

1-1-2011

Expropriating Land for Public Purposes: What China Can Learn From Canada

Xuezi Zhong
Western University

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Recommended Citation

Zhong, Xuezi, "Expropriating Land for Public Purposes: What China Can Learn From Canada" (2011). *MPA Major Research Papers*. 93.
<https://ir.lib.uwo.ca/lgp-mrps/93>

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Xuezi Zhong

Full-time Student
in Local Government Program

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Abstract

In recent years, with the development of economy, China has realized great achievements in various areas, and gradually stepped into a great developing country. But in the same time, China raised many issues, such as the gap between rich and poor expanding, the environment deterioration and so on. These years, the Communist Party of China and the State Council pay high attention to the peasants issue, because the “peasants, rural, agricultural” issue have already become a serious problem in the process of economy development, if these three issues can't be solved well, it highly hinders the pace of development. Therefore, this paper will pick up one aspect of the peasants issues----the peasants whose land is expropriated, firstly analyze the situation in China, then through Canada's experience and combine with China's real situation, finally try to come up with some reasonable and feasible recommendations.

Land is the source of all productions and all existence, and the most important resource for human beings' survival and development. The ownership and usage of land is related to social peace and development, closely relevant to the prosperity and decline of the nation as well as the people's life. Because China has a huge population and the agricultural people are the majority, the Communist Party of China and central government pay close attention to peasants, rural areas and agriculture. Whether the urban and rural development can be overall planned well, whether a new developed countryside can be propelled, and whether the "Peasants, Rural, Agriculture" issue can be solved concern the overall situation of building a moderately prosperous society.⁽¹⁾

The land issue is always at the core of the "Peasants, Rural, Agriculture" issue. In recent years, with the pace of urbanization in China accelerating, the rapid expansion of the city to the suburbs, and the building of many large-scale public projects such as the "Three Gorges Dam", a large amount of rural land was expropriated. A small portion of the affected peasants luckily became rich as they received high compensation fees, but the majority of them became a new group---farmers without land, going to the city without a job and living without money.⁽²⁾ This caused a large number of mass incidents and petitions which seriously affected the credibility of the government in protecting the legal rights of peasants. 900 million peasants account for the three quarters of China's total

population, land is the basis for peasants to make a living, if the rights of too many land-lost peasants can't be protected, it's highly probable to lead to enormous social problem.

Urbanization is the necessary process of societal development, in the process of urbanization, the peasants' farmland often being expropriated to become to urban land or being used to construct large-scale public projects, it meets the needs of economic development, especially for China, which has fallen behind the world for many years.

Therefore, it's no doubt that the land is huge contribution that peasants give to urbanization, but the development of cities should not depend on the sacrifice of peasants.

The current system of compensation and resettlement of landless peasants and local governments is not effective in addressing the landless peasants issue, which obviously affects the livelihood of this group and the social stability and the overall situation of economic development. However, in the same situation--farmers' land being expropriated to become to urban land or other usages, Canada, as a developed country, protects the farmers' rights very well, and farmer' s land is rarely expropriated. In a short word, when the land is expropriated, most peasants in China become more and more poor, but most farmers in Canada become more and more rich. Although there are many differences between China and Canada in political systems and economic situations, Canada's successful experience still has much worth for China' s learning

and reference, however, Canada's legal system is common law system (except Quebec Province), China's belongs to the civil law system, thus many of Canada's outstanding cases can't be used in China, therefore this paper will mainly focus on the systems of Canada's successful experience in land expropriation. Firstly, I'll analyze the current expropriation situation in China and Canada, then through Canada's experience, try to find out the problem and reasons of China's situation, finally use Canada's successful experience and combine with China's real situation, come up with the solutions to improve this issue. Since China is developing very fast these years, so not only the peasants' land often being expropriated, but also many city residents' land being expropriated for the economic development or the construction of city, therefore the issues related land expropriation have already become a nationwide issue, thus the recommendations for improving this issue can be used in all the land expropriation cases in China, including the peasants and the residents of in city. According to the definition in Wiki, a farmer is a person, engaged in agriculture, who raises living organisms for food or raw materials, generally including livestock husbandry and growing crops such as produce and grain. A farmer might own the farmed land or might work as a labourer on land owned by others; but in advanced economies, a farmer is usually a farm owner, while employees of the farm are farm workers, farmhands, etc; ⁽³⁾A peasant is an

agricultural worker who generally works land owned or rented by/from a noble; the peasant was bound to the land and couldn't move or change their occupation unless they became a yeoman (free person) which generally happened by buying their freedom. The peasant also generally had to give most of their crops to the noble.⁽⁴⁾ Thus, the essential difference between farmer and peasant is the ownership of the land, as all the land in China is owned by the state or rural collectives, thus the agricultural workers in China don't have the ownership of the land they work on, so in this paper, I'll name the agricultural worker in China peasants; however, in Canada, although the 89% land is Crown Land, of which the 41% is federal owned and the 48% is provincial owned, the rest 11% land is owned by private persons, so some of the agriculture workers who have the ownership of land can be called as farmers, thus in this paper, I'll name the agriculture workers in Canada farmers (the farm workers who are not the main body of expropriation will not be considered in this paper).

This paper will be six chapters: The first one is the significance of solving the issue; The second one is China's land ownership evolution history and the current expropriation situation; The third one is Canada's current expropriation situation; The fourth one is the

drawbacks of China's current situation; The fifth one is the recommendations to improve the China's expropriation system through Canada's systems; The sixth one is conclusion.

Chapter 1: The significance

1. Proper settlement of landless peasants problem is a necessary condition to ensure the state essential land expropriation operation health and efficiently.

