

# THE RETURN OF THE LANDLORD: CHINESE LAND ACQUISITION CONFLICTS AS ILLUSTRATED BY PERI-URBAN KUNMING<sup>1</sup>

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## China's Land Acquisition Conflicts and Land Tenure Security

Numerous farmers in China have felt cheated when losing their land without sufficient compensation. (See e.g: Guo 2001; Cai 2003; Chen (ed.) 2003: 39; Xiao 2003: 257-259.) Recent research has reported that 66.3 million farmers have lost their land between 1990 and 2002 (Zhao 2004). Many Chinese farmers have voiced their anger about land grabbing through demonstrations. The official number of demonstrations in 2005 was 85,000 involving over 3 million citizens, a significant part of which concerned land acquisitions. According to a recent figure, 25% of farmers have been affected by land grabs, while two-thirds have not been satisfied by the compensation (Zhu et al. 2006). And this is only the tip of the iceberg, as many Chinese peasants do not even demonstrate in protest when their land is taken away. The problem is widespread; one commentator notes that an "economic war is going on at the local level in China today especially on the fringes of expanding urban areas" (Subrahmanyam 2004). Alarming, the conflicts

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that result become increasingly violent, with strong clashes between farmers, police and hired thugs. In the worst case so far, armed police in Shanwei village in Guangdong province opened fire on a crowd of ten thousand protesting against the construction of a wind power plant on their land without sufficient compensation. The crowd had gathered to demand the release of three of their appointed negotiators who had been detained earlier. As the 1000 armed police officers faced the protestors, things turned ugly. Following an exchange of tear gas canisters for bricks and home-made explosives, the police opened fire, shooting to kill. Their live ammunition wounded over 100 villagers, killing between three and 20, according to eyewitness accounts (Ang 2005). After the incident, police sealed off the village, and one villager stated to the press:

The riot police are gathered outside our village. We've been surrounded. Most of the police are armed. We dare not go out of our home. We are not allowed to buy food outside our village. They asked nearby villages not to sell us goods. The government did not give us proper compensation for using our land to build development zones and plants. Now they have come to shoot us. I don't know what to say. (Ang 2005)

The central government knows that the land acquisition problem is a volcano waiting to erupt. In a speech made on December 29, 2005, Premier Wen Jiabo voiced his concern that farmland seizures are provoking widespread social unrest. "We absolutely can't commit an historic error over land problems", Wen stated. He warned that despite strong efforts to end local officials' land grabs, farmers still often receive little compensation for land loss (Buckley 2006). Decreasing rural underdevelopment has become a major theme of central policy in recent years and in 2006 the National People's Congress launched a new nationwide policy of a *xin nongcun* (new villages), a policy which aims to protect farmers' interests. For the Chinese Communist Party, a political organization that owes its present dominion over the country to its supposed role as the champion of China's poor and landless peasants who were once dominated by local elites, the current resurgence of farmer exploitation by a new class of elite land owners must be very frustrating.

Is history repeating itself, as it so often has in the Middle Kingdom? More than fifty years after the 1949 communist revolution it seems the days of old have returned, complete with a new type of landlords and landless peasants; or rich and poor, powerful and weak, in accordance with their access to and use of China's

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rare land resources. This is remarkable as the communists had been rather successful in creating a new type of egalitarian collective land ownership and a new rural social stratification, based on this communist land regime. Once they took power in 1949, the land reform involved a violent type of social engineering (White 1989) and a redistribution of land according to a new social stratification (Hinton 1972; Crook and Crook 1979). At first, land was only redistributed; the land rights system itself was left intact. This changed in the late 1950s during the Great Leap Forward (1957-1961) when large collective farms, People's Communes, were established and land ownership, as well as land use rights came under collective ownership (Chan 1992; Bachman 1991; Domenach 1995; Teiwis and Sun 1999). This collective land rights system lasted until the 1978 reform program. During the 1970s and the early days of reform local experiments with household-managed plots of land proved to be more productive than the existing collective land use practices. The local experiments were soon expanded into a nationwide policy, the Household Responsibility System (HRS), which gave China's rural households a 15-year use right to a plot of land (Yang 2003). Under the HRS, China's rural land remained collectively owned, but the use right was allocated to households. Since 1998, the revised Land Management Act (LMA), formalized and lengthened the HRS policy into a legally recognized 30-year land use right (LMA §14.1), including the right of transfer (LMA §2.2) and only allowing reallocations of land use rights if supported by two thirds of all collective members (LMA §14.2). In 2003, the Rural Land Contract Law (RLCL) provided further detail as to the rights and duties concerning the household land use rights, especially about the transfer of the use rights through exchange, lease or assignment (RLCL §32-43). The RLCL further provided a clearer and more restricted ban on land reallocations by the village collective (the formal owner of the land) (RLCL §17, 18), a practice that had continued in many parts of China despite restrictions in the 1998 LMA.

Thus China's communist and post-communist land rights system history has been one of land distribution from rich to poor, and from family-owned and -used to collectively owned and used (in some cases) and to collectively owned and household-used (in other cases) land rights. On paper, it seems that the 1998 and the 2003 laws have strengthened household tenure security.<sup>2</sup> Empirical research

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<sup>2</sup> By tenure security we mean:

The perceived right by the possessor of a land parcel to manage, and use the parcel, dispose of its produce and engage in transactions, including the temporary or permanent transfers

has demonstrated that, although full implementation is still an ideal, great progress has been made (Prosterman and et al. 2000; Schwarzwalder et al. 2002). Such research found by 2000 already and even more in 2002 that most farmers were aware of their 30-year land use rights, and that in most villages the implementation of the 30-year land use right system had begun. It has demonstrated that a growing number (about 45%) of households have signed land use contracts and received land use certificates. Since the implementation of the 1998 law the same studies found that in the majority of villages internal land redistributions have not occurred (Schwarzwalder et al. 2002. For recent data see Prosterman et al. 2006).

The many conflicts over land acquisition tell a different story though. They highlight China's growing gap between rich and poor, between a small group of powerful land predators and the masses of powerless farmers. Furthermore, they show that, despite the stronger formal recognition of farmers' land use rights, land tenure security is weak. China's land acquisition conflicts pose a puzzle: How is it possible that despite the progress made in the lawmaking and implementation of the LMA and RCLC land acquisition conflicts continue? In order to analyze this question we need to know what causes such conflicts. We must find out to what extent the existing problems are related to the efforts made to enhance land tenure security adopted in the LMA and the RCLC. The analysis of these conflicts teaches us about current land tenure security in China and future directions for land reform. Finally, more theoretically, the case of China's land acquisition conflicts teaches us about the relationship between legal institutions, governance

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without hindrance or interference from any person or corporate identity, on a continuous basis" (Bruce and Migot-Adholla 1994: 3, quoted through Ubink 2007: 219).

