



## REVIEW

# A Discussion for the Protection of the Environnement in the Law of Planification in China

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### ABSTRACT

This article aims to answer the question that if the law of planification of China, really takes account of the objectives of environmental protection. The answer is based on, first of all, the reform of system of land ownership (direct link of the development of urbanization). This article cracks the problem by two approaches: the state and collective property right. The first part of the analysis is macro-perspective, i.e., the course of land reform and the land users. In general, the state remains the sole owner of all the land and delegates the local governments to manage the use of land in China. However, the high interest undermines their roles, and degradation of environment in the process of urbanization continues. Based on this observation, we analyzed their administration, i.e., who are the actors and how the powers are shared. The lack of transparency and independence is in its structure, i.e., they have ambitions to have a good protection but the conflict appears frequently. In the further part, micro-vision was employed. We focused on the regulations of planification, procedures and formalities that is deeply involved. In fact, we find that the volume of law was expanded and a need of consolidation is urgent for the coherence, accessibility and understanding of law. Then it follows the analysis of two typical procedures: the procedure of environmental assessment as well as participation. These procedures are the practical implementation of the consideration of the environment. The fact is that rapid urbanization resulted in a reconfiguration of the urban space, and the appearance of a variety of interests. The degradation of environment, coupled with the importance of urbanization has become a challenge to governance. People realized more and more issues related to housing, welfare and citizenship. This forces the government to change their policies and acts. From different points of views- historical, political, administrative, legal and social- this research determines how a better environmental protection can play in law of planification. The reforms are envisaged, and there are still problems: the harmonization and consistency of the regulations, the clarity of the law for his efficiency and law security, the improvement of the process. Contrary to what is received, the government has intention to solve this question, as demonstrated by his consistency to innovation and reform in the field. At the present, planification, rather than a method of protection, works for the growth of the economy. Due to the lack of effective regulation, the real consideration of environment is still very limited.

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## 1. Introduction

In rural and urban areas, China's economic reform can be achieved through profound reform of the land tenure system and re-evaluation of the land use right. This has also had a profound impact on the phenomenon of urbanization.

The purpose of the first part is to describe the process of land reform, which is the direct link of China's urbanization development, and to understand the particularity of China's urban management with reference to the overall framework of environmental protection.

In order to effectively protect rare and important land resources, the goal of the Chinese government is to place all land under the public property system and establish a priority system for the management of these land. However, due to decentralization and the fragmentation of the government in this regard, the government's ambitions are considered to be severely constrained.

## 2. Land Reform, the Development and the Challenge of Urbanization

This paragraph will introduce the progress of China's land reform, and explain how local governments use the transfer system in a pragmatic way to promote local economic growth. The rapid development of urbanization and the deterioration of environmental problems occur.

If the urban planning law can be defined as "a set of rules of spatial distribution and spatial planning"<sup>[1]</sup>. If it wants to provide a framework for the physical transformation of urban organizations<sup>[2]</sup>, It is evident that all issues related to land policy, whether it is the status of land, the right to use or all procedures involving land, fall within the purview of the Commission and are priorities<sup>[3]</sup>. However, the precondition for any issue is the identity of the land rights holder. As long as we study the history of China's modern urbanization process, it is obvious that this phenomenon is mainly due to the separation of land use rights. The most famous example of China's new political and economic urbanization direction is the establishment of a « special economic zone » (SEZ). "The urban world did not immediately benefit from China's reform," said Chinese scholar Thierry sanjuan in a book on the close relationship (and necessary link) between rural land ownership and urban development, This is because "priority is given to agricultural exploitation, followed by special economic zones (such as Shenzhen) established in 1980, and finally economic and technological development zones around coastal cities opened in 1984"<sup>[4]</sup>.

Compared with many other countries, land is a strategic asset. The scarcity and natural talent of land are

more worrying in China than in other countries for many reasons. On the one hand, the importance of land lies not only in that it is a prerequisite for people's food self-sufficiency, but also in that it is one of the important pillars of the socialist regime policy in the first place<sup>[5]</sup>. So it's no exaggeration to say that land is an ideological motive. On the other hand, China's rapid economic growth in recent decades, at the same time, governments at all levels have almost confiscated arable land to meet the demand of increasing urbanization building heat. Therefore, the development of the city is shocking and chaotic, occupying too much land, especially arable land, causing serious waste. As a precious and rare property, it is not surprising that China's top political body regards land as a strategic asset.

## 3. Governance of Urbanization

The second paragraph will analyze the urban management, the way of power distribution, the administrative structure and its organization, in order to understand its complexity and dysfunction.

Considering the relationship between these issues and our current issues, as well as the "governance" or "good governance" issues in urban planning (Chinese: "you xiao zhi li" or "shan zhi"), it is very important to think about these issues. Improving urban environment can solve some problems in the process of urbanization, such as environmental degradation. However, in the context of social and economic changes, what does urban management mean in China? What is the distribution of power ("who is doing what")? If urban planning requires permits and institutions, how are they organized? Who decides who has priority? Is the structure transparent and effective? Has the government considered the new rights and environmental protection objectives of urban planning? Can the French experience inspire us?

These are issues that are often raised in urban management and legislation, so the key issue of decentralization cannot be ignored. Because, a priori, "when all or part of the authority of urban planning is delegated, the size of (...) basic units varies from state to state (for French towns; for Chinese towns)"<sup>[6]</sup>. Not only the economy, but also the whole society needs to breathe within the policy framework of the Maoist era, and decentralization is essential. But can decentralization of urban management be so widespread in countries like China? Do we have to do this? What will be the consequences of such decentralization and its future prospects? In fact, China has never implemented a system of local autonomy similar to that of European countries.

On the basis of this series of problems, and considering the impact of these problems on environmental deci-

sion-making, we will discuss two aspects: how to allocate the authority of urban planning and the administrative structure of this aspect.

As for the distribution of authority (vertical), the first thing we need to discuss is the territory / administrative organization, that is, the “physical context” of urbanization influenced by Confucius’ theory. In recent years, the system has been characterized by concentration and classification, with major adjustments (such as a significant increase of SEZ). After Deng’s decentralization, local authorities, especially urban and regional authorities, gained power transfer in urban planning. In addition, in order to protect the territory from the impact of informal urbanization, short-term private interests can damage public interests (such as environmental protection). We believe that the distribution of authority between state and local governments in this area is particularly important.

Secondly, the administrative structure of urban planning (“actors of urban planning”). Due to the high level of government structure, reflecting the core idea of the government - peripheral Confucianism, these institutions have experienced some changes at different levels, and stakeholders still lack transparency and clear commitment. The issue of “big government” involves both the central government and the local government. Cooperation between these levels exists, but does not prove its effectiveness, and the environment is not heavy in decision-making.

#### 4. Urban Planning Regulation

Land use planning and spatial use and projects impact can only be carried out in a forward-looking and progressive manner. In fact, land use and building placement are related to specific urban regulations at the national and local levels, which aim to ensure environmental protection in line with sustainable development. Although, the complex

depositio, sometimes repetitive and sometimes contradictory texts forces users to decrypt laws and hinders the improvement of the quality of urban planning rights.

With regard to urban planning procedures related to environmental protection, including assessment and participation procedures, which are provided for in legislation that takes into account legal, social and economic issues related to sustainable development. However, in our research, we can consider the gap and complexity between the formulation and implementation of these rules.

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