

June 5, 2003

To: Files

From: Brian Schwarzwald, Roy Prosterman, Li Ping

Re: Land Takings in China: Policy Recommendations

Although China's 1998 Land Management Law attempted to limit conversion of arable land to non-agricultural uses, rampant land takings continue to represent a major problem in rural areas. The problems resulting from China's current land takings regime not only threaten the shrinking arable land base in a country where approximately 2/3 of the population still relies on agriculture for some or all of its income - they also expose fundamental issues related to the allocation of the growing economic value of rural land among the farm households who possess rights to use the land, the collective landowner, and the state itself. The central government has recognized the growing importance of these issues, and has firmly placed land takings issues on the rural policy and legislative reform agenda.

To understand these problems, RDI's research team conducted two rounds of fieldwork with respect to the extent and nature of land takings in rural China, including one round conducted in Anhui in late 2002 and a second round conducted in Hainan and Guangxi in March of 2003.¹ In Anhui, we interviewed four groups of farmers in four villages of three county-level suburban districts of Fuyang Municipality, who reported that their land was taken for 14 non-agricultural projects. In Hainan and Guangxi, we interviewed 24 households in eight counties or cities, and 13 of these 24 households reported that land takings had occurred in their villages since HRS, with a total of 20 land taking incidents reported. Combining the results of the two rounds of fieldwork, we interviewed farmers in 17 villages in three provinces, who had experienced a total of 34 incidents of land takings.

Consistent with the central government's intentions to develop a policy and legal framework that will: (1) reduce and restrict land takings; (2) expand the role of markets in the land development process; and (3) introduce consistent and effective procedures which govern land takings and related disputes, this memo analyzes three key issues that are likely to be addressed in a forthcoming central government policy on land

¹ The issues concerning land takings were the focus of the fieldwork conducted in Anhui. The fieldwork conducted in Hainan and Guangxi involved a broader spectrum of issues related to farmers' land tenure, but included detailed questions concerning land takings in all villages where farmers reported that at least one taking had occurred.

takings, (1) the definition of public purposes; (2) compensation-related issues; and (3) procedural issues.² In our analysis of each of these issues, both international comparative experience and Chinese approaches, including the results of recent RDI fieldwork in China, are discussed, and policy recommendations are offered.

1. The Definition of Public Purposes

Most countries limit the state's right to expropriate land to circumstances that serve public purposes.³ The reasoning behind this restriction is that the state should not use its extraordinary eminent domain power to take land from some private individuals to benefit other private individuals; rather, the state should only take an individual's land if doing so serves a broader public purpose and benefits society in general. Varying definitions of "public purpose" embody each society's balance of the rights of individual landholders against the public's land requirements.

International Comparative Examples

Generally speaking, compulsory acquisition statutes define the circumstances under which the state may expropriate land in one of three ways: a general guideline announcing that the state can only take land for public purposes, a list of purposes which are defined as fulfilling public purposes or a combination of the two.⁴

General guidelines merely state that expropriation requires a public purpose, leaving considerable discretion to the executive power of the state and the judiciary's power of statutory interpretation.⁵ Countries employing this approach include the United States, the Republic of the Philippines, Vietnam, and Hong Kong Special Administrative Region. The Constitutions of both the United States and the Philippines state that private property shall not be taken for public use without just compensation.⁶ Vietnam also adopted this approach in its 1993 Land Law. Article 27 of the law states, "[W]here necessary, the State shall, for purposes of national defense, security, national or public interest, recover possession of land which is currently being used."⁷ Similarly, the

² For the purpose of this memo which will focus on state takings and collective transaction of land use rights for non-agricultural purposes through negotiated conveyance, collective withdrawal of farmers' land use rights for the uses that will benefit the public is not covered in the memo.

³ MICHAEL G. KITAY, *LAND ACQUISITION IN DEVELOPING COUNTRIES* at 40 (1985).

⁴ *Id.*

⁵ *Id.* Note that the terms contained in statutes may vary: "Public may become social, general, common, or collective. Similarly, purpose may be replaced by need, necessity, interest, function, utility, or use." *Id.*

⁶ UNITED STATES CONSTITUTION Art V; PHILIPPINES CONSTITUTION Art. III, sec. 9.

⁷ Land Law of Vietnam, art. 27.

government of the Hong Kong Special Administrative Region (SAR) may acquire land for public purposes under the Hong Kong Land Resumption Ordinance⁸

List provisions, on the other hand, limit expropriation of land to purposes such as schools, roads and government buildings, which are explicitly identified as public purposes in legislation.⁹ In general, list provisions leave much less discretion to the executive and judicial branches of government than general guidelines.¹⁰ List provisions may be either exclusive or inclusive. Exclusive lists provide a comprehensive list of public purposes beyond which the executive may not expropriate land. Inclusive lists, however, are combined with general guidelines, and expropriation is allowed where the purpose either falls within the list or meets the general guidelines.

Brazil and Mexico provide examples of countries that combine inclusive lists with general guidelines. Brazil recognizes two purposes that justify expropriation. First, land can be expropriated if it is needed for “public utility,” which is defined by a list to include national defense, public health, construction of public works, and achievement of state monopolies. Second, land can be expropriated if it serves a “social interest,” which is a more general guideline.¹¹ Mexico’s expropriation statute contains a detailed list of uses that meet the “public utility” standard, but also includes a final catchall provision that allows expropriation for “all other cases provided for by special laws.” This provision allows legislative expansion of the definition of “public utility.”¹²

A broad survey of both developed and developing countries indicates that the public purpose doctrine most often includes the following permissible uses:

- Transportation uses including roads, canals, highways, railroads, sidewalks, bridges, wharves, piers, and airports;
- Construction of public buildings including schools, libraries, hospitals, factories, churches, and public housing;
- Military purposes;
- Public utilities such as water, sewage, electricity, gas, irrigation and drainage works, dams, and reservoirs;
- Public parks, playgrounds, gardens, sports facilities, and cemeteries;
- Agrarian reform.¹³

⁸ Laws of Hong Kong Chapter 124, Hong Kong Land Resumption Ordinance (1997) hereinafter Hong Kong Land Resumption Ordinance.

⁹ KITAY, *supra* note 3, at 40.

¹⁰ *Id.* at 40-41.

¹¹ *Id.* at 41-42.

¹² *Id.* at 42.

¹³ *Id.* 43-44. Expropriation of land for agrarian reform is generally permitted where the land has been insufficiently exploited or to expropriate the excessive portions of very large, privately owned plots. In

This partial list of activities indicates the importance of defining the scope of the public policy doctrine in order to limit and define the state's broad expropriation powers. Except where a country employs an exclusive list of circumstances under which expropriation is permissible, statutory expressions of the public purpose doctrine will always require further definition and clarification through statutory interpretation by the judiciary or further detailed clarification in administrative regulations. This is especially true in countries with expropriation statutes that contain broad general guidelines. Without further clarification, such broad guidelines give government entities broad discretion to expropriate land without checks on their power, which results in land tenure insecurity and rapid loss of farmland base.

