

Access to Justice and Social Unrest in China's Countryside: Disputes on Land Acquisition and Compensation

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A major challenge for China is the frequency of so-called 'mass incidents' or protests that have been on the rise in recent years. Many such incidents are the result of forced expropriation of farmland by local government authorities for a wide variety of purposes, including the goal of industrialization of the economy. This article examines the challenges faced by rural citizens to access formal systems of justice while seeking a legal remedy. Why are formal systems of justice not effective in settling disputes on land expropriation in China? What are the obstacles faced by landless farmers in accessing justice, and how can such obstacles be overcome? We examine existing regulations for settling compensation disputes in China and discuss several concrete examples from the field in order to identify numerous institutional challenges. These include a very demanding applicant requirement, ambiguous provisions such as no time limit for compulsory mediation, and the inability of the petitions system to address land dispute cases. We argue that the adjudication system itself is an obstacle for farmers who wish to seek an administrative or legal remedy. The political, administrative and judicial authorities in China prefer the maintenance of strict and specific norms rather than facilitating more adaptable and feasible alternatives. Without a major overhaul of current dispute settlement mechanisms, the number and frequency of severe social conflicts between farmers and local governments will continue to increase. Major reforms are required to better protect the rights of landless farmers and other citizens whose properties have been expropriated.

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INTRODUCTION

Numerous challenges face China as it enters a fresh era of Communist Party rule with the appointment of a new group of leaders in 2013. Among the foremost of such challenges is the frequency of so-called 'mass incidents' or protests that have been on the rise in recent years, with an estimated 180,000 incidents occurring in 2010 alone.¹ A large majority of such incidents are the result of rural grievances arising from forced expropriation of farmland by local government authorities for a wide variety of purposes, including the goal of industrialization of the economy.² Rapid economic development, combined with high population density, has created a very high demand for rural land to be used for urban expansion and infrastructure projects. This has resulted in the widespread use of compulsory land acquisition by the state, often with insufficient compensation.³ Indeed, it is now well acknowledged that 'the biggest threats to farmers' land rights come from the government in the form of land takings and land readjustments'.⁴ And a recent survey claims that local governments, on average, expropriate land from approximately four million rural inhabitants every year.⁵ In the land expropriation process, there is a constant, and perhaps an in-built, tension of meeting the demands of continued economic growth in China while at the same time protecting the rights of rural inhabitants and farmers to their traditional way of life and livelihood practices. However, aggrieved individuals seldom access the justice systems of the state to lodge complaints and settle disputes. An illustrative example is Wukan village (in Guangdong province), which attracted national and international attention in September-December 2011 when villagers protested, for over three months, the arbitrary transfer by the village party committee of large amounts of communal land to private investors for industrial development. Since there are many such examples of social unrest in the Chinese countryside – a large number of these related to forcible land grabs – we examine the challenges faced by rural citizens to access formal systems of justice while seeking a legal remedy. Why are formal systems of justice not effective in settling disputes on land expropriation in China? What are the obstacles faced by landless farmers in accessing justice, and how can such obstacles be overcome? The empirical material for this article is based on a review of official rules, regulations and cases, and secondary

¹ Landesa, Summary of 2011 17-Province Survey's Findings (2011), <www.landesa.org/news/6th-china-survey> (accessed 16 April 2013).

² Xin Ru et al. (eds), *Society of China Analysis and Forecast* [in Chinese] 2012, pp. 293-294.

³ Jun Han (ed.), *Survey on China's Rural Land Issues* [in Chinese] 2009, p. 20.

⁴ Keliang Zhu and Roy Prosterman. 'Securing Land Rights for Chinese Farmers: A Leap Forward for Stability and Growth', in: *3 Cato Development Policy Analysis Series* (2007), p. 1, at p. 5.

⁵ Landesa, 'China's Farmers Benefiting from Land Tenure Reform' (2011), <www.landesa.org/wp-content/uploads/2011/02/Landesa-17-province-survey.pdf> (accessed 31 April 2013).

literature and news articles published within and outside China. We have, in particular, followed closely the public discourse in China on the protests and subsequent elections in Wukan village in 2011–2012, and conducted in-depth interviews in 2013 with groups of rural inhabitants from Yubei district in Chongqing regarding their specific complaints and experience with mechanisms for judicial redress.

LAND ADMINISTRATION LAW AND THE SEEDS OF SOCIAL UNREST

China has a dual system of land governance and management. The Land Administration Law (last amended in 2004)⁶ provides that the foundation of the country's land policy is the rational use of land on the one hand and the effective protection of cultivated land on the other (Article 3). Land is classified into three main categories: agriculture, construction and unused, and the state's aim is to strictly restrict the conversion of agricultural land for construction purposes while providing 'special protection' to cultivated land (Article 4). Chapter II of the Land Administration Law contains provisions related to ownership and land use rights. Land in urban areas of the country is owned by the state; while in most rural and suburban areas (including house sites and private plots of land) are collectively owned by peasants (Article 8). Peasants do not own land, but have usage rights based on the so-called 'household responsibility system' with a 30-year lease.⁷ Collective ownership at the village and town levels is operated and managed by village committees or the area's rural collective economic organization (Article 10). This categorisation of ownership has been termed 'tricky'⁸ since the 'deliberate institutional ambiguity'⁹ allows land to be controlled by a small group of village cadres. Even when ownership is relatively well established, collective land ownership rights are incomplete. For example, collectively owned rural land cannot be traded freely, leased, or transferred like state-owned land.¹⁰ In some cases, the law

⁶ <www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383939.htm> (accessed 15 May 2013).

⁷ Established in 1978, the household responsibility system reallocated collective agricultural land to individual rural households, giving them relative autonomy over land use decisions and crop selection. According to Art. 20 of the Law on Land Contract in Rural Areas, the period of contract is thirty years for arable land, thirty to fifty years for grassland ranges, and thirty to seventy years for forestland ranges. However, almost 29 percent of rural households do not possess a land use certificate or land contract (Landesa Report, 'Findings from 17-Province Survey of Rural Land Rights in China' (2011)).

