

Chapter 4

Policy Processes

4.1 Legislative Procedure

When a proposal for drafting a law is put forward at the national level, the preparatory stage starts. This stage includes the following steps.

- Setting up a specific organisation to draft the law—The organisation consists of the relevant state departments, non-government organisations (NGO), research institutes, specialists, and scholars
- Detailed investigation and analysis of the problems, seeking of opinions and experiences from all concerned
- Collecting and studying relevant documents from home and abroad
- Drawing up the first draft, soliciting opinions on it from the relevant people and organisations, amending it, and forming a working draft
- Raising a formal proposal for legislation and submitting the draft law
- Discussing the draft law—Firstly, it is submitted to a committee of NPC for examination and approval, and this includes modifying and amending the proposal. Secondly, it is considered by the plenary session of the legislative organisation.
- Adopting the law proposal—The law proposal should be passed by more than a half of the members of the SCNPC.
- Promulgating the law—The legislative organisation or the President publishes the law.

The draft is then submitted to the NPC for legislation. This stage includes the following four steps.

In the Constitution, it is clearly stated that provincial governments also have the right to set local laws and regulations. The formulation process of local legislation always includes investigation, planning, drafting, examination, voting, and publication, and revision, approval, or abolishment.

In the drafting of local legislation, the first task is to make clear the purpose; the sec-

ond is to identify the main problem and to find a solution through investigation; and the third is to examine related laws and regulations. The following steps are undertaken.

- Advancement of local legislation motions—Units having the right to raise motions include the praesidium and the Standing Committee of the People's Congress, various special committees, and the government at the same level. Parties, offices, organisations, and individuals do not have this right, but they can make suggestions. Local legislation motions and policies are submitted to the local People's Congress or its Standing Committee.
- Examination of local legislation motions in local People's Congress bodies or their Standing Committees
- Adoption of local legislation motions by local People's Congress bodies or their Standing Committees
- Promulgation of local laws and regulations by local government or the People's Congress

4.2 Land Policy

4.2.1 Changes in Law on Land Administration

The Law on Land Administration is at the centre of land policies. With the development of society and the economy, and hence the emergence of new problems, it has experienced changes that have influenced land policies.

In 1998, the newly revised Law on Land Administration was promulgated. On land-use change, the previous policy stated that the area to be changed should be examined and given limited approval. Now there is a policy of regional land-use control. This policy change aims to prohibit illegal occupation of cultivated land by disassembling the process of examination and approval.

In order to manage land more clearly, the new law classifies land into three types: land for agricultural use, land for construction use, and land so far unused. Land-use management should be based on overall land-use planning. Government at various levels should work out overall land-use planning according to the long-term development plan of the national economy and society, the demand for land resources' readjustment and environmental protection, and the land quality and various other needs. According to the overall plan, agricultural use of a particular piece of land can be prescribed. The prescription cannot be changed once it is confirmed.

Given the population pressure, the government has realised that farmland conservation is important for national food security. Farmland conservation has an individual chapter in the new Law on Land Administration. The government encourages individuals or collectives to reclaim unused arable land. It is prohibited to leave land unused. Regulations aim to prevent land from degeneration and to conserve farmland.

Another important change in the new Law on Land Administration stipulates: "*The duration of a farmland contract is lengthened by 30 years. Farmer's use rights to contracted land are protected by law*". During the contract, adjustments in land-use rights among contractors are permitted if assented to by two-thirds of the members of the villagers' committee or two-thirds of the representatives of the villagers and also by the agricultural administration agencies of the county's government. Villagers can participate in land administration according to the new law.

4.2.2 Changes in Land Development Policy

China is facing a conflict between a huge population and limited farmland. Rapid

industrialisation and urbanisation have occupied and will occupy more and more farmland. At present, 26,000 ha per year are built upon and this is expected to increase to 33,000 ha per year.

In 1953, the State Council approved and issued 'Temporary Stipulations on Land Requisition for Construction'. It stipulates the following principles.

- The uses of requisitioned land should be for the construction of national defence projects, factories, mines, railroads, transportation and water conservation projects, municipal engineering, and other economic and cultural facilities.
- The development should be indispensable and the local people's immediate or vital interests must be considered.
- Compensation for requisitioned land should generally equal the total production value of the land over three to five years. Assets on the developed land should also be compensated for at a reasonable price.
- Local farmers whose land is requisitioned should be resettled.

