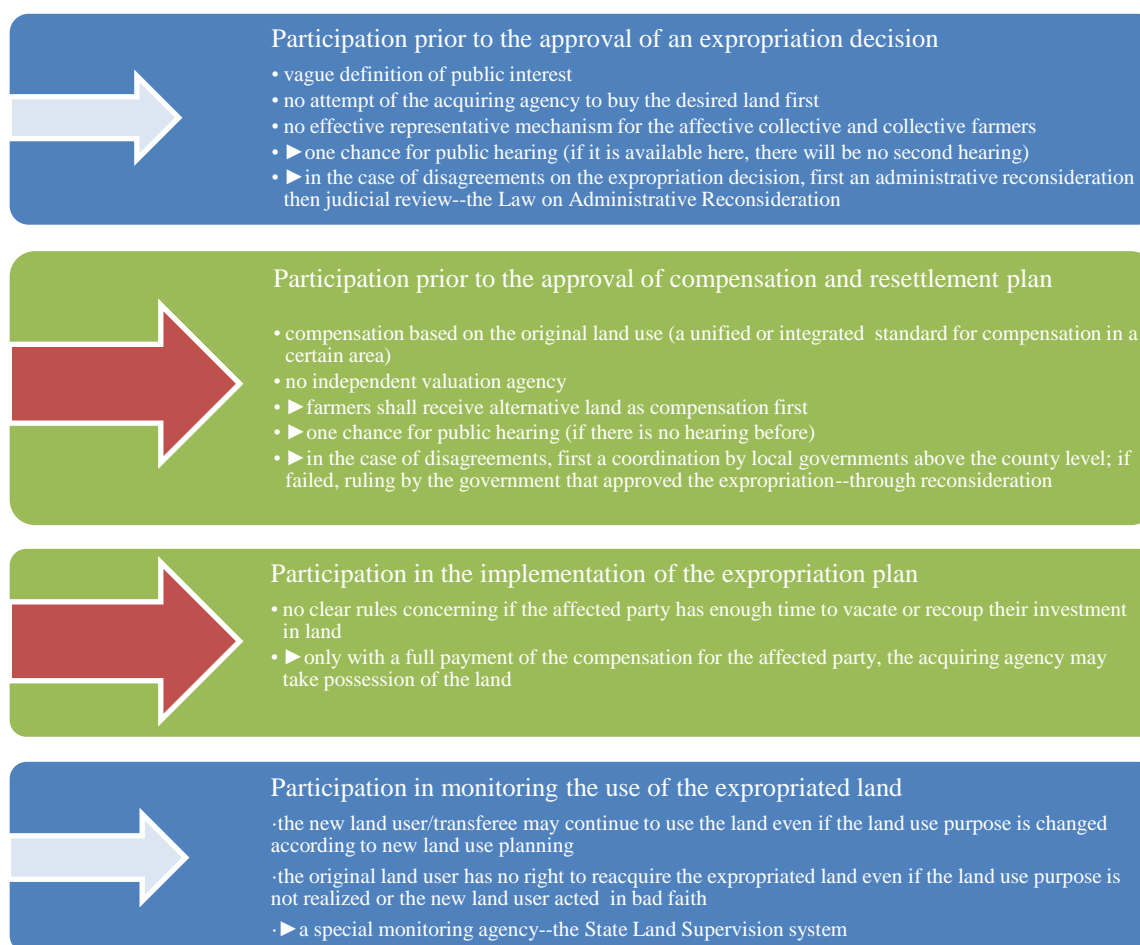
By and large, participation of the public including the affected parties in monitoring the use efficiency of expropriated land is emerging, with the strengthening of the investigation of the central government on idle land as well as the development of a State Land Supervision system. However, there are still no specific channels or specified incentives available for private parties to report violations in the use of

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<sup>31</sup> See the Announcement of the Chief Inspector of State Land (国家土地督察公告) from No. 1 to No.8 (from 2007 to 2014).

expropriated land. Although several documents have been issued to deal with the inefficient use of expropriated land, the role of the public is not clearly recognized by a unified regulation. This is also the same for the participation in the making and implementation of expropriation plans. An early and effective participation in expropriation projects cannot be secured in the current legal system. What is worse is that there is no chance available for affected parties to oppose the expropriation project itself. To sum up, there is a big space for the application of the four levels of participation under the international governance structure of land expropriation in China.

