

Title: To what extent are local governments responsible for land laws violations in China?

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SUMMARY

Key words: Land laws violations, tax reform, land expropriation, legal reform

The expropriation of land has become one of the most salient social issues in China. The existing literature and media reports often attribute this problem to the illicit behaviour by various levels of local governments. However, I see it as a long-standing and highly complicated issue. In this paper, I intend to address the roots of the problem by examining the extent to which local governments are held responsible for massive land laws violations in the CCP's reform era. By examining legal documents and engaging in latest reforms and case studies, I argue that the massive land laws violations are due to a combination of local, central and more deeply structural factors where both central and local government play significant roles. While the economic incentive and existing legal weaknesses have made local governments directly responsible for these pervading land laws violations, the central government is in fact equally accountable as a result of the 1994 tax reform and its incapability of enforcing land laws and regulations. More importantly, systemic factors such as the collective land ownership and the overall control of the Party over land have to be taken into consideration to understand such a long-lived and difficult issue. Therefore, to solve this problem needs a systemic change at both central and local level, and legal reform towards rule of law. Perhaps the most important of all is to change the authoritarian nature of the Party-state.

Introduction

Since the economic reform initiated 30 years ago, the land issue has always been a prominent problem with which the Chinese government has been trying to deal for years. In order to cater for economic development, a massive ‘enclosure movement’ taking place since the early 1990s, similar to that of 18th-century England, has resulted into a huge gulf between land supply and demand.¹ According to official figures, China merely had 1.827 billion *mu* of arable land in 2006, which was just slightly above the red line of 1.8 billion *mu* (120 million hectares) drawn by the government.² Moreover, it is estimated that approximately 200,000 hectares of rural land are requisitioned for industrial purposes every year.³ As a consequence, more than 66.3 million farmers have lost their land between 1990 and 2002.⁴ Indeed, the issue of land requisitions, a typical example of land laws violations through illicit means, has become the core problem of the ‘Three Rural Issues’ (*sannong wenti*) in recent years, as more than 65% of ‘mass incidents’ arise from those conflicts.⁵ Likewise, land laws violations are pervasive in urban areas as well. The Ministry of Land and Resources (MLR) has found that over 60% of urban land development cases have violated certain land laws, and in some cities illicitly acquired or used land account for 90%.⁶ Nationwide, over 5 million *mu* have been illegally requisitioned since the new *Land Administration Law* entered into force in 1999.⁷

To explain the reasons behind these massive violations, it has been widely reported by Chinese official media that local governments are the main protagonists in these violations, as they are involved in the majority of the cases and most corrupted government officials are associated with land issues.⁸ However, this knotty issue may not be as simple as it appears to be. In order to gain a better understanding of this long-standing and highly complex issue, the essay attempts to examine the extent to which local governments are responsible for land laws violations in the CCP’s reform era, and it also intends to analyse the reasons that lie behind. The essay argues that massive land laws violations are due to a combination of local, central and, more deeply, structural factors where both central and local government play significant roles. While it is true that violations of land laws are directly attributed to local governments at various levels, the central government is not at all innocent. On the contrary, the latter does equally, if not mainly, account for pervasive violations

underneath. More importantly, only after taking a systemic factor into consideration can we evaluate the responsibility of both governments for the land issue and thus it is possible to understand the reason why the issue is so long-lived and difficult, if not entirely unfeasible, to solve in the current circumstances.

The essay will firstly display the complexity of the issue by outlining major land laws violations with reference to the *Land Administration Law*. Secondly, it moves to examine several factors that contribute to local governments' violations. Thirdly, the role of central government in causing these violations will be taken into account. Finally, a few structural weaknesses will be addressed as well as analysed in seeking for a deeper understanding.

