
I. Overview of Land Expropriation¹

A. Definition and Legal Aspects of Land Expropriation

Land expropriation refers to the state compulsorily nationalizing land in the collective possession of peasants for public interests. Its legal features are: (i) land expropriation is an act of compulsorily expropriating collective land ownership, and is an extremely special case of property rights changes. Government, as the entity of expropriation, gets land ownership from the hand of peasant collectives by way of administrative orders, and the latter has no other choice but to yield; (ii) land expropriation is conditional on strict regulatory requirements. In each country's legislation, expropriation must strictly follow legal procedures, be only targeted at the development of public interest, and be kept away from any commercial purpose. The state should pay fair and reasonable compensation to the owner/occupant of the expropriated land.

B. Differentiation between Expropriation and Requisition in the 2004 Amendments to the Constitution

Before the Constitution was amended in 2004, Chinese laws had not differentiated between “expropriation” and “requisition” all the time, and “requisition” expressly specified in the laws in fact meant “expropriation”. The Amendments to the Constitution revised Article 10(3) of the Constitution into, “for the need of public interests, the state can expropriate or requisition land and give compensation according to provisions of laws,” which differentiated between expropriation and requisition in terms of legislation for the first time. Although expropriation and requisition have something in common, they are essentially different. Their commonness consists in the fact that both of them are obligatory for property owners and others with claims to property, and when the state expropriates or requisitions land for public interest, the owners/occupants have to yield. Their difference consists in the fact that expropriation is an act of the state directly acquiring ownership or other property rights from the hand of the owner/occupant of the expropriated and its legal consequence is the transfer of rights. On the other hand, requisition is only the compulsory use by the Government under a state of emergency; and when the state of emergency ends, the confiscated property will be returned to the former owner/occupant.

¹ This report quotes and summarizes research findings and reports of numerous foreign and domestic experts, scholars, and administrators studying land expropriation issues in current journals, periodicals, and networks. Their contributions are hereby acknowledged.

II. Main Problems in the People's Republic of China's (PRC) Land Expropriation Scope

The wide scope of enforcement of the land expropriation right is one of the glaring defects in the People's Republic of China's (PRC) prevailing land expropriation system. The main problems are discussed below.

A. The Laws Do Not Expressly Specify the Scope of "Public Interests" and Land Expropriation Goes Beyond the Domain of "Public Interests"

The Constitution and the Land Administration Law of the PRC provides that "for public interests, the state can expropriate or requisition land and pay compensation according to provisions of laws." However, laws and regulations make no further express restriction on the scope and assessment standard of "public interests". Article 43 of the Land Administration of the PRC provides that, "All units and individuals that need land for construction purposes shall, in accordance with law, apply for the use of state-owned land." The "state-owned land" mentioned here includes land owned by the state and land originally owned by peasant collectives but expropriated by the state. This provision extends land expropriation rights to all the land used for economic construction purposes and does not differentiate between land used for public interest purposes and land used for operational construction purposes. The land used for commercial development, which ought to be acquired by use of market mechanisms, is also included in the scope of the state's land expropriation right; and thus, the civil subject's private right is improperly deprived by the state's public right.

Statistical analysis of land expropriation and land use in 16 provinces in the PRC from 2000–2001 has shown that the purposes for which land has been expropriated have gone beyond the domain of "public interests" specified in the laws. The land expropriated for nonprofit "public interests" only accounted for a small proportion, and land expropriation had become the leading way to meet the demands for social and economic development.

The PRC's current laws view public interests almost identical with national construction. With the prevailing uncertainty about "public interests", the land expropriation right is misused to a certain extent. In reality, the purposes of land expropriation have not been limited to "public interests" but have already been extended to corporate interests and individual interests, and any unit or individual may apply to the state to use the land expropriation right to meet their demand for land.

B. Primary Market for Land Used for National Monopolistic Construction Purposes

The Land Administration Law provides for the PRC to exercise control over land use, and strictly restricts the transfer of farmland for construction purposes. At the same time, Article 43 of this law states that all units and individuals that need land for construction purposes shall, in accordance with law, apply for the use of state-owned land. Government expropriation is the only sole legitimate method for transferring land from agricultural purposes to land for construction purposes.