Within their definition Bruce and Migot-Adholla distinguish the extent, duration and certainty of rights. Following Ostrom the extent can be evaluated by checking which bundles of rights farmers have, including access, withdrawal, management, exclusion and alienation (Ostrom 1999: 339). The new laws have given farmers land use rights that cover most of the bundle rights, making them similar to ownership. We also see that farmers have obtained longer rights, rising from 15 to 30 years, while the limitation of the duration is the biggest difference from ownership. Certainty is finally made up of "the assurance in exerting rights and the costs of enforcing these rights which should not be inhibiting" (Place et al. 1994: 19-21, quoted through Ubink 2007). Thus, land acquisition poses a problem of certainty.

institutions, devolutionary arrangements and local power configurations.

The present paper seeks to understand what factors can explain China's land conflicts in order to find solutions. It makes a critical assessment of the current literature on this topic, by combining existing primary and secondary sources with data gathered during a year of fieldwork in Yunnan province. During this fieldwork, several cases of land conflicts in peri-urban villages near Yunnan's capital Kunming were studied in detail.<sup>3</sup> Findings from this fieldwork are used to illustrate and critically analyze data from secondary and primary sources about such regulation in China. It first looks at the relationship between the land conflicts and the existing land legislation. In addition, it analyzes the incentives for land development that have caused such conflicts. Finally, it analyses the existing systems of checks and balances in place to control land acquisition and protect farmers from losing their land, both those initiated by farmers themselves and those checks and balances organized through state institutions. In the conclusion, the findings about what has caused the land conflicts will be related especially to the devolutionary arrangements that have been introduced since the reform in 1978. In this manner, it seeks to find out what can be learned from China's land conflicts about the effects of devolution on equitable natural resource management.

### Weak Legislation, Sole Cause for Land Conflicts?

China's current land legislation has been blamed for the ongoing land acquisition abuses. The first legal problem which is sometimes said to be a primary cause of ongoing land grabbing, is that China still has a socialist system in which the law prescribes that land is state owned, unless collectively owned. Such socialist law, some scholars have argued, creates a discourse that legitimizes local governments grabbing land, whether it is according to the procedures or not. One informant from Yunnan stated: "All land belongs to the state, so the state can do whatever it wants, legal or illegal, with compensation or without. It all comes down to their final right as owner." Licun village in Yunnan is illustrative of the socialist influence on land tenure. In Licun, most farmers still work under a planned economy that dictates what they should grow when. Licun's village leadership just orders the farmers to buy certain seeds and grow certain crops that are then sold

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<sup>3</sup> For the detailed methodology and case descriptions see Van Rooij (2006: Chapters 1, 7-10).

collectively to export companies through collective contracts signed by the Village Committee (VC) leadership, without any involvement of the farmer who actually is legally entitled to his land use right and thus to his crops. Farmers who are in this manner used to a strictly planned local economy have perhaps been less inclined to protest against their leadership, even though they privately expressed the opinion that they were unfairly treated when they were ordered to rent out their land at prices far below the market price, as happened in Licun. (For details see Van Rooij 2006a: Chap. 9.) At first blush, the socialist analysis holds appeal. However, in recent years many villages have reacted differently from Licun, and villagers, no longer influenced by the socialist discourse, have demonstrated against abuses nonetheless. Protests, sometimes of a violent nature, as were observed during fieldwork in Xiaocun and Jiacun village in Yunnan (for details see Van Rooij, Chaps. 7, 9), and as reported in the press about Dongzhou in Guangdong are illustrative.

A related legal problem is that the socialist ownership system has created a state monopoly of the management of land to be used for construction.<sup>4</sup> Ding has argued that such monopoly has enabled local governments to abuse their powers and make profit from the value gap between urban and rural land (Ding 2007: 7-9). However, there are many land conflicts in which state institutions are not involved. In cases studied in Yunnan, acquisition problems existed without state interference and were the result solely of collective institutions, the VC, the village self-elected body of government, which is not part of the state structure.

Ambiguous ownership rights have been a second legal cause for concern. Ho has blamed the ambiguity of ownership rights - that exists because the LMA fails to clarify who exactly owns China's rural land<sup>5</sup> - for the continuing land conflicts (Ho

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<sup>4</sup> Exceptions are construction projects for farmers use or for village collective use, such as schools or housing: see LMA §43.1.

<sup>5</sup> The ambiguity originates from the fact that at present China's land law is unclear about who is the exact owner of collective land. Collectively owned land, which consists of most of China's agricultural land, is operated and managed by the *cun jiti jingji zuzhi* (village collective economic organization) or by the *cunmin weiyuan* (the village committee members) (LMA §10) The law adds that land that so far has been owned collectively by two or more collective organizations within the village shall be managed by such sub-village organizations, which in most areas are called *xiaozu* (small group) or *zirancun* (natural village) (LMA §10). The law further provides that land that already belongs to the township (or town) shall be operated

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2003). Ho argues that township governments especially have been able to use the ambiguity of the past to make profits from village land that they should not have been allowed to manage and acquire (Ho 2001). Although the argument is convincing in cases studied in Yunnan, in peri-urban Kunming vague ownership rights were not influential in the ongoing acquisition abuses, neither have I found evidence that they were in any of the cases reported in the Chinese media or in scholarly studies on land acquisition conflicts. Land conflicts involving township governments in the cases studied concerned governments that embezzled villagers' compensation, as happened in a case in Xiaocun village in peri-urban Kunming in Yunnan (Van Rooij 2006a: Chap. 9). Such township officials were able to do this in their role as intermediary between the villagers and the district government, but not out of a legal claim based on ownership.

The law's use of the vague term of '*gonggong liyi*' (public interests) as a prerequisite for forced land acquisitions forms the third legal problem (LMA §2.4, 58.1<sup>6</sup>). Current analysis holds that this vague term has made it easier for predatory local governments to appropriate farmers' land legally (Ding 2007; Subrahmanyam 2004). Therefore, it is sensible, as some scholars have advised, to create a better definition of 'public interests', limiting the possibilities for legal land acquisition for non-public interest purposes. However, we do not believe that such a change of legislation will stop all or even a substantial part of the ongoing land conflicts at hand. In the land acquisition practices in Yunnan governments and VC leadership have not tried to legitimize their action under this term. In Licun village outright illegal commercial acquisition for non-public purposes has been carried out without any attempt to justify it by reference to the legal concept of public interests (Van Rooij 2006a: Chap. 9). The VC leadership never attempted this because their

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and managed by such a township (or town) (LMA §10). Because of China's turbulent land history and the different operation of the communes that preceded the present land rights system, there is a large degree of ambiguity about which collective unit used to own the land. This original ambiguity has been left intact by the LMA as it is based on the existing ownership system. As a result there have been many conflicts between natural villages, administrative villages and township level leaders about who owns the land<sup>5</sup> and as a result who can control procedures of land expropriation. For a detailed analysis of this point see Ho (2001).