Chinese Approaches

China currently utilizes the general guideline approach to designating what serves the public interest for purposes of state expropriation.¹⁴ The Constitution grants the state the authority to expropriate land, in the public interest, for its use.¹⁵ The Land Management Law echoes the Constitution without providing any further details on what specific purposes serve the public interest: "The State may, in the public interest, lawfully requisition land owned by collectives."¹⁶ The State Council adopted implementing regulations for this law, but these regulations do not provide further details on what qualifies as a permitted expropriation for the public interest; therefore, great discretion is left to state bodies to determine what serves the public interest.

China's existing legal framework governing land expropriation further requires that all conversions of land from agricultural to non-agricultural uses must use state owned land. Where the land to be used in such a conversion is currently owned by rural economic collectives, it must first undergo a process through which the state becomes the owner.¹⁷ In such cases, the intended land user must apply to the state for approval of the use and conversion of agricultural land into non-agricultural uses.¹⁸

some countries, agrarian reform is dealt with under specific constitutional provisions separate from those relating to the general eminent domain power.

¹⁴ Under previous law, expropriation of collectively owned land was permitted for purposes of "economic, cultural and national defense construction, and public welfare undertakings." 1986 PRC Land Management Law, art. 21, repealed by the 1998 PRC Land Management Law (*hereinafter* LML). The current law governing requisition of land does not list the reasons that land may be taken, but simply states, as discussed in the text below, that land may be taken in the public interest.

¹⁵ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, art. 10(3). "The state may, in the public interest, requisition land for its use in accordance with the law."

¹⁶ LML, art. 2.

¹⁷ *Id.*, art. 43. A narrow exception to this rule is for rural public facilities, farmers' residential houses and township and village enterprises, which may use collectively owned land. *Id.*

¹⁸ *Id.*, art 44.

Upon approval the state will exercise its eminent domain power through the county level government.¹⁹ Under such a land taking framework, the state may take farmers' land not only for "public purposes", but also for all other purposes of a non-public nature.

The absence of a clear definition of what takings are in the "public interest" together with the state's monopoly over land takings, has resulted in a substantial number of land takings for profitdriven commercial purposes throughout China, including those areas where RDI recently completed fieldwork on the question of land takings. In the four villages we visited in Anhui, seven out of 14 incidents of land takings were for commercial purposes, ranging from real estate projects to gas stations. Of the 20 incidents of land takings reported in 13 villages of Hainan and Guangxi we visited, 11 were for commercial uses, including real estate projects, stone mining yards and industrial facilities.

Some of the reported takings were in fact "dual use" takings, involving both a commercial and a public component. For example, 10 mu of a village's land in Anhui was taken for an approved use for building a school in 1997. After the building was completed, the school leased part of the building out to vendors of various stores and collected a rent of more than RMB 100 per month for a 32 m² space.

Recommendations

The current legal framework governing land expropriation serves to blur the lines between expropriation of land for legitimate public purposes and conversion of land for commercial development. This lack of clarity is further exacerbated by the fact that the state exerts legally-sanctioned compulsory acquisition power in all cases,²⁰ regardless of the nature of the end use. Furthermore, the delegation of the state's compulsory acquisition power to the county government undercuts the LML's attempts to limit the loss of farmland through land use planning and approval mechanisms.

As discussed above, most countries with developed legal frameworks governing land taking limit the state's compulsory acquisition power to pure public uses; all other acquisitions of agricultural land, whether for agricultural or non-agricultural purposes, are accomplished through direct negotiation between the owners or users of the agricultural land and the party wishing to acquire ownership or use rights to the land.²¹ These negotiations are purely voluntary, and do not involve the state or local government; if the farmland's present owner or user is not willing to give up agriculture

¹⁹ Id., art 46.

²⁰ With exceptions listed in note 17 above.

²¹ It should be noted that such negotiated acquisition of agricultural land by private parties remains subject to all relevant land use planning restrictions imposed on the land.

or does not accept the buyer's offer, the buyer has to look for other willing sellers or raise his offer.

The first step taken in the reform of China's land takings regime should be to effectively confine the state's eminent domain power to takings for specified "public interests". We recommend that the central government make a clear distinction, first in its policy directives and later in revised legal rules on land takings, between "public interests" subject to compulsory state expropriation, and all other forms of non-agricultural land use, which should occur through a process of voluntary negotiation between the affected land owners and users on the one hand, and the party wishing to acquire rights to the land on the other. Under such a regime, it will be of the utmost importance that the state continue its stringent rulemaking and enforcement with respect to ensuring compliance with government's land use planning and its objective of preventing farmland loss. However, once a particular non-public-interest use of agricultural land has been approved by the state agency in charge of review and approval, the subsequent land conveyance should be conducted through the market mechanism.²²

It is important to emphasize that the state, as represented by the county-level land agency, should not be completely excluded from the voluntary negotiation process. Indeed, the state has an important role to play in protecting the rights of landowners and land use right holders in the negotiation process. It is in the state's interest to ensure that not only all land use planning requirements are met, but that adequate compensation has been paid by the party acquiring land use rights (see discussion in Section II, below).

Both China's practical experience with legislative enforcement, and its civil law tradition suggest that the best approach to defining "public interest" would be for policies and laws to specifically list the purposes for which land can be taken. While such a list can be nearly exhaustive, it is certain that some exceptions may arise.

²² In fact, the Chinese government has initiated a pilot program in several provinces exploring a better approach to compensating farmers in land takings. One principal component of the program is to break up the state monopoly over conversion of agricultural land for non-public-interest uses, allowing land use rights to collective owned land to be granted or leased to a non-agricultural user or converted into shares of joint stock of such user. Under the program, the pilot villages are allowed to grant collectively owned land for an approved non-agricultural use for market price of the use rights to the land subject to a small land transaction tax collected by local land administration. See *The Interim Measures of Use and Transfer of Collectively Owned Land Use Rights for Construction Purposes of Anhui province* (2002). This represents a remarkable shift from managing land conversions in a planned economy way to developing market for rural land use rights for non-agricultural purposes. By eliminating local land agencies as a middleman in conveyance of rural land use rights for non-agricultural commercial purposes, the objective of compensating farmers for the land's full economic value could be one step closer if the collective entity is required to allocate most of the proceeds from such transactions to the affected households (see discussion in Section II, below) and appropriate procedural safeguards are instituted (see discussion in Section III, below). We recommend the central government continue this land takings reform.

Therefore, the list should be an inclusive list, rather than an exclusive one, with the important requirement that any taking for a purpose not specifically authorized by the list must be approved by the State Council. On the important issue of uses that will include both a not-for-profit public component and a for-profit component, it should be required, where the compulsory acquisition power is to be exercised, the principal use is for non-commercial public purposes.

The language of a policy document describing these principles could read as follows.

The State may, in the public interest, lawfully take land owned by rural collectives. The only purposes for which the State may requisition such land are as follows:

- Transportation uses including roads, canals, highways, railroads, sidewalks, bridges, wharves, piers, and airports;
- Construction of public buildings including schools, libraries, hospitals, and housing for low-income families;
- Military purposes;
- Public utilities such as water, sewage, electricity, gas irrigation and drainage works, dams, and reservoirs;
- Public parks, playgrounds, gardens, sports facilities, and cemeteries;
- Major economic development projects critical to the national economy and approved by the State Council;
- Other highly important public uses approved by the State Council.

