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China's latest constitutional amendment on land acquisition compensation issues—
Does it offer real help to farmers?

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Abstract:

Since China adopted an open door policy in 1978, there has been rapid development in the economy and great improvement to the livelihood of the people. The rapid development also expedites urbanisation in the country. These forces have created great demand for land to support various developments. Compulsory acquisition of farmland has become a convenient means to increase land supply.

Compulsory acquisition of farmland is governed by the People Republic of China Land Management Law 1998. It also provides for the payment of compensation to dispossessed farmers. Land acquisition in recent years has encountered increasing resistance from farmers because they think the compensation is unfair and inadequate. In some cases, the resistance turns into violence. In March 2004, the Chinese Constitution was amended to address, among other issues, land acquisition compensation payment problems.

This paper gives an overview of the prevailing methods of compensation for compulsory acquisition of farmland in China. It also examines the adequacy of the latest constitutional amendments that are supposed to address the problems. Recommendations for improvement are provided at conclusion.

Key words:

Land acquisition, compensation principles, constitutional amendment, recommendations

Introduction

Since the introduction of the 'open door' policy in 1978, China has experienced rapid growth in socio-economic activities, and population. It also leads to rapid urbanisation throughout the country. The government is under great pressure to supply more land to support relevant developments. Article 10 of the Chinese Constitution provides that land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law. Since the majority of city land have almost been developed, it is difficult to get more land for various urban developments.

Despite that city governments may squeeze some land through urban renewal schemes and compulsory land acquisition within the city areas, the amount of land obtained is far less than the amount needed. In particular, local governments are competing against each other in recent years to establish development zones; the land supply has stretched to its limit. According to China Daily (2004a), as at March 2004, China has 500-600 development

zones, covering a total of 3.55 million hectares. The land required is largely obtained from the acquisition of rural land. In fact, rural land accounts for about 90% of all compulsory land acquisition in China (Liu, 2002). The latest report shows that China lost 6.7 million hectares (67,000 square km) of arable land between 1996 and 2003 (Xinhua News Agency, 2004b). This is roughly equal to 98 times the size of Singapore or 42 times the size of the Sydney metropolitan area. Hu (2004) reports that so far more than 20 million farmers have lost their land and the number is increasing by over 2 million per year.

According to the relevant land acquisition laws, compensation is payable to farmers whose land has been compulsorily acquired. However, disputes over the acquisition procedure, unfair compensation and brutal treatment of dispossessed people have been increasing. Zhou & Zhou (2004) report that before 1992, the number of dispute cases before the courts in Beijing was just a few hundreds. By 1999, the number increased to 8103 cases, and by 2001, the number increased to more than 15000 cases. More recently, litigation was brought about by 7 farmers from Shenyang Province in August 2004. They sued the Ministry of State Land Resources at a Beijing court for unfair compensation and requested the Minister to attend court hearing (Mingpao News, 2004). Disputes which are not satisfactorily solved frequently lead to petitions, violence and sometimes suicide of the aggrieved persons. In order to address land acquisition and other issues, the Chinese Constitution was amended in March 2004

The increasing number of disputes clearly shows that the current land acquisition system in China has many problems. As far as compulsory acquisition of rural land is concerned, the problems are too many that need to be examined in a series of papers. Accordingly this paper only focuses on the compensation problems. It provides an overview of the current compensation principles and highlights the problems. In addition, it analyses the recent constitutional amendments to see if real help is given to dispossessed farmers. Recommendations are made at the conclusion of the paper.

Acquisition of rural land in China

It is the right of governments around the world to acquire private property for public use. In the United States, this right is known as 'eminent domain', the act to acquire private property is known as 'condemnation' (Eaton, 1995). In Canada, the United Kingdom, and Australia, the right and act are respectively known as 'expropriation' (Boyce, 1984); 'compulsory purchase' (Denyer-Green, 2000); and 'compulsory acquisition or resumption' (Brown, 2004). In each of these countries, compulsory acquisition of private property and compensation are governed by relevant legislation.

In China, compulsory land acquisition is known as '*zhengdi*' (Chan, 2003). It is authorised by the Constitution of the People's Republic of China. Before the recent amendment in March 2004, Article 10 of the Constitution stated that the "State may, in the public interest, requisition land for its use in accordance with the law."