In the process of economic development, if we can create essential conditions to lead more peasants leave farmland and leave country to work in the cities, then we can realize the combination and complementary of advantages in the process of socialist institutionalization, standardization, routinization. From this significance, peasants losing land is not only the inevitable trend of history development but also the need of social progress. But in the current compensation systems, it's not avoidable that part of landless peasants fall into poverty. Effectively protecting this most vulnerable group, is the embodiment of social justice as well as the government's responsibility. ⁽⁵⁾On the contrary, if the landless peasants issue can't be solved properly, it might cause disputes, then the original plan may couldn't operate smoothly, as a result, it'll become a vicious circle, the peasants may arise resistant emotion when the government need to expropriate land in the future.

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2. Proper settlement of landless peasant problem is an important breakthrough of achieving coordinated development of urban and rural areas⁽⁶⁾

The rural-urban dual division state which has existed a long time in China causes two different social groups---peasants and residents of in cities. Of course, this situation should attribute to its special history reasons, because China was backward and extremely poor when the new PRC founded, but when the state's industrial base initially founded and gradually stepped into the well-off society, the government still implemented the original policies instead of revising them.

The ancient Chinese had a saying:" Do not need to worry about scarcity but inequality". The landless peasants not only face "scarcity" but more "inequality".

From the change of three indicators---income, consuming and saving, the gap between the urban and rural residents in China is obviously expanding. Thus, the rational choice should realize the following two aspects: the one is solving the landless peasant problem caused by the urban development effectively, the other one is ensuring the peasants can share the benefits from the land value-added and the development of urban, which the urban residents can enjoy. Landless peasant are a special group which is intermediate between peasants and urban residents.

The group's particularity is that it loses the land which the peasants depend on to

make a living---and no longer has the traditional sense of peasants' identity. At the same time the group has not fully integrated into cities and does not enjoy all the rights that the urban residents could share. ⁽⁷⁾ The landless peasants are the interest carriers of a transition, which is from the stage of urban-rural dual structure to the stage of the full integration of urban and rural areas. Thus, to achieve full integration of urban and rural, we must solve the landless peasant problem and maintain compatibility between their various interests and cities' development.

3. Proper settlement of landless peasant problem is an important part of maintaining social stability.

Social stability is the prerequisite for the construction of new modern countryside. Without a stable social environment, it's impossible to realize the construction of modernization. In recent years, with the pace of modernization and urbanization, the amount of expropriation land is increasing, and there is no real coordination of the various interests of peasants, led to many landless peasants rose mental imbalance emotion. ⁽⁸⁾ According to news, many areas happened conflicts between

peasants and governments, even some peasants attacked expropriation officers in violent ways, triggering a large-scale groups of petition. It's proved that the longer the landless peasant problem accumulated, the greater its complexity, the greater the government's responsibility and pressure shall be, leaving more social instability. If this situation exacerbates, the lighter result may impact the economic development environment and the public security, in serious cases may hinder the development of urbanization, intensify social conflicts, bring serious social crisis, and threaten the social stability. ⁽⁹⁾

4. Proper settlement of landless peasant problem is the booster of urbanization process

Urbanization is an important symbol to measure the economic and social development level of a country or a region, it not only directly helps to improve the intensive level of economy, but also is conducive to industry restructures, optimizes and upgrades, and ultimately promotes the national economic developing rapidly, healthy and coordinated. However, the process is difficult and even painful. ⁽¹⁰⁾In the current stage, rapid urbanization means many new

industrial projects, large-scale construction of industrial zones and urban expansion, which must involve a large number of land acquisition and demolition of villages, resulting in a large number of landless peasants. The government must pay close attention to the various problem of the peasants whose land is being expropriated. If these various problem can't be settled properly in the process of expropriation, it may cause peasants worry about selling land, lead to peasants rise resistance behavior to expropriation, then increase the workload of the land expropriation process, eventually slow down the process of urbanization. On the contrary, if the landless peasants problem can be solved properly, landless peasants can eliminate their worries, then increase the sense of security, in the same time have a clearer and more confident future design, then they can better able to adapt to urban life and production environment. If many landless peasants pour into cites with positive attitude, they can become a "reservoir" of the urban labor force, which will help to reduce our labor costs, maintain the low-cost competitive advantage in the international industrial products and service markets, slow down the rapid labor cost increasing, finally realize the urbanization process be faster and in a more healthy and orderly manner.

Chapter 2: China ' s land ownership evolution history and the current expropriation situation.

Expropriation, according to the *Land Management Law of People ' s Republic of China*, is a behavior that when the state aims at meeting the public interest, under the premise of the statutory requirements and according to legal rules, to levy the rural collective-owned land to become to state-owned, and compensate the rural collective economic organizations and the person who has the collective land use rights. In essence, expropriation is the transfer of the ownership or the use right of the land. China, as a socialist country, has undergone a complex and tortuous evolution process since 1949, when the People ' s Republic of China founded. As the ownership of land directly relates to peasants ' rights, it ' s necessary to talk about the history of China ' s land ownership system from 1949: The first phase (1950-1952)-in June 1950 the central government promulgated the "Agrarian Reform Law of the PRC", which abolished the feudal landlords ' private land ownership and then implemented the private ownership of land for peasants. ⁽¹¹⁾The second phase (1952-1956)-changed the peasants ' private ownership of land to "peasants own land privately, but rural collective unifies to operate and use" as

the land system. In the second year after the land reform was implemented, the CPC Central Committee for the first time issued a "resolution of mutual assistance and cooperation on agricultural production ", which mainly aimed at solving the rural cooperative problem, through various forms of mutual assistance and cooperation, transforming the individual agricultural economy which was based on the private ownership of production to an agricultural cooperative economy which was based on the public ownership of production. The process of rural reform is the collectivization of agriculture. ⁽¹²⁾The third phase (1956-1978), changed the land system from "peasants own land privately, but collective unifies to operate and use" to "collective has the ownership of land, and collective unifies to operate and use". In June 1956, the third meeting of the first session of the National People's Congress adopted the "Advanced agricultural production cooperatives model statute", which indicated that private land ownership should change to the collective land ownership. In August 1958, the CPC Central Committee launched the "The resolution about establishing the people's communes in the countryside". As a result, only in two or three months, all the peasants ran into the communist society and established people's communes, thoroughly realized all the productions owned by collectives. ⁽¹³⁾ Phase IV (1978-present), changed the land system from "collective has the ownership of land, and collective unifies to operate and use" to