Where a proposed taking of collectively-owned land by the State will involve any profit-making element, the State must demonstrate that the principal use of the land following its requisition is for public, and not commercial use (see the related discussion on judicial appeal in Section III, below).

Conversion of collectively-owned agricultural land to non-agricultural uses for a purpose other than those specifically listed above, or for a purpose listed above whose principal use is commercial, rather than public, may not involve compulsory acquisition of land rights by the State. In such cases, conversion may only occur through a voluntary, negotiated transaction approved by all affected landowners and land-using households.

All conversions of land from agricultural to non-agricultural uses, whether through state public purpose takings or negotiated acquisition,

must comply with relevant land use planning rules set forth in the Land Management Law and related laws and regulations.

II. Compensation for Land Takings

With respect to China's current land takings system, two distinct compensation-related questions exist. The first is the determination of the amount of compensation to be paid by the state when land is taken. The second is how compensation for land rights should be allocated between the collective as the land's owner, and those households possessing 30-year rights to use the land under the Rural Land Contracting Law that came into effect on March 1, 2003. This question applies both to cases where land is taken by the state and cases where rights to agricultural land are acquired through voluntary acquisition for non-public purpose uses. These two important issues are discussed separately, below.

A. *The Amount of Compensation*

Comparative Experience

Most expropriation laws broadly define the level of compensation for expropriation as "fair market value" or "just compensation."²³ Different expropriation schemes, however, have developed divergent methods for determining the level of compensation that equals market value or meets the "just compensation" standard.

The underlying goal of the "just compensation" standard is to leave the owner or user of the expropriated land in the same economic circumstances as before the expropriation; the former owner should neither be enriched nor impoverished. Many countries utilize this standard. Amendment V to the United States Constitution requires "just compensation" for all takings of private property.²⁴ The Philippine Constitution similarly requires that "payment of just compensation must be made."²⁵ Brazil's Constitution also contains a "just compensation" clause.²⁶ A survey of developed and developing country practices reveals that countries employ a variety of methods to determine "just compensation."

In the United States, the principle for determining just compensation is the full market value of the land, which is defined as the amount a willing buyer would pay a

²³ KITAY *supra* note 3, at 50.

²⁴ U.S. CONST. amend. V.

²⁵ PHILIPPINES CONSTITUTION, art. III, sec. 9.

²⁶ BRAZIL CONSTITUTION (1967) art 153, para. 22 (Amendment 1).

willing seller.²⁷ In Brazil, the 1956 Expropriation Law sets out the following determinants of “just compensation”: (1) the assessed value of the land for tax purposes; (2) acquisition costs of the property; (3) profits earned from the property; (4) location of the property; (5) state of preservation of the property; (6) insured value of the property; (7) market value over the past five years of comparable property; and (8) valuation or depreciation of remaining property if only a portion of the owner’s land is taken.²⁸

In the Hong Kong SAR, the compensation standard is the “open market value of the resumed properties at the date of resumption.”²⁹ According to the Hong Kong Department of Lands, the open market value of resumed properties is based on “the market evidence of similar properties in similar locality around the date of resumption. The assessment involves comparing the resumed properties with the sale transactions of similar properties and making necessary adjustments for various factors such as location, environment, building condition ... (noting other factors where the building is on the land) ... date of transaction ... etc.”³⁰

Several countries use tax valuation as a guide for compensation. In Mexico, the landowner is entitled to the amount declared or accepted by the owner for tax purposes, subject to adjustment for changes in value since the previous tax valuation.³¹ In Singapore, the declared tax value is the ceiling for compensation, while in Guatemala City the ceiling is the declared tax value plus 30%.³² When land was expropriated in El Salvador for land reform purposes in 1980, the declared tax values in 1976 and 1977 were used to determine compensation.³³

Many countries provide that the government must compensate not only landowners, but also lessees. For example, in Great Britain, all owners, lessees, and occupiers are entitled to compensation.³⁴ Compensation is determined either through agreement between the acquiring authority and all interested parties or through an assessment of compensation by the Lands Tribunal. If the parties cannot agree on appropriate compensation, the Lands Tribunal first determines the level of

²⁷ See *Shoemaker v. United States*, 147 U.S. 282 (1893); *Riley v. District of Columbia Redevelopment Land Agency*, 246 F.2d. 641 (D.C. Cir. 1957).

²⁸ Expropriation Law (1956) (Brazil), *supra* note 3.

²⁹ Hong Kong Land Resumption Ordinance, *supra* note 8, § 11(1997).

³⁰ Hong Kong Department of Lands, “Land Resumption in Urban Area” available online at http://www.info.gov.hk/landsd/public/land_res/land_re.htm

³¹ KITAY, *supra* note 3.

³² *Id.*

³³ Basic Law of Agrarian Reform (Decree 153) (1980) (El Salvador), art. 13.

³⁴ The only exception to this rule is a short term tenant with a term of one month or less. Compulsory Purchase Act, 1965, sec. 1 (England); Acquisition of Land Act 1981, sch. 1 (England).

compensation according to the following principles: (1) no allowance is made for the fact that the acquisition is compulsory; (2) the value of the land is the amount for which a willing seller would have sold the land on the open market; (3) the special suitability or adaptability of the land for any purpose shall not be taken into account if statutory approval would have been required for that purpose; (4) value added to the property by uses that are illegal, detrimental to the health of the occupants, or detrimental to public health shall be excluded; and (5) if there is no market for the land, the compensation may be the reasonable cost of reinstating the occupier.³⁵ Under certain circumstances, compensation based on the reduction of value of the owner's remaining unexpropriated land may also be granted.³⁶

Separate from and in addition to this compensation, when a person is displaced from an agricultural unit in Great Britain, he or she is entitled to a farm loss payment, if: (1) he or she has a use right to agricultural land with at least three years remaining; (2) loses this use right through compulsory acquisition; and, (3) within three years begins to farm another agricultural unit within Great Britain.³⁷

Canada explicitly requires compensation to be granted to lessees. The government determines the lessee's compensation based on: (1) the length of the lease and the remaining number of years on the lease; (2) any right or reasonable prospect of renewing the lease; and (3) any investment into the land made by the lessee.³⁸

Chinese Approaches

In contrast to most market economy countries, where market values are used to determine the amount of compensation due to a landowner whose land is taken by the state, in China the amount of compensation is determined by statute. Current compensation standards can be found in the 1998 Land Management Law. Under the law, compensation for arable land expropriations includes: (1) compensation for the loss of land; (2) compensation for young crops and fixtures; and (3) a resettlement subsidy.³⁹

Standard compensation for the loss of land is set at 6 to 10 times the value of the average annual output of the arable land over the three years prior to expropriation. The collective, whose land has been expropriated, is required to report to its members the compensation received for the expropriated land. Compensation standards for surface fixtures and young crops are stipulated by provinces, autonomous regions, and provincial level municipalities. Resettlement subsidies on average should amount to 4

³⁵ Land Compensation Act, 1961, sec. 5 (England).

