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Failure by design – National mandates and agent control of local land use in China

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ABSTRACT

This paper aims to fill the void in the literature by answering the following research question: to what extent has the Chinese central government institutionalized public participation for addressing the challenge of agent control of local land use in China? Focusing on the stated purposes, specified actors, and installed mechanisms of public participation and government accountability, an institutional analysis was conducted on the national land use regulations and policies enacted between 1947 and 2012. It was found, without institutionalized input and surveillance from bottom-up by individual citizens and civil society organizations (CSOs), the top-down approaches remained ineffective and land use was mainly left for manipulation by local governments. The rural-urban dichotomy and lack of institutionalized public participation in land use decision-making have compromised equal economic and social opportunity for farmers, eroded public trust in local governments, and led to social unrest. Thus, the central government needs not only to directly control the discharge of discretionary power by local governments, but also to empower the public for holding the government accountable for land use decisions.

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Introduction

China is a country with a large population and scarce resources. With 1.4 billion people to feed, China only has about 0.10 ha of cropland per capita compared to 0.47 ha of cropland per capita in the United States and 0.69 ha per capita in the European Union (Lichtenberg and Ding, 2008). Since the establishment of the People's Republic of China (PRC) in 1949, self-sufficiency and using agricultural production to subsidize industrialization have become national development strategies (State Council, 1950).

Thus, farmland protection has been at the core of the Chinese central government's land use policy (State Council, 1998).

Land is not only an important means of agricultural production, but also the base for hosting other economic and social activities. Particularly since manufacturing industries and the real estate market have taken off, China's land has been subject to conflicting demands (Ding and Lichtenberg, 2011). Redeveloping urban land and appropriating rural land are major sources of land supply for constructing industrial and commercial facilities, residential estates, and roads and other public infrastructure.

The central government (agent) represents the Chinese public (principal) to manage land resources and further delegates the authority and responsibility to local governments (agent), including provincial, city, county, and township and village to make land use decisions that fit local conditions. The central government prohibits transfer of rural land use rights to interested nonagricultural or commercial users without state expropriation or compulsory acquisition (Article 43 and 63) (Standing Committee of NPC, 1998). But local governments are entitled to expropriate and compulsorily acquire rural land for public interest purposes (NPC, 2004; Standing Committee of NPC, 1998). Unfortunately, there is no clear demarcation between public and private interest in laws or government policies and the nature of a land development project is subject to definition by the government in charge. Local governments abuse their discretionary power and engage in excessively converting rural to urban land, illegally transferring land use rights to

Abbreviations: CCDI, Central Commission for Discipline Inspection; CPC, Communist Party of China; CSO, civil society organization; MEP, Ministry of Environmental Protection; MLR, Ministry of Land and Resources; MOA, Ministry of Agriculture; MOF, Ministry of Finance; MOHRSS, Ministry of Human Resources and Social Security; MOS, Ministry of Supervision; MOHURD, Ministry of Housing and Urban–Rural Development; NAO, National Audit Office; NDRC, National Development and Reform Commission; NGO, non-governmental organization; NPC, National People's Congress; OLGFE, Office of Leading Group on Finance and Economy; PC, People's Congress; PRC, People's Republic of China; SANL, State Administration of National Land; SC, State Council; SEPA, State Environmental Protection Administration; SOE, state-owned enterprise; TVE, township–village enterprise; UNECE, United Nations Economic Commission for Europe; VC, villagers' committee.

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commercial users, and/or compensating farmers below market rates or even subsistence levels (Ding and Lichtenberg, 2011; Lin and Ho, 2005). Because of a lack of public participation in the deliberations on land appropriation and compensation, Chen Xiwen, Deputy Secretary General of the Office of Leading Group on Finance and Economy (OLGFE) of the State Council admitted in public that land conflicts have become the number one reason for the rampant social unrest in rural China (Ren and Lu, 2006; Xinhua Net, 2006).

Previous studies have examined land use patterns and implications for food security (Chen, 2007; Deng et al., 2006; Ding and Zhao, 2011; Lichtenberg and Ding, 2006; Verburg et al., 2000), economic and political incentives of and measures taken by local governments to expropriate (*zhengshou* 征收) and compulsorily acquire (*zhengyong* 征用) rural land (Ding, 2003; Ho and Lin, 2004; Lichtenberg and Ding, 2009; Long et al., 2007; Zhu, 2002), and price differences incurred by rural peasants, local governments, and land developers in different stages of transactions on land use rights (Lin, 2011; Lin and Ho, 2005; Wei and Zhao, 2009; Xu et al., 2009; Yan and Xu, 2010; Yep, 2013). Public participation is a useful mechanism for involving stakeholders in defining purposes, identifying actors, and designing the architecture of environmental and natural resources governance that will deliver desirable environmental, economic, and social outcomes (Li, 2006; Ostrom, 1990; United Nations Economic and Social Commission for Asia and the Pacific, 2009). Researchers have pointed out the limitations in the current practices of public participation and advocated for a participatory approach in land use planning for reducing social conflicts (Tang et al., 2008) and building a well functioning land market (Koroso et al., 2013) in China.