⁸ Louis Putterman, 'The Role of Ownership and Property Rights in China's Economic Transition', in: 144 *The China Quarterly* (1995), p. 1047, at p. 1052; Thomas P. Bernstein, 'Instability in Rural China', in David Shambaugh (ed.), *Is China Unstable? Assessing the Factors 2000*, pp. 93–110.

⁹ Peter Ho, 'Who Owns China's Land', in: 166 *The China Quarterly* (2001), p. 394, at p. 400.

¹⁰ Land Administration Law (2004), Arts. 46, 47, 48, 55.

provides for specific usage; for example, 'construction' land owned by collective economic organizations can only be used for building township enterprises, houses for villagers or for public welfare services. Consequently, any private enterprise, state organisation or individual that requires land for construction purposes must apply for state-owned land.¹¹ However, since the availability of state-owned land in rural areas is limited, the only way to transfer collectively owned land to the state is through a process of expropriation.

China's Constitution originally provided that 'The state may in the public interest take over land for its use in accordance with the law' (Article 10). This was revised in 2004 to state that: 'The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned'. The exact content of 'public interest' and the criteria for initiating a process of 'expropriation' of rural land are, however, neither defined in the Constitution nor in any other piece of legislation. There is indeed a provision that defines public interest in the Regulation on the Expropriation of Buildings on State-owned Land and Compensation (Article 8) – including broad categories of safeguarding national security, promoting national economic and social development, and infrastructure construction related to energy, transportation and water. However, this provision does not apply to rural land, and in reality, most local governments exercise the authority to determine what constitutes the 'public interest'. This is problematic, as these very same authorities simultaneously possess strong incentives to expropriate rural collectively owned land for urban development because of the exorbitant prices these properties attract when sold to private sector actors. Thus, changing the designation of land from 'rural' to 'urban' can be extremely profitable and is a major source of incentive for local authorities to embark upon frequent and large-scale expropriation efforts.¹²

Land is the most natural form of social security for farmers in China.¹³ Although land-use rights and land ownership rights are distinct, most farmers enjoy contract-based land-use rights. A large majority of the rural population, however, does not enjoy complete social welfare protection. It is in this context that the process of state expropriation of rural land is important, in particular the type and nature of compensation provided to the affected parties by the government. Although the Land Administration Law explicitly provides that the state must provide compensation for expropriated land, 'the lack of well-defined property rights or functioning land markets' in rural China does not encourage the payment of compensation

¹¹ Land Administration Law (2004), Art. 43.

¹² K. Deininger et al., 'Dynamics of Legal Change in a Decentralized Setting: Evidence from China's Rural Land Contracting Law' (2007), *World Bank Policy Research Working Paper* No. 3981.

¹³ J.D. Ping Li, 'Rural Land Tenure Reforms in China', in: *3 Land Reform* (2003), p. 59.

according to the market value of the land.¹⁴ Indeed, in the absence of a legal market for transferring collective-owned land, the municipal level government – which is at the same time also the authority that often undertakes the expropriation – typically determines the compensation rate. This dual role of local governments invariably leads to bias in determining compensation rates and results in the widespread use of compulsory (or forced) land acquisition, often with insufficient compensation.¹⁵

Another aspect that complicates the rate of compensation is the vague definition of land ownership and widespread ambiguity over who actually is authorised to ‘sell’ collective land. When people are asked in the villages as to who really owns the land, a host of different answers are typically received and there is uncertainty as to whether the land is owned by the farmers, villages, or higher levels of government.¹⁶ In this scenario, the role of village cadres or so-called ‘village legal representatives’ assumes significance, as a small group of people at the village and municipal levels usually collude to decide on land sales and acquisition of village assets. The resulting process is often characterised by the misappropriation of funds and embezzlement.¹⁷ As several scholars have argued, the lack of legal channels for transferring land out of the collective sector – other than through state expropriation – and the lack of a mechanism to transparently assess the market value of the rural properties involved – creates rent-seeking behaviour and opportunities for corruption.¹⁸ In 2010 alone, local governments earned 2.7 trillion RMB through the sale of farmland for non-agricultural purposes. And in many areas of the country, the sale of collective land accounts for 60–70 percent of local government revenue.¹⁹ For example, in Shandong province’s Pingdu city, the local government expropriated rural land at an average compensation rate of RMB 75,000/mu, and sold the same at an average rate of RMB 1,230,000/mu.²⁰ There is considerable pressure on local officials from their superiors to boost the local economy by attracting investors. The large disparity between compensation rates offered and the actual sale price – and the resulting revenue that typically accrues to local governments – provides enormous power and influence to local officials

¹⁴ Chengri Ding, ‘Policy and Praxis of Land Acquisition in China’, in: 24 *Land Use Policy* (2007), p. 1, at p. 8.

¹⁵ Han (ed.), *Survey on China’s Rural Land Issues* 2004, p. 20.

¹⁶ Zhu and Prosterman, ‘Securing Land Rights for Chinese Farmers: A Leap Forward for Stability and Growth’, p. 6.

¹⁷ Ronghua, Mao, *Research on the Circulating & Transferring System of Rural Collective Land in China* [in Chinese] 2010, p. 85.

¹⁸ Samuel Lin et al., ‘Emerging Land Markets in Rural and Urban China: Policies and Practices’, in: 175 *The China Quarterly* (2003), p. 681, at p. 706.

¹⁹ O. Tom, ‘Unrest Grows as Economy Booms’, *The Wall Street Journal* (26 September 2011).

²⁰ ‘Free Talk’ (25 March 2014), <<http://news.ifeng.com/opinion/special/pingdu>> (accessed 3 July 2014).

on land issues. And even when compensation is offered, there is no guarantee that the beneficiary will receive the entire amount as middlemen and hidden transactions costs add to reduce the actual amount on offer. Farmers who do not even receive their entire compensation amounts, such as those in Pingdu, are increasingly, and very publicly, venting their frustration and anger.

Rural land has thus become a kind of 'commons', where infringements do not encounter major obstacles²¹ and there is growing concern that in the long run, the land rights of Chinese farmers will be sacrificed in order to reduce the costs of urbanization and industrialization as part of the effort to prop up and maintain a high national GDP rate.²² A growing number of social conflicts have intensified over the past decade and pose a growing threat to the sustainability of China's social and economic development. When disputes arise over expropriated land, the usual (and preferred) strategy of farmers is to fight for their legal rights through petitions, protests or 'mass incidents'²³ in order to attract the attention of higher level authorities or the central government.