³⁶ KEITH DAVIES, *LAW OF COMPULSORY PURCHASE AND COMPENSATION* 136 (4th ed. 1984).

³⁷ Land Compensation Act, 1973, sec. 34 (England)

³⁸ Canadian Expropriation Act, art 26(5).

³⁹ Land Management Law, art. 47 and LML Regulations, art. 26.

to 6 times the average annual output value of the land for the three years preceding the expropriation. However, such resettlement subsidies may exceed that average, and are capped at a maximum of 15 times the average annual output value of the land for the previous three years. If land compensation and resettlement subsidies set according to these standards are still insufficient to help the displaced farmers maintain their original living standard, the resettlement subsidy can be increased upon approval by the people's governments of the provinces, autonomous regions and municipalities. However, the total amount of land and resettlement compensation is finally capped at 30 times the average annual output value for the three prior years.⁴⁰

Judged against the basic principle adopted by most land takings systems -- that the land loser should be left neither better nor worse off as a result of the taking -- the existing statutory compensation standards set forth by the LML are clearly inadequate. The maximum land compensation standard of 10 times the value of annual average production from the three years prior to expropriation falls well short of the actual value of the 30-year land use rights established by the Rural Land Contracting Law.

The inadequacy of existing land compensation standards is made even more pronounced when judged in the context of the requirement that the state's expropriatory powers, and related compensation standards, also apply to cases where agricultural land is converted to non-public uses. In these cases, Chinese law authorizes the state to convey use rights to the expropriated land to a developer through a granting process in which the end user must apply for use rights to the land, and, upon the approval of the application, pay a granting fee to a local land agency acting as the representative of the state.⁴¹ If the land is for an industrial use, such as manufacturing facilities and processing plants, the granting fee includes an application fee, which is split between central, provincial and local governments, and compensation to farmers determined by local land agencies based on the standards under the 1998 Land Management Law. If the land is intended to be used for non-industrial commercial purposes, such as real estate projects and facilities of the service sector, the granting fee is determined through an auction process⁴² with the starting bid equal to or higher than the combination of the application fee and the standard compensation; any portion of revenues in excess of the application fee and the standard compensation is retained by local land agencies. This process creates both the opportunity and the incentive to profit from commercial land development by setting low standards for compensation to farmers while auctioning the right to acquire land use rights for commercial development to the highest bidder.

⁴⁰ This paragraph describes how property expropriated by the state is to be compensated. When property is withdrawn by the collective landowner for the purposes that will benefit the general public, land use right holders are entitled to "appropriate compensation" under Article 65. The same "appropriate compensation" standard applies to withdrawal of land that is already state owned for public purposes under Article 58. Very little arable land would already be state owned and subject to this provision.

⁴¹ The Interim Regulations on Allocation and Granting of Urban State-Owned Land Use Rights (1990), art. 8.

⁴² The Urban Real Estate Law (1994), art. 12.

To understand local governments' land taking operation with respect to the nature and extent of their revenues from land takings and compensation to farmers, we also interviewed the city land administration of Fuyang Municipality of Anhui. As of November of 2002, the application fee was RMB 25,000 per mu, split between the central, provincial and municipal governments with 40% to the municipal government. If use rights to the expropriated land were granted through auction, all proceeds from the winning bid minus the application fee and compensation to farmers went to the city government, which was usually 40% of the bidding price.

According to the land administration official we interviewed in Fuyang of Anhui, as of November of 2002, the city standards of compensation for the land located in the city suburbs which would be used for an industrial purpose are as follows:

Land Compensation

First class arable land:	RMB 23,000/mu
Second class arable land:	RMB 20,500/mu
Vegetable land:	RMB 36,000/mu
Wasteland:	50% of the standard for one of the above categories that the wasteland is adjacent to

Compensation for Standing Crops

Vegetable land:	RMB 700-800/mu
Non-vegetable arable land	RMB 600-700/mu

Resettlement subsidies

Depending on whether the land taking incident would involve resettlement of the affected households and varying in amount depending on the structure of the house.

Farmers in Fuyang were strongly upset about this arrangement for sharing proceeds from land takings. In one village, farmers complained to us that the city government had sold their land for more than RMB 70,000 per mu, but they could only get RMB 23,000 per mu for land compensation. They said the municipal government had got a large chunk of the proceeds for losing nothing while they had to give up their land to get a small fraction of the proceeds.

Fieldwork done by other researchers also indicates local government's abuse of the system by "buying low and selling high". In a village of northeast Yunnan, 850 mu of land was expropriated by the state and use rights to the land were sold for RMB 150,000 per mu to an investor. The compensation fees ultimately paid to the collective amounted only to RMB 28,000 per mu, of which farmers received only 9,000 - 10,000 RMB per mu, roughly 6% of the price for which the land rights were sold.⁴³

⁴³ Xiaolin Guo, *Land Expropriation and Rural Conflicts in China*, THE CHINA QUARTERLY (2001) at 422.

Recommendations

Under existing rules and procedures governing land takings in China, the state pays inadequate compensation whenever land is taken from farmers, and derives potentially huge profits when the taking involves a commercial use. As discussed in Section I, we recommend that policy and legislative reforms should end the state's ability to exert compulsory acquisition power in all but specific public purpose takings. Allowing direct negotiation between the collective land owner and affected farm households, on the one hand, and the commercial developer, on the other hand, will result in higher levels of land compensation than is currently provided by statute.

There are three possible approaches to increasing the amount of compensation that the state must pay when it expropriates land for public purposes. One would be to continue to have a statutorily-defined compensation standard, but to increase the level of compensation currently provided by the Land Management Law. A second would be to adopt a "fair market value" approach. The third, and recommended, approach would be to require compensation based on fair market value, but to include a statutory minimum level of compensation for all cases of takings. Under this approach, the fair market value standard would be applied in areas where it is possible to determine a market value for the land rights – most likely in suburban or more economically developed areas – while the minimum compensation standard would apply in areas where fair market value could not be easily determined.

With respect to the amount of compensation to be paid for takings by the state for public purposes, the forthcoming policy document could read as follows:

When the state expropriates collectively-owned agricultural land for one of the permissible public purposes designated herein, it must provide compensation to the owners and land use right holders of all affected land. The standard for compensation shall be the fair market value of the affected land. Where the fair market value of the land cannot be determined, the minimum compensation for the land shall be thirty times the average annual value of agricultural production for the three years previous to the expropriation. Compensation for standing crops and resettlement shall be made in addition to this amount, and in accordance with the Land Management Law and other relevant laws and regulations.

Where the owner of the land to be expropriated, or one or more farm households possessing use rights to the land to be expropriated, or both, dispute the amount of compensation that the executing state agency has determined, they may appeal to the higher level of the People's Government for administrative review of the determination, or make a direct filing of a complaint with the People's Court. If they appeal for the

administrative review and disagree with the decision, they may file an appeal with the People's Court.

