

Large-Scale Land Acquisition for APP Forest Plantations

Field Findings and Recommendations

Li Ping

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Landesa
Rural Development Institute



THE RIGHTS AND RESOURCES INITIATIVE

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EXECUTIVE SUMMARY

The Chinese central government has consistently taken decisive legal and policy measures over the past 35 years to secure, enhance, and expand farmers' rights to farmland and forest land in order to reduce the gap in income and consumption between urban citizens and their counterparts in mountainous forest areas. While encouraging development of a forest land rights market to facilitate market allocation of resources, these legal rules and policy directives have particularly emphasized protecting farmers' forest land rights and their property interests when such land rights are subject to acquisition by powerful enterprises.

Among these powerful players in China's forest land rights markets are multinational forest companies, including Asia Pulp and Paper Co. Ltd (APP). Starting in the mid to late 1990s in Qinzhou County in Guangxi Province, and the early 2000s in Lancang County in Yunnan Province, APP, with assistance from local governments embracing a mentality of "development at all costs," has leased large areas of collectively owned forest land to build eucalyptus plantations to provide timber for its paper and wood products. Such government intervention to sacrifice farmers' interests for the benefit of the company, especially that demonstrated in APP land acquisition in Yunnan Province, has met sharp criticism by the central government and elicited international attention.

In order to understand how APP carried out land acquisition and to what extent its land acquisition was propelled by local governments, researchers from Landesa, an international land laws and policy institute, conducted intensive field research using the Rapid Rural Appraisal (RRA) method in Guangxi and Yunnan provinces in February and September 2013, in collaboration with Rights and Resources Initiative (RRI). The research team randomly chose seven villages in Guangxi and 13 villages in Yunnan for the field research and then randomly chose individual farmers within those communities for interviews. Farmers were questioned about their experience with APP's acquisition of forest land rights in their villages based on a checklist of issues prepared before the interview. All interviewed farmers were active participants in these discussions.

The field research discloses a pattern of APP's reliance on strong government intervention or profit-driven intermediaries to acquire rights to collectively owned land, rather than direct dealing with farmers and the collective through market transactions. The principle of Free, Prior, and Informed Consent (FPIC) was ignored in both government-imposed transactions and intermediary-maneuvered deals. In Yunnan, for example, farmers were compelled to accept a blanket, government-imposed annual rent which was far below market price. Further, minority rights and farming traditions were seldom respected in APP land acquisition in indigenous areas. Moreover, farmers' individual land rights – created by household land allocation in the early 1980s and increasingly protected by laws, regulations, and central policies – were flagrantly violated in APP land acquisitions.

The report provides a comprehensive review of existing laws, regulations, and central policies on farmers' land rights and the transfer of these rights. Based on thorough discussions and analysis of the most important issues identified in the fieldwork, a series of recommendations are offered to improve APP's land acquisition practices:

1. Immediately institute a contract screening and correction mechanism for all APP land contracts;
2. Deal with individual land rights in full compliance with mandatory legal requirements;
3. Improve acquisition of collectively managed land rights;

4. Reform the rental determination mechanism to ensure farmers receive full market value of the acquired land rights;
5. Make rental payment directly to farmers; and
6. Improve dispute resolution by promptly and effectively addressing farmers' grievances.

INTRODUCTION

While rapid economic growth has boosted China's economy to the second largest in the world and agrarian reforms have bolstered farmers' livelihoods, rural Chinese do not proportionally enjoy the full benefits of this growth.¹ Fifty-six percent of Chinese farmers (and predominantly the poorest) live in mountainous areas; for them, forest land and its resources are an important means of income, household security, and social identity.² In order to lift rural forest farmers out of poverty, improve their livelihoods, and revitalize forest areas, the Chinese government launched a nationwide forest reform in 2008. The reform mandates allocation of collectively managed forest land to farmer households within the community for a term of 70 years. Once allocated, such land rights³ are legally defined as usufruct property rights.⁴

Asia Pulp and Paper Co. Ltd (hereinafter APP), is one of the world's 10 largest pulp and paper companies, with over US\$20 billion in assets.⁵ Presently, APP's China holdings include more than 20 pulp and paper plants⁶ and about 20 forest farms producing raw material for its pulp and paper making.⁷ APP established a presence in Yunnan in 2002 in an attempt to acquire large areas of land to build tree plantations to supply its paper mills in China. According to the Memorandum of Understanding (MOU) signed between APP and the Yunnan provincial government in September 2002, the Yunnan government would provide 10.65 million mu⁸ (710,000 ha) of land to APP for plantations in the Pu'er (formerly the Simao) Municipality.⁹

With support from Rights and Resources Initiative (RRI), a research team consisting of researchers from Landesa conducted six days of field research in the summer of 2013 in Lancang Lahu Autonomous County of the Pu'er Municipality, Yunnan Province, in order to observe firsthand the APP acquisition of collectively owned forest land. The team chose Lancang County primarily for two reasons. First, most of the APP acquisitions are located in Lancang. Second, Lancang is inhabited by people who belong to various minority nationalities. Prior to this, in February 2013, Landesa researchers conducted similar fieldwork to observe APP's land acquisition practices in Qinzhou County in the Guangxi Zhuang Autonomous Region. In both field studies, the Rapid Rural Appraisal (RRA) method was used to conduct interviews. Both villages and farmers within the villages were randomly selected to be interviewed, and were given no advance notice of the visit. Farmers were asked questions about their experience with APP's acquisition of forest land rights in their villages based on a checklist of issues prepared before the interview. All interviewed farmers were active participants in these discussions. In order to minimize undue influence, no government officials or APP employees attended the interview sessions in Qinzhou. In Lancang, while a senior APP official accompanied the research team throughout the field study, the official remained a silent observer rather than a participant throughout each of the interview sessions.

This paper provides analysis of the research teams' findings in Lancang and Qinzhou and analyzes APP's land acquisition practice in accordance with Chinese laws, regulations, and central policies related to collectively owned forest land in existence at the time of acquisition, as well as internationally accepted Corporate Social Responsibility (CSR) standards. Following the introduction, Section II summarizes the regulatory framework governing forest land transfer. Section III sets out the fieldwork findings based on interviews of farmers in the visited villages. Section IV analyzes APP's land acquisition program in relation to several important field research findings and the regulatory framework governing farmers' land

rights in place at the time of the acquisitions. Section V offers a series of recommendations for improving APP's land acquisition practice. Section VI presents the conclusions.

SECTION II

REGULATORY FRAMEWORK GOVERNING COLLECTIVELY OWNED FOREST LAND

In China, rural forest land is governed by a combination of rural land laws and a series of central policy directives promulgated to regulate distribution, transaction, and dispute resolution related to collective forest land rights. This section will briefly discuss China's legal and policy frameworks with implications for the acquisition of collective forest land rights.

Property structure governing collectively owned forest land

With respect to the property nature of rural land including forest land, China adopts a two-pronged property regime: public ownership of land and private use rights to land. Under this system, use rights, once legally acquired through land allocation or subsequent land transaction, become formal usufruct property rights independent of ownership.

Ownership and exercise of ownership rights

Under China's Constitution, all land (including forest land) located in rural and suburban areas, except for that owned by the state, is owned by rural collectives.¹⁰ The 1998 Land Management Law (LML) reiterates this constitutional principle, and authorizes collective economic entities at various levels of the rural collective to "operate and manage" collectively owned land.¹¹ However, neither the Constitution nor the LML clarifies the relationship between members of the collective (farmers) and administrative bodies of the collective (the collective entity) with regards to land ownership.

This legal vacuum was filled by the Property Law of 2007, which provides that collectively owned real properties "are owned by all members of the collective,"¹² namely, by all farmers of the community where the land is located. With respect to the relationship between member-owners and the collective entity, the Property Law further prescribes the role of the collective entity as merely "exercising ownership rights on behalf of the collective."¹³ In other words, such exercise of ownership rights must be carried out on behalf of member-owners. To prevent the collective entity from abusing its power when dealing with collectively owned land, the law specifically requires that plans and proposals for contracting land to external entities or individuals be approved by member-owners.¹⁴

Taken together, these provisions of the Property Law answer critical questions concerning the nature of collective land ownership. First, they clarify that rural land, including forest land, is owned by all members of the community rather than by an administrative device, be it a village committee, a villager-group, or a collective economic organization.¹⁵ In other words, each member of the collective has an indivisible ownership interest in all collectively owned land. Accordingly, as the non-owner of rural land, the collective entity does not have any property interest therein, and therefore should not be entitled to compensation when such land is transferred to a third party. Second, any exercise of ownership rights by the collective entity is essentially a power delegated by member-owners of the collective. Third, such exercise of ownership rights, including leasing collective forest land to a third party, is subject to the approval of member-owners.

Central government forest reform policies reinforce this principle of member ownership. The 2003 Central Committee Decisions on forest reforms takes a two-pronged position. Collective forest land that is suitable for household contracting must be allocated to individual households. Conversely, the property interests of collective forest land that is not suitable for household contracting must be converted into shares which are in turn allocated amongst all member-owners.¹⁶ The 2008 central document further reiterates that property interests in collectively managed forest land be allocated to villager households in the form of shares of stock.¹⁷ Clearly, both national law and central policy documents support the principle that forest farmers, not the collective's administrative body, are joint owners of collective forest land and therefore maintain vested property interests.

Use rights to collectively owned forest land

Both Chinese laws and central government policies permit individual as well as collective possession of rights to forest land under collective ownership. However, the default rule is that the collectively managed forest land that is suitable for household contracting must be allocated to individual households in the village.

Individual rights to collective forest land

Individual rights to forest land can be broadly divided into two categories. The first pertains to the land acquired through household contracting since rural land reforms started in the late 1970s, and the second to the forest land that was allocated to individual households in the 1960s and has been recognized as “private mountain rights” by farmers, central policies, and laws.

Household contracting

The 2002 Rural Land Contracting Law (RLCL) specifically mandates that collectively owned land suitable for household contracting must be contracted to individual households for farming.¹⁸ The 2007 Property Law reinforces this requirement by stating that, with respect to collectively owned forest land, the state must adopt the land contracting and operation system.¹⁹ That is, when exercising ownership on behalf of all member-owners in the community, the collective entity is legally bound to allocate land use rights to individual farmers as long as the land is suitable for household contracting.

The central policies on reforming collective forest land also require allocating collectively owned forest land to individual households within the village through household contracting and ownership of trees on the land to the households.²⁰

These land rights have a term of 70 years,²¹ renewable when the term expires.²² Once the land is allocated through household contracting, the rights holder may possess, use, and benefit from the allocated forest land,²³ and transfer such rights.²⁴ The Property Law further defines such land rights as usufruct property rights,²⁵ thus making farmers' individual land rights legally independent of the village's land ownership.

Private mountain rights

Another category of individual forest land rights is the use rights to private mountains, which refers to forest land rights first allocated to individual households for a “long time without charge” in the people's commune period in the 1960s,²⁶ and reaffirmed by the Supreme People's Court in 1986 as farmers' “long term” land rights.²⁷ Although such rights are essentially the same in nature as forest land rights acquired by individual households through household contracting, central policies have granted them heightened protection. Document No. 9 of 2003 emphasizes that allocated private mountains are “for farmer

households to use for a long time without charge; no compulsory taking-back is permitted.”²⁸ In Document No. 10 of 2008, which sets forth the guiding rules for the nationwide forest land reform, the term of use rights to private mountains is reiterated as a “long time without charge” while the term for non-private mountain rights obtained through household contracting is set at 70 years.²⁹ Moreover, under no circumstances can such private mountain rights be compulsorily taken back or administratively readjusted.³⁰ Clearly, the central government recognizes the unique, private property-related nature of such private mountain rights and has taken special measures to shield them from violation.

It is important to note that, under Chinese law, individual land rights are created when the land is allocated to individual households through household contracting.³¹ The government at county level or above is required to register such land rights and issue land rights certificates to individual farmer households; this registration and certification process reaffirms farmers’ individual land rights³² created at the time of household contracting. Although the 2007 Property Law creates a rule of “no registration/certification, no right,” rural individual land rights are an exception to this rule.³³ Therefore, possession or non-possession of a land document such as a land certificate does not establish the nature of the land rights at issue; rather, the deciding factor is the land allocation through household contracting.