“Institutions are the humanly devised constraints that structure political, economic and social interaction” (North, 1991: 97). Institutions, both formal and informal legitimize human actions. China has been notoriously famous for the culture of state secrecy and control. However, there has not yet been a systematic assessment of the (lack of) institutionalized public participation in land use decision-making, especially in the context of rural-urban dichotomy in China. To fill the gap in the literature, this paper aims to answer the following research question: to what extent has the Chinese central government institutionalized public participation in land use decision-making and what are the implications for land governance in China? Narratives on the national land use regulations and policies will uncover perspectives of the central government on problems in local land use and possible solutions foreseen at particular points in time from 1947 to 2012. The results will reveal flaws in the system design and further inform debates on good governance and central–local relations in the Chinese context.

Methodology

The paper analyses the existing 88 land use related national regulations promulgated by the NPC or its Standing Committee and laws and policies made by the central government between 1947 and 2012. The narratives reveal how the stated purposes, specified actors, and built architecture intertwined with each other determining the opportunities for the public to participate in land use decision-making. Since the actual local practices of public participation usually fall short of what is mandated by law, particularly in China where enforcement is weak (OECD, 2006; Shan, 2012), an evaluation of formal institutions, especially national land use regulations and policies offers an upper bound of the estimate on the level of institutionalization of public participation in China.

A two-stage data analysis was performed on the texts of those laws and policies. Stage one analysis qualitatively assessed each legislation/policy for understanding its logic and substances. Important elements such as purposes and actors emerged

Table 1

List of purposes specified in the national land use related regulations and policies.

Purpose	Definition
p1	Protecting individual property rights
p2	Striving for a socialist/communist society
p3	Maintaining social stability
p4	Regulating land for enhancing farmers' welfare
p5	Ensuring macro-economic control by the government
p5	Optimizing land resource allocation
p6	Increasing agricultural production for ensuring food security
p7	Regulating land as a means of facilitating industrialization
p8	Facilitating industrialization
P9	Facilitating urbanization
P10	Nature conservation or hosting public facilities
p11	Serving private interests other than that of farmers
p12	Ensuring government tax revenue
p13	Regulating local governments over land deeds

during the documentary research. The 2008 State Council Decision on Strengthening the Rule of Law among City and County Governments demands public participation for ensuring scientific, democratic and accountable administrative decision-making (State Council, 2008). Thus, a top-down approach was adopted to assess the legal and administrative procedures installed by the central government for the public to participate in land use decision-making and to hold the government accountable for decisions made. The second stage of analysis quantified those texts for understanding how the relative importance of different purposes, actors, and architecture has changed over time.

Using a grounded approach, a total of 13 substantive purposes were identified in the texts of the regulations and policies (Table 1). Only three focus on protecting and advancing interests of individual Chinese citizens: protecting individual property rights, enhancing farmers' welfare, and serving private interests other than that of farmers. All the rest are national development objectives.

There are altogether 21 different actors specified in the regulations and policies, of whom two collective (TVEs and VCs), four private (private land users, CSOs, and rural and urban residents), 15 public. The public organizations can be grouped into the following five different categories: legislative, supervisory and disciplinary, administrative, economic, and judicial, across central (C) and local (L) levels (Table 2):

The necessary conditions for the public to participate in decision-making and effect change include: access to information, timeframe for commenting, and mechanisms of participation to impact decision (ex-ante participation). Access to justice is considered ex-post participation in decision-making. Thus, for the purpose of this study, architecture is defined as institutional set ups that ensure:

- (1) dissemination of information by public authorities including publication of land use plans (s1),¹ land development projects (s2), compensation schemes (s3), government approval of land use applications (s4), transaction records of land use rights (s5), contact information of responsible government agencies or project owners (s6);
- (2) time period for the public to comment before approval by the government on land use plans (s7), land development projects (s8), and compensation schemes (s9);
- (3) due processes and accesses to remedies including requesting a fair hearing (s10), filing appeals to the government (s11), and bringing a case to the court (s12); and

¹ “s” stands for structure and “1” stands for number 1. The same rule applies to s1–s15.

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