B. The Allocation of Compensation

In comparison to private land ownership systems, the allocation of compensation for land takings is made somewhat more complicated in China by the fact that the land is owned by collectives but used by households, who are entitled to 30-year use rights under the RLCL. Rules governing the allocation of the three types of required compensation are, again, found in the 1998 Land Management Law. Under the LML, compensation for the loss of land is allocated to the collective landowner. Compensation for young crops and fixtures is paid to the households whose land has been affected by the takings. Resettlement subsidies are paid either to the collective or other entity responsible for the resettlement, or to those to be resettled directly, if no resettlement arrangements are necessary.⁴⁴

Field research conducted by RDI and others has shown that the current rules and practices governing the allocation of compensation result in most of the compensation for land takings being captured by the township government and the collective, with little or no compensation provided directly to farmers whose land is lost. In effect, the classification of compensation provided by existing laws, combined with the lack of transparency in distribution of compensation (see discussion in Section III, below) leaves both discretion over and responsibility for allocation with the collective officials, providing the opportunity and the incentive to retain as much as possible while allocating as little as possible to farmers..

One very typical approach employed by the collective or township government is to retain most or all of the land compensation and conduct a big readjustment of village landholdings, spreading the pain of the loss of village land among all households while capturing the benefit of the taking for itself. A second approach is to distribute the compensation equally among all village households, while conducting a big readjustment. While this second approach is certainly preferable to the first, in both cases the land tenure security of all village farmers is undercut by the conduct of a big readjustment, which is illegal under the Rural Land Contracting Law and all related policies.

In the fieldwork conducted in the three provinces of Anhui, Hainan and Guangxi, we asked all farmers in villages where land had been taken (a total of 34 cases of land takings in 17 separate villages) about the method of distribution of land compensation, the type of land readjustment, if any, following the distribution, and their attitude toward a particular way of distribution. In the 17 villages, we found a total of five different combinations of land compensation distribution and land readjustment in

⁴⁴ Land Management Law, art. 47 and LML Regulations, art. 26.

response to land takings: (1) compensation distributed to all households followed by a big readjustment; (2) compensation distributed to all households followed by no readjustment; (3) compensation to the affected households⁴⁵ followed by no readjustment;⁴⁶ (4) compensation retained with collective followed by no readjustment; and (5) compensation retained with collective followed by a big readjustment. A breakdown of the fieldwork results concerning these five different approaches can be seen in the following table:

Compensation distributed to all households followed by a big readjustment	7
Compensation retained with collective followed by a big readjustment	6
Compensation distributed to the affected households followed by no readjustment	12
Compensation distributed to all households followed by no readjustment	4
Compensation retained with collective followed by no readjustment	5
Total incidents of land takings occurred in the 17 villages	34

We also asked farmers in Anhui about their attitude toward distribution of land compensation and land readjustment. In the four group interviews conducted in Anhui, most farmers in Group 1 and most female farmers in Group 2 supported egalitarian distribution of land compensation followed by a big readjustment because it would maintain equality among all villagers. However, most farmers in Groups 3 and 4 and most male farmers in Group 2 expressed their support for making land compensation directly to the affected households either in lump sum or in annual payments in the form of “rent” or in lump sum and carrying out no readjustment. They thought this would avoid the difficult task of carrying out land readjustments and facilitate investment in non-agricultural development by affected households who received compensation.

Several interpretations of our fieldwork findings are worth noting. First, in all 34 incidents of land takings, we found no case of conducting a small readjustment in response to land takings, suggesting that allowing a small readjustment under the circumstance of land takings may not be a practical approach to the imbalance of household size and household landholdings as a result of land takings. Instead, any permission of land readjustment in response to land takings would result in a clearly illegal and highly disruptive big readjustment, severely undermining both the rule of law and the tenure security of all farmers in the village.

⁴⁵ In some incidents of this model, collective retained a certain percentage of land compensation, ranging from 10% to 30%, before it was distributed to the affected households.

⁴⁶ This includes 4 incidents in 2 villages of Anhui where the affected households received compensation in the form of annual “rent” rather than a lump sum payment and no land readjustment was conducted after the taking.

Second, a substantial number of villages adopted the approach of making land compensation to the affected households followed by no land readjustment. Indeed, some villages have begun to improve their past practice by replacing “land compensation to all followed by a big readjustment” with “land compensation to the affected households followed by no land readjustment”. Taking these findings together, it appears likely the improved approach would be welcomed, or at least accepted in an increasing number of villages.

Third, making land compensation to only the affected households appears to be a major stabilizer of land contracting relationship in case of land takings; *in all 12 incidents of land takings where land compensation was made to the affected households, not a single case of land readjustment was reported following the land taking*. In contrast, where land compensation was either distributed to all households in the village or retained with the village collective, a village-wide big readjustment was most likely a response.

Recommendations

The RLCL explicitly prohibits big readjustment⁴⁷ and lists illegal land readjustment as one of the violations of farmers’ land contracting rights.⁴⁸ The fieldwork findings clearly indicate that both collective retention of land compensation and egalitarian distribution of land compensation will have mixed results, often but not always (13 out of 22 cases) leading to a village-wide big readjustment a village-wide big readjustment that will, in turn, result in a serious negative impact on the rule of law and tenure security for all farmers in the village.

On the other hand, the fieldwork experience strongly indicates that distributing all or most of land compensation to the affected households not only directly compensates the affected households for what they have lost, but also helps to strengthen tenure security for all farmers (no readjustment in 12 out of 12 cases). Although the Implementing Regulation of the 1998 Land Management Law requires the state to allocate land compensation to the collective, it does not state how the collective should deal with such land compensation after the state delivers it to the collective. The forthcoming policy directive on land takings should fill this vacuum by explicitly requiring collective to distribute all or most of land compensation to the affected households.

At the same time, the collective’s interest as landowner must also be recognized. The question remains as to what constitutes an equitable distribution of the compensation between the landowner and the land user. Two points are important to recognize. The first is that under the Rural Land Contracting Law, all farmers are

⁴⁷ RLCL, art 27.

⁴⁸ Id., art. 54.

entitled to possess 30-year land use rights that are free from land readjustments in all but the most extreme cases. Depending on the exact discount rate employed, secure 30-year land rights represent between 75-95% of the economic value of full private land ownership. Therefore, farm households who lose land as the result of either a state taking or a negotiated transaction for commercial development purposes, should be entitled to somewhere in the range of 75-95% of the total compensation paid. In cases of negotiated transactions for commercial development, it may also be appropriate to allow the state to collect a tax based on the proceeds of the transaction. However, such a tax should be capped at 5% of the negotiated transaction price.

We recommend an approach that would place a cap of 25% on compensation paid to the collective landowner. This would lead to the following allocations: for state takings for designated public purposes, the collective would be entitled to receive between 5-25% of the compensation, while the affected households would be entitled to receive between 75-95% of compensation. For negotiated transactions for commercial development purposes, the state would be entitled to 5% of the negotiated transaction price, while the collective would be entitled to 5-25% of the negotiated transaction price, and the affected households would be entitled to 70-90% of the negotiated transaction price.

