

How Fiscal Pressures Drive Land Disputes and Shape Dispute Resolution Mechanisms  
in Rural and Peri-Urban China\*

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“After rural laborers return to the countryside in large numbers, if they have already transferred their originally contracted land to others and the transfer contract has not expired—especially if there are still crops on the land, then it’s very easy for disputes to occur; this is quite unfortunate for social stability in the countryside.” Ministry of Agriculture Official, March 2009<sup>1</sup>

“Following the quickening progress of our county’s urbanization and industrialization, rural collective land has been taken in large amounts, landless farmers have become a special status group among rural residents, and their numbers have increased rapidly.”<sup>2</sup>

Tensions over rural land have driven the issue of land rights to the top of the policy agenda of the Chinese party-state. In October 2008, rural reform, including land rights, was the central focus of an historic plenary session of the Chinese Communist Party, exactly thirty years after the initiation of China’s reforms.<sup>3</sup> In June 2007, the State Council initiated a nationwide campaign to address what it regarded as the two most common and serious types of land disputes: violations of land contracting rights in agriculture and illegal takings of rural land for non-agricultural purposes.<sup>4</sup> Earlier State Council documents had already expressed concern about the increasing number of “mass incidents involving... contracted land.”<sup>5</sup> Concerns about instability arising from land disputes are echoed all the way down to the county level.<sup>6</sup> These tensions have arisen despite major legislative initiatives, including the promulgation of the Land Management Law in 1998 (revised in 2004), the Rural Land Contracting Law in 2002, and the Property Law in 2007, intended to improve the governance of rural land and, in principle, to allow farmers to defend their rights in court.

Legal scholars argue that, “a sustained move to triadic dispute resolution (i.e. the courts) will reconstruct, gradually but inevitably, the nature of governance.”<sup>7</sup> Yet, law and courts, in what is in many ways a highly capacious Chinese state (Yang 2004),<sup>8</sup> have in many cases failed to reduce tensions over rural land rights. Legal norms do not always hold sway (Zhang 2003) and, overall, courts appear weak and ineffectual (Pils 2005) in resolving rural land disputes.<sup>9</sup> Overall,

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<sup>1</sup> Zhang Hongyu, Ministry of Agriculture as quoted in “就业危机或致群体性事件发生几率增加 (Employment crisis may lead to increase in occurrence of mass incidents),” <http://www.sina.com.cn> March 9, 2009.

<sup>2</sup> 2020年失地农民超1亿国家应出台法规保障权益,” <http://sohu.com> March 14, 2009.

<sup>3</sup> 中国共产党第十七届中央委员会第三次全体会议公报

<sup>4</sup> 国务院七部委关于开展全国农村土地突出问题专项治理的通知 (State Council/Seven Ministry-Commission Notice Regarding Launch of Specific Governance [Procedures] Nationwide for Prominent Rural Land Problems), June 10, 2007. In addition to the State Council, the other leading agencies include the Ministry of Agriculture, Ministry of Land and Resources, Ministry of Supervision, Ministry of Civil Affairs, CCP Leading Group for Rural Work, the State Council Office for Rectification, and the State Bureau for Letters and Visits.

<sup>5</sup> State Council Document (2004) No. 21

<sup>6</sup> See, for example, 中共安乡县委常委政法委, “关于预防和处置群体性事件地思考,” May 18, 2007, accessed at [http://www.hnfz.net/fzxw/xs\\_content.asp?id=5757](http://www.hnfz.net/fzxw/xs_content.asp?id=5757), July 14, 2008.

<sup>7</sup> Alec Stone Sweet, “Judicialization and the Construction of Governance,” *Comparative Political Studies* Vol. 32, No. 2 (April 1999), pp. 147-184.

<sup>8</sup> Dali Yang, *Remaking the Chinese Leviathan*.

<sup>9</sup> On land disputes, see also: Eva Pils, “Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan,” *Columbia Journal of Asian Law* Vol. 19, No. 1 (Spring-Fall 2005), pp. 235-292; Zhu Keliang, et al., “The Rural Land Question in China: Analysis and Recommendations Based on a Seventeen-Province Survey,” *International Law and Politics* Vol. 38 (January 2007), pp. 761-839; Peter Ho, “Who Owns China’s Land? Policies, Property Rights, and Deliberate Institutional Ambiguity,” *The China Quarterly* No. 166 (June 2001), pp. 394-421; Xiaolin Guo, “Land Expropriation and Rural Conflicts in China,” *The China Quarterly* No. 166 (June 2001), pp. 422-439; Loren Brandt, et

property rights in rural land remain vaguely defined, and legal principles are in competition with powerful social and political interests.

This paper examines the links between one important set of political interests—generation of and control over local fiscal revenue—and the genesis and resolution of rural land disputes. It shows how the fiscal pressures under which local governments operate shape both the causes of land disputes and the way these disputes are resolved. Local governments have been squeezed by a widening gap between available revenues and expenditure needs. In response, they have used their effective control over land to try (1) to maintain collection of taxes on agriculture (through the mid-2000s, when these taxes were eliminated by central fiat) and (2) to generate new revenues from the transfer of land into non-agricultural uses. The paper sets the agenda for future research by generating hypotheses about the conditions under which farmers who lose their land are more likely to escalate their disputes by taking them to court and to find effective recourse there. In some cases, conflicts between the real fiscal incentives of local state officials and the letter of the law undermines the role of law and courts and leads to heavy reliance on mediation by party-state officials in order to maintain political stability in rural communities. Disputes over land transferred out of agriculture are more likely to result in law suits, since the players may include individuals from outside the village or township and since the level of compensation at issue is typically greater and linked to loss of livelihood and social security.

The paper presents case studies (drawing on interview, documentary, and survey data, where available) of two counties—a poorer, cotton-growing county in Hunan Province, and a wealthier, rapidly industrializing county in Shandong Province. As Table 1 illustrates, the Hunan county derives about 40 percent of its GDP from agriculture and only about 20 percent from industry. Its location several hours by car from the provincial capital and away from major transportation nodes has made it difficult to attract and sustain investment in industry. County residents have relied heavily on migrant labor opportunities to generate income. They are sensitive both to trends in migrant labor wages and to policy changes affecting the profitability of agriculture.

By contrast, the Shandong county derives only about 5 percent of its GDP from agriculture and more than 75 percent from industry, resulting in a per capita GDP more than four times higher. By the mid-2000s, it was one of the top-performing one hundred counties in China (全国百强县), in the top five percent of counties nationwide in terms of a range of indicators as of 2004-05.<sup>10</sup> Its location along the major highway linking the provincial capital of Jinan and the port city of Qingdao has fueled industrialization and has been a boon to the county and its residents.

While multiple types of land disputes occur in each county, the paper focuses on only one frequently occurring type in each locale in order to shed light on two distinct fiscal drivers of land disputes: In the Shandong county, the focus is on the local authorities' ability to generate revenue from the conversion of agricultural land to non-agricultural uses, contributing to the increase in disputes over the level of compensation for land takings.<sup>11</sup> In the Hunan county, the focus is on the *legacy* of the agriculture tax and its *continuing* effect on disputes over the assignment of contracts

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al., "Local Government Behavior and Property Right Formation in Rural China," *Journal of Institutional and Theoretical Economics* Vol. 160, No. 4 (December 2004), pp. 627-662.

<sup>10</sup> National Bureau of Statistics of China 国家统计局综合, "2005 年度全国百强县基本稳定, 十强排位右边," September 30, 2006, [http://www.stats.gov.cn/tjfx/fxbg/t20060930\\_402355417.htm](http://www.stats.gov.cn/tjfx/fxbg/t20060930_402355417.htm), accessed 02/10/08.

