

# Collective Forest Ownership and Management in China

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## Introduction

The ownership of forests in China is divided into two types: state and collective ownership. Around 60 percent of China's total forestland is owned by the collective entities; collective forestland can mostly be found in the southeast, central and southwest of China. However, although the majority of China's forestland is collectively owned, 80 percent of them are managed by individual households.<sup>1</sup> The 'collective owned and privately managed' arrangement of forestland is a unique feature of China's agricultural land use and is not confined to forestland; in fact, almost all of the collective cropland has been contracted out to private households for management purposes. The devolution of arable land use rights to private households started at the end of the 1970s when the household responsibility system was adopted. Due to the overwhelming popularity of the system, it was extended to the forestland in the 1980s.

The collectives are the legacy of China's communist past and continue to play an important role in China's political and economic development, especially in the rural areas. They play not one, but three important roles: grass-roots administrative unit; collective economic unit; and democratic organisation of the masses.<sup>2</sup> Although the (forest) management responsibility of the collectives has decreased substantially since the devolution of land use rights, the collectives nevertheless still exercise extensive control over forestland use via the ownership rights. In addition, in some places, devolution of land use rights has not taken place and the collectives are still actively involved in the management of the forestland. This is especially true in more remote and forest-dependent areas such as in Yunnan, Sichuan, Guizhou and Hunan. These places also have high proportions of minority population, whose special status has been acknowledged and are usually given more autonomy to govern the community affairs.<sup>3</sup> This usually means that the collective-based management of forestland practised by minority tribes is preserved. However, it is still a fact that most of the collective forestland in China is now contracted out to and managed by private households.

This paper is divided into three sections. The first section will look briefly at the evolution of rural land rights, from just before the establishment of the People Republic of China to the present day. We shall see that the most recent important rural land reforms had started without legal sanction by the

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<sup>1</sup> William F Hyde, Brian Belcher and Xu Jinato (eds), *China's Forests: Global Lessons from Market Reforms* (Washington DC: RFF Press Book, 2003) at 10

<sup>2</sup> Pan Jiawei and Zhou Xianri, *Cun Min Zi Zhi Yu Xing Zheng Quan Chong Tu (The Conflict of Village Autonomy and Administrative Power)* (Beijing: Chian's People Publishing House, 2004) at 96.

<sup>3</sup> For example, Article 9 of the Forest Law gives indigenous communities 'more autonomous rights for forestry development, timber distribution and use of forestry funds in ethnic autonomy regions'.

central government but were eventually approved and adopted by the government. Another characteristic of rural land reform in China is the trial system where the proposed reform would be tested out in a few counties before being implemented nationwide. The second section outlines the different types of 'collective management' of forest that can be found in China. Due to the lack of legal provisions detailing the types of forest management regime, different kinds of 'collective management' models have sprung up all over China. The most well-known is perhaps the 'shareholding' regime where the collective forests were distributed to individual households in the form of monetary shares rather than as physical plots of land. The third section then analyses the institution of the collectives, including the democratic election at the local level and the relationship between the collective and the government. It shall be seen that the collectives suffer from various shortcomings; the most serious weakness is perhaps the overwhelming control the state still has over collective affairs. This is then followed by the conclusion.

### **Evolution of Forestland Use Rights**

Before communism took hold, most of the land in China was in the hand of a small number of landowners.<sup>4</sup> Most farmers were renting the land from the rich landowners and were liable to pay rent.<sup>5</sup> Different land use systems were in place before the establishment of the modern state of China in 1949, with the most prominent one being the 'yong dian' (永佃) system, which denotes 'permanent tenancy rights'. The basic feature of this land use system is that land rights were divided into ownership and usufruct (or surface) rights. Landlords owned the land and the minerals underneath the land, but the tenants owned the use rights and crops or trees planted on the land. The two different parties had respective duties and rights, and they were enforceable by the local magistrates. In pre-1949 China, forest landowners included private entities such as local nobles and state officials, and also collective institutions such as temples, schools and the community. Collective owners managed the land for the use and benefit of the institutions or community they represented. They usually had rules that outlined the purpose and manner of use for forestland, which included penalties and punishment in case of rule violations. Violations of rules for personal benefits were not uncommon on collective land, and perpetrators were sometimes punished.<sup>6</sup> With regards to privately owned forestland, usufruct and ownership rights on land co-existed and some form of benefit-sharing or rental arrangements were in place.

The new People's Republic of China was established by the Communist Party at the end of 1949 following the end of the civil war. The Communist Party won the support of the farmers on the promise that everyone would get the equal right to own land. The idea of 'land to the tiller' (*geng zhe you qi tian* 耕者有其田) was a huge attraction to the majority of the farmers who had

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<sup>4</sup> Before the revolution of 'new democracy' that toppled the last dynasty of China, less than 10% of the population were owning 70%-80% of the land, Han Mingmo, *Nong Cun She Hui Xue (Social Studies of Villages)* (Beijing: Peking University Publishing House, 2001) at 105.

<sup>5</sup> More than 90% of the population owned only 10-20 percent of the land, *ibid*.

<sup>6</sup> Nicholas K Menzies, *Forest and Land Management in Imperial China* (UK: St Martin's Press, 1994)

suffered under the old system. After the Communist Party took power, huge amounts of land were taken from the previous landowners (including rich but not ordinary peasant owners) to be allocated to farmers. However, mainly due to the concern of land fragmentation and unproductiveness of small household farms, and also to catch up with the practice of the Soviet Union, the government had opted for collective management just a few years after the initial land reallocation. In the early 1950s, farmers were encouraged to pool their land and resources together to form cooperatives (these were recognised as 'elementary cooperatives') in order to increase productivity.<sup>7</sup> Participation was voluntary and farmers who joined were allocated shares. Benefits or profits were allocated on the basis of the amount of work the farmers undertook and the capital invested.<sup>8</sup>

Collectivisation of forestland holdings was also carried out swiftly. In fact, by 1954, three-quarters of the afforestation was carried out by the cooperatives.<sup>9</sup> Collectivisation of forestland was beneficial in many places due to the fact that peasants could now pool their labour in planting trees, harvesting trees and so forth, which would otherwise be too costly for individual households. Few cooperatives were engaged in industrial forestry but many had integrated horticultural crops (such as food and fodder trees) into the agricultural pattern.<sup>10</sup> A Resolution on Agricultural Collectivisation was issued by the Central Committee in 1955, which stated that trees owned by collective members should remain under their care and even if the trees were included in collective management, there should not be any change in ownership.