Since the PRC's compensation for land expropriation follows the principle of compensation by the original purpose of the land but not by the standard of market value, the low cost for land expropriation enables the Government to earn a large share of income from land expropriation. This not only leads to imbalance of economic relations between the original landowner/occupant and the state, but also goes against the tenets of the state's expropriation right.

C. Absence of a Review Mechanism for the Legitimacy of Land Expropriation Purposes

The review mechanism for land expropriation purposes should not only include an ex ante examination by competent authorities on the legitimacy of land expropriation purposes before approval of land expropriation, but should also include a mechanism to

review and carry out an ex post examination when the land expropriation is deemed illegal after approval of land expropriation. However, the Land Administration Law only provides that land expropriation must be approved by the State Council or government of each province, autonomous region, or municipality directly under the central Government, but does not address any conflicts over the legitimacy of land expropriation purposes.

III. Overview of Expert Opinions on Connotations of “Public Interests”

As well known, “public interest” is the premise for the existence of land expropriation rights and the sole condition for its legitimate exercise. Professor Jiang Ping² pointed out in his speech during an experts’ symposium held by the Constitution Amendment Team of the Central Committee of the Communist Party of China that, “though each country follows the principle of giving priority to social public interests, when a private property has conflicts with social public interests, the priority shall not be misused but shall be taken to really meet the needs of social public interests.”

In a society with very complicated and diverse interests, there are two different answers to the question whether common benefits exist. Most American scholars believe that there are public interests superior to the accumulation of various private interests or the sum of partial and local interests in a society, and public interest is an objective existence and will not change along with different recognitions by each interest group. To the contrary, Truman³ pointed out that without this, that and the other group interests, there would be no abstract public interests. Interest groups provide the required connection between people and governments, and the process of numerous groups pursuing their interests is the process for formation of public interests. In other words, different interest groups all pursue their interests, and after bargaining among them, may reach a transitory balance based on mutual constraints and compromises. This kind of balance is called public interest.

In economics, social public interests are also called public goods. The so-called public goods are those goods any individual cannot occupy and consume exclusively. In the opinion of Mr. Wu Zhiliang,⁴ Councilor of Environment Resources Law Research Society of China Law Society, social public interests are the common interests of all members of a society and concentrate on the overall stability and development of this society. Public interests cannot be automatically actualized in a market, and government is the entity to actualize public interests. To actualize public interests, government may bring land expropriation rights into play, and public interests are foundations and limits on land expropriation rights. Land expropriation still answers the purpose of public interests as well as meets public interests even if expropriation benefits certain individuals.

Bond⁵ divided interests to be protected by laws and orders into three classes: individual interests, public interests, and social interests. At the same time, he also pointed out that public interests include “interests of the state as a legal person” and “interests of the state as a defender for social interests”. It in essence included social interests in the domain of public interests. Many interests contained in these social interests that can be deemed as individual interests from another angle, which blurred the standard for definition of interests. However, on this basis, interests can be generalized into “private” and “public” ones. While this generalization takes relativity as its starting point, its denotation must be defined individually in specific circumstances.

² Jiang Ping, 2005. The interview of Jiang Ping: Public interests differ to social interests. *Reminwang*, 13 July. Available: www.people.com.cn.

³ Woll, Peter. 1984. *American Government: Readings and Cases*. Little, Brown and Company: pp. 279–280.

⁴ Wu Zhiliang, 2002. The purpose of public interest for land expropriation. Available: www.riel.whu.edu.cn/show.asp?ID=731

⁵ Bond, Roscoe. 2004. *Nomology*, Volume 1. Book concern of China University of Political Science and Law.