Local governments typically accord high priority to economic development through a process of industrialization and local revenue maximization, while the central government attaches greater importance to agriculture and food security, social stability and communal harmony.²⁴ Unlike many other countries, such as India, disgruntled farmers in China, however, seldom resort to seeking a remedy through the formal justice system. In some areas, illegal seizures of farmland without adequate compensation have provoked social instability and local uprisings, which have included street protests, public demonstrations, picketing and group petitions.²⁵ In response to such unrest, local governments have often used force

²¹Yang Li, 'The Reason for Farmers' Land Right Abusement' [in Chinese], in: 10 *Rural Economy* (2006), p. 32. at p. 33.

²²Xuefeng He, *The Logic of Land Rights: Where Should China's Rural Land System Go?* [in Chinese] 2010.

²³In 2005, the Shenzhen Municipal Committee of the Communist Party of China issued a decree describing various forms of mass incidents, including large-scale petitions, strikes, protests, assaults on government property, obstruction of transportation lines, destruction of commercial projects, attack of civil servants, and any other activity deemed harmful to public order. The same directive classified incidents into four levels based on the number of demonstrators involved: Level I (5-30 people); Level II (30-300 people); Level III (300-1,000 people); and Level IV (more than 1,000 people).

²⁴Zhao Deyu, 'The Interactive Relationship between Farmers, Local Governments and the State during the Course of Land Acquisition' [in Chinese], in: 2 *Sociological Studies* (2009), pp. 93-129.

²⁵Thomas Lum, 'CRS Report for Congress' (8 May 2006) <www.fas.org/sgp/crs/row/RL33416.pdf> (accessed 15 April 2013); J. Kahn, 'Chinese Premier Says Seizing Peasants' Land Provokes Unrest', *The New York Times*: <www.nytimes.com/2006/01/21/international/asia/21china.html?_r=0> (accessed 30 April 2013).

to suppress spontaneous outbursts of growing dissatisfaction.²⁶ For these very reasons, China has, since 2010, spent more resources in funding its police force than on its armed forces.²⁷ Nonetheless, popular forms of resistance remain widely used in the country by citizens who wish to claim their rights, despite the enormous amount of resources that is used by the state for suppressing such activities.²⁸ That the problem is serious was borne out of statements by senior Chinese leaders, including former prime minister Wen Jiabao, who have in the recent past admitted that incessant land grabs were 'provoking mass unrest in the countryside and could threaten national stability and economic growth'.²⁹

At the outset, it appears quite surprising that a farmer whose land has been expropriated will choose to embark on a strategy of resistance *vis-à-vis* the authorities rather than pursuing a legal route through formal institutions of justice. Some studies in the social sciences have termed these events as processes of 'rightful resistance'³⁰ or 'resistance by legal means'.³¹ Others have applied approaches related to the subsistence economy or moral economy perspectives (such as those based on the work of the noted scholar James C. Scott), to analyse the issue. Most such scholarly work has, however, focused on dimensions of substantive justice for landless farmers or the new and evolving characteristics of the mass protests. Hence, there is very little attention on procedural justice. Indeed, a clarification (or even simplification) of land use rights and the criteria for private land ownership will be of little consequence if such rights cannot be enforced in a court of law and if the judiciary does not possess the power and ability to combat the repeated infringement of the land rights of citizens. In the ensuing sections, we will therefore focus on the dispute settlement mechanisms related to compensation for expropriated land. This is the only type of rural land expropriation dispute that has been specifically regulated in China.

LAND DISPUTE SETTLEMENT MECHANISM

The Property Rights Law (adopted in 2007) specifies that collectively owned land, houses and other property owned by organizations or individuals might be expro-

²⁶ Yongshun Cai, 'Local Governments and the Suppression of Popular Resistance in China', in: 193 *The China Quarterly* (2008), p. 24, at p. 25.

²⁷ Michael Forsythe, 'China's Spending on Internal Police Force in 2010 Outstrips Defense Budget' (2011), <www.bloomberg.com/news/2011-03-06/china-s-spending-on-internal-police-force-in-2010-outstrips-defense-budget.html> (accessed 31 April 2013).

²⁸ Cai, 'Local Governments and the Suppression of Popular Resistance in China', p. 27.

²⁹ J. Kahn, 'Chinese Premier Says Seizing Peasants' Land Provokes Unrest', *The New York Times* <www.nytimes.com/2006/01/21/international/asia/21china.html?_r=0> (accessed 31 April 2013).

³⁰ Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* 2006, pp. 1-24.

³¹ Jianrong Yu, 'Social Conflict in Rural China', in: 3 *China Security* (2007), p. 2. at pp. 5-8.

priated for 'the purpose of public interest' (Article 42). When the expropriation process applies to collectively owned land, appropriate compensation should be paid for the land and 'young crops on land', in addition to subsidies for human resettlement and social security insurance premiums for affected farmers (*ibid.*). The legislation further provides that the state will ensure 'special protection with regard to the agriculture land, strictly limiting the transfer of agriculture land to construction land' (Article 43). In general, the Property Rights Law provides a threefold formula for land compensation: compensations for the land expropriated, subsidies for resettlement, compensations for the fixtures and existing crops on land. Since no transparent market exists for collective owned land, the compensation standard is in reality decided by the government. And there are no specific dispute settlement mechanisms on compensation for expropriated land in existing legislation. The Land Administration Law simply provides the substantive provisions of land expropriation conditions and the range of compensation standard, but is silent on the procedures for implementing the expropriation process and resulting dispute settlement.

The Regulations on the Implementation of the Land Administration Law (hereafter referred to as 'Regulation'), provides that 'mediation shall be carried out by local government above the county level' (Article 25). And when such mediation fails, 'adjudication shall be resorted to by the people's government that approved the land acquisition'. The Regulation provides for administrative mediation and adjudication as ways to settle disputes. While administrative adjudication is usually undertaken in civil disputes, the focus here is on administrative issues, making the Regulation quite unique.

