

Credibility of institutions: Forestry, social conflict and titling in China

Peter Ho*

Centre for Development Studies (CDS), University of Groningen, P.O. Box 800, 9700 AV Groningen, The Netherlands

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Abstract

In the reform of a forestry sector governed by centralist, socialist principles towards a sector suited to the challenges of the market economy, the Chinese government needs to establish institutions that can be perceived as credible by social actors. In other words, the creation of institutions that rally sufficient social and political support in order to be effective. Against this backdrop, this article consciously opts to refer to institutional “credibility” instead of the more fashionable concept of institutional “trust”. Whereas scholarly discussions about trust focus more on the relation of trust between social actors, credibility puts more emphasis on the institution itself, and the role of government in its successful creation or failure. Failure to effectively undertake institutional reform might put the social acceptability or credibility of institutions at risk, and can lead to the emergence of “empty institutions” with little, or even, a negative effect on social and political actors. Applying this concept to China’s forestry sector, this article identifies three critical areas that call for careful rethinking how to “get institutions right”: the titling of forest holdings; the restructuring of the forest administration; and the design of forest laws and policies with particular reference to lease and ownership.

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Introduction: examining credibility

Almost three decades after the start of the economic reforms, it is clear that China’s tremendous economic development has put substantial pressure on the nation’s forest resources.¹ Rising urbanization has led to the reclamation of forests for non-agricultural purposes and a decline in the total forestry area. Between the national forest inventories of 1984–1988 and 1989–1993, the forest area dropped by 4.54 million ha, while since the fifth forest

inventory of 1994–1998 another 1.23 million ha was lost due to illegal reclamation and construction activities (Li and Yang, 1999, p. 874 (table on forestry land); State Forestry Bureau, 2000a, p. 110). These problems are indicative of the inadequate functioning of forest tenure, and point to the need for institutional reform in a rapidly industrializing and commercializing environment.

In the literatures on institutional change and property rights in states-in-transition, much attention has gone to the concept of efficiency. In the neo-classical view, the particular layout of property rights and institutions is deemed a critical precondition for a competitive market. As a result, the scholarly debate focused on the role of privatization and secure property rights in the success of economic reforms.² China’s agricultural land tenure system, however, has proven that privatization and tenure security are not preconditions for long-term and stable

*Corresponding author. Tel.: +31 50 363 7224; fax: +31 50 363 3720.

E-mail address: p.p.s.ho@rug.nl.

URL: <http://www.rug.nl/cds>.

¹According to the Forest Law revised in 1998, there are five types of forests: (i) productive timber forest (*yongcailin*), which includes the forests for bamboo production; (ii) economic forest (*jingjilin*) meant for providing food and non-wood forest products, such as tung oil, resins, mushroom and medicinal plants; (iii) protection forest (*fanghulin*) for soil and water conservation; (iv) fuelwood forest (*xintanlin*) for the sole purpose of fuel production; and (v) special purpose forest (*tezhong yongtulín*), which includes nature reserves and forests meant for national defense, biodiversity conservation, and scientific research (Article 4 of the 1998 Revised Forest Law, NPC, 1999).

²This was also one of the main themes at a conference hosted by the Centre for the Study of Transition and Development (CESTRAD) of the Institute of Social Studies. An interesting paper that sums up the various socio-economic factors that determine patterns of transition is that of Swinnen (2003).

economic development. A wealth of empirical material has become available (see Nongcun Guding Guanchadian Bangongshi, 1992; Kung and Liu, 1997) that shows that frequent land readjustments in response to demographic changes is actually widely supported by the rural populace.³ In the absence of sufficient alternative employment outside the agricultural sector, the overall majority of farmers are in favour of an egalitarian land distribution to ensure access to land for all. In fact, the reallocations of agricultural land function as a basic social security system in the villages (see, for example, Carter and Yao, 2005). These research findings have led to a fundamental rethinking about the relation between property rights and institutional change,⁴ and led to the notion that privatization cannot be brought about, but can only be gradually guided under the proper socio-economic and legal conditions (see Murrell, 1991; Stark, 1996; Stark and Bruszt, 1998).

Moreover, other authors have drawn attention to the role of the government in guiding transition processes. Daniel Bromley (2000) rightfully noted that “institutional change is driven by the exercise of collective authority residing in the executive, the parliament, and the judiciary. (...) The central flaw in the transitions in Central and Eastern Europe is that economic advisors insisted that privatization and tenure security was both necessary and sufficient to induce the rise of a market economy. In fact, privatization is neither necessary nor sufficient.” In this respect, Diermeyer et al. (1997) have brought the concept of credibility of property rights to the fore. As long as the state cannot safeguard the long-term stability of institutions, they will not be truly accepted by economic and political actors. In their words:

Formal institutions are credible to the extent that people believe they are not subject to arbitrary change. In the absence of credible formal institutions, people often create informal institutions that promote many types of economic activity. These informal rules, however, often do not provide as strong an incentive for economic actors to invest their assets in the most socially productive uses. Therefore, the credibility of formal rules established by the government plays an important role in shaping economic activity and promoting economic growth (Diermeyer et al., 1997; Hann, 1998).

Against this backdrop, one might wonder what tasks currently confront the Chinese government in the design of credible institutions—in other words, institutions that rally sufficient social and political support in order to be effective. Note that, following Diermeyer et al. (1997), I here consciously opt to refer to institutional “credibility”

instead of the more fashionable concept of institutional “trust”. Whereas scholarly discussions about trust focus more on the relation of trust between social actors—be it face-to-face “thick” interpersonal trust, the more “diluted” institutional trust, or networks of social capital (Putnam, 1993)⁵—I would like to draw attention to the nature of institutions and the way in which they are perceived by social actors. Put differently, “trust” relates more directly to the social actor, whereas “credibility” puts more emphasis on the institution itself, and the role of government in its successful creation or failure. Failure to effectively undertake institutional reform might put the social acceptability or credibility of institutions at risk. It can lead to the emergence of “empty institutions”—policies, regulations and organizations—with little, or even, a negative effect on social and political actors. Applying this concept to China’s forestry sector, I argue that we need to look at several critical areas.

First, the absence of a rural land registry, which affects agricultural land, grassland, wasteland and forest management. To many outside observers it would seem virtually impossible that a rapidly developing country with the size and high population density like China lacks a national cadastre. However, despite numerous attempts by the national government starting from the early 1950s, the nation-wide registration of land titles never succeeded due to bad management practices and rural conflicts. The most recent attempt since the dismantling of the people’s communes has met with strong social resistance and stopped at the level of the natural village. As we will see below (see the section on the commercialization of forestry), the failure of rural land titling is directly linked to China’s collectivist past: the ambiguity around the collective after the dismantling of the communes, and the unsolved question of ex-ownership. As a result, the most basic requirements for a modernized forest sector are lacking, because there is no system that can protect forest users and their holdings, and allow for the free transfer of forest holdings.

Second, the national forest administration is completely fragmented over various state institutions: the State Bureau of Forestry, the Ministry of Agriculture, the Ministry of Land Resources, and even the Ministry of Civil Affairs. This situation has led to poor inter-departmental coordination and multi-permitting for forest use and ownership rights, and was a direct cause for the failure of forest registration. Due to the problem of multi-permitting by different state departments it is by no means clear what rights a legal person can exercise over which plot of forest. For example, it is not unimaginable that the legal status of a single forest plot is governed through three separate documents, a forest permit (issued by the Forestry Bureau), a land permit (issued by the Land Administration Bureau), and a grassland permit (issued by the Agricultural Bureau).

³In addition, there are also no clear indications that tenure insecurity leads to the mining of agricultural land. On the contrary, Kung and Cai (2000) even maintain that the “allegation of farmers neglecting to preserve the soil fertility of their contracted plots is wholly unfounded.”