According to the *Economic Observer*,⁶ public interest is essentially nothing but “an assembly of private rights”, “numerous privates equal a public”, and it is made up of numerous private free rights. In reshuffling social interests, local governments and state-owned enterprises (SOEs) do not take it for granted to stand in the position of “public interests” or “stand in for public interests”. Moreover, the Central Government should clear off the power and authority of local public sectors as soon as possible and compel them to respect and protect public interests in the interest of civil society.

Guo Lifang⁷ thinks that the connotation of public interests had always been disputable and included public usage, public purpose, public use, public undertakings, and other interpretations, with a common feature of “public or public-related use”. Public interests are closely related to national policies and social development, and may have different contents at different social stages. Generally speaking, public interest—which is determined by the existing system of social values—provides public transport, public education, public health, social security, social order, mutual development, and any other things deemed necessary for public interests, and is the social value necessary for the existence or development of a social community. It not only includes various interests, such as provision of public goods, but also includes other interests such as economic development. With the development of society and the economy, and the implementation of new national social and economic policies, the connotation of public interests will also change. For instance, the construction of the PRC’s economic and technical development zones becomes social common interests after its reform and opening to the outside.

Zhuang Xiaobo⁸ from the Environment Law Research Institute of Wuhan University suggested in his Study on the Redemption System of Expropriated Land that in the redemption right system, there exist “public interests” and “private interests.” These two kinds of interests are different, which is especially evident in the ownership transition process of expropriated land. Land expropriation, as an administrative act compulsorily

depriving land ownership, must be targeted for the sole purpose of public interests, and be actualized for “public interests” because of national sovereignty. Once this kind of pursuit cannot be actualized—that is, the expropriated land loses the support of public interest purposes—and transfer of land ownership no longer has rationality, the maintenance of the former landowner’s “private interests” will not be realized through the redemption system. Although the PRC implements a socialist public land ownership system, it does not mean an absolute public interest of land ownership, but admits existence of private interests. For collective land ownership, it is of public interest relative to a single member of society, while in the process of land expropriation—relative to public interest purposes—it can only be of a private interest right and must submit to the exercise of public power. As a result, it is necessary to uphold the private interest of the former collective owner if being infringed upon.

In a word, public interest is a dynamic concept. Public interest in land expropriation can be divided into absolute public interests and relative public interests. Absolute public interests are social values generally accepted by a society and independent from prevailing policies of the society and the state, such as national health, education, public transport, etc. Relative public interests are important social interests selected by governments and the people in line with the principle of social and national exigencies at different development stages. For instance, the initial stage of economic reconstruction and development is a public interest.

⁶ *Economic Observer*. Rediscuss “Public Interest”. Available: www.newssc.net/gb/newssc/llzx/sxwz/userobject1ai153321.html

⁷ Guo Lifang. 2003. Discussion on Defining Expropriated Land Scope. China real estate newspaper.

⁸ Zhang Xiaobo. 2004. *Research on Redeem Right System of Expropriated Land*. People’s Republic of China (PRC): University of Wuhan.

IV. Comparative Study of Foreign Land Expropriation Scope

A comparison of relevant countries' land expropriation scope found that the following aspects are noteworthy.

A. Essential Foundation of Land Expropriation — Interpretation of “Public Interests”

To avoid misinterpretation that leads to misuse of expropriation rights or improperly restricting expropriation actions, many countries make specific provisions on public interests, and give interpretations in terms of legislation from different angles.

- Interpretation by property purpose. Public interest is interpreted as having public interest purposes besides public use. Public use includes direct use of the entities representing public interests (such as national defense facilities) and government buildings; public interest purposes means the consequence of expropriation is to improve the welfare of all members of a society, such as education, science, public welfare undertakings, etc. However, due to uncertainty of public beneficiary scope, whether public interests only refer to benefiting all members but not part of the members or members of specific sectors, laws and practices of each country are different in their definition. Different interpretations of public use are the consequence of a country's land resources, legal traditions of land expropriation, and many other factors.
- According to land use, public interest purposes can also be interpreted as “for profit” and

“not for profit”. In the case of direct use by the entities representing public interests, the expropriated land is put into consumptive and nonprofit generating use, where there are benefits to members of society for public purposes. Most expropriated land generates income and the operating income is used for recompensing society or the public. For example, according to relevant administrative provisions of state expressway undertakings, the operating income of expressways is mostly used for repaying the investment, and for facilities supply and maintenance cost. Land expropriation for public interest does not exclude using land for profit-generating undertakings. Consequently, land use not only includes public entities, but also includes private entities.