Figure 2 The participation framework for (collective) land expropriation in China



## 5. Lessons for China from the international framework

On the whole, three distinctive characteristics of China's land expropriation system can be summarized in this contribution. First, under the strict land use control system, expropriation of land especially farmland has to comply with local land use plans which define the land use purpose and the amount of farmland that can be converted into construction land. The functional control is for the prevention of farmland use

change through the execution of a top-down land use planning, in which farmland redline and construction land boundaries are key approaches. The quantity (supply) control refers to the annual land supply quotas for urban constructions. The central government holds the highest power in approving the farmland conversion, which leads to an extremely centralized and complex administrative examination and approval system. More notably, in order to control the supply of construction land, the collective construction land is prohibited to enter into the market. Only through the state expropriation, newly added construction land can be created (Zhong, 2012). Second, as the main tool of controlling land use, land use planning in China does not play its due role in regulating the government expropriation of land. As showed above, in essence, it is a plan system consisted of various land quotas like the annual quotas for construction land set from top to bottom. Third, in terms of the concrete procedure for expropriation, the participation of affected parties is greatly limited. In particular, as the main basis for expropriation, public interest is poorly defined in law. Together with the restrictions imposed on the transfer of collective land, governments become the only seller of land in the primary land market. In order to improve the land expropriation system and develop a sound and equal land transfer market, several issues have to be addressed in a timely manner:

► First, the collective land owner and land users shall be endowed with an equal right to use and transfer their land rights. In accordance with the 2013 Decision of the CCCPC, the collective construction land for profit-oriented use can be transferred directly on market, provided that it is in line with the planning and land use control. Namely, after an effective local land use plan is made, the construction land planned for profit-oriented use can be transferred including sold directly to investors with a market price. This is primarily aimed at developing a unified and equal market for land in both urban areas and rural areas. With the transfer of such rural collective construction land, the scope of land expropriation is supposed to be reduced. More specifically, the “expropriation mainly for private interests” mentioned above will decrease and might disappear one day. In practice, a direct transfer of such collective land starts emerging such as the marketization of collective land in Shenzhen ( Zou et al., 2014).

► Second, the various planning system shall be integrated, which is supposed to be centered on a well-functioning land use planning system. As a major approach to balancing the private property rights and public interest involved in land use, a strict and highly participatory land use planning shall be the main basis for initiating any expropriations. Although the public participation has been recognized as one part of the urban and rural planning process in the 2007 URPL, no detailed procedural rules are provided.<sup>32</sup> In

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<sup>32</sup> With the promulgation of the URPL in 2008, the rural planning including village planning is incorporated into a unified planning system in the form of legislation. The bifurcated system of legislation and management concerning urban and rural planning is thus integrated into one system. In accordance with the URPL, the making of township or village planning shall respect the will of the villagers and be consented to by the villagers’ meeting or the



the near future, a special law on land use planning should be issued by the legislature (the National People's Congress or its Standing Committee), in which the participation of all affected parties shall be secured through specific procedural rules. More importantly, the planned land use control system characterized by various quotas for controlling the amount of land use are supposed to be abandoned gradually. Under the permission of the central government, a land quota market has emerged in certain areas like Chongqing and Chengdu. Moreover, the transaction of land quotas in both cities allows a direct transaction between the collective (farmers) and the investor (Xiao, 2014; Deininger et al., 2014). It is certainly a marked improvement in this planned system. As the removal of the restrictions on the transfer of collective land rights, however, such transactions of land quotas will disappear.

► Third, a further rigid definition of public interest which decides whether an expropriation can be proceeded or not is critical. Before an effective land use planning system is established, the adoption of a SIA before the expropriation is submitted for approval may have a better effect on putting a stop to expropriations that not for a truly public purpose. Together with the right to apply for a public hearing for the SIA, participation of the affected parties in determining the public purpose of expropriation projects can be guaranteed. This is especially significant for China where there is no clear definition of a public purpose in expropriation law or the Constitution. It is worth noting that in the Regulations for Expropriation and Compensation for Houses on State-owned Land issued in 2011 (国有土地上房屋征收与补偿条例, the 2011 Expropriation Regulations), a social stability risk assessment (SSRA) has to be conducted by the acquiring agency before it decides to proceed with the expropriation. Although there is no detailed rules on how to conduct this assessment in this regulation, several relevant documents are issued by the National Development and Reform Commission (NDRC) since 2012.<sup>33</sup> What is more significant is that regulations concerning the SSRA in expropriations of private houses on state-owned

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villagers' representative meeting before it is filed for examination and approval (Article 18 and Article 22). Furthermore, a nationwide pilot of village planning is initiated by the Ministry of Housing and Urban-Rural Development of the PRC (MOHURD) since February 2013. According to the Notice on National Pilots of Village Planning in 2013 and the Notice on Pilots of Village Planning, Town Planning and County Planning System in 2014 issued by the MOHURD, the wishes of the public shall be respected in the planning process. During the investigation, preparation, and approval of planning, public opinions shall be solicited through consultation in an easily understandable manner; planning results must be showed in public; and the plan shall be propagated widely. Although the requirement for a broad participation is clearly imposed on the making of village planning, more detailed procedures for realizing such participation are needed.