In addition to the above, ministerial regulations also provide for dispute settlement. For example, in 2006, the Ministry of Land and Resources³² issued a document on accelerating the compensation resettlement dispute coordination and adjudication system. This followed the administrative adjudication alternative proposed in the Regulation, and directed provincial governments to formulate regulations on 'land compensation and resettlement dispute adjudication'. By contrast, the Legislative Affairs Office of the State Council did not agree with the proposed adjudication channel as illustrated by the notice it issued in 2011 on Land Compensation and Resettlement Dispute Administrative Reconsideration (hereafter referred to as 'Notice'³³). The Notice provides that if collective economic organizations and farmers are not satisfied with land acquisition compensation, they must access justice through so-called 'administrative reconsideration'.

The above is illustrative of how various government agencies have understood their task differently with the result that the dispute settlement mechanisms pro-

³²MLR Fa [2006] No. 133.

³³Guo Fa [2011] No. 35.

posed at national and provincial levels are not uniform. While some propose accessing justice through administrative adjudication, others suggest administrative reconsideration. Some agencies even consider the two to mean the same thing, which adds to further confusion. And in addition to administrative adjudication and administrative reconsideration, the law also provides citizens with two further channels of accessing justice: petition and administrative trial. We examine these four alternatives in the ensuing sections of this essay.

Administrative adjudication

China's Ministry of Land and Resources is of the view that the administrative adjudication system is unique and established by the Regulation specifically for dispute resolution on issues of compensation arising from rural land expropriation. However, the Regulation itself is silent about the actual procedures and processes to be followed for settling disputes. As a result, the task of formulating a detailed implementation plan is usually left to provincial level governments. Despite the importance of this task, only 14 of 31 provinces in Mainland China had, as of December 2012, formulated provincial level procedures for dispute settlement on expropriated land.³⁴ Moreover, in the absence of clearly specified national level legislation, the provincial level regulations vary considerably. And in many instances, rather than resolving disputes, the mechanisms in place actually create further obstacles for farmers that are fighting to access justice. In the following, we will discuss four specific obstacles with reference to specific cases.

The applicant requirement is very demanding

Among the 14 provinces with dispute settlement mechanisms in place, there are two types of applicant requirements for land compensation disputes. The first allows for both the collective economic organizations and individual members as applicants, and is the case in Hubei, Jiangxi, Jiangsu, Shandong, Heilongjiang and Ningxia. The second type requires that the land compensation applicant should be the collective economic organizations only, and applies to Hunan, Anhui, Hainan, Gansu, Henan, Zhejiang, Tianjin and Liaoning.

Consider the case of Jiangsu province, which formulated its own measures of mediation and adjudication with regard to land expropriation compensation standards and resettlement disputes in 2007. According to Article 7 of this regulation, either the rural collective economic organization or their individual members can apply for mediation and adjudication on disputes involving land compensation standards and resettlement fees. In contrast, Hunan has the most demanding ap-

³⁴This information has been collected from the database of 'China law info' and the official website of the Ministry of Land and Resources. In addition to the 14 provinces, certain municipalities such as Ningbo, Zhoushan and Huludao, also have specific regulations on mediation.

plicant requirements, which provides that the only legitimate applicant is a rural collective economic organization. For example, Article 6 of Hunan's interim measures for mediation and adjudication states that if the expropriated rural collective economic organisations disagree with compensation rates or resettlement programmes, then they must apply for mediation to the municipal or county government within 10 days after the authorities have announced their decision. Some provinces – Anhui, Hainan, Ningxia, Henan, Gansu and Zhejiang – have codified legislation that provides that while the land compensation applicant must be a rural collective economic group, individual farmers can apply for mediation in relation to disputes involving crop compensation, ground attachments (except housing) and resettlement.

The difficulty with both the above types of cases is that the ownership of collective land in China remains ambiguous, and a small group of village cadres are essentially in control. These cadres maintain close ties with authorities and government departments, and hence seldom willing to apply for mediation and adjudication. Consider the case of more than 700 farmers from Yuelu District in Changsha City (Hunan), whose land was expropriated by the local government. The villagers were not satisfied with the compensation and hence applied, in 2011, for administrative mediation and adjudication. The Hunan provincial government dismissed the application based on the criteria that the applicant must be a collective economic organization.³⁵ In a similar case in Zhejiang, a mediation petition by around 43 farmers was rejected by the county government in November 2008 since the applicants were considered 'unqualified'.³⁶ Subsequently, this group of farmers sued Cangnam county government in May 2009, and the Wenzhou intermediate court ordered the county government in July 2009 to take responsibility for the mediation within 30 days. Thus, the court verdict simply gave the farmers a new opportunity to access mediation, but nothing concrete in terms of actual benefits and they were back to square one.

Although the Property Law does not recognise individual ownership of land, it does provide for all rural citizens to enjoy thirty years of land use rights. And if any form of government action negatively affects such user rights, then the user or users have in theory a platform and a legal right to express their objections to the compensation standard. In practice, however, local regulations at the provincial level often prevent displaced and dissatisfied farmers from receiving effective relief and remedy. Because the mediation report is the prerequisite for further adjudication, citizens in some provinces are not allowed access to other remedies

³⁵ Case No. Hunan Province Land Adjudication (XiangZhenCaizi) [2011] No. 14.

³⁶ Case No. Wen Zhou of Zhejiang Province Administrative First Trial (Zhewenxingchuzi) [2009] No. 28.

if they first cannot complete the mediation process. We discuss this further in the following sections.

Mandatory mediation without time limits

Even in provinces where rural citizens can individually apply for dispute settlement, there is no guarantee for accessing justice. The first hurdle is often the prerequisite condition for mandatory mediation where parties are required to take part in mediation before having their case adjudicated. In theory, the act of seeking mediation should be voluntary, and moreover under the supervision of an impartial third party. However, in China this is not the case, as the local authorities (with obvious vested interests as an affected party), and contrary to the *nemo iudex in parte sua* norm, directly control the mediation process. Most provinces stipulate that a mediation report is required before proceeding on to administrative adjudication. However, even when provinces such as Ningbo and Zhoushan actually encourage and require mediation, there is no fixed time limit specified. Thus, the concerned government enjoys an unfair advantage by inordinately extending the duration of the mediation process or simply refusing to provide a mediation report, even when the mediation process has been completed.