It should be noted that first, profit-generating enterprises are different from corporate-operating activities. The former generally refers to economic acts for the maximization of property returns and the latter refers to operating acts for the purpose of for-profit entities' distributing dividends to investors or members. Therefore, for-profit operating activities belong to purely private acts, and should acquire land through the market but have no expropriation right. Next, the concept of SOE in western laws is different from the Chinese one. In the PRC, SOE refers to a form of enterprise characterized by the state investment existing in competitive and noncompetitive industries. Whereas in western countries—according to the concept that a state can only invest in public utilities on behalf of people—SOEs are limited to investment necessary for public interests but not discretionary industries (including government-sponsored enterprises in industries with narrow profit margins or needing fiscal support of the state but private investors are unwilling

to undertake, such as social insurance). Second, SOEs are operated monopolistically and inaccessible to private investors for the need of public interests, such as energy service enterprises.

B. Definitions of “Public Interests”

The definitions of public interests in countries with sound legal systems are generally divided into two forms. The first form is that laws do not expressly define the scope of public interests, but fully protect private land or property through other laws. For instance, Australian expropriation law states, “public purposes” mean those purposes that the Parliament has the power to define by legislation. The second form is that the scope of public interests is strictly defined by listing in relevant laws. For instance, in land expropriation laws, a list of 35 undertakings can bring land expropriation rights into play.

Roughly, four methods are adopted in defining a specific land expropriation scope for public interest. The first is generalization. For instance, the French Civil Code provides that land can be expropriated “for the need of public interests, including direct public engineering construction and construction indirectly meeting public interests, and for the need of government’s macro control.” The second is enumeration. For instance, the Japanese Land Expropriation Law provides that land can be expropriated “in order to set up various social public undertakings, such as roads, parks, dikes, and harbor construction etc.” The third is a combination of generalization and enumeration. For instance, Taipei,China Land Law provides that expropriation can be done “for setting up public undertakings, such as national defense, transport, water conservancy, government agency etc.; and to enforce national economic policies, control monopoly and desolation of private land, etc.” And the fourth is elimination, where exclusions are specified.

It could also be found from comparison of countries

that the existing purposes of land expropriation in each country are no longer for the need of a single national or social public facility construction. The existing domains of public interests have extended to various areas of social and economic life and can meet the needs of general public interests directly or indirectly. In some countries (e.g., France, Malaysia, Taipei,China, etc.), land expropriation has become a means for governments to exercise macroeconomic control.

C. The Position of Governments in the Process of Exercising Land Expropriation Rights

The exercise of land expropriation rights should represent public interests, and therefore, can only remain with the country or the government in a country, while other individuals or enterprises have no right to represent public interests. In the process of the government’s exercising land expropriation rights, conflicts arise on land expropriation rights and land ownership.

Generally speaking, land ownership is the most integrated bundle of rights, and is an absolute right for landowners to freely use and dispose land within the scope of legal provisions. The land expropriation right is a kind of “supreme power” or “sovereignty”, and means “the right that the sovereign expropriates a property for public purposes without getting the approval of the owners”. In this case, private land ownership cannot contend with government land expropriation rights. As a result, government exercise of land expropriation rights is most characterized by its irresistible constraints, when decisions are not in the hand of landowners. In terms of strict property rights, it is the “most absolute” property right that suffers the “most compulsory” interference. In addition, some countries provide that appropriate public construction sectors and SOEs can also directly expropriate land and exercise land expropriation rights after authorization by governments or if permitted by law.