<sup>11</sup> According to a report of the Shandong county's economic management bureau (8/27/08), in addition to disputes over compensation for land takings, some disputes did arise over reassignment of contracts for agricultural land (村里为了不让承包地负担的税费落空, 就将其承包地发包给其他农户).

involving agricultural land.<sup>12</sup> In general, whether counties are rich or poor, compensation for land takings is a more prominent source of disputes near urban areas (including county seats), where transportation is relatively more convenient and demand for land is greater, whereas disputes resulting from reassignment of agricultural land are more commonly found in more remote communities dependent on agriculture.

The paper is organized as follows. The first section provides background on the fiscal system, establishing the fiscal pressure under which county governments in rural and peri-urban settings operate. The second section provides background on the relevant land laws, establishing the inherent ambiguities in farmers’ rights over land and the ways such ambiguity facilitates pursuit of political interests by local officials. Then, in subsequent sections, the paper demonstrates how fiscal imperatives have shaped both the generation of land disputes and the ways in which they are resolved in the rural and peri-urban cases. These sections address the puzzle of differential recourse to the courts in the face of land disputes.

Economic Structure as of 2006  
(Gross domestic product, million yuan, percent, yuan)

	Primary	Secondary	Tertiary	Total	Per Capita
Hunan county					
Level	2052	1158	2116	5326	9018.88
Share	39	22	40	100	
Shandong county					
Level	1666	21132	5005	27803	38600.84
Share	6	76	18	100	

Source: County statistical yearbooks, 2006

### Background: Fiscal Pressure at the Local Level

Despite many cycles of policy change, the rural grassroots have yet to be the beneficiary of the “peasant revolution,” which culminated in the founding of the People’s Republic of China in 1949. The present fiscal regime, dating from the implementation of the tax-sharing system in 1994, is characterized by the increasing centralization of control over revenue and the marked decentralization of responsibility for expenditures on basic public goods, placing local governments in a fiscal squeeze. Constitutionally a unitary state, the formal state apparatus has five levels of government, reaching from the center to the province, municipality, county, and township.<sup>13</sup> Under

<sup>12</sup> Based on a representative sample survey of 335 rural households in the Hunan county in Autumn 2007, the author’s research team identified 53 disputes involving land over the preceding ten years. Of those disputes, 17 percent of land disputes involved reassignment of abandoned agricultural land, linked, as I will show, to collection of the agriculture tax. This type of dispute is the focus of the analysis of the Hunan county in this paper. However, other types of land disputes also occurred in this county, including disputes involved compensation for the taking of agricultural land; compensation for the taking of non-agricultural (mainly housing) land; land readjustments related to population changes; other sources of “unfairness” in land distribution; disputes with neighbors over housing land; boundary disputes; and other issues.

<sup>13</sup> Below the township are villages. Villages are not constitutionally defined as part of the formal government hierarchy, although their leaders are integrated into the system through membership in or oversight by the ruling Chinese Communist Party.

this tax-sharing system, taxes are divided into central, shared, and local (sub-national) categories. The National Tax Service, also established in 1994, is tasked with collecting both central and shared taxes—including the major revenue earner, the value-added tax, of which the center claims fully 75 percent. Subsequent policy changes further centralized control over fiscal revenue. In 2002, for example, corporate and individual income taxes were reassigned from the local to the shared category, with the center claiming 60 percent. Following the initiation of these reforms, the center's share of budgetary revenues jumped from 22 percent in 1993 to roughly 50 percent thereafter. Under the present fiscal regime, total budgetary revenue as a share of GDP has steadily increased, growing from a low of about 11 percent in 1994 to more than 17 percent in 2005 (UPDATE). Even as the budget has grown, the center has claimed roughly 50 percent.

While revenue began flowing toward the center after 1994, expenditure responsibilities remain highly decentralized. To illustrate with national figures,<sup>14</sup> in 1993 prior to reform of the tax and fiscal systems, counties and townships at the bottom of the government hierarchy controlled 32 percent of revenues while bearing responsibility for 27 percent of expenditures. By 1998, by contrast, they controlled only 20 percent of revenues while shouldering responsibility for 28 percent of expenditures. After further recentralization of revenue control in 2002, counties and townships accounted for 17 percent of revenues and 29 percent of expenditures. The disjuncture between revenue assignments and expenditure responsibilities at the local level leaves county-level governments, in particular, facing a substantial fiscal gap. Local governments are heavily reliant on intergovernmental fiscal transfers, but these transfers, while increasing, are still inadequate to meet local needs. Wang Yongjun (2006) estimates that, after taking into account local and shared tax revenues and fiscal transfers, 5-10 percent of fiscal needs at the local level go unmet.<sup>15</sup>

Local governments have responded to revenue inadequacy by intensifying tax collection efforts, taking on debt, and going “off budget” to generate revenues informally. In agricultural areas—like rural Hunan, intensifying tax collection efforts meant setting quotas for the amount of agriculture taxes and fees to be collected by township officials and local party cadres at the village level. Failure to meet these quotas was considered a major failure in job performance.<sup>16</sup> Failure to collect adequate tax revenues led many local cadres to meet quotas by taking on debt—borrowing money from local banks, firms, and even local residents. According to a report of the Hunan Province Statistical Bureau, as of 2003, township governments had accumulated debts of more than 6.8 million yuan on average.<sup>17</sup> In industrializing areas—like peri-urban Shandong, intensifying tax

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<sup>14</sup> “Fiscal Reform: Disentangling the Public Purse Strings,” *China Development Brief*, January 25, 2007

([www.chinadevelopmentbrief.com](http://www.chinadevelopmentbrief.com), accessed October 19, 2008).

<sup>15</sup> Susan H. Whiting, “Central-Local Fiscal Relations in China,” *China Policy Series*, No. XXII (April 2007). On local impacts, see also: John James Kennedy, “From the Tax-for-Fee Reform to the Abolition of Agricultural Taxes: The Impact on Township Governments in Northwest China,” *China Quarterly* No. 189 (March 2007), pp. 43-59; Vivienne Shue and Christine Wong, eds., *Paying for Progress in China* (New York: Routledge, 2007); Achim Fock and Christine Wong, “Financing Rural Development for a Harmonious Society in China,” Unpublished manuscript; Lu Mai and Calla Weimer, “An End to China’s Agriculture Tax,” *China: An International Journal* Vol. 3, No. 2 (September 2005), pp. 320-330; Ran Tao and Ping Qin, “How has Rural Tax Reform Affected Farmers and Local Governance in China?” *China & World Economy* Vol. 15, No. 3 (2007); Kai-yuen Tsui, “Local Tax System, Intergovernmental Transfers and China’s Local Fiscal Disparities,” *Journal of Comparative Economics* No. 33 (2005), pp. 173-196; .

<sup>16</sup> Susan H. Whiting in Barry Naughton and Dali Yang, eds., *Holding China Together*.

<sup>17</sup> Not all of these debts resulted from borrowing to meet tax targets; some longstanding debts were incurred in unsuccessful attempts to start industrial enterprises with local government backing. The data cited in the report refer to the prefectural level unit in Hunan where the case study county is located. “2004年上半年农村经济形势分析

collection efforts has meant finding new sources of investment in industry to increase tax revenues.<sup>18</sup> According to a 2005 report of a Communist Party conference in the Shandong county, local party officials should “attract investment by all possible means... and make attracting investment the main battleground of economic work.”<sup>19</sup>

Going “off budget” has involved a wide range of practices. In remote areas, it often has meant charging farmers unsanctioned fees and levies, on top of legally mandated tax and fee collections, thereby significantly increasing the farmers’ burden.<sup>20</sup> In peri-urban areas, “off budget” referred to fees on township- and village-run enterprises and, increasingly since the 1990s, to large fees generated from the transfer of land out of agriculture for industrial or real-estate development.