<sup>6</sup> Farmers can also lose their land use rights to the collective, if such collective needs farmland for *gonggong sheshi* (public facilities) or *gongyi shiye* (public utilities): LMA §65.

practice of renting the land to enterprises without first converting it into state ownership was in clear violation of the LMA any way (LMA §62). Clearly, Licun's leaders did not fear to engage in an illegal practice (for details see Van Rooij 2006a: Chap. 7). Vice versa, even when local VCs acquired land for public purposes such as building a school or a temple in Jiacun village, the villagers have demonstrated in protest nonetheless (for details see Van Rooij 2006a: Chap. 7). In these cases, protest was directed not against the purpose of land grabbing but against the compensation farmers were to receive.

The existing regulation on compensation for arable land loss is the fourth and most important legal concern discussed here.<sup>7</sup> Ever since the adoption of the LMA<sup>8</sup>, there has been criticism of the provisions on compensation for farmers' loss of land. A first point of criticism concerns the procedure for compensation. At

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<sup>7</sup> The LMA provides for a standard of compensation 6-10 times the annual average output value of the three preceding years and a resettlement fee of 4-6 times average annual output. The law also provides absolute combined compensation maxima of no higher than 15 times annual output or when approved by provincial authorities no higher than 30 times the annual output of the land compensated. The specific standards are determined at the provincial level. Both Village Committees and farmers are to be consulted in the requisition compensation. Compensation payment shall be made public, and the new act explicitly states that it is forbidden to embezzle or divert compensation funds (LMA §47, 48, 49).

<sup>8</sup> Even during the LMA amendment approval process there was criticism. During the law making process commentators, including local governments, complained that the proposed compensation was too low, that the procedure lacked transparency, that a hearing for farmers should be instituted, and that payment of compensation should be done in public, and finally some thought that monetary compensation was not sufficient and that farmers should be helped to find new employment. The NPC (National People's Congress) Legal Committee reacted, stating that the height of the compensation fee is a difficult issue and that circumstances vary from place to place. Therefore, the committee held, it is impossible to enhance the draft to cover all points raised with this regard. The Committee did make suggestions for changing the draft to allow for more transparency by instituting a hearing, making payment of fees public, and a rule that local governments should do their best to help farmers who have lost their land to start enterprises. These suggestions made it into the final law. (NPC Legal Committee 1998: 316)



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present, China's LMA provides only that farmers affected are to be informed about land requisitioning and the compensation to be paid (LMA §48). Thus farmers are not involved in bargaining about the compensation amount and have no formal legal instrument for stopping land acquisition when they do not agree with the amount of compensation offered. An important and logical change would be to grant farmers rights of negotiation about compensation prior to the land acquisition approval. In local Beijing municipal regulations farmers have gotten a stronger voice in the compensation negotiation process as the local rules require that a written agreement between the requisitioning unit and the rural collective economic institutions or village committees is required which governs the compensation amount and procedures (Subrahmanyam 2004).<sup>9</sup> However, whether such changes in the law will affect current practice remains to be seen. Even the existing procedure is not well implemented, as recent research found only 20% of the farmers whose land was acquired had received required prior notice about compensation (Zhu et al. 2006). This shows that even if negotiations became required by the law, many land developers would still be able to start construction without following the procedure, whether it was a duty to provide information as at present or a duty to enter into negotiation introduced in the future. In addition, our study of negotiations over compensation for collective construction on arable land in Jiacun village in Yunnan demonstrates that, even where farmers are able to enter into negotiations with developers and VC leadership, they have still demonstrated in protest, sometimes just to get more compensation (Van Rooij 2006a: Chap. 7). Therefore, the issue of compensation is not so much solely one of procedure, but also of the amount of compensation paid.

Most of the protests concern the amount of compensation.<sup>10</sup> The data collected by Zhu et al. demonstrates that 67% of the farmers whose land has been expropriated are dissatisfied with the amount of compensation received (Zhu et al. 2006). Thus,

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<sup>9</sup> One consultant has expressed doubt about the effectiveness of this new rule, as it does not require such agreement to be delivered to the higher government for consideration.

<sup>10</sup> Here we disagree with Phan (2005) who states that the process of expropriation has been more important. We are not convinced by the support she provides for this conclusion. In our view, the process is often only mentioned in order to get better compensation. This opinion is based on the cases studied in Kunming, where as long as due compensation was paid nobody cared for the correct procedures, which were often not followed any way.

it seems perfectly logical to blame the existing minimum amounts of compensation set by statute, as most analysts have done. At present, China's LMA provides that farmers should get at least six times the average annual output of the last three years and an additional amount of at least four times the average annual output for farmers made to relocate (LMA §47.1). China's statutory compensation minima for land acquisition are based on the idea that farmers should be compensated sufficiently to provide them with the standard of living they previously had for a set number of years into the future. Current compensation minima are therefore not based on the economic value of the land acquired. Some scholars have questioned their fairness. They have argued that the statutory minima at present are not even enough to enable farmers to retain the same standard of living as before, as the law does not provide for the increased cost of living which is especially likely to ensue for farmers who have to leave rural areas and to get by in the much more expensive urban centers. The second criticism of the present statutory compensation concerns the relative unfairness of the current compensation minima. Here scholars argue that the compensation minima bear no relation to the value the land has once it is acquired for construction purposes. They argue that farmers should be allowed to share in the immense wealth the land conversions bring. Guo's research from Yunnan has shown that many farmers there have demonstrated in protest against land expropriation cases, not so much because they disagreed with the overall amount of compensation but because they were jealous of the amount of money that land developers were making (Guo 2001). Such jealousy was also apparent in my own research in Jiacun village in Yunnan where farmers demonstrated in protest when a school was built, not because the compensation was absolutely too low, which it was not, but because it was lower than what a Temple project had paid their fellow villagers a year earlier (Van Rooij 2006a: Chap. 7).

The amount of compensation, whether absolute or relative, is thus a problem that needs to be addressed in the law. At present, there have been efforts, both in local legislation in Beijing and in national policy documents and legal interpretations, and supposedly in the new draft LMA, to incorporate higher compensation minima which are not related solely to output value. In a Beijing local initiative for example, local rules offer a minimum compensation standard based on the agricultural output value, land location, and compensation for resettlement, and adjusted according to social and economic development (Subrahmanyam 2004). A true change that would link compensation to land market value seems to remain difficult to accomplish. First, there may not be sufficient support to make such a change in national legislation, and second, as long as the land market is not well

developed it remains difficult to determine a fair price to base such compensation on.