⁴Similar to experiences in other transitional states, such as Uzbekistan and Kyrgyzstan, see Bromley (2005).

⁵For studies on trust and social capital in transitional economies, see, for instance, Mishler and Rose, 1997; Lovell, 2000.

And each of these permits might contain different and often contradictory stipulations regarding use and ownership rights. The situation becomes even more complicated when the forest exceeds provincial boundaries, as that would involve the Ministry of Civil Affairs for the formal delimitation of the plot. The fragmentation of the forest administration has become a constant source for land disputes. It also added to the chaos in forest titles that already resulted from the conflicting claims between ex-owners. Against this backdrop, the central government is gradually working towards a recentralization of land administration into one single ministry, the newly created Ministry of Land Resources (established in 1998). Not surprisingly, stripping the forestry and agricultural institutions of their powers has met with fierce opposition and led, ironically, to an even more hampered administration.

The final critical factor that can weaken China's forest tenure is the fact that forest regulations are still poorly developed. In combination with recent policies to improve forest management by bringing in market forces, this factor can prove socially disruptive. It is uncertain how and under which conditions forestry operations can be commercialized; for example, through the issue of shares, transfer of use rights, and the pricing of leases. More importantly, the government has not fundamentally questioned the desirability of commercial forestry or considered the institutional prerequisites under which it could be successfully effected. It can be doubted whether commercialization and privatization of forestry is currently a viable approach, certainly so for China's collectively owned forests, which make up 60% of the total forest area.

Under the current socio-economic circumstances where a substantial proportion of the rural populace is still dependent on traditional uses of natural resources—that is, labour-intensive, small-scale and with low technological inputs—the privatization of collective forests will involve higher transaction costs and lower economies of scale. In this case, the introduction of a dual forest tenure system might be a better option: the large-scale state forest holdings can be gradually privatized and left to the market under strict environmental requirements, while the management of the collective forests should be decentralized to the village communities. This inevitably entails the recognition of customary rights in the statutory legal system and the strengthening of the rural collective as the basic unit of management. But here lies the weakest link in China's forest sector: the rural collective is ill prepared to deal with the external pressures of a rapidly commercializing, industrializing and urbanizing environment. Improving this situation is not merely a legal matter of clear ownership or the registration of collective forest titles. It will involve the restructuring of the collective in such way that it can effectively, democratically and transparently exercise the right of ownership on behalf of the village community.

The article is divided into three main parts. The first part provides some essential facts and figures about China's

forestry sector. The second part—divided into three sub-sections—discusses the aforementioned three factors that can potentially weaken tenure credibility; i.e., the absence of forest registration, the fragmentation of the national forest administration, and the unclear rules that should guide the marketization of forestry. In the final part, I will demonstrate that China's forest tenure might in fact already be showing signs of undermined institutional credibility. This is apparent in two ways: (i) the loss of forest, in particular due to illegal reclamation; and (ii) the relatively high incidence of social conflicts over forest rights. This is, of course, not to say that with future changes in the socio-economic parameters (population pressure, the possibility of alternative income-generating activities, price levels of wood products, and so forth) there might not be any positive shifts in credibility.⁶

Forest under pressure: facts and figures

China has approximately 133 million ha of forest covering 14% of the land surface.⁷ The largest forest areas can be found in the northeast (former Manchuria and the eastern tip of Inner Mongolia), in the eight southern provinces (Guangdong, Guangxi, Fujian, Jiangxi, Hubei, Hunan, Sichuan and Yunnan), and in mid-China (Shaanxi). Together, they make up for around 80% of the total forestry area.⁸ The majority of forests in the north are mixed coniferous, whereas the southern forests are lowland rain and monsoon forests. The native woody vegetation of the evergreen broadleaved forest in the south is unique in the world.⁹ The overall majority of forests (60 per cent) is collectively owned and managed by the rural collectives (township, administrative village and natural

⁶This article is based on a review of state documents, including the minutes of the National People's Congress' (NPC) Standing Committee and Legislative Affairs Work Committee, the legal interpretation of the forest law as released by the Legislative Affairs Work Committee, research reports of the Law Implementation Inspection Group of the NPC and the State Council. In addition, interviews have been conducted with officials from the State Bureau of Forestry, and the Ministries of Agriculture and Land Resources. The interviews were undertaken in Beijing in September and October 2001. For the legal interpretation of the Forest Law, see Wu and Cao (1998, p. 6).

⁷Chinese statistics make a distinction between the area of forest (*senlin mianji*) and forestry land (*linye yongdi mianji* or shorter: *lindi mianji*). The first term refers to land with a vegetation of trees and a canopy cover exceeding 20%, whereas forestry land is all the land with a present or potential future forest cover or land allocated for forestry purposes. For an explanation of the statistical definitions, see State Forestry Bureau (2000b, pp. 34–35).

⁸Each of these provinces has over 8 million ha of forestry area. See State Forestry Bureau (1999).

⁹China boasts about 2500 species of forest trees—many of which are endemic—ranging from oak (*Quercus*), elm (*Ulmus*) and lime (*Tilia*) to trees yielding important by-products such as the tung-oil trees (*Paulownia*), the lacquer trees (*Rhus vernicifera*), and star anise (*Ilicium verum*) (FAO, 1998).

village). The collective forests are generally located in south and central China.¹⁰ The remaining forest (40%) is run and owned by the central and local state (province, prefecture, county and state forest companies) (see Liu, 2001, p. 240).¹¹ The state forestry area is concentrated in the north-central and northeast part bordering Russia and Mongolia. The state forest in the frontier region consists of vast areas inhabited by nomadic hunter and gatherer tribes, such as the Owenk and Oroqen. Out of strategic reasons, a large proportion of these forests are managed by (military) state forest companies.

The People's Republic belongs to the world's five largest wood-producing countries. In recent times, the central government has greatly invested in expanding the wood-processing facilities and upgrading the outdated small mills of the past. In 1999, a total of 48.5 million m³ of raw wood, 7.3 million m³ of plywood and 3.9 million m³ of fiberboard was produced. But the domestic demand for forest products outweighs the production, and China has become an important importer of wood products (including raw wood, plywood, veneer, pulp, and paper) as well as some non-wood forest products since the 1980s (State Forestry Bureau, 2000c, p. 156).¹² There is increasing evidence that the domestic shortages in wood products are forcing Chinese logging companies abroad. Similar to the Indonesian, Korean and Japanese, also Chinese logging companies are seeking—if necessary with illegal means—to expand their activities in other countries, in particular in Russia and South America (see also van der Valk and Ho, 2004; Sizer and Plouvier, 2000).

The destruction of forest resources has serious environmental drawbacks. In 1998, the nation was confronted with large-scale flooding which left 4150 people dead and caused material damages of USD 32 billion. Deforestation at the upper and lower reaches of the Yangzi River was marked as one of the main causes for the flooding (State Forestry Bureau, 1999b, pp. 1–2). Also, the scale and intensity of desertification has been on the rise over the past few years. Deserts are expanding with an estimated 156,000 ha per year, causing annual economic losses in terms of lost agricultural production of USD 2–3 billion (Ho, 2001a). The decreasing forest area has a large impact on biodiversity. China possesses a wealth of flora and fauna. According to estimates, there are about 2400 species of vertebrates—including 301 endangered species—accounting for 10% of the world's species. In terms of richness in plant species, the country ranks third in the world (after

Brazil and Indonesia). There are 32,800 plant species of which over 10,000 are endemic and 288 are threatened with extinction (Zhang et al., 1999, pp. 375–377.).¹³ The central authorities have put environmental protection high on the political agenda. In line with the United Nations Conference on Environment and Development in 1992, the Chinese government produced China's Agenda 21 as a means to promote sustainable development. Within this framework, a Biodiversity Conservation Action Plan, a National Action Plan to Combat Desertification, and a National Forestry Action Plan were developed. Along with the Forestry Action Plan, a national logging ban was introduced in 1998 under which commercial logging in natural forests was prohibited.