the present two-tier management system "collective owns, combines unified with separate". In the end of 1978, Xiaogang village, Fengyang city, Anhui province, a dozen peasants risked their lives to initiate the household contract responsibility system, finally achieved success very soon because of its high operating efficiency of production and its unique function of mobilizing the peasants' enthusiasm to produce. On January 1, 1982, the CPC Central Committee approved and transmitted the "National Rural Working Conference", which was the first known that the Central One document related to rural issues, it indicated: all the land responsibility systems operate now, are one of the land responsibility systems of socialist collective economic. After 1982, with the household contract responsibility system being further promoted and improved, the people's commune system was repealed. Since then, all the land in China is owned by the state or rural collectives, but the peasants share the use right.⁽¹⁴⁾

The current expropriation situation in China:

1. The legal background of the land expropriation system

China's land expropriation has constitutional support, the Constitution article 10 indicates:

"The State can expropriate the land in accordance with the law for public interests."

Moreover, China's legislative system is mainly based on the "Land Management Law", "Urban Real Estate Administration Law" as the core, formed by a series of separate regulations for the legal framework, there is no independent land law, and no independent land expropriation law.

2. The land expropriation scope of the expropriation system.

The scope of land expropriation in China is wide compared to the other countries.

According to the Land Management Law in 1986, which stated that "When the State runs economy, culture and national defense construction, and hosts public utilities construction, if need to expropriate collective land or use state owned land, conduct according to this chapter rules." In addition, the new Land Management Law Article 43 also states: "If any unit or individual needs to use land for construction, it must apply using state-owned land. The state-owned land includes all the national-owned land and the state expropriated land which was originally owned by the peasant collectives.

3. The compensation standard and scope of the land expropriation system

China's land expropriation compensation is in accordance with the "multiple output method" to determine the compensation, the compensation principle is "to maintain the original living standard of peasants". The land compensation includes land compensation fee, resettlement fee, compensation for ground attachments and young crops. The compensation fee for the expropriated arable land, should be 6 to 10 times' value of the arable land's average annual output in the previous three years; resettlement compensation fee should be 4 to 6 times' value of the arable land's average annual output in the previous three years, not exceeds 15 times' value of the average annual output 3 years prior, the total number of the land compensation fees and resettlement fees should not exceed 30 times' value of the average annual output value precede 3 years before expropriation. ⁽¹⁵⁾The compensation scope of the expropriated land is narrow, because it only includes the direct loss caused by the expropriation, and does not mention the indirect loss.

4. The land expropriation procedures of expropriation system

Land Expropriation in China generally have six steps: application → application being checked and the review of related documents → sketch land compensation and

resettlement program → examination and approval of the land → organize

implementation and announce → registration and certification. ⁽¹⁶⁾

The compensation of expropriated should be paid within 3 months since the approval of

compensation and resettlement plan. ⁽¹⁷⁾

Chapter 3: Canada's current expropriation situation.

Land ownership in Canada is held by governments, native groups, corporations, and individuals. Canada is the second largest country in the world; at 9,093,507 km² or 3,511,085 mi² of land (and more if fresh water is included) it occupies more than 6% of the Earth's surface. Since Canada uses primarily British-derived common law, the holders of the land actually have land tenure (permission to hold land from the Crown) rather than absolute ownership. The majority of all lands in Canada are held by governments on behalf of the monarchy and are called Crown Lands. About 89% of Canada's land area (8,886,356 km²) is Crown Land, which may either be federal (41%) or provincial (48%); the remaining 11% is privately-owned. Most federal Crown land is in the Canadian territories (Northwest Territories, Nunavut and Yukon), and is administered on behalf of Indian and Northern Affairs Canada; only 4% of land in the provinces is federally-controlled, largely in the form of National Parks, Indian reserves, or Canadian Forces bases. In contrast, provinces hold much of their territory as provincial Crown Land, which may be held as Provincial Parks or wilderness. In the last century, the trend in Canada has been for a smaller percentage of people to own land, as more urbanization

has turned people into renters. Still Canada has one of the world's highest rates of home ownership, which actually increased during the economic boom of the mid 2000s.⁽¹⁸⁾

Canada implements the management system that the management rights scope are basically the same as the ownership scope. The federal government is responsible for managing the federal public land; the provincial government is responsible for the management of provincial public land; private land is self-management by the owner.

The development, utilization and protection by different levels of government and the owners of the land are based on federal and provincial laws and regulations. The federal government doesn't directly participate in the management of provincial and private owned land but provides guidance for national land, through researching and establishing the land information system, as well as strengthening scientific management methods, to manage the land resource well.

In Canada, under the constitution, each province has its own law and regulations, so it is necessary to consider the expropriation laws of Canada, the provinces and the territories.

The Canadian Expropriation Act used as its prototype the Ontario Expropriations Act.

These two statutes provided legislative precedents for the expropriation statutes of

Manitoba, Nova Scotia, New Brunswick, Alberta, and British Columbia. ⁽¹⁹⁾ Thus, this paper will mainly focus on the expropriation law of Canada and Ontario province.

