

Peasants' struggle for land in China¹

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I. Introduction: the struggle for land as a result of China's economic and legal reforms

Tens of millions of Chinese peasants have been affected by the loss of their land in the past two decades.³ This has given rise to disputes, which in many cases have culminated in physical resistance to land takings and evictions⁴ Wrongful takings have been one of the

³ See George Gilboy & Eric Heginbotham, 'The Latin Americanization of China?,' 103 *Current History*,. 256, 258 (2004), "According to the 2004 Green Book of China's Rural Economy, for every mu (approximately 0.07 hectares) of land that is transferred to nonagricultural use, about 1 to 1.5 farmers lose their land. According to official statistics, some 34 million farmers have either lost their land entirely since 1987 or own less than 0.3 mu . . ." Research published in 2006 claims that the number of land seizures rose fifteen-fold in ten years. See 'Land seizures rose 15 times over past decade – survey,' *Forbes News Agency*, 5 May 2006, available at <http://www.forbes.com/markets/feeds/afx/2006/05/05/afx2723558.html>. [to be updated].

⁴ See also 'Chinese Official acknowledges that land requisitioning sparks of mass incidents,' *RFA*, 17 October 2007, at <http://www.rfa.org/mandarin/shenrubao/2007/10/17/zhengdi/>.

factors preventing the development of a sound law on land tenure and property rights. To handle the land disputes in rural China is therefore an important challenge faced by Chinese society. If they are not handled well, the resulting protests may ultimately lead to major social and political upheaval.

The principal cause of the phenomenon of land grabs is China's rapid urbanization, estimated to see the migration of hundreds of millions more Chinese people into urban areas within the next few decades.⁵ To quote Gaoming Jiang writing in 2006, almost 770 square kilometers of land were being built on annually, and this figure was increasing by almost 6% annually.⁶ While this process may involve and does presently involve unnecessary or irrational construction, for instance in cases in which construction projects are ill-executed, wasteful of natural resources, or environmentally harmful,⁷ urbanization itself is unstoppable. Nor is it necessarily bad for peasants. But many peasant grievances result from the wrongs done in the context of takings processes. Peasants are denied equal status in the land law and wider legal system. Their individual legal rights in the land taken from them are weak, and there are virtually no legal protections against the state taking the land 'in the public interest.' In many cases, peasants fail to get (adequate) compensation. They are denied equal opportunities to participate in a growing Chinese market economy which is leaving many of them behind, and they are denied equal access to public services. And yet much economic growth could not have happened without trade in and use of what was once rural land and the basis of their livelihood. Many rural citizens feel victimized and aggrieved, because they do not want to give up their land, or because they want a share in the profits from property development and urbanization. There are reports to suggest that increasingly, peasants express a sense of ownership in the land, which is only imperfectly reflected in the current law of land tenure and expropriation.

This paper provides a brief overview of the land rights and land tenure system in China and the legal status of peasants today. It describes how expropriations happen in rural China, and describes avenues of redress and forms of protest and resistance chosen by the peasants in such cases. Various attempts to circumvent restraining legal rules and allow for an 'informal' acquisition of property directly from peasant communities are discussed in the fourth part. In its last part, this paper discusses reports of recent open declarations of defiance

⁵ Gaoming Jiang speaks of 850 million in the next 25 years, Pan Wei of 500 million in the next thirty years, for instance. Gaoming Jiang, 'Toward Sustainable Urbanisation in China,' 6 September 2006 at <http://www.chinadialogue.net/article/show/single/en/348>.

⁶ *Supra* note 3..

⁷ *Supra* note 3.

against those rules of current land law which disadvantage peasants.

II. Property rights and wrongs: the grievances

II. 1. The legal status of landholdings in China

Thirty years ago, private property rights in land were considered a capitalist idea in China, and consequently reprehensible. This had not always been the case. Prior to 1949, private property rights had been recognised, both in the imperial and in the republican periods of Chinese history. So far as land was concerned, property rights were generally held by a clan or family, rather than an individual; they could generally be transferred in commercial transactions. It was important to keep land in the family, especially for peasant communities; there was no general right to bequeath land away to anyone outside the family, and splitting up the property after a patriarch's death was considered unfilial.⁸ The socialist revolution and the first three decades of Communist Party rule brought a gradual effective elimination of 'capitalist' private property rights, through formal expropriation decisions or through various kinds of restrictions imposed on private property right holders. It culminated in the establishment of the People's Communes,⁹ economic and political entities in which the production and consumption of goods were almost entirely brought under centralised control.