The simple form of cooperatives changed into a more advanced type in 1956.<sup>11</sup> The main change accompanied by the adoption of the 'advanced cooperatives' was that the land and major farming equipments were taken from individual farmers and turned into collective assets. Farmers no longer had the discretion of not joining the cooperatives and profits were allocated according to the amount of work they put in. Even though farmers could still own scattered fruit trees, other non-timber trees planted around the homesteads and small farming equipment, and had alternative employment, they had virtually lost their ownership right of and right to income from the land and agricultural assets. Decision-making became centralised and involved hundreds of households (total number of households in an advanced cooperative).<sup>12</sup> This was the beginning of the real 'communisation' of forestland.

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<sup>7</sup> Two Decisions ([Decision of Central Government On Mutual Help and Cooperation in Agricultural Production] and [Decision of Central Government on Development of Agricultural Cooperatives]) were issued by the central government in 1953 to encourage farmers to form cooperatives, Han Mingmo, *supra*, at 114.

<sup>8</sup> Niu, Ruofeng et al., *Zhong Guo De 'San Nong' Wen Ti (China's 'Three Agricultural' Problems)* (Beijing: China Social Sciences Publication, 2004) at 52.

<sup>9</sup> S D Richardson, *Forests and Forestry in China: Changing Patterns of Resource Development* (Washington DC: Island Press, 1990) at 170-171

<sup>10</sup> *Ibid.*

<sup>11</sup> By the end of 1956, 96 percent of rural households in China had joined cooperatives, Liu Dachang, *Tenure and Management of Non-State Forests in China since 1950: A Historical Review*, 6 (2) *Environmental History* (2001) at 243

<sup>12</sup> *Ibid.*

Trees and forests were also consolidated and managed by the collectives. In addition to the means of production, ownership of the existing trees on the forestland was also reverted to the collectives. The policy at that time in general provided that young forests, nurseries and blocks of 'economic' tree and industrial timber species should be collectively owned, and the previous owners of these trees should be compensated where appropriate.<sup>13</sup> However, this was not adhered to in many cases and peasants were either under-compensated or not compensated at all.<sup>14</sup>

The role and power of collective forest farms were further strengthened by the adoption of an even stronger version of collective agricultural organisations, namely the 'People's Communes'. People's Communes were higher forms of farmers' cooperatives, and were formed via the merger of the advanced cooperatives. Under the people's commune system, all production assets were collectivised and were owned by the collectives.<sup>15</sup> Collective forest farms emerged under the new system. By May 1958, there were 1,455 collective forest farms in China and by 1960, there were 80,000 with a total labour force close to one million.<sup>16</sup> In addition to collective ownership of production assets, collective sales and purchase were also established<sup>17</sup> and the urban and rural residency permit system was adopted.<sup>18</sup>

De-collectivisation of land started to take place at the end of the 1970s. Due to widespread poverty and low productivity, some local officials in Anhui Province started to experiment with a new arrangement<sup>19</sup> of land management rights in 1978 (by doing so without the express authorisation of

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<sup>13</sup> S D Richardson, *supra*, at 171

<sup>14</sup> *Ibid.*

<sup>15</sup> All communes were created in a short period of three months in 1958 and all rural households were involved, Liu Dachang, *supra*.

<sup>16</sup> S D Richardson, *supra*, at 171

<sup>17</sup> The collective or compulsory purchase and sales of agricultural produce was adopted in 1953 and was only changed in 1990s when the market for crops was opened up. For timber, compulsory purchase was in place until 1985 when timber market was opened. However, in an attempt to reduce illegal logging and deforestation, free timber market was shut again in 1987 and only forest departments and state timber companies were allowed to collect timber from farmers and act as wholesaler, *ibid.*, p 255. Timber cutting in China is also subject to a quota system, and anyone who wants to cut down the timber needs to get a permit from the forest bureau.

<sup>18</sup> In 1958, the Household Registration Regulations was adopted and it cancelled out the right to migrate between the urban and rural guaranteed by the Constitution. The residency permit system is controversial and is said to be the main cause of the wide wealth gap in China. There have been plans to scrap the system in certain Provinces, especially the coastal provinces, Tim Luard, *China Rethinks Peasant 'Apartheid'* British Broadcasting Corporation, BBC News, 10 November 2005.

<http://news.bbc.co.uk/1/hi/world/asia-pacific/4424944.stm>

<sup>19</sup> In fact, the 'Households Responsibility' system was not new at that time. It had been adopted several times since 1957 but it did not last long each time due to unfavourable political climate. Not incidentally, Anhui Province was taking the lead in contracting out land to rural households, which resulted in many local officials being persecuted when political climate turned unfavourable, *Jin Ru Er Shi Yi Shi Ji De Zhong Guo Nong Cun – Tu Di: Tu Di Zi Yuan Zhuang Kuang (Rural China in the 21 Century: The Land Resources)* Guangming Daily Publication (2000).

[www.tragri.gov.cn/uploadImages/200551715311213572.doc](http://www.tragri.gov.cn/uploadImages/200551715311213572.doc)

the Central Government, they risked being persecuted).<sup>20</sup> The local officials devolved arable land management and use rights (ownership of land still belonged to the collectives) to the household level with the hope that it would give the much-needed incentives to farmers to increase productivity. This was soon followed by other provinces and was subsequently endorsed by the central government;<sup>21</sup> this system is now officially known as the Household Responsibility System (*tu di cheng bao ze ren zhi* 土地承包责任制).

Following the success of the Household Responsibility System (HRS), reform in collective forestland management and use rights followed suit. Decentralisation of collective forest management rights officially commenced in 1981 with the adoption of the 'Three Fix' policy.<sup>22</sup> This policy outlined the three main reforms to be adopted for forestland tenure: 1. stabilising land tenure; 2. demarcating family plots; and 3. defining the household production responsibility system. This policy guideline defined the tenure and forest use right reforms subsequently adopted. At present, almost all of the arable land have been devolved to the household level<sup>23</sup> whilst close to 80% of the collective-owned forests has been contracted out to households under the new Contract Responsibility System.<sup>24</sup> In the Fujian Province, use and management rights of most collective land had not been allocated to the households; instead, some collectives had opted for the share-holding system where a 'board of directors' or equivalent were established to manage the forest for all members of the communities, who were issued shares and paid dividends from any profits earned. However, the latest collective forestland reform in the Fujian Province sought to catch up with the rest of the country with regards to allocation of private use rights to households.<sup>25</sup>

For China's forestry, under the new system, the role of 'specialised households' was prominent.<sup>26</sup> These households specialised in forestry and were actively involved in timber production and forest management. These households flourished in some locations where the right conditions were

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<sup>20</sup> Han Mingmo, *supra*, at 117

<sup>21</sup> In September 1979, Central Committee of the Chinese Communist Party issued the [Decision About Issues on Accelerating of Agricultural Development]. Under this Household Responsibility System, farmers manage the land as individual units and have the power to make decisions about production. In addition, farmers can keep the surplus after shares are given to the state and the collective. The essence of the system can be appreciated from the propaganda adopted to educate farmers of the new system: Guarantee the share of the state, Provide enough for the collective, and Keep the remaining (*bao zheng guo jia de, liu zu ji ti de, sheng xia dou shi zi ji de* 保证国家的, 留足集体的, 剩下都是自己的).