Take the case of Mr. Ren, whose community-owned land was expropriated by Chongqing Yubei district government in January 2004. Like Ren, other members of the community were similarly dissatisfied with the compensation on offer, which they claimed was even lower than the legal standard.³⁷ The local community therefore decided to pursue a legal channel for resolution of the dispute, applying to the Yubei district government in March 2004 for mediation and a resulting mediation report. While the district government employed delaying tactics, Ren and the rest of the affected community submitted numerous letters petitioning relevant government agencies for assistance, albeit without success. For example, in late August 2004, Ren and another community representative travelled to Beijing to visit the letter petition office of the Ministry of Land and Resources. However, the officers here were not authorized to handle such matters and forwarded the letter to Chongqing's Department of Land and Resources, which in turn did not respond. After waiting for almost nine months, the community decided to apply to the Chongqing Municipal Government for administrative adjudication in November of the same year. However, in late December 2004, the

³⁷ Land compensation fee for the cultivated land requisitioned is supposed to be six to ten times of the average annual output value in the three years prior to requisition. However, the villagers claimed the compensation offered to them was less than five times of the average annual output value.

municipal government rejected the application on the grounds that the community did not meet the requirements for receiving the mediation report.³⁸

Following this verdict, the plaintiffs applied in January 2005 to the Chongqing municipal government once again, but this time for administrative reconsideration (we discuss this feature later in this essay) on the grounds that the government did not fulfil its legal responsibility to organize the mediation and release a report. This time the municipal government reacted somewhat quickly, and on 28 February 2005, it issued a notice for the administrative reconsideration³⁹ and urged the Yubei district government to settle the mediation application. And although the Yubei district government finally acknowledged in May 2005 that it had received the mediation application after all,⁴⁰ the plaintiffs spent a total of fourteen months and a considerable amount of money to travel to Beijing and Chongqing without being able to resolve the case in the absence of a time limit for mandatory mediation.

The above is an illustrative example of the fact that the requirement for mandatory mediation without specified time limits is not well suited to handle disputes. On the contrary, landless farmers view it as an impediment to accessing justice. Mandatory mediation functions very well as a tool for the government to defer conflict resolution, and potentially escalates the dispute between farmers and local governments in the long run.

Accessibility, impartiality and independence of the adjudication system

According to Regulations on the Implementation of the Land Administration Law, adjudication functions related to land disputes are to be handled by the level of government that originally approved the land acquisition (Article 25). Provisions in the Land Administration Law, however, make it impossible for certain groups of affected parties from accessing the adjudication system. For example in Article 45, the Law provides that capital farmland and cultivated land that exceed 35 hectares, and other types of land that exceed 70 hectares, must be approved by the State Council. However, since the State Council has no such body to settle the problem, the adjudication system does not, in practice, apply to these cases, thus preventing those affected from filing a complaint. All other types of land acquisitions are normally approved by the provincial/municipal level government, and are subject to the adjudication system. Thus, when a provincial government approves land acquisition, the Department of Land and Resources in the provincial level is authorized to settle potential disputes. However, this organ is neither

³⁸ Case No. Chongqing Municipal Land Adjudication (Yufudicai) [2004] No. 31.

³⁹ Case No. Chongqing Municipal Administrative Reconsideration (Yufufuhan) [2005] No. 113.

⁴⁰ Case No. Yubei District in Chongqing Land Adjudication (Yubeifudi) [2005] No. 1.

independent nor impartial as it reports to the provincial government, which in turn stands to gain an economic benefit from rural land grabs. Moreover, although the adjudication system is free (in the absence of application fees), there are other costs involved for expropriated farmers, including transportation from rural areas to the provincial capital, accommodation and the costs of hiring a local lawyer. And this adjudication system only exists in 14 of China's 31 provinces. In the remaining 17 provinces, citizens must apply for administrative reconsideration to settle disputes.

Another related problem is that the adjudication process does not necessarily resolve disputes, even when the plaintiffs are able to surmount all other obstacles (such as costs and delays) and are able to seek an official remedy. In some provinces such as Jiangsu, the provincial level Department of Land and Resources can either rule in favour of maintaining the existing compensation standard (if these are in line with the law and relevant policies and regulations) or withdraw the compensation standards after approval by the provincial government.⁴¹ In the latter case, the authority that first assigned the compensation amount is then ordered to reassess this amount within a prescribed period. However, in practice such revocation of the compensation standard has no bearing on the final result as it invariably means that one government agency passes on the responsibility back to another. Moreover, since the adjudication authority does not have the power to provide a higher rate of compensation, disputes are not resolved, as citizens do not gain economically from this form of remedy.

Administrative reconsideration

Administrative reconsideration is another channel to settle land disputes, if the concerned party considers that a specific administrative act of an administrative organ has infringed upon her legitimate right. Compared to administrative adjudication, administrative reconsideration has the following advantages: a) there is no strict requirement for the applicant (i.e., both individual farmers and collective organisations can apply); b) with its detailed regulation and clear time limits, due process is ensured; and c) the authority undertaking the ruling (the legislative affairs office of the provincial government) is comparatively independent, in that it is not the same organization that ordered the expropriation.

The process of administrative adjudication, as mentioned earlier, theoretically involves the provincial government as the decision-making authority. However, this task is invariably delegated to the province's Department of Land and Resources, the same body that orders the expropriations. Before 2007 the modification of implementation of Administrative Reconsideration Law, mediation did

⁴¹ Art. 25 of the 'Measures of Mediation and Adjudication on Land Acquisition Resettlement in Jiangsu Province'.

not constitute a part of the administrative reconsideration process, and was considered a major drawback in relation to other dispute settlement mechanisms such as petitions.⁴² However, that has now changed. Moreover, while administrative adjudication requires compulsory mediation, mediation that is required under administrative reconsideration is undertaken voluntarily. The Regulation on the Implementation of Administrative Reconsideration Law (Article 50) provides that an administrative reconsideration organ may conduct mediation under the principle of willingness and legality under either of the following circumstances: (a) 'A citizen, legal person or any other organization applies for administrative reconsideration against a specific administrative action taken by an administrative organ at its discretion as provided for in any law or administrative regulation'; or (b) 'Disputes over administrative compensation or administrative indemnification arise between the parties concerned.'