New central initiatives, responding to deepening problems with rural development and political stability, particularly the growing burdens on farmers, the stagnation of rural incomes and the growing income disparities between rural and urban residents, led to policy changes intended to reduce the burden of taxes and fees on farmers. Beginning in 2001, the center initiated rural fee reform. This reform combined into a single levy the agriculture tax and all officially mandated fees and levies on farmers and, in principle, eliminated the unsanctioned levies, setting a ceiling on farmers’ tax obligations. Beginning in 2004, the center went even further, announcing first a reduction in the agricultural tax rate and then its complete elimination.<sup>21</sup> By 2006, the agriculture tax, along with the agriculture special products tax and the slaughter tax, were formally abolished. This set of initiatives, while reducing burdens on farmers, removes a major source of local government revenue in agricultural communities.

In sum, local governments are under significant fiscal pressure. Under central state policies, budgetary revenues available to local governments have shrunk and intergovernmental fiscal transfers—while increasing—have failed to keep pace; yet local governments continue to bear heavy expenditure responsibilities for financing the provision of local public goods. As a result, local officials have a strong political interest in exploiting land as a fiscal resource.

### **Background: Ambiguities in Property Rights over Rural Land**

The property regime over rural land in China has several characteristics that make it difficult for farmers to exercise full property rights and creates openings for manipulation for political purposes. Three issues are particularly salient here. Ownership is ambiguous; attenuations of rights prevent farmers from realizing the full value of their land; and in the case of land takings under eminent domain, what constitutes “the public interest” is unclear.

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(Analysis of Rural Economic Trends for First Half 2004),” Hunan Province Statistical Bureau, July 20, 2004. Accessed at [www.hntj.gov.cn/sxfox/cdfx/2200407190092.htm](http://www.hntj.gov.cn/sxfox/cdfx/2200407190092.htm) on July 14, 2008.

<sup>18</sup> Cite Shandong interview data and reports on 招商引资。

<sup>19</sup> 千方百计招商引资。。。把招商引资作为经济工作地主战场。” in “在县委工作会议上的讲话

<sup>20</sup> Thomas P. Bernstein and Xiaobo Lu, *Taxation without Representation in Contemporary Rural China* (New York: Cambridge University Press, 2003). DELETE: As a common saying put it, “the first tax is light, the second tax is heavy, and the third tax is a bottomless pit.’ The ‘first tax’ referred to the agriculture tax. The ‘second tax’ was the township and village levies that were explicitly permitted by state rules and policies, and the ‘third tax’ referred to various unsanctioned fees, levies, and exactions collected by local officials (Fock and Wong, pp.45-46).”

<sup>21</sup> See especially:“中共中央国务院关于促进农民增收收入若干政策的意见,” (Doc [2004]

#1, [http://www.gov.cn/test/2006-02/22/content\\_207415.htm](http://www.gov.cn/test/2006-02/22/content_207415.htm), accessed 10/26/08; “中共中央国务院关于进一步加强农村工作提高农业综合生产能力若干政策的意见,” (Doc [2005]

#1, [http://www..people.com.cn/GB/jingji/1037/3155616.html](http://www.people.com.cn/GB/jingji/1037/3155616.html), accessed 10/26/08.

Chinese law defines two broad categories of land: state and collective. Most land in rural and suburban areas is collectively owned.<sup>22</sup> Beginning in the late 1970s, the commune-based organization that had characterized the agricultural sector throughout much of the Maoist era gave way to the contracting of collective land to rural households under the “Household Responsibility System.” In exchange for land use contracts—initially lasting from one to three years, farm households were required to pay taxes and fees in cash or kind. In 1984, initial land-use contracts and associated obligations were extended to fifteen years. By 1993, the state began to extend rural land-use contracts to thirty years.<sup>23</sup> In 1998, the National People’s Congress promulgated the Land Management Law, formalizing the commitment to thirty-year contracts nationwide.<sup>24</sup> In 2002, the NPC adopted the Rural Land Contracting Law, further clarifying land-use rights and strengthening contract holders’ ability to challenge rights violations through mediation, arbitration, or litigation.<sup>25</sup> In 2007, the NPC enacted the Property Law, in principle, clarifying the meaning of collective land ownership.<sup>26</sup>

Ambiguity stems from the question of who is “the collective” and what political interests “the collective” really represents. In general, “the collective” refers to the village, a rural community organization below the township, which is the lowest level of formal government defined in the constitution. Villages are, in principle, self-governing entities with elected leadership as defined by the Organic Law of Villagers’ Committees. As Deininger and Jin (p. 2) highlight, there is complementarity between meaningful, democratic elections at the village level and the effectiveness of legal changes to enhance the rights of land contract holders. It is the village that enters into land-use contracts with individual households. According to the Land Management Law, changes to contracted land holdings are permitted with the agreement of two-thirds of the villagers’ representatives, as well as the approval of the local government. However, village leadership itself is subject to competing political pressures. In addition to the elected leadership, which is itself subject to oversight by the township government, villages are also led by Communist Party Committees appointed from above. While there is well-documented variation in the quality of village elections nationwide [CITE], in interviews in the Hunan case study county, for example, local residents and officials describe the township as the key actor in determining candidates for

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<sup>22</sup> **Article 10. 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; house sites and private plots of cropland and hilly land are also owned by collectives. The state may in the public interest take over land for its use in accordance with the law. No organization or individual may appropriate, buy, sell or lease land, or unlawfully transfer land in other ways. All organizations and individuals who use land must make rational use of the land. Third paragraph of Article 10: “The State may, in the public interest, requisition land for its use in accordance with the law.” Revised to: “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.” March 14, 2004,

<sup>23</sup> “CCP Central Committee and State Council Notice on Certain Policy Measures Regarding the Countryside and Rural Economic Development,” November 5, 1993.

<sup>24</sup> Land Management Law, promulgated

<sup>25</sup> Rural Land Contracting Law, promulgated August 29, 2002. State Council Document 2004 No. 21 refers to experiments in arbitrating land disputes by part-time arbitrators with the county agriculture bureau, subsequently formalized in the Rural Land Contracting Dispute Arbitration Law now under consideration (中华人民共和国农村土地承包经营纠纷仲裁法(送审稿), March 9, 2007). However, there is no evidence of arbitration as an available option in the case study counties.

<sup>26</sup> Property Law, promulgated March 16, 2007.

village leadership and in deciding who becomes village leader (hn080729a). In such a case, the connection between the value of village elections and effectiveness of farmers' property rights in land is negative. As one farmer put it, "the appointment of the village leader and village party secretary are at [in the hands of] the township government... the average person has no say in the matter. Even in recent years when village elections have been implemented, basically, the township still puts forward the names, and the results of the election have been poor (hn070907a)." As demonstrated above, until the abolition of the agriculture tax, meeting tax quotas was a primary concern for leaders at both the township and the village levels in remote, agricultural areas. For leaders in peri-urban communities, revenue generation through industrial and real estate development was an important concern. Thus, township political interests are an important influence at the village level, and village leaders acting in the name of "the collective" do not necessarily act in the interests of the local residents, including with respect to their property rights in land.

The Property Law of 2007 indicates that the "collective" refers to "members of the collective community," but this phrasing still leaves some ambiguity regarding who is empowered to act in the name of the collective. Article 60 indicates that the collective exercises ownership rights on behalf of the members and that members may sue the collective if their rights are violated.

Existing legislation governing land use attenuates rights in other ways. Even where local residents themselves may have an interest in industrial or real estate development on their land, farmers do not have the right to make private transfers of land for non-agricultural uses. Thus, rural land contract holders are legally precluded from participating in the secondary land market. In order for land to be transferred from agricultural to non-agricultural use, it must be converted from collective to state land through government requisition or takings.