Institutional reform in forest tenure

Mission impossible: registering the forest

The clarification of forest ownership and subsequent registration of forest belong to the Chinese government's major tasks looming ahead. Yet, forest registration is particularly complicated because it involves the handling of (customary) claims by the collectives for which the present legal framework offers no formal status. Moreover, and this is frequently brushed aside in China because of its ideological and political sensitivity, talking about ownership involves talking about “land theft” and forced land evictions. Like other revolutionary movements in the world, the Chinese communists lured poor and landless farmers into the communist cause with the promise of land. Contrary to communist ideology, farmers did obtain private titles during the land reform movement in the 1950s. Yet, private titles were by no means a guarantee for secure ownership. Land once seized from “landlords and rich peasants” and subsequently redistributed to the poor and landless, was easily lost again during the political campaigns in later years. The erratic and machiavellian policies of the Chinese Communist Party under which a new elite was continuously created and the old elite destroyed, caused frequent reshuffles of land holdings. How the past land thefts and evictions affect forest administration today is highly uncertain, but that they do is beyond doubt.

The 1998 revised Forest Law is an important legal document.¹⁴ Apart from the reorganization of the Ministry of Forestry, and the establishment of a market for forest lease, the latest revision of the law also touched on forest titling.¹⁵ As early as the beginning of the 1980s, great

¹⁰In the provinces of Anhui, Fujian, Guangdong, Guangxi, Guizhou, Hainan, Hubei, Hunan, Jiangxi and Zhejiang, the proportion of collective forestry area is around 90%, and in Yunnan and Sichuan combined 65%.

¹¹If one uses the figures given by Li and Yang (1999, p. 86), the ratio becomes 39.9% state and 60.1% collective forestry land.

¹²In 1998, China had a net import of 3.7 billion US\$ in paper and cellulose pulp, and waste paper, as well as a net import of 149 million US\$ in wood and wooden products (see State Statistical Bureau, 1999). A good description of China's forest industry and economy is provided in Zhang et al. (1999).

¹³An interesting study about the socio-economic background of diversity loss was written by C. Sun (1998).

¹⁴The Forest Law belongs to the earliest administrative laws proclaimed in the period of reforms. A trial Forest Law was already passed by the NPC in February 1979. It was consequently revised in September 1984, and once more in April 1998.

¹⁵The legal interpretation mentions that “although the original Forest Law had no clear regulations about forest land, the area of regulation of

importance was attached to forest registration, because the authorities feared the mining of forests if titles were left unclear. At the time, forest registration met with a similar fate as the registration of agricultural land—it stopped at the level of the natural village or villagers' group (see Ho, 2001b). But the rapid commercialization and economic development has turned forest registration into one of the most pressing political issues of the near future.

Strongly complicating forest registration is the question of ex-ownership, which becomes clear by looking at some statistics. Today, forest is owned by the central and local state and the rural collectives. But during the early Republican period only a minor proportion (11%) of the (registered) forests was in the hands of the state. The majority of forest was privately owned (55%) or held in common (34%).¹⁶ Under the Forest Law of 1914 private and common forest property had a legal status, which did not necessarily imply that this status was secure. The 1914 Forest Law, for example, stated that “if the Ministry of Agriculture and Trade deems that certain common and private forests have important links with the management of state-owned forest, they can be nationalized at a suitable price.”¹⁷ What “important links” and a “suitable price” precisely denote, however, is not stipulated.

As early as 1947, when the Chinese Communist Party proclaimed the Outline of the Land Law of China (for the territory under their rule), it was clear that forest would from then on fall under the direct administration of the government. To be sure, all forest was nationalized when the nationalist armies were finally driven to Taiwan and the communists took power in 1949.¹⁸ Land reform in the early 1950s and the following collectivization movement (mid-1950s until 1958) had a profound impact on forest ownership and customary forest titles.¹⁹ Private ownership and customary common ownership were abolished, and replaced by state and collective ownership. The political

campaigns in later years, such as the 1965 Four Cleanups—meaning the cleansing of rural cadres from economic, political, ideological, and managerial “errors”—and the Great Proletarian Cultural Revolution (1966–1976), were frequently used to “reshuffle” land from the former elite to the new ones in power.²⁰ With so many historical shifts in the control and ownership of forest, it should not come as a surprise that forest titling comes close to a mission impossible.

The reforms in the forestry sector officially started in March 1981 when the central authorities issued the “Decision on Some Issues concerning Forest Protection and Forestry Development”, popularly known as the “Three Fixes.” This term stood for (a) the assessment and registration of forest titles which provided the basis for; (b) the distribution of *use rights* to “family land” (*ziliushan*)—tiny patches of wasteland or degraded forest meant for the farm household's own needs in firewood. At the end of 1984, a total of 31 million ha of forest was distributed as family land to over 57 million households (an average of approximately 0.5 ha per household); and (c) the establishment of the forestry contract responsibility system under which so-called “responsibility hills” (*zerenshan*) were leased to individual farm households.²¹ The forest registration of 1981 was trumpeted with overly confident overtones:

The ‘Three Fixes’ in forestry is the Party and government’s policy that shows their love for the people. Wherever the leadership attaches importance to it, policies are correct and the work is solid, the “Three Fixes” in forestry will be done right. (State Forestry Bureau, China Forestry Yearbook 1987, p. 480).

Yet, 18 years later the optimism had swung to alarmism:

... permits have been issued twice or not at all. In addition, due to the needs for economic construction and management changes since 1981, there have been great changes in forest titles. (...). The multiple changes in titles have not been assessed in time, as a result of which many places feature ‘permits but no forest, or forests but no permits.’ Worse, the content recorded by permits often does not match with the actual site, leading to numerous disputes. Lastly, to date there is no standardized model for the forest permits. (State Forestry Bureau, 2000a, p. 113).

²⁰For a case study on the effect of the Four Cleanups on forest ownership, see Ho (2003a).

²¹The responsibility hills referred to non-timber plantations, fuelwood forests, and small-scale timber forests unsuitable for collective management. The responsibility hills developed in three different directions in later years. Some were included into the family land, such as happened in 1984 in Anhui Province. Others were returned to the collective, after a national ban on the new allocation of responsibility hills was issued in 1987 in response to reports about deforestation by farmers. In most cases, however, the responsibility hills simply remained under individual lease. A detailed account of the forestry reforms is provided by Liu (2001, pp. 247–249).

(footnote continued)

the Forest Law does include forest land,” touching on stipulations such as “the issue of forest land titles, the expropriation of forest, the lease of wasteland and mountains suitable for forestry. (...) The reason why the Forest Law is revised this time is to clearly include forest land as an area of regulation.” (Wu and Cao, 1998, p. 6).

¹⁶In 1914, 332,350 ha was state-owned forest; 1.1 million ha common property forest; and 1.7 million ha private forest. In fact, this is only a fraction of the total area of forest land (see Yuan, 1924). The greater part was unregistered forest and must have amounted between 48 million and 125 million ha, depending on whether we use the estimated figures of 5% forest coverage or 13% forest coverage before 1949 (see Zhang, 2001).

¹⁷Also in the 1940s, the Chinese government started from the principle of state-owned forestry. The 1945 Forest Law stipulated that “there is state forest, common forest and private forest. Forest is in principle state-owned.” (Xiong, 1998).

