Short Term Policy Brief 60

Land Acquisition in China

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Executive summary

In this study, land acquisition refers to government acquisition of farmland from farmers (with compensation), changing the land use and then leasing it to developers. The large price gap between compensation and lease rates has created enormous profits for local governments. This has provided essential ground for China’s industrialisation, which has led to nearly double-digit average annual GDP growth over the past ten years. Urbanisation continues to occur and the urban population is expected to reach one billion by 2030.

Following three decades of land acquisition, 40-50 million farmers have become landless urban residents and three million more are joining them each year. The majority report a decline in living standards following land acquisition. Currently there is no appeal mechanism for farmers to challenge land acquisition decisions imposed by local governments. The village collective, the owner of the farmland, is governed by the village committee and Communist Party village branch. Driven by political and economic interests, these governing bodies often sacrifice ordinary villagers’ rights to fair compensation and resettlement.

The abolition of agricultural taxes in 2006 has, on the one hand, helped to ease the burden on the agricultural population; however, it has also led local governments to intensify land acquisition in order to generate revenue. Land lease prices have rocketed in recent years, earning an average of RMB 9.1 million (EUR 1.13 million) per hectare (ha) of land transferred in 2011. Motivated by enormous profits, land acquisition has become a hotbed for corruption.

The compensation scheme for farmers who lose their land offers a very low rate, which comes to a maximum of 30 times the average output value three years preceding land expropriation. Older farmers with less skills are likely to find it difficult to enter and compete in the urban job market. There has recently been a rise of mass protests in China, estimated at 200,000 in 2011. 50% to 65% of these are related to land acquisition.

The central government, while acknowledging the unfairness, corruption and social conflicts surrounding land acquisition, finds itself in an awkward position, as its fiscal budget is heavily supported by the tax contributions of local governments. Land revenues account for approximately 40% of local government tax revenues.

The EU has little influence on China’s land acquisition. Yet it is in its interests to stay informed of developments, particularly in relation to food security issues and for promoting corporate social responsibility (CSR) of European companies. The EU should be more vocal when human rights abuses surrounding land acquisition take place. This should be made on the basis that these abuses are creating increasing levels of contention and conflict in society, which may well become unmanageable and is already expensive to police and control.
Main Points

• Land ownership and land usage rights are divided in China. Rural households are entitled to use an allocated piece of arable land, but the village collective, governed by the village committee and the local Communist Party branch, dictate land use.

• Driven by business and political interests, local governments above the village-level have intensified land acquisition across China. The scale and speed of this intensification has been impressive, but the current procedure is not transparent and includes no appeal mechanism for members of the affected rural population.

• The compensation scheme is outdated and the rate paid to affected farmers is low. Farmers are often not entitled to citizen social security packages, even though they have become landless and forced to settle in the city. These factors have contributed to massive social unrest in China.

• Some recommendations have been made by civil society groups hoping to see fairer distribution of profits from land acquisition between farmers and local governments and ease the scale of social unrest. However, very few of these have been carried out.

• The central government has repeatedly tried to address these problems but seems reluctant to carry out fundamental land ownership reform, as land acquisition provides 40% of its taxes revenues from local governments.

• The EU should pay more attention to this issue as China's land acquisition could have a large impact on global food security and investment from European companies in China.
Background Briefing: Land Acquisition in China

1. Introduction: land acquisition in China

1.1 Industrialisation and urbanisation as the driving force

Land acquisition has come hand-in-hand with China's economic development. China started its ‘Open Door’ policy in 1978 and, throughout the 1980s and 1990s, infrastructure building and industrialisation were prioritised in the state’s Five-Year Plans. As a result, much rural land was allocated to serving this purpose. Throughout the 21st century, this trend has continued - China’s fast rate of annual GDP growth (almost double-digit), has further increased the pace of industrialisation, fuelling demand for land, and the scale and pace of China’s urbanisation has continued at an unprecedented rate. The total urban land area was 2.3 million km$^2$ in 1990, but by 2005 had expanded to 2.6 million km$^2$. 24,727 km$^2$, an area a tenth of United Kingdom (or a half of Slovakia), is added as urban land each year.

In terms of population, between 1990 and 2005, the urban population grew from representing 22% of the total population, to 44%. It is estimated that two-thirds of the Chinese population will become urban residents by 2025, totalling one billion by 2030. In order to feed the needs of industrialisation and to accommodate the growing urban population, land acquisition is expected to continue, if not speed up, in the foreseeable future.