<sup>22</sup> Even as late as 1979, the Forestry Act prohibited all forms of forest management other than collective and state management. In 1984, a new Forest Law was enacted. Article 23 of the Forest Law acknowledged that households could own trees that they had planted around their houses and on land (barren hills and uncultivated land) that had been contracted out to them.

<sup>23</sup> According to estimates, around 97 percent of the total arable land are now included in the HRS, Han Mingmo, *supra*, at 119.

<sup>24</sup> William F Hyde, Brian Belcher and Xu Jinato (eds), *supra*, at 10

<sup>25</sup> The reform involves only commercial collective forestland, and provides for a systematic and comprehensive process whereby collective land is allocated to households and individuals in order to encourage private investment. The Opinion of the Fujian Province People's Government on Promoting the Collective Forest Property Rights Reform.

<sup>26</sup> J W Bruce, S Rudrappa and Liu Zongmin, *Experimenting with Approaches to Common Property Forestry in China*, 46 (1) *Unasylva* (1995)

present such as suitable soil and remote mountainous areas not suitable for crop planting.<sup>27</sup> Some of these households were also provided with financial assistance to undertake afforestation and were also eligible for loans from the government. It was then believed that the outlook for collective and joint-venture forestry in China was bright mainly because it accommodated the diversity of contractual arrangements for forest establishment and management, and that it worked more according to the market in comparison to the state forestry.<sup>28</sup> Furthermore, collective forestry enabled households to pool together resources to carry out forest management in a more cost-effective manner. Generally, it is widely agreed that the HRS has proved to be the impetus for the increase in forestland area in China during the 1980s and 1990s.<sup>29</sup>

A study by Zhang et al using data from four provinces over 1978 and 1995 concluded that forestland tenure reform generally had a positive impact on forestland expansion in China.<sup>30</sup> Similarly, a World Bank's publication highlighted that timber plantations and non-timber product forests have increased fastest on plots allocated under the HRS. Afforestation was particularly prominent in plots over which individuals have more control and income rights.<sup>31</sup> Evidence shows that both forest cover and standing volume on collective-owned forestland have also increased.<sup>32</sup> In the last five years, nearly 90 percent of the total investment in forest industry came from private capital; non-state forests make up of more than 80 percent of the new plantation areas.<sup>33</sup>

## Types of Forest Management Regimes

Under the current system, collective forestland is contracted out to private households via mainly three ways: administrative allocation (the underlying principle of administrative land allocation is egalitarianism where households' needs are put on an equal footing in deciding how to allocate resources); contracting out (for investment purposes and usually with a fee); and public

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<sup>27</sup> S D Richardson, *supra*, at 172-177

<sup>28</sup> *Ibid.*

<sup>29</sup> Liu Dachang and David Edmunds, *Devolution as a Means of Expanding Local Forest Management in South China: Lessons from the Past 20 Years* at 27-44; and Yin Runsheng, *Central Characteristics of Reform: Measures of the Effects of Improved Property Rights, a Stable Policy Environment, and Environmental Protection* at 59-84, both in William Hyde, Brian Belcher and Xu Jintao, *supra*.

<sup>30</sup> Zhang Yaoqi, J Uusivuori and J Kuuluvainen, *Impacts of Economic Reforms on Rural Forestry in China*, 1 (1) *Forest Policy and Economics* (2000) 27

<sup>31</sup> Scott Rozelle et al., *China: From Afforestation to Poverty Alleviation and Natural Forest Management, Evaluation Country Case Study Series* (Washington DC: The World Bank, 2000) at 44

<sup>32</sup> Zhang Daowei, *Policy Reform and Investment in Forestry*, in William Hyde, Brian Belcher and Xu Jintao, *supra*, at 91.

<sup>33</sup> Hou Bingye, *Qian Xi Fei Gong You Zhi Lin Ye Fa Zhan Ji Qi Fa Zhi Jian She* (A Brief Analysis of Non-State Forestry Development and Its Legal Development), Wuhan University Environmental Law Research Centre (2004) <http://www.riel.whu.edu.cn/show.asp?ID=2422>

bidding, auction and negotiation (this applies only to wasteland).<sup>34</sup> As can be assumed, the greatest efficiency and transparency is achieved with public bidding, auction and negotiation. Regeneration of wasteland is one of the government's main priorities in improving rural land use. Effective regeneration of large quantities of wasteland requires participation of and investment by rural citizens; hence, the government has created as many incentives as possible to attract community participation.

As mentioned above, while the management right of collective arable land have been devolved to the household level, not all collective forestland have been allocated to households for management purposes. Collective management has remained an important feature of forestland in China. Part of the reason is the deforestation that took place during the 1980s when forestland management rights were first allocated to households. In many places, local government restored collective management on these lands in order to stop illegal cutting.<sup>35</sup> This type of forest can be found in South and Southeast of China, such as Fujian, Zhejiang, Guangxi, and Yunnan Province.<sup>36</sup> Since then, different arrangements of collective management of forestland flourished in China, many of which were initiated locally that took into account the unique features of their locality. This was possible due to the lack of a clear legal basis that set out the constitution of collective forest management; in addition, the Chinese government was more than happy to dispense with regulations and to allow local authorities to experiment with different management arrangements.<sup>37</sup> Among the different types of collective management regimes, the most common are the following: centralised collective management; public association or shareholding; private association or shareholding; and ethnic minority management systems.

The first regime refers to the system where the village leader and village committee, on behalf of the collective members, make decisions about how collective forest is to be managed. These include what to plant, when and how to harvest, and how much to harvest,<sup>38</sup> although timber harvesting is still subject to various government restrictions such as the harvest quota and transport permit system. How much discretion the village leader and village committee have, and to what extent villagers participate in decision-making depend on the local institutions. In reality, in many places, villagers know very little of the management plans for collective forests, and are under-represented in decision-making processes.<sup>39</sup> Since the 1980s, election has been introduced in rural China, which has arguably greatly increased the efficiency and transparency of collective governance. The nature of village institutions will be discussed in more detail below.