V. Three Feasible Reform Plans for Land Expropriation Scope

A. Reform Plan I

“Public interest” is defined as public facilities and public welfare undertakings that do not aim to profit, but serve the public, and have benefits shared by the society. This includes military installations, roads used for transport, energy, water conservancy, municipal and other public facilities, and other public places only invested by the state; government office facilities; and cultural, educational, health, technical, and other public buildings invested by governments and public groups. Any other land use projects shall be excluded from land expropriation scope.

B. Reform Plan II

Land expropriation scope is defined as land used for energy, transport, water conservancy, and other infrastructure supported only by the state and land used

for development within the scope of urban (including organic township) construction purposes. Any other land use projects shall be left out of land expropriation scope, including nonpublic land use beyond the scope of land used for urban (including organic township) construction purposes.

C. Reform Plan III

Land expropriation scope is defined as land used for energy, transport, water conservancy, and other infrastructure and other public welfare projects exclusively supported by the state and land used for development within the scope of urban (excluding organic township) construction purposes. In contrast with Plan II, what is left out of land expropriation scope is using organic towns’ land used for nonpublic interest purposes.

Table 1 compares the three reform plans.

Table 1: Comparison of Reform Plans for the Scope of Land Expropriation

Reform Plan	Advantages	Disadvantages
I	<ul style="list-style-type: none"> - Reduces the land expropriation scope and assures the interests of peasants. - For-profit land use is taken out of the land expropriation scope, which will improve government functions and standardize governmental procedure. - Beneficial for playing the fundamental role of the market in land resource allocations. 	<ul style="list-style-type: none"> - Entities of urban land ownership are diversified; both governments and rural collectives supply land at the same time, and unified development becomes difficult. - The compensation standard for land expropriation will be close to market price, increasing the cost of land used for urban construction purposes. - Income acquired by municipal governments from land transfer will decrease, and urban construction will lose important sources of funds. - Land used for nonpublic interest purposes is to be provided by rural collectives, involving major amendments to the PRC’s basic land system. Improvement of some supporting measures and reform will be very difficult.

Table continued

Table 1: Comparison of Reform Plans for the Scope of Land Expropriation

Reform Plan	Advantages	Disadvantages
II	<ul style="list-style-type: none"> - Beneficial for urban development purposes, and helps the process of urbanization. - Within the scope of land used for urban construction purposes, it is beneficial for investment promotion, economic control, and land market administration. - Easy to combine with the prevailing basic land system, ready for amendment of relevant regulations, and beneficial for social stability. 	<ul style="list-style-type: none"> - The land expropriation scope is reduced, land expropriation expenses are increased, and benefits to peasants from land expropriation are small. - For-profit land use within the scope of land used for construction purposes is not removed from the land expropriation scope. This does not improve government functions and standardize government behavior. - Land expropriation scope is reduced, land resources allocated through market are limited, and land market development will be slow.
III	<ul style="list-style-type: none"> - Beneficial for urban development purposes. Within the scope of land used for urban construction purposes, it is beneficial for investment promotion, economic control, and land market administration. - Easy to combine with the prevailing basic land system, for amendment of relevant regulations, and beneficial for social stability. 	<ul style="list-style-type: none"> - Tract development and construction of organic towns becomes harder. - Increases the problems of organic towns' investment promotion.

PRC = People's Republic of China.

Source: Prepared by China Land Surveying and Planning Institute (CLSPI) based on the analysis of three reform plans.

VI. Case Study

A. Study of the Impact of the Reform Plans on Two Cities

1. Background of Zhenjiang and Shaoxing

Zhenjiang is located in the southwest part of Jiangsu. The city covers a land area of 3,854 square kilometers (km²), with a distance of about 95.5 kilometers (km) from west to east, and about 76.9 km from north to south. Hills, barrows, and hillocks occupy 51.1% of the total land area, while plains are relatively small, only representing 35.2%. Zhenjiang has seven districts (cities). Data were gathered from four districts (cities) from 2000–2004. In 5 years, they approved 759 projects, with a land expropriation area of 3,196.3 hectares (ha), occupying a cultivated area of 2,336.7 ha, and resettling 40,813 inhabitants.