1.2 Land use rights and ownership

In China, urban land is owned by the state. Rural land is distributed equally to all rural residents who are allowed to farm on this land or, under certain conditions, can transfer the land to others for agricultural use. The right to use land is separate from land ownership and farm land remains owned by village collectives, governed by the village committees and the village’s Communist Party branch.

1.3 The two concepts of land acquisition

Land acquisition in China involves two concepts, land requisition (zhengyong) and land expropriation (zhengshou). The 2004 constitutional amendment defines land requisition as a temporary act that
usually takes place in an emergency and in the public interest. During land requisition, the collective retains ownership of the land, which will eventually be returned with adequate compensation. Land expropriation involves a change in land ownership from the collective to the state, with payment of compensation. The state, often represented by local governments, converts the usage of the land and leases it to developers for between 40 to 70 years. As a change of ownership is involved, land expropriation requires approval from the State Council in accordance with the Land Administration Law (LAL). This paper refers to land acquisition in the latter format.

2 The scale of land acquisition

2.1 Impacts on the rural population

The 2011 China Land and Resources Report reveals that the transfer of land use from agricultural purposes to land for development projects, has increased from 406,000 ha in 2006 to 612,000 ha in 2011 (see Figure One).

![Figure One: Land approved for development purposes between 2006 and 2011](source: 2011 China Land and Resources Report)

In terms of population affected, the Chinese Academy of Social Sciences’ 2011 report on China’s urban development reveals that 40 to 50 million farmers have lost their land so far. In addition, more
than three million farmers are losing their land each year, which will affect 110 million farmers by 2030. In a recent survey, 60% of landless farmers interviewed say that they now suffer from financial difficulties and 81% say they are worried for their future. However, in a minority of cases, adequate compensation has been offered to farmers via schemes offering pensions or long-term rental fees to farmers and there have also been reports of farmers voluntarily giving up their land in the belief that ‘planting the field has no future’.

2.2 Threats on China’s food security

China’s Ministry of Land and Resources has warned that the misappropriation of farmland has brought the country dangerously close to the so-called ‘red line’ of 296 million acres (19.7 million ha) of arable land that is needed to feed a population of 1.34 billion. To combat the misuse of arable land, the Ministry has started to engage in a number of activities: it now uses satellite imagery to spot abuses; has launched a fresh crackdown on illegal land use since 2011, targeting golf courses, hotels and villas in particular; and claims to have punished party officials (2,078 in 2010) in several high-profile cases regarding this matter.

3 The procedure of land acquisition & loopholes

3.1 The motivations of local governments

As required by the LAL, any individual or unit that needs land for construction purposes must apply to use state-owned land. Therefore, for any proposed development project in a rural area, land ownership must first be acquired by the state, when it can then be leased to the developer. This practice creates room for local governments to make enormous profits, acquiring the farmland cheaply from farmers and leasing to developers at a much higher rate.

Apart from land conveyance fees, during land acquisition, local governments are often able to collect other taxes, such as farmland occupation tax, land use rights fees, etc. This has enabled local governments to cash-in on land acquisitions, which has particularly been the case following the abolition of agricultural taxes in 2006. In many circumstances, local governments are shareholders in the investment plan, or officials and their families hold senior positions at the corporate involved.
This gives an additional strong incentive for local governments to acquire farmland as cheaply as possible.

The constitution stipulates that land acquisition can only be carried out in the ‘public interest’, yet this term is not clearly defined. Research conducted in 2010 shows that more than 80% of land acquisition is motivated by commercial interests, rather than in the public’s favour. When a local government acquires farmland, it often has no clear development project in mind and instead offers the land at auction. The local governments may try to justify their actions by arguing that the land conveyance fees generate income to finance urban development and that this promotes employment and exports, as seen, for example, in the Special Economic Zones (SEZs). SEZs, which are mostly built on former farmland, experience two to three times higher GDP growth than the national average and act as the driving force behind the ever-growing national GDP.

3.2 The imbalance of power between villagers and the local governments

Affected villagers are required to follow the decisions, terms of compensation and relocation plan that have been devised by the local government without their prior consent. Some even report that the local government has leased their land to developers, without informing or compensating them. Currently, there is no appeal mechanism for farmers to overthrow the land acquisition decision, although farmers might negotiate better terms of compensation through the village committees, protest or by hiring lawyers.