Identify problems

First and foremost, it is important to be aware of various forms of land laws that governments, at various levels, often infringe.⁹ The most ostensible one is associated with land expropriations. Article 2 articulates that the 'state may, in the public interest, lawfully requisition land owned by collectives' and Article 58 gives the land administration department of the government the right to take back 'the use of the State-owned land' under several circumstances. Meanwhile, Articles 21, 25 and 26 state that any overall plan for land utilisation has to be 'examined for approval at different levels'. However, violations occur when local governments simply do not seek for approval either by their superior administrative government or by people's congresses at the corresponding level.¹⁰

The second serious issue is related to land requisition as well, but specifically associated with the government's responsibility to protect cultivated land. Chapter 4 of the *Land Administration Law* states that 'the State protects cultivated land and strictly controls conversion of cultivated land into non-cultivated land'.¹¹ However, the farmland consists of a significant proportion of the illegal cases of land expropriations. *China Daily* revealed that more than 20,000 hectares of cultivated land was requisitioned without approval in 2005.¹² Moreover, it was reported that in one of four direct-controlled municipalities, 91.3% of illicitly grabbed land, which accounted for 79.3% of all newly requisitioned land in 2005, was cultivated land.¹³ Furthermore, in order to protect farmland, Article 37 prohibits 'all units and

individuals' to 'leave cultivated land unused or let it lie waste' and 'if the land is not used for two years', the government shall 'take back the users right to the use of the land without compensation'. According to an investigation conducted by the MLR in 2005, the unused land still reached about 400,000 *mu* (26,666 hectares) nationwide and there were over 3,500 hectares of wasted land in Shanghai.¹⁴

The final major violation takes place after governments requisition land, namely the compensation issue. Article 47 articulates that 'land requisitioned shall be compensated for on the basis of its original purpose of use'.¹⁵ Local government, as Article 48 requests, shall make the plan for compensation 'known to the general public and solicit comments and suggestions from the collective economic organizations, the land of which is requisitioned, and the peasants'. However, insufficient compensation is more likely to be the case in practice. According to He Diankui's estimation, there are more than 30 million peasants who have suffered from insufficient compensation.¹⁶ Consequently, these farmers who lose their land have become 'three-nos' peasants, namely no land to cultivate, no job to take and nowhere to go.¹⁷

In sum, according to the latest *Land Administration Law* (2004), the most important law regarding to land issues, it is clear to see that land laws violations have been so widespread that they occur in nearly every aspect, if not every single Article, of the Law. Hence, it seems difficult to convince people to accept the argument that only local governments are responsible for this problem. The following essay provides a relatively sophisticated framework in seeking for a general explanation within which both local and central governments are involved.

Local Government

As can be inferred from above, local governments are likely to be the best candidate to blame for these varied violations. Nevertheless, their incentives are very complicated. Interestingly, it is not only because of the fact that local governments violate or simply ignore these laws and regulations driven by certain incentives, but also due to legal weaknesses which actually to some extent help the former become the violators.

Firstly, it is widely acknowledged that economic motives have dominated the violation issues. Jean Qi notices that since the economic reform was initiated in 1978, the role of local governments in economic development has been dramatically increased, as they have to ‘lead the economic reform’ and participate in specific economic activities, such as running SOEs (State Owned Enterprises) in urban cities and TVEs (Township and Village Enterprises) in rural areas.¹⁸ While acknowledging the notion that these changes ‘paved the way for China’s successful economic reform’, she also contends that decentralisation process makes each level of government as a ‘profit centre’ where the government is ‘fiscally independent and is thus expected to maximize its economic performance’.¹⁹ He Qinglian expresses a similar concern by emphasising the importance of taking the economist James M. Buchanan’s theory of ‘public choice’ into account.²⁰ Based on Buchanan’s simple assumption that ‘when people as “economic animals” are confronted with temptations of wealth and are forced to make a choice, they are more willing to choose whatever method maximizes their personal benefits’, the purpose of government is thus to ‘maximize its own autonomous interests’.²¹ Hence, the economic incentive helps us explain the fact that local governments not only infringe one or some aspects of land laws, but nearly every aspect of the land expropriation process.

Apart from the theoretical point of view, there has to be a historical reason that triggered the pervading violations. It is widely agreed that it is mainly because of the tax-sharing system (fenshui zhi) adopted in 1994, which has caused serious fiscal difficulties at the local level ever since. Through this tax reform, the central government has occupied nearly all stable, rich and easily-collected taxes. For example, 75% of the VAT from local industries goes to the central government and only 25% belongs to respective local governments.²² Hence, the tax revenues for local governments, in comparison to the previous tax system of ‘fiscal-contracting’ system (caizheng baogan) where local authorities held a significant proportion and only a small amount of negotiated ‘tax quota’ went to the central level, have been substantially reduced. Noticeably, the ratio of revenues between central and local has experienced a drastic change from 38:62 in 1990, to 52:48 in 2000, and to 55:45 in 2004.²³