The People's Republic of China Land Administration Law 1986 (LAL) as amended in 1998 is the principal legislation for compulsory acquisition of private land (urban and rural) for construction purposes. Strictly speaking, private land ownership does not exist in China. Private land here means urban land held under titles granted by the city governments or rural land owned by collectives. Land acquisition for specific projects such as water conservancy and hydroelectric power is covered by separate laws.

Rural land acquired for construction

The LAL allows any unit or person, subject to approval, to use state owned land (including former rural land acquired by the state) for construction. However, the meaning of construction is not defined. The law merely mentions about roads, pipelines, major infrastructure works, as well as construction land in approved cities, villages and rural settlements under the master plan (s. 44). Accordingly, the government has great flexibility in

the interpretation of the meaning of construction prior to the land acquisition. Very often the flexibility leads to controversial incidents that rural land is compulsorily acquired for speculative developments by crony developers and leads to corruptions, criticisms and disputes.

On the face of it, compulsory acquisition of rural land in China is subject to strict control. Section 44 of the LAL requires that, before any land acquisition, approval for converting rural land to construction land has to be obtained first. Under section 45, the acquisition of rural land of the following categories needs the approval of the State Council:

1. Primary farmland;
2. Non primary farmland and more than 35ha; and
3. All other land exceeding 70ha.

The above control is however not comprehensive. Rural land outside the categories is often arbitrarily acquired by government at all levels for various reasons including revenue-raising for the government concerned (Ding, 2004).

Compensation Principles

In accordance with the provisions of the LAL, compensation has to be paid for the land acquired. Section 47, para. 1, provides that compensation has to be based on the original use of the acquired land. Under this broad compensation principle, the law provides for a compensation package that consists of the following items:

a) Compensation for land taken

For arable land, the compensation payment is based on 6 – 10 times the average annual production value of the acquired land in the previous 3 years prior to the acquisition (s. 47, para. 2).

The compensation standards for other land are to be determined by the respective province, autonomous region and direct-governed city people's government having regard to compensation for arable land (s. 47, para. 3).

For the acquisition of vegetable land in suburban areas, the land use unit also needs to make payment to the New Vegetable Land Development Construction Fund according to the relevant requirements of the State (s. 47, para. 5). Presumably the money is required to provide replacement vegetable fields elsewhere.

b) Resettlement subsidy payment

For the acquisition of arable land, the resettlement subsidy payment is based on the number of dispossessed persons required to be resettled. However, the number of persons to be resettled is not based on the actual number of persons affected. Instead, it is calculated by dividing the amount of land acquired by the average area of arable land per person in the dispossessed community. The amount of payment for each person who needs to be resettled is based on 4 – 6 times the average production value of the acquired land in the previous 3 years prior to the acquisition. Section 47, para. 2 of the LAL puts a limit on the maximum resettlement payment for each hectare of land acquired. The amount shall not be higher than 15 times the average production value of the acquired land in the past 3 years prior to the acquisition.

The resettlement subsidy payment for the acquisition of other land is to be determined by the respective province, autonomous region and direct-governed city people's government having regard to the resettlement subsidy paid for arable land (s. 47, para. 3).

If the land compensation and resettlement subsidy payments are insufficient to maintain the dispossessed farmers' original level of quality of life, the amount of resettlement subsidy payment may be increased subject to the approval of the respective province, autonomous region and direct-governed city people's government. But the total payment for land compensation and resettlement subsidy shall not exceed 30 times the average production value of the acquired land in the previous 3 years prior to the acquisition (s. 47, para. 6).

c) Compensation for improvements and crops

The LAL does not lay down any standard to compensate for the loss of improvements on the land and crops. It allows the respective province, autonomous region and direct-governed city people's government to make the relevant decision (s. 47, para. 4).

d) Compensation entitlement

As mentioned previously, rural land is owned by rural collectives; farmers do not own the land. Although the farmers are members of the respective rural collectives, they are actually tenants of the farmland. Section 14 of the LAL allows the member farmers to sign up a contract with the collective to cultivate all land owned by the collective for 30 years.