Shaoxing is located in the north central part of Zhejiang. The city has a land feature generalized as “four mountains, three basins, two rivers, and one plain,” and covers a total area of 7,901 km² in which barrows and hills occupy 66.07%, basins occupy 16.48%, and plains occupy 17.45%. Data were gathered for Shaoxing from 2002–2003. In 2 years, it approved 1,044 projects, with a land expropriation area of 4,014.4 ha, occupying a cultivated area of 2,762.6 ha.

2. Results of the Analysis

a. Application of Reform Plan I

From 2000–2004, in the four districts and counties of Zhenjiang, only 524.6 ha were for urban infrastructure projects as defined by Reform Plan 1, representing 16.4% of the land expropriated. Thus, under this plan, land expropriation scope in these four districts could have been reduced by 83.6% since the

larger area would not qualify under the scope of public purpose. Moreover, only about 8,844 peasants would have lost land and had to be resettled, representing only 21.67% of the total original resettlement population.

Using a similar approach in Shaoxing, land expropriation scope could have been reduced by 81.2%.

Out of a total area of 2445.3 ha acquired for construction purposes in Zhenjiang, only 192.1 ha qualify as public purpose (affordable houses, municipal public facilities, and other urban public interest purposes), representing 7.9% of the total area acquired. The balance (92.1%) was used for industry and commerce, real estate, and other urban operating purposes that would not qualify under this plan’s land expropriation scope.

Similarly, in Shaoxing, the land used for economically affordable houses, municipal public facilities, and other urban public interest purposes that can be included into the land expropriation scope under this reform plan was 400 ha, representing 11%. Moreover, the land used for industry and commerce, real estate, and other urban operating purposes that would be excluded from the land expropriation scope was 3,186.7 ha, representing 89%.

Thus, the impact of Reform Plan 1 on these two cities is quite similar.

b. Application of Reform Plan II

Under this plan in Zhenjiang, 98% of the total land expropriation area would come under the scope of public interest. Measured thus, the land expropriation scope can be reduced by only 2%, and about 39,672 peasants losing land would have to be resettled, representing 97% of the total original resettlement population.

Similarly, in Shaoxing, 99.9% of the total expropriated rural collective land would be classified

under public interest and only a mere 0.1% would be excluded. Naturally, the impact would be negligible.

Under this plan, the impact on land expropriation would be minimal.

c. Application of Reform Plan III

Under this plan, the land used for organic township construction purposes is removed from the land expropriation scope. In Zhenjiang, from 2000–2004, the newly added land used for organic township construction purposes occupied 13.41% of the township area, and the proportion was 2.46% in Shaoxing. In Zhenjiang, the percentage land expropriated for single purpose construction and urban projects (excluding organic townships) was 63.3% of the total expropriation area. Thus, land expropriation scope would be reduced by 36.7%, and about 35,355 peasants would be losing land and have to be settled, representing 86.63% of the total original settlement population.

Similarly, in Shaoxing, the comparative figures would be 67.2% of the total expropriation area and the land expropriation scope would be reduced by 32.8%.

B. Comparison based on the Data from 16 Provinces (Cities or Districts)

At the same time, the relevant data submitted by 16 provinces (districts) in 2002 was analyzed according to the three plans. The results are as follows:

Plan I: From 2000–2001, rural collective land of 104,020 ha were expropriated, of which land expropriated for construction projects and urban infrastructure project purposes was 66,666.7 ha, representing 64% of the total expropriated rural collective land area. On this basis, the land expropriation scope may be reduced by 36%. About 650,000 peasants would have lost land and have to be resettled, representing only 52% of the total original resettlement population.

From 2000–2001, the total expropriated land used for urban construction purposes was 35,326.7 ha, including 12,540 ha used for economically affordable houses, municipal public facilities, and other urban public interest purposes that can be included into the

land expropriation scope, representing 35.5%. Moreover, a land area of 22,786.7 ha used for industry and commerce, real estate, and other urban operating purposes should be left out of the land expropriation scope, representing 64.5%.