With such difficulty in gaining sufficient revenue through tax to balance their

increasing administrative expenses, local governments did not have an alternative but to look for other sources. Among various resources, land has become the most profitable source of revenue, and the land sale, which is also called the ‘second revenue’ (di’er caizheng) of local governments, has become crucial for their survival.²⁴ As Article 55 of the *Land Administration Law* stipulates that 70% of the compensation paid for the use of land for construction shall go to local governments, it was estimated that local governments gained approximately 910 billion yuan between 2002 and 2003, which consisted of 35% percent of all local revenue during that period.²⁵ Moreover, the percentage increased to 47% the next year.²⁶ For the years of 2005 and 2006, annual income from the land sale exceeded 1 trillion yuan and the proportion even reached two thirds of the total revenue.²⁷ Therefore, it is not surprising to see that financial benefits have become the primary motive for illegal land use in China.²⁸

It is also important to note that legal weaknesses do make local governments less hesitant to maximise their interests. With regard to the first step, namely land grabbing, there is an essential legal question on the definition of ‘public interest’. As mentioned earlier, according to Article 2 of *Land Administration Law*, the ‘State may, in the public interest, lawfully requisition land’. Article 58 also specifies five circumstances under which the state can take back the right to use State-owned land.²⁹ However, the ‘public interest’ remains undefined. Hence, local governments can easily claim that their requisitioning of land meets the general requirement. Moreover, Li Qiang contends that in contrast to the fact that land needs to be approved by government before it is requisitioned or used, there is not any specific law or regulation that could deal with the situation where land is already illicitly occupied or used and it does not benefit the public.³⁰ In other words, a lack of institutional and legal supervision makes illegal land use much more likely and much less costly, as local governments do not need to worry about their failure to fulfil their promises.³¹

The next step that benefits local governments is to minimise the compensation for peasants and city-dwellers whose land have been taken away. Legally speaking, Article 47 specifies the content of compensation for requisitioned cultivated land, which shall include ‘compensation for land, resettlement subsidies and attachments and young crops on the requisitioned land’. Among these three types, the most

valuable one is the compensation for land, which shall be ‘six to ten times the average annual output value of the requisitioned land for three years preceding such requisition’.³² However, legal scholars regard it as insufficient, as the value of the requisitioned land is not taken into consideration.³³ While the land is often sold ‘ten to twenty times higher than the compensation paid to peasants’, peasants cannot gain any benefit from it.³⁴ Furthermore, the *Land Administration Law* does not give peasants a strong stance over the compensation issue. Although Article 48 does mention that peasants have the right to negotiate with government, it is still unfair for them as it takes place after the plan for compensation is decided by government.³⁵ In other words, peasants are only granted to express opinions rather than have the right to make the decision on their own. Moreover, if there is any dispute between peasants and government, according to Article 25 of the *Regulations for the Implementation of the Land Administration Law*, ‘coordination shall be carried out by local people’s government above the county level’. However, ‘where coordination has failed, arbitration shall be resorted to by the people’s government that approved the land requisition’. Hence, it is hard to believe that the ‘economic animals’ would pay a fair compensation to poor peasants from whom they requisition the land. It is reported that ‘local government’s compensation to farmers for the collection of their land or property accounted for only 3 to 6 percent of the regular compensation rate for the land collection by state construction projects’.³⁶ In addition, the law states that ‘land requisition compensation and resettlement dispute shall not affect the implementation of the land requisition plan’ (Article 25). In other words, peasants have a very weak legal position against local government, which explains the fact that the conflict over compensation issues is the ‘top reason for Chinese farmers’ petitions’.³⁷ In contrast to peasants’ weak legal insurance, far less compensation to pay vis-à-vis far more benefits to gain, as well as strong legal buttress, make local government able to minimise their expenses.