Collectively managed forest land

Collective management of collectively owned forest land is permitted under Chinese laws and central policies, with two important conditions. First, the forest land under collective management must not be suitable for household contracting, and the decision to maintain collective management must be made by farmers in the village.³⁴ Second, the property interest in forest land under collective management must be ascertained and distributed among all member-owners in the form of stock shares of the collectively managed forestland.³⁵

Transfer of use rights to collectively owned forest land

Both individual and collectively managed forest land rights may be transferred. However, transfer of these two distinctive categories of forest land rights is subject to regulation by different sets of rules.

General principles

From the outset, the central government mandated that all transfers of rural land rights, including forest land rights, must be “voluntary, with compensation, and in accordance with the law.”³⁶ Based on these fundamental principles, the 2002 RLCL states that all transactions of rural land rights must be voluntary;³⁷ pressuring a farmer into a transaction of his or her land rights under the pretext of “minority submitting to majority” is prohibited.³⁸ This law also excludes government officials from coercing farmers to transfer their land rights.³⁹

Anticipating the increasing interest of commercial entities in farmland and forest land, in 2004 the central government issued a series of policy directives to regulate development of rural land rights markets in order to prevent coercive transfers.⁴⁰ In its “Urgent Notice on Properly Resolving Rural Land Contracting Disputes,” the State Council requires local governments to “resolutely stop and correct various acts that compel farmers to transfer their land rights against their will” and states that “any contract involving compulsory transfers should be deemed void.”⁴¹ In its 2008 decision, the Central Committee reiterates the principle of voluntariness in land rights transactions and prohibits any transactions that may violate farmers’ property interests in land contracting.⁴² In 2013, the Central

Committee further stresses that “land transfers shall not be conducted through compulsory orders, nor shall farmers’ interest be injured through land transfers.”⁴³

To prevent local governments from compelling farmers to transfer their land rights in order to attract investment, in April 2013 the State Forest Administration (SFA), reiterated that in principle, “it is up to farmers to decide whether to transfer.” This decree resolutely rejects using the scale of forest land rights transfer to evaluate performance of local officials. More importantly, it prohibits local governments from pushing forest land rights transfers to attract investments, promising assistance to investors looking to acquire forest land rights, or making such promises as a favorable condition to attract investments.⁴⁴

In this spirit and based on existing laws, China’s Supreme Court holds that “where the contract issuing party [the collective entity] compels the contracting party [the farmer] to convey his rural land contracting and operating rights to a third party, the contracting party’s claim for voiding the transfer contract should be supported” by the local court that reviews the claim.⁴⁵ The 2008 Supreme Court decision on implementing the new Central Committee’s decision further requires local courts to void land rights transfers that violate farmers’ property interests in land contracting, as well as correct any act that unlawfully interferes with the transfer of land rights.⁴⁶

Transfer of individual land rights

Chinese law and central policies permit and encourage farmers to transfer their individual rural land rights, including forest land rights, to other farmers and non-farmer third parties. The 2002 RLCL provides that individual forest land rights “may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law.”⁴⁷ The 2007 Property Law subsequently echoes the RLCL’s original support for market-based transfers.⁴⁸ Moreover, the central decision on further rural land reforms in 2008 reiterates this legal permission.⁴⁹ Such individual forest land rights may also be used as contributions to investors in exchange for shares of such investors or as contributions for development of a cooperation agreement with forest enterprises.⁵⁰

To protect forest farmers, Chinese laws require that all transfers be voluntary and conducted through arms-length negotiation and consultation, and that no institution or individual shall compel farmers to transfer their forest land rights.⁵¹ Considering the possible power imbalance between individual farmers and the collective entity, commercial interests, or government agencies who may pressure individual farmers, the land transfer laws specifically state individual land rights, including forest land rights, should not be compulsorily transferred under the pretext of “minority submitting to majority.”⁵² The central document on reforming collective forest land reiterates such regulatory mandates.⁵³

In order to safeguard farmers as a willing party to any transfer deals, the law further requires that any transfer of individual forest land rights be witnessed with a written transfer contract signed by the farmer transferee,⁵⁴ and that any contract that was formed under deceit or duress must be deemed void.⁵⁵

Rights to private mountains are categorized as individual rights to collectively owned forest land, but subject to greater protection. Private mountain rights were allocated to farmers for private use for a “long time without charge” even during the collective farming period under the people’s commune system.⁵⁶ All central documents on the collective forest reforms state that private mountains shall be used by farmers for a long time without charge, and that compulsorily taking-back or at-will readjustment of farmers’ private mountain rights are strictly prohibited.⁵⁷ The Guangxi Autonomous Region Government recognizes these rules and includes them in its own forest reform directive.⁵⁸ Clearly, any transfer of such private mountain rights is a gross violation of the law if the transfer involves the slightest compulsion.

Transfer of rights to collectively managed forest land

As discussed above, collectively owned forest land that is not suitable for individual household contracting may be maintained under collective management. Use rights to such forest land may be granted to villagers or non-villagers upon public notice in the village and consent of the villagers in accordance with the law.⁵⁹ Both the 1998 LML and 2002 RLCL define the consent as agreement by two-thirds of all villagers or two-thirds of villager representatives.⁶⁰ In addition, both laws require further approval of the transfer deal by the township government.⁶¹

To ensure transparency in such land deals, the RLCL requires that rights to collectively owned land that is not suitable for household contracting be granted through competitive bidding, auction, open negotiation, or similar methods.⁶² Moreover, both laws and related central documents give villagers the preference to acquire such rights to collectively managed land under equal conditions.⁶³

In addition to the aforementioned legal requirements and central policies, the SFA issued a directive in 2009 establishing special rules regulating large-scale transfers of collective forest land rights to large transferees,⁶⁴ most of which should be enterprises. This directive was issued to control unregulated markets for collective forest land and to prevent arbitrary or under-the-table transactions that could lead to loss of collective forest land and its asset value. The directive states that collectively managed forest land should be allocated to individual farmer households before being transferred to non-villagers, except for “absolutely necessary” circumstances⁶⁵. Even if under “absolutely necessary” circumstances, the transfer must be completed in accordance with the following procedures: (1) a property value assessment of forest assets; (2) advance public notification of the transfer plan within the collective entity; (3) consent to the transfer plan by two-thirds of collective members or their representatives and approval by the township government; and (4) through bidding, auction, or public negotiation with respect to the terms of the transfer. In addition, members of the collective entity have priority to acquire rights to such collectively managed forest land or wasteland under the same conditions.⁶⁶

The new rules are based on the following principles. First, collectively managed forest land is primarily for household contracting. It should therefore be allocated to individual households in the village, or members of the collective, as members are joint owners of the land under both the Property Law and forest land reform policies.⁶⁷ Allocation helps prevent landlessness in forest areas, thus maintaining social stability, encouraging forest farmers to invest in forest land, and creating an equitable basis for the development of forest land rights markets. Second, forest farmers should be the primary players in forest land rights markets because, as individual operators of the land, they possess expert knowledge of when to transfer their contracted forest land, to whom, at what price, and for how long. Third, because of concerns over rent-seeking by collective cadres in cooperation with local government officials, the value of collectively managed forest land must be assessed before transfer takes place. Fourth, all existing laws and policies on transferring collectively managed forest land must be strictly enforced in order to further reinforce the restrictions on such transfers.

Transfer of forest land rights to corporate enterprises

Transfer of rural land rights to enterprises, though not completely prohibited, is constantly discouraged and restricted by the central government.⁶⁸ As far back as 2001, the Central Committee of the Communist Party of China (CPC) issued its Document No. 18, discouraging “enterprises from contracting rural land at large scale for a long time.”⁶⁹ Central policymakers have repeatedly expressed grave concerns over the potential threat of corporate land acquisition to the livelihoods of hundreds of millions of farmers relying on rural land as their primary source of income.⁷⁰

For enterprises occupying farmland to plant trees, the State Council requires a comprehensive review of the contract. When local government at municipal, county, and township levels signs a contract with an enterprise to provide farmland for growing trees without farmers' consent, the contract should be voided and terminated. Where the enterprise failed to enter into a direct contract with farmers for planting trees on farmers' contracted farmland, the enterprise should consult with farmers as to whether it is permitted to continue growing trees. If farmers do not agree, they may uproot the trees and return the land to farming.⁷¹ In the case of enterprises occupying basic farmland to plant fast-growing trees, the State Council has a further requirement that farming be resumed on such land.⁷²

The central intent to tighten restrictions on corporate acquisition of rural land rights for agricultural purposes is perhaps best demonstrated in Document No. 1 of 2013 of the Central Committee of the CPC, issued under China's new leadership, which took office in 2012. In this important policy document, the new Central Committee makes a clear distinction between rural land transfers to farmers and farmer associations and rural land transfers to enterprises. While "encouraging and supporting" transfers of use rights to rural land, including forest land, to farmers, family farms and farmer associations, Document No. 1 of 2013 specifically emphasizes the need to "explore and establish strict rules on permitting and regulating industrial and commercial enterprises' leasing of contracted arable land, forest land, and grassland from farmer households."⁷³

Improved regulation of existing large-scale transactions

With respect to the forest land leases, and other related transfers of rights that have already been completed, the central government takes a three-pronged position: such transactions that are compliant with existing laws should be retained and confirmed, the transactions that fall short of the common standards should be improved, and the transactions that do not conform to legal requirements should be corrected in accordance with the law.⁷⁴

Realizing the extent of the irregularities in large-scale transactions of collective forest land rights that occurred prior to the forest reform, the central government issued a set of rules in 2009 requiring a comprehensive review of historical problems associated with collective forest land transactions in order to enhance social stability.⁷⁵ The general approach for the review is to "respect history while taking into account reality, with an emphasis on consultation and adjustment of financial interests."⁷⁶ For transactions of "oversized" areas, for a low rate, lengthy period, and eliciting strong opposition from farmers, the document requires an adjustment of the agreement by increasing transaction payment, shortening the contract period, or converting payment entitlement into shares of stock, based on mutual consultation.⁷⁷

The Guangxi Autonomous Region Government incorporates these requirements into local regulations in its Provisional Measures on Management of Transfers of Collective Forest Rights, adopted in 2011. According to this regulation, all existing large-scale forest land transactions that are not in compliance with existing laws are required to "be resolutely corrected."⁷⁸ For those transactions that are in compliance with existing laws but are deemed oversized, for an excessive time period, paying low rent, and eliciting strong opposition from farmers, the regulation requires an adjustment of rent and shortening the contract period, or a combination of adjustment of rent and sharing of the transferee's profits.⁷⁹

Dispute resolution

Chinese law provides holders of forest land rights with a variety of remedies for redress when forest land transactions contravene existing laws and policies. Under the Property Law, if a decision made by the

collective entity or the person in charge of such an entity violates members' lawful rights, the aggrieved members may file a lawsuit to nullify the decision.⁸⁰ In addition to nullification, the RLCL further prescribes both equitable remedies and legal damages for farmers who are forcibly compelled to transfer their land rights, including injunctive relief, restitution, and reward of monetary damages.⁸¹ Government agencies or employees involved in such violations are subject to administrative or criminal penalties in addition to monetary damages.⁸²

SECTION III

FIELD RESEARCH FINDINGS

Farmer interviews were conducted in February 2013 in Qinzhou Municipality and in September 2013 in Lancang County. The research team spent three days in Qinzhou and six days in Lancang, conducting semi-structured interviews utilizing the Rapid Rural Appraisal (RRA) method to identify issues concerning APP acquisition. Farmers were asked questions about their experience with APP's acquisition of forest land rights in their villages based on a checklist of issues prepared before the interview.