It is doubtful whether a change in legislation will solve existing land disputes concerning the amount of compensation. A change in legislation will for example not address the many disputes in which farmers have been dissatisfied with the compensation they have received because the local authorities and land developers have violated existing legal compensation requirements. In Licun, for example, farmers just received no compensation at all because their own leaders never involved them in the land deal made (Van Rooij 2006a: Chap. 9). In Xiaocun, farmers protested against compensation that was unsatisfactory as a result of local embezzlement (Van Rooij 2006a: Chap. 9). Thus, in a number of cases compensation-related protest is related to a violation of law.

In sum, although the current land expropriation abuses can be attributed to the text of the law, and a change in the law would lead to amelioration, in many cases the problem is largely related to how the law functions in practice. Therefore, land acquisition conflicts cannot be explained merely through a legal analysis. Neither can such land conflicts be solved through changes in legislation. Land acquisition conflicts will continue unless other factors are taken into account. Therefore, this paper will continue by looking at how law functions in practice and what non-legal factors have influenced the ongoing land disputes.

### Understanding the Land Predator: Incentives and Pressures

Land acquisition conflicts occur primarily when local governments and land developers stand to benefit from land expropriation transactions. In China this benefit can be gained because of the wide gap between the value of land used for agricultural purposes, based on agricultural output, and land used for construction purposes based on the real estate market (Subrahmanyam 2004). In Licun village in Yunnan, for example, the local elite became rich by leasing rural land for 12,000 RMB per *mu* (app. 667 sqr metres) and then leasing it as construction land for 80,000-90,000 RMB per *mu*. In Fujian province a local government paid 10,000 RMB per *mu* to farmers and then resold it to developers for a minimum of 200,000 RMB per *mu* and in some cases even up to 750,000 RMB per *mu*. In another case Hangzhou farmers were paid 160,000 RMB per *mu* in compensation, while the land was then sold for housing for 2-4 million RMB per *mu* (Ding 2007: 6). The biggest value gap in China exists on the outskirts of cities, where high

value urban construction land encroaches hungrily upon adjacent rural plots, and it is exactly in these peri-urban areas where most land conflicts take place. World Bank land expert John Bruce compares going from urban to rural land in terms of its value to falling off a cliff (cited in Subrahmanyam 2004). He argues that the only solution to ongoing land acquisition conflicts is to reduce this incentive by reducing the value gap between rural and urban land (cited in Subrahmanyam 2004). The value gap is central in any understanding of land grabbing related conflicts. The gap explains why there is such a struggle for land.

An additional manner in which local governments benefit from land transactions comes from the money that can be made from illegally diverting compensation funds. In Xiaocun the township leadership embezzled part of the compensation that the district government was to pay local farmers (Van Rooij 2006a: Chap. 9). Ironically, this means that, if farmers are able to negotiate higher compensation from land developers, local governments have a greater incentive to embezzle such funds and thus to participate in land acquisitions, with yet more land conflicts as a result.

The fact that local governments are increasingly pressed for funding exacerbates the incentive for land grabbing created by the land value gap and the possibility of embezzling compensation. While the post-1978 reforms led to extra local tax revenue, they also increased local government expenses as local functions and local bureaucracy increased. The 1993 Tax Reforms had a major impact by giving local governments more functions but no more revenue. Consequently, local governments have faced increasing budgetary deficits (Ding 2007). Land leasing is an increasingly important source of local government revenue. Ding provides the example of Hangzhou city where 20% of the municipal income of the local government of this city of 3 million inhabitants was derived from land revenues. “Revenues generated from land can account for up to 60% of total fiscal incomes of local governments” (Ding 2007: 6, referring to JIGMLR 2003) For village level authorities the situation is different, yet similar. VCs, the directly elected bodies of village self government, are not part of the state bureaucracy and thus do not receive state funding related to taxes. As such they are to be paid from local income. In all of the Yunnan villages studied here, such income was largely related to profits made on land deals. Thus local leadership is directly paid through money made from land acquisitions. A related problem is that local governments have recently lost tax revenue opportunities. This happened when the central government first decreased and then later abolished rural taxes, in order to lighten peasants’ burdens. In many communities, especially purely rural ones where local

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governments cannot tax industry, rural taxes have continued to exist despite the central level reforms.<sup>11</sup> However, once these new reforms take root and local governments can no longer tax their farmers, they will be under additional pressure to make use of income related to the farmers' land. Ironically, this might mean that the tax measures adopted to protect farmers might actually cause them to lose their land without proper compensation.

An additional pressure on local governments that explains a hunger for land is the pressure they are under to demonstrate local economic growth. Such economic growth, whether in the form of urbanization or industrialization, requires land conversions for building roads, factories, or housing.<sup>12</sup> Within China's system of governance, the center exercises control over local governments through a vertical management system. Since the reform period this system has emphasized economic growth and social stability, which provides a second perspective for understanding the priority given locally to short-term growth. Under this system, local governments are evaluated on the basis of certain performance indicators. If they do well local leaders can get bonuses and promotions, and if they fail they may be fined. (For more detail see Chou 2005: 45-47.) In the evaluation system (*kaohu*), economic growth and social stability are always the two main yardsticks against which success or failure are measured (Huang 1996; Edin 2003. On the link with weak enforcement, see Liu 2000).

In sum, the land value gap, the lack of local state and VC revenues, and the pro-growth pressure and strategy can explain why land predators have engaged in land expropriations. They cannot explain, though, how these land predators have been able to grab land, often in clear violation of the law, without successful opposition by those aggrieved or the state whose laws and policies are aimed to prevent such abuses. In other words, why have the land predators not been stopped, especially

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<sup>11</sup> Good examples can be found in Chen and Chun (2004) who have detailed how farmers in Anhui have attempted to protest against illegal tax practices, a situation in many ways similar to the land grabbing discussed here.

<sup>12</sup> Because of China's legacy of a planned economy, and the reform economic decentralization in which local governments got to own and invest in local enterprises, local governments have retained close ties with local industry and thus themselves also benefit from local economic development, which then forms an important source of revenue for China's poor local bureaucracies (Phan 2005, also quoting Zhang 2002).

now that both local farmers and the central state have made clear that they want these practices to end? In the next two sections we will discuss the possibilities for keeping land predators at bay, first by discussing farmers' options for redressing these situations and second by discussing the state's efforts at punishing land predators who have violated the law.

### Empowerment: What can Farmers do? Legal and Factual Remedies

Given the existing strong incentives and needs, only an effective system of checks and balances can stop ongoing land abuses in China. Such a system could exist in two forms and ideally would exist in both. First in a bottom-up manner local governments and land developers could be made accountable to citizens and grassroots organizations. Second, in a top-down manner higher-level state institutions could control local governments and land developers in such a way that they refrain from unfair land appropriations. This section will address the bottom-up system and look at what land grab victims can do when faced with an unfair land acquisition. It will discuss farmers' legal and extra-legal options for controlling land expropriations.