Only the State Council, China’s version of a Cabinet, can revise local government land acquisition decisions. By law, the acquisition of basic farmland or arable land of more than 35 ha must be approved by the State Council. However, in order to avoid this, it is common practice for local governments to divide the land into smaller areas for the acquisition process. As shown in Figure One, apart from 2009, local governments transfer more land per year than the State Council. In some years, two-thirds or more of land transfers are carried out by local governments.
3.3 Power structure at the village level

As the governing body of the collectives, village committees and local Communist Party branches are responsible for negotiating on behalf of villagers, in order to reach deals on land ownership transfer. The village committee is elected every three years by villagers aged over 18 years and is responsible for mediating civil disputes, maintaining social order and reporting popular opinion and proposals to the government. The local Party branch is appointed by the higher level Party Committee every five years to exercise leadership according to the Party constitution. There is no restriction on the frequency of a member being re-elected and re-appointed and it is not unusual to find village chiefs and party secretaries who have taken office for decades. Vote-buying is also reported as common practice.

3.4 Low level of democracy and transparency in village governance

In terms of power structure, the local Party branch tends to lead, ratifying decisions made by the village committee, although very often the Party chief and the chairperson of the village committee are the same person. Individual farmers are often excluded from the negotiation process for compensation and resettlement. The cadres at the village committees and Party branches have a track record of conspiring with local government and business to seize farmland. This is especially the case with local Party branches, as the political careers of cadres are in the hands of their supervisors - namely, those in the upper level of local governments - who often push for deals to be finalised. Their involvement in embezzling, intercepting and withholding farmers' compensation has frequently been reported.

4 The central government’s stance

4.1 The fiscal structure between central and local governments

Land leases account for about 40% of local government revenues. The fiscal relations between the central government and the provincial governments are a complicated matter. Local governments (from village governments to provincial governments) fund 80% of the country's public spending but are required to hand over half of their tax revenues to the centre. For poorer provinces, the handouts received from the central government fill the gap or even exceed their own contributions, but the more developed provinces are cash cows for central government funds. For example, in
2010, Guangzhou City Government, the capital of Guangdong Province, handed over RMB 210 billion (EUR 26 billion) to Beijing - nearly two-thirds of its total funds collected from local taxes (RMB 338 billion (EUR 42 billion) in total).

4.2 The challenge for central government

Both the size and market price of land transfers have increased in recent years, as indicated by Figure Two. In 2011, the total land sales price reached RMB 3 trillion (EUR 370 billion). In 2006, the average transfer price for each ha was RMB 3.5 million (EUR 0.43 million) but by 2011, this had increased to RMB 9.1 million (EUR 1.13 million). Despite the high inflation rate in China, the price hike is significant.

![Figure Two: Land sales in area and price 2006-2011](source: 2011 China Land and Resources Report)

On the one hand, the Chinese media and Premier Wen Jiabao have openly criticised the loopholes that exist regarding the land acquisition procedure, acknowledging the unfair compensation scheme and its linkage to social unrest. However, on the other hand, they have not pressed local governments to alter their land acquisition practices. Over the past few years, legal experts have discussed the fact that China needs to revise or even create a new land acquisition law that better
defines ‘public interest’ and reforms the compensation scheme. However, no draft or time line has been announced at the time of writing.

5 The compensation scheme

5.1 Calculation method

There is no market price for rural land in China, as there is only one buyer, namely, the state. Article 51 of the LAL states that different standards and levels will be applied to major projects of national interest, enabling local governments to exercise their administrative power by underpaying farmers in the ‘national interest’.

According to the LAL, total compensation should include land compensation fees, compensation for above-ground buildings and other attached objects, and compensation for crops on the land. Land compensation fees range from six to ten times the average output value three years preceding land expropriation. Resettlement fees should be calculated according to the agricultural population to be relocated and should be four to six times the average output value three years preceding the expropriation. The standards can be determined by local governments, but the combined total of land and relocation compensation should not exceed 30 times the average output value three years preceding the expropriation. The Ministry of Land and Resources also recommends that local governments subsidise expropriated farmers if the legal maximum compensation cannot restore their original living standard.