This paper is not a special article on expropriation law, it just aims to find the core theories which are worth China learning, therefore, there won't be a discussion of all the aspects of Canadian expropriation law, just two outstanding parts----the procedures and the compensation, which I think could be most useful and reasonable revelations for China, especially the procedures as China's government doesn't have enough money as Canada's to afford a huge number of high compensations, because although in these years China's government has large amount of financial revenues, there are many other public projects need government's revenues to carry out, so for the expropriation part, it can only share a small portion of the government's revenue.

Procedures:

In Canada, the federal and provincial acts divide the process of expropriation into two parts---the pre-expropriation procedures and the post-expropriation procedures.

1. Pre-expropriation Procedure

(1) Notice of intention to expropriate

In the opinion of the Minister, any interest in land is required by the Crown for a public work or other public purpose, the Minister may request the Attorney General of Canada to register a notice of intention to expropriate the interest, signed by the Minister.⁽²⁰⁾

This act is aiming at notifying the owner and giving an opportunity for representations to be made prior to the formulation and registration of the notice of intention to expropriate.

(2) Public Hearing or Inquiry Procedure

Under the federal Act, the owner can object the expropriation within 30 days after the date the notice of intention is given, then the Minister should order that a public hearing be conducted with respect to the objection and any other objection to the intended expropriation that has been or may be served on the Minister.⁽²¹⁾

(3) Confirmation or approval of intention to expropriate

If there is no objection within the period of thirty days, the Minister may confirm the intention; or if there is an objection within the period of thirty days referred to section 9, the hearing officer should conduct a public hearing after receiving the report. ⁽²²⁾

(4) Registration of confirmation or approval

Under the Ontario Expropriations Act, if a proposed expropriation has been approved, within three months the expropriation authority should register the approval plan in the proper land registry office by the expropriating authority and by an Ontario land surveyor. ⁽²³⁾

(5) Abandonment of intention to expropriate

After 120 days the notice of intention was given, if the Minister has not confirmed the intention in the manner provided in section 14, the Minister shall be deemed to have abandoned the intention. ⁽²⁴⁾

(6) Entry for Survey

The Attorney General shall appoint a chief inquiry officer and many inquiry officers to consider the necessity. The chief inquiry officer has general supervision and direction over inquiry officers and the assignment of their duties. The expropriating authority should serve each party to the inquiry a notice indicating the grounds, including maps and plans, and other documents may be used at the hearing. ⁽²⁵⁾

2. Post-expropriation Procedure

(1) Notice of expropriation

Under the Ontario Act, if a plan has been registered under section 9, and there is no compensation agreement has been made, within thirty days after the plan registration, the expropriating authority should serve a notice in a prescribed form to the owner and the registered owner, but the expropriation won't be invalid if the notice fails. ⁽²⁶⁾

(2) Entry for appraisal

Only after the expropriation authority has served the land owner a notice, and the owner consents to the entry, could the equivalent Ontario provision can be invoked. If the owner refuses the entry, the authority may apply to the Ontario Municipal Board for an order authorizing entry, which should upon terms and conditions. ⁽²⁷⁾

(3) Statutory offer of compensation

The expropriation codes provide for a mandatory advance payment or an offer to pay in advance, amounting to 50% or more of what they consider the property to be worth, and without prejudice to any further claims to compensation, at least the market value of the subject property, as estimated by the expropriation authority. The written offer must be made within a specified period of the effective date of expropriation.⁽²⁸⁾

(4) Negotiation

Under the Ontario Act, if the statutory authority and the owner haven't agreed the compensation payable, according to section 22 for the case of injurious affection, and section 25 for the case of expropriation or the time for complying therewith has expired, the authority and the owner shall negotiate.

- (a) The statutory authority or the owner may serve the notice of negotiation to each other and upon the Board, requires the compensation to be negotiated under section 27; or
- (b) If the statutory authority and the owner have agreed to negotiate, the statutory authority or the owner may serve notice of arbitration to each other and upon the Board, to have the compensation determined by arbitration.⁽²⁹⁾

(5) Right to possession

If the land which has been expropriated is vested in an expropriating authority, and the expropriating authority has served the registered owner with a notice that it requires possession of the land on a specified date, if no application is made under subsection(3), the land shall be taken on the date specified in the notice⁽³⁰⁾; subject to subsection (3), the date for possession should be at least three months after the date of serving of the notice of possession.⁽³¹⁾

(6) Determination of compensation

In summary, disputed compensation claims are determined by the courts in six jurisdictions, by permanent boards in five jurisdictions and by ad hoc arbitration boards in three jurisdictions.⁽³²⁾

Compensation

Basic Principles of Compensation

The general theory underlying the principles of compensation is “that the expropriated owner is entitled to economic reinstatement.” A principal merit of

the check-list of compensable items is that it can and should provide the format and order for the owner's particulars of claim, the various appraisal reports and the award of the arbitral tribunal. The constituent elements in a compensation claim, whether the particular jurisdiction retains the old value to the owner basis of compensation or has adopted a statutory "market value plus" check-list of compensable items⁽³³⁾, will consist of one or more the following:

(1) Market Value

(a) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.⁽³⁴⁾

(b) If the land is expropriated to use for purpose which has no general demand or market for land, and the owner desires to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.⁽³⁵⁾

(c) If only part of the land is taken and there is no general demand or market, the market value and the injurious affection causes by the taking should be

determined by the whole land's market value minus the market value of the land after taking.⁽³⁶⁾

(d) In order to arrive at an estimate of market value, the appraiser will usually

use one of more of the following three basic appraisal methods, namely:

-----the direct sales comparison approach;

-----the income approach;

-----the cost approach.⁽³⁷⁾

(2) Disturbance Damages

In general terms, the disturbance damages may be defined as compensation for the economic loss which the owner may suffer due to have to move from the expropriated property. Under the Ontario Expropriation Act, the disturbance damages should include: Business losses; cost of relocation; loss of profit or rent; loss of trees; loss of parking space; depreciation; loss through a force sale of fixtures.