Plan II: From 2000–2001, they expropriated rural collective land area of 104,020 ha, in which land expropriated for construction projects and urban (including organic township) construction purposes was 89,560 ha, representing 85% of the total expropriated rural collective land. On this basis, the land expropriation scope would be reduced by about 15%. About 1.05 million peasants were losing land and had to be resettled, representing 83% of the total original resettlement population.

Plan III: With only organic towns being left out of the land expropriation scope in the newly added land used for construction purposes from 2000–2001, based on the proportion of cultivated area in organic township construction and the proportion of cultivated area in urban construction, it was deduced that in the newly added land for construction, organic towns occupied 44% of the township area. According to relevant data of survey materials submitted by 14 provinces (districts), from 2000–2001, they expropriated rural collective land of 104,020 ha, in which land expropriated for construction projects and urban (excluding organic township) construction purposes was 73,346.7 ha, representing 70% of the total expropriation area. The land expropriation scope would be reduced by 30%. About 630,000 peasants would have lost land and be resettled, representing only 50% of the total original resettlement population.

C. Discussion and Conclusions

The prerequisite for planning is to narrow the scope of the land expropriation. Plan I is a long-term objective, representing an ideal reform plan. It strictly follows the nature of land use. The rights of land expropriation can only be used in the interest of the public. As Plan I depends on the revision of the Constitution, putting it into effect within a short period will be difficult. Under

these circumstances, a transitional plan, namely Plan III is proposed. Plan II is based on current national policies.

The purpose of the survey and analysis carried out in two prefecture-level cities and 16 other cities was to examine the feasibility of the plans. Yet, the outcomes of the comparisons are very diverse.

Economic levels, development pace, amount of land use, as well as land use programs of the cities are not the same. What is more, the time sequence in selecting samples is inconsistent with the cross-section data of the samples due to limited conditions. Therefore, it is inevitable that the same plan leads to different results.

On balance, the measurement results of the two individual cities and the proportion for the 16 cities conform to the requirements.

Plan I: The approximate proportions of expropriation area for public purposes to land for other purposes in the two individual cases are 1:4 and 1:9;

Plan II: The approximate proportions of land expropriation for public purposes to land for other purposes in the two individual cases are 49:1 and 99:1.

Plan III: The approximate proportions of land expropriation for public purposes to land for other purposes in the two individual cases are 3:2 and 7:3.

Given the information collected from the individual cases and the 16 cities, the results of the long-term objective (Plan I) and the transitional plan (Plan III) are closer. The results of the current plan (Plan II) differ significantly from those of the other two plans. This shows that it is imperative to reform the current land expropriation scope.

VII. Conclusions and Recommendations

A. Public Interests to be Expressly Defined in Laws and Relevant Policies

Relavant laws should expressly define the domain and connotation of “public interests”, and prepare a specific land expropriation directory and classify it.

When classifying the scope of land expropriation, reform plans should fully consider the basic situation in the PRC now and reduce the scope of land expropriation in stages, given the fact that the PRC is still short of capital and in dire need of land.

Stage I: Adopt Plan III. The land expropriation scope is defined as land used for energy, transport, water conservancy, infrastructure and other public interest projects only supported by the state, and land used for development within the scope of land used for urban (excluding organic township) construction purposes.

Stage II: Adopt Plan I. “Public interest” is defined as public facilities and public welfare undertakings that take the state as their investment entity, do not aim to profit but to serve the public, and have benefits shared by the society. This includes military installations, roads used for transport, energy, water conservancy, municipal and other public facilities and other public places exclusively invested by the state, governmental office facilities and cultural, educational, health, technical, and other public buildings invested by governments and public groups. Any other land use projects should be excluded from land expropriation scope.

It should be made clear whether a single project or projects in batches are being included under public

purpose. The short-term plan is in line with the Decision of the State Council on Deepening the Reform of Strict Land Administration (i.e., on how collective construction land in rural areas should enter the market).