Compensation for takings of collective land is divorced from the real market value of the land itself, creating the opportunity for local governments themselves to capture the value. Compensation for requisitioned farm land is set in the Land Management Law at six to ten times the average yield, while compensation for resettlement costs is set at four to six times the average yield (LML Art 47).<sup>27</sup> Under the Land Management Law (Art 26), compensation payments are made to "the collective," which then, in principle, allocates payments to individual farm households.<sup>28</sup> Once the land is converted to state land, the local government via the Land Management Bureau can command land transfer fees reflecting the true market value of the land, which—especially in peri-urban areas—is often much higher than statutory compensation levels to farm households.

Since collective, agricultural land must first be converted to state land before being put to non-agricultural uses, and since there is frequently a large gap between the valuation of land for compensation to farmers and the valuation of land for transfer to developers, local cadres can generate and control significant revenues as middle men in the land transfer process. They subsequently become party to disputes with villagers, when villagers raise concerns about the procedures by which land was transferred or about the amount of compensation they receive.

County governments are directed to employ competitive bidding, auctions, or public listings in order to conduct land transfers in a transparent way and at market levels. These policies are laid out in a stream of central documents, including State Council document 2001 #15, State Land Resources Ministry 2002 #11, State Land Resources Ministry and Supervision Ministry 2004 #71.

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<sup>27</sup> Subsequent documents seek to bring compensation more in line with the cost of social security for farmers dispossessed of their land, however (PL Art42)

<sup>28</sup> The 2007 Property Law indicates that compensation should go directly to the holder of land-use rights (PL Art 132)

However, local governments make non-transparent land transfers at below-market values for a variety of reasons, such as attracting industry that will generate new tax revenues as well as in order to solicit kickbacks for themselves.

In response, the State Council office issued document 2006 #100 “Notice Regarding Standardizing Management of Income and Expenditures from the Transfer of State Land Use Rights,”<sup>29</sup> and provincial level governments followed with guidelines for implementation.<sup>30</sup> Income from land transfers may be used for 1) compensation for land takings, 2) land development, 3) supporting agriculture, including social security for farmers, 4) urban infrastructure construction, and 5) other expenditures, including the state land benefit fund (to finance land bank purchases). The guidelines emphasize that the public finance bureau and the land resources bureau must cooperate in submitting land transfer fees to public finance oversight and treasury management. However, many land transfer fees become off-budget funds, outside of effective oversight by the Ministry of Finance. Land transfer fees are reported to be the largest source of off-budget funds in recent years, which have grown to rival the size of the formal budget in many peri-urban areas.<sup>31</sup>

### **How fiscal pressures drive disputes over agricultural land rights in rural Hunan**

#### *Fiscal Pressures*

This section demonstrates how pressure to collect agriculture taxes in the context of ambiguity in property rights law affected farmers’ land rights and contributed to land disputes in rural Hunan. In the case study county, the first round of household contracts over agricultural land following the decollectivization of agriculture were in force from 1980 to 1995. Local officials issued a second round of contracts over agricultural land in 1995, and farmers received land-use certificates documenting their claims at that time. As subsequent paragraphs demonstrate, disputes over agricultural land intensified after 2004.

Until their recent abolition, agriculture taxes constituted the single largest source of budgetary revenue in the rural Hunan county. In 2003, agriculture taxes accounted for 39 percent of budgetary revenue in this county (about 2.5 times the national average for counties nationwide). See Table 2. County-level officials sought to ensure the full collection of agriculture taxes by assigning fixed quotas that officials of each township had to meet (hn081007). Failure to meet these targets could result in the loss of a leading cadre’s position or jeopardize his promotion prospects. The intensity of this pressure led township cadres in the Hunan county to incur personal debts to wealthy township residents in order to meet the annual agriculture tax quota to be handed up to the county level. By the time the agriculture tax was abolished in this county in 2004, the accumulated debt in one township alone had reached 3 million yuan (hn081007).

This pressure to generate and collect agriculture taxes also reached below the township to the village, affecting the allocation of land use rights in agriculture. Village party leaders were tasked with keeping agricultural land in production and collecting agriculture taxes.<sup>32</sup> This task became increasingly difficult in the 1990s and early 2000s.<sup>33</sup> Given the relatively heavy tax burden on farmers and the relatively low profitability of household farming in the 1990s and early 2000s,<sup>34</sup>

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<sup>29</sup> 国办发[2006] 100 号文件“国务院办公厅关于规范国有土地使用权出让收支管理的通知

<sup>30</sup> 鲁政办发[2007] 38 号 “关于贯彻国办发[2006] 100 号文件

<sup>31</sup> Ping Xinqiao (平新乔). 2006a. “我国土地财政规模估计.” 北京大学中国经济研究中心简报, No. 56; Susan H. Whiting, “Central-Local Fiscal Relations in China,” *China Policy Series* No. 22 (April 2007).

<sup>32</sup> Insert quote from 2007 interviews

<sup>33</sup> Bernstein and Lu

<sup>34</sup> Local cadres provided varying accounts of low profitability in agriculture. In one case-study village in the Hunan county, for example, it was reported that a villager engaged exclusively in agriculture could gross approximately 500

farmers holding land-use contracts abandoned the land in growing numbers as they sought work outside of agriculture—often as migrant laborers. As one local party secretary put in, “Before 1998, many people left for migrant labor, owing to [the fact that], at that time, agriculture taxes and fees were very high and cultivating the land was unprofitable. The result was that land was abandoned on a large scale (hn081007p).” However, village cadres sought to ensure that farm land remained under cultivation for tax reasons.

In some cases, farmers deciding to leave farming made private land transfers (within the agricultural sector) to other local farmers to take over cultivation and to assume the tax and fee burden. In other cases, farmers simply abandoned the land. In these situations, village cadres intervened, transferring the land to other local farmers, who would take over cultivation and assume the burden of taxes and fees (hn081007p2). In the Hunan case study county, regardless of who initiated the land transfer, there was seldom a written record, nor adherence to any formal procedure for the transfer and registry of land use rights according to the RLCL (hn0810072; hn072908 sifaju). In only a small minority of cases, farmers who abandoned farming actually signed agreements to return their land to the village collective (hn080729a).<sup>35</sup> Most transfers of land from the original cultivator to the new cultivator were made with nothing but verbal agreements. When village cadres were involved, they sometimes attempted to notify the original cultivator verbally *post hoc*, when the original cultivator returned to the home village for the annual New Year’s holiday, for example. Importantly, new cultivators took on the burden of paying taxes and fees to local cadres. Moreover, the authority of local cadres to oversee land transfers without formal procedures went unquestioned by local farmers.<sup>36</sup>

Changes in agricultural tax policy, along with other changes, sparked a marked increase in disputes over transfers of *de facto* property rights in agricultural land. With the symbolically important Document No. 1 of 2004, issued by the Central Committee of the Chinese Communist Party and State Council, the state signaled a set of major new policy initiatives to increase rural incomes and support the agricultural sector. These policies included the immediate reduction and phased elimination of the agriculture tax, increases in agricultural subsidies, and increases in rural infrastructural investment. Coupled with increases in prices for agricultural commodities,<sup>37</sup> agriculture began to appear increasingly profitable beginning in 2004. Those farmers who had abandoned the land for migrant labor faced a new opportunity structure, affecting their interest in land rights. Interviews with farmers and local officials reflect the changed opportunity structure. Prior to 2004, accounts of gross receipts per mou in the case study county ranged from 500-900 yuan. Taxes and fees were consistently reported at approximately 300 yuan per mou, with costs approximately 200 yuan per mou, leaving meager *net* receipts of 0-400 yuan. After 2004, accounts of gross receipts per mou ranged from 1500-2000 yuan. With the abolition of all taxes and most fees, increased commodity prices, and state subsidies along with steeply increasing input costs,

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yuan per mu, with costs about 200 yuan and taxes and fees 200-300 yuan per mu, making agriculture relatively unprofitable. Profits averaged 60 yuan per mu in 1998 and declined in the following years (Author’s interview hn070810am3). In another account in the same county, estimated gross receipts per mu were 900 yuan, with costs of about 200 yuan and 300 yuan in total “contract fees,” leaving profits of 400 yuan per mu (hn072908a).