(3) Severance Damage and Injurious Affection

Severance damage is if only part of the owner's property is expropriated, the partial taking may decrease the value of the remaining land, and the injurious affection is the use of expropriated portion may adversely affect the value of the remaining land, in very limited circumstances compensation may be claimed for injurious affection although no land of the claimant has been expropriated.⁽³⁸⁾

(4) Interests and Costs.

According to subsection 25(4), the owner of land expropriated is entitled to be paid interest on the portion of the market value, and on the portion of any allowance for injurious affection, at the rate of 6 percent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

The federal Act and most provincial statutes provide that a prudent and reasonable owner will not be financially jeopardized by exercising statutory rights at every stage of the expropriation process, which includes:

- (a) Public hearing or inquiry
- (b) Negotiation

- (c) Extraneous matters
- (d) Arbitration
- (e) Assessment, Taxation or Review
- (f) Costs of assessment
- (g) Interest on Assessed Costs
- (h) Costs of Appeal
- (i) Owner's Bills
- (j) Surface Rights Costs ⁽⁴⁰⁾

Chapter 4: The drawbacks of China ' s current situation

1. It does not make a clear definition of “public interest”, which is the purpose of land expropriation.

"Giving low compensation to let me go, and live in a broken place. This is not for the need of public interest, actually is for developers' interests. In the name of 'the public interest ', private rights are deprived, but increase the profits for developers. "A peasant in a district of Guangzhou stated, when he learned that the land his generations had farmed have been expropriated, the government received millions of yuan through selling the land to real estate developer, then the developer obtained tens of millions profits through speculative sale, but he just received tens of thousands yuan for compensation. Most of the countries in the world use "public interest need" as the legal basis for the land expropriation system design, China's "Constitution", "Land Management Law "and "property law"also states that "the needs of the public interest" is the only prerequisite of expropriating collective owned land. But the legislation doesn't make clear defined criteria for "public interest ", The “Property law”, on which many experts and the public

place high hopes is still no breakthrough on the issue, and legislation does not list the scope of the construction projects for public interests like Canada does. Besides, the expropriation process also lacks specific procedural legal norms which can be referenced, resulting in a large number of non-public interest land expropriations also carry out in the name of “public interest”, causing the landless peasants feel strong discontent. According to the Xinhua Net statistics, ending in 2007, only 20% of the expropriation land was used for greening and other public projects, 80% of agricultural land has been expropriated for real estate development, highway construction and other construction, including national defense, infrastructure, water conservancy. The construction projects such as national defense, public facilities or highway, if being defined as "public interest", generally won't have any controversy. But around the last decade, the real estate construction developed with high pace in the nationwide, the land expropriation of private housing construction and other commercial facility construction projects also ran in the name of "public interest". "For the public interest," which the legislative restriction aims at protecting the interests of the majority through it, became a profit making tools of minorities due to its very abstract concept, led to abuse the land expropriation right, which is a pity for legislation.

2. The compensation scope of land expropriation is too narrow and the compensation standard is too low.

According to the "Land Management Law" Article 47, the compensation scope of agricultural land expropriation include: land compensation fees, resettlement fee, land attachments and young crops compensation fee. As can be seen from the provisions, the current land expropriation compensation range is very narrow, individual peasants will only get the land attachments and young crops compensation fee. The land compensation fee which occupies a large proportion of the total expropriation compensation fee shall be owned by rural collective economic organizations. If increase the compensation fee of land expropriation, it will inevitably increase the land expropriation cost, and increase local government's expenditure, add the government's burden, thus what kind of living security and living standards peasants can have, to a large extent, depend on the attitude of local government, whether the government wants to provide a better life for landless peasants or not.⁽⁴¹⁾In essence, actually China takes the principle of incomplete compensation, only the direct loss caused by land expropriation shall be compensated, but all the indirect loss due to the expropriation behavior won't be compensated. The more important point is that the current legislation is still in the stage, holding the concept that as long as providing the compensation which according to the land output for

peasants, it can sustain their lives, without taking into account the indirect loss the peasants may suffer due to loss the land, such as the residual land, damage to adjacent land and other loss, and these are obvious expressions that China's compensation range is inadequate and incomplete.

The same problem exists like the compensation range is that the compensation standard is too low, according to the "Land Management Law " Article 47, paragraph 2, the compensation fee for the expropriated arable land, should be 6 to 10 times' value of the arable land's average annual output in the previous three years, resettlement compensation should be 4 to 6 times' value of the arable land's average annual output in the previous three years, not exceed 15 times' value of average annual output of 3 years prior. The paragraph 6 of the article regulates, the total value of the land compensation fees and resettlement fees should not exceed 30 times' value of the average annual output value precede 3 years before expropriation. Peasants generally hold the opinion that according to the legal standards, the compensation fee they can get is hard to maintain they and their descendants living. At the same time this compensation calculation method -----"multiple output method" only considers the original use and value, regardless the value of the land itself and the location of the expropriated land, is also very unscientific

and unreasonable. According to the investigation in nearly 30 villages in Wuhan city, Hubei Province: the vast majority of landless peasants(more than one hundred villages were interviewed, only one exception, who is the family member of the village committee officer)didn't meet the previous living standard level before land expropriation. The current land expropriation compensation is cash compensation(in the form of a one-time buyout), usually 7,500 dollars per acre, the peasants can only get 2,500-5,500 dollars, which is obviously insufficient to maintain the landless peasants standard of living, job placement and social security.