In Qinzhou Municipality of Guangxi, one of the hubs of APP's operation in China, the team visited seven villages which were randomly selected while driving through the countryside. Although APP had been contacted for an interview before the fieldwork, we were told that the CSR officer at APP had a time conflict. To locate villages in Lancang, a sparsely populated mountainous county⁸³ with extremely poor access roads, we had to rely on APP field officers who provided us with a list of all townships and villages where APP had acquired forest land rights in Lancang. Thirteen villages were selected based on road access to the village, road conditions, and the distance from the village to the county seat. In all farmer interviews, the first farmer or first group of farmers we met in the village were interviewed to ensure the objectivity of interviews; no officials representing collective governance were present because they were not notified in advance of our visit to the village.

While all of the interviewees in Qinzhou were farmers of the Han nationality, which is the dominant ethnic group in China, all those interviewed in Lancang were minority nationality people belonging either to Lahu (61.5% of interviewees), Aini (23.1%), Wa (7.7%) or Bulang (7.7%).

The nature of APP-acquired land rights

Most farmer interviewees in Qinzhou reported that the land rights acquired by APP were rights to collectively managed forest land. These lands were customarily held as individual household land rights that were neither allocated to individual households nor developed. In one village, however, the interviewed farmer told us that when APP acquired the village's land in 1998, it included more than 10 mu (.66 ha) of his own land allocated to the household in 1992.

On the other hand, in most villages we visited in Lancang, a substantial portion of land rights that APP acquired were allocated to individual households and used by them until the APP acquisition. In 10 of the 13 villages visited during the field research, APP had acquired both collectively managed forest land and individual household land rights. Individual land rights were assigned to the dry land located on slopes or hillsides. According to interviewed farmers, the land in these local indigenous communities was

traditionally farmed in rotation under a swidden approach.⁸⁴ During the HRS reform, the village land had been allocated to individual households, but the rotating swidden farming continued.

Although no written land document for such rotating landholdings was found for any of the households interviewed, farmers in five villages told us that they had at one time possessed a land contract printed in a red-cover booklet that was issued before the APP acquisition. In the absence of written land documents, all farmer interviewees confirmed that the land was indeed allocated to and farmed by individual households in a rotating swidden manner before APP began its forest land rights acquisition program in the early 2000s. One farmer complained that his household's allocated land for farming had been reduced from more than 90 mu (6 ha) before the APP acquisition to about 40 mu (2.66 ha). In another village, a farmer reported that APP had acquired more than 30 mu (2 ha) of his household land rights, which reduced the household landholdings from 48 mu (3.2 ha) to 15 mu (1 ha). In one village where APP had acquired use rights to more than 1000 mu (66.66 ha) of land, at least 400 mu (26.66 ha) belonged to five individual households.

The distribution of compensation for APP land acquisition in certain villages also sheds light on the nature of land rights that APP acquired. In at least two villages where the compensation was not “managed” by the administrative village or the township government, it was distributed according to the land contribution of each household. In China, compensation for either government expropriation or company acquisition of collectively managed land that is not allocated to individual households must be distributed equally to farmer households. The non-egalitarian distribution we found in Lancang strongly suggests that at least part of the forest land rights that APP acquired in Lancang belonged to individual households and had been farmed by them before the acquisition.

Acquiring land through government and intermediaries

Both APP officials and farmer interviewees confirmed that it was through various levels of government that APP acquired collective forest land rights in Lancang. In all 13 villages we visited in Lancang, farmers reported that the APP land acquisition was profiled as a “governor’s project” and implemented by various levels of local government.

APP’s acquisition in Lancang was conducted from 2003 to 2005. According to the interviewed farmers, land holdings allocated to households for farming under the swidden approach ranged from more than 10 mu (0.67 ha) to dozens of mu per person. However, when APP began to acquire land, farmers were told by the county government that per capita landholdings were reset to 3 mu (0.2 ha) and that all land exceeding the per capita quota must be transferred to APP. At least in the villages where APP’s eucalyptus plantations are located, it appears that a uniform county policy was introduced to accommodate and facilitate the APP land acquisition.

The strong government intervention was also evidenced by the uniformity of both the lease term and the rental amount. In all 13 villages visited, the lease was for 50 years for a non-negotiable rent of 0.8 yuan per mu per year, payable in a lump sum for a total amount of 40 yuan per mu for all 50 years. This government-manuevered land acquisition practice was confirmed by APP officials. In addition, they told the research team that APP was introduced into Yunnan Province in the early 2000s by the then provincial governor who was actively seeking international investment. The Yunnan Provincial Government also admitted that the governor had emphatically pushed for the APP land acquisition.⁸⁵

In contrast, APP's earlier acquisition in Qinzhou, in Guangxi Province, was conducted in a different way. Most of APP's acquisition of collective forest land rights in Qinzhou occurred in the mid to late 1990s. In all the villages visited in Qinzhou, the team found direct contracting with the village collective in only one village. In the other six villages, APP acquired land through intermediaries or quasi-intermediaries. According to farmer interviewees, in land transactions involving intermediaries, the intermediary (who was either an individual person or a group of local private business people) leased land from the villager-group (the owner of the land)⁸⁶ on behalf of APP and subsequently re-transferred the land to APP.⁸⁷ A quasi-intermediary was often the "administrative village,"⁸⁸ which is actually not the owner of the land, but has administrative jurisdiction over several villager-groups. In this type of deal, the administrative villages or the administrative village forest farms⁸⁹ signed the lease agreement with APP to lease the villager-group's forest land to APP despite the fact that they were not the owner of the property.

The term of these land deals generally ranged from 30 to 50 years. However, in one village where we found the direct contract, farmers reported that the initial contract was for 10 years, but that APP unilaterally extended the term to 30 years when the initial 10-year term had expired. The rental payment was arranged in two ways. One was a monetary payment, in the range of 8-10 yuan per mu per year.⁹⁰ Under such a monetary payment scheme, rent was paid to the villager-group by private intermediaries, but farmers did not know how much these intermediaries received from APP. In villages where APP entered into a contract with the administrative village, the rent payment was a 50:50 split between the villager-group and the administrative village.

Another payment arrangement, which was adopted in two of the seven villages visited in Qinzhou, took the form of a split of harvested trees or a split of income from harvested trees. In one village, the split ratio was 71 percent to APP, 24 percent to the village, and 5 percent to the township forest station. In another village, the village was entitled to incomes equivalent to 20 percent of the market price of harvested trees.

Compulsory nature of land acquisitions

Euphemistically referred to as the "governor's project," the APP land acquisition program in Lancang was apparently compulsory. Although there was little violent confrontation during the land acquisition, farmers in all 13 villages visited expressed strong dissatisfaction. According to indigenous farmers, the local government was the prime force in acquiring farmers' land rights on behalf of APP, while APP itself remained largely behind-the-scenes. Before starting land acquisition, the county government drew up an acquisition plan red-lining the areas in each village subject to acquisition, without consulting affected farmers. With such plans in hand, local government officials came to each affected village and compelled farmers to surrender their land rights to APP.

Farmers in most of these poor and remote villages opposed acquisition because they perceive the land to be their lifeline. In one village, farmers stated that they went to guard their land with knives in hand, but eventually submitted because of intense pressure from government officials. In another village, farmers reported that they cried for the loss of their land, feeling uncertain of their livelihoods after the acquisition.

Farmers stated that their opposition was met with intimidation from local government officials. For example, in one village, farmers were told that the APP land acquisition was governor-sanctioned and approved by the government, and that farmers "had to accept it, like it or not." In another village, the

government official even claimed that the village's land was state-owned, and demanded farmers to give up their land on the grounds that "the state landowner can claim it back whenever it wants."

When asked whether farmers could oppose the transaction and/or reject the deal, a typical answer was that no objection could prevail because "the [acquisition] order came from above." Moreover, even in cases where the APP acquisition included individual household landholdings, farmers said they were not able to resist the acquisition if the village's majority agreed with the acquisition.

Failure to follow the principle of Free, Prior, and Informed Consent (FPIC)

In both Qinzhou and Lancang, we found that the principle of FPIC was universally ignored in acquiring land rights for APP plantations.⁹¹ In two of the seven villages we visited in Qinzhou, only the villager representatives⁹² were consulted; the non-representative farmers were left out of the consultation process entirely. In the remaining five villages, neither the village representatives nor the rank-and-file farmers were involved in the process. Excluded from the transfer deals, farmers in three villages complained that they were not aware of APP's land acquisition until the APP employees attempted to cut down the trees.

None of the farmer interviewees had ever seen the land acquisition contract. According to the farmers, such contracts were signed between APP and private intermediaries or between APP and administrative villages even though the forest land subject to acquisition was owned by different villager-groups. In one village, farmers reported an apparently fraudulent process used in the mid-1990s to obtain farmers' consent to acquire use rights to about 2,000 mu (133.33 ha) of the villager-group's forest land. Initially, the contract was for 10 years with a rent of 10 yuan per mu per year. A representative of each household signed and affixed his or her fingerprint to an independent, separate piece of paper attached to the contract. When APP came to cut the trees, the farmers found the initial 10-year contract had been changed to a 30-year contract and attached to the same piece of paper containing the signatures and fingerprints made on the 10-year contract.⁹³

APP's land acquisition in Lancang took place between 2003 and 2005. We were told that because it was essentially a government-led process, land acquisition was carried out in a relatively organized and uniform way. In all villages we visited in Lancang, farmers said they were merely informed of the APP land acquisition by officials from the county, the township, and the administrative village. Typically, these government and collective officials came to the villager-group and announced the acquisition, the location of a parcel or parcels of land subject to the acquisition within the villager-group, and the financial terms of the transaction, such as 0.8 yuan per mu per year for 50 years. Farmers were neither able to reject the acquisition itself nor negotiate the terms of the transaction. Despite farmers' ignorance of the land deal, a land acquisition contract was still entered into and signed by APP and the administrative village, the latter acting on behalf of the villager-group that owned the land at issue.

To minimize potential resistance from farmers, these government officials often cited the acquisition as a "governor's project" aimed at boosting the local economy and development of the forest sector. These officials also told farmers to accept the deal because the land at issue had already been identified and the terms of the deal had been decided by the government.

According to farmers, the land acquisition contract was entered into and signed between APP and the administrative village head. However, in all 13 villages visited in Lancang, interviewed farmers said that they had never seen the land acquisition contracts. When asked who had kept the contract involving their village's land, none of the interviewed farmers knew for sure. Some farmers believed it was kept by

the administrative village, while others thought it was kept by the township government. With respect to our question of whether farmers would be able to look at the contract if they knew where it was, all of them shook their heads. One villager-group leader's story may shed light on how the FPIC standard was ignored in the process. He said that when APP commenced land acquisition in 2003, the township government and administrative village cadres convened a meeting of all villager-group leaders within that administrative village. At the meeting they were informed of the APP acquisition and its positive impacts on the local economy, such as reforestation and creating jobs for local farmers. Even though the farmers were told the financial terms of the deal, there was neither explanation nor discussion at the meeting with respect to relevant issues such as what rights farmers had in a land transaction when their household land holdings were involved or when collectively managed forest land was involved, on what basis the financial terms were set, whether the terms were negotiable and to what extent, whether farmers had the option to reject the deal, and what remedies farmers would have in case their land rights were violated in a land transaction. Together with other villager-group leaders, the villager-group leader we interviewed said he was instructed to conduct a villager meeting with the villager-group, during which he was required to obtain villager consent to the acquisition. He reported that he merely conveyed to all villagers what he heard at the group leaders' meeting, and asked the villagers to sign their names or affix their fingerprints in either the "agree" column or the "disagree" column printed on a piece of paper. Although this signature page was believed to be included in the contract as a supporting document, the interviewed villager-group leader said he had never seen the contract. When asked why farmers signed their names on a piece of paper without seeing the relevant contract, he said few people in this indigenous villager-group would be able to read the contract, even if it were presented to them. This villager-group leader admitted that he himself had only one year of schooling, but was regarded as the most educated within his age group.

We did not find a single case where APP employees were directly involved in any phase of land acquisition. In neither Qinzhou nor Lancang did APP participate in notifying farmers of the acquisition, discussing the deal with farmers, or consulting farmers with respect to issues related to land transactions. According to the farmer interviewees, APP employees showed up in the village only once eucalyptus seedlings were planted on the acquired land.