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<sup>34</sup> Generally forestland is contracted out to households for 70 years. The Rural Land Contracting Law 2002 sets out the principles and guidelines for the contracting out of rural land.

<sup>35</sup> Liu Dachang, *supra*, at 248

<sup>36</sup> Peter Ho, *Institutions in Transition: Land Ownership, Property Rights and Social Conflict in China* (Oxford: Oxford University Press, 2005) at 106

<sup>37</sup> J W Bruce, S Rudrappa and Liu Zongmin, *supra*.

<sup>38</sup> Liu Dachang and David Edmunds, *supra*, at 24-25.

<sup>39</sup> *Ibid.*, at 30-31.

In relation to the public association/shareholding system, this refers to the situation where collective forests are distributed to farmer households in the form of shares rather than physical plots of land. One of the most-cited examples of the public association system is the shareholding system that was started in Sanming Town in Fujian Province.<sup>40</sup> Under the shareholding system, local households were not allocated the physical plots of the forestland; instead their rights over the use of forestland were in the form of shares. The shares were divided into two types: basic or 'old' shares and 'new' shares. Each community member was guaranteed one basic share (on the basis of their status as a member) whilst new shares were issued in return for the investment of labour or other inputs. Forestland was managed by a board of directors and profits were given to the members of the community in the form of dividends. The share-holding management regime of forestland in Sanming Town has since evolved to adapt to changes that had taken place.<sup>41</sup> The shareholding system has received approval from government officials and academics, who have advocated this system as a way to overcome the various disadvantages under household-based management such as plot fragmentation and the problem of inefficiency. Despite this, the public shareholding system has not been widely practiced;<sup>42</sup> in many places, farmer households prefer to initiate their own associations that place their forestland outside the control of the collective totally.

Private association, or self-initiated shareholding system, is where individuals pool resources together to manage the forest collectively. There are various forms of this kind of collaboration; there can be farmer-farmer collaborations, company-village partnerships, and collaboration between villagers and non-villagers.<sup>43</sup> In many places in Qiangdongnan Prefecture in Guizhou Province, the first type of collaboration (farmer-farmer) was found to be very common.<sup>44</sup> Households (the number of which may vary), on their own initiative, pooled together their land, labour and capital, and managed them as one unit. This usually involved informal association initiated by the households themselves and no share had been allocated. This not only solved the problem of plot fragmentation, it also meant that labour investment in tending and guarding

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<sup>40</sup> Song Yajie et al., *New Organizational Strategy for Managing the Forests of Southeast China: The Share-holding Integrated Forestry Tenure (SHIFT) System*, 91 *Forest Ecology and Management* (1997) 183.

<sup>41</sup> For example, individual dividend payments had ceased and tenure contracts were going to large and specialised forest management service providers. The depletion of high-value species and the requirement of a more ecosystem approach to forest management meant that cash flow from the collective enterprise had reduced considerably. All these different factors contributed to the changes within the shareholding system, Song Yajie et al., *From Innovation to Adaptation: Lessons From 20 Years of the SHIFT Forest Management System in Sanming*, 191 (1-3) *Forest Ecology and Management* (2004) 225.

<sup>42</sup> Liu Dachang and David Edmunds, *supra*, at 25; J W Bruce, *Shareholding Associations in China's Forestry: Reflections on Institutional Innovation*, paper presented at the IASCP Conference (2000)

<http://dlc.dlib.indiana.edu/archive/00000229/00/brucej052400.pdf>

<sup>43</sup> Liu Dachang and David Edmunds, *ibid.*, p 23

<sup>44</sup> Zhang Shiqiu et al., *Impacts of Compensation Policies in Reforestation Programmes – Case Study 2: Assessing the Impacts of the Natural Forest Protection Programme on Local Community Welfare*, report prepared for the China Council for International Cooperation on Environment and Development (2005)

the forest was shared among the few households. There is yet a legal basis for this kind of association, hence the terms of obligations and benefits sharing were totally up to the agreement of the households involved.

As already mentioned above, indigenous groups in China are given more autonomy in relation to forest management, and many of these groups adopt a common property regime. These regimes can mostly be found in provinces such as Yunnan, Sichuan and Guizhou where a high proportion of the population are minority tribes. One success example of community-based forest management that was reported was Taohua Village in Lijiang, Yunnan.<sup>45</sup> The village set up institutional arrangements for collective timber production, consumption and conservation. In relation to collective timber production, the villagers had representatives to share decision-making on management and selling of timber. They also set up rules for forest management; among the more important ones were: a) power sharing through group decision-making; b) benefit-sharing based on collectively controlled income distribution (before total net income was distributed, two percent was allocated for forest conservation and fire control funds, and one percent was collected as education funds); c) households' involvement based on a collective arrangement for labour (contracts were entered into with groups rather than individuals); d) sustainable rate of cut based on managed logging and rotational cutting (generally logging was implemented and governed by the Village Community); e) one account book for collective timber production (every year the final accounting report is displayed to the villagers). Furthermore, a number of rules based on traditional knowledge and practices have been set up with regard to subsistence forest use and conservation. However, the arrangement fell apart after the nation-wide logging ban was adopted in 1998 mainly due to lack of income from timber production.

The existence of all these different and 'locality sensitive' management systems are possible due to the relatively flexible implementation of the devolution of land use right policy and the necessity to accommodate conditions and requirements that are unique to the localities. However, collective management of forestland is experiencing a decline in recent years, especially since the latest forestland reform introduced in 2003, which again aimed at encouraging the involvement of households in forest management. This reform is generally taking place in the southern Provinces of China where collective management of forestland is still prominent. This new round of reform is seen as progress towards further liberation of forestry and forest management. Perhaps it shows that despite the various innovative collective management regimes that have sprung up in different localities, they are not adequate to meet the challenges faced by forest and forestry. The forest industry is now more susceptible to the world market since China joined the World Trade Organisation, and science-based ecosystem approach to forest

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<sup>45</sup> Su Yufang, *Local Institutional Changes and Collective Forest Management in Taohua Village of Lijiang, Yunnan, China*, paper presented at the 10<sup>th</sup> Biennial Conference of the International Association for the Study of Common Property (IASCP) (2004). The village consists of the Han majority and four different minority groups (Bai, Lisu, Naxi and Pumi).

management is increasingly becoming the norm. Collectives may find it difficult to satisfy the needs and requirements not only of the government, but also of the market.