Since the launch of the Reform and Opening policy under Deng Xiaoping, China has experienced a transition. It has changed from a socialist system premised on the theoretical superiority of socialist public ownership of the means of production, into the current, hybrid system. While nominally preserving 'socialist public ownership' of land, the law has greatly modified that principle through the introduction of land use rights, which can be held privately. Indeed, the very first experiments with reform had included the use of a 'household responsibility contract' by some villagers in Fengyang county, Anhui province in 1978. It gave contractual land use rights to individual rural households. At the time, these spontaneous experiments seemed politically wrong and dangerous to many. But they were a great economic success and in the 1980s rural land use rights were made part of China's new and increasingly complex legal system.

⁸ Zelin, Madeline, 'A Critique of Rights of Property in Prewar China', in Zelin, Ocko and Gardella (eds), *Contract and Property in Early Modern China* (Stanford, 2004), 17-36; Michael Palmer, 'The Surface-Subsoil Form of Divided Ownership in Late Imperial China: Some Examples from the New Territories of Hong Kong', in *21 Modern Asian Studies* (1987).

⁹P.R.C. *Draft directive on the work of rural People's Communes* (农村人民公社工作条例修正草案), 1962.

Under current law, public ownership of land remains the fundamental principle (cp. Art 6 of the P.R.C. Constitution). It takes two legal forms prescribed by the Constitution and other laws. In urban areas, land is owned by the 'whole people', or in effect the state, represented by its land administration bureaus. In the countryside as well as in areas designated as suburban, land is owned by rural collectives. According to law, rural collectives exist at three different levels: namely the *xiang* (township) level, the *cun* (village) level, and the level of smaller collectives created within one village. What is called 'village' (*cun*) may be merely an administrative unit comprised of several natural villages grouped together for administrative purposes. Natural villages are sometimes referred to as mere 'working groups' or – using a now outdated parlance – brigades.

In addition to the two legal forms of land ownership, there are different kinds of land use right, the two principal ones being the 'land use right for urban construction,' derived from the state as owner, and the rural right to contracted land management (*chengbao*), a land use right or 'usufructuary right'¹⁰ derived from the (rural) collective as owner. Urban land use rights are held by individuals. Rural land use rights are held by individual households belonging to the collective that owns the land.

State ownership and collective ownership of urban and rural land, respectively, are officially viewed as indispensable to maintaining the socialist character of the system.¹¹ These assertions are difficult to reconcile with the reality of the thriving, at times bubbling market in urban real estate, from which the peasants are effectively excluded due to the status of their land rights. More recently, the rhetoric has shifted a little, to assertions that land use has to be strictly controlled by the state because of the scarcity of arable land, and because the preservation of a certain amount of land for agriculture is essential for the welfare of the nation. This is a more persuasive argument, because it is based in the easily observable fact that agricultural land is being diminished.

¹⁰ In Chinese: *shouyi wuquan* (收益物权).

¹¹ E.g. 'Official: China won't privatize rural farmland', *Xinhua News*, 26 December 2007, available at <http://www.wsichina.org/morningchina/archive/20071228.html>.



A propaganda poster used on the national 'Land Day' in 2007. The here visible characters, part of a slogan, read 'land.'¹² Twenty official slogans were issued on this occasion, to be used for events, posters, etc. across the country. They included slogan no. 3, 'Adhere to a Scientific Development Perspective, Treasure Every Inch of Land!' and slogan no. 20, 'Strictly Control Land Use, Build a Harmonious Society!'¹³

In a recent reform of property law through enactment of the new Property Rights Law of 2007, the dual rural-urban land tenure system which had been developed until then was consolidated and refined. This amounted to a confirmation also of the principle of socialist public ownership of land. Prior to the passing of this law in March 2007, public debates about it had included calls for a return to a more purely socialist regime on the one hand, and on the other hand calls to strengthen the private rights of peasants.¹⁴

The right to use land for agricultural purposes under the chengbao system. As just mentioned, land in rural Chinese areas remains in 'socialist public' collective ownership, but collectives will grant land use rights to members of the collective. The basic content of the right given to

¹² Picture available at http://news.xinhuanet.com/house/2007-04/12/content_5968282.htm

¹³ In Chinese, the slogans read: 坚持科学发展观, 珍惜每一寸土地'(no. 3), and 严格土地管理, 构建和谐社会 (20). These can be found in "Land Administration Ministry: Actively Holding Propaganda Events for the Seventeenth National Land Day' (国土资源部:积极开展第17个全国"土地日"宣传活动), 25 April 2007, at http://news.xinhuanet.com/politics/2007-04/25/content_6027076.htm.