B. Establish and Improve Review Mechanisms to determine the Legitimacy of Land Expropriation Purposes

Amending the approval system for land expropriation in the Land Administration Law will establish review mechanisms to determine the legitimacy of land expropriation purposes. The State Council or provincial government shall strengthen ex ante examination on legitimacy of land expropriation purposes; establish a relief system when land expropriation purposes are illegal; and strengthen the ex post examination on legitimacy of land expropriation purposes. Those affected by land expropriation may request relevant authorities for an administrative review, or lodge an administrative complaint in court when land expropriation is deemed illegal.

C. Establish a Methodology to Acquire Rural Collective Land for “Nonpublic Interests”

Expedite institutional reform for collective land use and acquire collective land use rights through the land market for land used for collective construction purposes after the land used for “nonpublic interests” purposes is removed from the land expropriation scope. Necessary legal adjustments should be made for the collective land use system to permit the land used for collective construction purposes to directly enter market circulation on certain conditions, correct price

distortions in the process of cultivated land changed to noncultivated land, and advance the healthy, orderly development of the land market.

D. Suggested Reform Measures

Stage I: In accordance with the current national condition, a gradual approach should be adopted to improve the land expropriation system. Reducing land expropriation scope should also be gradual. Plan III is merely a transitional plan. It defines land expropriation scope as land used for energy, transport, water conservancy, infrastructure, and other public interest projects only supported by the state and land used for development within the scope of land used for urban (excluding organic township) construction purposes. Document No. 28 on the Decision of the State Council on Deepening the Reform of Strict Land Administration states that with planning consent, farmers in villages, townships, and organic townships can transact rural collective land use rights under the relevant law. On this basis, without amending the Constitution, pilot work in transacting land use rights of rural collective land for construction can be conducted in typical areas of Central, Eastern, and Western PRC to find ways for collective land to enter the market for construction purposes as well as providing a basis for revising the Land Administration Law and the Land Subdivision Index.

Stage II: Experience gained from the pilot work in implementing Plan III will be extended on a larger scale, providing a basis for amending the Land Administration Law and the Land Subdivision Index.

Stage III: Adopting Plan I, which defines public interests” as public facilities and public welfare projects that take the state as their investment entity, do not aim to profit but to serve the public, and have benefits shared by the society. This includes military installations, roads used for transport, energy, water conservancy, municipal and other public facilities and other public places emphatically invested by the state, governmental office facilities and cultural, educational, health, technical and other public buildings invested by governments and public groups. Any other land use projects should be removed from the land expropriation scope.

Article 10 of the Constitution stipulates that “for the public interests, the State may expropriate land or provide compensation while expropriating in accordance with laws and regulations. Urban land is owned by the State.”

Although an ideal plan involving the revision of Article 10 of the Constitution, Plan I will inevitably meet difficulties in legal procedures. Based on the pilot work in Stage I, and the review and publicity in Stage II, additional pilot work should be carried out in areas where conditions permit to provide guidelines for revising the Constitution and the Land Subdivision Index.

As reform of the land expropriation system involves various other aspects in the PRC's economic development, supplementary reforms are required in other systems such as the rural collective land use system, the land registration system, the property rights system, and the tax and revenue system.

References

- Bond, Roscoe. 2004. *Nomology*, Volume 1. Book concern of China University of Political Science and Law.
- Economic Observer*. Rediscuss "Public Interest". Available: www.newssc.net/gb/newssc/llzx/sxwz/userobject1ai153321.html
- Guo Lifang. 2003. Discussion on Defining Expropriated Land Scope. China Real Estate Newspaper.
- Jiang Ping. 2005. The interview of Jiang Ping: Public interests differ to social interests. Reminwang. 13 July. Available: www.people.com.cn.
- Woll, Peter. 1984. *American Government: Readings and Cases*. Little, Brown and Company: pp. 279–280.
- Wu Zhiliang. 2002. The purpose of public interest for land expropriation. Available: www.riel.whu.edu.cn/show.asp?ID=731
- Zhang Xiaobo. 2004. *Research on Redeem Right System of Expropriated Land*. People's Republic of China: University of Wuhan.