The second important point is that farmers should be entitled to compensation based on the full length of the 30-year land use right term established by current law, regardless of which year during the 30-year term the state taking or negotiated transaction occurs. Several factors support this recommendation. First, although no definitive determination has been made in law as to whether the current 30-year land use right contracts will be extended for an additional 30-year term, the strong presumption, supported by statements by former President Jiang Zemin, is that land use right contracts will in fact be renewed upon expiration of the current use term. The second is that in the Hong Kong SAR, where agricultural land use rights in the New Territories are held under 50-year use rights, compensation for resumption of land by the Hong Kong government is based on the full 50-year use term, and not the number of years remaining on the lease.

As noted in our fieldwork findings, the collective's failure to distribute compensation to affected farm households is currently a serious problem. To guarantee that compensation is actually disbursed to farm households according to the proportions set forth above, some protections should be established. One such form of protection would be the use of an escrow agent in lieu of directly providing the compensation to the collective landowner. This would involve designating a government agency or state bank as the unit responsible for receiving the payment of required compensation from the state or the land developer, and for receiving all documentation from the collective landowner and affected land users. Upon completion of the transaction, the escrow agent would then be responsible for distributing the compensation directly to affected households, in the form of either a lump sum or annual payments.

Some policy designers and scholars have proposed to convert the proceeds into shares of joint stock of the transferee company and let the affected households receive an annual dividend from the company. This proposal would in fact put farmers in a position of sharing business risks with the company. Because it is almost impossible to assess the profitability of the company at the stage of land transaction and in the absence of a credit reporting system and effective auditing and accounting rules, such conversion could end up with a complete loss of the proceeds for farmers if the company failed to generate profits (or misstated the profits) or even went bankrupt a few years down the road. We recommend that the central government take a skeptical look at the reliability and sustainability of this approach.

We recommend that the forthcoming policy directive on land takings include following rules on allocation of compensation for land takings and proceeds from agreed-upon land transactions:

In the event of state taking or state purchase of collectively owned land or collective transaction of use rights to collectively owned land for any non-agricultural use, no readjustment of land contracting and operation rights shall be conducted on any unaffected portion of the village's land. Compensation for standing crops and fixtures shall be allocated to the affected households. Compensation or proceeds for loss of land may be allocated between the collective landowner and the affected households in the village with a collective share not exceeding 25% of the total amount of compensation or proceeds for loss of land. Where resettlement of the affected households is needed, resettlement subsidies shall be allocated to the affected households. Compensation or proceeds from such conveyance of collectively owned arable land or wasteland that has not been contracted to individual households may be allocated between collective and all members of the village with a collective share not exceeding 25%.

Upon agreement of the collective and the affected households, a designated state agency or state bank shall be selected as an escrow agent to handle distribution of compensation or proceeds for loss of land. All compensation and proceeds for loss of land to which the affected households have land contracting and operation rights shall be deposited into an escrow account in such a designated state agency or state bank with the affected households as recipients, by the state agency responsible for land taking or state purchase or the transferee of land use rights with witness of the escrow agent. The escrow agent shall act diligently and responsibly in distributing the compensation or proceeds for loss of land to the recipients based on the shares of allocation agreed by collective and the affected households in conformity with the above rule.

In case of state purchase of collectively owned land or collective transactions of land use rights for any non-agricultural purpose, the state may levy a property transaction tax of not exceeding 5% of the proceeds on the affected household recipients of the proceeds, or 5% on any payment if multiple payments are to be made..

III. Procedures

Most countries with reasonably developed legal systems have adopted procedural guidelines for expropriation which place important constraints on state power and protect the rights of landholders against illegal expropriation of land. Effective procedures include, at a minimum, notice of the decision to expropriate land, direct involvement of affected landholders in transparent proceedings, and an opportunity to appeal.

Comparative Examples

Notice of the Planned Taking

Most expropriation statutes contain provisions governing notice to landowners regarding the state's desire to expropriate land. The specific timing and form of notice varies greatly by jurisdiction.

In Great Britain, the ministry, local government, or other authority seeking to acquire land must describe the land to be acquired by reference to a map, publish notice of the proposed acquisition in at least one local newspaper, and serve notice to all of the owners, lessees, and occupiers of land affected by the proposed acquisition order.⁴⁹

In Hong Kong, notice must be published in the paper and a copy of the notice had to be served on the owner (lessee) or affixed in a conspicuous place on the land if the owner could not be found.⁵⁰

In Peru, a judge must notify the property owner of the state's decision to expropriate his or her land within 24 hours of the time the final decision is made.⁵¹ Delivered actual notice should be given to the landowner, but if he or she cannot be located, notice can be given through publication for three days in the provincial capital's newspaper. If the owner does not respond within three days of either the delivery of actual notice or the last publication date, the state's designation of the land to be expropriated and its decision on the compensation level is considered accepted.

⁴⁹ Land Acquisition Act, 1981 (Eng.).

⁵⁰ Hong Kong Lands Resumption Ordinance, *supra* note 8, §4.

⁵¹ KITAY, *supra* note 3, at 60.

The Civil code of Russia provides for a very long notice period: “[T]he owner of a land plot must be informed in writing not later than a year before the forthcoming withdrawal of the land plot by the agency which adopted the decision concerning the withdrawal.”⁵²

Landholder Participation in the Takings Process

Direct involvement of the land holder in the expropriation proceedings also takes a variety of forms. Some countries permit a high level of landholder participation by requiring the government to first attempt to acquire the land through negotiations with the landholder. For example, in Poland, the expropriating agency must negotiate with the land rights holder for a period of at least three months to attempt to acquire the property through contractual agreement.⁵³ Once the time limit for negotiations has expired, the expropriating agency may submit a recommendation for expropriation to the district level of government, which reviews and approves or rejects the request. Similarly, Indonesia requires that the government body wishing to acquire land first hold negotiations with the landholder before bringing expropriation proceedings.⁵⁴

Other jurisdictions, that do not require negotiation as a first step, involve the landholder in other steps of the expropriation process, most frequently the determination of compensation. In Honduras, landowners have the right to appoint one expert to a three-person committee that determines valuation.⁵⁵ In Brazil, the final determination of the amount of compensation is judicial, but each party has the right to appoint an assistant to the court-appointed expert who prepares an advisory report concerning the land’s value.⁵⁶

In Peru, if the landowner disagrees with the valuation, after receiving notice, as described above, he or she must respond within three days and then has eight days to submit a counter-appraisal of the land’s value.⁵⁷ The judge then appoints two experts to resolve the conflict. Generally, the judge will approve these experts’ appraisal of the land’s value.

⁵² Civil Code of Russian Federation, ch. 17, art. 279(3).

⁵³ Poland Law “On Land Use Management and Expropriation of Real Estate,” art. 49.3.

⁵⁴ Land Expropriation Act of 1961; and Presidential Decree No. 55 of 1993, “Land Procurement for Implementation of Construction in the Interest of the Public.”

⁵⁵ KITAY, *supra* note 3, at 61.