5.2 Low compensation in implementation

With the thirty-fold average annual output value as the ceiling and no legal minimum limit on compensation, local governments tend to offer compensation that is lower than the ceiling price. Looking into this further, if the farmland is cultivated, compensation will be made according to the output value of crops. However, in the past two decades, a large number of farmers have become migrant workers (estimated at 250 million in 2011) who leave behind their farmland to look for jobs in the city. If the land of these farmers is not attended by their families, resulting in little or no crop output in the previous three years, their compensation payment would be seriously distorted should their land be expropriated. Despite this, migrant workers are not eligible to receive urban social
security packages and have no rights to remain in the city once they are out of a job. (This is due to the urban-rural dual system, known as Hukou.) Because many migrants plan to eventually return to their home villages, often returning to farming as part of a retirement plan, if their farmland is acquired without proper compensation, or even without them being informed, many migrant workers lose their basic social safety net.

5.3 Unfair basis for calculating the compensation

Even when legal maximum compensation is paid, farmers still do not receive a fair price given that grain prices in China are kept artificially low. For decades, national policy has meant that grain prices have been heavily controlled to ensure that adequate cereal grain supplies can be provided to urban residents at low and stable prices. It is not just the price of farming products which are affected and the market price of land for urban use should also be considered here.

5.4 Obstacles from fiscal structures

For national projects that are handled separately by the State Council, such as large or medium-sized water conservancy and hydroelectric projects or pipelines for natural gas, compensation comes directly from the state although the amount varies between the provinces. Due to the fiscal structures of central and local governments, funds are allocated downward to lower levels of governments, from state, to provincial, municipal, county and finally township levels. A portion of funds is retained at each level of government, namely for public goods and services. By the time payments have trickled down to farmers, they receive only one quarter of the initial compensation.

5.5 Different forms of compensation

The majority of compensation is offered in cash settlements. On average, a household receives compensation of RMB 76,271 (EUR 9,469), which is only enough to cover basic needs for 3 to 4 years. Although cashing this in may be an attractive option for farmers, without healthy investment channels, high inflation and long term planning, the compensation would run out in just a few years. Moreover, a significant percentage of them cannot compete in the tightening urban labour market, given their age and skill level. In a 2010 study of Hunan Province, 60% of landless farmers say that re-
employment is their biggest concern and 30% cannot find jobs. Only 34.3% of farmers report that their livelihood has improved after land acquisition. Voices from civil society have started lobbying for welfare provision for those affected by land acquisition, such as urban housing, medical insurance, pensions, low-income allowance, etc., to be included in the compensation package in future.

Some pilot projects, held as part of land acquisition reform, were introduced throughout the 2000s. These included the compensation of elders (men over 60 and women over 50 years old) with monthly social security payments for a certain period of time (around 15 years or so) and the entitlement of the middle-aged population to receive social security payments after their retirement. Some have adopted a rent-based approach, in which farmers can receive annual rents, instead of a one-off lump sum. This is equivalent to their average output value over the previous 3 years and adjustments are made every few years according to inflation and agricultural product price changes. However, these pilot projects have only taken place in a few prosperous cities, such as Shanghai, and cover only a small number of affected farmers.

5.6 Hukou for the landless farmers

When farmers lose their land due to land acquisition, their identity as part of the rural population very often remains unchanged. Their resettlement and new employment might be in cities, but without the relevant citizen residence, they are not entitled to participate in urban social security schemes. This means that education and medical services become comparatively more expensive for them and they are not entitled to retirement benefits or basic safety net protection. Discrimination against migrants and conflicts between migrants and citizens are also on the rise.

The 2011 Social Security Law entitles landless farmers to enrol in a new social security system. Yet it remains doubtful how many farmers will be willing and able to pay the premium for their pension.
6. Social conflicts related to land acquisition

6.1 Continuous rise of conflicts

According to a lawyer specialising in demolition and resettlement cases, half of the disputes in China relate to collective land acquisition. Another researcher, Yu Jianrong of the Chinese Academy of Social Sciences, estimates that since 1990, 65% of large-scale protests, also known as ‘mass incidents’, in rural areas involved land disputes. Rural land disputes are reportedly starting to spread from the eastern coast to the less developed western part of the country. Yu has calculated that, over the past 20 years, governments have seized 6.7 million ha of rural land and deprived farmers of RMB 2 trillion (EUR 250 billion) in compensation, because local governments often compensate much less than the market price for the land.