3. The allocation ways of compensation and resettlement fees aren't fine

There are only two rural land expropriation compensation ways: monetary compensation and labor resettlement. However, because of the reform of enterprise labor system and most peasants are lack of practice skills, labor force resettlement compensation is difficult to achieve. Thus many places use the monetary resettlement way, one-time payment being called as "kick" by peasants. Monetary compensation alone can't make peasants resettle and have jobs. A large number of peasants pour into cities after losing land, but due to lack of skills and knowledge, they can't survive in the fierce competition

of cities. There are problems in the allocation of monetary compensation: The expropriation subject of payment and distribution rules are not clear. "Land Management Law Ordinance" Article 26 indicates: "The land compensation fees should be owned by the rural collective economic organizations; ground attachments and young crops compensation fee should be owned by the owners of ground attachments and young crops. " To compensation fees, the ground attachments and green crops subsidy calculation are relatively simple and have a single standard, and the repayment subject is clear, therefore these two distributions of compensation, in practice do not cause much controversy.

Generally, the land compensation fees and resettlement fees cause dispute. In accordance with the "Land Management Law" Article 47, these two compensations have different calculation standards, when accounting the compensation fees, the land compensation fee and resettlement fees should be calculated separately, but many local governments don't elaborate these two fees separately in the process of expropriation, in most cases these two compensation fee will be tied, then the government pays them together to the rural collective economic organization. The land compensation fee accounts for a large proportion of the entire compensation, which means that the majority of compensation can't be directly assigned to peasants. The "Constitution", "Property Law", "Land Management Law " etc. in China all clearly point to the fact that China's rural land is

owned by rural collective members, but the relevant legislation has not clearly defined the “collective”. Township, village committees and villagers groups in a sense, all can be identified as collective, therefore the owner of collective rural land is uncertain, without a specific definition. In the process of land expropriation, land revenue is the benefits of land ownership and use rights, so this part of the revenue should be allocated to the subjects who lose the land ownership and use rights, namely, a reasonable allocation should be carried out for the collective economic organizations and individual peasants. However, due to lack of a clear collective land ownership subject, resulting in much problem when allocating the expropriation compensation fees. Many rural collectives have poor grassroots organizations, the land compensation fees are often mastered by the village governors, so the event that village governors inappropriate allocate the land compensation fee occur frequently, even defalcate the compensation fees. The compensation deliver to the real land rights’ owner—peasants is already depleted, which seriously violates the interests of peasants.⁽⁴²⁾

4. Lack of standardized procedures for land expropriation

According to law, the procedure aims at protecting the expropriation rights being used legally in the process of expropriation, most countries in the world enact stringent

procedures in the land expropriation legislation. In comparison, China's "Land Management Law " only has some general regulations, but lacks standardization and the operational practice is not strong, which have some specific expressions: At first, the relevant procedures' legislations are simple, rough, and there are some loopholes in system designs, for example, the legality examination for the purpose of the land expropriation is not included in the procedure, the designs of expropriation announcement and compensation resettlement announcement are not scientific, "China's current land expropriation program is basically an internal process. Land expropriation announcement and the land compensation announcement are announcements after the application is approved and compensation resettlement plan being designed, actually should belong to post procedure."⁽⁴³⁾ Second, the government dominates the land expropriation implementation procedures. Whether the expropriation meets the public interests, the approval of expropriation plan and the compensation standards are decided by the government, the people whose land being expropriated are lack of opportunities to express their views. The collectives and peasants as the interest party in the expropriation are levied the right to know, the right to negotiate, the right of petition, which are completely in a passive position. From the decision of land expropriation, to the standards of compensation fee and the resolution of expropriation dispute, all of these are

decided by the government. Third, the land expropriation process inadequately protects the rights of peasants whose land being expropriated. Although China has made regulations about the hearing of land expropriation, the selection of representatives and the overall allocation quota lack clear rules, the peasants can't fully take part in the compensation process, and the regulations do not protect the hearing channel of peasants well, thus the peasants' rights are not protected fully.

5. Land dispute resolution mechanism is not perfect

The most critical challenge on the compensation price in the expropriation process can only be resolved by administrative review, and not to resort to judicial process. The judicial proceedings are limited by the law, whether fair or not, the court has no right to judge the dispute on expropriation. All facts and data show that the rural land compensation issue has become one of important types of land disputes, while the more developed coastal region currently has the largest concentration of land disputes in rural areas, the most prominent being in Zhejiang, Shandong and Guangdong provinces. "Land Management Law Ordinance," Section 25 provides: "If the compensation dispute happens, local people's governments above the county level coordinate it; If coordination

fails, the People's Government which approved the land expropriation adjudicates it. The compensation and resettlement dispute does not affect the implementation of the land expropriation program." This rule actually excludes the land compensation dispute outside the scope of litigation, does not give the parties rights to solve the dispute through the judicial authorities, this is obviously not conducive to protect the right of peasants whose land is expropriated. In the land expropriation process, the government always involves in, land expropriation application needs to be approved by the government, after the expropriation, the collective land will be owned by state, then the government acts as a representative of selling the land use right, and collect the management fees and land transfer fees. This process is inappropriate because it makes the government who has significant interest in both parties of the dispute to coordinate it at first, and finally decides it. This behavior can't effectively protect the legitimate interests of landless peasants, and the land expropriation disputes can't be resolved fairly.⁽⁴⁴⁾ In this environment, after the land expropriation dispute happens, many peasants use private relief such as letters, petitions, and even direct violence to find a solution, but rarely take legal action, administrative adjudication and other public power to get relief.⁽⁴⁵⁾ In the current background that aims at building a harmonious society, how to improve and

perfect the current land dispute resolution mechanisms, and protect the legitimate interests of landless peasants have already become a top priority.

Chapter five: The recommendations for China to improve the issue.

1. Design the contents of the franchise contract clearly and protect the right of peasants to participate in land expropriation process.