<sup>35</sup> In at least a few cases village cadres did actually sign agreements with new cultivators (hn080729a).

<sup>36</sup> On this phenomenon more generally, see, e.g., Xu Yingjie and Jin Chuanhui, “对当前农村土地纠纷的类型成因及对策分析 (Analysis of the types, reasons, and policies to address current rural land disputes),” in [www.chinacourt.org](http://www.chinacourt.org) February 25, 2007, accessed March 3, 2009.

<sup>37</sup> Global cotton prices, for example, increased from about 40 cents per pound in 2002 to about 60 cents per pound in 2004, after years of declining prices. John Baffes and Gaston Gohou, “The Co-Movement between Cotton and Polyester Prices,” World Bank Policy Research Working Paper Series No. 3534 (2005).

reports of *net* receipts ranged from 400-1000 yuan per mou—making agricultural land relatively more valuable (Author’s interviews hn070810am3, hn080729a).

The pull factors created by increases in profitability of agriculture between 2004 and 2008 have been joined by push factors created by the global economic slowdown that began in late 2008, resulting in the loss of factory jobs for migrant workers. As an official of the Ministry of Agriculture indicated in a March 2009 press report, “After rural laborers return to the countryside in large numbers, if they have already transferred their originally contracted land to others and the transfer contract has not expired—especially if there are still crops on the land, then it’s very easy for disputes to occur; this is quite unfortunate for social stability in the countryside.”<sup>38</sup>

### *Land Disputes*

According to a 2004 report of the Hunan Statistical Bureau, “Cases of rural land disputes have increased sharply. After the issuance of Document No. 1 (2004), a new “planting fever” has swept the countryside. Migrant laborers are returning to their villages wanting land to plant. Those who transferred land are seeking to discontinue these arrangements and resume planting, even to the point instigating disputes—even some involving violent incidents. According to statistics of the relevant prefectural-level government office and its county-level subordinates, there were more than 6000 land disputes in the first half of the year (2004), more than twice the number during the same period of the preceding year.”<sup>39</sup>

In a representative sample survey of 335 households conducted in the case study county in Hunan in 2007, nine households (3 percent) reported disputes involving village handling of abandoned land. In one of the rural townships in the county, the township head, interviewed in 2008, reported that abandoned land accounted for about one third of all land disputes in his township in recent years.<sup>40</sup>

### *Disputes and Approaches to Dispute Resolution*

This section first establishes the common dispute-resolution practices and then discusses how tax burdens shaped not only the disputes themselves but also the processes of dispute resolution. Disputes over abandoned agricultural land appear less likely than land-takings cases to result in law suits, for multiple reasons. In these disputes, the direct parties to the dispute are typically members of the same farm community. Local community officials are implicitly a party to the dispute (motivated by their fiscal concerns, they initiated reassignment of land); in addition, local officials face explicit guidelines from higher-level party/government to mediate disputes in order to prevent them from escalating.<sup>41</sup> Compensation claims in disputes over abandoned land are typically small and linked to the payment of tax obligations; payment of taxes becomes a central issue of fairness and a basis for compensation in the context of mediation. This approach to community notions of fairness stands in contrast to bargaining in the “shadow of the law (perhaps because, if courts won’t accept the cases, a threat to sue is not credible),” and “black-letter law”

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<sup>38</sup> Zhang Hongyu, Ministry of Agriculture as quoted in “就业危机或致群体性事件发生几率增加 (Employment crisis may lead to increase in occurrence of mass incidents),” <http://www.sina.com.cn> March 9, 2009.

<sup>39</sup> This report refers to the prefectural level unit in which the case study county is located. “2004年上半年农村经济形势分析 (Analysis of Rural Economic Trends for First Half 2004),” Hunan Province Statistical Bureau, July 20, 2004. Accessed at [www.hntj.gov.cn/sx/fx/cdfx/2200407190092.htm](http://www.hntj.gov.cn/sx/fx/cdfx/2200407190092.htm) on July 14, 2008.

<sup>40</sup> Other disputes included boundary disputes, disputes over population-based adjustment of land holdings, and land takings disputes.

<sup>41</sup> From the perspective of a township or village official, escalation includes disputes visible at the county level, including complaints at the county-level petition office, litigation at the county’s basic-level court, or protests large enough to elicit county-level response (Author’s interviews hn070809am2, hn070810am)

does not necessarily govern the outcome. Moreover, judges in the county court with jurisdiction over these farm communities seek to avoid volatile cases that may heighten community tensions and affect local political stability. In survey data, follow-up interviews, and the documentary record, local residents, officials, and judges recounted the way the disputes came about and the ways in which disputes were resolved.

Of the nine surveyed households who reported disputes over abandoned land in the Hunan county, seven sought to regain land that they had earlier abandoned and which had been reassigned to other households by village cadres. (The other two households identified in the survey sought to defend their occupation of formerly abandoned land—to be discussed below). Of these seven households, four initiated action in response to the dispute.<sup>42</sup> One household that had earlier abandoned their land undertook direct negotiation with the household occupying the land; this household reported reaching a compromise solution with which they were “relatively satisfied.” Three of the four households initiating action sought out village cadres to mediate the dispute; these households’ explanation for involving village cadres was that they believed that these cadres had the necessary authority to resolve the dispute. Two of these households reported compromising in the course of mediation with the village cadre; one of these households was “relatively satisfied” with the compromise, while the second of these households which had earlier abandoned their land was “extremely dissatisfied,” because they had to pay 400 yuan (most likely compensation for past agriculture taxes paid by the new occupier) as part of the compromise solution.

Case records from mediation committees of township justice bureaus in the Hunan county also document the mediation process and shed additional light on these survey findings.<sup>43</sup> First, mediation records indicate that there were typically no written records of the land transfers. Second, they show that taxes are a key element in the dispute. One mediation over the disposition of formerly abandoned farm land recounts an oral statement that the new occupier of the land had to undertake all the taxes and fees levied on cultivated area: “the burdens levied on the area [of land] are all yours (面积摊的负担也是你的).”<sup>44</sup> When the original land-use-rights holder sought the return of the land, the new occupier protested that he had been the one paying taxes and fees over several years: “These [past] few years, the burdens have all been mine; this year the contributions to repair roads—all these I paid (这几年的负担都是我, 今年为修公路的捐资, 都是我出的).” Mediator, “You mean to say that now you are not willing to return the [land] area? (你的意思就是现在不肯交还面积?)” New occupier, “Yes (对).” Because the new occupier had shouldered years of tax and fee burdens; he refused to return the land to the original land-rights holder. The mediator proposed that the land should be returned to the land-use-rights holder after the coming harvest, but also that some compensation from the land-use-rights holder to the new occupier was appropriate because the new occupier had undertaken all the taxes and fees over several years.

Two of the nine surveyed households who reported disputes over abandoned land sought to defend their occupation of the land assigned to them by village cadres against claims by the formal land-use-rights holders. In both cases, these households attempted direct negotiation. One household subsequently sought out the village cadre to mediate the dispute, explaining that they trusted the village cadre and that they didn’t know what else to do. This household reported that, through mediation, both sides compromised and that they were “relatively satisfied” with the result

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<sup>42</sup> In the other three cases, the household newly occupying the land initiated action to resolve the dispute; beyond that, no further information is available.

<sup>43</sup> Case records constitute a convenience sample of 30 disputes in the Hunan county.

<sup>44</sup> Case record #5.

of the mediation process. The other household that attempted *only* direct negotiation with the former land-holder reported that they “lost” the negotiation and were “extremely dissatisfied” with the result.

