
V. Research on the Scope of Land Acquisition Rights

Introduction. Land acquisition means that the State takes expropriation measures to acquire, for public interest, land that is collectively owned by farmers. The legal features are

- (i) Land acquisition is a coercive/involuntary action to deprive farmers of their collective landownership, a special form of changing property rights. The Government plays a major role and makes administrative orders to acquire landownership from farmers and collectives. The collectives must obey the order and have no alternative.
- (ii) Land acquisition is an action in line with legal conditions. In the legal framework of all countries, land acquisition must follow strict legal procedures, in the public interest. Land acquisition for commercial gains is prohibited; otherwise, the land-takers must be compensated in a reasonable way.¹⁴

A. Major Problems in the Scope of Rights of Land Acquisition

1. Inadequate Definition of “Public Interests”

Overuse of the scope of the right to acquisition land is a major problem existing in the current land acquisition system. It can be seen in the following aspects:

The scope of “public interest” is not adequately defined in law, and land acquisition goes beyond the scope of “public interest”. The Constitution and the LAL of the PRC are clear that:

“The State may in the public interest take over land for its use in accordance with the law.”

But no laws and rules clearly define the scope and standard of what constitutes “public interest.” Article 43 of the LAL also states:

“All units and individuals that need land for construction purposes shall, in accordance with law, apply for use of state-owned land ...the ‘state-owned land’ mentioned in the preceding paragraph includes land owned by the State and land originally owned by peasant collectives but acquisitioned by the State.”

Under this provision, land acquisition rights have actually been extended to all the land that is to be used for economic construction, without distinction between land for public good and land for construction and commercial gains. As a result, land acquisition and construction land are generally prescribed in this provision. Land for commercial development should be acquired in the market, but here it has been covered under state land acquisition rights. Therefore, the individual rights have been inappropriately deprived by public power.

According to survey data held by MLR, land acquisition went beyond the scope of “public interests” in 16 provinces surveyed between 2000 and 2001. Collective land acquisitioned for the use of urban operations, such as industry, business, and real estate, accounted for 21.9% of the total area of land acquisitioned—second only to the proportion of land acquisitioned for infrastructure development, such as transportation, energy, and water conservancy, which was 52.1%. Land acquisition has become a major way of meeting the need for land to promote social and economic development.

Public interest is equivalent to national development in the law; moreover, public interest is not defined and, therefore, the rights of land acquisition are abused to some extent. In fact, the purpose of land acquisition

¹⁴ This paragraph only talks about the problem of enforcement of the scope of land expropriation rights; other related problems, such as reasonable compensation, will be discussed later.

is no longer confined within the public interest and extends to the interest of companies and individuals. Any company or individual can apply to the Government to conduct land acquisition for their use.

2. State Monopoly of Land Market

The LAL also states that the State applies a system of control over the purposes of land use. It should rigidly restrict conversion of agricultural land for construction. Article 43 states that all units and individuals that need land for construction purposes shall, in accordance with law, apply for use of state-owned land. Therefore, only the Government can act as the legal authority to convert agricultural land for construction purposes. However, as the PRC applies a system of land acquisition compensation paid according to the original purposes of land—but not at the market price—the low cost of land acquisition enables the Government to obtain a greater proportion of returns from land acquisition and selling land-use rights for commercial activities, which produces an inequitable economic relationship between the original holder of land-use rights and the State, and does not comply with the purpose of the State in its exercise of land acquisition rights.

3. Absence of a Monitoring System

There is no system in place to fully monitor the legality of land acquisition requests. The review system for land acquisition requests should include preexamination of the validity of land acquisition requests to be conducted by the relevant authorities before any land acquisition is formally applied for and approved. But the process should also include an appeals mechanism and post-examination in the case of ‘land loss people’ who subsequently claim the land acquisition was not legal after it had been approved. Yet, the PRC’s LAL states only that land acquisition must be subject to the approval of the State Council or the people’s governments at the provincial level. No appeal or remedial mechanism is provided for the dispute of land loss people with respect to the legality of land acquisition, that is, the purposes or uses for which land are to be reassigned.

B. Research on the Scope of Land Acquisition in Other Countries

Through research on the scope of land acquisition in other countries, the following lessons are drawn:

1. Basis for Land Acquisition and Definitions of Public Interest

Firstly, regarding the basis for land acquisition, and the legal definitions of “public interest”. To prevent the abuse or inappropriate limitation of land acquisition caused by misinterpretation, many countries have made specific definitions of public interest, which are explained from different legal perspectives:

- (i) In terms of property use, public interest can be interpreted as public use or use for public interests. Public use includes direct use by members of the society for public interest, such as facilities for national defense, government buildings. Public interest use means that acquisition can bring benefits to all members of the society, as for example, education or public undertakings, etc. However, the scope of the public beneficiary is not defined; therefore, different countries have different definitions of public interest, which refers to benefiting either all members of society or certain groups. The different interpretations of public use are due to many factors, such as land resources, laws on land acquisition, etc.
- (ii) In terms of land use, public use can be interpreted as for-profit or nonprofit use. In the case of direct use by members of the society for public interest, the acquired land is used for consumption or nonprofit use. When land is for public use and benefits society, it is usually for profit-making and the benefits go to the public, for example, based on the regulations on the management of highways, the proceeds of highways will be used for compensation investment, paying for the construction and maintenance of highways. Land acquisition for public good also includes land development business. Therefore, land users include not only users for public good, but also users for profit-making.