A first observation is that legal options—initiating civil or administrative litigation against unlawful behavior of land developers or local government—have not been used much or with much success. In the cases from Peri-Urban Kunming, Yunnan studied, as well as in the cases from other parts of China discussed so far, farmers having lost their land did not turn to the courts, but instead resorted to extra-legal factual measures to address their grievances.<sup>13</sup> This observation is supported by nationwide data on legal redress for land takings, which demonstrated that only 0.9% of aggrieved farmers filed a lawsuit for more compensation (Zhu et al. 2006). Clearly, going to court has not been a preferred option for land grab victims.

A lack of legal awareness and rights awareness may be a first reason why few

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<sup>13</sup> Of course there have been some instances where citizens have made use of courts. Phan (2005) describes urban acquisition cases in which neighborhood organizations have made use of legal aid support to assert their rights. Those cases are from Liaoning (Phan 2005: 633).

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farmers have gone to court.<sup>14</sup> Especially in more remote areas, farmer literacy is still low, making legal awareness even more problematic. In addition, in many cases farmers are informed of their rights by local governments and local leaders who may not always tell them the full content of these rights. However, whether a lack of knowledge about the existing laws and policies prevents farmers from going to court has become increasingly questionable. The central state has initiated nationwide legal education campaigns (*pufa*) in which there has been special attention to the 1998 LMA and the 2003 RLCL, giving local governments little opportunity to distort the flow of information. Research has also demonstrated that farmers have increased knowledge of their land rights and know about the 30 years land use right regulations and the fact that these cannot be violated at will (Schwarzwalder et al. 2002). Peri-urban Kunming villagers are illustrative. When asked about their land and their land rights local farmers there proudly tell about the 30 year land right policy. Even in areas where the level of knowledge had traditionally not been high, village activists have started to study land legislation and land policies and have used their self-acquired knowledge to start protests. In a case in Yunnan, a district government had first forced a village to provide 100 *mu* of arable land for a landscape theme park. When this land was not duly compensated and another 100 *mu* was to be requisitioned one of the local farmers went to the local city bookshop to get books about the existing land laws. Through self-study, he learned about their rights, and this eventually led to extra-legal protest (interview with a local Yunnan researcher, April 2006; see similar examples in Chen and Chun 2004).

So if farmers have an increasing legal awareness, why do they not turn to the courts for protection? An immediate answer may be that successful civil and administrative litigation requires the hiring of a lawyer to take up the case.<sup>15</sup> Without a lawyer to prepare and present an argument for their case in accordance with China's increasingly complex procedural rules, most undereducated peasants do not stand a chance in court. A problem here is that lawyers in China are highly risk averse and do not like taking sensitive cases (Michelson 2006). Lawyers are

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<sup>14</sup> For a good study of legal awareness in China from the 1990s see Gao 2000. A more recent study of urban awareness and litigiousness is Michelson 2003.

<sup>15</sup> Having a lawyer as representative is not compulsory in China's civil and administrative procedure, but the law provides that citizens have the right to be represented by one (Civil Procedure Code §49, 58, Administrative Litigation Law §29).

not inclined to take cases against local governments, whether civil or administrative, especially if they concern volatile highly politicized matters such as land acquisitions (Peerenboom 2002a). They lack independence from local governments and do not wish to upset this relationship. Lawyers' fees form another obstacle for farmers, who often barely make a living when they still have their land. Thus farmers are not ideal clients as they have little money to pay for a well-prepared case and their cases do not have a high probability of success. As lawyers in China are struggling to make ends meet, they tend to refuse cases with a low fee potential (Peerenboom 2002a). In the peri-urban Kunming villages in Yunnan, which are not poor by local standards, villagers rarely go to court as they state that getting a lawyer is just too expensive. Only in cases such as divorce in which there is no other way do they go to court. In some areas legal aid clinics, especially at universities have been set up to help aggrieved citizens get their rights defended. In one Hunan case, a team of Tsinghua University lawyers got involved when residents who had protested against a forced eviction from their homes had been detained without grounds (Fu 2004). Especially Beijing-based lawyers have become increasingly active in helping victims of national scandals, probably because of the fame such cases bring them.<sup>16</sup>

In the Hunan case, lawyers did not initiate litigation but sought negotiations instead, while petitioning higher levels of government. This shows that even if land grab victims find legal aid, going to court is not always the preferred option. The reason for this is that the chances of winning a case against a local government or against land developers with good local connections are slim. Courts are paid and partly managed by their local governments and have tended not to bite the hand that feeds them. In addition, the context of judicial corruption and personal favors (*guanxi*) further denies poor peasants success in the courtroom. Courts, like lawyers, have refused to take on land cases, claiming that they lack jurisdiction, or that litigants do not have a right of standing (Phan 2005: 18). However, even if litigants are able to get their cases tried in court, research on administrative law practice has demonstrated that in a high number of cases the government has a much higher chance of winning (Pei 1997; Peerenboom 2002a). In a large number of cases the courts never gave judgment, but instead plaintiffs settled with local governments and discontinued their suits. Pei has argued that this

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<sup>16</sup> Good examples are the Sun Zhigang case where a team of Beijing lawyers was able to influence the State Council to revoke regulations on detaining citizens without proper papers and the Songhua pollution case where a team of Beijing lawyers tried to file a public interest litigation suit.



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has become part of citizens' strategies to gain as much as possible from administrative litigation. It developed because a plaintiff's chances of winning a case are slim, but local governments are afraid of losing a case, even though this rarely happens. Citizens have thus initiated administrative litigation in order to boost their negotiation power, in which they can threaten to pursue the case to judgment unless some of the grievances are addressed (Pei 1997). Even if citizens win a case, whether administrative or civil, that does not necessarily mean that they get their land back or that they get compensation. Executing judgments has been notoriously difficult in China, especially against powerful local actors (Clarke 1996; Peerenboom 2002b; Chen 2002).

Given these formidable obstacles to legal remedies, aggrieved farmers have turned to extra-legal options. An important method has been to send a formal letter of petition complaining about the abuses to a higher level of government or to part of the higher-level bureaucracy. Such petitioning is a Chinese legacy that has continued throughout the communist era until today (O'Brien and Li 1995). All of China's bureaucracies have specialized bureaus complete with service counters to receive citizens' petitions. In Kunming one can see long lines of complainants waiting to hand in their petition to officials they hope can help them.

For land acquisition cases petitioning the higher-level government, or petitioning the state land resource management bureau or the construction bureau have been popular. Petitioning has been used much more widely than formal litigation. In Beijing, for example, the total number of real estate related cases in court in 2003 was 3948, while petitions about land related abuses in the first half of 2004 to the Ministry of Construction alone numbered 18,620 (Phan 2005: 634). On the other hand, in the cases from peri-urban Kunming, Yunnan, none of the aggrieved farmers attempted to petition on the matter to higher-level governments. But this is not to say that such petitioning does not occur in Yunnan province. I have mentioned the case in Qincun, which is some two hundred kilometers south of Kunming, where a local villager learnt through self-study that their legal rights had been violated. He tried to petition municipal and provincial level governments to stop the local Township and District authorities from taking the land without paying in full. The district authorities reacted by arresting this local champion of the people, whom local villagers had started calling their own 'Deng Xiaoping' and placing him under arrest. This shows that petitioning is not easy; neither does it guarantee a successful intervention in the local context (Interviews with local researchers, April 2006).