⁵⁶ *Id.*

⁵⁷ *Id.* at 60

In the United States, property owners are entitled to notice and a fair hearing into all contested issues of fact and law before property may be taken.⁵⁸ Consistent with these requirements, each state enacts statutes containing detailed procedures governing land takings.⁵⁹ In Washington state, for example, state law requires that any time an authorized agent of the state intends to acquire land through the process of compulsory acquisition, the office of the state attorney general must present a petition for appropriation to the superior court in the county where the land is located.⁶⁰ This petition must describe the property to be acquired, list all owners or other interested parties, describe the purposes for which the property will be acquired, and request a determination of compensation to be paid to all affected owners.⁶¹

At least ten days prior to the presentation of such a petition to acquire property, the state is required to provide a notice to each and every person listed as an owner or otherwise interested party.⁶² This notice must include a description of the property to be acquired and the time and place where the petition will be presented to the county superior court.⁶³ The law contains detailed requirements as to what constitutes notice; where the affected landowner or other party is not a resident of the state, or cannot be found, the notice must be made in a newspaper where the land is located at least once a week for two successive weeks.⁶⁴ The notice must be signed by the attorney general and filed with the clerk of the county superior court.⁶⁵

At the required hearing, the court may enter an order permitting acquisition of the property if it has satisfactory proof that (1) all interested parties have been served with the required notice and that (2) the property to be appropriated is really necessary for the public use of the state.⁶⁶ Within five days of this hearing, any of the affected parties has the right to appeal the determination that the purposes for which the property is to be acquired is really a public use of the state.⁶⁷ If the purposes for which the property is to be appropriated have been determined by the court as a legitimate public use, and all other procedural requirements have been met, the taking may go forward. However, any landowner or affected party retains the right to appeal the amount of compensation offered for his property.⁶⁸

⁵⁸ DAVID DANA & THOMAS MERRILL, PROPERTY: TAKINGS, 205 (2002), *citing* State of Washington *ex rel.* Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 121 (1928).

⁵⁹ *Id.*

⁶⁰ Rev. Code Wash (ARCW) § 8.04.010 (2003).

⁶¹ *Id.*

⁶² Rev. Code Wash. (ARCW) § 8.04.020 (2003).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Rev. Code Wash. (ARCW) § 8.04.070 (2003).

⁶⁷ *Id.*

⁶⁸ Rev. Code Wash. (ARCW) § 8.04.150 (2003).

The Right to Appeal

The right of appeal provides the landholder with an important check against arbitrary or illegal administrative decision-making. Appeal rights vary substantially by jurisdiction, and may focus on the decision to expropriate, the decision of what land to expropriate, and the decision of how much to compensate.⁶⁹

An appeal of the decision to expropriate may address the question of whether the taking serves a truly public purpose. This appeal right is limited in many jurisdictions. In the United States, significant deference is paid to legislative declaration of public purpose, but challenges of the decision to expropriate are allowed where the expropriation appears to serve private interests more than public interests. Mexico also permits landowners to challenge the decision to expropriate on the grounds that it serves private purposes more than public purposes. Similarly, in Great Britain, a landowner has the right to appeal an acquisition order to the High Court on grounds that the ministry or local authority has exceeded its statutory powers in making or confirming an expropriation.

The decision of what land to expropriate is also reviewable in some jurisdictions.⁷⁰ For example, in El Salvador, the court has the authority to review two issues: first, whether all or a part of the property is necessary and second, whether the location chosen for the public facility should be such that other property owners share in the burden of having their land taken by the expropriation in question. In Mexico, if the landowner challenges the designation of his or her land for expropriation, the expropriating agency bears the burden of proving that the designated property is “suited and necessary.” In Indonesia, however, the decision of what land to expropriate is held to be final and non-reviewable.

The level of compensation to be paid for expropriated land is widely held to be reviewable.⁷¹ In the United States, the most commonly litigated question related to land takings is whether the compensation offered by the government meets the “just compensation” standard set forth in the Constitution, and a rich body of judicial precedent has developed to define this standard.⁷² In various jurisdictions, judicial review of the original compensation determination is permitted based on procedural issues, fraud or error, or general grounds. In the Hong Kong SAR, compensation is the only issue that can be appealed by a rights holder.⁷³

⁶⁹ KITAY, *supra* note 3, at 64.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² DANA ET AL., *supra* note 58, at 169.

⁷³ Hong Kong Land Resumption Ordinance, *supra* note 8, §8

Chinese Approaches

The 1998 Land Management Law sets out detailed procedures governing the taking of agricultural land by the state. However, the law includes no provision for meaningful participation by farmers at any stage of the takings process. For example, it is only after the state expropriation is approved, that the user, owner and general public are notified of the expropriation.⁷⁴ The announcement must include: (1) the serial number of the approval; (2) use, scope and area of the expropriated land; (3) compensation standard; (4) farmer resettlement plan; and (5) deadline for compensation. All of these are determined unilaterally before the public is to be informed.

Once announced, the collective owner and individual users of the land must file with the land administration agency of the local government for compensation.⁷⁵ After the plan for compensation is made, it is announced and the collective and farmers whose land is being expropriated can submit comments to the land administration bureau.⁷⁶ If there are any disputes about the compensation standard the government at the county level or higher must try to resolve them, but if no agreement can be reached, the people's government that approved the land expropriation unilaterally sets the compensation amount.⁷⁷ All compensation must be paid within three months of the date of the approval of the compensation and resettlement plan.

RDI's recent field research strongly indicates that the lack of farmer participation in the land takings process serves as both a source of frustration for farmers and an opportunity for abuses of power by the collective landowner. None of farmers in the 17 fieldwork villages where takings had occurred had been consulted by the collective regarding the purposes or compensation related to the 34 incidences of takings. In most cases, farmers were only summarily informed by township government or collective cadres what parcels of their land would be taken for a certain non-agricultural use and what amount of compensation would be paid to them.⁷⁸ This communication was made orally rather than in writing. Moreover, because the taking itself and the terms of compensation were unilaterally imposed on farmers, this oral announcement was in effect a mere ultimatum demanding that farmers get ready for the taking within a designated timeframe, rather than 'participation', in any sense, in the takings process.

⁷⁴ Land Management Law, art. 46. After approval the expropriation is implemented by the local people's government at the county level or above.

⁷⁵ *Id.*

⁷⁶ *Id.* art. 48 and implementing regulations art. 25.

⁷⁷ PRC Land Management Law Implementing Regulations, art. 25.

⁷⁸ However, it appears that some improvement has been introduced in recent years in Fuyang of Anhui on the process of land takings. In a recent taking, a public notice issued by the city land administration was posted in the village office announcing the would-be taking and listing detailed compensation standards for the affected land.

In the cases where such an oral announcement was made, it typically included the categories of compensation and the level of each category. However, most farmers told us that they did not know exactly how much the government had actually paid for the land taking. Of the 17 villages we visited, only two villages in Anhui made this information accessible to villagers by posting in the village's office the government's taking notice containing information on compensation.