Apparently unfair deals

As reported above, in order to attract investment by APP, local government introduced a uniform flat rate of 0.8 yuan per mu per year for a lease period of 50 years payable in a lump sum at the time APP acquired the land in Lancang. It is not clear how and on what basis this flat rate was determined; however, it is clear that the flat rate and the fixed lease period were imposed on villages throughout the whole county of Lancang. Although the APP officials told us that the company was actively thinking of raising the rental level for the county, at the time of our field trip to Lancang, the idea had not been put into practice.

Farmer interviewees in all 13 villages we visited voluntarily conveyed a strong dissatisfaction with the low rent even before we asked them questions concerning the rental amount. To find out the basis for the discontent farmers voiced, we asked them a series of questions about what crops they planted and how much income they derived from the land before it was acquired by APP. Most of the land that APP acquired in Lancang was formerly swidden land on which farmers primarily grew annual crops such as corn, wheat, Job's tears, and sugarcane. Multi-year tree crops such as pines, mulberry trees, and tea were

TABLE 1. ESTIMATED NET REVENUE OF FOUR CROPS PRIOR TO APP ACQUISITION IN 13 VILLAGES OF LANCANG COUNTY

Crops	Gross revenue per year			Inputs per year				Net
	Yield kg/ mu	Unit Price yuan/kg	Gross yuan/mu	Pesticide yuan/mu	Fertilizer yuan/mu	Seed or seedling yuan/mu	Labor	Yuan/mu
Corn	250-300	2.5	625-750	50-60	200-300	80	Self	185-420
Job's tears	400	5	2,000	80	100	75	Self	1,745
Sugarcane	3,000	0.4	1,200	No	200-300	260	Self	640-740
Wheat	200	2.2	440	No	No	80	Self	360

grown to a lesser degree. The following table is based on farmers' responses and depicts gross revenue, cost of inputs, and estimated net revenue from some of the annual crops.

Beyond the crops listed above, farmers could earn a good income growing multi-year tree crops. For example, one mu (0.07 ha) of land planted with pine trees produces 4-5 m³ of timber once mature. At the current price of 800 yuan/m³, this would equate to 3,200 yuan after the required 15 year maturity period, or about 215 yuan per year per mu. For birch, farmers could plant 33 trees on one mu of land and earn an income of more than 100 yuan per tree, resulting in an estimated total income of more than 3,300 yuan. Birch becomes mature for harvesting in 10 years; the annual income from growing birch can be as great as be 330 yuan. In both cases, we asked farmers for relevant costs. They reported that apart from the nominal fee to purchase seedlings, growing multi-year trees does not require much cash investment.⁹⁴

In order to compare the APP rental level with local market rates in non-government-led land transactions, we asked farmers in all 13 villages whether they had experienced private transfers and, if so, what the rental amounts were. Farmer interviewees in seven villages reported that private transfers did occur in their villages, with a rental level of 5-40 yuan per mu per year, which is substantially higher than the uniform APP rent imposed on farmers. For example, a non-villager investor leased 500 mu (33.33 ha) of the village's land for walnut tree cultivation in 1998, five years before APP arrived in Lancang in 2003. The lease contract stipulated that the lessee pay 5 yuan per mu per year before the trees bear fruit, and 10 yuan per mu per year after. In another village, the interviewed farmer leased 50 mu (3.33 ha) of the villager-group's land in 2011, paying a rent of 5 yuan per mu per year, to grow a local variety of birch. These rates are six times the 0.8 yuan annual rent paid by APP.

The unfairness reflected in this rent discrepancy may be best illustrated by a village where we found both APP acquisition and private transfers. Before the APP acquisition, the villager-group's land was allocated to individual households for farming, with an average landholding of more than 10 mu (0.67 ha) per person. As noted above, the county government introduced a county-wide policy to reduce per capita landholdings to 3 mu (0.2 ha), thereby accumulating around 2,500 mu (166.67 ha) of land to facilitate APP acquisition. In 2004, APP took 1,430 mu (95.33 ha) from the designated land pool, which is contiguous and relatively flat, and paid 0.8 yuan per mu per year for 50 years. In 2010, a non-villager businessman signed a lease contract with the villager-group to lease half of the remaining 1,000 mu (66.66 ha) to grow coffee trees for a term of 20 years at a rent of 20 yuan per mu per year. In the same year, the interviewed farmer himself leased 4 mu (0.27 ha) to grow corn on the remaining part of the

villager-group's land initially designated for APP plantations, and paid the villager-group 10 yuan per mu per year, which was increased to 15 yuan per mu in 2013.

It is not entirely known how APP had managed to acquire such favorable deals, but it is undisputable that APP paid much less for better quality land than others paid on the local land market. Even more alarmingly, the APP deal was much more lucrative and attractive than what villagers could get for themselves, even though villagers are joint member-owners of the land at issue and have priority over non-villagers in leasing the village's land.

Distribution of rental payment

Although the APP rent appeared to be low in Lancang, this already low rent was not received in full by the farmers whose swidden farming land rights APP had acquired. Farmers in only six of the 13 villages reported that the rental payment was fully or nearly fully distributed among all households in the village in accordance with the total area of the household landholdings acquired by APP.⁹⁵ In six other villages, the rental payment was reported to have been intercepted and maintained by the administrative village or the township government. In addition, the 13th village presented an interesting case in which the interviewed party's secretary and head of the administrative village claimed that all rental payment had been fully distributed to affected households. This conflicted with claims made by the interviewed farmers, who reported having only received half of the rental payment that APP was supposed to have made.

In the six villages in which the administrative village or township government retained the rental payment, these administrative bodies typically stated as the reason for retaining the funds that the money would be recklessly spent if allocated to individual households. Thus, they thought it would be better spent if used for the development of public facilities. However, in only two of the six villages where the rental payment was kept by the collective entity or the township government did farmers report some sort of public spending, such as installing running water in the village or building a road to connect the village to the township road system. In the remaining four villages, farmers were unaware of how the money was allocated, for what purpose, whether there were any remaining funds, and how much of these funds remained.

Farmers' attitude toward the APP acquisition

Interviewed farmers were asked a series of questions regarding their general views on the APP land acquisition in their villages. Farmers in all 13 villages visited in Lancang expressed dissatisfaction and frustration with the acquisition. In almost half of the interviewed villages, farmers wanted to take the land back after APP harvested the trees. They preferred to use the land to develop their own tree plantations or for subsistence farming. In the remaining villages, farmers said that they would allow APP to continue leasing their land rights, but only on the condition that APP substantially raised the rent to a level consistent with local land rights rental markets.

In all villages, farmers complained about the compulsory nature of APP land acquisition, namely that the acquisition was primarily enforced by all levels of local government and because the non-negotiable rent, which was well below the market price, was imposed on farmers. When asked what rental level would be acceptable, most farmers thought that a range of 20-40 yuan per mu per year was reasonable because that was the rent they could get if leasing the APP-acquired land rights to other private investors. In three

villages, farmers were inclined to have all farmer stakeholders jointly set the rental level at the village meetings.

Moreover, farmers also accused APP of getting farmers into the deal by making unrealistic promises. When local government officials went to villages to advocate for APP, one of the selling points was the prospect of creating jobs and increasing farmers' income through the employment of local farmers in APP's eucalyptus plantations. However, except for initial hiring of local farmers to plant trees, no additional jobs were created to offset the loss of income from farming on the land acquired by APP.

A similar pattern of reactions to the APP land acquisition was found in Qinzhou County as in Lancang. In all seven villages in which we conducted interviews in Qinzhou, farmers expressed a strong resentment to the contracting out of their villager-groups' forest land to APP by the administrative villages and to APP's land acquisitions through intermediaries. As joint owners of their villager-groups' land, they believed any land deal without their participation should be declared illegal.

When asked whether they would like to lease their land to APP, Qinzhou farmers gave mixed responses. In three of seven villages we visited, farmers wanted to take the land back and contract it to individual households for forest farming. In the other four villages, farmers said they would not lease villages' forest land to APP unless the company substantially raised the rent.

Dispute resolution

Although farmers interviewed in both Qinzhou and Lancang had complaints about the APP acquisition, there appeared to be no effective mechanism to address their grievances. In all seven interviewed villages of Qinzhou, farmers reported that APP had never informed them of any channel for land dispute resolution, and had not informed them of APP policies on socially responsible resolution of land disputes. As a result, none of the farmers interviewed were aware of the process for filing a complaint with APP, to whom and where they should address their complaints, or even where the APP Qinzhou office was located. They had never heard of an APP hotline or mailbox to receive farmers' complaints, nor had they ever been approached by APP officials interested in understanding their concerns.

In the absence of an institutional mechanism for dispute resolution within the APP system, farmers had to rely on ad hoc, non-official APP channels to voice their grievances and seek proper settlement. In three villages, farmers raised their complaints to the administrative village officials or the township government, but were told that they were not an appropriate party to address the issue because the land had been acquired by APP.

A similar problem existed in Lancang. In 11 of the 13 interviewed villages, farmers were unaware of the APP Lancang office location or the contact information for its grievance addressing unit. Even an interviewed farmer who was a part-time ranger hired by APP did not know the company's location. Moreover, farmers in all 13 villages reported they had never received any oral or written information about the company's CSR policies or its institutional mechanism, if any, for addressing farmers' complaints. When asked whether APP had ever sent its employees to listen to farmers' reactions to the APP acquisitions or explain the APP position on issues related to its land acquisitions, the farmers replied that these things had not happened.

Like farmers in Qinzhou, the interviewed farmers in Lancang resorted to village cadres and APP forest rangers⁹⁶ to voice their complaints, in the hope that they would present the farmers' complaints to APP and help to resolve the disputes. However, this tactic was entirely ineffective. In one case where the

aggrieved farmer complained to an APP technician about the issue of low rent, the technician replied that “the rent is decided by the government, it is impossible to change it now.” In another case where the interviewed farmer actually took the low rent issue to the APP Lancang office, the answer from APP was that “the contract has already been signed, and it is impossible to amend the conditions in the contract.”

Neglect of the special needs of minority nationality people

All 13 villages we visited in Lancang are inhabited by minority nationality people. However, we found a universal lack of attention to the rights of minority nationality people in the APP acquisition. None of the interviewed farmers in the 13 villages could tell us of any special measures that local governments at various levels had taken to understand the farmers’ perspective when they acquired farmers’ land rights on behalf of APP. The company stayed behind the scenes and let local governments deal with villages and farmers. All farmer interviewees confirmed that APP officials did not attend village meetings to discuss the acquisition, nor did they explain potential impacts of the acquisition on minority nationality farmers’ livelihoods and how to cope with such impacts.

For example, swidden cultivation had long been the dominant farming practice in local indigenous communities of Lancang before the APP land acquisition. Because of the low productivity of this farming system, extensive per capita landholdings were needed to produce sufficient food for farmers. The APP acquisition substantially reduced farmers’ landholdings (to 3 mu per person), thus forcing farmers to discontinue the use of this practice. Although the acquisition changed the cultivation pattern of local minority nationality communities, the interviewed farmers reported that neither the local government nor APP had informed them of the dramatic change in farming practices that the land acquisition would consequentially cause, and did not seek their consent. In three of 13 villages, farmers complained about the negative impacts on their livelihoods, including their inability to practice subsistence farming on substantially reduced household landholdings.

Several farmers reported that they did not fully understand the acquisition deals because of their illiteracy and their inability to communicate with government officials and APP staff due to the language barrier. In one village, the interviewed farmers complained that the acquisition was promoted and discussed in non-ethnic languages they did not understand. In another village, interviewees cited the use of incomprehensible jargon by APP officials when explaining their failure to appropriately and effectively address farmers’ concerns about the negative impacts of eucalyptus on mountain water supply.

SECTION IV

ANALYSIS

APP has publicly announced that it will abide by Chinese laws, regulations and central policies in all aspects of its operations in China, including land acquisition. This section analyzes its land acquisition program with respect to several important issues we identified in the field research, and compares the APP program to the regulatory framework governing farmers’ land rights in place at the time of the acquisitions. Because China had not had functional laws governing farmers’ land rights until 2002 when RLCL was adopted, the legal analysis in this section focuses on the APP acquisition in Lancang which took place between 2003 and 2005.