<sup>33</sup> With the aim of avoiding the social risks in the construction of major projects, an interim measure for the social stability risk assessment of major projects concerning fixed assets investments is issued by the NDRC in August 2012. It requires that all the projects concerning fixed assets investments including land that need to be approved by the NDRC or the State Council must carry out a SSRA at the beginning of the project. Otherwise, the project will not be approved. In February 2013, the NDRC further issued one outline for preparing an assessment report of the social stability risks in major projects. With the comprehensive guide from the NDRC, a series of regulations on the implementation of the SSRA in local areas are made by provincial governments. That is, the SSRA has been regarded as one part of the approval process of construction projects.

begin to appear in local areas, such as Nantong City in Jiangsu Province, Huai'an City in Jiangsu Province and Zibo City in Shandong Province.<sup>34</sup> In accordance with the related assessment reports retrieved through the internet, the SSRA did help to reduce the various risks incurred by expropriation projects and thus guaranteed the legal rights and interests of the affected people.<sup>35</sup> Nevertheless, comparing with the SIA study in India, a more systematic and practical regulation on the SSRA in expropriation projects is needed, in order to make the assessment more operational in practice.

► Fourth, a fair representative mechanism on the basis of the free will of affected farmers is supposed to be established. Comparing with the expropriation of houses on state-owned land, one special issue in the expropriation of collective land including farmland is the representative of affected farmers. Due to the adoption of a collective land ownership and the lack of an effective representative mechanism, individual farmers' land rights and interests are easily intervened by (village) collective leaders and local officials.<sup>36</sup> Individual farmers cannot and do not have much say in the expropriation of their land. According to the 2011 Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases Involving Rural Collective Land, if the (representative of) collective does not sue the expropriation decision of local governments, more than half of the collective farmers may take a legal action in the name of the collective. Moreover, the individual land user can bring an action against the expropriation decision concerning his own land use right (Article 3 and Article 4). That is to say, in the case of collective land rights are violated in expropriation process, farmers themselves can protect their own land rights through legal means, instead of relying on the (representative of) collective such as the Villagers' Committee or collective economic organizations.

► The fifth issue concerns the compensation for land expropriation. On the one hand, although the formulation of a unified annual output value of agricultural land or an integrated land price within districts provides a relatively fair compensation for affected parties living in a certain area, an effective participation of the people from this area shall be ensured in the formulation process. In the meantime, the

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<sup>34</sup> See Trial Opinion of Nantong City on the Implementation of Social Stability Risk Assessment in Land Expropriation Projects (南通市征地项目实行社会稳定风险评估的试行意见) issued in September 2010, Measures of Huai'an City on the Implementation of Social Stability Risk Assessment in Land Expropriation Projects (淮安市征地项目社会稳定风险评估实施办法) issued in July 2012, and Measures of Zibo City on Social Stability Risk Assessment in Land Expropriation (淄博市征地社会稳定风险评估办法) issued in December 2013.

<sup>35</sup> Report on the social stability risk assessment of the land expropriation and demolition project in Zhangshu City Yaoshi Road (关于樟树市药市路征地拆迁项目社会稳定风险评估的报告), April 2012, <http://wenku.baidu.com/view/90c35df54693daef5ef73d6a.html>.

<sup>36</sup> The People's Daily (owned by the Central Committee of the Communist Party of China/the CCCPC) continuously reported problems appeared in the transfer process of contracted farmland in different local areas from 7th January, 2014 to 18th March, 2014. The forceful transfer of land is one of the five tricky problems in current transfer practice in China.

establishment of independent valuation agencies is equally important for ensuring a fair compensation. On the other hand, regarding the distribution of the compensation, shares that should be paid to the affected collective and collective farmers should be clear. As mentioned, the provincial government is responsible for providing a fair distribution mechanism for the compensation for expropriated land. Due to the complexity of specific expropriation practices, a basic principle that the compensation is mainly used for landless farmers shall be maintained.

► Last but not least, a right to reacquire the expropriated land that is not used or the use is changed afterwards should be established for the original collective land and farmers. Whether it can be attributed to the government or the transferee/the new land user, the original land user is entitled to reacquire the expropriated land and resume farming if the land is unused or used for other especially private purposes.

## **6. Conclusion**

In comparison with the international model of a well-governed land expropriation system, the expropriation system in China has to be improved in several aspects. It is worth noting that this model is based on the good experience from different countries. It is hard to say that one specific country has met every requirement of this model, even the developed countries. In the case of China, the main problem is the decisive intervention of governments, which results in a severe lack of participation of the affected parties. This is especially obvious in the first and the fourth stage of the expropriation procedure. In the meantime, the central government keeps improving the land rights of Chinese farmers, including a right to participate through the disclosure of information and (public) hearings. However, the key question is that procedural rules which can secure this participation are not enough, and sometimes not available. That is to say, in addition to the deficiency in substantial rights, Chinese farmers do not have enough procedural rights either. In the future legal reform, more procedural rules are supposed to be established to enforce the substantial as well as procedural rights of farmers in land expropriation process. The international documents and regulations from local governments mentioned in this contribution provide a good reference.

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