Interviews with mediators suggest that compensation from the land-use-rights holder for taxes and fees paid by the occupier is often part of the mediated settlement. The land-use rights holder may be dissatisfied about having to pay such compensation, but in mediation, it appears to be a common pre-condition for return of land to use-rights holder. Although the new cultivators never had formal land-use-rights to the occupied land, such compensation is a reflection of their past adherence to the authority of village cadres and their past shouldering of the tax and fee burden of the village and locality. Such compensation—not found in the letter of the law—appears to be a key element in gaining “buy-in” by the new cultivators who will lose the land they currently occupy, keeping the peace, and maintaining political stability in the locality. A 2008 policy document of the economic management bureau in the Hunan county, affirmed that land-use contracts and certificates from the second round of land contracting (1995) would be the basis for returning land to those who had abandoned it but that compensation to new cultivators would be required. “In situations in which rural households abandoned their land because the [tax and fee] burden was excessive in earlier years and because cultivation was un-remunerative but have now returned and want to cultivate the land, their original land rights should be affirmed. ...the returning original farmers should pay the new cultivators appropriate compensation. While affirming the rights of the original land-use contract holders, the contract holder must shoulder his obligations.”<sup>45</sup>

None of the survey respondents and few of the records or interviews reveal escalation to the court system in cases involving disposition of abandoned land. However, a county justice bureau official cited an instance of litigation in such a case, a case in which a family holding a valid land-use certificate from the second round of contracting in 1995 had—for more than two years—abandoned its land and neglected to pay relevant taxes and fees (Author’s interview hn070815a). Concerned about meeting tax targets, cadres reassigned the abandoned land in order to facilitate collection of the agriculture tax. Cadres re-allocated the land to a family with two young children without making any formal changes to the pre-existing land contract. Rather, such reassignment had political rather than legal sanction. The young family worked the land and paid the accompanying taxes and fees. After the abolition of the agriculture tax, the first family—holders of the formal land-use-right certificate—returned to reclaim their land, and a dispute with the young family and the village cadres ensued. The certificate holders insisted on suing in the local court. The plaintiff won a favorable judgment on the basis of the RLCL, privileging land-use certificate holders, whose rights, in principle, remain unchanged for thirty years. No compensation was awarded to the young family occupying the land. It is noteworthy that the plaintiff paid not only the standard 200 yuan court fee but also 1000 yuan in costs reportedly incurred by the court in investigating the case. When the family holding the land-use certificates appeared with the judgment to take back the land, villagers rallied in support of the young family occupying the land, and a violent incident ensued. The court had no effective way of enforcing the judgment.

Local cadres were, implicitly, party to the dispute, since they had reassigned the land. The court, in finding for the plaintiff, in effect found against the local cadres. Moreover, villagers felt that “morality”—but not the court—was on the side of the young family who had farmed the land,

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<sup>45</sup> In discussing compensation, the statement also makes reference to compensation to new cultivators for productivity-enhancing improvements to the land. “关于农村土地二轮延包后续完善工作有关具体问题的处理意见，” 县经管局，March 12, 2008.

paid the taxes and fees, and supported their young children—all with the political sanction of local cadres.

Ultimately, the resolution was mediated by local officials, who sought to contain the conflict. Local cadres felt justified in their earlier actions and felt pressure to prevent further unrest and restore community harmony. Under pressure from local officials, the plaintiff agreed to rent the land to the young family as long as their children were still in school, although the rent would be zero. In lieu of actual rent, the plaintiff accepted a nominal one-time payment.

The county justice bureau official indicated that this case informed the local guiding thinking (指导思想) establishing that courts should not accept cases of disputes over abandoned land and that such cases should be mediated by relevant government agencies (Author’s interview hn070815a). In determining this new local policy, local officials made reference to the State Council document issued in 2004, which similarly emphasizes mediation over litigation of such land disputes in the interest of maintaining political stability.<sup>46</sup> Separately, a judge in the Hunan county basic-level court cited internal guidelines in force at least as of 2007, prohibiting courts from taking land dispute cases (Author’s interview hn070809pm). He emphasized that the court was not effective vis-à-vis the government, since the court itself was—in reality—a part of the local party-state. He indicated that when such cases came up, the court instructed plaintiffs to use the petition system or to seek mediation by another government agency. The role of the courts in adjudicating disputes according to legal principles is not necessarily consistent with maintaining political stability and, in the case recounted by the county justice bureau official, made conflict more acute.<sup>47</sup>

The Hunan case study suggests that additional conditions are necessary before new laws affirming farmers’ rights to use the courts will change the nature of governance. Two factors appear to be relevant in creating disincentives to litigation. First, as demonstrated above, the political authority of local officials in the rural, agricultural community contravenes both the relevant land laws and the authority of the court. Second, citizens’ sense of fairness—as opposed to legality—further undermines the place of law, because citizens are willing to protest violations of fairness and because local officials privilege political stability over legality. As Zhang Jing highlights in her work, the arenas of law and politics are not well delineated in the Chinese context, resulting in power struggle and politicization of legal practice in which interest politics invade the legal process.

#### Sources of budgetary revenue

##### Shandong county

##### Share of total

	VAT	bus. Tax	direct land	inc taxes	ag taxes	urban maint	finances	admin fees	subtotal	other*	total
2001	18	8	2	57	4	3	1	2	94	6	100
2002	26	11	3	27	12	4	1	3	87	13	100
2003	26	13	4	19	9	8	4	3	86	14	100
2004	26	13	9	13	3	9	7	3	83	17	100
2005	34	10	13	9	0	8	1	3	78	22	100

<sup>46</sup> Indeed, a party official in the Hunan county reported that public order has become a primary criterion in job performance measures for local party leaders (Author’s interview hn070809am2).

<sup>47</sup> This view is echoed by Zhu Suli in his widely cited book, *送法下乡 Sending Law to the Countryside*.

2006	31	9	16	10	0	6	14	3	90	10	100
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Hunan county  
Share of total

	VAT	bus. Tax	direct land	inc taxes	ag taxes	urban maint	finances	admin fees	subtotal	other*	total
2001	6	8	1	9	32	1	7	5	69	31	100
2002	5	11	1	4	41	1	6	19	89	11	100
2003	5	13	1	3	39	1	7	21	90	10	100
2004											
2005	7	20	4	4	0	3	10	31	78	22	100
2006	7	18	3	3	0	3	9	20	63	37	100

\*residual

Source: County statistical yearbooks, multiple years.

## How fiscal pressures drive disputes over land takings in peri-urban Shandong

### *Fiscal Pressures*

This section demonstrates the very different dynamics of how fiscal pressure (to generate revenues through land-use policies in a peri-urban, industrializing county) affects farmers' land rights and contributes to land disputes. The case study county in Shandong is one of the top-performing one hundred counties in China.<sup>48</sup> 2002 GDP per capita was 12,091 yuan, while by 2006, GDP per capita had increased to 38,029 yuan; per capita budgetary expenditure reached 2,365 yuan in 2006, up from 722 in 2002.<sup>49</sup> "Top-performing" counties like this one are concentrated in the coastal provinces of Zhejiang, Jiangsu, Guangdong, and Shandong, where urbanization is progressing at a rapid pace.<sup>50</sup> Also concentrated in these provinces are government land requisitions, which, in turn, are a major source of on-budget and off-budget revenue as well as a major driver of land disputes.<sup>51</sup>

The on-going centralization of control over revenue (including portions of corporate and individual income tax) and the subsequent abolition of agriculture taxes has affected the Shandong case study county, but the long-term effects of these changes were smaller here than in many other areas, in part because of the county's ability to readily exploit the value of its land. In 2001, locally controlled income taxes accounted for 57 percent of local budgetary revenue, dropping to 27 percent in 2002, following centralization measures (Table 2). The reallocation caused a drop in

<sup>48</sup> National Bureau of Statistics of China 国家统计局综合, "2005 年度全国百强县基本稳定, 十强排位右边," September 30, 2006, [http://www.stats.gov.cn/tjfx/fxbg/t20060930\\_402355417.htm](http://www.stats.gov.cn/tjfx/fxbg/t20060930_402355417.htm), accessed 02/10/08.