The Qincun petition-related arrest is not an uncommon phenomenon in China. In Shishan village, in Fujian province, Lin Zengxu, a local land petitioner, was arrested by a police squad of 12 men while taking a nap one afternoon. The police gave Lin a severe beating and wanted to take him away to jail. However, family, neighbors and friends were able to fight off the police and rescue the man who had for years tried to stop illegal land grabbing and get higher compensation for farmers losing their land. Lin later escaped to Beijing (Cody 2004). Also in Fujian province, in Minhou county, Qingkou Town, another leader of a peasant protest movement against illegal land seizures who had filed a higher level petition, Xiao Xiangjin, tried to escape the police when they came to lift him from his bed in the middle of the night. At first, he was able to flee, while later he was detained and questioned at Fuzhou airport when boarding a plane to Beijing to present a petition to the central government. Upon return to Fuzhou he was arrested and sent to a reeducation labor camp “for having entertained prostitutes four times in his home and office at Qingkou” (Cody 2004). This last case shows how high up in local protectionism can run in these kinds of cases. Only provincial level authorities would have been able to detain Xiao Xiangjin at the Fuzhou airport. If even the provincial level authorities are involved in protecting and covering up local land abuses, farmers have nowhere else to go than Beijing. Recently even there many petitioners have been detained or sent straight back in an effort at the level of central government to control some of the land related protests (Phan 2005).

Even when higher-level authorities are willing to receive a petition and endorse the grievance, the impact on the local situation has proved to be limited. When superior authorities are called in to investigate local scandals, a temporary measure may be taken. However once the higher authorities leave and any press attention the case may have attracted subsides, the local elite may return to old practices while taking retribution on those who have betrayed them. An extreme case where this happened is when Li Changping, at the time a township party secretary in Hubei province, wrote a letter of complaint to prime minister Zhu Rongji about how local governments, from the village to the district, had been maltreating local peasants. Li’s letter was at first successful as Zhu Rongji send a personal investigative team to Li’s district and the team made strong recommendations for changes to be implemented locally. However, as time passed, and subsequent central level missions were persuaded that a real change had been made, local powerholders regained their influence. This is evidenced by the fact that Li Changping felt threatened in Hubei Province and had to move elsewhere, losing his position and home.

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Since the late 1990s, China's peasants have also been able to use village elections to voice their dissatisfaction with land takings and seek amelioration by installing new leadership. The central government set up a system of self-government at the rural grass-roots in 1987. (See generally: O'Brien 1994; O'Brien and Li 2000; Shi 1999; Manion 1996; Liu 2000; Xu 1997.) During the 1990s officers in this system were increasingly elected democratically, especially after the 1998 new Organic Law on Village Committees introduced truly direct elections with more candidates than positions. Such elections have sometimes been used by farmers against land malpractices. In Jiacun village in Yunnan, for example, villagers used the opportunity of the first round of direct village elections in 2000 to protest against the compensation they were about to receive for their land-loss due to the Buddhist temple construction project. They tried to nominate a mentally disabled person to partake in the elections as their village leader. Although their nomination finally failed because of the nominee's mental handicap, the attempt did send a clear signal to the incumbent village leader to pay attention to the villagers' demands. In Jiacun there is now a good working system of *fenhong* (literally dividing the red) which allows all villagers to share in the land-related payments providing farmers with a per-capita income of 2000 RMB a year, which if more land is rented out will increase accordingly (Van Rooij 2006a: Chap. 7). In Qincun village in Yunnan, farmers succeeded in electing a new leader when they found that their old leaders had not secured sufficient compensation from state land developers. Their new leader actively tried to get more compensation when a new batch of land was to be taken and was even arrested when he filed a petition with a higher-level government (Interviews with local researchers, April 2006). However, elections have not been successful in all cases. In Licun village in Yunnan, for example, farmers having lost their land without proper compensation have not tried to use the elections. They state that the local elite that has just taken their land also dominates the election process. They have no way to win against the families that have controlled the village for decades and have strong connections with government officials at higher levels. Similarly elections offer no protection against land takings by higher level authorities as they are not directly elected. In the Xiaocun village where the township level government had embezzled compensation funds, remedy through election again was not possible (Van Rooij 2006a: Chap. 9).

Given the weak legal and participatory options farmers have against land takings, in many cases they either do nothing or rise in protest. Licun village in Yunnan is a good example of doing nothing. Even though the local elites have robbed local farmers of their land without paying proper compensation, and even though the

elites and not the community have benefited from the money made in these transactions, farmers have done nothing. When interviewed they express cynicism and helplessness. Going to court, petitioning or elections, none of them believes it will change existing power relationships. So far their dissatisfaction has been kept inside. In Licun no active protest has erupted (Van Rooij 2006a: Chap. 9).

Meanwhile, in many other villages in Kunming and elsewhere in China, helpless villagers have initiated protests, sometimes of a violent nature. There have been different protesting reasons and methods. Some protests are initiated by villagers when they find out about unfair land takings. This happened in cases observed in Xiaocun and Jiacun village in Yunnan. In other cases, violence erupts when villagers protest against the imprisonment of one of their petitioners, as happened in the Dongwei case in Guangdong. One method of protest is to surround the leadership headquarters so no one can enter or leave the building. This happened for example in Jiacun village in Yunnan when villagers felt they had been insufficiently compensated for land lost for the construction of a Buddhist temple.<sup>17</sup> Another method is going to the city to demand attention for the matter. One such case occurred on August 20 2004 in Beijing, when hundreds of farmers blocked the capital's traffic with their bicycles and rickshaws in a desperate effort to vent their frustration about a new development project enabling the city's new rich to seize their land (Cody 2004). In other cases protesters block or sabotage the construction project that is to take place on their land. This happened for example in Jiacun village where villagers cut the power lines of a new school construction project they felt they had not been properly compensated for.

Protests have led to violence. Ang writes: "The clashes have become increasingly violent, with injuries sustained on both sides and huge amounts of damage done to property as protesters vent their frustration in the face of indifferent or bullying authorities" (Ang 2005). Catherine Baber, deputy Asia director at Amnesty International stated: "The increasing number of such disputes over land use across rural China and the use of force to resolve them suggest an urgent need for the Chinese authorities to focus on developing effective channels for dispute resolution" (Ang 2005). In some cases violence was initiated by villagers, while in others villagers reacted with violence when the state intervened to stop protests that were already occurring.