Acquisition of individual land rights

While most of the forest land rights APP acquired in Qinzhou are, according to interviewed farmers, rights to collectively managed forest land, the research team found that a substantial part of its acquisition in Lancang involved individual land rights allocated to households for farming before APP's acquisition. A legal analysis of transfers of individual land rights must start with a brief recap of laws governing such transfers which existed at the time of the APP acquisition in Lancang.

Under Chinese law, individual rural land rights are usufruct property rights⁹⁷ that may be transferred through lease and assignment.⁹⁸ However, the transfer must be: (1) voluntary and free from compulsion,⁹⁹ including free from the pressure of “minority submitting to majority”;¹⁰⁰ (2) made by the household with rights to the land;¹⁰¹ (3) evidenced with a written transfer contract reached through arms-length consultation and negotiation;¹⁰² and (4) signed by the transferor household and the transferee individual or entity.¹⁰³

Clearly, APP failed to follow each of these mandatory legal requirements existing at the time when it acquired land rights from individual farmer households for its eucalyptus plantations. First, the land transfer was imposed on affected farmers by local government through a county-wide uniform program orchestrated and implemented by all levels of the administrative apparatus within the county. Farmers in many villages were forced to give up the landholdings allocated to and farmed by them long before APP entered into Lancang. Second, farmers were not a party to the transaction transferring household land rights allocated to and held by them. Third, none of the transfer contracts was signed by farmers as the transferor. Even the party secretary and the head of the administrative village we interviewed admitted that the collective entity, rather than individual farmers, signed the document to transfer property that in fact did not belong to it.

Fourth, the apparent illegality of the APP land acquisition may be further demonstrated by the fact that no consultation or negotiation was conducted with individual households when their land rights were transferred to APP. All major terms of the transaction, such as the rental amount and the length of the transfer contract, were unilaterally imposed on farmers as non-negotiable in all affected villages. As the holder of property rights to the land subject to any land transaction, farmers are treated under the law as independent land market players with the right to accept or reject a deal, or negotiate for a better one. Forcing farmers to accept an imposed deal not only violates Chinese laws, but also defies the basic rules of the game for the land market.

It is unknown whether APP was aware that it was acquiring individually held land rights when it carried out its land acquisition program in Lancang. All of its land transfer contracts were entered into with village collectives, which suggests that APP was either misled into believing, or chose to believe, that what it acquired in Lancang were rights to collectively managed land, and that it merely needed to sign the land transfer contract with the village collective. Such misperceptions of the nature of its acquired rights may have come from the fact that at the time of the acquisition farmers did not present a land document, such as a land certificate issued by the county government, to evidence their individual land rights. If so, this would be a serious misunderstanding of Chinese laws on the legal force of the land document. In China, farmers' individual land rights are created by the formation of the land contract¹⁰⁴ through a household land contracting process.¹⁰⁵ Land registration and certification are merely processes to reaffirm such individual land rights.¹⁰⁶ That is to say, possession of land documents is not the required conclusive evidence of farmers' individual land rights, and accordingly, the lack of written land documentation does not invalidate farmers' individual land rights. Clearly, treating individual land rights

as non-allocated collective rights solely on the basis of the non-possession of land documentation is a misinterpretation of the law.

Government intervention in land acquisition

Farmers in all 13 villages we visited in Lancang asserted that the APP land acquisition was, in fact, a government action. The SFA also categorized it as a transfer “through governments’ administrative manipulation.”¹⁰⁷ Even the Yunnan Provincial Government itself admitted that the uniform rental amount (0.8 yuan per mu per year) was set by the provincial government,¹⁰⁸ rather than through negotiation between farmers as the transferors and APP as the transferee. Such strong government intervention triggers serious legal concerns of whether the government is allowed to serve as a decision-maker in land rights transfer markets and, if not, whether the land rights acquired through government intervention are legally valid.

The RLCL explicitly prohibits government and its staff from intervening in rural land contracting, modifying or terminating farmers’ land contracts, or compelling farmers to transfer their land rights.¹⁰⁹ By singling out farmers as the transferor party empowered to “decide by his or her self-determination whether to and how to transfer land contracting and operation rights,”¹¹⁰ the law effectively outlaws any government action that makes decisions directly or on behalf of farmers in land rights transfers. Clearly, the government intervention in the APP land acquisition in Lancang is legally impermissible.

As to the legal validity of the APP land acquisition achieved through government intervention, Chinese laws are even more straightforward. A land transfer is deemed void where the transfer is made through compulsion exercised by any organization or individual.¹¹¹ China’s Contract Law provides that a contract is deemed void from the beginning of the contract if it violates the mandatory provisions of existing laws and regulations.¹¹² Our field findings indicate that the APP land acquisition in most of the 13 villages involved individual land rights but, due to government intervention, APP failed to follow the mandatory requirements for rural land rights transfers under RLCL, such as entering individual land transfer contracts with each affected household. Such failure casts great doubt on the legality of the APP land acquisition in Lancang.

Determination of the uniform rental amount

Farmers in all 13 villages in Lancang reported that the rental amount (0.8 yuan per mu per year) was imposed and executed county-wide by the government. Both SFA and the provincial government confirmed that the uniform price was set by the provincial government.¹¹³ With respect to the issue of how this provincially imposed price was determined, the Yunnan Provincial Forestry Administration explained that the uniform rental standard was based on the amount that the government paid when designating and allocating collectively owned forest land for two state-owned forest companies as their plantation land.¹¹⁴

There seems to be little dispute that the APP land acquisition should be defined as a market transaction, and that therefore the rental level should be determined by the market. In a market economy, the market price of land is the amount a transferee is willing to pay and a transferor is willing to accept in a land transaction deal. Under this standard, the market price should be determined through arms-length negotiation between the transferor and the transferee as equal market players free from any external intervention, including government intervention. However, the blanket rental amount applied in the

APP acquisition in Lancang was set through the direct influence of government and without any consultation or negotiation with the farmer holders of the property. Clearly, such a rental amount can hardly be considered a fair market price.

In a well-developed land market, the market price may be based on the sale or lease price of comparable properties. However, as the provincial government admitted, the land rights market in Lancang was essentially nonexistent when APP started investing in Yunnan Province, so this comparative approach may not be applicable in analyzing the rental value of the APP-acquired land. Alternatively, the income approach is typically used in situations where markets are relatively inactive. The income approach is based on the principle that the value of an investment property reflects the quality and quantity of the income it is expected to generate over the life of the property. In other words, the value of the land derived from this approach is the estimated present value of future benefits, including streams of net incomes during the lifetime of the property.¹¹⁵ Because the land that APP acquired is essentially leased rather than owned, it seems sufficient and appropriate to look at the annual net income from the land to arrive at the appropriate APP rent.

According to interviewed farmers in the 13 villages we visited in Lancang, the net income from the APP acquired land would have been at least 185 yuan per mu per year if the land were not transferred to APP. In contrast, what they received from APP was merely 0.8 yuan per mu per year. Moreover, the rental amount prevailing in private lease transfers in Lancang at that time was 5-40 yuan per mu per year, suggesting that the government had substantially distorted the market and proposed a price that was between 6 and 50 times lower than the market price.

Payment of rent to farmers

Both in Qinzhou and Lancang, a substantial number of villages we visited reported that farmers did not receive the rental payment. In several villages in Lancang, the rental payment was retained by the administrative village under the township government's management. This practice is clearly at odds with existing laws governing proceeds from the transfer of rural land rights.

As our field findings indicate, the land rights acquired by APP are either individual land rights or rights to collectively managed land. For individual land rights, existing laws specifically require that the proceeds from transactions be paid to the holder of such rights, namely, individual farmer households.¹¹⁶ In anticipating possible misunderstandings of the rural property structure and its potential impact on the allocation of transfer proceeds, the law further provides that no organization or individual is allowed to retain or intercept the proceeds from the transfer of individual land rights,¹¹⁷ and that any retained or intercepted proceeds must be returned to farmers.¹¹⁸ Obviously, withholding of the rental payments by either the administrative village or the township government is a clear violation of law, as well as a serious harm to farmers' property interest in land. Although APP may not have directly violated the law in making payments to the collective entity or the township government for the acquired individual land rights, it may still be held liable for making the rental payment to the incorrect entity.

With respect to acquired rights to collectively managed land not allocated to farmer households as individual land rights, the proceeds should also go to farmer households rather than being retained by the collective entity. Under Chinese laws, collective land is owned by members of the collective,¹¹⁹ and the collective entity merely exercises ownership rights on behalf of all member-owners.¹²⁰ This legal construction clearly rules out the collective entity as the owner, and naturally, a non-owner cannot have any property interest in land, and hence can have no right to any proceeds when use rights to

collectively managed land are transferred. That is to say, when rights to collectively managed land are transferred, the proceeds should be allocated among all farmers in the village as member-owners of the property. Clearly, no matter how such allocation is conducted, the collective entity has no property stake in the allocation.

SECTION V

RECOMMENDATIONS

Although we visited only a limited number of villages in Qinzhou and Lancang from which APP has acquired land for its plantations, the findings of the fieldwork disclose a range of problematic practices associated with APP's land acquisition for its eucalyptus plantations. We make the following recommendations to address these problems.

1. Immediately institute a contract screening and evaluation mechanism for all existing contracts.

APP officials reported that its land acquisition in Lancang had been completed in 2005, which was confirmed by our field findings. Similarly, our field research did not indicate any APP land acquisition conducted in Qinzhou in recent years. Nevertheless, it is exactly these past land acquisitions that have caused farmers' grievances and the SFA's concerns. Clearly, to effectively address farmers' grievances, the first step is to have a mechanism within APP that is designed to review and evaluate all existing land acquisition contracts and to improve these contracts based on the information obtained through such review and evaluation.

Although it is beyond the scope of this paper to offer a specific design of the review and evaluation mechanism, the design should be guided by the following principles:

First, all contracts should be reviewed and evaluated against the existing laws, regulations, and central policies at the time of the contract formation as well as international obligations. Chinese laws invalidate a contract that violates laws and regulations, and therefore any APP contract or contract provisions should be deemed void if they are not in compliance with Chinese laws on rural land contracting and operational rights. From a legal perspective, an invalid contract is not implementable because it cannot be held as legally binding in a court of law, nor can it be lawfully enforced. It is also in the company's interest to have a legally compliant contract to enforce the contract implementation.

APP has a stated commitment to observing Chinese laws and regulations in all areas of its operations including land acquisition;¹²¹ it could be expected that the company would therefore show zero tolerance to any illegality or legal defect in its land acquisition contracts. As our field findings suggest, many of APP's land acquisitions appear legally invalid or legally questionable, casting doubts on APP's observation of its publicly made commitments. If the legal defects go ignored and unaddressed, it would seriously damage the company's reputation and raise questions about APP's promise to be a socially responsible, law-abiding corporate citizen.

Second, the review and evaluation process should ensure farmers' participation in a meaningful way. Desk review of contracts is necessary, but it is far from sufficient. Farmers are key stakeholders in APP's acquisition of either individual land rights or collectively managed land rights, and any review and evaluation of such land acquisition contracts would not be sufficient or fair without the full and active

participation and consent of farmers. Ensuring farmers' participation requires the company to talk directly with affected farmers in each of the villages where APP acquired land, listening to their complaints, and documenting and addressing such complaints for further analysis.

The best forum for farmers' participation is the villager meeting. APP reviewers should conduct such meetings in each of the villages where it acquired land rights for its plantations. To ensure the maximum participation rate, the notice of meeting should be given to farmers in advance (at least two weeks), informing farmers of the location and time of the meeting. Multiple follow-up meetings may be necessary if the first meeting is attended by less than a threshold number of villagers in any given village. A two-thirds majority could be a threshold number because all Chinese laws, regulations, and central policies adopt this standard for village decisions on issues related to land.

While interviewing collective officials is an integral part of the review and evaluation process, such interviews should not replace farmer interviews, which are much more important for the company to understand the specific complaints of the farmers as well as acceptable solutions. For example, according to our field findings, collective cadres actively participated in pressuring or persuading farmers to give up their allocated land rights for APP plantations in Lancang. If reviewers were to only talk with collective cadres, the information may thus be distorted. Moreover, to avoid undue influence of local government officials and village cadres, contract reviewers should randomly select farmer interviewees in the village without any advance announcement.