¹⁴ For the socialist position see especially Gong Xiantian, 'A Property Law (Draft) that violates the constitution and basic principles of socialism. An open letter prompted by the annulment of section 12 of the constitution and section 73 of the General Rules of the Civil Law of 1986,' posted online on 12 August 2005; at <http://www.europe-solidaire.org/spip.php?article4161> and Gong Xiantian (巩献田), 一部违背宪法和背离社会主义基本原则的《物权法(草案)》---为《宪法》第12条和86年《民法通则》第73条的废除写的公开信, available at http://www.lawyerstown.com/newlaw/news_page.asp?id=0000000031&lawid=0000000020; for criticism demanding privatization see e.g. Chen Zhiwu in 'Returning Land to the Peasants: a Dialogue between Chen Zhiwu and Yu Jianrong' (对话陈志武: 把地权还给农民), 14 February 2008, at , at http://www.infzm.com/review/pltt/200802/t20080204_36453.shtml.

individual households is a right to agricultural use within the contracted time period.¹⁵

Rural collectives vary in size and the object of rural collective ownership is often in fact ill-defined, in the sense that it is not clear which assets belong to a particular collective, or who may make decisions about them. For example, decisions allocating land use rights are apparently often made at the level of the administrative village or *cun* even in cases where the land belongs to a smaller collective within the *cun*.¹⁶ The reason for this is probably that the administrative village – often the collective owner of land -- is at the same time a political entity. According to law, villages practice self-administration (*zizhi*) by means of democratically electing villagers' committees and other administrative positions. The degree to which these elections are genuinely democratic appears to vary very greatly.¹⁷ Moreover the Party, also always represented at village level by a Party Committee, takes great influence on local decision-making; and party positions are not generally elected democratically (but there are exceptions).¹⁸

The collective is responsible for the allotment of land use rights to individual rural households belonging to the collective. Such allotment varies in duration; the longest possible time period for agricultural land use rights is thirty years.¹⁹ This legal mechanism is governed by the Law on Rights to Contracted Management (*chengbao*) of Land, to which the new 2007 Property Rights Law has added some stipulations, in particular the requirement that the allotment be decided by all members of the collective. As mentioned above, the *chengbao* system was one of the most important causes of rapid agricultural productivity rises when it was introduced in China in the late 1970s, after a period of great decline during the Great Leap Forward and Cultural Revolution periods.

There is now a mechanism allowing villagers to trade their land use rights within the same collective,²⁰ but rural land use rights remain importantly limited to rural/agricultural

15 2007 Property Rights Law, Article 125. 'The holder of the right to the contracted management of land shall enjoy the right to possess, use and seek proceeds from the cultivated land, wood land and grassland, etc. under the contracted management thereof, and have the right to engage in planting, forestry, stockbreeding or other agricultural production activities.'

16 For a discussion of the status of collective land see Yu Jianrong, *supra* note 14.

17 Jamie P. Horsley, 'A Legal Perspective on the Development of Electoral Democracy in China: the Case of Village Elections', in Hsu, Stephen, *Understanding China's Legal System. Essays in Honor of Jerome A. Cohen*. Bernstein, Tom and Lü Xiaobo, chapter 7 of *Taxation Without Representation in Contemporary Rural China* (Cambridge: 2003); Ai Xiaoming and Hu Jie, Taishi, 2005 documentary film.

18 Horsley, *id.*.

19 2007 Property Rights Law, Article 126 The term of a contract for cultivated land shall be 30 years...After the term of a contract as mentioned in the preceding paragraph expires, the holder of the right to the contracted management of land may continue to fulfill the contract according to the relevant provisions of the state.