Apart from local government’s economic incentives as well as legal weaknesses, government officials, as individual ‘economic animals’, also contribute to massive land laws violations. Their primary goal is to maximise their own income. Statistically, it is revealed by National Audit Office that 80% of corrupted officials are related to land issues.³⁸ A typical example is the commercial bribery case, which occurs when governments transfer the requisitioned land to real estate developers. Although the

newly amended *Law on Administration of the Urban Real Estate* states that ‘the right to use the land for construction of commercial, tourist, recreational facilities or luxury housing must be leased out through auction or bidding’, the land leased out through above two means merely took up less than 30% of total converted land between 2004 and 2006.³⁹ It is mainly because of the fact that the key government officials in charge are often bribed by developers so that the former are willing to sell land to the latter at a very cheap price, even though it is still far higher than the compensation paid to peasants, through negotiations instead of auctions or biddings.⁴⁰ For example, Chen Liangyu was one of the highest-ranking government officials who used to be the Communist Party chief of Shanghai. He was sentenced to 18 years in prison in 2008 for taking bribes.⁴¹ Zhou Zhengyi, once the wealthiest man in Shanghai bribed many officials to obtain land.⁴² Reportedly, Zhou, with the help of his close relationship with Chen, acquired the ‘most desirable’ site called Dong Ba Kai (East Eight Pieces) consisting of 269,000 square metres and 12,000 homes in the city centre for re-development constructions.⁴³ In return, Chen did not enrich only himself, but also his brother, friends and relatives by taking \$340,000 in bribes.⁴⁴ In addition, the way in which local government officials gain political promotions also contributes to their undiminished enthusiasm for land business. It is true that the most important criterion for assessing local government officials is their capabilities to ‘sustainably develop’ local economies.⁴⁵ In particular, every year most provinces rank local governments’ performance according to their GDP growth.⁴⁶ Therefore, local officials have the strong incentive to promote local economic development by selling land to developers and attracting foreign investors with promises of cheap price of land.⁴⁷

Central Government

Although there is no doubt that local governments, as illustrated above, are the main violators and they have strong incentives to do so, it does not necessarily mean that they are solely responsible for such pervading violations. It is likely that the central government also plays an essential role here.

One probing question arising from above analyses on local governments would be: why the central government, having the authority to promulgate and amend new laws and regulations, has not yet effectively overcome such legal weaknesses? To answer it,

it is necessary to bear the theory of ‘public choice’ in mind and examine the 1994 tax reform again from the perspective of the central government. As discussed above, governments are ‘economic animals’, so is the central government. With regard to the assessment of the tax reform after 15 years of its implementation, the central government generally posits that the tax reform took the ‘historic opportunity’ and it was a ‘full success’ based on a rational choice.⁴⁸ However, some scholars contend that it was actually a zero-sum game.⁴⁹ While local government’s revenue has been declined after the introduction of the tax-sharing system, the central government has automatically increased their revenue. Hence, scholars such as He Qinglian argue that this tax redistribution conducted by the central government is the fundamental factor contributing to such massive land expropriations.⁵⁰ Christine Wong concurs with He, stating that since local governments are forced to expand their revenue to cover their increasing expenses, developing extra-budgetary resources, such as land, is likely to be the only source.⁵¹ On the other hand, ‘knowing the stress this [the tax-sharing system] has imposed on local budgets’, observed by Wong, the central government ‘has tolerated and often encouraged local governments to seek “self-reliant” solutions that have resulted, over time, to a situation where resources allocated by government (at all levels) outside the budget are far larger than those on-budget’.⁵²

Nevertheless, defenders of the central government often dismiss the above argument, as they tend to think that the central government is constantly making effort to constrain the massive land laws violations. Firstly, it is evident that since 2003 the central government, including the State Council and the MLR, has introduced a series of strict regulations in attempt to constrain massive land requisitions and the overly developed land market.⁵³ Furthermore, using the state media, such as *Xinhua News* and *China Daily*, the central government has publically blamed local governments for causing varied problems, such as increasing waste land and declining farmland.⁵⁴ The MLR also carries out several open investigations into local land laws violations and publicises those cases in the media.⁵⁵

While it cannot be denied that the central government does not take a *laissez-faire* approach towards land laws violations, it does not mean that those actions are sufficient as well as effective. On the contrary, it seems clear that the central government does not gain substantial achievements in supervising local governments.