Despite the above features, whether the concerned party can directly apply for administrative reconsideration for land compensation matters remains unclear and is currently being debated in administrative and political circles. Some scholars argue that the 'adjudication' provided in the Article 25(3) of Regulations is essentially 'administrative reconsideration'.⁴³ The State Council's Legislative Affairs Office accepts this interpretation, since numerous difficulties with the adjudication process have resulted in the Office advocating the use of administrative reconsideration in place of administrative adjudication.⁴⁴ In our previous example of Ren and fellow villagers from Chongqing whose community-owned land was expropriated by the local government, it is particularly interesting to note that when the plaintiffs applied for administrative adjudication for the second time in May 2005, the Chongqing municipal government (in August 2005) upheld the previous compensation standard.⁴⁵ The plaintiffs, obviously not satisfied with this outcome, appealed the decision and applied for administrative reconsideration in September 2005. In early September, the Chongqing municipal government found their application to be inadmissible on the grounds that the previous adjudication process already contained elements of administrative reconsideration!

The Ministry of Land and Resources, however, has a different view on the issue, and argues that the compensation and resettlement mediation and adjudication system is unique, set up specifically for addressing conflicts arising out of com-

⁴² Xin Ying, 'The Xinfang Remedy: A Special Form of Administrative Relief' [in Chinese], in: 3 *Chinese Journal of Law* (2004), p. 58, at p. 68.

⁴³ Shuyi Zhang, *Administrative Dispute Settlement Mechanism* [in Chinese] 2006, p. 204; Taigao Wang, *Administrative Compensation Mechanism* 2004, p. 237.

⁴⁴ Notice of the Legislative Affairs Office of the State Council on the land compensation and resettlement dispute administrative reconsideration work in accordance with the law. Guo Fa [011] 35.

⁴⁵ Case No. Chongqing Municipal Land Adjudication (Yufudi) [2005] No. 16.

pensation and resettlement interventions.⁴⁶ They further point out that administrative reconsideration differs from other legal avenues in the following aspect: if one of the parties refuses to accept the initial ruling, it can apply for administrative reconsideration or sue ('administrative litigation') within the statutory period in accordance with the relevant provisions of the Administrative Reconsideration Law and the Administrative Procedure Law. This means that in the 14 provinces that have special regulations, if the plaintiffs do not agree with the compensation provided when the authorities expropriate their land, they must first apply for administrative adjudication; they cannot directly apply for administrative reconsideration. In the remaining provinces of China, the ability of the plaintiff to apply for administrative reconsideration is dependent on the provincial government's will.

Administrative litigation

Litigation is another dispute settlement alternative provided in the Administrative Procedure Law, which has been in effect since 1990, but is scheduled for amendment in the near future. Individuals and organisations who believe that an administrative act or an administrative organ has infringed upon their ownership and right to use of 'natural resources, such as land, mineral resources, rivers, forests, mountains, grasslands, unclaimed land, beaches, maritime waters', are entitled to file a suit before a people's court, provided that the case has already undergone administrative reconsideration, and the plaintiffs are not satisfied with the verdict of that process (Article 30).

When the Chongqing municipal government rejected their application for administrative reconsideration, Ren and his fellow villagers decided to litigate. They contacted a law firm and interacted with a well-known lawyer who was willing to take the case. However, the fee demanded was a minimum of RMB 180,000 calculated on the basis on RMB 2000 each of the 90 households represented in the case. Not being able to afford such a large sum of money, the villagers sought the help of another lawyer, who helped the group file a suit before Chongqing No.1 intermediate people's court against Chongqing municipal government.⁴⁷

The case was tried on two separate sittings, first in November 2005 and then in April 2006. The final verdict, delivered in April 2006 stated that the legal procedure specified in existing regulations has been violated as the compensation decision was made by the Department for Land and Resources of the local (Yubei) government rather than by the Chongqing municipal government. The court went

⁴⁶ MLR notice on accelerating the land compensation and resettlement controversial mediation and ruling system. GuoTuZiFa [2006] 133.

⁴⁷ This lawyer took contingent fees and did not receive any final payment, as he did not win the case.

on to urge the Chongqing municipal government to reach a new decision on the compensation offered by a competent body (i.e., the municipal government again) within two months. As ordered, the Chongqing government made a second adjudication of the case on 06 June 2006. However, the amount of compensation offered did not change, and without any further assistance from the court, Ren and his fellow villagers once again applied for administrative reconsideration. The Chongqing government accepted the application this time, but maintained their previous position once again on 13 October 2006.⁴⁸ The plaintiffs subsequently appealed their case to the State Council on 30 October 2006 requesting administrative reconsideration. In September 2013, however, they received a notice from the Chongqing Legislative office informing them that their complaint did not qualify for final adjudication by the State Council. Thus, although the villagers won their first court case, the concrete impact was simply that the municipal government was asked by the court to make a new decision because of procedural problems; the amount of compensation remained unchanged. The interesting aspect here is that even if the State Council had rejected the demands of these villagers, they would most likely have accepted the compensation initially offered as the State Council is perceived to be more fair than local governments. However, the current legal system currently provides that the State Council will not review all such decisions. This is a growing problem in China, as borne out by several similar cases elsewhere in the country.⁴⁹

In practice, filing a lawsuit in court on land issues remains extremely difficult on account of the special relationship between the local government and the judicial system. Local courts are essentially under the control of local governments and given the complexity of compensation cases (that require considerable technical expertise), land disputes are extremely difficult to enter the proceedings. Moreover, according to China's Administrative Procedure Law (1990), a lawsuit cannot change the compensation standards already proposed by previous decisions. Thus, when litigation simply reviews the legality of the government's decisions, and does not assess whether the compensation standards are reasonable or not, then land compensation disputes are effectively not resolved. Thus, even when landless farmers take their case before a court of law, the result is either support or annulment of the previous administrative act without solving the fundamental issue of unfair compensation rates. This is yet another instance of various agencies of government and the courts failing to take overall responsibility for their acts and delaying tactics. We are aware of the fact that, despite going to court, many cases involving

⁴⁸ Case No. Chongqing Municipal Administrative Reconsideration (Yufufu) [2006] No. 125.