¹⁸See Article 9, 1947 Outline of the Land Law of China and Article 18 of the 1950 Land Reform Law, “Large forests, (...) wastelands and waste mountains (...) are all owned by the state”, in J. Sun (1998, pp. 99 and 109).

¹⁹Zhuang (1997) provides a brief description of the so-called “Fung shui woods” in Hong Kong villages before 1945. Other good descriptions of customary forest rights are provided in Menzies (1994) and Apel (1996).

Table 1
National Forest Registration in 1997 (in 1000 ha)

Region	Total forest area (state and collective)	Unregistered area			
		Unregistered state forest	Percent of total state forest	Unregistered collective forest	Percent of total collective forest
National	2,661,0.90	20,007	17.6	34,185	21.1
Beijing	920	11	17.5	857	100.0
Tianjin	73	0.02	1.0	13	24.1
Hebei	5630	11	1.6	724	14.7
Shanxi	3559	134	9.8	874	39.9
Inner Mongo-lia	33,141	12,885	50.5	1166	15.3
Liaoning	5669	18	2.6	496	10.0
Jilin	9830	667	9.9	640	20.6
Heilong-jiang	9792	1610	20.7	1341	66.9
Shanghai	16	—	—	—	—
Jiangsu	592	3	3.1	180	36.3
Zhejiang	5935	0.2	0.1	133	2.4
Anhui	4133	6	1.8	400	10.5
Fujian	21,095	49	3.0	1136	5.8
Jiangxi	10,518	95	6.5	105	1.2
Shan-dong	2384	47	27.2	1572	71.1
Henan	4193	33	8.4	1133	29.8
Hubei	8354	13	2.3	3823	49.2
Hunan	12,165	0.0	0.0	727	6.4
Guang-dong	10,834	86	10.9	2642	26.3
Guangxi	13,404	55	3.6	3,129	26.3
Hainan	1821	368	37.5	731	87.1
Chong-qing	3008	28	7.6	2018	76.5
Sichuan	19,972	1944	16.9	2655	31.3
Guizhou	7408	27	6.9	1943	27.7
Yunnan	27,932	947	13.3	3827	16.9
Shaanxi	11,975	—	—	—	—
Gansu	—	—	—	—	—
Qinghai	1215	13	1.2	27	30.7
Ningxia	1027	—	—	—	—
Long-jiang Forest Corp. ^a	10,060	319	3.2	—	—
Nei-menggu Forest Corp. ^a	9359	364	3.9	—	—
Daxing' an Ling Forestry Co. ^a	8295	—	—	—	—

Source: State Forestry Bureau (1999a, p. 105). Note that there is no forest area in Tibet and Xinjiang.

^aIn the early 1990s, the 84 State Forestry Bureau of Jilin, Heilongjiang and Inner Mongolia were merged into four large forestry corporations. The reasons for this merger was to enhance the competitiveness, vertical integration, and economies-of-scale of the forestry operations of state institutions. There are no data available for the Jilin Forest Corporation (see also Zhang, 2000, p. 291).

The conflicts stirred up by the forest registration itself were not limited to the grassroots. During the first few years of registration provincial-level disputes were particularly strong and became a matter of national concern. In 1984, the State Council circulated a report by the former Ministry of Forestry and the Ministry of Civil Affairs, which stated:

Many provincial mountain forest disputes have not been solved yet. To date there are still 1,360 unsolved cases concerning a contested area of more than 1.4 million mu. Disputes are most frequent in the southern provinces.²²

Forest registration is still an unresolved question. The current problems show from the data in Table 1. Of the 26 provinces and municipalities directly under the State Council, 16 provinces had more than 20% of the total area of forestry land (state and collective) still unregistered, whereas in four provinces over 60% had not been registered (Heilongjiang, Shandong, Hainan and Chongqing). When considering the vast territory and remote location of China's forests, we can seriously question the reliability of these data. For instance, in the case of the pastoral sector, the majority of the data on contracted and registered grassland proved merely "paper figures" (Longworth and

(footnote continued)

regarding the Arbitration of Provincial Mountain and Forest Rights Disputes (State Council, 1984).

²²Notice approved and circulated by the State Council on the Report of the Ministry of Forestry, Ministry of Civil Affairs, and other Ministries

Williamson, 1993, p. 322). In reaction to the problems, the State Forestry Bureau issued a national model for the forest permits in 1999 replacing the old permits. Whenever forest is newly registered or changes in registration occur, the new permits should be used. In 2000, attempts for a renewed forest registration were undertaken in a few pilot areas, including Liaoning and Sichuan Provinces (Longworth and Williamson, 1993, p. 113; Lei Zhang, oral communication, 2001).

To facilitate the registration of forest under the jurisdiction of the (military) state forest corporations the Revised Forest Law even included a specific clause:

The State Council can entrust the responsible forest department of the State Council to register and issue permits for forest and trees of the state-owned key forest areas, as well as to notify the relevant local governments. (Article 3, NPC, 1999, p. 8).

If we take a look at Table 1, it can be seen that the forest holdings of the (military) state corporations have mostly been registered. However, the official legal interpretation of the Forest Law mentions that in reality “the operational terrain of these State Forest Companies exceeds provincial boundaries, while some of the boundaries are unclear as a result of which registration is difficult to handle by provincial governments” (Wu and Cao, 1998, p. 9). The state forestry area encompassed by these corporations is substantial: the territory of the Longjiang, Inner Mongolia and Daxing'an Ling corporations represents approximately a quarter of the total state forestry area (27 million ha). In addition, the central government is concerned with recent reports of illegal logging in these areas.

Stripping the ministry from its powers: fragmented administration

In China today, land administration is fragmented and its authority divided over several ministries. According to the Land Administration Law, the Ministry of Land Resources is entrusted with the administration and supervision of the nation's land. A few paragraphs below in the same law, however, it is stipulated that the assessment and registration of forest and grassland are the responsibility of the State Forestry Bureau and the Ministry of Agriculture (Articles 5 and 11, Revised Land Administration Law in Fang, 1998, pp. 207–209). The question of unified land administration—or better, the lack of it—is most clearly shown in a formal writing to the National People's Congress by experts and institutions of Heilongjiang Province. They wrote:

Forest permits are issued by the forestry departments, while land permits are issued by the land administration. The fact that the issue of these permits is not coordinated is one of the roots for land title disputes. (Fazhi Gongzuo Weiyuanhui, 1997, p. 2).

The origins of this problem can be traced to 1950, when the leaders of the young People's Republic put an end to the unified land administration that existed under the republican era (1912–1949). From then on, land administration was divided over urban and rural land, as well as over different land resources—forest, grassland and wasteland. A separate Ministry of Forest Reclamation was established (*linkenbu*), which was changed into the Ministry of Forestry (*linyebu*) in 1951. Its tasks comprised the “overall protection of forest, the afforestation in key areas, and the rational use and exploitation of forest.” In order to meet the growing demand for lumber and wood products, a separate Ministry of Forest Industry was set up in 1956. Two years afterwards, the two ministries merged into what would later become the Ministry of Agriculture and Forestry (*nonglinbu*). The Cultural Revolution was no less than an “institutional shakeup” of forest administration when the authority of the forestry departments of Heilongjiang, Inner Mongolia and Jilin were transferred to provincial revolutionary committees, and 83% of the state forest farms were decentralized to counties and communes (Li and Yang, 1999, pp. 221–222). To undo the damage, a new State Forestry Bureau (*guojia linyeju*) was erected under the Ministry of Agriculture in May 1978. Exactly 1 year later, this ministry was once more split into a Ministry of Agriculture and a Ministry of Forestry (Li and Yang, 1999, pp. 221–222).