Third, special attention should be paid to ethnic minority peoples' rights and needs when conducting review and evaluations. Much of the APP land acquisition took place in minority nationality areas, and such acquisition appeared to have been conducted with insufficient consideration of the traditions and customary rights of minority nationality peoples. For example, to help APP acquire large areas of land for its plantations, the Yunnan provincial government forced ethnic minority residents in Lancang to abandon their traditional rotating swidden farming, which operated on the basis of indigenous customary land rights. APP has publicly announced its policy of "recognizing and respecting ... traditional rights of indigenous people,"¹²² and should adhere to this commitment in its contract review and evaluation.

Fourth, the contract review and evaluation process should be designed to encourage the participation of women farmers. Our field findings indicate that women farmers were completely ignored in APP's land acquisitions. Whether in Qinzhou or in Lancang, we found no special treatment paid to women in villager meetings nor any efforts made to help women understand the land deals. As China rapidly urbanizes, rural women are expected to become a major workforce in farming and thus rely increasingly on rural land for their livelihoods as their male counterparts migrate to cities. In other words, no matter how legitimate a land acquisition is, it is expected to affect women more than men. Chinese laws clearly provide for the equal rights of women and men in contracting and operation of rural land including forest land.¹²³ Therefore, APP should apply a gender perspective in all aspects of its contract review and evaluation procedures.

2. Deal with individual land rights in compliance with mandatory legal requirements.

As reported and discussed above, APP's land acquisition in Lancang was mainly comprised of individual land rights allocated to individual households. These individual land rights had been in place well before APP entered Yunnan Province. However, APP either intentionally or unintentionally categorized such individual land rights as non-allocated collective land rights for its land acquisition program. We recommend that APP redo its acquisition process for individual land rights in accordance with Chinese laws and regulations.

Individual land rights, which are legally defined as property rights, are subject to a heightened level of procedural and substantive protection as compared with rights to collectively managed land. For example, with respect to the legal requirement for stakeholder consent, agreement by two-thirds of all villagers is sufficient for transfers of collectively managed land rights¹²⁴ because the land in question is categorized as collective property. In contrast, this two-thirds consent rule does not apply to the transfer of individual land rights because such land rights are defined as individual property rights. Chinese law requires direct agreements to be made between the transferor household and the transferee investor in individual land rights transfer¹²⁵ and it explicitly prohibits the application of the “minority submitting to majority” rule to such transfers.¹²⁶ Clearly, if an APP land acquisition contract deals solely with individual land rights but fails to obtain consent from each individual household, the contract should be deemed invalid. For a contract that covers both individual land rights and collectively managed land rights, the portion of the contract involving individual land rights is invalid under the law if no individual consent is obtained.¹²⁷

Because a direct contract is perhaps the best indicator of the individual’s willingness to transfer individual land rights, Chinese laws require that a direct transfer contract be negotiated, agreed upon and signed by the individual stakeholder and the intended investor.¹²⁸ Because all APP land acquisition contracts in Lancang were with the collective entity, according to the APP officials and farmers we interviewed, one of the most important screening items for the contract review and evaluation proposed above would appear to be to identify individual land rights covered in each of the contracts. If individual land rights are found to have been included in full or in part of the contract, APP should renegotiate with the individual stakeholders and sign an individual contract with each stakeholder.

There is no doubt that the renegotiation and signing of individual land transfer contracts would substantially increase the transaction costs for APP. However, such a remedial process would exemplify APP’s implementation of its commitment to abiding by and respecting Chinese laws and regulations in its land acquisitions. In addition, it could also avoid potentially huge costs to its normal operations if its existing contracts with the collective entity were to be judicially found legally invalid in the event that farmers file lawsuits to claim back individual land rights.

3. Improve contracting of collectively managed land rights.

Farmer interviewees in both Qinzhou and Lancang counties were also upset about APP acquisition of rights to the forest land under collective management, with complaints ranging from low rent to over-long lease periods. These complaints at least suggest the need to review APP’s practice in acquiring collectively managed land rights. In order to enhance social stability, the central government also requires a comprehensive review of historical problems associated with collective forest land transfers.¹²⁹ The approach for the review is one of “respecting history, taking into account reality, with an emphasis on consultation and adjustment of financial interests.”¹³⁰ In cases of transfers of large-scale land areas, for low rental rates, lengthy lease periods, and eliciting strong opposition from farmers, the central government requires an adjustment of the agreement by increasing rental payments, reducing the lease period or converting collective forest land assets into shares of stock of the investor, based on mutual consultation.¹³¹

In light of these central government requirements, we recommend that APP take serious steps in reviewing its existing contracts that cover collectively managed forest land rights and in pursuing equitable actions to address farmers’ complaints. First, APP should strictly follow the central demands in designing corrective measures. The central government has already outlined three specific approaches to

address irregularities in acquiring collectively managed forest land rights, which all seem applicable to APP land acquisitions. At present, what farmers complained most about were the lengthy lease period and low rental fees. APP may consider developing specific measures in relation to these two issues.

Second, APP could consider a profit sharing approach if it is reluctant to convert collectively managed forest land rights into equity shares in the company. APP could set aside an equitable percentage of timber harvested at the end of every growing cycle as the collective portion of income derived from harvested trees to be purchased by APP at the market price. This profit sharing can be used together with a rent adjustment in order for farmers to capture the full market value of the land leased to APP.

4. Reform the rental determination mechanism.

As is reported and discussed above, the extremely low rental price imposed by the provincial government for APP land acquisition in Lancang substantially distorted the land market and severely damaged farmers' property interest in land. The government intervention violates the fundamental rule of "willing buyer, willing seller" in market transactions and is at odds with Chinese laws governing rural land rights transactions. Clearly, the government-imposed pricing system should be abolished and replaced with a market determination mechanism. We recommend that APP reform its rental pricing system as suggested in the following two steps:

Substantially increase its rental payment to farmers in the near term. Because of its violation of existing laws on rural land transfers, the current rental amount of 0.8 yuan per mu per year was determined by the SFA as a "deviation from the [land's] economic market value" and an "infringement upon forest farmers' lawful interest;"¹³² any continued implementation of the rental arrangement will constitute a flagrant breach of Chinese laws and cast serious doubts on APP's vow to "recognize and respect" farmers' rights and interest. Given the fact the rent was already paid in a lump sum at the time of land acquisition in 2003-2005, APP should compensate affected farmers for their property loss due to extremely low rent. The compensation could take the form of a cash payment or sharing of profits from harvested trees or both.¹³³ Whatever the form, the compensation should be determined in compliance with the FPIC principle adopted by APP, taking into account increases in local land rights markets.

Replace the current pricing system with a more equitable and market-oriented mechanism. APP's land leases in Lancang are all for 50 years. With leases beginning in 2003 through 2005, as it currently stands they will continue to be executed for the next 40 years. Unless the lease period were cut short, which is unlikely according to the APP officials, affected farmers in Lancang would continue sustaining property losses for the next 40 years if the current pricing system were to be maintained. Moreover, if this clear violation of Chinese laws and the central policies went unchecked and uncorrected, APP's reputation as a law-abiding corporate citizen would be further damaged.

We recommend that APP abandon the government-imposed rental determination and replace it with a more equitable and more market-oriented mechanism to determine the rental amount for the next 40 years. The Third Plenary of the 18th Central Committee of the CPC announced a range of landmark economic reforms, including defining the market as the fundamental factor in determining allocation of resources.¹³⁴ When designing and introducing a new mechanism for rental determination, the market should be the primary gauge. The market price is the monetary rate at which a seller is willing to sell and a buyer is willing to buy, without any external pressure. Also, this "willing buyer, willing seller" approach exemplifies the concept of "free, prior, and informed consent," a principle adopted by APP as a company-wide policy. APP should actively engage local farmers to renegotiate a mutually acceptable rental amount for the next 40 years.

APP could make a benchmark offer for the renegotiation, taking into account recent comparable rentals. During our field research in 13 villages in Lancang, we found numerous cases of market transactions of collective forest land rights in recent years, with an annual rent ranging from 15 to 40 yuan per mu. Another approach is to consider the net income per unit of land if the land were not acquired by APP.

The new rental agreement in the land acquisition contract should also include a provision for adjustment of rent for every given number of years to reflect inflation and the increase of cost of living. At present, APP land acquisition contracts do not have such provisions, which is extremely unfair to farmers because food prices have increased dramatically since the early 2000s.

5. Make rental payment directly to farmers.

Many farmers complained that they had not received rent payment for the land rights acquired by APP, even though the company was reported to have paid the rent for 50 years in a lump sum. In at least one village, a certain percentage of rent was intercepted by the collective entity to cover administrative costs. These findings raise the issue of whether APP should arrange for a direct payment of rent to farmers and, if so, through what mechanism.

In rural China, it is not uncommon for collective entities and township governments to intercept or embezzle the compensation paid for land expropriation and land rights transfers.¹³⁵ On the one hand, rent-seeking motivations have led easily corruptible local officials to infringe upon farmers' property interest in land. On the other hand, there is an institutional defect that has made such rent-seeking activities possible. That is, the compensation is not made directly to affected farmers; instead, it is made to collective entities or township governments, apparently on the assumption that the collective entities and township governments will fulfill their duty and distribute the funds among all affected farmers.

To ensure benefits are channeled directly to farmers and to minimize the chance of rent-seeking, we recommend that APP explore ways to directly disburse rental payments to individual households if the acquired land rights are individual land rights. In the case of collectively managed land rights, the payment can still be made to individual households either on a per capita basis or in accordance with the household's share of the collective forest land determined at the villager conference. APP could work with local government to establish an individual account for each of the affected farmer households and arrange for depositing the rent directly into these individual accounts. The Chinese government is currently making agricultural subsidies to individual farmer households each year and depositing the subsidies to individual household accounts. This system could be used by APP to make direct rental payment to farmer households.

6. Improve dispute resolution to address farmers' grievances in a timely and effective manner.

As our field findings suggest, although farmers expressed dissatisfaction with APP land acquisition practice on a variety of issues, they did not know how and where to file a complaint. They were quite pessimistic about the prospect of resolving disputes over land acquisition even if dispute resolution channels were available. However, leaving these complaints unattended would not only continue harming farmers' property interest in land, but would also negatively affect the company's reputation.

Given the government's strong intervention in APP land acquisition in Lancang, relying on its administrative system to effectively address farmers' complaints seems unrealistic if not totally impossible. APP should consider setting up a dispute resolution mechanism to receive, investigate and resolve farmers' grievances. An alternative option might be for APP to establish and fund an independent

mechanism through a local NGO, for instance, which would operate as an ombudsman representing farmers' views to APP.

First, APP should consider various options to receive farmers' complaints. In 12 of the 13 villages in Lancang, farmer interviewees reported that they did not know where to go or how to report any complaints about APP land acquisition. It seems imperative for APP to establish a functional and accessible mechanism to hear farmers' concerns and complaints. A 24-hour toll-free telephone hotline may be a socially accessible and economically viable option. Most farmers in China have access to mobile communications, thus a toll-free hotline would provide farmers with a convenient channel to report their grievances to APP. From a company perspective, this may be an inexpensive way to collect the information compared to sending its employees to remote villages which often lack road access. However, it is important to note that a hotline would have little utility unless its existence is known to all farmers. Therefore, once it is established, APP should widely publicize its access numbers, functions, and rules, and actively encourage farmers to call.

A hotline can be supplemented by additional channels for dispute resolution, especially in minority nationality areas. For example, farmers in Lancang belong to more than a dozen minority nationalities with unique indigenous dialects. For farmers who do not speak Mandarin Chinese, the hotline would not be an effective channel. On the other hand, it might be costly to maintain a multi-dialect work force to operate the hotline. The company could make use of its existing system of forest guards stationed in each village to collect farmers' complaints.