20 Clarified by Article 128 of the PRL: 'The holder of the right to the contracted management of land shall be entitled to circulate the right to the contracted management of land according to the provisions in the law on the contracting of rural land. ...Without approval, no contracted land may be used for non-agricultural constructions.'

use purposes and limited by the time period of the rural management contract.²¹ As a further consequence, rural land use rights may not be sold or transferred for the purpose of urban development or construction. Any legally valid change of use or purpose must be based upon a city government decision to take land from a rural collective, as is explained further below.²²

Rural houses for accommodation purposes are under a separate regime called 'residential plots' (*zhaijidi*). This family owning a house on the land has a special use right in it; it remains in the ownership of the collective and no compensation is paid for it according to law. No rural family or household (*hu*) is allowed to own more than one plot for housing purposes according to the Land Administration Law, and the maximum size of such plots is prescribed by local governments.²³ The justification for this is the scarcity of arable land in China., and the policy of 'one housing plot per household' is generally characterised as welfarist.²⁴

Relationship between collective owner and individual household holders of chengbao rights. If village officials exploit their position of power, they may be able to enrich themselves, and this is most easily done by demanding fees and surcharges, and by withholding payments due to the villagers, including compensation for land in the case of takings, but also subsidies, such as for instance those for education, etc. Because of the possibility of corruption at the village official and village party cadre level, one of the most frequently contentious political issues at the village level appear to be the village accounts kept on behalf of the village.

In cases of expropriation, for instance, it often happens that villagers demand the disclosure of the account-books because they suspect that there has been collusion between village leaders and property developers or city officials, leading to the withholding of compensation for land takings from the ordinary villagers.²⁵ Seeking to address this problem,

²¹ Roy Prostermann and Zhu Keliang, 'Securing Land Rights for Chinese Farmers: A Leap Forward for Stability and Growth,' Cato Development Policy Analysis Series, No. 3, October 15, 2007 available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1066812 at p. 7 f.; Qian Forrest Zhang et al., 'Development of Land Rental Markets in Rural Zhejiang: Growth of Off-Farm Jobs and Institution-Building,' *China Quarterly* 1050 (2004).

²² Prior to the Property Rights Law, and the term *zhengyong* (征用) was used in both cases, but now 'expropriation' (*zhengshou*, 征收) refers to a permanent taking, while *zhengyong* only refers to a temporary requisitioning of land.

²³ Hu Kangsheng(胡康生, general editor), *P.R.C. Property Rights Law Commentary* (中华人民共和国物权法释义), Beijing, 2007, p. 337.

²⁴ *Id.*

²⁵ One typical case is described in Eva Pils, 'Land Disputes, Rights Assertion and Social Unrest: a Case from Sichuan', 19 (2006) *Columbia Journal of Asian Law* 365-292.

the new Property Rights Law of 2007 in its Art 62 stipulates an obligation of transparency toward all members of the rural collective.

The Property Rights Law was intended to strengthen peasants' land use rights, by stipulating that there must be no 'taking back' of land during the contract period, and that no re-distribution must take place during that period. These two provisions address problems which existed in the past.²⁶ However, similar provisions also already existed before.²⁷ There is also the provision of Article 63, which now expressly gives peasants a right to petition courts to annul decisions made by the collective when they consider their own rights to have been infringed by the decision. The usefulness of these rights will depend to a large extent on whether they can be enforced in the courts (see below).

Discrimination in the land law? Collective 'ownership' in the Chinese countryside (i.e. areas classified as 'rural' or 'suburban') is limited by the fact that land owned collectively cannot be sold or mortgaged legally,²⁸ despite the very limited mechanisms for a transfer of the contractual use right within rural communities. Rights in such land can nevertheless be acquired by urban citizens, because state officials have the power to re-classify the land as 'urban', and a completely different regime of state ownership and urban land use rights operates in 'urban' areas.

There is a lot of debate about whether the resulting discrimination is invidious. The counter-argument is that in fact, preserving the collective ownership system and prohibiting the direct sale or transfer of rural land by the peasants protects their interests, because it forestalls the concentration of landholdings in the hand of a few private individuals, and because allowing peasant collectives or individual households to sell land would only expose them to economically much stronger urban property developers, and result in exploitative deals. This debate ties in with a more general discussion about the status of peasants, whose main arguments are very briefly outlined in the following. Then the further implications of the land law regime, in particular land takings, are discussed in part 3.

²⁶ Roy Prostermann and Zhu Keliang, *supra* note 19.

²⁷ Articles 130, 131 of the Property Rights Law.

²⁸ This issue is discussed in part IV.

II. 2. The legal status of rural Chinese ('peasants' and 'peasant migrant workers')

It is not possible fully to understand peasants' struggle for land in China if one is not aware of the fact that peasants, due to a so-called 'Household Registration' (*hukou*) system and a host of legal and administrative differentiations based on household registration, have a different status from urban residents.