One of its most important responsibilities is to tackle the corruption problem. As previously stated that 80% of corrupted officials are associated with land issues, the inability to curb this problem would significantly impede the success of reducing violation cases. Ample evidence confirms that this is the salient issue with which the central government is unable to cope. It is estimated by the MLR that there were about 168,000 cases of land laws violations in 2003.⁵⁶ However, merely 738 people received the Party disciplinary punishment and 134 people were given judicial sentences.⁵⁷ The fact that only less than 1% of violators were punished suggests that the violation cost is considerably low for government officials and hence it is understandable that they do not take central government laws, regulations and policies seriously, regardless their strong economic incentives.⁵⁸

More importantly, there is another serious failure of land management for which only the central government is responsible. It is the grand policies on land reform. It is generally believed that the most significant land reform is the introduction of the household contract responsibility system enacted at the Third Plenary Session of the 11th Central Committee of the CCP in 1978. Although it was initially practiced by voluntary farmers in Xiaogang Village, Anhui Province, it significantly increased farmers' income after it was adopted as the central government policy.⁵⁹ Moreover, in the autumn of 2008, a new land reform plan called the 'Resolution of the CCP Central Committee on Some Major Issues in Rural Reform and Development' was passed at the Third Plenary Session of the 17th Central Committee. Some optimists feel that it is 'possibly one of the most important policy changes in the 59-year history of the People's Republic of China, a horn that signals the start of a new round of overall reforms'.⁶⁰ The Resolution for the first time advocated that farmers would be legally allowed to subcontract (zhuanbao), lease (chuzu), exchange (huhuan), and swap (zhuanrang) their land-use rights in proper markets set up by government. It aims to increase farmers' income and meanwhile to create more efficient as well as larger farms that could enhance productivity.⁶¹

Although this alleged 'new deal' appears very creative, it has received a number of valid criticisms on its nature and possible outcomes. Firstly, scholars believe that the new plan is hardly new, as the *Economist* observes that 'much of the "breakthrough" is already common practice and the toughest issues are skirted. The actual reform is

rather minor'.⁶² Indeed, by August 2008, the number of land circulated through transfers of land-use rights had reached 106 million *mu*, consisting 8.7% of the total amount of the household-contracted land.⁶³ With regard to China's east coastal region, it is reported that 30 to 40 percent of farmland have been already subcontracted to non-native farmers.⁶⁴ Hence, the central policies are not at all innovative but just accept the realities at the local level. More importantly, critics believe that the namely advocates of efficiency and productivity are likely to be counter-productive, as it may result to the 'liberation' (*jiefang*) of land instead of farmers.⁶⁵ In other words, farmers would become the victims again, rather than gain substantial benefits. Indeed, local governments seem to be far more active and passionate than farmers in implementing this policy. For example, right after the transfer of land-use rights was encouraged by the central government in October 2008, several local governments in Jiangsu Provinces forced farmers to transfer their land and some county-level governments even promised to transfer a quota of 60,000 to 70,000 *mu* by the end of the year.⁶⁶

Therefore, it can be argued that although thousands of new laws and regulations promulgated in the past 30 years, it seems true that few significant and influential grand policy changes or reforms on land similar to that of Deng Xiaoping's have been initiated to cope with the constantly changing economic, social and political circumstances. Moreover, the basic direction of the central government seems to incorrectly place an excessive emphasis upon efficiency rather than equation, which does not help constrain widespread land laws violations. On the contrary, it may facilitate it, as local governments can now use another banner of 'efficiency' in addition to 'public interests' for maximisation of their own interests.

Structural Problems

In addition to those local and central factors attributing to pervading land laws violations, it should be pointed out that there are also some structural factors contributing to this long-lived and complex issue. Generally, they are more deeply rooted and thus more difficult to tackle. They may include historical legacies from the Mao era and some fatal institutional weaknesses where it makes no sense to blame either local or central government because both are heavily involved in the sense that they both agree with, or at least tolerate those structural defects.