⁴⁹ See Case Nos. Chongqing Municipal Land Adjudication (Yufudicai) [2003] No. 12, No. 13; Chongqing Municipal No. 1 Intermediate Court on Administrative First Trial (Yuyizhongxingchuzi) [2003] No. 10, No. 12.

compensation for loss of land have not been resolved. Indeed, litigation relief is only limited to protection from so-called 'illegal administrative acts', and such protection does not help a farmer achieve a higher rate of compensation from the authorities.

Petition

The most popular channel for frustrated citizens to voice their grievance and seek redress on compensation matters is through petitions, which typically take the form of letters and comments by individuals and organisations. Petitions also include visits to specific government offices in order to voice a complaint and/or provide comments and suggestions for improvement of specific services. According to the Regulations on Letters and Visits (2005), such information provided through correspondence may include e-mails, faxes, phone calls and visits (Article 2). Petitions have over the years been considered to strengthen the rights of ordinary citizens, in addition to being the cheapest and most effective way of settling disputes. However, there are many who differ. For example Zhiping Liang⁵⁰ and Jianrong Yu⁵¹ argue that petitions are in reality only a channel to forward information regarding a conflict to a relevant authority. And although petitions may not cost much in theory (to file one is free of charge), there are numerous costs involved when cases drag on for years on end and transportation and accommodation costs (to Beijing or other urban centres) are much more than what most rural citizens can afford. Indeed, some lawyers in Beijing even claim that petitions in the long run can be even more expensive than administrative reconsideration and trial. Similarly Yu concludes that only a small percentage of disputes are successfully resolved through petitions. Moreover, many petitioners risk being harassed in many ways, including confiscation of property and assets by local authorities and detention (e.g., in psychiatric hospitals).⁵²

Even though petition is neither the cheapest nor the most effective way to settle disputes, it is often preferred by the common man because it does not face the numerous obstacles of adjudication and reconsideration, and appears to welcome everyone to voice their grievances. The difficulty, however, starts with Article 21 in the Regulations on Letters and Visits, which states that all petitions should be handled by the Department of Letters and Visits within 15 days of receipt of a complaint, but that the department should 'reject the matter which has been or shall be handled according to law through litigation, arbitration, administrative reconsideration or any other statutory means'. And since land com-

⁵⁰ Zhiping Liang, *New Persian Letters: The Change of Law Concept* [in Chinese] 2000, pp. 61-63.

⁵¹ Jianrong Yu, 'Criticisms of the Petition System in China' [in Chinese], in: 2 *China Reform* (2005), p. 26 at p. 28.

⁵² Yu, 'Criticisms of Petition System in China', p. 28.

pensation matters are supposed to be handled through the channels of administrative adjudication, reconsideration and litigation, all petitions on land matters are invariably rejected. The experience of Ren and his group is a good example in this context, as they spent a considerable amount of time and money in pinning their hopes on a visit to meet officials at the Department of Letters and Visits in Beijing. However, the message they received was that the department was not empowered to address such issues.

While petitions do provide an important channel for citizens to air their opinions and submit proposals, we conclude that existing legislation does not provide for a competent and powerful body to deal with disputes. Some scholars claim that petitions actually undermine the independence and authority of the judiciary and have therefore suggested the removal of this feature from the legal and political landscape of China.⁵³ They argue that petitions are a product of history, and without significant reforms (e.g., transforming it to a more powerful body such as the Ombudsman system in Nordic countries), the system will foster political chaos. Others disagree, arguing that petitions have numerous advantages (e.g., cheap, flexible and without fixed thresholds) over administrative reconsideration and trials.⁵⁴ Since local government priorities often vary considerably, it is far more effective, they argue, for peasants to appeal to higher-level authorities. As O'Brien and Li argue, petitioners believe that they can resolve their complaints and justify their actions if these are framed in accordance with central level political and legal discourse. Hence, complaints and resulting activism propagate the idea that local leaders are bad and corrupt and that higher-level government officials are good and benevolent.⁵⁵

The central government is careful to avoid protests and the social unrest, and has made tremendous efforts to nip such protests in the bud and to hold local governments to account when such protests have occurred. Rather than providing remedies, petitions function as an important tool at the disposal of the central government to monitor the activities of local governments. And local governments therefore routinely send their own representatives to intercept petitioners in order to lure them with false hope and promises of resolving problems before petitions are submitted in Beijing.

⁵³ Yu, 'Criticisms of Petition System in China'.

⁵⁴ Ying, 'Petition Relief as a Special Administrative Remedies', pp. 66-68.

⁵⁵ Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* 2006, pp. 1-24; Benjamin van Rooij, 'Bringing Justice to the Poor, Bottom-up Legal Development Cooperation', in: *4 Hague Journal on the Rule of Law* (2012), pp. 286-318.

Legal empowerment and the power of social movements

Access to justice is not only central to the realisation of constitutionally guaranteed rights, but it is also crucial in relation to the broader goals of development and poverty reduction. In order to access justice, however, individuals and groups must have the ability to 'seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards'.⁵⁶ Accessing justice also refers to 'the methods by which individuals are able to get legal information and legal services and to resolve disputes' including 'access to a court procedure, to legal aid and to extra-legal mechanisms to resolve conflicts'.⁵⁷ As we have highlighted in the discussion so far, the formal channels of complaints in China, such as those related to adjudication, reconsideration, litigation and petition, do not necessarily work or are accessible by the affected individuals and groups. Thus, legal empowerment of the poor – defined as 'a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors'⁵⁸ – is very limited in China.

The media and other socio-political factors can here play an important role, and the Wukan case we mentioned earlier – where villagers launched a campaign in September 2011 lasting several months to protest against illegal and arbitrary transfer of communal land by village officials to private investors – is an illustrative example. Wukan is particularly interesting for several reasons: the protests were allowed by the authorities to drag on for several months (i.e., the authorities refrained from using force); the village was characterized by strong social cohesion (which was further strengthened when one of the protest leaders died while in police custody); the village youth actively used micro blogs to disseminate information, which in turn generated considerable internet buzz on the topic in China; provincial authorities, who were promoting a 'Happy Guangdong' model of development, promised to look into the complaints by villager; the party secretary and village chief of Wukan, whose arbitrary decisions to transfer land were the target of initial village protests, were subsequently removed from their positions on corruption charges; and fresh elections witnessed the leader of the protest movement being elected to the position of local party secretary of the Communist Party. Although it is debatable whether the protest movement was successful in reclaiming the land that was sold to private parties over many decades (there is no

⁵⁶ UNDP, 'Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice' (2005) <<http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/tools/index1.html>> (accessed 4 July 2013).