Every Chinese citizen is required to have a household registration. Introduced in 1958, registration used to reflect one's actual place of residence. Under the planned economy, people had little opportunity to travel, change their workplace, or indeed even get access to goods for personal consumption outside the place where they were registered. The situation, however, has greatly changed now, due to the liberalization of the market, the facilitation of transport, and the attraction of urban areas to peasants seeking work and opportunities not available in the countryside. Of the estimated 900 million Chinese 'peasants' some 100-200 million are supposed to be actually living in cities as so-called 'peasant migrant workers' (*nongmingong* or *mingong*). In most cases, however, these people are unable to transfer their household registration. Urban governments usually make registration transfers subject to requirements such as acquisition of an urban flat, or income thresholds, or employment with a state-owned employer. Transfers may therefore be easily available to white-collar workers or urban students (temporary registration), but are out of reach for the majority of ordinary blue-collar migrants from the countryside. The details of this system are complicated and vary from city to city due to the differences in local regulations.

The household registration system has further important consequences.²⁹ Firstly, ordinary peasant migrant workers are in many cases unable to access public services on the same conditions as registered urban residents, for themselves or their families. The most immediate difficulties arise with regard to healthcare and schooling for their children.

Secondly, because of these restrictions, peasant migrant families do not completely move into the cities. Instead, in many cases the peasant family remains essentially 'tied' to its place of household registration and to its land. Some member of a household, now more often women, will stay in the village to cultivate the land for which use rights have been allotted,³⁰ when younger people leave to seek work in cities (typically young men will go first). Children are frequently left with their grandparents because they cannot gain access to public

²⁹ Eva Pils, 'Citizens? The Legal and Political Status of Peasants and Peasant Migrant Workers in China,' in Liu Xiangmin (editor), *Zhidu, fazhan yu hexie* [System, Development, and Harmony] (Ming Pao Press, Hong Kong: 2007), 173-243.

³⁰ Readjustments may be made after some time when many family members have left the village; but note that the new law expressly prohibits readjustments before expiry of a use right term, while extending the ability of households to transfer the limited use right to someone else (Art 131 PRL and above).

schools in the cities, even though the level of rural education may be much worse than in the cities.

Overall, it has been pointed out that urban-rural income and other disparity has risen greatly in recent years.³¹ Income disparity would appear even greater, once the rural-urban disparity of access to public services had been 'factored in.'

II. 3. 'Takings' (expropriation) of land and buildings under old and new law

In a legal system in which due to a – however tenuous – commitment to socialist principles there can be no private ownership of land, a booming real estate market may seem like an oddity at first glance. But the existence of a particular type of land use right easily explains it. The urban real estate market is founded on the urban land use right for construction purposes.³² Like the rural land use rights, urban land use rights are limited in time, but the stipulated time period is longer (up to 70 years for residential construction land). With the introduction of the new Property Rights Law, a provision was made whereby land use rights will be automatically renewed upon expiry of the term. It remains to be seen on what conditions such renewal will take place (e.g. will urban governments require the payment of another fee); but at any rate, urban land use right holders find themselves in a far more secure position than rural ones, as in the rural case the law only says that use rights 'may' be extended (Art 127). Most importantly, urban land use rights can be transferred to others without the restrictions applying to holders of rural land use rights.³³

Takings. While peasants cannot legally sell land for urban (e.g. residential) construction or residential purposes,³⁴ city governments may decide to expropriate ('take') land from an entire collective, re-designating it as 'urban'. There are administrative requirements for such takings, which include an approval requirement, and compensation has to be paid to the rural collective in the case of expropriation.³⁵ This is often done by means of an arrangement imposing that the obligation to pay compensation directly on a property developer. Compensation is basically measured by the collective's members' expected agricultural

³¹ From Prostermann, Zhu, *supra* note 19.

³² In Chinese, 建设用地使用权.

³³ Chapter 2 of the 1st division of the new PRL deals with transfer of property rights. A principle of public notice through registration has been introduced for immoveable property.

³⁴ Article 128 PRL.

³⁵ Art 42 PRL (regarding collectively owned land) and 132 PRL (reiterating the need to pay compensation in the section of the PRL which deals with rural land use rights), etc.

incomes for up to thirty years (corresponding to the time limitation for rural land use rights);³⁶ there is also a requirement to reallocate evicted persons to new housing and pay special compensation for young planted crops, etc.