One of these most acute defects in current land system is the land ownership, which is regarded as a ‘direct heritage of collectivization and the commune system’.⁶⁷ Article 2 of the *Land Administration Law* clearly states that there are only two types of ownership: state-owned and collective. Article 8 stipulates that urban land is owned by the state and rural and suburban land belong to peasant collectives. However, in reality, individual farmers do not have the ownership of their land. There are mainly two legal flaws on the collective ownership. Firstly, although Article 6 of the Constitution states that both ‘ownership by the whole people and collective ownership by the working people’ are the basis of the socialist economic system, the status between the two is unequal in the *Land Administration Law*. While the state ownership cannot be transferred by whatever means, the collective ownership can be transferred to the state ownership with approval by government.⁶⁸ Hence, the owners, namely peasants, would permanently lose their previously collectively-owned land after the transfer.⁶⁹ The second legal issue is the ambiguous definition of the collective ownership itself. Article 10 stipulates that land owned by peasant collectives ‘belongs lawfully to peasant collectives of a village’. According to the interpretation of the NPC Legal Committee, it specifies the ‘collectives of a village’ as the ‘collectives of an administrative village’.⁷⁰ Furthermore, according to Article 10, collective economic organisations of the village or by villagers’ committees, instead of farmers, can ‘operate and manage’ land. Therefore, the state, i.e., both central and local governments, becomes the ultimate owner of the land, whereas the so-called collective ownership by village peasants is a ‘mere empty phrase’ because peasants only have the right to the use of land.⁷¹

Hence, the consequences of avoiding the ownership issue are obvious. For example, farmers cannot mortgage their land or ‘bargain on an equal basis with potential buyers of the land’.⁷² Particularly, they are extremely vulnerable under coercion of local governments. Moreover, farmers’ economic benefits from compensation are very limited, as they do not benefit from the huge profits through land sales. Sometimes even though compensation has been designed for farmers, they cannot get all the money in practice. For instance, the compensation for land shall go to the owner, namely the collectives of an administrative village, so in practice it often becomes the ‘village assets’.⁷³

In sum, the fundamental flaw on land ownership with Chinese characteristics makes land laws violations such a salient issue by limiting the legal protection of farmers and favouring that of the government. Unfortunately, it is hard to foresee that this indeterminate problem will be solved soon, as Peter Ho states that ‘in present-day China land ownership by the state and collective is an ideological given’.⁷⁴ Because of ‘the clash between Marx-Leninist tenets and the reality of the reforms’, “‘socialist market economy” in rural areas can only be realized by commercializing the rights to land use and lease’.⁷⁵ For this reason, the governments only adopt a ‘trial-and-error process’ in land policy-making and therefore allow the ‘deliberate institutional ambiguity for political manoeuvring’.⁷⁶ Indeed, in Hu’s ‘new land reform’, as discussed above, ‘what has been now transferred or circulated is not the ownership of the land, but the management rights of the land’.⁷⁷ In other words, offering a form of ownership other than state and collective, i.e., private ownership, has never been the option for the Party.

From another angle, the issue of property rights is not merely the legacy of communism, but also a reflection of the absolute control of the Party-state over land and consequently land requisitions. Moreover, another equally important form of power possessed by government is its monopoly of land market. It should be emphasised that in the current land system, China has a ‘dual-track’ market. With regard to the urban open land market, the government possessed both means to transfer the land-use rights, namely allocation (*huabo*) and conveyance (*churang*).⁷⁸ This is the ‘primary market’ (*yiji shichang*).⁷⁹ In order to enable land to be circulated at the market, the ‘secondary market’ (*erji shichang*) is created. However, commercial users have to buy land from the government with a conveyance fee.⁸⁰ In the rural open land market, it seems bitterly more complicated as Article 44 stipulates that agricultural land to be converted to land for construction purposes has gone through ‘formalities of examination and approval’. Nevertheless, only the government has the authority to approve this conversion. Moreover, as illustrated above, the government also enjoys the right to transfer the collectively-owned land into state-owned. In short, the government not merely controls how land is used, but also manipulates the ownership transaction.⁸¹ Therefore, taking land expropriation, land sale and compensation together, the government has a multiple role with the absence of separation of powers and checks and balances: it is a regulator, a broker and also a

judge. It then becomes what Lord Acton envisioned more than 100 years ago: ‘power tends to corrupt, and absolute power corrupts absolutely’.

Conclusion

The essay has addressed massive land laws violations that have been taking place in China since the early 1990s. It has examined roles of three factors in contributing this problem. With regard to local governments, two incentives have made them directly responsible for these pervading land laws violations. One is the economic incentive of local governments constantly given by the central government during the decentralisation process since the economic reform. This economic incentive, according to the ‘public choice’ theory, is to maximise its own interest in economic activities. However, the fact that land became the primary objective from which local governments tended to maximise their interests derived from the 1994 tax reform, which caused serious fiscal difficulties at the local level. As a matter of fact, huge benefits from selling land to developers have constituted more than 50% of local governments’ revenue. Meanwhile, serious laws violations have been constantly taking place during land expropriation process and on the compensation issue in the light of legal weaknesses. Moreover, widespread corruption of local officials in seeking for their economic benefits and their utilitarian strategy due to the promotion policy have also contributed to grave violations in the land market.