⁵⁷ M. Barendrecht et al., 'How to Measure the Price and Quality of Access to Justice?' (2006), <<http://ssrn.com/abstract=949209>> (accessed 27 April 2008).

⁵⁸ Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Volume 1, Report of the Commission on Legal Empowerment of the Poor* 2008, p. 3.

evidence available to indicate that the core demands of the protesters were ever met), it nonetheless served as an important reminder of the power of grassroots movements built on strong social cohesion and with the assistance of a strong diaspora spread across the country that was mobilized with the help of social media. There has also been considerable talk in political circles of using the Wukan model to settle similar disputes through peaceful means.

We believe the above manner of resolving conflicts, that the Chinese authorities often resort to, can be best understood using the analogy of a pressure cooker, in that letting off steam for certain grievances is sometimes deemed acceptable by the authorities. In many such instances, and Wukan was certainly one of these, Beijing is viewed by villagers to be beyond corruption and exploitation, and hence supportive of local complaints and demands. Indeed, protesters focus their ire on local officials and are careful not to criticize provincial or central governments. Accordingly, such movements appeal to the conscience of the Communist party. This largely explains the unusually long duration of the protests in Wukan, as Beijing was reluctant to use the force of the Peoples Liberation Army to intervene in ending the protest. Another important factor that explains the relative success of the movement in Wukan relates to the political aspirations of key government officials, particularly at the provincial level. The party chief of Guangdong at the time of the protests, Wang Yang, was widely believed to be interested in being elected to the Politburo of the Communist Party, and was keen to protect his image of combating inequality and promoting social harmony. Hence, any use of force would have been contrary to his professed 'Happy Guangdong' model.

Michael Anderson provides a very interesting conceptualization of access to justice as a 'three-floor house', where 'on the ground floor, people have to be aware of their rights, which they can go on claiming in the next floor, whereas in the top floor they are re-assured of equal treatment'.⁵⁹ We argue that the barrier for landless farmers is not that they are unaware of their rights (but if they are, there are numerous lawyers and other experts who can provide assistance), but rather the institutional defects that deprive them access to justice when their rights are infringed upon. There is a widespread belief in the West that China does not have an effective public sphere for critical discourse. While there are indeed numerous restrictions on freedom of assembly, association and expression of opinion, there are a surprisingly large number of people who regularly discuss and criticize a whole range of social issues in public. The Wukan story is an illustrative example in this context as, in addition to the international and Hong Kong-based media outlets, social media (e.g., Weibo) played a crucial role in generating widespread interest within China while highlighting the misdeeds of local officials. Thus, we

⁵⁹Michael R. Anderson, 'Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs', 178 *IDS Working Paper* (2003).

need to better understand the strategies pursued by ordinary citizens as well as activists to disseminate critical messages, as well as the administrative and political impact of such activism within China. The recent spate of critical reports on environmental pollution, corruption and embezzlement by public officials demonstrates that citizens are increasingly resorting to both traditional and newer social media forms to exert influence in daily life. This has further emboldened investigative journalists and activists to file critical reports on the adverse impacts of China's economic development model.

CONCLUDING REMARKS

Existing regulations for settling compensation disputes in China contain numerous institutional defects. These include a very demanding applicant requirement, ambiguous provisions such as no time limits for compulsory mediation, and the inability of the petitions system to address land dispute cases. We have argued that the adjudication system itself is an obstacle for farmers who wish to seek an administrative or legal remedy. Thus the political, administrative and judicial authorities in China appear to prefer the maintenance of strict and specific norms rather than facilitating more adaptable and feasible ones. Given this scenario, and without a formal avenue of resolving land disputes, it is no surprise that disgruntled rural citizens often choose to take part in mass protests (some of which are also violent) over land seizures.

We have argued that the failure of rural citizens to adequately receive compensation for expropriated land is a major source of rights violations in the country. And the system in place does not enhance or facilitate an adequate standard of accessing justice. Apart from the unreasonable rates of compensation offered by the authorities, the population in many regions of the country (i.e., Jiangsu and other provinces that only allow collective organisations to apply for adjudication) moreover do not have the possibility of taking their case to court. And in provinces where individual citizens can sue the state, the tribunals are neither independent nor impartial, and the result is that disputes are invariably not settled. China's property law is supposed to protect farmers whose land has been expropriated by the state. If fair compensation is not provided, the law provides for administrative and legal remedies. In practice, however, when individuals and groups do seek such avenues for settling disputes, various levels of government officials control the process and prevent citizens from accessing justice by making use of ambiguous legal provisions.

Major changes are required to better protect the rights of landless farmers and other citizens whose properties have been expropriated. One alternative is to replace administrative adjudication with administrative reconsideration, as has been sug-

gested by the Legislative Office of the State Council. This would then entail some of the same procedures as prescribed by the Expropriation of Buildings on State-owned Land and Compensation, which in Article 26(3) provides that 'An owner who disagrees on a compensation decision may apply for administrative reconsideration or file an administrative lawsuit according to law.'

Another alternative is to retain the administrative adjudication system, but only after addressing the source of major obstacles. For example, appropriate reforms are needed to ensure that applicants are not excluded from applying for adjudication. The government can further ensure that all forms of mediation should have specific time limits and should be practiced based on the principles of willingness and legitimacy. And upon expiration of the time limit, and irrespective of whether a mediation report has been completed and handed over, the concerned party should be permitted to directly apply for administrative adjudication. The authorities can also consider a circular land tribunal system (for example modelled on the British system) in order to help improve access to appropriate remedies. Thus far, the practice of rightful resistance has relied largely on the trust and belief that farmers place on the central government's good intentions while at the same time distrusting the motivation and strategies of local governments. Under the current legal system, frequent disputes arising as a result of the process of land acquisition are inevitable. Without a major overhaul of current dispute settlement mechanisms, the number and frequency of severe social conflicts between farmers and local governments will continue to increase.