Defining “public interest”. The definition of public interest in countries with progressive legal systems has two categories: first, in the law, there is no clear definition for the scope of the public interest, but private land or other property can be protected by other regulations. For example, acquisition law in Australia states that, “public purpose” refers to the use,

which can be defined by laws the parliaments have formulated. Second, regulations in some countries enumerate the scope of the public interest. For example, the land acquisition law in Japan lists 35 undertakings having the rights of land acquisition.

All countries have four ways to specify the scope of land acquisition: first, generalization. The civil code in France states that the needs for public interest include direct public construction, indirect construction for public interest, and macro-control; second, enumeration—the Land Acquisition Law in Japan states that “in order to develop public undertakings, such as roads, parks, riverbanks, ports, etc.”; third, combination of generalization and enumeration. While, the Land Law in Taipei, China states that in order to serve the public needs, such as national defense, transportation, water conservancy, and government agencies, etc; in order to carry out national economic policies, the monopoly and abandoning of private land should be prevented. Fourth is the exclusion list.

When comparing countries, it is easy to see that the purpose of land acquisition is not solely for serving national or public construction. The scope of public interest has expanded to many dimensions, directly or indirectly serving the public interest. In certain countries, such as Taipei, China, the Government can acquire land to prevent concentration of ownership.

2. Role of Government in Land Acquisition

Exercising the rights of land acquisition must serve the public interest, therefore, only the central government has the right of land acquisition, while other individuals or entities cannot represent the public interest. Land acquisition involves conflict between the right of acquisition and landownership.

Generally speaking, landownership should be the most complete set of rights, and it should be an absolute right that the landowner has to freely use and dispose the land in line with the law. However, during land acquisition in all countries, the acquisition right is actually with “the top power” or “the ruling power”. It refers to the right that the State has to acquire land and property for public use without the consent of owners. In this case, individual landownership cannot contend with the Government’s land acquisition right. Therefore, Government’s land acquisition right is irresistible and coercive. The landowner does not have the decision-making right. From the perspective of ownership, “the most absolute” ownership is interfered by “the most

coercive means”. Moreover, some countries provide that with government authorization and legal permission, relevant public construction agencies and state-owned enterprises can also directly use the land acquisition right to acquire land.

C. Reform Plans for the Scope of Land Acquisition

1. Feasible Reform Plans

Three feasible reform plans for the scope of land acquisition:

a. Reform Plan I

Within the existing system and legislation, “public interest” is defined as public facilities and public welfare undertakings that are funded by the Government, nonprofit, serving the social public good, having benefits shared by the society, including military installations, roads used for transport, energy, water conservancy, municipal and other public facilities and places invested in by the State, government office facilities and public buildings for culture, education, health, technical, and other purposes invested in by governments and public groups. Any other land-use projects should be excluded from the scope of land acquisition..

b. Reform Plan II

The scope of land acquisition is defined as land used for basic infrastructure supported by the State, such as energy, transport, water conservancy, and land used for development within the scope of land used for urban (including “organic” townships) construction purposes, prescribed in the overall planning on utilization of land. Any other land-use projects should be excluded from the land acquisition scope, mainly for nonpublic land use beyond the scope of land used for urban (including “organic” townships)¹⁵ construction purposes.

c. Reform Plan III

The scope of land acquisition legislation is defined as land used for energy, transport, water

¹⁵ According to the present regulation in the PRC, “organic” township has smaller size than city, commonly about 2,000–60,000 people.

Table 2: Comparison of Land Expropriation Reform Plans

Reform Plan	Advantages	Disadvantages
I	<ol style="list-style-type: none"> 1. Reduces the land expropriation scope and assures the interests of farmers. 2. For-profit land use is taken out from the land expropriation scope, which will improve government functions and standardize governmental procedure. 3. Beneficial for playing the fundamental role of the market in land resource allocations. 	<ol style="list-style-type: none"> 1. Entities of urban landownership are diversified; both governments and rural collectives supply land at the same time, and unified development becomes difficult. 2. The compensation standard for land expropriation will be close to market price, increasing the cost of land used for urban construction purposes. 3. Income acquired by municipal governments from land transfer will decrease, and urban construction will lose important sources of funds. 4. 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.
II	<ol style="list-style-type: none"> 1. Beneficial for urban development purposes, and helps the process of urbanization. 2. Within the scope of land used for urban construction purposes, it is beneficial for investment promotion, economic control, and land market administration. 3. Easy to combine with the prevailing basic land system, ready for amendment of relevant regulations, and beneficial for social stability. 	<ol style="list-style-type: none"> 1. The land expropriation scope is reduced; land expropriation expenses are increased; and benefits to farmers from land expropriation are small. 2. 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. 3. Land expropriation scope is reduced; land resources allocated through market are limited; and land market development will be slow.
III	<ol style="list-style-type: none"> 1. Beneficial for urban development purposes. 2. Within the scope of land used for urban construction purposes, it is beneficial for investment promotion, economic control, and land market administration. 3. Easy to combine with the prevailing basic land system for amendment of relevant regulations, and beneficial for social stability. 	<ol style="list-style-type: none"> 1. Tract development and construction of organic towns becomes harder. 2. Increases the problems of organic towns' investment promotion.