Under the China's legal systems, peasants are not the owner of the land. However, in the reality, the collective economic organizations as the land owners generally do not directly manage the land, but the peasants as the members of the collective economic organizations directly operate the land by contracting in. Therefore, peasants are the actual controllers and land managers. Although land expropriation is the ownership alteration between collectives and the state, such changes have a direct impact on the interests of peasants, because the peasants' rights of contractual management for land are eliminated at the same time, attributed to the land being expropriated to be owned by the state. These can fully make peasants become as an independent interest body, thus they should enjoy the legal involvement rights. In Canada, the farmer's land being expropriated rarely happens, but once happens, the land owners---farmers can have the rights to participate in all the process, to negotiate with the buyers, to express their ideas and so on. In China, as the peasants can't be the owner of the land, so they don't have the

same rights as Canada's farmers enjoy, but as the direct managers of the land, the peasants at least should have some rights to take part in the expropriation process, therefore, the law needs to further clarify its legal status as stakeholders, which means to redesign the contents of land contract, provide the involvement rights for peasants.

According to property rights theory, the peasants' right of land contractual management directly get from the rural collective land ownership, should belong to the land use rights of rural collective land ownership systems. In accordance with the theory of property law, the ownership of the property is real right, it can be changed to many other rights, such as the transfer, sublet, shares, mortgages and income.⁽⁴⁶⁾ Therefore, in the formulation and revision of the property law and other relevant laws in China, it should further clarify the content of peasants' contractual land management right, in order to protect peasants' basic life will not be affected in the process of land contractual management rights transfer, as well as government expropriates the collective land. Expropriating land must base on compensation.⁽⁴⁷⁾

2. Clarify the purpose of expropriation

a. clearly states the range of "public interest ": Professor Liming Wang said: "The expropriation means, the state in mandatory way to get the property or property right of residents or legal person for public purpose" China should learn Canada's way, retaining the existing principle rule for "public interest ", in addition China should also explicitly stipulate the range of "public interest ".⁽⁴⁸⁾The range China regulates to obtain the land use right through allocation is basically the same as the rule the most countries in the world regulate the scope of "public interest" requirement. China can use this rule as the wide basis of defining the "public interest" of expropriation, in the same time take education, sanitary, environmental protection and other projects specifically included in the scope of "public interest". In addition, China should also strengthen the "public interest" legislation, and establish a complete system of public welfare legislation, specifically regulate which utility buildings, facilities can apply to expropriate land in the name of "public interest".

b. Strictly distinguish public welfare and business-building land.

In China, it should divide the "construction land" chapter of the current "Land Management Law" into "public construction land" chapter and "business construction land". In Canada, for the public interest is the sole reason for expropriation, this is good

for protecting the farmer's rights. So in China, we should clearly regulate that only public construction will be allowed to get land through expropriation. But for the economic development, many business constructions are necessary, so the Land Management Law can regulate that the public interest should be the sole reason for expropriation, but also can regulate if the construction meets the demand for economic development, it can get land through the following two channels: First, fully use the existing state-owned land, open the state-owned land market, land demander can obtain the state-owned land use rights through selling, transferring, leasing, etc from the land management departments or other owners of state-owned land;⁽⁴⁹⁾ Second, through appropriate ways make the non-agricultural land of rural collective into the market. Of course, converting rural agricultural land into construction land is still to be strictly controlled in accordance with the provisions of existing law. There are many different views about how to get non-agricultural rural land into the marketplace. In practice, some parts of China have been making attempts at this, but there is still much need for improvement.

3. Raise the compensation standards for peasants and improve the compensation mechanism

a. Legislation should clearly regulate the expropriation compensation principles of "justice " or "reasonable ": From the perspective of comparative law, "justice ", "reasonable" or "fair" compensation is actually complete compensation based on replacement cost, the reason is, this approach is consistent with national policies, such as "the decision of State Council on Deepening Reform and Tightening Land Management" stressed, in the process of expropriation and the transformation of the usage's purposes, should put the interests of peasants in an important position, and require local people's governments above the county level to take effective measures to ensure the living standards of peasants whose land being expropriated are not lowered because of land expropriation.⁽⁵⁰⁾ At the same time, this approach can prevent the abuse of the right of expropriation, and limit the political conflict as well as curbing corruption.

b. Legislation should expand the scope of compensation for expropriation: in the scope of expropriation compensation, China's legislation should learn from Canada, but as a developing country, China's government can't afford the various compensation levels found in Canada, and some compensation levels are not feasible in the current China, such as the several interest, but at least should include the adjacent land compensation,

indirect compensation and disturbance damages fees. In a short word, the indirect loss should be included in the compensation scope. The compensation scope should expand to other indirect losses, such as the residual damage, business losses, injurious affections and other necessary expenses caused by the land expropriation, to maximize ensure the legitimate rights and interests of peasants.

c. The legislation should take the market price of expropriated land as compensation standards: the current legislation which takes the average annual output value of land as compensation standard is extremely unscientific, it is difficult to achieve the functions of land expropriation compensation, but also can't realize the goal --"ensure the living standards of peasants whose land being expropriated are not lowered because of land expropriation ". Canada has a complete market-value determination system to appraise the price of the expropriated land, the most preferred approach is the direct sales comparison approach. However, in China, as the peasants aren't the owner of the land, the land can't be circulated in the market, and is transacted by the government, peasants can't participate in the transaction. Therefore, there isn't a definite market value of land, but only the market value is reasonable and justice compensation standard, as a result, China can regulate that the government as the third party in the land transaction, it should

be fair and justice, regard the sale price of land as the market value, then directly give this amount of money to the rural collectives and peasants.