6.2 No appeal mechanism available

Currently there is no systematic appeal system for farmers to voice their concerns or opposition to land acquisition and very few can afford lawyers. It has become normal for farmers to stage sit-in protests, road blockades and, in some extreme cases, even commit suicide to protest against forced demolition and land seizure.

6.3 Wukan protest as an example

The village of Wukan, in southern China, provides one example of how intense and violent the tension regarding land acquisition can be. Having already protested against land acquisitions for several years, in 2011 villagers in Wukan alleged that village officials had sold their farmland without informing or compensating them. They only noticed the land sales when the developers started construction work. The deal reportedly generated RMB 1 billion (EUR 120 million) for 400 ha of land, which was pocketed by officials. During the protests, one village representative was abducted by police and died in police custody shortly afterwards. His death led to an uprising in the village in December that year and caused the upper level of government to call an election for a new round of village committee members in early 2012.
6.4 Land rights defenders

Thugs have reportedly been hired by local governments and developers to silence land rights defenders. The most recent case occurred in Fujian Province on 12 June 2012, when a farmers’ representative was attacked by thugs who injected him with Toluene. He died two days later in hospital and his body was forcibly taken away by police after his family demanded a public investigation.

The State Bureau for Letters and Visits (the highest level petitioning bureau in Beijing) is overrun by landless farmers on a daily basis. Farmers travel from the countryside, hoping to have their cases heard. Yet, provincial governments have been accused of hiring people in Beijing to abduct petitioners and to force them back home, or send them to ‘black’ jails. Human rights organisations have documented allegations of torture and mistreatment in these facilities.

6.5 Right to organise not protected

Freedom of association and the right to organise are not respected in China. Farmers who choose to try and defend their rights are often accused of ‘mobbing and disturbing social order’, which is a criminal offence. The police also hold the power to place these ‘offenders’ in ‘re-education through labour’ – an imprisonment lasting up to three years that does not require any legal proceedings.

7 Recommendations

As social conflicts have increased in scale and number in recent years, academia and civil society have concerned themselves with ways to improve the land acquisition procedure to make it fairer and more transparent. In order to avoid these abuses, ‘public interest’ needs to be well defined and central government needs to start reviewing cases closely. An effective appeal mechanism that works independently from local governments should be introduced to assist farmers in reviewing the motivation for land acquisition, compensation terms and distribution of compensation.

Democratisation and transparency are key for land acquisition reform to help keep check on corruption, collusion between officials and business, and abuse of police power. Farmers should be
consulted on when, where, for what purpose and at what price their farmland will be acquired. Their rights to organise should be respected.

The compensation level should be increased to market price level to fairly compensate farmers and make their lives sustainable. The compensation methods should be diverse, taking the farmers’ age, skill level and employability into consideration.

8 Conclusions and EU recommendations

Land rights are not typically a topic of the official EU-China Human Rights Dialogue. Yet, many of the issues surrounding land acquisition are related. For example, the Dialogue runs an EU-China Village Governance Programme that promotes social and economic rights. This could become a platform to further discuss the rule of law in rural areas and the democratisation of village governance. The EU takes the fight against torture as its priority; therefore, it should become more vocal when it is made aware of the worst forms of abuses on land rights defenders.

The EU is fully committed to supporting the UN ‘Protect, Respect and Remedy’ Framework for Business and Human Rights since 2009. In this measure, the EU should provide greater access to effective remedies, both judicial and extra-judicial, for corporate-related human rights abuses. At the time of writing, there are no European companies that have been identified in violating these abuses due to land acquisition in China. However, the EU should investigate a possible remedy for potential cases. In June 2012, the Swiss-owned Nestle was accused of acquiring 60 ha of farmland and changing its land use without adhering to legal procedure. Should there be a similar case involving a European company, how should the EU respond? The EU is currently working on a Europe 2020 Strategy with a commitment to renew the European corporate social responsibility policy and it would be insightful to pay more attention to the conduct of European companies in land acquisition issues.

Globally, concern has grown regarding China's food security, one result of increasing land acquisition cases. Should China’s population of 1.3 billion go hungry, this would have strong impact on world peace. Monitoring China’s land policy, as well as its grain outputs, prices, imports and exports, could help the EU to stay better informed and prepared with regard to its food security.