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<sup>17</sup> It is interesting to note that this manner of protest was also used by Falungong members in 1999 when they surrounded the CCP headquarters, Zhongnanhai (Human Rights Watch 2002).

In conclusion we may state that farmers have had weak weapons to resist land abuses. Legal or semi-legal options in particular have not been able to protect them from land takings. All that has remained has been acceptance or outright protest combined with violence. There are two important points to be made. First, from the cases studied in Kunming, activism, whether through legal, semi-legal or illegal means seems to occur in places where farmers have sufficient autonomy from local leadership. In Jiacun and Qincun where farmers were most active, local income was to a large extent related to non-local sources, which were independent of the local leaders involved in the land abuses. In contrast Licun villagers who have not done anything against much clearer and worse land takings, depend mainly on agriculture that is largely controlled by the local elites. In Licun no petitions or elections have been used and the farmers so far have not even demonstrated in protest. A second observation is that most of the action against land takings is of a disorganized or at least of a locally organized matter. There has not been a national or even a provincial or prefectural organization in which aggrieved farmers have tried to combine their weak positions into larger and stronger institutions to fight those who have taken their land. This is not surprising within China's current political context, in which local protest is condoned as long as it does not directly criticize the central government or become a larger organization that indirectly could threaten the party's supremacy.

### **Street Level Bureaucracy: The Important Role of State Enforcement and its Failure due to Local Protectionism**

In order to deal with unfair land takings the state has instituted a system of norms, discussed above, combined with an enforcement system to punish and stop violations of such norms. The state has established an institutional land management structure at all levels of administration from the center in Beijing to the township level such as at Haikou and Liujia Township in Yunnan province. Informally the state bureaucracy even penetrates into China's more than one million villages and even larger number of sub-villages, in whose village committees there are also leaders responsible for the implementation of land law and who are supposed to work under the supervision of the vertical structure above them.

So far, most studies of land conflicts have paid scant attention to the role these state institutions have played. As we detailed above, part of the problem may be

that the norms themselves are insufficient to protect farmers, but an equally important problem is that the existing - and thus also future amended and improved norms - are violated. Thus there is an enforcement problem, which is especially serious now that we know that farmers themselves have not been successful in securing their rights.

The enforcement is largely left to the State Land Resource Protection Bureaus (SLBs). The law provides for different sanctions for the various violations of the LMA norms protecting farmers from unfair takings. The sanctions mainly cover the unprocedural taking of land, for which violators can be ordered to give back the land, to pay back illegal proceeds, to pay fines related to the illegal proceeds, and in really bad cases even be prosecuted through the criminal justice system (LMA §73, 77, 76).

If the Chinese state so wishes to squash illegal or unfair land takings, why has it not been able to do so? Can the Chinese state not control itself? The main problem is a lack in vertical reach. Here it is important to understand China's current grassroots system of governance. In China's current system of governance local state institutions are to a large extent independent from control either by higher level state organs, or from local citizens. The lack of state vertical control over local level bureaucracies results from the fragmentation of governmental power that has originated in the post-1978 reform program.<sup>18</sup> Cohen writes:

Contrary to American images of the PRC as a ruthlessly effective authoritarian regime whose writ runs from the Standing Committee of the Politburo in Beijing to the most remote hamlet, in many respects contemporary Chinese government resembles a series of feudal baronies more than a totalitarian dictatorship (Cohen 2001).

As a result of the post-1978 de facto devolutionary governance set-up local governments are largely autonomous as against higher levels of administration. The Kunming Land Bureau is subordinate to the provincial SLB and the provincial government. In practice, of these two 'masters' the local government is the strongest, because it controls the bureau's budget and leadership appointments (for

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<sup>18</sup> Lieberthal and Lampton have used the term "fragmented authoritarianism" to describe this phenomenon (Lieberthal 1992, 1995; Lampton 1987; Lieberthal and Oksenberg 1988).

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which see the following paragraphs).<sup>19</sup> Law enforcement is largely left to SLBs that reside under the lowest local governments at township and district levels. These bureaus used to be paid and staffed by the local governments. Thus they were ill equipped to enforce the law against those bodies which were in many cases directly involved in illegal land practices. As a result enforcement has been weak, as local land bureaus protected the interests of local elites, a practice called '*difang baohu zhuyi*' (local protectionism).

A second problem is that the enforcement bureaus lack the legal authority to act against some of the most important violations related to the land conflicts. For cases in which the land was taken legally but in which the farmers were not happy with the amount of compensation nonetheless, either because the amount of compensation paid was below the legal standards, or because the amount of compensation paid did not arrive in full, or because the farmers deemed the legally amount of paid compensation to be too low, the land bureau has no clear enforcement authority. The law does not provide clear rules on sanctions for sub-optimum or even sub-standard compensation. Only if compensation is embezzled can the embezzler be prosecuted and be fined (LMA §79; Criminal Code §§271, 272, 382, 384, 342). In other cases, the bureau has no direct enforcement authority. In such cases, the Kunming SLB explained that they will try to negotiate a better compensation for the farmers with the land-grabbing actors. In order to exercise power in such negotiations the land bureau in Kunming has used its authority over land use approval as leverage by denying approval until full compensation or more satisfactory compensation is paid (Interview Kunming Land Bureau 3 December 2004).

Apart from local protectionism and the lack of legal enforcement authority, enforcement bureaus suffer from internal problems. Firstly they lack funding. The deficiency in funding has been part of the cause of goal displacement, as enforcement bureaus have had to engage in entrepreneurialism in order to pay their staff. They do so through *shiye danwei*, semi-subordinate agencies who carry out consultancy and other commercial activities. The Kunming SLB's enforcement department has a staff of 22, of which only 16 are paid for through regular funds (Interview with enforcement staff of the Kunming SLB). The other six must thus be paid through other means.<sup>20</sup> Because of the meager funding, the Kunming SLB

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<sup>19</sup> Most literature on environmental enforcement in China recognizes these issues (e.g. Jahiel 1997, 1998; Sinkule and Ortolano 1995; Ma and Ortolano 2000).