Under regulation 26 of The People's Republic of China Land Administration Law Enforcement Regulation 1998, the rural collective economic organisation has the right to retain the compensation money for the land acquired. Dispossessed farmers only get compensation for the loss of improvements on the land and crops. Although the dispossessed farmers are members of the relevant collective, the collective has no statutory obligation to distribute the land compensation money to them. Under the same provision, resettlement subsidy is to be paid to the rural collective economic organisations or the resettlement units (organisers). Individual farmers are given the money only when there is no collective resettlement program.

Rural land acquired for water conservancy and hydroelectric power projects

Section 51 of the LAL provides that the compensation standards and resettlement method for medium and large scale water conservancy and hydroelectric power projects are to be determined by the State Council. In this regard, the State Council introduced the Compensation For Land Acquisition And Resettlement In Large And Medium-sized Water Conservancy And Hydroelectric Power Projects Regulation (WCHPP Reg) in 1991. Under this regulation, compensation for the taking of arable land shall be 3 – 4 times the average annual production value of the acquired land in the previous 3 years prior to the acquisition.

The resettlement subsidy payment to each person required to be resettled is based on 2 – 3 times the average production value of the acquired land in the previous 3 years prior to the acquisition (cl. 5, para. 1). Similar to the LAL, the compensation standards for the taking of other rural land, improvements on land and crops are to be determined by the respective province, autonomous region and direct-governed city people's government (cl. 5, para. 2 & 8). Clause 6 of this regulation limits the total compensation to not more than 8 – 20 times the average production value of the acquired land in the previous 3 years prior to the acquisition.

For the Three Gorges Dam project, a special law, the Changjiang Three Gorges Project Construction Migration Regulation 2001 (which replaces the previous 1993 Regulation), was legislated. The feature of this law is that, in addition to the compensation for the dispossessed farmers and other affected parties, it makes the scheme a project of the whole nation. It introduces a “progressive migration” directive and a “corresponding supports” scheme to help dispossessed people in the dam area. Basically the idea is about taking care of the long term livelihood of the resettled farmers by encouraging enterprises to establish a branch unit in the

resettlement areas so as to bring in employment and economical development opportunities (Chan, 2000).

Problems of current compensation principles

From the above, it can be seen that the compensation package for compulsory acquisition of rural land in China consists of 3 elements:

1. value of land taken based on the original use of land taken;
2. resettlement payment; and
3. compensation for improvements and crops.

On the face of it, the package has provided reasonable compensation for the dispossessed farmers. A closer look reveals that it is not the case. The increasing number of compensation litigations and violence incidents highlights the existence of serious problems in the current compensation principles. The major problems are analysed below.

1. Compensation not based on just compensation

Developed countries have adopted similar compensation principles to compensate their people for the acquisition of private property from them. Regarding compulsory acquisition of private land, the basic compensation principle is to put, as far as money can do, the owner back to his or her original position as if there has been no acquisition. The compensation principle has different names. It may be referred to as 'just', 'adequate', 'reasonable', 'due' compensation (Eaton, 1995) or 'value to the owner' (Brown, 2004, Denyer-Green, 2000). While the meaning of 'just' compensation and 'value to the owner' alike is not always defined, the market value of the land taken is commonly used as a benchmark for compensation. In assessing the market value of the acquired land, it is necessary to consider the potential (highest and best use) of the land.

The 'just' or 'value to the owner' compensation principle is not adopted in China (Chan, 2003). Instead, the LAL stipulates that compensation for the land taken has to be based on the land's original use. The supporters for this principle may argue that when rural land is compulsorily acquired for a public purpose which does not have a general demand or market, the original use of the acquired land is the highest and best use. Compensation based on the original use is thus a fair deal. Unfortunately, this is not always the case; and the original use approach may cause hardship to the dispossessed farmers.

Firstly, the law does not define what original use is. In the past two decades, a number of rural township enterprises and industries have sprung up from former rural land, i.e. the rural land has already been put to other profitable use prior to the compulsory land acquisition. A strict interpretation of the law may lead to the payment of compensation based on the previous agricultural use of the land and causes significant hardship to the dispossessed people.

Secondly, if, for the implementation of a town plan, the land is acquired for a purpose other than a public use that has no market or general demand, the potential of putting the rural land to more profitable use, say, residential, commercial or industrial development, is stripped off by the statutory provision. Dispossessed farmers only receive compensation based on the original agricultural use of the land.