<sup>49</sup> 邹平县统计年鉴.

<sup>50</sup> National Bureau of Statistics of China 国家统计局综合, "2005 年度全国百强县基本稳定, 十强排位右边," September 30, 2006, [http://www.stats.gov.cn/tjfx/fxbg/t20060930\\_402355417.htm](http://www.stats.gov.cn/tjfx/fxbg/t20060930_402355417.htm), accessed 02/10/08..

<sup>51</sup> 平新乔, "我国土地财政规模估算," 2006 年第 56 期 (总第 618 期)。Similarly, Liu Mingxing and Tao Ran (2007:169) find that "In richer regions, local governments, especially those at the county and township level (sic), are generally able to provide decent public goods and services to residents and businesses, since they not only enjoy higher tax revenues coming from the development of non-agricultural sectors, but can draw on additional high income from the sale of rights to develop local land..."

*total* revenue in 2002, but by 2003 the county had already recovered, exceeding 2001 local budgetary revenue by nearly 100 million yuan due to dramatic growth in local VAT tax and business tax revenues as well as urban maintenance and construction tax revenue.<sup>52</sup> By 2003, the county had stopped collecting the agricultural special products tax and the slaughter tax and, by 2004, had ceased collection of the agriculture tax. In 2004, the agriculture tax accounted for only 3.3 percent of county budgetary revenues, however; so, the impact was more minimal than in less industrialized localities.

The large increase in VAT and other taxes also reflects in part the growth of the single largest enterprise (the W—Group) located in the case study county, also, reportedly, the largest textile plant in the world by area. The W-- Group occupies more than 310 hectares of land in the region and employs 150 thousand workers (Author’s interviews zp072507a). According to a representative of the National Tax Service office, it is the single largest source of taxes in the county, providing 50-60 percent of tax revenues. In addition, the conglomerate has attracted a large number of related enterprises to the county.<sup>53</sup> The growth of the W-- Group is related to the expansion of local development zones (termed “zone fever”) occurring in the case study county, as elsewhere (Cartier 2001).<sup>54</sup>

One way in which local governments—particularly in wealthier, peri-urban areas—cope with revenue inadequacy is by generating revenue through their ability to requisition land “in the public interest (Land Management Law).” Local officials cite the creation of job opportunities and new revenue-generating economic activity through conversion of agricultural land to industrial or commercial purposes as a motivation for land requisitions. In recent years, the case study county has requisitioned land to develop industrial parks and economic development zones and has approved major real estate development projects. Data on the area of farm land requisitioned for these purposes is available beginning in 2004. These data (Table 3) show that from 2004 to 2006, between 3 and 5 percent of the county’s arable land was requisitioned each year, using land transferred from local farmers (Interview zp072507a).

#### Requisitions of Arable Land, Shandong Case Study County

Year	Total arable land (area)	Arable land requisitioned (area)	Arable land requisitioned (%)
2001	1066262	n/a	n/a
2002	1054650	n/a	n/a
2003	1009271	n/a	n/a
2004	952187	28249	3.0
2005	950384	41654	4.4

<sup>52</sup> County statistical yearbook (various years).

<sup>53</sup> These include seven additional firms with output valued at over 100 million yuan, 16 with output over 10 million yuan, and 87 with output over 1 million yuan. “山东邹平魏桥创业集团让 15 万人‘农转非’，”<http://www.texnet.com.cn/2007/01/22/151724.html>, accessed 2/13/2008.

<sup>54</sup> See also Liu and Tao (2007: 176).

Source: County statistical yearbook (various years).

These land requisitions can generate fiscal revenue in a number of ways.<sup>55</sup> First, local governments use low-priced land to attract investors in industry and real estate as a means of increasing GDP growth and taxes.<sup>56</sup> Local officials in the case study county highlighted their “great flexibility” in policies with respect to land (Author’s interview zp071907p). In response to such local government tactics, the 2007 Shandong Province State Land Resources Meeting highlighted the problem of local governments’ reducing or exempting land transfer fees in the name of “attracting investment” (不得以‘招商引资等名义减免土地出让收入). It called for the strict implementation of minimum standards for transfer of land for non-agricultural uses.<sup>57</sup>

Calls for stricter regulation and monitoring of local government land management practices notwithstanding, in the case study county, tax revenues directly tied to land have increased rapidly in a short period of time: in only five years, the urban land-use tax, farmland occupation tax, and deed tax together grew from 1.6 percent of local budgetary revenue in 2001 to more than 15 percent in 2006 (Table 2). Taken together, these taxes exhibited an average annual growth rate of 110 percent during this period. In terms of revenue sources indirectly linked to land and land development, two industries alone—the construction and real estate sectors—accounted for nearly 50 percent of all business taxes in 2005 and 2006.<sup>58</sup> One official highlighted the extent to which taxes from the construction industry followed flexible local land management policies (土地管理政策) (zp072507a). Following the marked increase in requisitioned land in 2004-05, the county also experienced a more than doubling of VAT-tax revenues in 2005 (Tables 2 and 3).<sup>59</sup>

Second, land transfer fees generate substantial off-budget revenue for local governments.<sup>60</sup> A special study commissioned by the State Council in another “top performing” county found 1.18 billion yuan from land trades in 2003 alone, equivalent to nearly one quarter of budgetary revenue (Zhang Y. 2007). Nationwide, these funds were estimated at 615 billion yuan in 2004, equivalent to

<sup>55</sup>Zhang Yanlong, “Urban Entrepreneurialism,” p. 24. 刘江, “政府和谐治理与‘土地财政’的根治,” 农村经济 2007 年第 10 期, pp. 91-92.

<sup>56</sup> 2007 Shandong Province State Land Resources Meeting (山东全省国土资源会议).

<sup>57</sup> Suggesting the difficulty in eliminating this practice, the same point was made ten years earlier in the 1997 Shandong Provincial Government “Notice Regarding Strengthening Collection Management of Transfer Fees for Use Rights over State Land.” Article 4 emphasizes that local governments may not reduce or exempt land transfer fees. In 2004, August 31 was set as the national deadline (“土地大限”) after which local governments were instructed to end negotiated pricing for land for industrial use and to implement competitive bidding, auctions, or public listings. “Because these funds lack Ministry of Finance oversight, they easily shade into corruption; real estate developers, for example, may provide kickbacks to local government officials who make available land at low prices, shortchanging the farmers who lose access to the land in the process.” Whiting, “Central-Local Fiscal Relations in China.”

<sup>58</sup> 邹平统计年鉴 2005, 2006. Note that the totals for business and income taxes by sector do not match the totals for business and income taxes reported elsewhere in the same volume; totals for all other taxes by sector do match the total for all other taxes reported elsewhere in the same volume.

<sup>59</sup> According to the party secretary of GX Township in the case study county, as higher-level monitoring of land management practices tightened in late 2007, it became more difficult to use low-priced land to attract investment and the break-neck growth in tax revenue slowed concomitantly.

<sup>60</sup> Ping Xinqiao 平新乔我国土地财政规模估计. 北京大学中国经济研究中心简报 No.56 (2006). According to this study of land transfer fees conducted in 2004, Shandong was one of the provinces generating the most off-budget funds from land transfers.