4. Establish a sound social security system for landless peasants.

Canada is a developed country with high welfare, every citizen can enjoy the various welfare provided by the three levels of government, even if the farmers can't get enough compensation when their land is expropriated, at least, they can get the subsistence allowance to sustain their living. But in China, due to the comprehensive national strength and the systems limitation, the rural social security systems haven't been established, lead to if the landless peasants can't get compensation fee when their land being expropriated, there is no other way they can get money to sustain their living. In the real life, even if the compensation systems are founded completely, there may still happen the situation that the system can't be operated well, thus it's necessary to establish a sound social security system for landless peasants. The reunification policies of central government and the specific policies of local governments should complement each other, overall progress, and gradually establish a perfect social security system for landless peasants. National authorities should promptly formulate a unified legal system

for landless peasants' social security. We can begin to gradually establish a perfect social security system for landless peasants from the pension, medical insurance which the landless peasants need most. In the distribution of expropriation income, the state should stipulate clearly that peasants should get a certain proportion benefits, and ensure the implementation of social security funds.⁽⁵¹⁾ The Land and Resources Department should regulate, the local government should take a certain percentage (not less than 10%) from the land sale income as a special fund, additionally the collective economic organizations whose land been expropriated should also take some of the accumulation capital or land compensation funds into the landless peasants social security fund, render landless peasants can get benefits from the land value-added and the development of cities.⁽⁵²⁾

5. a. Clarify the procedures of land expropriation

Further add and improve the specific systems of procedures for land expropriation: "Land Management Law "Article 48 stipulates, "When land compensation plan was finalized, the local people's governments shall make an announcement and hear the comments of the rural collective economic organizations and peasants whose land been expropriated." But the current land expropriation model generally operates as the following: the land

user applies firstly, when the application obtains approval, and then the state and collective or peasants negotiate to determine land price, land compensation fees and other issues. The state participates in the whole process of land expropriation, but the peasants and collectives miss the opportunity to directly negotiate with the construction land user in a market way. This approach provides convenient for the state to deprive the land income of peasants and collectives, this is the reason why many local governments are also happy to land expropriation. So the legislation should redesign specific and clear procedures of expropriation, restrict the government's behaviors, then weaken the power of government in the process, finally achieve protecting peasants' rights.

b. Regulate the distribution ways of land expropriation compensation clearly:

Although the ownership of the land is peasant collective organization, however, land expropriation actually damages the land use rights of peasants, so the part of land compensation fee should be allocated to the peasants. While preserving the interests of landless peasants, we should ensure the peasants' right to know and to participate, prevent the corruption of land expropriation, strengthen social supervision and enhance the transparency of government expropriates land, ⁽⁵⁴⁾carry out fair and efficient land

expropriation procedures, standardized land expropriation act, ensure the allocation ways of the compensation fee can be fair and justice.

C. Newly add the chapter of “Expropriation Procedures” in the land management law.

China should learn from the success of legislative experience in Canada, absorb the mature, rational part of the practical operation, supplement and improve the land expropriation procedures. At first, the government should pay high attention to the procedure, realize that many times the peasants’ rights being harmed is caused by the inadequate and irregular procedures, because the peasants can’t participate in the land expropriation process, their rights to know, rights to negotiate are deprived. Even the current notice procedure, is actually the post-notice. Secondly, China can learn the way Canada does, to divide the procedures into the pre-expropriation procedures and post-expropriation procedures, especially the post-expropriation procedures which the government neglected in the previous years. The government should not only care about the pre-expropriation but also the post-expropriation, but currently the government only takes some measures before expropriation, when the expropriation carries on, the government won’t care about how the peasants’ life goes. For the post-expropriation part, the notice of intention to expropriate is necessary as it can protect the peasants’ rights to

know; and the public hearing or inquiry procedure which actually is existing should be improved, which means the representatives selections and the allocation should not be mastered by the government, every peasants whose rights might be damaged should have the right to take part in. For the post-expropriation procedure part, entry for appraisal and right to possession are expressions that the citizen's private property should be protected, because as discussed above, China's peasants' rights are not protected well, the government has absolutely power to master the expropriation process, even force to carry out expropriation. Thus, if China's procedure law can add the two parts---entry for appraisal and right to possession, it can ensure that if the peasants object to the expropriation, they have legal rights to refuse the officers to entry their land for appraisal. And when the expropriation application is approved, the state can only take possession of the land on the date it regulated, instead of taking the land at random. Of course, Canada's other procedures, the statutory offer of compensation, negotiation, determination of compensation, are a complete process that China can learn to make up the current shortage, but need to combine with the real situation, thus our land expropriation process could be more detailed, scientific and operational.

Chapter six: Conclusion

Land is a very important resource to maintain the peasants' survival, the expropriation of rural land is undoubtedly influential to peasants. The peasants are the key issue of the "Peasants, Rural, Agricultural" (PRA) issue, if peasants' legal rights are infringed, the "PRA" issue can't be solved well, however, the "PRA" issue has a close bearing on China's economic development and social stability. Therefore, how to improve and perfect the system of rural land expropriation is a significance issue. We hope to protect the lives of landless peasants and ensure they can fully enjoy social progress and economic development . In the actual operation of expropriation, the social conflicts caused by expropriation are growing, the most important thing is not the rural and agricultural issues, is still the peasants. The real problem is not the acceleration of urbanization, but rather the land expropriation procedures, which still have serious flaws. Reform of these procedures should strengthen the market economy of the new China so as, to liberate the peasants in the legal sense. Then it will be possible to resolve the problem of rural economic development. According to Canada's successful experience, we can see that the expropriation procedures and compensation are two extremely important factors, but it's obvious that China doesn't pay close attention to these two

aspects. Therefore, establishing and improving the legal system, adding land expropriation procedures, broadening the scope of compensation, raising the compensation standards, improving the dispute settlement mechanism, are effective legal ways to protect the interests of peasants in the process of expropriation. Only by paying close attention to the peasants' interests, giving them effective protection in the legal system, and ensuring the rational use of land resources, can we establish better land use patterns, build a harmonious society, improve the peasants' living standards, maintain social stability, and lay a good foundation for national revival.

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