2. Compensation based on average annual production value

Under Chinese law, rural land is not freely transferable. Accordingly, a rural land market does not exist and it is impossible to assess the market value of rural land (Ding, 2004). Instead of using market value as a basis for assessing compensation, the LAL and other relevant legislation provide that the compensation amount has to be based on a prescribed multiple of the average annual production value of the acquired land in the previous 3

years prior to the acquisition. The multiplier is 6 – 10 times under the LAL, and 3 – 4 times under the WCHPP Reg.

Although it is an acceptable approach to value arable land on the basis of its productivity, the use of prescribed multipliers in compensation assessment has problems. Firstly, the basis for the multipliers is unknown. It is unsure what are the factors constituting the multipliers. Secondly, even if the multipliers are reasonable figures prepared with good faith, the gap of the multipliers between 6 – 10 times is too big and easily leads to corruption and causes grievance among dispossessed farmers.

Thirdly, the multipliers are not consistent. The multipliers under the WCHPP Reg are smaller than those under the LAL. Why should the farmers displaced by a water conservancy/hydro-electrical power project receive less compensation? If the land acquired is less productive, the land value would have been reflected in the lower average annual production value. The application of a lower multiplier on the low production value effectively imposes double punishment on the dispossessed farmers.

Fourthly, there is a problem of uncertainty in determining the production value of the acquired land. Production value is susceptible to adverse environmental impacts. The industrialisation of China has caused serious environmental problems. The extensive use of coal fuel has caused the formation of acid rain that covers one third of the nation. Zhang (1997) reported that the average annual pH value of the acid rain in Central China was below 4.0 and the frequency of acid rain was over 80 percent. Coupled with impacts from natural disasters such as floods and droughts, the annual production value can be a very low figure or even a zero value. The average annual production value in the previous 3 years can easily lead to fiddling compensation.

Finally, the trend of a worldwide falling of grain prices also causes uncertainty of production value. The advance in farming technology has enhanced productivity. The increase in supply leads to a fall in global grain prices. Wyatt (2004) reports that prices of wheat, soya bean and corn have fallen 30%, 42% and 35% respectively from their previous record high level. China has a long established agricultural policy of food self-sufficiency and farmers are encouraged to grow grains. This policy was reiterated in the Premier Wen Jiabao's government work report in March 2004 (Xinhua News Agency, 2004a). Unfortunately grain prices in China also follow the global trend and have been falling since mid-1990s (Shi and Qi, 2004). Even if farmers are compensated at the highest multiplier of 30 times permitted under the LAL, the compensation is still very low.

3. Restrictive resettlement subsidy and lack of consequential loss payment

The relevant legislation does not explicitly provide for the compensation of consequential losses. Instead, dispossessed farmers may receive a resettlement subsidy. There are two major problems with the resettlement subsidy payment. Firstly, the actual number of persons affected is not used to assess the payment of compensation. Instead, the number is calculated by dividing the area of land acquired by the average area of arable land per person in the village. It is apparent that the calculated figure may not necessarily match the number of persons actually affected by the acquisition. The acquiring authority may either over or under pay the subsidy.

Secondly, the payment is based on a prescribed multiple of the average annual production value of the land taken in the previous 3 years prior to the acquisition. The pitfalls of the production value approach were outlined above and are not repeated here. Since the resettlement subsidy is not related to the actual expenditure involved, the payment may not adequately cover the real resettlement cost. Farmers may have to use their own money to subsidise the resettlement.

Thirdly, there is a problem with fairness. Based on the current prescribed multipliers, the resettlement subsidy paid to farmers displaced from a water conservancy or hydro-electrical project is less than the subsidy paid to farmers displaced by other projects. Unless the cost required to resettle farmers displaced from water conservancy/hydro-electrical projects is always lower than the cost to resettle farmers displaced from other projects, it is difficult to justify the compensation disparity.

Fourthly, the payment is made only if the farmers are required to be resettled elsewhere. If the land acquisition does not require resettlement, the subsidy is not payable. In real life, no resettlement does not mean that the farmers do not have other consequential financial losses. Since there is no statutory requirement for compensation of other consequential financial losses, the farmers are not entitled to compensation in this regard.