### **The Institution of the Collectives**

Having looked at different types of collective management regimes, this section will focus on the institution of the collectives in China. The discussion will include not only the governance structure but also the relationship between the collective with the government on the one hand and the collective members on the other. It is important that the nature of the collective governance in China is properly understood before any suggestions as to what type of forest management should be adopted is given. This is because if, as will be pointed out below, the collectives in fact act merely as the 'agents' of the state and the collective members have no real input in the decision-making process, it is then debatable that a collective regime will maximise the interests of the collective members. Hence, whether or not a collective regime is viable is contingent on the wider issue of the governance structure. More importantly, one of the main indicators of a 'good' regime should be the degree of participation of the resource users in the decision-making processes, regardless of what the type of regime is.

The current power and representation of the collective are manifested at the village level, both administrative and natural villages. After de-collectivisation, the government had to readjust its fiscal and the collective administrative systems to accommodate the changes that were taking place. For example, in 1980, the fiscal reform made each sub-national level of government responsible for its own revenue and expenditure.<sup>46</sup> And in 1983, administrative power was transferred from the commune and brigade administration to township and village administration respectively.<sup>47</sup> More importantly, accompanying the administrative reform was the severance of the party and the government from the economic activities, especially at the township level.<sup>48</sup> This was an important development as it was aimed to lessen political interference in the economy and increase economic efficiency. However, as we shall see below, there has never really been a real separation of these three (party, government and economic) functions at the township and collective levels.<sup>49</sup>

The collective is deemed to be too weak in relation to the protection of the interests of the collective members against the power of the state. This is due to several reasons. Firstly, the concept of 'collective' is not defined. More

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<sup>46</sup> Before 1980, China's fiscal system functioned under a 'unified income and expenditure' system where each level of government turned over virtually all taxes to the central government. The central government then allocated the money from the central budget to local governments, Susan Whiting, *Power and Wealth in Rural China: The Political Economy of Institutional Change* (UK: Cambridge University Press, 2001) at 75-76.

<sup>47</sup> Township government replaced the people's communes, while administrative and natural villages replaced production brigades and production teams respectively.

<sup>48</sup> Susan Whiting, *supra*, at 76.

<sup>49</sup> Even at the beginning of the administrative reform, the separation of functions did not really take off, *ibid.*, at 76-77.

often than not legislation fails to identify which level of collective is referred to.<sup>50</sup> Also, the level at which land rights decisions are to be made is not clarified.<sup>51</sup> To make matters worse, different legislations have given the ownership right to different levels of collectives.<sup>52</sup> It has been suggested that the 'undefined collective' is an 'intentional institutional ambiguity'.<sup>53</sup> In fact, according to a scholar, the lack of identity and power of collective is the manifestation of the overriding interest of the state.<sup>54</sup> It is the result of a deliberate act (or 'conspiracy') by the government 'to avoid an escalation of land disputes between the various levels of the rural collective'.<sup>55</sup> The problem of 'definition vagueness' has two major implications: it is highly probable that any future delimitation of boundary and registration of ownership rights will cause large-scale social unrest in the rural area; by keeping the definition vague, the government can easily requisition land for 'public benefit' purposes.

The second issue relates to the status of the collectives in the overall governance structure. The government administration structure officially ends at the township level, which is one level higher than the administrative village. The village administration hence works as a 'bridge' between the government and the people. Township government's role is to 'guide, support and help' village committees and leaders, while the village committee's role is to assist the township government.<sup>56</sup> The first official legislation on the regulation and establishment of villager committees was adopted in 1998.<sup>57</sup> Under the new law, rural affairs are to be decided and carried out in the village meetings, which are to be presided over by the village committees, whose members are to be elected locally.<sup>58</sup> In addition, approximately 40 percent of villages in China now have village-level regulations (*cun gui min yue* 村规民约) that facilitate village governance.<sup>59</sup> These regulations are adopted and enforced by the village committees/leaders, and they regulate village affairs and are binding on members of the collective.

The current arrangements of township and village governance as explained above have fatal shortcomings. Firstly, the township government, being part

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<sup>50</sup> *Rural China in the 21<sup>st</sup> Century: The Land Resources*, supra; and Yang Cairan, *Nong Cun Tu Di Cheng Bao Jing Ying He Tong Zhi Du De Li Fa Si Kao (Legal Analysis of Rural Land Contracting Out Management System)*, China Civil and Commercial Law Net, 18 June 2003. <http://www.myfcagri.gov.cn/news/list.asp?id=652&typeid=43>

<sup>51</sup> Niu, Ruofeng et al., supra, at 56; and Scott Rozelle and Li Guo, *Village Leaders and Land-Rights Formation in China*, 88 (2) *The American Economic Review* (1998).

<sup>52</sup> For example, both the Constitution and Land Management Law 1998 stipulate that all rural land, apart from state-owned land, belongs to the *farmers collective*; however, under the Organic Law of the Villagers Committee 1998, non-state owned land is said to belong to the *village collective*.

<sup>53</sup> Peter Ho, supra, at 42

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Article 4 of Organic Law of Villagers Committee

<sup>57</sup> Organic Law of Villagers Committee, Pan Jiawei and Zhou Xianri, supra, at 33-35

<sup>58</sup> Even though theoretically villagers elect their leaders in democratic and open elections, things do not always take place according to law. Apart from the fact that candidates sometimes use power or support of the township government to win, there are also instances where the posts are dictated or even filled by local party leaders, *ibid.*, pp 146-149.

<sup>59</sup> *Ibid.*, at 67

of the government structure, is given the responsibility to implement and oversee government policies at the village level and rural affairs. However, this is difficult if not impossible if it only has an 'advisory' role in relation to the village committee. This essentially creates a vacuum between the government (with township government as its representative) and the collective members (the rural population).<sup>60</sup> In other words, it creates a gap that, in theory, is incapable of being closed; or if it is to be closed, depends entirely on the self-motivation of the collective, which makes it to fall outside of the realm of the 'government'. Hence, in reality, this administrative vacuum is either filled up by the township government going beyond their advisory role, or is left as it is.<sup>61</sup> The consequences of the latter can be detrimental when the misuse of power by the village committee and village leader cannot be reined in.<sup>62</sup>

Secondly, the notion of 'self-governance' itself is questionable. In rural China, it seems that 'self-governance' simply means using collective resources and governance structure to carry out tasks that are handed down by the government. Although village committees and leaders are officially not civil servants, they nonetheless shoulder the responsibility to implement and enforce government policies and administrative targets. Many of these village leaders run the day-to-day affairs of the villages, including collecting taxes and charges, imposing government targets in relation to agricultural products, and carrying out other administrative policies such as the one-child policy.<sup>63</sup> Furthermore, although all villages are expected to set up village committees that consist of representatives of the village members, most decisions are still

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<sup>60</sup> *Ibid.*, at 88-91.