In 1982, the third 'Regulations on Land Requisition for Construction' were issued. The significant changes were as follow.

- Land compensation should equal 3-6 times the year's output value of the requisitioned land. This should be calculated according to average yield in the past three years and the price stipulated by the state.
- The provincial government stipulates the compensation for young crops and possessions on the requisitioned land.
- A development fund for new vegetable plot reclamation should be paid if vegetable plots are to be requisitioned.

- Each agricultural labourer whose land is requisitioned should receive a subsidy equal to two or three times the year's output value of the requisitioned land.
- The sum of land compensation and consolation subsidy should not exceed twenty times the year's output value for the requisitioned land.

Land development policy has played an important role in farmland conservation and the effective use of non-agricultural land. However, there are some problems. Compensation, calculated according to the value of agricultural products, is low compared to industrial products. In addition, the present policy neglects the future generation's demand for land in calculating the compensation. It conceals the true value of land and makes it less valuable. The amount of farmland will continue to decrease greatly if the price does not reflect its true value.

At present, the administration of land requisition remains in comparative disorder. There is no national decision-making procedure for compensation of requisitioned land and resettlement subsidy, and local government usually determines the compensation. The present method of land expropriation is mandatory and does not embody the participation of local people. In general, the farmers receive low compensation.

In order to mitigate the contradiction between population and land and to improve land ecology, the government has made a series of policies on land rehabilitation. These policies have made progress. However, the land rehabilitation rate is still low. At the end of 1994, for example, the rates of rehabilitation and utilisation amounted to only nine per cent of the total excavation and collapsed areas and seven per cent of the total of open-mining area. Recently, these rates increased to 22

and 33 per cent respectively. However, they are still much lower than those of most developed countries, where land rehabilitation rates are generally higher than 50 per cent.

The rehabilitation projects often have a shortage of investment and lack effective channels to raise capital. The price of mineral products does not include the rehabilitation cost. The principle "*whoever destroys the land should be responsible for its rehabilitation*" has no concrete measures to help enforce it. Small mining enterprises, in particular, lack the ability to rehabilitate destroyed land. In addition, there are no standards to assess if rehabilitation is appropriate. There is no stipulation on the duration of rehabilitation, and on inspection, checking, and acceptance.

Large-scale mining is one factor leading to land degradation. The state should make stricter laws and policies to control mining for short-term benefit and to promote rehabilitation of the land mined.

4.3 Policy Implementation

4.3.1 Implementation of Environmental Policy

The current Law on Environmental Protection is not treated as one of the national fundamental laws and, hence, has little force in the NPC (Wang Jin *et al.* 1998). The application of the Law on Environmental Protection places priority on regulations such as air pollution prevention and cure. The Law on Environmental Protection was formed in the planned economy of the past and has not been adapted to the market economy of today. The most important problem is how to deal with the relationship between the regulations on environmental protection

and resource conservation and the Law on Environmental Protection.

In China, the laws on environment, resources, and land are separate, and different administrative departments carry them out. There is no synthesised law of natural resource conservation nor a unified administrative institution. Regarding land, although there also is no comprehensive law, there is a complete system of land administration that includes land investigation, assessment, use planning, research, and macro-administration, as the core. This situation means uncertain authority and responsibility and causes chaos in administration between departments. It makes it difficult to manage, develop, utilise, protect, and renew the environment, resources, and land as a whole.

Besides implementing and executing laws and regulations at the national level, local governments issue local stipulations on environmental protection. Particular units, e.g., environmental protection station or city construction office, are responsible for implementing national environmental laws and policies. Local legislation and policy generally pay greater attention to prevention and cure of pollution and less to natural resource conservation. They pay little attention to procedural legislation; and more to punitive legislation. Some local environmental legislation lacks consideration of local characteristics and only repeats national environmental law. Problems such as being complicated and confusing with non-standard wording, imprecise structure, self-contradictory content, and out of keeping with national environmental legislation make laws and policies difficult to implement. Moreover, the most important problem is the low degree of public participation in the process of forming environmental policy. People's awareness of their rights and their legal knowledge is weak.

4.3.2 Implementation of Agricultural Policy

Although the land contract responsibilities system has brought about a boom in the agricultural economy and rural development, problems still exist. Farmers worry that land policies are not stable, although the duration of land contracts has been lengthened by another 30 years. They do not manage their land whole-heartedly or invest in it. On the contrary, they use chemical fertilisers and exploit the land to obtain high yields and maximum profits during the period of contract. They do not consider whether their land use is sustainable or not.