Whether for hotline operators or for forest guards assigned with the responsibility of receiving farmers' complaints, a regular training program should be designed and implemented to improve their performance. The program should include training on the company's CSR policies and Chinese laws, regulations, and the central policies on farmers' land rights, as well as functional skills to deal with complaints. If the complaint is beyond their authorized response scope, they could still provide advice on what farmers' rights are governed under the law and refer them to a higher level of management. Even when farmers' complaints are related to government actions, they could help farmers arrange meetings with relevant government agencies.

The company could conduct an independent review of the most frequently reported complaints based on the phone log of the hotline and reports of forest guards, and invite the aggrieved farmers to the review meetings. The company can take immediate actions if the dispute can be resolved internally, or pass the complaint to local government with the company's suggested approaches if the dispute is related to government conduct.

Second, the company should establish dedicated offices of dispute resolution in each of its operation hubs in China to address farmers' complaints in a timely and effective manner. Upon receiving a summary of each complaint collected through the hotline and through field officers, the dispute resolution unit should conduct an investigation of each claim in an objective way and develop a solution in line with Chinese laws, regulations, and central policies as well as the company's own CSR policies.

CONCLUSION

In recent years, and especially under its new leadership, the Chinese government has further strengthened farmers' forest land rights to increase their asset value and to improve their long-term livelihoods. This policy shift presents new challenges to investors, particularly to those with high demands for rural land. Under such circumstances, ensuring proper land acquisition practices to enable all stakeholders, especially rural farmers and minority nationality people, to share and enjoy the benefits of growth should be a priority of every investor's operation.

APP has quickly expanded its Chinese operations over the past 20 years, due partly to local governments' thirst for investment, which has resulted in negative impacts on local peoples' land rights. APP can certainly draw lessons from its land acquisition practice and make corrections and improvements on its existing contracts to mitigate their negative impacts, while developing socially responsible policies and approaches for further expansion and future land acquisition. Designing its land acquisition program in line with a new central decision to give farmers more secure property rights to land will not only benefit a vast number of farmers, especially those in poverty-stricken mountainous regions, but will also help APP establish a socially responsible business model that both facilitates the company's growth and results in genuine improvements to the livelihoods of local Chinese communities.

ENDNOTES

- ¹ According to official statistics, the urban-rural income disparity increased from 1.74:1 in early 1985 to 3.1:1 in 2012. See the National Statistics Bureau. Statistical Bulletin on National Economy and Social Development for 1985. Available at http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20020331_15379.htm. And the National Statistics Bureau. Statistical Bulletin on National Economy and Social Development for 2012. Available at http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20130221_402874525.htm.
- ² See <http://politics.people.com.cn/GB/7546460.html>.
- ³ The authors have chosen to use the term 'land rights' in this paper to distinguish the rights that Chinese farmers currently have from either 'ownership rights' or 'use rights' in the traditional legal meaning. The term 'land rights' includes the right to possess the land, the right to use the land, the right to benefit from the land, the right to transfer the land for a period equal to or less than the contracting period, the right to mortgage, and the right to compensation when the land is expropriated by the government.
- ⁴ The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale (Document No. 10 of 2008).
- ⁵ APP-China. 2014. <http://www.app.com.cn/about/index/id/61>.
- ⁶ APP-China Sustainability Report 2010. <http://www.scribd.com/doc/75780730/APP-China-Sustainability-Report-2010>
- ⁷ APP-China. 2014. <http://www.app.com.cn/about/index/id/62>
- ⁸ A Chinese unit of area: 1 mu = 0.06666667 hectares.
- ⁹ APP-China. <http://baike.baidu.com/link?url=li3k0xkyl2Zu7WJR0rJ0c1wwG-uq6YR3YF1nNleUyxZA2v5loF-AZXycuQgmTC0k>.
- ¹⁰ PRC Const., art. 10.
- ¹¹ 1998 Land Management Law, art. 10.
- ¹² The 2007 Property Law, art. 59.
- ¹³ *Id.*, art. 60(i).
- ¹⁴ *Id.*, art. 59, stating “[f]armers’ collectively owned immovable and movable properties are owned by all members of the collective. Following matters shall be decided by members of the collective in accordance with procedures legally prescribed: (1) land contracting plan and contracting [village] land to units and individuals outside of the collective; ...”
- ¹⁵ After the decollectivization in the late 1970s and the early 1980s, the old collective structure – commune, production brigade, and production team – was abolished, and replaced with a new structure composed of township, administrative village, and villager-group. In present-day China, the vast majority of collectively owned real properties are owned at the administrative village and villager-group levels. In all villages we visited in Guangxi and Yunnan, collective forest land is owned at the villager-group level. Under the Organic Law of Village Committee, the village committee is an administrative body set up at the administrative village level. The committee consists of three to seven people elected by villagers aged 18 or above. See *id.*, art. 9. Most administrative functions of the villager-group, a successor of the production team under the commune system, are delegated to the village committee at the administrative village level, but real properties located within the villager-group boundaries are still owned by members of the villager-group according to the Property Law. Collective economic organizations may be at either the LEVEL OF administrative village or villager-group, with the function of “independently performing economic activities.” See the Organic Law of Village Committee, art. 5.
- ¹⁶ The Central Committee and the State Council Decisions on Speeding Up Forest Development, Document No. 9. 2003.
- ¹⁷ The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale, Document No. 10. 2008.
- ¹⁸ The 2002 Rural Land Contracting Law, art. 4.
- ¹⁹ The 2007 Property Law, art. 124.
- ²⁰ Document No. 9 of 2003; Document No. 10 of 2008.
- ²¹ Document No. 10 of 2008.
- ²² The 2007 Property Law, art. 126.

- ²³ *Id.*, art. 125.
- ²⁴ *Id.*, art. 129.
- ²⁵ *Id.*, Chapter III.
- ²⁶ The 1962 Sixty-Article Regulation for People's Communes, art. 40.
- ²⁷ The Supreme People's Court's Response on Citizens Only Having Use Rights Rather Than Ownership Rights to Foundation Plot (1986).
- ²⁸ Document No. 9 of 2003.
- ²⁹ Document No. 10 of 2008.
- ³⁰ *Id.*
- ³¹ The 2002 Rural Land Contracting Law, art. 22.
- ³² *Id.*, art. 23.
- ³³ The 2007 Property Law, art. 9.
- ³⁴ The Central Committee and the State Council Document No. 10 of 2008.
- ³⁵ The Central Committee and the State Council Document No. 9 of 2003; Document No. 10 of 2008.
- ³⁶ The Central Committee Document No. 18 of 2001.
- ³⁷ *Id.*, art. 33.
- ³⁸ *Id.*, art. 35.
- ³⁹ *Id.*, art. 61.
- ⁴⁰ The State Council General Office. Urgent Notice on Properly Resolving Rural Land Contracting Disputes. April 30, 2004.
- ⁴¹ *Id.*
- ⁴² The Third Plenary Session of the 17th Central Committee of the CPC Decisions on a Series of Key Issues Concerning Pushing Forward Rural Reform and Development, October 12, 2008.
- ⁴³ The Central Committee Document No. 1 of 2013.
- ⁴⁴ The State Forest Administration of China. "Notice on Further Strengthening Management of Transfers of Collective Forest Rights". Available at http://www.gov.cn/gzdt/2013-04/16/content_2378983.htm.
- ⁴⁵ The Supreme People's Court of the People's Republic of China. 2005. "Interpretation of Applicable Laws When Reviewing Cases Concerning Rural Land Contracting Disputes."
- ⁴⁶ The Supreme People's Court of the People's Republic of China. 2008. "Comments on Provision of Judicial Protection and Services for Pushing Forward Rural Reforms and Development, December 3, 2008.
- ⁴⁷ The 2002 Rural Land Contracting Law, art. 32. The law uses different terms to refer to leasing of land rights to a person who resides within the same village as the lessor does and leasing of land rights to a person who lives outside of the lessor's village. If the transaction occurs when both parties are within the same rural community that has collective ownership to the subject land, that lease is referred to as "zhuanbao," which could be literally translated as "transfer the contract." In contrast, when the lessee lives outside of the community, the transaction is termed "chuzu," which is commonly translated as "lease."
- ⁴⁸ The 2007 Property Law, art. 144.
- ⁴⁹ The Third Plenary Session of the 17th Central Committee of the CPC. Decisions on a Series of Key Issues Concerning Pushing Forward Rural Reform and Development. October 12, 2008.

- ⁵⁰ The Central Committee and the State Council Document No. 10 of 2008.
- ⁵¹ The 2002 Rural Land Contracting Law, art. 33.
- ⁵² *Id.*, art. 35.
- ⁵³ The Central Committee and the State Council Document No. 10 of 2008.
- ⁵⁴ The 2002 Rural Land Contracting Law, art. 37.
- ⁵⁵ The 1999 Contract Law, art. 52 (1).
- ⁵⁶ The 1962 Sixty-Article Regulation, art. 40.
- ⁵⁷ The Central Committee and the State Council Document No. 9 of 2003; the Central Committee and the State Council Document No. 10 of 2008.
- ⁵⁸ Guangxi Zhuang Autonomous Region People's Government Implementing Measures on Fully Pushing Collective Forest Reform. Available at <http://sys67.gxcic.net:8080/show.asp?id=8546&sk=1>.
- ⁵⁹ The Central Committee and the State Council Document No. 10, sec. 15.
- ⁶⁰ The 1998 Land Management Law, art. 15; the 2002 Rural Land Contracting Law, art. 48.
- ⁶¹ *Id.*
- ⁶² The 2002 Rural Land Contracting Law, art. 44.
- ⁶³ *Id.*, art 47.
- ⁶⁴ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forest land Rights, sec. 7 (issued on October 16, 2009). Available at <http://www.forestry.gov.cn/ZhuantiAction.do?dispatch=content&id=205357&name=lqgg>.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ The Central Committee and the State Council Document No. 9 of 2003, widely viewed as the document launching the forest land reform, explicitly requires collectively managed forest land, if not contracted to villagers, be converted into shares of stock to be allocated among all households in the village even if the land is not physically allocated. This clearly indicates the central recognition of individual property interest in collectively managed forest land. See the Central Committee and the State Council Decisions on Speeding Up Forest Development, sec. 13 (Document No. 9 of 2003).
- ⁶⁸ Local governments may have a position different from, or even completely at odds with, that of the central government in terms of corporate acquisition of rural land rights, and thus leave corporate investors with an impression that such corporate acquisition is welcome in China. It is important to note, however, that different views seem to suggest different policy agendas between the central and local governments.
- ⁶⁹ The Central Committee Document No. 18 of 2001.
- ⁷⁰ See Chen Xiwen. 2010. Participation by Industrial and Commercial Interests in Agricultural Operation in Large Scale and for a Long Time Should not be Encouraged." Available at http://www.cs.com.cn/xwzx/03/201008/t20100809_2543590.htm; Chen Xiwen. 2013. Leasing Land from Farmers by Industrial and Commercial Interests at Large Scale and for a Long Time Should not be Encouraged. Available at <http://finance.sina.com.cn/nongye/nygd/20130305/071114718384.shtml>; Han Jun. 2011. We Cannot Let Companies to Become the Main Force of Agricultural Operation. Available at <http://finance.qq.com/a/20111225/000719.htm>.
- ⁷¹ The State Council. Urgent Notice on Properly Resolving Disputes Concerning Rural Land Contracting. Available at <http://www.law-lib.com/lawhtm/2004/83854.htm>.
- ⁷² The State Council. Urgent Notice on Resolutely Banning Growing Trees on Basic Farmland. Available at <http://www.chinaacc.com/new/63/73/142/2006/7/zh263815483977600213725-0.htm>.
- ⁷³ The Central Committee of the CPC Document No. 1 of 2013.
- ⁷⁴ The Central Committee Document No 10 of 2008, sec. 8.