<sup>20</sup> It is not clear how this is done in Kunming. Informants refused to explain at the

enforcement division lacks staff and cars to carry out fully their inspection work for such a large region. Secondly, the quality of the staff is problematic. Land Bureaus have had problems in attracting the right kind of staff. In the post-Cultural Revolution 1980s and early 1990s, China, and especially peripheral provinces such as Yunnan, did not have many university graduates at Bachelors (*benke*) level, let alone Masters (*suoshi*) level. The predecessors of the SLBs were established during this period. Therefore, they had to start by employing staff with a lower level of education, at most with professional two-year degrees (*dazhuan*) or several years of working experience. (Cf: Li 2004: 167; S.Y. Tang et al. 1997: 869.) Recently staff educational standards have been raised, especially for enforcement personnel. All new staff must now have passed the civil service examination, for which a Bachelor's education is compulsory. Moreover, enforcement agents also need an enforcement permit, which requires extra education (Interviews with enforcement and personnel staff, autumn 2004). The Kunming SLB has recently been able to attract two new enforcement agents with a Masters degree. Thirdly, weak personnel incentives and controls further explain China's weak land taking related enforcement performance. The internal structure and management procedures in the land bureaus are insufficient to ensure job conformity of enforcement agents. (For an elaborate account see Van Rooij 2006a: Chap. 13). Consequently, bureaus are at risk of their agents shirking their duties. Finally, land bureaus are largely centrally managed institutions in which the bureau's leadership has a final (direct or indirect) influence on almost all major personnel decisions except for those affecting their own positions (Van Rooij 2006a: Chap. 13). This has strengthened local protectionism, because local governments, through their power of appointment to the powerful bureau leadership, have a strong indirect influence on all bureau personnel decisions.

The central government has recognized the need to improve its performance and strengthen its action against illegal land takings. This is no easy task as it faces formidable obstacles such as local protectionism, weak bureaus and difficult enforcement procedures. As for other enforcement problems, such as that for pollution control (Van Rooij 2006b), the state has organized political campaigns to enhance the enforcement of land law. The first were in 1997 and 1998, mainly attempting to stop further loss of arable land and to prepare for the introduction of the 1998 LMA. In 2003 another campaign was organized to stop continuing illegal and irregular land practices, and especially to stop the further development of

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time of interview.



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economic development zones, which were an important cause of loss of land by farmers. Nationwide data reported just after the campaigns in late 2003 and early 2004 are optimistic. According to these reports, the campaign detected more than 170,000 illegal land use cases, of which 128,000 were punished (Anon. 2004a; for earlier reports see Anon. 2003a). Furthermore, during the campaign, 732 governmental officials received internal disciplinary sanctions (*chufen*) for their involvement in these cases and 134 individuals were prosecuted under criminal law. Similarly national reports proudly announced that the campaign had been successful in curbing the illegal use of land for so-called development zones. Of the 5658 development zones that had existed, 2046, or more than 35%, had been dissolved during the 2003 campaigns (Anon. 2003b). Furthermore, the Ministry of National Land Resources published nine model violation cases, five in November and four in December, it had detected and severely punished, just as the campaign had planned (Anon. 2004b). These national data are not however the full story. The validity of the data presented in the reports, is, as any data in China, doubtful.<sup>21</sup> An indication of this is found in our fieldwork. When we first started our research in Kunming in January 2004, the 2003 campaign had just ended. By that time, the 2003 campaign had not affected local villages such as Jiacun, Licun and Xiaocun as the national reports would have had us believe. Some of the violations discussed above were still continuing in early 2004, and the 2003 and 2004 campaigns had not stopped them or even addressed them in any way. In one of the Townships where research was carried out, Kouxiang Township, a development zone still existed in 2004. Even though the 2003 campaign aimed to curb all further development of such zones, especially by township governments, the Kouxiang government proudly explained their development zone work to me in May 2004 (Van Rooij 2006a: Chap. 14).

Apart from these campaigns, the central government has also tried to address the many land acquisition conflicts through a reform, recentralizing the devolutionary land enforcement structures. In this reform, called the 'vertical management reform', the provincial level's control over land management and enforcement is to be strengthened (see generally Ye 2004: 6). The reform has just started, and we know that in Kunming the lowest levels of land management administration, city district bureaus, were converted into offices directly subordinate to the municipal level SLB, which will allocate their resources and appoint their personnel

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<sup>21</sup> The problem of positive bottom-up reporting is well known in China. A lack of accountability and transparency makes it difficult for higher levels to get trustworthy information from subordinate departments.

(Interview with the Kunming SLB, Personnel Department 3 December 2004; the State Council has issued an order to the same effect to SLBs: State Council 2004). In Jiacun Township, the newly vertically reformed SLB Township office is worried about its new inspection responsibility. As one of the agents told me:

In the past our work was easy, we just did what our Township government wanted, but now we have to inspect for the District SLB and they do not want to consider our local conditions. We fear that there will be conflicts between our new superiors and our local leaders.

It seems that the vertical management reform has not removed the conflict of interests and powers that lies at the heart of local protectionism. It is questionable whether the recentralized land bureaus will be strong enough to enforce the law against local elites including local governments.

## Conclusion

The ongoing land conflicts in China are caused by the value gap between arable and construction land, and the power local elites (who are closely connected to local governments) have been able, given the weak checks and balances, to cash in on this gap. The strengthening of land rights in national legislation has so far not stopped local abuses. Especially local elites have been able to benefit from stronger protection of their own rights, while many weaker farmers have lost their land without due compensation, in many cases in clear violation of the law. Solutions to this problem should do more than merely aim to strengthen legal norms, but should also address the various factors that have caused the weak checks and balances in respect of these local elites. While improving state enforcement is essential in this, the state is not likely to be strong enough to curb the power of the elites without simultaneous pressure from disenfranchised land users. This means that measures for reform should concurrently address legal awareness, legal aid, judicial reform and the freedom and actual possibility of association for public interest groups.

The case of China's land acquisition conflicts sheds new light on current debates about whether devolutionary arrangements of natural resource management are beneficial. In many countries worldwide, natural resource management is thought to benefit from devolutionary arrangements. Devolving management to local

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communities is seen as an important reform addressing problems such as those discussed in this paper: violations of state laws and weak actual remedies for disenfranchised local rights holders. In many countries the debate about devolutionary arrangements centers on choices between state normative systems and devolved non-state, community-based customary practices. China's current land management system is similar to but different from such proposed devolved arrangements. On the one hand, land management is strictly controlled by the state, as China has maintained that the norms on the basis of which land is managed should be state norms as laid down in policy and increasingly legislation. On the other hand, the actual rights within state law and the institutions that are to safeguard such rights are devolved and largely managed by local communities. In addition, state institutions in place to adjudicate land conflicts and enforce existing land laws are de facto decentralized and have a considerable degree of autonomy.

China's devolved land management and legal arrangements seem to have enabled local elites to misuse land, profiting from the land value gap while excluding weaker groups. The devolutionary arrangements seem to have empowered some locals (the existing elites consisting of entrepreneurs and government officials), while excluding others, who have only limited options to protect their rights because most channels for redress are dominated by the same local elites. Checks and balances on such elites are further weakened as devolution makes top-down control through state law enforcement difficult. The challenge remains of how to overcome the power of local elites and prevent further institutional reform being a road for further cooptation and strengthening of existing power and related abuses. For this a comprehensive reform program is necessary, going beyond necessary changes in legislation and addressing also the empowerment of civil society, the independence of and the prevention of corruption in judicial organs, and the capacity and independence of enforcement institutions.

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