As for the responsibility of the central government, it is true that the tax-sharing system introduced in 1994 reflected the intention to maximise economic interests at the central level as well. Furthermore, being aware of causing such fiscal difficulties to local governments, the central government, albeit constantly increasing number of new laws and regulations, is clearly incompetent in curbing land laws violations at the local level, such as the massive corruption issue. More importantly, the central government’s failure to upgrade grand strategies on land reform since the introduction of household contract responsibility system 30 years ago also fails to efficiently alleviate the land laws violations. In particular, the so-called ‘new land reform’ with the theme of land circulation introduced by Hu Jintao last year is not only out of date, but also becomes counter-productive in the sense that local governments intend to use this policy to expropriate more land and on the other hand farmers are far less

enthusiastic about this ‘new reform’.

Finally, structural defects should not be ignored. In fact, they are likely to be more difficult to deal with. For example, the fact that collective ownership only plays a subordinate role in its relationship with state ownership and has a blurred definition of collective shows that farmers, albeit in theory, do not own the land in practice, which leads to a series of consequences that farmers have to bear, such as an unfair bargaining position vis-à-vis local governments and low compensations due to the exclusion of land value. More importantly, as the land ownership is rooted in the communist legacy from Mao era and also related to the current declining but still officially endorsed communist ideology, it is hard to foresee a privatisation of land in the near future. The second structural factor concerns with the overall control of the Party-state over land, albeit their internal disputes between central and local level, including land requisitions and market. The omnipotence of government simply makes the land laws violations much easier and more profound.

In sum, it can be argued that massive land laws violations are not simply the responsibility of local governments, but attributed more widely to a number of local, central and, more deeply, structural factors. In other words, although for reasons of convenience, each of them has been treated separately, it is clear from above analyses that the reality is of course more complicated and less artificial. Each affects the other and it is the combined effect of all which makes land laws violations such as a vital problem affecting not only China’s economic development, but also political stability and social order. Therefore, to solve this problem needs a systemic change at both central and local level, and legal reform towards rule of law. Perhaps the most important of all is the change of the authoritarian nature of the Party-state. As professor E.S. Savas once commented, ‘the job of government is to steer, not to row the boat. Delivering services is rowing, and government is not very good at rowing’.⁸²

ENDNOTES

¹ For a detailed analysis of the early 1990s' 'enclosure movement', see He Qinglian, *Xiandaihua de xianjin* (The Pitfalls of Modernization), (Today's China Press, Beijing), 2004, Chapter 2: '90 niandai de "quandi yundong"' (The 90s' 'enclosure movement'), pp. 49-77.

² 'China urged to reform land expropriation policies', *Xinhua Net*, 9 March 2009, http://news.xinhuanet.com/english/2009-03/09/content_10977095.htm, (accessed: 10 Apr 2009).

³ 'Land expropriation, top reason for Chinese farmers' petitions', *Xinhua Net*, 30 January 2007, http://english.people.com.cn/200701/30/eng20070130_346166.html, (accessed: 10 Apr 2009).

⁴ Li Cheng, 'Hu Jintao's Land Reform: Ambition, Ambiguity, and Anxiety', *China Leadership Monitor*, 27 (2009), p. 6.

⁵ Qin Hui, 'Shizi lukou de Zhongguo tudi zhidu gaige' (Chinese land system at cross road), *Nanfang Daily*, 7 October 2008, http://www.nfdaily.cn/opinion/opinionlist/content/2008-10/07/content_4631419_2.htm, (accessed: 10 Apr 2009); and 'X-4 Question', *China.org.cn*, 13 Mar 2008, http://www.china.org.cn/china/China_Q&A/2008-03/13/content_12481209.htm (accessed: 22 Jan 2009).

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¹⁵ According to Article 47, 'compensation for requisitioned cultivated land shall include compensation for land, resettlement subsidies and attachments and young crops on the requisitioned land'.

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