- ⁷⁵ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forest Land Rights, Sec. 11 (issued on October 16, 2009). Available at http://www.jxly.gov.cn/lyzt/lqgg/lgzc/200912/t20091222_42202.htm.
- ⁷⁶ *Id.*, sec 12.
- ⁷⁷ *Id.*, sec 13.
- ⁷⁸ The 2011 Guangxi Zhuang Autonomous Region People's Government Provisional Measures on Management of Transfers of Collective Forest Rights, art. 25.
- ⁷⁹ *Id.*
- ⁸⁰ The 2007 Property Law, art. 63.
- ⁸¹ *Id.*, art. 54 (4).
- ⁸² *Id.*, art. 61.
- ⁸³ 98% of the land is located in the mountains, with a population density of 45 people per square kilometer.
- ⁸⁴ This is a farming pattern that was widely adopted by minority nationality people in Lancang before APP's arrival. Under this approach, half of the village's land is farmed in a given year, while the other half is left unattended, growing naturally with wild grass and bushes. A rotation is conducted the following year, practicing a rotating swidden of the wild grass and bushes on the unattended half, while the other half is left unattended and uncultivated so that it may recover.
- ⁸⁵ Yunnan Provincial People's Government Notice on Provincial Leaders' Liason of and Pushing for Key Foreign and Domestic Investments. Available at <http://china.findlaw.cn/fagui/jj/23/59976.html>.
- ⁸⁶ In all villages we visited in Qinzhou, collective land ownership is determined at the villager group level, the lowest of the three levels of collective ownership: township, administrative village, and villager-group.
- ⁸⁷ In all villages we visited in Qinzhou, collective land ownership is ascertained at the villager-group level, the lowest of the three levels of collective ownership: township, administrative village, and villager-group.
- ⁸⁸ In the three-level administrative hierarchy in rural China, administrative village rides below township but above villager-group. However, because of the lack of administrative capability at the villager-group level, administrative village manages villager-groups administratively.
- ⁸⁹ During the collective farming period, collective forest farms were often formed in order to manage collectively owned forest land of multiple villages in a uniform manner. Each of the participating villages made a land contribution to the farm and received income from the farm operation in accordance with its contribution. Once formed, the farm had use rights to the pooled-up land while each contributing village retained land ownership. At the time of our interview in Qinzhou, all collective forest farms had been dissolved and the land contribution should have been returned to villager-groups.
- ⁹⁰ In two villages, farmers were told by the village leaders in 2013 that the rent was increased to 15 yuan per mu per year. However, by the time of our field visit in February 2013, farmers had not seen the increase.
- ⁹¹ It should be noted, though, that the FPIC principle was not adopted as APP's sustainability development policy until 2012.
- ⁹² Villager representatives are elected at a ratio of one villager representative for every 5 to 15 households within the villager group. See the 2010 Organic Law of Villager Conference, art. 25.
- ⁹³ However, we did not see a physical copy of the contract. The story in the text is an oral recap of what farmers experienced at that time.
- ⁹⁴ Because of the lack of non-agricultural opportunities in mountainous areas of Lancang resulting in negligible opportunity cost for villagers, they do not count their labor as a cost.
- ⁹⁵ In one of these four villages, farmers were told to contribute 1/8 of their rental entitlement to the village collective and the township government to cover the expenses for local involvement in measuring land for the APP acquisition.
- ⁹⁶ A forest ranger is a villager hired by APP as a contract laborer to watch over the APP plantation located in the village and prevent it from being poached.
- ⁹⁷ The 2007 Property Law, Chapter III.
- ⁹⁸ The 2002 Rural Land Contracting Law, art. 32; The 2007 Property Law, art. 128.

- ⁹⁹ The 2002 Rural Land Contracting Law, art. 33(1).
- ¹⁰⁰ *Id.*, art. 35.
- ¹⁰¹ *Id.*, art. 34.
- ¹⁰² *Id.*, art. 33(1).
- ¹⁰³ *Id.*, art. 37.
- ¹⁰⁴ *Id.*, art. 22.
- ¹⁰⁵ *Id.*, art. 19.
- ¹⁰⁶ *Id.*, art. 23.
- ¹⁰⁷ The State Forestry Administration. Notice on Earnestly Rectifying Problems Related to Forest Resource Management. 2004.
- ¹⁰⁸ The Yunnan Provincial Government Publicly States that ‘Selecting APP is Absolutely Correct.’ Available at <http://www.paper.com.cn/news/daynews/05012806.htm>.
- ¹⁰⁹ The 2002 Rural Land Contracting Law, art. 61.
- ¹¹⁰ *Id.*, art. 34.
- ¹¹¹ *Id.*, art. 57.
- ¹¹² The 1999 Contract Law, art. 52(5).
- ¹¹³ The State Forestry Administration Notice on Issues Related to APP’s Raw Material Plantations in Yunnan (SFA Document No. 4 of 2005); The Yunnan Provincial Government Publicly States that ‘Selecting APP is Absolutely Correct.’ Available at <http://www.paper.com.cn/news/daynews/05012806.htm>.
- ¹¹⁴ Investigation of APP’s Investment in Reforestation and Papermaking in Yunnan. Available at http://www.yn.xinhuanet.com/newscenter/2005-02/23/content_3765383_1.htm.
- ¹¹⁵ Joseph Eckert, ed. 1990. Property Appraisal and Assessment Administration. 231.
- ¹¹⁶ The 2002 Rural Land Contracting Law, art. 32.
- ¹¹⁷ *Id.*
- ¹¹⁸ *Id.*, art. 58.
- ¹¹⁹ The 2007 Property Law, art. 59.
- ¹²⁰ *Id.*, art. 60.
- ¹²¹ APP-China Forest Mission and Policies (on file with Landesa)
- ¹²² *Id.*
- ¹²³ For a more thorough discussion on rural women’s rights to collectively owned forest land, see Wang Xiaobei et al. Ensuring that Poor Rural Women Benefit from Forest land Reforms in China: Fieldwork Findings and Policy Recommendations. Available at http://www.rightsandresources.org/documents/files/doc_5585.pdf.
- ¹²⁴ The 2002 Rural Land Contracting Law, art. 48.
- ¹²⁵ *Id.*, art. 33 and art. 4.
- ¹²⁶ *Id.*, art. 35.

¹²⁷ While invalidating a portion of a contract that violates laws and regulations, Chinese laws recognize the validity of the other portion of the contract if that portion is legally formed. See the 1999 Contract Law, art. 56.

¹²⁸ The 2002 Rural Land Contracting Law, art. 34 and art. 37.

¹²⁹ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forest Land Rights, Sec. 11 (issued on October 16, 2009). Available at http://www.jxly.gov.cn/lyzt/lqgg/lgzc/200912/t20091222_42202.htm.

¹³⁰ *Id.*, sec 12.

¹³¹ *Id.*, sec 13.

¹³² The State Forestry Administration, *supra* note 134.

¹³³ At the time of our field research in Lancang, all trees in APP plantations were not yet harvested despite having reached maturity.

¹³⁴ The Central Committee of the CPC Decision on Several Major Issues in Deepening Comprehensive Reforms, adopted at the Third Plenary of the 18th Central Committee of the CPC on November 12, 2013.

¹³⁵ The Interest of Masses Is Not a Small Matter: Alerting Implication of the Wukan Incident. Available at <http://71bbs.people.com.cn/viewthread.php?tid=615154>. See also, Fengtai County of Anhui Province: Village Cadres Act as Real Property Developers. Available at <http://ah.people.com.cn/GB/channel2/16/200705/28/82009.html>. May 28, 2007; The Illegal Construction of Villas in Qinglongtou Village of Beijing City Once as a New Socialist Countryside Project. Beijing Times. April 27, 2007; Why Relevant Authorities Turn a Blind Eye to Yicheng's Problems. Jiangnan Times. June 23, 2007.

ANNEX: APP RESPONSE

APP RESPONSE TO RRI AND LANDESA REPORT ON ITS FORESTRY MANAGEMENT HISTORY IN QINZHOU, GUANGXI AND LANCANG, YUNNAN, CHINA

In February, and then in the summer of 2013, Landesa, supported by The Rights and Resources Initiative (RRI), and working with the Yunnan Academy of Social Sciences, undertook independent research into the background to APP China's acquisition and subsequent management of forestry assets in Qinzhou County, Guangxi, and Lancang County, Yunnan Province.

In September of the same year, APP China met with Landesa in order to better understand the issues of concern, and to provide further information to enable the researchers to complete the project. This led APP to establish an internal action plan to address the issues raised.

RRI have now published their full report "Large Scale Land Acquisition for APP Forest Plantations" in which they detail their findings, and make a number of recommendations.

APP's response:

Asia Pulp and Paper Group (APP) welcomes the RRI/Landesa report. It is comprehensive, and provides a strong platform for extending the work APP began in June 2012, when it published its "Sustainability Roadmap Vision 2020." This was followed eight months later by the launch of the company's Forest Conservation Policy (FCP), which is being implemented in partnership with The Forest Trust (TFT).

From this point APP began a journey towards becoming a sustainability leader, underlined by its commitment to transparency and open reporting. This began with the FCP announcement in which it committed to an end to the use of natural forest wood in its operations, as the company moved to complete reliance on plantation timber and certified sustainable sources.

Included in the FCP was a commitment to transparent processes for conflict resolution with local communities as well as the implementation of the principles of Free, Prior and Informed Consent (FPIC) for all new developments.

Landesa and RRI's research was being carried out in parallel with the first stages of APP's Forest Conservation Policy, and the publication of the resulting report now is timely as the company turns its attention more closely to how the FCP, and in particular its social policies, can be implemented in China, as well as Indonesia.

As highlighted in the RRI report, APP is today facing challenges around its community leased land in China. At the time, APP was actively encouraged to establish plantations in the interests of supporting poor and remote rural communities, which it did until 2005. All APP's plantations in Lancang were granted certificates of forest and woodland tenure rights.

However, with rapid economic development and the consequent changing requirements of the relevant authorities, these same processes are now shown to have their limitations. On the other hand, the local traditional rotation farming systems, as the interviewees in RRI's report explain, had no written land document for such landholdings. These factors have led to the challenges faced today.

APP's policy is to deal with investigative reports such as this constructively, to understand the nature of the impacts and what kind of affirmative action is required, then to put in place a process that deals with the situation. We also want to ensure that we learn from the experience. This is the approach the company will adopt in China, irrespective of the original causes and circumstances.

Following feedback and meetings between APP and Landesa early in 2014, APP has developed an action plan designed to address the issues and challenges raised within the RRI report. This action plan is being integrated into APP's broader social efforts in China under the company's Forest Conservation Policy.

Progress on a number of these activities has already been made, including; strengthening the application of FPIC in any future land acquisition, mapping social conflicts, FPIC training and an FPIC pilot programme, and improved mechanisms for stakeholder communication, consultation, and feedback.

In order to build robust solutions that recognise the importance of comprehensive dialogue with all concerned stakeholders, APP has formed a multi stakeholder working group. This has been established to tackle challenges around expanded reserve areas in Hainan and is currently working towards informed solutions to the challenges around leased land in China.

The company is also in the process of establishing two pilot sites at which lease arrangements will be reviewed, with a view to understanding how best to address the issues and solutions across all of APP's plantations in China. Work at these pilot sites will focus on community engagement with a view to reaching multi stakeholder solutions to the challenges present.

APP recognises that these are first steps and that, as with the wider FCP, there is a longer journey ahead. Throughout this process, the company welcomes feedback from stakeholders everywhere, and will publish updates on its progress.



Aida Greenbury
Managing Director, Sustainability and Stakeholder Engagement
Asia Pulp & Paper

APP SOCIAL ACTION PLAN IN CHINA

Date 2014	Activities/Milestones
September	APP China Forestry (ACF) to draw up a remedial action plan based on the findings of the review in Yunnan and Guangxi.
October	ACF will build the capacity of its team working on social conflict related issues.
October	Implementation of a Community Engagement Trial Project will commence in one business unit.
November	ACF to implement new Standard Operating Principles (SOP) on Land Acquisition, including newly added FPIC principles and improved rental determination mechanism.
December	Expanded FPIC trainings in Yunnan and Guangxi Business units will be finalized.
December	ACF to develop and publish a revamped Social Conflict Management Protocol and Grievance Policy
April 2015	Training for Yunnan and Guangxi business units on Social Conflict Management to be finalized.
October 2015	ACF to finalize social conflict mapping across all its business units.
December 2015	The first round of training for all ACF business units on FPIC and Social Conflict Management will be finalized.



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