4. Compensation for loss of improvements and crops

The laws require the acquiring authority to compensate dispossessed farmers for the loss of improvements and crops. However, the laws do not lay down the principles or standards for assessment of compensation. Instead, they authorise the relevant government to make the decision. The absence of statutory guidelines has caused great disparity in compensation (Hu 2004) and has become an issue of equity of compensation (Ding 2004).

5. No provision for damages for partial taking

Sometimes a public scheme only requires the taking of a part of the farmers' land. It may cause the retained land to suffer from value loss caused by severance and/or injurious affection. "*Severance damage is the depreciation in the value of the retained land caused by the loss of the resumed portion. Injurious affection is the depreciation in value of the retained land caused by actual or intended use of the portion resumed.*" (Brown, 2004, section 3.33)

In China, land value loss due to severance and/or injurious affection is not covered by the current land acquisition laws. Accordingly, farmers do not have a legal base to claim compensation for land value loss in this nature. In addition, a partial land acquisition may not require the farmers to resettle elsewhere. In this circumstance, they are not entitled to resettlement subsidy or compensation for other consequential losses. The dispossessed farmers' real loss from a partial taking is not compensated under the current compensation principles.

6. Unpaid compensation

Conversion of rural land to construction land through the land acquisition process is a lucrative business that creates huge land value appreciation. It is an open secret that a number of governments are using this process to raise revenue and the dispossessed farmers are not adequately compensated. Zhou & Zhou (2004) report that the lion's share of the value appreciation is taken by the government. The compensation to the dispossessed farmers is only a small portion as shown below:

- a) government: 60 – 70% ;
- b) village collective: 25 – 30%; and
- c) dispossessed farmers: less than 10%

Despite that the farmers' share is so small; there is no guarantee that they will receive payment. The compensation money is often illegally retained by various departments of the government for private use. Xie (2004) reports that a recent investigation by the Ministry of State Land Resources reveals that, state-wide, dispossessed farmers are owed Rmb 14.7 billion in land acquisition compensation money. So far the government has

managed to pay the farmers Rmb 8.7 billion. The outstanding amount is still a hefty amount of Rmb 6 billion.

7. Compensation entitlement

Under the current legislation, compensation for the land taken has to be paid to the collective concerned. Dispossessed farmers are entitled to compensation for the loss of improvements on the land and crops only. The life of the dispossessed farmer is made harder when resettlement subsidy payment is also paid to the collective. Since the legislation does not require the collective to distribute the compensation money to the dispossessed farmers, the real compensation received by the farmers is very little.

Another problem lies in the lack of recognition of legal interests in land under the current laws. Over the past two decades, the unfavourable living condition in rural areas has seen millions of farmers flocking to the cities for job opportunities. In order to keep their land cultivated, farmers use to sublet their land to other farmers within or outside their village. The current laws do not have provision to compensate these subtenant farmers when the land is acquired.

Recent Constructional Amendment

The increasing number of compulsory land acquisition disputes and abuses of dispossessed people has alerted the central government. The government has been repeatedly talking about solving problems caused by compulsory land acquisition. In his 2004 Government Work Report to the National People Congress (China' Parliament), Premier Wen Jiabao pledged, among other things, to ensure that appropriate compensation is paid for expropriated or requisitioned land (Xinhua News Agency, 2004a). At about the same time, the Chinese Constitution was amended for the 4th time. In this round of amendment, 13 revisions were made. The revisions that have an impact on compensation to dispossessed farmers are listed in Table 1.

Table 1 Relevant Revisions of the Chinese Constitution

Article No.	Original Provision	Revised Provision
10, paragraph 3	The State may, in the public interest, requisition land for its use in accordance with the law.	The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.
13	The State protects the right of citizens to own lawfully earned income, savings, houses and other lawful property." and "The State protects according to law the right of citizens to inherit private property.	Citizens' lawful private property is inviolable" and "The State, in accordance with law, protects the rights of citizens to private property and to its inheritance" and "The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.
33, add new paragraph 3		The State respects and preserves human rights.

Does the constitutional amendment help the farmers?

The constitutional amendment surely is a big step forward. The revised Article 10 is most important and relevant to compensation for dispossessed farmers. It explicitly requires that land acquisition, apart from having to be in the public interest, has to be carried out according to the provisions of law and that compensation has to be paid for the land expropriated or requisitioned. Compensation for land taken now becomes a constitutional right of the dispossessed people. However, the amended constitutional provision does not define what public interest is. Without the legal definition, governments at all levels are still free to exercise their own interpretation. Whether land is really acquired in the public interest remains a loophole in the national farmland protection policy.