In order to deal with the fragmented land administration,²³ the Ministry of Forestry was downgraded to a bureau-level organ in 1998. At the same time, the State Land Administration was elevated to the ministerial level and became the new Ministry of Land Resources.²⁴ The recentralization of authority was the subject of debate during a sub-meeting of the National People Congress (NPC) in the summer of 1998. Some NPC delegates proposed that the “scope of the [Land Administration] Law be expanded (...) by abolishing the regulation that the Forest Law controls the forest and trees, and the Grassland Law controls the grassland (...) and including this scope of control into the Land Administration Law. In this way permits can be uniformly issued, and [land] managed in an unified manner.” But Li Boyong (1998, p. 3), the deputy chairman of the NPC Legal Committee, stated that the current circumstances do not permit such radical reform. He maintained that the law should be left as it was, yet, with the common understanding that “the revised Land Administration Law should affirm the unified land administration as a principle.” (Li, 1998, p. 3). In fact, the

²³A striking illustration of the problems created by the fragmentation in land administration is the case of the Fengchanlin Pulpwood Base Sino-Singaporean Cooperative Limited Company in Qingyuan City in Guangdong Province. See the case described by the Law Implementation Inspection Group (1997).

²⁴Through merging with the Ministry of Geology and Mineral Resources, the State Bureau of Marine Resources and the State Topography Bureau.

drafters of the revised law diplomatically left some space for future institutional manoeuvring:

As we considered the possible changes in (...) the current administrative setup due to changes in economic conditions and organizational reforms, the Forest Law does not directly mention the term ‘State Forestry Bureau.’ (Wu and Cao, 1998, p. 27).

Officials within the forestry administration feel little attraction to the idea of unified land administration, let alone, their downgrading. In response to the question why their ministry was downgraded, Zhang Lei, a senior official within the State Forestry Bureau, answered:

Ask the premier himself, we don’t know why we were downgraded! Our authority has declined; our director-general is now only as high as a vice governor and that has made our work more difficult. (...) We are responsible to protect forest and increase the forest reserves. If we would be abolished and our tasks transferred to the Ministry of Land Resources, I assure you, that ministry would not have the ability nor the resources to protect the forest.²⁵

Having reviewed the problems in forest registration and the division of responsibilities over the national forest administration, it is time to turn to the last factor that can negatively influence forest tenure credibility: the question of commercialization.

Commercializing forestry: imperfect markets and institutions

Nowhere is the tension between the rapid changes in socio-economic conditions and the need for the central government to regulate these changes through new institutions more pronounced than in the realm of the “rural land market.” One could rightly remark that China has no rural land market in the true sense of the term. Yet, what has not been forbidden and therefore, increasingly occurs, is the sale of rural land lease rights. It should be noted that the sale of ownership rights—although it does occur—is outright illegal. Due to ideological reasons, certain “capitalist” words such as “lease” (*dian*) and “sale” (*mai*) have been replaced by politically correct terms, such as “contract” and “valued use”.

The “valued use” or sale of land use rights was not allowed until the 1988 revision of the Constitution. However, it is officially restricted to the urban (state-owned) sector alone. The Land Administration Law only stipulates that “the State exercises according to the law, a system of valued use for state-owned land” (Article 2, Revised Land Administration Law in Fang, 1998, p. 207). Whether this also applies to collective land (and thus also forest) is deliberately left undefined. On the one hand, such ambiguity has allowed for regional experimentation in the

commercialization of agricultural lease rights. At times, not without successes as recent experiences in Hubei and Zhejiang Provinces have proven (Huang, 2001). On the other hand, however, the legal ambiguity can easily lead to bad forest stewardship and the indiscriminate felling of trees for short-term economic gains. For these reasons, there was a high urgency to fill the legal void through a revision of the Forest Law. As the drafters of the revised law explain:

The crux is that we lack comprehensive and unified standards for the valued use of forest resources. (...) The standardization of the valued use of forest resources is inevitable under the circumstances, it is also one of the focal points for revising the [Forest] Law this time. (Wu and Cao, 1998, p. 39).

The Revised Forest Law now stipulates that “the use right for the following forests, trees and woodlands can be transferred according to the law. It can also, according to law, be priced and converted into shares or used as conditions for equity or cooperative joint ventures for forestation and operation of trees.”²⁶

Forest is quite a different natural resource than agricultural land. From the beginning of forestry studies one is taught that forest differs from agricultural land because it is inseparably linked to the trees, or in other words: without the trees there is no forest left (Fortmann, 1988). In addition, a forest is a complex ecosystem in which a large diversity of flora and fauna coexists. Apart from wood-products, the forest generally yields many non-wood forest products, such as medicinal herbs, fruits and game. And lastly, forest management is by definition characterized by long-term investments and revenues; high transaction costs (information, contracting and enforcement costs); substantial non-monetary costs and benefits (in terms of scenic beauty and biodiversity); and potential irreversible environmental effects (climatic change, soil degradation and desertification).²⁷ For the reasons above, international donor organizations and scholars have argued—in particular for village forests in developing nations—for the establishment of community forestry as opposed to privatization of forest.²⁸ On the other hand, recent debates have also turned to the commercialization of

²⁶However, forestry land shall not be converted into non-forestry land if it concerns timber stands, economic forests and firewood forests (Article 15, NPC, 1998, p. 10). The official English translation of the Forest Law available on internet (www.lawinfochina.com) has rendered *lindi* as “woodland.” This term, however, conveys a wrong meaning as *lindi* also refers to land with a potential forest cover or designated as forest land. As elsewhere in the text, I have translated “*lindi*” as “forestry land.”

²⁷There is even evidence for a relation between desertification and climate change (see, for example, Hulme and Kelly, 1997).

²⁸For an overview of this discussion see, for instance, Bromley (1999). Although the concept of community management is known by Chinese foresters, mainstream policies are geared to privatization. The Chinese Academy of Forestry even runs its own journal in this area, *Forestry and Society*. For Chinese scholarly studies in this area, see, for example, Tang and Du (1995) and Zuo (1999).

²⁵Lei Zhang (oral communication, 2001) is the deputy director of the Forestry Economics Institute of the State Forestry Bureau.

forestry through so-called environmental services: the sale of rights to private actors to provide services such as watershed protection, biodiversity conservation and carbon sequestration. In theory, the sale of forest services should generate funds that can be channeled back into initiatives that aim to increase the economic incentives of individual forest managers to conserve forests, or finance sustainable forestry practices by public and non-governmental groups. Yet, in practice various pitfalls remain many of which relate to the fact that we are dealing with the creation of an *artificial* market—a complicated process with a crucial role for national and transnational governing bodies (see, for instance, Pagiola et al., 2002).

Whatever one's stance in these debates, I would argue that it is too soon to bring in market forces in the forestry sector in China, particularly for collective forests. In the present socio-economic conditions, a large proportion of the rural population still depends on traditional uses of collective forest resources, such as the gathering of fuelwood, the collection of medicinal herbs and plants, and the hunting of game. Under such conditions, the privatization of collective forests might lead to expropriation, deforestation and illegal reclamation. In some cases, the free transfer of forest rights through sale, mortgage, and auction already had a significant negative impact on farmers' livelihood (see Ho, 2003b; Hanstad and Li (1997). Seen from this perspective, in the present circumstances it might be a wiser option to introduce a dual forest tenure system: a more commercialized, privatized state sector with strict environmental regulations for forest operations, versus a collective forest sector with community management governed by (partly) legalized customary rights. The larger economies-of-scale of the vast state forest farms in the Northeast will allow for a greater extent of marketization. The problem rests with the collective sector. Apart from the fact that institutions such as a forest registry, and a clear national forest administration are either non-existent or lack sufficient credibility, the collective as an institution cannot adequately represent nor protect the legal interests of its members.