The land contract is based upon the size of the population or the ratio of the population to workers. A single household does not get a complete farm; every household is allocated patches of land in order to maintain equality. Complete fields are broken up. Farmers have to work many small patches, making it inconvenient to manage the land. It is difficult to establish economies of scale.

The disparity between farmers is great. Some farmers receive good education, master advanced agricultural knowledge and technology, and can make money. Some farmers are rich so have the capacity to invest more in their land. They tend to manage and conserve their land well. However, some farmers lack scientific knowledge. They use traditional methods to manage their land. They lack capital for investment. They have lower yields and less benefits. The poorer they are the more they depend on the land. When their land is exhausted, they open up new land on the mountains that leads to soil erosion.

After land is contracted, farmers should have the right to plant any crop they

want. However, some departments interfere. For example, the Tobacco Bureau of Luquan County, a local government department, made a contract with local farmers in 1998 for planting flue-cured tobacco. The contract stipulates that every household plant about 0.33 ha of flue-cured tobacco, and the Tobacco Bureau is responsible for purchasing these products after harvest. However, the Tobacco Bureau has a contrary purchasing policy. It lowered the price and grading of tobacco when purchasing from farmers. Local farmers were dissatisfied and accused the Tobacco Bureau of breaking the contract, but to no avail. Cases like this not only increase farmers' suspicions about agricultural policy, but also lead to changes in land use.

The Land contract responsibility system also faces the influence of the 'Domicile Control System (DCS)'. The DCS separates the urban population from the rural population. This policy limits freedom of movement from the countryside to the town or city. Surplus labour in the villages can only do part-time work in the city. In addition, benefit differences mean that farmers receive a lower income than urban inhabitants. Farmers want to leave the village and go to the town or city to make money. Their lands are put aside, or are managed by other people in an extensive way. The DCS and the situation of more people and less land results in part-time agriculture, which is adverse to effective land use and conservation.

Although eco-farming and sustainable agriculture are fashionable and relevant policy exists, and although the Agricultural Bureau of Luquan County declares that eco-farming has been practised for several years, most farmers do not know about these concepts. This kind of separation between policy and farmers is not uncommon.

Eco-farming advocates less use of chemical fertiliser. However, many farmers in Luquan County are using more and more chemical fertiliser. A major reason is the large acreage of flue-cured tobacco. According to a local farmer: *"We are using more and more chemical fertiliser. The fertiliser investment makes up one-third of total expenditure of the whole family. The cropland also seems to be dependent on chemical fertiliser. If you do not put enough fertiliser on the land, the yield will be lower and lower."*

In talking about the influence of chemical fertiliser on soil structure and underground water, local farmers express the opinion that more chemical fertiliser is not good for soil and underground water (the latter is an important source of drinking water). They say: *"But we have no choice. We have limited farmlands that cannot produce enough grain for us without higher fertiliser input."*

The first task of most people in rural China is production of enough food for survival. Although farmers are aware that sustainable agriculture and eco-farming are good, and are conscious of the harm caused by chemical fertiliser and pesticide use, they have to choose between survival and sustainable development. If policies do not match the actual situation, farmers do not adopt them.

The government has emphasised policies for advancement of agricultural technology and education. However, like the eco-farming policy, they are not implemented and do not actually benefit farmers. Few new technologies—except fertiliser, pesticides, and plastic film—are accepted by local farmers. In the process of policy implementation, one basic fact was neglected: the majority of farmers only had primary-school education and many are illiterate. Although the government has made efforts to improve farmers' knowledge, they

are too busy working and are not interested in literature and scientific knowledge, not to mention articles of law and policies.

4.3.3 Implementation of Forest Policy

Forestry policies are often changed. Recently, a new national forest law has been issued and principles for implementing it are being discussed in detail in the provinces, especially in provinces where there are large areas of forest such as Yunnan. Methods for Forestry Land Administration in Yunnan Province have been issued and relevant policies have been established through co-ordination between various authorities. A special department of forestry policy and regulation was established in 1995 in Yunnan Forestry Bureau. Although some conflicts between agencies exist, the provincial government co-ordinates relevant work, making it easier.