The amended Article 10 has another deficiency. It does not specify what compensation should be paid. While it is a general expectation that just or reasonable compensation has to be given, Premier Wen Jiabao's March 2004 Government Work Report makes it less clear. Instead of using terms like 'just', 'fair' or 'reasonable' compensation adopted by the international community, he only pledged to ensure that the compensation will be 'appropriate' (Xinhua News Agency, 2004a). It cast some doubt on the sincerity of the government to treat the dispossessed farmers fairly. China Daily (2004b) reports that the central government plans to increase the compensation amount by two to three times in the next few years. Presumably the proposed increase in compensation amount is deemed to be 'appropriate' compensation referred to in the Premier's report. However, even if the compensation is increased by two to three times, there is no guarantee that it is at a level equivalent to the highest and best use value of the land taken. The problem of unfair compensation still remains unresolved.

Under the revised Article 13, it explicitly states that citizen's lawful property is inviolable and that acquisition of private property has to be in public interest and according to the provisions of law. Also compensation needs to be paid. This provision creates a legal base to prevent the abuse of power by government bodies in respect of arbitrary expropriation of private property. It reinforces Article 10 that compensation will be made for land acquisition. While this Article aims at protecting private property other than real estate, farmers now have a legal base to query the legitimacy of a land acquisition proposal under this provision and Article 10.

Human rights are now formally recognised and written into the Constitution. No doubt it is a breakthrough towards the improvement of human rights in the country. Although human rights are not defined in the Constitution, it is fair for the people to expect that the right to receive just or reasonable compensation for land acquisition is within the ambit of this constitutional provision. However, the expectation still remains a dream because the constitutional amendment does not go far enough to radically remove the plight of farmers. The decision to give 'appropriate' compensation instead of just or reasonable compensation implies that farmers remain the biggest losers in the wake of economic and national development.

Latest reforms

The Chinese government has been talking about protecting the interest of farmers for a long time and some progress has been made in the regard. Prior to the constitutional amendment, the government had introduced a new measure to abate arbitrary acquisition of farmland and arbitrary determination of compensation payment. The State Land Resources Hearing Regulation was introduced in January 2004. It requires a public hearing to be conducted before a land acquisition scheme is carried out and the compensation payment is determined. China Daily (2004b) claims that, under this new requirement, no requisition of rural land will be approved without the endorsement of affected farmers. However, an examination of the legislation cast some doubt over this claim. The contents of the legislation only mention the

procedure for conducting a hearing and say nothing about the need for endorsement of the acquisition scheme by the affected farmers.

In August 2004, the Ministry of State Land Resources announced that relevant sections of the LAL will be amended to match the revised constitutional provisions regarding land acquisition and compensation. However, this is not a major amendment. A major amendment of the LAL will be carried in the future after the introduction of the land administration system reform policy by the Central Government (Xinhua News Agency, 2004c).

Conclusion

The current compensation principles for acquisition of rural land are highly unfair. The requirement that compensation should be based on the original use of the land has seriously infringed the farmers' right to just or reasonable compensation. The uncertainty in assessing production value of the acquired land makes the production value approach an unworkable method for compensation assessment. At present, about 2 million farmers lose their land every year and the number is increasing. The rising number of aggrieved farmers is a serious threat to community security. The solution is to give the farmers a fair go.

The recent constitutional amendment is a major step forward in this direction. Compensation for land acquired is now a constitutional right. Although the constitutional amendment does not offer immediate real help to dispossessed farmers in land acquisition issues, it gives the public a strong signal that the central government treats it as an important issue and paves the way for future amendments of the existing land acquisition laws. The recent announcement about the proposed amendments to the LAL is a good start.