<sup>61</sup> According to one analysis, there are two types of village governance models, which are further divided into four different classes. The first type is known as the 'standard' model where the governance system fulfils government's criteria of an 'exemplary' village. This type is divided into those that have a healthy and complete governance structure, and those that have achieved considerable economic growth although the governing structure itself maybe less than desirable. The second type is known as the 'substandard' model where the governance system is less than desirable. This type is further divided into those called 'administrativised' villages where the village committee is subject to total control of the township government, and those called 'out-of-control' villages where the village committee has the free rein and there is no supervision from the government. According to a survey, around 60 percent of all villages in China are 'administrativised' villages, *ibid.*, at 102-103.

<sup>62</sup> The inability of township government to interfere actively in village governance can have negative impacts on the welfare of rural communities sometimes. For example, there was a case where a village committee annulled a village election just because the former village leader was not re-elected. The election results were then declared valid by the township government after the collective members sought help from it. However, the village committee brought the township government to court on the reason that it had 'violated and over-stepped' its responsibility, *ibid.*, at 104-105.

<sup>63</sup> The contents of some village-level regulations reflect the complexity of the village governance. For example, many regulations include matters such as the fulfilment of government policies in relation to population control and healthcare, development of local economy and also the regulation of social relations, *ibid.*, at 67-71. In some places, monetary fines are imposed on anyone who has breached the provisions. Some scholars have questioned the legitimacy of the 'localised' laws, especially those that impose positive duties and monetary fines. This is because village regulations are not subject to review by the courts or other administrative bodies. There is no obvious way for rural residents to dispute the legality of those regulations that are deemed unfair or excessive. *Ibid.*, at 110-111.

made by the village leaders or party leaders.<sup>64</sup> The subordinate nature of the collective governing body throws up doubts about its ability to act independently for the best interest of the local community, especially in relation to economic and social development.

Another restriction faced by the collective is the financial constraint. Although the collective have to carry out 'governmental tasks'<sup>65</sup>, they are nevertheless mostly financially self-reliant. Many of the public services and amenities that the collective entity needs to provide for its members are provided by the government in the city.<sup>66</sup> For example, the collective is expected to pay for school construction costs, the salaries of teachers, road construction and so forth. This puts a heavy burden on the finances of the collective, as a result rural taxes (agricultural and non-agricultural) can be prohibitively high. Although the Chinese government abolished agricultural taxes in 2006, many illegal charges and fees have again sprung up. The need for self-finance explains why this has happened. Furthermore, the fact that a great proportion of village income is given to the central government is seen as a huge compromise of village authority and has led many farmers to believe that the state is the actual owner of the land.<sup>67</sup> In fact, according to a case study, 60 percent of the interviewees named the state as the legal owner of the land, while only 27 percent said the collective was the legal owner.<sup>68</sup> Some interviewees did not think there was any difference between state and collective ownership.<sup>69</sup> This is a significant finding as it points out how serious the mismatch between the *de jure* and *de facto* owner is.

Hence, it seems that 'self-governance' is limited only to choosing the right person to implement government policies; the collective members themselves provide no inputs into the policy-making process. The 'chain of command' is still top-down and there is no official feedback channel available to the members of the collective, represented by their elected leaders, to influence government policies. Due to the extensive control and power over the collective land by the State, some critics have said that collective land is in fact subject to dual-ownership, which are the collective and the State ownership.<sup>70</sup> In many cases, the power of the State is so overwhelming that it

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<sup>64</sup> In addition, many village committees meet irregularly like once a year, which makes it impractical for all decisions to be made on the basis of the majority wishes of the villagers, Zhang Xiaoshan, *San Nong Wen Ti Yuan Yu Lao Ban Que Wei (The Missing Decision-Makers as the Source of the 'Three Agriculture' Problems)*, Nanfang Daily, 13 October 2005. <http://www.nanfangdaily.com.cn/southnews/zt/rdzt/snwt/200510130080.asp>

<sup>65</sup> This refers to the fact that most of the tasks required of the village collective are usually the responsibilities of the government such as economic development, provision of public amenities and social services, Pan Jiawei and Zhou Xianri, *supra*, at 97-101.

<sup>66</sup> *Ibid.*, at 113.

<sup>67</sup> Chen Xiaojun et al., *Nong Cun Tu Di Fa Lu Zhi Du Yan Jiu: Tian Ye Diao Cha Jie Du (Research of the Legal Institution of Rural Land: Explanatory Notes of Field Case Studies)* (Beijing: China University of Political Science and Law, 2003) at 9

<sup>68</sup> 7 percent thought that village group was the legal owner and 5 percent thought that the individual land user was the legal owner of the land. *Ibid.*, p 5

<sup>69</sup> *Ibid.*, p 9

<sup>70</sup> Wang Pingjie, *Ping Xi Xian Ying Ji Ti Tu Di Chan Quan Zhi Du (A Critical Analysis of the Current Collective Land Property Rights System)*, Ningbo City Land Resource Department (2004)

is clear that collective's ownership is subordinate to the interest of the State. In short, the collective has arguably become more independent following the policy shift since the late 1970s in relation to ownership of assets and running enterprises, but they are still far from being 'self-governing'.

In relation to the relationship between the collective representatives and collective members, the collective could be seen as both too powerful on the one hand and too weak on the other. Firstly, the governance body of the collective has extensive control over the collective affairs. This is mainly because the collective body, acting on behalf of its members, is the owner of the land and subsequently wields enormous power over the economy of the village. Collective ownership of rural land in China means that the land is owned by the collective as one unified entity; ownership is not broken down into separate units held collectively by individual households.<sup>71</sup> In other words, collective members are not distinct individual co-owners of the collective land. The village committee and village leaders, who are acting on behalf of the collective, make most of the land-use decisions. In many places, village cadres act as the *de facto* owner of the collective land. This concentration of power in the hands of a small group of people has given rise to corruption and abuse of power.<sup>72</sup> An example of abuse of power by the village cadres took place in Datong Village in Guangning County, Guangdong Province in 2006.<sup>73</sup> In that case, the village cadres decided to sell 300 mu of the village's protection forest to an outside investor who was going to establish a fast-growth plantation forest. They subsequently set a fire to destroy the plantation forest in preparation for the sale. Not only was this carried out without prior consultation with the collective members<sup>74</sup> (who are the *de jure* owners of the land), the protection forest was destroyed without approval from the provincial forest bureau.<sup>75</sup>

Being both the governing body and the landowner at the same time also gives the village cadres enormous power to influence and control local affairs. Apart from that, there is also the inherent conflict of interest in relation to the use of the collective property. Like public property, collective property, controlled by

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<http://gtj.ningbo.gov.cn/pubpage/detail.jsp?id=533>

<sup>71</sup> Pan Jiawei and Zhou Xianri, *supra*, at 205

<sup>72</sup> For examples of abuse of power by village committee members, see *ibid.* at 208-210, and Cai Yongshun, *Collective Ownership or Cadres' Ownership? The Non-Agricultural Use of Farmland in China*, 175 *The China Quarterly* (2003) at 666-670.