Such procedural insufficiency also provided an opportunity for local officials and collective cadres to maximize their financial interests through land takings. During interviews, most farmers complained that they had been kept in the dark as to how much compensation was made to the collective and what portion of such compensation was subject to distribution among villagers or the affected households. In one village of Hainan, farmers were told by the collective cadres the land compensation for a land taking for building a local market in 1998 was only RMB 600 per mu, which is unbelievably low. In another village of Hainan, 40 mu of land was taken in 1993 for a high tech project with a total compensation said to be RMB 100,000, but farmers believed, based on their information on compensation levels in adjacent villages, that the collective had in fact received much more than what was announced to them.

The types of abuses by collective officials that are enabled by a lack of procedural safeguards can be placed into three categories:

1. Withholding land compensation

During the interviews, we asked farmers whether they had received any compensation for the land that had been taken, and if yes, what kind and how much. In almost all villages, the interviewed farmers reported that the affected households had received compensation for standing crops. Except for one case where the affected farmers of a suburban village of Nanning, the capital of Guangxi Autonomous Region, received RMB 1,500 per mu for standing crops, the affected households in all other villages were compensated for standing crops in an amount of RMB 600-800 per mu.

Of the 17 villages we visited, five villages involving 11 incidents of land takings (out of 34 total in all villages) did not pass land compensation to the affected households nor distribute it among all households. In another village, the affected household was promised by the collective to get the same amount of land from the village's flexible land, but that promise had never been performed. When asked where the land compensation went, the farmers in these villages said it had gone to the collective.

Collective cadres in most of these villages did not explain to farmers how land compensation retained with the collective would be used. There was one exception. In that village, the farmers were told that the "upper level" policy document did not allow land compensation of RMB 1.8 million to be distributed to farmers, so the money had to be deposited into the collective bank account. However, farmers said they had never

seen such document; even the collective cashier at the interview could not cite the document on which the collective decision on withholding the money was based.

2. Announcing a reduced amount of land compensation

As noted above, few villages publicized the government's land taking notice that included the amount of each category of compensation; in nearly all villages we visited, only an oral announcement of compensation was made at the time of land taking by collective cadres. Such oral announcement had given collective cadres a huge discretion over the amount of land compensation about which they wanted farmers to know. Our fieldwork found that the announced level of land compensation ranged from RMB 600 per mu to RMB 40,000 per mu, but for a majority of land takings, the announced land compensation was under RMB 12,000 per mu. Many farmer interviewees believed that there was a huge difference between what should be and what was announced with respect to land compensation.

In Fuyang Municipality of Anhui, although the government's standard for land compensation was RMB 20,500-36,000 per mu, farmers in three of the four villages we visited reported a much lower level of land compensation as announced by the collective. Moreover, in two villages of Fuyang, the collective instituted a compensation scheme in recent years in which the affected farmers were paid in the form of annual "rent" between 600 and 700 yuan per mu per year. The affected farmers were very upset about the arrangement because the collective did not specify how long they would be able to be paid in "rent"; they suspected the collective had disbursed only a small portion of the land compensation in "rent" to the affected households while keeping a large chunk for itself.

3. Overtly intercepting land compensation to farmers

During the March fieldwork in Hainan and Guangxi we found several incidents of land takings where township government and collective entities had blatantly deprived farmers' of compensation through a series of illegal deals. In one village of Hainan, 40 mu was taken for a high tech project in 1993. Although the villagers were told that the total compensation was more than RMB 100,000, less than RMB 60,000 was distributed among all farmers in the village, and the village leader pocketed the rest. Also in this village, a large tract of the village's land was taken in 1986 for building a mineral processing plant. No land compensation was made to the affected farmers or distributed among all villagers. When the plant went bankrupt a few years later, it abandoned the land. The village leader turned it into 44 house building lots of 120 m² each, and sold it at RMB 3,000 per lot. All proceeds went to the team leader and his relatives.

In another village in Guangxi, the township government took 17 mu of the village's land for a development zone between 1994 and 1995. The township promised to pay RMB 6,500 per mu for land compensation. However, no payment was made

because the township claimed that it did not have money. Eight years later, in 2002, when the land was developed into a housing project capable of subdivided into more than 100 building lots of 80 m² each, the township allocated 17 lots to the village as an alternative to the initially promised land compensation. By the time of the interview, about 70% of allocated building lots had been sold at RMB 6,500 per lot. Through this scheme, the township had probably made or would potentially make more than RMB 0.5 million for itself (83 X RMB 6,500 = RMB 539,500).

Recommendations

We recommend that the central government's forthcoming directive on land takings require that users of land to be expropriated, be given notice of the decision to take the land, notice of the time and place of any discussions concerning compensation and relocation plans, and an opportunity to attend and speak at such discussions. The directive should also require a written time schedule for the land expropriation or withdrawal, as well as a written compensation and resettlement plan that all parties, including the land user, must sign. Any party that does not agree with any part of the written plan should be given an opportunity to attach a written dissent that will be reviewed by the approval agency. Furthermore, the law should set a minimum time period between the date the expropriation notification is given and the date the land user must vacate the land. Comparative experience indicates that three months would be a reasonable minimum.

The policy document's language concerning procedural safeguards could read as follows:

Farmers residing in the collective economic entity whose land will be taken have the right to be notified concerning any proposed taking of land by the state, and the right to participate in all aspects of the takings process. Upon application for the taking of land for an accepted public purpose, all households within the collective economic entity where the land is located shall be notified. The form of notification shall include a written notice, posted in a public location within the boundaries of the collective economic entity, and a meeting of the village assembly or village representatives in each of the villages whose land will be affected by the taking. Farmers shall be similarly notified of any subsequent meetings concerning material elements of the proposed taking, including site selection, approval of the taking by relevant authorities, designation of the compensation standard and allocation, including the portions of such compensation be allocated to farmers, to which farmers, and when, and the schedule for requisitioning the land, and shall have the right to participate in any such meetings. Farmers shall be notified within three months of any decision or determination made by relevant authorities with respect to any such materials elements of the taking, and shall have the right to submit a written dissent with 15 days of such notification,

which must be reviewed and answered by relevant authorities before the taking can proceed. Once the final approval for the taking has been granted by relevant authorities, in accordance with the procedures outlined above, the affected farmers shall be granted three months to vacate the land to be taken.

In the event of a state purchase of collectively owned land or a negotiated transaction of use rights to the collectively owned land for non-agricultural purposes, upon a show of interest is made by the party interested in any parcel or parcels of the village's land, a meeting of the village assembly or village representatives shall be convened to discuss whether to proceed with the transaction. Any decision on proceeding the transaction must have 2/3 votes by the village assembly or the village representatives, and be agreed upon by all the households to be affected by such transaction. Upon an offer to buy or transact -in made by the interested party, all affected households shall be notified to discuss the offer and counter offer, if any. One representative from each affected household, shall participate in all subsequent negotiations for the transaction.

Once the agreement on all terms of the transaction is reached, a contract embodying the transaction shall be signed and/or sealed by the interested party, the collective landowner and the representative and spouse, if any, of each affected household.