How can the state create or stimulate the emergence of the collective as a credible institution that can properly represent the joint interests of its members? This crucial question touches on issues of transparent decision-making and accountability, in other words, rural democracy.²⁹ In this respect, Chinese legal scholars appropriately noted that “the feature of common ownership of collective property can only be expressed through democratic management by members of the collective who exercise ownership through democratic procedures” (L. Wang, 2001). Accountability means that village cadres can be held responsible for their actions and, if necessary, removed from office through democratic elections. This principle is now enshrined in law

(see the 1998 Revised Organic Law in *Zhongguo Falü Chubanshe*, 1998). Transparency implies that the members of the collective are informed and participate in decisions regarding the use and management of forest. The Land Administration Law, revised in 1998, provides a promising start in this direction. It is the first law that clearly curtails the power of the village authorities in land administrative matters. It stipulates that leased land can only be redistributed or leased to legal persons from outside the village, if two-third of the villagers' congress (effectively: the village population as a whole) approval has been obtained.³⁰

However, accountability and transparency only make sense if collective property is sufficiently protected against external forces. If community forest management is ever to succeed, the village (that is the natural village or villagers' group) needs to be reinstated as the legal owner of collective forest, which it also was before the period of reforms. But to effect this is not an easy task.

Under Chinese law, forest is state-owned *unless* collective ownership can be legally proven.³¹ This puts the burden of proof squarely on the shoulders of the collective. Pitted against the state, the villages are likely to lose out because of various reasons. First, a substantial part of village forests are owned and used under customary law, which predates the communist take-over in 1949, and thus, land reform. However, the present law determines that “all land titles dating from before land reform are invalid.”³² To complicate matters, the current legal definition of the collective is muddled. During the Maoist period it was stipulated in Party regulations that collective land ownership was vested in the lowest level: the production team (see Fig. 1).³³ With the dismantling of the communes in the mid-1980s, the production team was dissolved and replaced by the natural village or villagers' group. Although Chinese law recognizes forest ownership by the collective, it does not define *which* of the three

²⁹Articles 14 and 15, Revised Land Administration Law in Fang (1998, pp. 208–209). The 1998 Forest Law makes no explicit reference to these articles.

³¹Articles 9 and 10 of the Constitution; see *Zhongguo Falü Chubanshe* (1999, p. 8). These articles have been unchanged during the revisions of the Constitution in 1988, 1993, 1999 and 2004. The 1998 Forest Law follows the Constitution's stipulations on ownership.

³²Article 30, 1950 Land Reform Law, in J. Sun (1998, p. 111). This article is still in force today and was reiterated in the important “Measures for the Handling of Forest Disputes” issued by the former Ministry of Forestry in 1996. See Article 9: “The forest permits from before Land Reform can not be admitted as evidence nor reference material in the handling of forest disputes” (see Zhang and Wang, 2000, p. 382).

³³“All land within the limits of the production team is owned by the production team. [...] Collective forest, water resources, and grassland, are all owned by the production team.” Chinese Communist Party, ‘Nongcun Renmin Gongshe Gongzuo Tiaoli Xiuzheng Cao'an’ (Revised Draft of the Work Regulations of the Rural People's Communes), 27/9/1962, in *Zhongguo Renmin Jiefangjun Guofang Daxue Dangshi Yanjiushi* (1986, pp. 141–142).

²⁹More information on rural democratization is provided in Z. Wang, 1998, 2000).

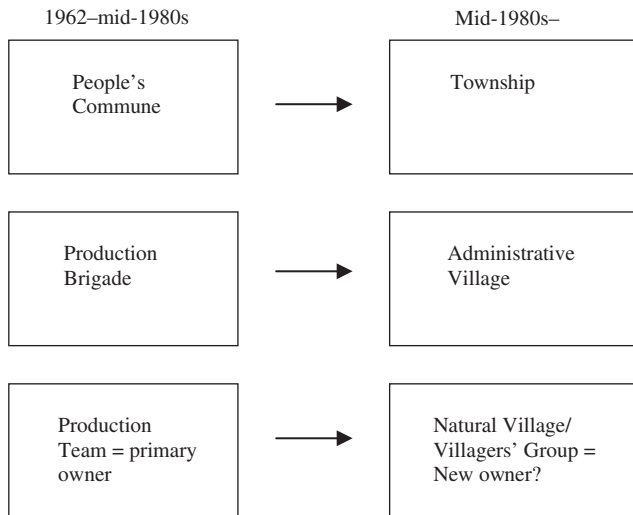


Fig. 1. Changes in ownership of collective land (all rural land not proven state-owned). Source: Author.

collective levels holds that right. As a Chinese scholar remarked:

Although the law stipulates that the village farmers' collective is the owner, it does not define the organization or structure that represents the village farmers' collective. By law the village collective [...] has only managerial and administrative rights, which does not necessarily imply that it can legally represent and exercise the ownership of the owner, or reap the profits from ownership.³⁴

It is thus unclear whether the successor of the former production team—the natural village or villagers' group—is still entitled to forest ownership. In sum, even if the collective has managed and used forest for centuries, forest is *de jure* and *de facto* owned by the state, because the collective has no legal means whatsoever to claim ownership, and therefore, control over land.

In a recent work, the FAO noted that “forest laws in many countries have tended to be inhospitable to local forest management. (...) National law may have left tenurial status of forest areas unclear, giving weak or no legal protection to existing community-based tenure systems (FAO, 1999, pp. 67–68). We see that China is no exception to this.

Throughout the article, I maintained that the long-term credibility of China's forest tenure may be at risk. Two phenomena that underscore this possibility are (i) deforestation and the illegal reclamation of forest; and (ii) the high incidence of social conflict over forest. In the final part

of this writing, we will look at these two phenomena in more detail.

Why the forest tenure system lacks credibility

Deforestation and illegal reclamation

In a recent article in *Science* it was noted that “a half century of forest exploitation and monoculture in China has led to disastrous consequences, including degradation of forests and landscapes, loss of biodiversity, unacceptable levels of soil erosion, and catastrophic flooding. (...) Although a large-scale increase of plantation-style forests in non-forested areas increased total forest coverage in China from 5.2% in 1950 to 13.9% in 1995, natural forests declined to 30% of the total forest area in China and unit-area stocking of natural forests decreased by 32%” (Zhang et al., 2000a, pp. 2135–2136).

Scholarly attention to date has focused on the impact of China's privatization of forest tenure on forest use. It is said that the introduction of the contract responsibility system for forest has led to large-scale felling of trees by individual households eager for short term profit, in particular in the early years of reform. Rozelle et al. remarked that “the optimism born from the 8 percent increase in forest cover during the 1980s may need to be carefully reevaluated in light of the steep drop in forest volume. Most of the volume decline has been caused by the rapid harvesting of China's old-growth forests—up to 27 percent in some regions during a period of only about 10 years” (Rozelle et al., 1998).³⁵ It can be expected that the pressure on China's forests will remain high. For instance, the imbalance of fuel-wood supply and demand has often been neglected in forecasts about the Chinese forestry sector. At present, designated fuel-wood forests account for less than 1% of the closed forest volume, whereas annual fuel-wood consumption amounts to over 30% of total resource use (see Yin, 1998).

Apart from deforestation, a source of serious concern for the central leadership is the loss of forest through the illegal conversion to non-forestry land. Through surveys by the State Forestry Bureau it was found that of the forest area requisitioned for (local) state development projects in the years 1993, 1994 and 1996, over 60 per cent had not been approved by the forestry administration (Fazhi Gongzuo Weihuanhui Jingjishi, 1997, p. 5). The illegal reclamation

³⁴Xu (1998) does not mention the right of management and administration of the villagers' group. The reason is that their article was written before the Revised Land Administration Law became effective and this right had not yet been stipulated in law. A similar line of argument can also be found in Huang and Chen (1998, p. 19) and Wang et al. (1996, p. 72).