At present, there is a huge gap between the compensation principles in China and those from developed countries. Given the difference in political environments and cultures between countries, it is unrealistic to import all compensation principles from developed countries into China. However, any attempt to make the gap smaller will offer real help to dispossessed farmers in China. In this regard, the following recommendations are worth considering:

1. Replace original land use compensation principle by highest and best use value
The original land use compensation principle is unfair and has caused the biggest discontent amongst dispossessed farmers. When the land acquired has a potential for more profitable uses, the highest and best use principle should be used to assess reasonable compensation. Since China is now a member of the WTO and has a strong economy, there is no reasonable why this international convention is not adopted. Farmers are already at the bottom of the social hierarchy in China and are suffering most. They should be given a fair deal when they lose the land which is their lifeline.
2. Improve production value approach
When the highest and best use of the land acquired is its existing agricultural use, the production value approach is still a good method to assess compensation for the land. Most of the farmers in China have little or no education and skill training. After losing their land, their lifeline is broken. They become "3-no" citizens, i.e., no land, no job and no security. While the government may introduce other measures to take care of their future livelihood, assessment of compensation based on the production value approach has to be more flexible and generous.

To address the issue of uncertainty in production value, the authority may consider using the highest production volume recorded in the past together with a favourable exgratia payment per unit of production volume to assess the annual productive value. Coupled with more generous and uniformed multipliers, it may help overcome the problems due to the uncertainty of production value.

3. Allow consequential loss payment
Whether resettlement is necessary, the farmers are bound to have other consequential financial losses, big or small. The law should be amended to require compensation for consequential financial losses in addition to resettlement subsidy. Since farmers are not as well educated and knowledgeable as their counterparts in the cities, they should be allowed and encouraged to get professional advice and assistance and claim the cost out of consequential loss.
4. Introduce partial taking compensation
The current compensation package does not cover value loss of the retained land resulting from a partial taking. Dispossessed farmers have no legal base to claim land value loss due to severance and/or injurious affection. This is against the 'no loss, no gain' compensation principle adopted by the international community. To provide fairer compensation, the Chinese government should introduce compensation for value loss of the retained land due to partial land acquisition.
5. Make dispossessed farmers the receivers of compensation
The current compensation law puts the dispossessed farmers in a very unfavourable position. Compensation for the land taken is paid to the collective instead of the farmers. Although the farmers may have lived and worked on the farm for generations, they are deemed tenants instead of owners of the land and do not have the right to receive compensation losing the farmland. A radical solution to the problems is to change the existing land ownership system and make the farmers the owner of the land. However, such a change is a politically sensitive issue. The government is unlikely to change the status quo.

A better solution is to make it a legal requirement for the collectives to distribute the compensation money to the dispossessed farmers. However, unless the collective is dissolved after the land acquisition, it may need to continue to exist so as to look after other farmers remaining in the village. The laws may thus be amended to require the collective to distribute a prescribed portion of the compensation money to the dispossessed farmers and allow it to keep the rest to maintain service to other farmers.

In regard to the subtenant farmers, they should be given the right to get compensation when the land is taken. Since they are cultivating the land on behalf of the absentee head-tenant farmers, it is fair for the laws to be amended to allow them to have full compensation less the reasonable amount available to the head-tenant farmers.

6. Make sure farmers receive payment
As mentioned above, dispossessed farmers are owed billions in compensation money. This is not a healthy situation and immediate actions need to be taken to pay the farmers. In order to prevent recurrence of the problem, the government may consider setting up a statutory independent trust fund and require the acquiring authority to pay the compensation money into the fund prior to the land acquisition. The trust then distributes the money to the dispossessed farmers. In order to make sure the full amount of compensation money is deposited before the land acquisition, the trust should be empowered to apply to the court for an injunction on behalf of the dispossessed farmers to stop the land acquisition if the full amount of compensation money is not deposited.
7. Introduce uniform compensation standards
At present, land acquisitions for construction and water conservancy/hydroelectric power projects are governed by different laws and the compensation packages are different. The prescribed multipliers for the production value approach under different laws have big gaps. In order to remove unfairness, the laws should be

amended to introduce uniform multipliers and lay down other compensation standards. Where it is necessary to allow local governments to prepare the compensation standards, broad principles should be provided to make sure the compensation standards prepared are reasonable.

China has significant economic progress in the past two decades. While the living standard of most people is improving; the majority of farmers are still struggling. The rapid development of the country has seen the acquisition of large amount of rural land and the creation of millions of dispossessed farmers. The current compensation standards are far from satisfactory. Following the recent constitutional amendment; it is time to give farmers a fair go in land acquisition compensation. While the above recommendations cannot solve to all compensation related problems, their implementation will no doubt give the farmers considerable relief.

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