3-4 percent of GDP (Ping 2006). The land bureau in the Shandong case study county reported stable land transfer fees of about 100 million yuan annually, equivalent to less than 10 percent of 2006 budgetary revenue. This politically sensitive figure is likely understated, because land transfer fees are supposed to be subject to official fiscal management and yet often serve as off-the-books slush funds instead. Indeed, in 1997, the Shandong Provincial Government emphasized that the *public finance bureau* should collect all fees, including all funds over and above compensation for farmers.<sup>61</sup> However, in the case study county, the director of the county-level public finance bureau stated baldly that his office had “no control over (管不了)” these funds (Author’s interview sd070718am).

### *Land Disputes*

Since agricultural land must first be converted to state land before being put to non-agricultural uses, and since there is frequently a large gap between the valuation of land for compensation to farmers and the valuation of land for transfer to developers, local cadres can generate and control significant revenues as middle men in the land transfer process. They subsequently become party to disputes with villagers, when villagers raise concerns about the procedures by which land was transferred or about the amount of compensation they receive.

According to the state land management bureau in the Shandong case study county, in anticipation of land takings, officials convene meetings of both the nominally elected village committee and the village party committee and then convene a meeting of all village households (sd180707p). Although the land management law requires approval by two-thirds of villages for changes to land contracting arrangements, the bureau claims to require 95 percent approval in this county. However, among the issues in dispute in land takings in the county are the failure of the village leaders to obtain the required approvals from villagers in advance of land takings as well as arbitrary adjustments of remaining arable land among households in the wake of land takings. Moreover, while relevant laws require villages to provide documentation of property rights in land, another issue in dispute is the failure to provide land-use certificates to document property rights of village households reflecting re-adjustments of land holdings in the wake of land takings. In one township where these problems were particularly acute, all cadres were subject to an administrative investigation and rectification to correct serious violations of the relevant laws involving land takings.<sup>62</sup>

Another central issue in dispute is the amount, dispensation, or misappropriation of compensation funds. Where land takings involve formal, written agreements in the wake of consultations with all village households, compensation per unit area is made explicit, and the agreement becomes the basis for legal claims of households vis-à-vis the village.

### *Disputes and Approaches to Dispute Resolution*

Land takings disputes appear more likely to escalate to the courts than other types of disputes. The existence of writings makes claims more readily litigable. The relatively high value of land compensation in peri-urban areas may outweigh the costs of litigation. Moreover, the relatively high value of land compensation may bring to the fore violations of property rights that would have been ignored (lumped) in other circumstances. Finally, the presence of resource-rich industrial or commercial developers from outside the local community may contribute to the undermining of local authority relationships or trust-based relationships.

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<sup>61</sup> 1997 Shandong Provincial Government, “Notice Regarding Strengthening Collection Management of Transfer Fees for Use Rights over State Land”

<sup>62</sup> 扎实开展农村土地突出问题专项治理 <http://www.binzhou.com.cn/Article/ShowInfo.asp?ID=207>, accessed 7/14/08.

Courts have accepted at least some land dispute cases (as reflected in available, published case reports), despite overall emphasis on mediation and on maintaining political stability.<sup>63</sup> In a commentary authored by judges of the basic-level court in the Shandong case study county, they advocated pre-trial mediation and highlighted the importance of mediation by village cadres in particular.<sup>64</sup> However, as the subsequent examples show, village cadres themselves become parties to the dispute and may lose the trust of villagers.

For example, the basic-level court in the case study county accepted a land compensation dispute stemming from a real-estate development project initiated in 2006. The developer provided the village with compensation for the total area of land taken, including one-time payment of 30,800 rmb (about US \$3,850 in 2006) per mou to go to each villager whose land was taken. This arrangement was documented in a formal, written compensation agreement. At issue in the court case was compensation for 1.22 mou of 4.37 mou of land contracted to the plaintiff in a land-use contract dating from 1998.<sup>65</sup> In 1999, the village illegally transferred the 1.22 mou of agriculture land to a third party, without the knowledge or approval of the land-use certificate holder. This illegal transfer became an issue only after the land acquired high cash value following its conversion from agricultural (individually contracted collective land) to non-agricultural (state) land for development as commercial real estate. When the land-use certificate holder did not receive any compensation (at 30,800 rmb per mou) following the conversion of the agricultural land to commercial real estate, he sued the developer, the village committee, and the third party (to whom the village had earlier transferred the agricultural land). The court found for the plaintiff, but found only the village committee liable for the full amount of unpaid compensation. The plaintiff found recourse in the courts, receiving a total of 37,576 rmb (about US \$4,700 in 2006) in compensation for 1.22 mou of requisitioned land.

In another example, the basic-level court in the case study county accepted another land compensation dispute in which arable land was taken for an industrial development park. In this case, the village did not recognize the property rights of a divorced woman with land rights in the village, giving the compensation instead to her former husband's family. The divorced woman sued to enforce her rights to compensation, and the court found in her favor.

### **Probing the Agenda for Future Research**

This comparative case study suggests that the fiscalization of agricultural land can result in multiple types of disputes over property rights. The specific nature of the dispute appears to influence the degree to which rural residents consider the courts to be a viable means of defending their property rights in land and the extent to which they have access to the courts. In a preliminary test of this hypothesis, in the second, 2008-wave of the household panel survey in the Hunan case study county, respondents were randomly assigned to two groups for hypothetical—as opposed to experiential—questions. One group was presented with a hypothetical question concerning a typical dispute over abandoned land, while the other group was presented with a hypothetical

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<sup>63</sup> Township party secretaries interviewed in Shandong and Hunan report that public order has become a primary hard target for cadre evaluation (Author's interview hn070809am2). A township party secretary in the Shandong county indicated that mediating disputes in the village had become one of his major responsibilities. Moreover, he highlighted the importance of maintaining political stability: "The evaluation for social stability is pretty strict: [they record] petitioning and disturbances—[especially] whether they have reached a higher-level government. There's a monthly report, and at year-end, if there's been a serious disturbance, it's a single-item veto; you don't get any other bonus, even if the economy developed well (Author's interview sd070724pm).

<sup>64</sup> 中国法院网 2008-10-10

<sup>65</sup> "擅自收回发包土地村民怒告村委会," 安徽农网, 2008-01-01, accessed 7/14/08.

question concerning a typical dispute over land takings. Respondents were asked about which actions (negotiation, mediation, litigation, protest, etc.) they would take, if any, in the face of such a dispute. Respondents might be expected to evince a greater willingness across-the-board to go to court in an abstract, hypothetical scenario, since they would not be confronted with real costs, community pressures, or political obstacles. However, comparing the responses of those presented with a hypothetical land-takings dispute with those presented with a hypothetical abandoned-land dispute, nearly ten percent more of the respondents presented with a land-takings dispute indicated the intention to go to court, a statistically and substantively significant difference.<sup>66</sup> This finding suggests that different types of disputes, for individuals similarly situated within the same communities, affect individuals' perceptions of their recourse to courts and the formal legal system.

## CONCLUSION

Fiscalization of agricultural land results in multiple types of disputes over property rights. Disputes within the agricultural sector over abandoned land are prominent in the rural, agricultural county in Hunan. These disputes came to the fore only after the value of land in agricultural uses increased after 2004. These disputes are embedded within the political confines of rural communities. In this context, despite the promulgation of major legislative acts intended to strengthen farmers' recourse to the courts, few, if any, farmers in disputes over abandoned land find effective recourse in the courts.

Disputes over land takings of agricultural land for non-agricultural uses are prominent in the peri-urban, industrializing county in Shandong. These disputes reflect the high value of land in non-agricultural uses. While based in the village political economy, these disputes also reach outside the village and entail written agreements with parties outside the village. Local residents appear more likely to challenge village authority structures and find effective recourse in the courts.

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<sup>66</sup> 7 percent more in the land-takings "treatment" group indicated they would go to court even without a lawyer, while 8 percent more in this group indicated they would go to court if they had the assistance of a lawyer (both differences significant at the .05 level or better (Chi-square)).