Source: Prepared by CLSPI.

conservancy and other infrastructure, and other public welfare projects supported by the State and land used for development within the scope of land used for urban (excluding “organic” townships) construction purposes. In contrast to Plan II, what is excluded from the land acquisition scope is using organic townships' land for nonpublic interest purposes within the scope of land used for construction purposes (Table 2).

Stakeholders in land acquisition are land-taken farmers, village collectives, local government, central government, and developers. Reform plans have different influences on these stakeholders; therefore, they will have different attitudes toward these plans.

(i) *The land-taken farmers*

They are the most severely affected group. In the PRC, farmers do not have the power to influence policy making in the domain of land acquisition. Farmers lose land without livelihood security. So even where compensation is received, it is frequently insufficient or inappropriate and does not ensure that resettled farmers avoid impoverishment as a result of lost assets and disruption. Wider scope of land acquisition means more risks for farmers. Therefore, in addition to higher compensation to maintain their living standards, farmers would prefer to conduct the free transaction of land, which is not used for public construction.

(ii) Village collectives

Village collectives are the managing institutions of rural collective land benefiting more from land acquisition. However, they do not want the Government to expropriate their land, but hope to have the right of land disposal so that they can benefit more through the transfer of collective land. Therefore, they hope to reduce the land acquisition scope and open the collective land market (i.e., to sell land user rights directly to commercial businesses—such cases are now being tested).

(iii) Local government

The local government in the PRC is the architect of land acquisition policy. It acquires farmland in order to develop the local economy, increase its revenue, and maximize its performance. Therefore, the local government benefits more from expanding the scope of land acquisition.

(iv) Central government

Compared with the local government, the central government is more concerned about the impacts of land acquisition, such as food security, eco-environmental protection, sustainable socioeconomic development, etc. Therefore, while the local government is keen on land acquisition, the central government is inclined to constrain land acquisition in terms of land regulations and policies. In order to protect arable land and farmers' interests, the central government favors the reduction of land acquisition

(v) Developers

Developers, as land users and potential land users, will acquire land-use rights at the lowest possible cost so as to maximize their profits. But if land for nonpublic interest is removed from the scope of acquisition, the developers may suffer losses, setting back economic growth.

According to the analysis, Plan I will be welcomed by the land-takers, village collectives, and the central government, which is also the final objective. However, once the scope of acquisition is strictly defined, the local governments and developers will suffer the greatest loss. Therefore, some interest groups will resist the implementation of this plan, thus increasing the reform cost in the short term. This plan may hamper industrialization and urbanization, and slow economic growth and employment promotion. Moreover, Plan

I calls for an overhaul of the basic land system and improvements to the supporting measures. In this case, the reform of the scope of acquisition should proceed gradually.

2. Recommended Reform Plans**a. Stage One**

Adopting Plan III, the scope of land acquisition is defined as land used for energy, transport, water conservancy and other infrastructures, and other public interest projects supported by the State and land used for urban (excluding “organic” townships) construction purposes.

b. No. 28 Document

Decision of the State Council on Deepening the Reform of Strict Land Administration states that “As long as it complies with relevant planning, the collective land-use rights for farmers in villages, townships, organic townships may be reassigned but without changing the overall plans for land use.” On such a basis, without amending the Constitution, pilot work in reassigning land-use rights of rural collective construction land can be conducted in typical areas of Central, Eastern, and Western PRC with a view to researching on the mode for collective construction land to enter market, as well as providing a basis for revising the Land Administration Law and the Land Subdivision Index. Experience gained from the pilot work in developing Plan III will be popular and will have wider scope, providing a basis for amending the Land Administration Law and the Land Subdivision Index.

c. Stage Two

Adopting 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 make profit, but serve the general public good of society, and have benefits shared by society, including military installations, road used for transport, energy, water conservancy, municipal and other public facilities, and other public places invested in by the State, governmental office facilities and cultural, education, health, technical and other public buildings invested in by governments and public groups. Any other land-use

projects should be withdrawn from the scope of land acquisition.

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

Being an ideal plan and involving the revision of the 10th Article of the Constitution, Plan I will inevitably meet difficulties in legal procedures. On the basis of pilot

work in Stage I and review and publicity in the Stage II, key pilot work will be carried out in areas where conditions permit so as to provide reference for revising the Constitution and the Land Subdivision Index.

As the land expropriation system reform affects various fields in the PRC’s economic development, it requires supplementary reforms in other systems, including the rural collective land-use system, land registration system, property rights system, tax and revenue system, etc.