<sup>73</sup> Fu Miao, *Wei Zhong Su Sheng An, Fen Hui Gong Yi Lin (Destruction of Protection Forests to Make Way for the Plantation Forests)*, *Nanfang Daily*, 6 August 2007

<http://www.nanfangdaily.com.cn/southnews/dd/nc/sntf/200708060283.asp>

<sup>74</sup> Article 19 of the Organic Law of Villagers Committee 1998 provides that consultation with collective members is required before the village committee make certain decisions, such as the method of collection of charges and fees and their use; the use of profits from collective economic activities; and the planning of collective economic activities. The village cadres in this case might have breached the last requirement.

<sup>75</sup> Article 23 of Forest Law prohibits commercial destruction of protection forest; Article 24 provides that protection forest cannot be logged without the approval of provincial forest bureau.

the collective governing body, is used for public purposes.<sup>76</sup> On the other hand, the same collective property is also subject to private use, which aims to increase private utility and efficiency. In China, the collective interests dominate the use of collective land. The practice of constant land reallocation to reflect demographic changes highlights the public utility of the land. Interferences of right may not always be prompted by corruption or abuse of power by local leaders. Very often implementation of administrative orders and policies involve interfering with the farmers' land use rights.<sup>77</sup> This is not only because land is one of the main resources at the disposal of the governing body to control rural affairs, but also because as most land held by farmers now was allocated to them free of charge, it inevitably adds some 'false legitimacy' to the control of the governing body.

The overwhelming emphasis given to the public utility of collective land has enabled village cadres to disguise and justify actions that are actually detrimental to the collective interests. Sometimes land use rights are sold off in the name of public interest although they actually benefit the village leaders and their cronies.<sup>78</sup> One instance of misuse of power by village committees and village leaders took place in Datang Village in the Guangdong Province in 2001.<sup>79</sup> In that case, during land reallocation, the village committee and village leader either kept some land for themselves unlawfully or sold the land for profit. When this was found out, violent clashes between the villagers and village cadres ensued. The situation was only rectified when the county government intervened on the villagers' behalf. It is very difficult for the members of the community to dispute or for the court to adjudicate cases of alleged abuse of power as the line between public and personal interests has blurred. As a result, it is an inevitable outcome that the overall private utility derived from the property is lower.

On the other hand, in many cases the collective administrative body is deemed to be too weak to represent the interests of collective members. This is particularly true in relation to land requisition by the state. In China, the state has the exclusive right to requisition agricultural land and then sell it for non-agricultural uses.<sup>80</sup> It has been argued that rural households can use ex

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<sup>76</sup> Pan Jiawei and Zhou Xianri, *supra*, at 208. A good example is the use of land as a means of providing social security. As pointed out above, this creates the need to reallocate land (in the absence of a land market) when demographic changes take place.

<sup>77</sup> This is particularly common in relation to the enforcement of the one child policy in rural China. For example, Article 5 of Beijing City's Regulation on Punishment and Restrictions Upon Infringement of Family Planning Law (《北京市违反〈计划生育条例〉限制与处罚办法》) provides that families that have infringed the Family Planning Law are not entitled to extra family and responsibility plots, and are not entitled to extra allocation of construction land.)

<sup>78</sup> Pan Jiawei and Zhou Xianri, *supra*, at 209-210

<sup>79</sup> *Ibid.*, pp 133-134.

<sup>80</sup> Article 43 of LML 2002 provides that any unit or individual that wishes to carry out construction or (non-agricultural) development on rural land must apply for the permission to use state land. It further outlines that the state land includes both state-owned land and collective land that have been requisitioned by the state. Article 63 provides that the state (which includes all levels of government such as county government and municipalities) has extensive power to requisition rural land for development purposes, and the law prohibits collective and households to transfer land use rights for development purposes.

ante and ex post measures to protect themselves from land requisition.<sup>81</sup> Ex ante measures include objecting to and thwarting land requisition efforts. However, as the collective landowner is placed at the bottom of the state's administration hierarchy, its power is too weak vis-à-vis the state and local officials. As already highlighted, even though local leaders are elected by the members of the collective, their main role is nevertheless to act as an agent of the government to oversee village administration. As a result, rural households can only resort to ex post measures such as staging protests and appealing to a higher level of government.<sup>82</sup> This shows that the notion of 'collective ownership' is neither independent nor comprehensive, and in some cases it is even meaningless given the fact that the state exercises so much control over collective affairs and administration.

Apart from being the 'agent' of the state, another reason why the collective does not and could not truly represent the interest of the farmers or forest users concerns the mandate of the collective: it is not an 'exclusive' or 'specialised' body that only handles matters related to farming or forestry. The collective is not the usual farmers' 'co-operative' as commonly found that are specially set up to protect the interests of its members; nor is it a 'forest community' that sets out to protect mainly the interests of forest users.<sup>83</sup> As explained above, the collective in China works as an administrative body for the government that manages all aspects of rural affairs, and crop harvest may not be the sole concern of the governing body, with forestry even less so. Furthermore, there are plenty of political factors that affect the decisions taken by the village leader or governing body. Thus, to expect the collective to act in the best interests of the farmers or forest users is unrealistic and impractical. Although it can be argued that the presence of one governing body that oversees and balances all the aspects of rural affairs including social and economic development is desirable as a more comprehensive approach, it is also true that it is highly susceptible to political influence and the failure to achieve a proper balance.

In addition, village affairs are influenced and controlled by higher levels of government, such as the township and county government. As already pointed out above, the township government has the responsibility to provide 'guidance, support and assistance' to the village/collective administration. However, in some places, the village collective is virtually under the control of the township government.<sup>84</sup> This sometimes means that township government treats collective properties as its own and disposes of them as it wishes.

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<sup>81</sup> Cai Yongshun, *supra*, at 663-664

<sup>82</sup> In 1998, the Central State Council Letters and Visit Office received 460,000 letters and appeals, two thirds of which consisted of peasants' complaints. Unauthorised fee collection, usurpation of farmland and corruption are the most common complaints, *ibid.*, at 672.

<sup>83</sup> From the analysis of the literature on community forestry from all over the world, it shows that regimes that have work successfully are those who are supported by and represent the interests of local forest users. This is expected as the mandates of these communities have not been diluted by other non-forest related concerns or issues, C J P Colfer and D Capistrano (eds), *The Politics of Decentralisation: Forest, People and Power* (London: Earthscan, 2005).