³⁵Contradictorily, later research by Rozelle et al., also finds positive trends in privatization: “Afforestation effort is greatest on Forest Household Responsibility System and private plots. (...) Descriptive statistics show that within the non-state sector (...), increases in forest area happen most frequently when individuals have more control and income rights.” (Rozelle et al., 2000, p. 44). Another study by Zhang et al. reached the conclusion that privatization “in general has had a positive effect on forest land expansion, but the absolute size of the effects varies from province to province. The positive impact of the reform on timber harvesting has not taken place at the cost of forest land cover” (see Zhang et al., 2000b, p. 27).

Table 2
Requisition of forest 1998–1999

Region	No. of projects	No. of projects examined and approved by forest dept.	Requisitioned area (in ha)	Situation on forest exploitation and felling		Situation on reforestation fee (in 1000 Rmb)		No. of illegal projects after 1998 freezing
				Area for which permit required	Area for which permit obtained	Fee required	Fees collected	
National	1527	953	7929.3	5311.0	2986.3	105,483	19,874	211
North	47	27	478.3	456	325.7	5739	836	4
North-East	33	30	1792.3	1500.6	1499.9	5412	5,412	3
East	937	669	1197.7	483.8	322.4	16,622	9273	106
Central-South	222	93	1671.6	1204.3	493.9	46,434	2500.4	42
South-West	207	91	1660.6	1362.5	269.1	24,094	821	36
North-West	61	27	640.9	133.9	19.7	5947	969	18
Long-jiang Forest Corp.	2	0	5.0	1.7	0.0	0.0	0.0	2
Jilin Forest Corp.	13	13	163.5	55.6	55.6	61	61	0
Nei-menggu Forest Corp.	1	0	86.2	26.8	0.0	85	0.0	0
Daxing Anling Forestry Co.	4	3	233.2	85.6	0.0	1,089	0.0	0

Source: State Forestry Bureau, 2000a, pp. 112–113).

Note: North (Beijing, Tianjin, Hebei, Shanxi, Inner Mongolia); Northeast (Liaoning, Jilin and Heilongjiang); East (Shanghai, Jiangsu, Zhejiang, Anhui, Fujian, Jiangxi, Shandong); Central-South (Henan, Hubei, Hunan, Guangdong, Guangxi, Hainan); Southwest (Chongqing, Sichuan, Guizhou, Yunnan – Tibet n.a.); Northwest (Shaanxi, Gansu, Qinghai, Ningxia, Xinjiang).

leads to the rapid destruction of forest resources. For example, over the period 1989 until 1993 a total of 2 million ha of forestry land had been converted into non-forestry land (Fazhi Gongzuo Weiwhuanhui Jingjishi, 1997, p. 6). The central authorities commissioned a new large national investigation which yielded a bleak picture: only 53% of all development projects had been approved through the Forestry Bureaux, in 54% of the cases no forest use permit had been issued, in 47% no felling permits, while in 77% no fees for reforestation had been collected!³⁶ Shocked by these results, the government ordered an immediate standstill of all forest requisition for land development.³⁷

The state has closely monitored the developments in forestry after this “freezing policy.” The results of these investigations are shown in Table 2. These figures, too, present a grim image. Several provinces show a bad record in forest management. In Jiangxi Province only 1.7% of the land development projects had been officially approved. Other notorious “record-holders” are Henan, Hubei, Hunan and Sichuan.³⁸ Also in recent years, there has not

been much improvement, in some provinces (Jiangxi, Hunan and Sichuan) the number of illegal development projects after the freezing is even higher than the legally approved number before 1998! Worthwhile to note is that illegal forest reclamation (at least judging from the presented figures) seems particularly a problem in the collective forest zones. One of the possible reasons for this is the poor legal protection of collective forest ownership—apart from other explanatory factors such as the rate of urbanization; price levels of timber and land; and alternative employment opportunities. As forest is by law state-owned unless proven collective property, it might be easier for the (local) state to illegally expropriate forest for land development purposes.

Forest fights: what to do with ex-ownership?!

The entrance of rural society into the market economy has led to stronger economic interests in land. And with that also a sharp rise of forest conflicts occurred, in particular, as the ambiguity in the current forest tenure impedes a proper balance of economic interests. The need to clarify boundaries for forest registration has brought out renewed outbursts of disputes that simmered for years in legal fuzziness. In the first three years of forest registration, a total of 1.4 million cases were recorded—an annual average of 350,000 cases—of which 91% had been solved. Provincial-level disputes pose a special problem; the forestry administration noted that “some ‘great old

³⁶This survey covered 830 forest development and requisition projects in 98 counties all over the nation (see State Forestry Bureau, 1999a, p. 103, see table).

³⁷Two subsequent state documents were issued: the State Council’s notice on “The Protection of Forest Resources and Halting the Destruction, Reclamation and Indiscriminate Occupation of Forest” of 5 August 1998 and the notice on “The Continuation of Freezing All Forest Requisition for Construction Projects” of 30 July 1999 (see State Forestry Bureau, 2000a, pp. 110–111).

³⁸These figures are respectively, 0% approved, 0% issued and 0.02% collected (Henan); 31.4%, 42.6% and 2.8% (Hubei); 25.5%, 29.7% and 10.8% (Hunan); and 11.7%, 5.7% and 2.0% (Sichuan). Interesting in this respect is that in the wealthy, coastal regions such as Zhejiang, Fujian and

(footnote continued)

Guangdong—where the drive for urban construction is high—the problem of illegal forest reclamation is not prominent.

Table 3
Record of forest tenure disputes (1993–1996)

Year	Status	Forest tenure disputes			
		Inter-provincial		Intra-provincial	
		No.	Areas (ha)	No.	Area (ha)
1993	Settled	56	837	12,921	126,285.4
	Unsettled	719	114,357.2	26,709	527,562.1
1994	Settled	47	3070.4	11,365	106,376.3
	Unsettled	584	310,110.3	21,247	578,347.3
1995	Settled	23	27,792.6	9556	183,691.6
	Unsettled	409	254,827.9	16,554	491,263.7
1996	Settled	107	4669	12,413	43,332
	Unsettled	430	49,439	24,921	363,225

Source: Provided to the author by the State Bureau of Forestry.

troubles' (*lao da nan*) from the past still had not been resolved" as provincial-level disputes are termed (State Forestry Bureau, China Forestry Yearbook 1987, pp. 55, 480). In 1999, a special mission for dispute resolution and the reassessment of provincial administrative boundaries was organized by the State Forestry Bureau, and the Ministries of Land Resources and Civil Affairs (responsible for drawing administrative boundaries) (State Forestry Bureau, China Forestry Yearbook 1949–1986, p. 480; State Forestry Bureau, 2000a, p. 110). If we take a look at Table 3, we see that over 1993–1996 inter-provincial disputes have gradually decreased (from 719 unsolved cases to 430), with a dramatic drop in contested area (from 114,357 to 49,439 ha). Initially, the tenure disputes within the province gradually decreased, but a sharp rise (50%) in the number of unsettled conflicts occurred over 1995–1996. The scale of intra-provincial tenure conflicts, however, has decreased.

The legal setup of forest ownership—state-owned *unless* proven collective property—is an invitation for social conflict. The following case illustrates this.³⁹ During Land Reform, a farmer from Yongxin Village (Sichuan Province) was granted *private ownership* and issued a title for some bamboo forest near the village. During the Four Cleanups campaign⁴⁰ in 1965 he fell into disgrace. His forest was expropriated and returned to the village collective. After the Maoist era, the county government leased the forest back to the farmer. At the same time, however, the village collective—which deemed itself the rightful owner of the forest—had leased the same tract of forest to another farmer. It needs not much imagination to see this resulted in a protracted dispute between the two farmers. The dispute was brought to the township collective for arbitration, which agreed with the village and ruled that the lease by the county government was illegal, as the forest

was not state but collective property. But after a lawsuit, the forest was again returned to the farmer with the rather murky verdict that “although the forest permit issued by the county government (...) is not complete, the township could have only appealed to the county government that had issued the permit to handle the case. By declaring the lease illegal on its own accord, the township exceeded its jurisdiction”.