In the process of executing policy and regulation, local officers often protect local vested interest so that policy is distorted. Lawbreakers are usually businessmen. Although the state and provincial government try to manage the timber market, businessmen often bribe officers in order to obtain priority in the timber trade. Luquan County has more than 40 wood factories.

About 15,000 people are responsible for forest policy implementation in Yunnan Province. They compose a strong force and should be a guarantee for implementation. However, they face many difficulties. The story of Luquan County may illustrate the situation.

In Luquan County, the majority of land is mountain and hillside. The main factors causing land degradation are reclamation of steep slopes and deforestation. Although Luquan government has issued

provisions on forest administration and there are many fines that should make it easy to enforce the provisions, the phenomenon of cutting the forest and cultivating the steep hillsides does not disappear completely. The main reasons may be the shortage of forestry staff and the difficulty of their work.

In Pingshan Township, for example, the forest station is responsible for all work related to forestry administration. The station has 24 staff to administer the forestry affairs of 103 villages and 169 sq.km. of forest. Staff have to go to the majority of villages on foot because of poor road conditions. While inspecting the forest, they often face violent resistance by lawbreakers, sometimes running into danger. The forest station hired one person for each office (the basic administrative unit in rural China) to take responsibility for forestry supervision. Each officer has to check the forest and report illegal felling to the forest station. Li Jinshen, who is 26 years old and takes responsibility for protecting the forest of the area administered by Yanwa Office, told us: *"This job is arduous and it is easy to displease the people who break the policy or stipulations. Of course, the wages are too low."* Lower wages weaken the enthusiasm of forestry staff.

The process of making and enforcing policy should include the participation of local farmers. However, local farmers hardly ever participate. They say: *"We have no choice because this is policy"*, while they continue to be discontented with current policy.

The current policy is made 'from the top' and generally considers macro-problems of the whole nation rather than local conditions. They are often hard to implement at the local level. Only policy that is made 'from the bottom up' can be trusted by farmers and arouse their zeal for active implementation.

4.4 Policy in Practice

Usually there are strict articles and sections in local policies and stipulations, their implementation is weak, however. This reduces the operational ability of the policy and gives opportunities for both users and administrative agencies to extract private benefits.

For example, although the 'Provisions on Environmental Protection in Yunnan Province' stipulate that all lawbreaking behaviour will be fined, no concrete quantitative standards are identified. 'Enforcement Method of Rewards and Penalties for Provisions on Environmental Protection in Yunnan Province' stipulates a certain scale for imposing fines. If the circumstances are serious, for example, lawbreakers will be fined from 1,000 to 30,000 *yuan*. However, lawbreakers bribe the staff because supervision is weak. The result is often that the lawbreakers carry on breaking the law and only pay a small fine.

In China, the legal system is not completely independent of political and administrative intervention. Therefore, the role of law is weakened and such phenomena as 'contempt for law' and 'substitution of power for law' frequently happen. Although there are many laws preventing land degradation, it is still severe. One of the main reasons is that the laws are not followed. As in the whole of China, several departments, such as forestry, agriculture, environment and land administration, are concerned with land degradation. There is no special department. Estimation and evaluation are often made intuitively and approximately according to rough secondary data and materials. Contradiction and conflict between different departments are inevitable. YPG has appointed a vice-provincial governor to co-ordinate the interests of each department. This is a typical case in

which the higher leader substitutes authority for the law. It is extremely difficult to study the policy-making and implementing process because there are so many hidden agendas behind the policy.

4.4.1 Local People in the Policy Process

In practice, local farmers are not only the main receivers of policy, but also the direct link between policy and the environment. The majority of local farmers express great zeal for good policies that bring them benefits but also show discontent for inappropriate policies. The main concerns of local farmers are "to save more money, to earn more money, and to live in a more comfortable manner". One farmer said "We learn various laws and regulations, but we do not consider these laws most of

the time, we carry on as we usually do." He continued "Every farmer has 0.13 ha of land for food crops. However, almost every household has opened up land on about 1.3 ha of mountain and for various purposes." When talking about energy, he said "There are so many trees in the mountains. It is nothing for us to fell some trees for fuelwood." Activities of local farmers have a direct impact on land degradation/improvement.

When talking about policy implementation, a local leader said "Policy-makers are not tired when they make policy but are too tired to enforce these policies. Too many policies come from various upper agencies. But we must execute them as a whole. The cadres at the basic level are responsible for too many things, even various household affairs."