<sup>84</sup> As already pointed out above, more than 60 percent of Chinese villages are hardly independent, and are under the control of the township government. In these villages, village

To further undermine the independence of the collective, leaders of all these other levels of government are not elected by the people but rather selected by the government. A direct consequence of this is that they are not answerable to the people. As a result, the interest of the state (sometimes disguised as the public interests) always takes precedence over the interests of the individuals and the collectives. Collective leaders are powerless when it comes to confronting the state's interests. Furthermore, in most villages, village leaders are 'assisted' by local party leaders who also interfere with village administration.<sup>85</sup> Article 3 of the Organic Law provides that local Communist Party representatives have an important role to play in the village governance. Local party leaders should be 'at the centre' of leadership and that their relationship with the village committee should be one of 'support and guarantee'. Their tasks include implementing the Party's policies and manifesto; to promote the socialist ideology; and to establish a close tie between the Party and the people.<sup>86</sup> It has been pointed out that theoretically these party representatives should play only an advisory role (like the township government but only in relation to things concerning the Party).<sup>87</sup> However, there have been cases where party representatives took power into their own hands, usually with the collaboration and support of township government or party representatives at higher levels.

One case in the Guangdong Province illustrates the seriousness of the arrogation and excessive power of party representatives and the vulnerability of village 'democratic election'.<sup>88</sup> To explain it briefly, in Hongxing Village, villagers had been subject to the control of township government and party representative until 1999 when a local election was carried out. But after the village committee was set up, the township government appointed the party representative (who was not elected to the village committee) to preside over the local economic cooperative, which basically controlled the finance of the village. To compete with the elected village committee, the party representative set up his own committee, which issued notices and made decisions about village affairs. Thus, there were two different entities that governed the village at that time, one democratically elected and one appointed by the township government. Even though the party representative had in fact usurped the power of the village committee, his position was acknowledged by the higher level of government. This is an extreme example whereby the power of the village committee was usurped by a non-elected body but it nevertheless shows the vulnerability and weaknesses of the 'self-governance' model of village/collective administration.

The underlying causes of the problems discussed above are associated with the nature of the rural collective institution itself. The 'top-down' nature of the institution denotes a lack of independence from the government. Instead of

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administration is viewed as merely a subordinate agency to the township government. Pan Jiawei and Zhou Xianri, *supra*, at 102-103.

<sup>85</sup> Cai Yongshun, *supra*.

<sup>86</sup> Pan Jiawei and Zhou Xianri, *supra*, at 143-144.

<sup>87</sup> *Ibid.*, at 144-145

<sup>88</sup> *Ibid.*, at 145-146

representing the interests of the rural population, the collective institution acts as a medium to channel government's excessive power and control to the lowest level of governance. Furthermore, as pointed out above, despite the fact that the overhaul of the collective system following the de-collectivisation process in the 1970s was aimed at separating the administrative, economic and social aspects of the village governance, in reality this has not been successful.<sup>89</sup> In addition, the judiciary system does not always give protection to the rights of the collective and its members when local government oversteps its power. This is not only because very often local courts lack judicial independence, they are also often biased in favour of parties from the local regions to which the courts belong.<sup>90</sup> The lack of independence and the presence of 'local protectionism' are the results of the organisational problem, where the local judiciary is 'completely dependent on the local government in terms of funding, and personnel decisions relating to the local judiciary are also in the hands of the local party committees and local people's congresses'.<sup>91</sup> It has been pointed out that in fact, many leaders of the local government regard local courts as subordinate departments of the local government.<sup>92</sup>

## Conclusion

Following the discussions of the weaknesses inherent in the collective institution in rural China, one has to doubt whether or not the current arrangement of collective ownership of land is conducive to economic, social and political development in rural China. If the Chinese government wishes to bring economic growth whilst at the same time give the rural population the autonomy to govern its own affairs, it is vital that it separates the administrative control from the economic control (via land).

The historical evidence, households' feedback and the nature of the collective do not support an extensive role for the collective administrative body to govern rural productive land use in China. To exaggerate the role and capability of the collective is to ignore the fact that in reality in many places, the collective acts more as a hurdle to than as a promoter/protector of private interests. The above analysis suggests various reasons why the collective system in China is not capable of representing the best interests of China's rural population. The most important reason seems to be due to the nature of the collective: it is a 'top-down' institution that is in charge of rural political, social, administrative and economic affairs. Furthermore, the underlying function of the collective is to act as the government's administrative agent rather than to represent the collective members. The overly extensive mandate of the collective and the strong government interference inevitably increase instances of conflict of interest.

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<sup>89</sup> *Ibid.*

<sup>90</sup> Albert Chen, *An Introduction to the Legal System of the People's Republic of China*, 3<sup>rd</sup> Edition, (Hong Kong: Lexis Nexis Butterworths, 2004) at 153

<sup>91</sup> *Ibid.*

<sup>92</sup> In some extreme cases, these leaders even express to judges their views on individual cases pending before the courts, *ibid.*, at 153-154.

As a result, in order to better protect the rights of the collective members, the government should change the nature of land use governance in a way that insulates private or collective rights from unwanted interferences. There are two things the government can do to improve collective forest management. The first is to overhaul the collective system to make it more likely to succeed, taking into account the important attributes of a common property regime such as voluntary association, democratic decision-making, effective supervision and effective conflict resolution mechanism. The second option would be to allow privatisation of land<sup>93</sup>, which would provide more protection to private rights than the current 'collective ownership and private use rights' arrangement. Of course this should not deter or prohibit individuals' initiative from establishing a collective-based management regime, but to superimpose a defunct institution on the regulation of rural land use is unwise. Ultimately, no matter which option the government chooses, some radical reforms need to be undertaken in order to incorporate some vital factors such as reinforcement and protection of private rights, public participation in decision-making, transparency and accountability of government actions, and access to fair and effective judicial recourse. The current arrangement merely represents a compromise between the reformists and anti-reformists, it does not represent a better model of land use arrangement, not just in terms of economic performance but also in terms of social justice. This is the main reason why collective ownership and management of rural land in China can be arbitrary and inefficient.

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<sup>93</sup> It is important to point out that the author does not advocate immediate and unconditional privatisation of land. Given the concern for social equity and justice, and also bearing in mind the problems that emerged in the former Soviet Union members following land privatisation, it is important that land reform is carried out gradually and in conjunction with other socio-economic and legal reforms such as the rural welfare system and judicial reforms. In addition, the privatisation process and the scope of the land market for collective forestland should initially be controlled.