In this highly complicated case, conflicts at two different levels come together. First, a dispute between the collective (township and village) versus the local state (county). By law forest is state-owned unless collective property can be proven. Thus, the county regarded itself as the official representative of state ownership, and leased the forest to the farmer.⁴¹ On the other hand, the village collective almost certainly claimed ownership to the bamboo forest by customary use. However, as discussed previously, under the current legal framework the collective has no legal means whatsoever to claim forest ownership even if it has used the forest for ages. Second, and this is important to note, in addition to the state-collective dispute this is also a collective-*private* dispute. At this point, we touch on the sensitive topic of private ex-ownership. It should be remembered that the farmer, being from a poor peasant background, had factually obtained *ownership* to the bamboo forest during Land Reform.⁴² The Chinese Communist Party employed numerous political campaigns to create loyal constituencies for new policy lines. This was effected through a continuous swing of a machiavellian pendulum allowing new cadres to be recruited and old,

³⁹Case drawn, translated and revised from Zuigao Renmin Fayuan (1997, pp. 443–445).

⁴⁰For more details on the impact of this campaign on rural society, see Chan et al. (1992).

⁴¹Note that the county as the *local* government, can never be the official representative of state ownership to land, as the 1998 Land Administration Law defines the *central state* (i.e. State Council and its subordinate organs) as the sole legal representative of state ownership to land (Article 2, Revised Land Administration Law in Fang, 1998, p. 207).

⁴²“All confiscated land (...) shall be uniformly, fairly and rationally distributed and given in ownership to the landless and land-scarce farmers, as well as poor farmers who lack other means of production.” See article 10, 1950 Land Reform Law (see J. Sun, 1998, p. 107).

disloyal ones to be disposed of. The Four Cleanups campaign in 1965 during which the farmer in question fell into disgrace was no exception to this. Being seen as one of the hated “new middle peasants” (the new elite that had benefited from Land Reform) this former landless farmer was “struggled against” during the Four Cleanups. His forest was expropriated and returned to the village collective. Legally, the farmer has no leg to stand on, as the law stipulates that since 1956 all private rural land has become collective property.⁴³ For this reason, the village collective felt it was justified in leasing the bamboo forest to someone else—perhaps even a family that criticized the farmer during the Four Cleanups.

Yet, the fact that the local state overrides the collective and returns the farmer’s forest holding is an indication that the legacy of private ownership from pre-socialist times, and the injustices of forced evictions have not been forgotten. That remains a minefield for the Chinese judiciary.

Concluding remarks: forest institutions in transition

In the reform of a forestry sector governed by centralist, socialist principles towards a sector suited to the challenges of the market economy, the Chinese government is confronted with the basic question of how to establish institutions that can be perceived as sufficiently credible in the eyes of social actors. At the beginning of this writing, I identified three critical areas that call for careful thinking how to “get institutions right” if the Chinese forestry sector is to emerge soundly from the economic reforms. These three areas are the need for the titling of forest holdings; a solution to the fragmentation in the national forest administration; and a clear and consistent regulatory and legal framework to guide the commercialization of forest lease, with particular reference to the strengthening of collective forest ownership.

However, despite its positivist connotations the idea of “getting institutions right” is not simply a matter of applying institutional blueprints after which a well-oiled market economy automatically pops up. On the contrary, it implies the cautious conceptualization of institutions in relation to the desired future socio-economic layout, yet with a good dose of realism about the limitations imposed by current socio-economic parameters. Considering the dynamics of institutional change in China’s forest sector the outside observer is struck by two features: (i) bad forest management leading to deforestation and illegal reclamation of forest; and (ii) a relatively high incidence of social conflict. The large-scale illegal conversion of forest into non-forestry land has received high political priority. It prompted the central authorities to freeze all forest reclamation projects since 1998. Yet, the demand for cheap land to accommodate the rapid urbanization remains high.

Recent data show that in the areas where indiscriminate reclamation was rampant before 1998, the number of illegal forest reclamation projects has not diminished. Also the multitudinous forest disputes, even at the provincial level, are a source of serious concern for the national government. Particularly as the ambiguity of current laws and regulations offer little legal guidance for the judiciary to handle such complicated disputes. We have seen a poignant example of this in the case-study of a farmer whose forest was forcefully expropriated during the Maoist period.

I have argued that the two features above might point to a lack of credibility of forest institutions. The question is how the state should respond to this. Should the Chinese government establish a cadastre for forest? Taking the case of forest titling as an example for state action in the establishment of new institutions, it might be good to recall the warning from one of the most renowned experts on land law. Rowton Simpson rightfully reminds us that “land registration is only a means to an end. It is not an end in itself. Much time, money, and effort can be wasted if that elementary truth be forgotten” (Simpson, 1976, p. 3). In this sense, the titling of forest holdings in China might both be a necessity, as well as a danger.

Since the start of the economic reforms in the late 1970s, China has gone through a historically unprecedented economic growth. The booming economy has unleashed processes of industrialization and urbanization that are forever changing the face of Chinese rural society. The serious losses of forest due to illegal reclamation, and the eruption of forest disputes as the economic value of land rises, may be seen as direct outcomes of these developments. So yes, in this increasingly commercialized environment the clear assignment of property rights through titling might indeed place a much-needed check on illegal forest conversion and forest disputes. However, as also noted in the introduction to this special issue, as land resources become increasingly marketized and commodified, it is also up to the state to protect the rural poor and weak. In other words, as land markets emerge the state should step in to avoid landlessness and the monopolization of land by the mighty few. And this might imply reining in the market forces while gradually building new, credible institutions.

It is for these reasons that there is a strong case for the introduction of a dual forest tenure system in China: the large-scale state forest holdings could be gradually privatized and marketized under strict ecological requirements, while the management of the collective forests could be decentralized to the village communities. In the hilly, poor areas, many farmers depend on common forests for collecting medicinal herbs and fuel wood, hunting game, and pasturing animals. In the case of collective forest where the economies-of-scale are small due to high population pressure, it is difficult to exclude others from, or divide forest use without forcing up transaction costs. Add to this the slow returns from forestry, as well as the ecological

⁴³Article 13, Exemplary Regulations on the Higher Agricultural Production Cooperatives (see J. Sun, 1998, p. 131).

complexity of the biotope, and one sees that the privatization of village forests could easily lead to short term mining and irreversible environmental degradation. The free transfer of forest rights through sale, mortgage, lease and auction can have a major negative impact on farmers' livelihood exactly because of these other two areas in which the government has a critical role to fulfill: the unification of national forest administration, and the institutional strengthening of the collective.

We have seen how the national forest administration is fragmented over various state institutions resulting in poor inter-departmental coordination and multi-permitting. We have also seen that the legal void surrounding the rural collective places it at a strong disadvantage versus the (local) state. Under the present legal framework for forest ownership, forest is de jure and de facto state-owned unless legal evidence to the contrary can be furnished. This implies that the collective cannot effectively defend the interests over forest by its members, the farmers. In an era of rapid socio-economic change, there is a considerable danger that the Chinese village community will loose out, certainly so when existing institutions are ill-prepared to meet the challenges of the market. At such critical moments, commercialization must make way for state intervention in order to safeguard social stability. It is what makes or breaks the credibility of institutions.

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