In the context of such a taking called 'requisitioning' of land (formerly, *tudi zhengyong*, now *tudi zhengshou* to reflect the permanency and expropriation character of the measure better in Chinese language), ownership is transformed from collective (rural) land ownership into state (urban) land ownership,³⁷ and private individual (household) rights of use in land are extinguished together with collective ownership, the basis of these rural land use rights.³⁸ City governments, representing the state as new owner through their land administration bureaus, can then go on to grant rights of use for urban construction, usually to property developers, against a fee.³⁹ City governments can also make administrative decisions for the 'demolition and relocation' of buildings already situated on urban land, with a view to later granting urban land use rights to property developers carrying out urban 'redevelopment.' The present study concentrates on the rural takings are considered, as they affect peasants directly, only pointing out how the position of peasants compares to that of urban residents.

Both urban residents and peasants affected by what may summarily be described as government 'takings' (as in the Anglo-American context) will at some point typically suffer eviction from their houses and 'demolition and relocation' (*chaiqian*) of these houses. But 'demolition and relocation' of urban residents is governed by law different from that governing the rural land taking process.⁴⁰

The law provides that takings (rural and urban) are subject to a requirement of 'public use' purpose.⁴¹ What is problematic about this requirement is that, even though its wording

³⁶ The composition of compensation (*buchang*) is complex; for instance, it may include payments for the loss of green crops and for the loss of rural dwellings. Art 42 ff, Land Administration Law.

³⁷ The new terminology proposed a distinction between requisition and expropriation.

³⁸ This is implicit in Art 132 PRL.

³⁹ Regarding land already designated as urban and currently used for residential purposes, it is possible for urban governments to claim the land of residents by administrative decision, against compensation which in these cases should, according to the law, be measured according to the market value of urban land use rights. Technically speaking, the city government 'takes back' (*shouhui*, 收回) land in those urban cases. Effectively, any legal position held by the residents, for instance land use rights, rights of ownership relating to flats and houses, or rights arising from lease arrangements, e.g. the state administered *jingzufang* (经租房), are lost. Again, cities can go on to grant rights of use to property developers against compensation.

⁴⁰ For urban residents the State Council 'Urban demolition and relocation regulation' and various local regulations apply; rural evictions are handled in accordance with the Land Administration Law and further local laws.

⁴¹ P.R.C. Constitution, Article 13 para. 2 of PRC Constitution 2004: (...) The state may, for the public interest, expropriate or take over private property of citizens for public use, and pay compensation in accordance with the law. Art 42 PRL: For the purpose of satisfying the needs of public interests, it is allowed to requisition collectively-owned lands, premises owned by entities and individuals or other realties in accordance with the

seems so similar to that used in many market economies as a restricting precondition of state expropriation,⁴² this public use 'restriction' is operative in an environment in which land designated as rural is excluded from the urban property market. In other words, all rural land must be subjected to a taking process, before it can become land for urban construction (or to be more precise, before it can yield land use rights for urban construction). In a place in which urbanization is happening with break-neck speed, and in which the judicial system remains weak, this means that 'takings' of collectively owned rural land are not exceptional processes accompanied by lengthy legal disputes. They are normal processes underlying every urban construction project which is not one of inner-city 'urban renewal.'

Compensation and gains made from land takings. In effect, both in rural 'land requisitioning' and urban 'demolition and relocation' cases, governments can to some degree set the 'price' at which they will take land, and then negotiate a price at which they 'sell' rights of use to urban developers. This is because the compensation is effectively the subject of an administrative decision subject to legal requirements but not amenable to judicial review.⁴³ Court do potentially play a role, however, when compensation is not paid as promised/stipulated by the administrative decision, when individual agreements about compensation are not honoured, or when improper means are used to evict peasants. All of this happens frequently and in part explains the high number of land protests.

Land takings as described above can constitute a large part of city governments' revenue,⁴⁴ and frequently involve corruption. Government and party officials' control over land use puts them in a position of great power. At the same time, the administration has experienced the devolution of responsibilities for public services upon local governments, as well as the commercialization of many public services, in recent decades.⁴⁵ Against a background of stretched public funds and increased state responsibilities at the local government level, local government officials may feel virtually forced to grab and sell peasant land in order to generate revenue to be used for essential purposes of public administration and public services; but there is also a great temptation to enrich oneself in the

statutory power limit and procedures...As for the requisition of collectively-owned land, it is necessary to, according to law and in full amount, pay such fees as land compensation fees, placement subsidies, compensations for the above-ground fixtures of the lands and seedlings, arrange for social security fees for the farmers whose land is requisitioned, secure their livelihood and safeguard their legitimate rights and interests.'

⁴² E.g. the 5th Amendment of the U.S. Constitution.

⁴³ Art 12 (2) of the Administrative Litigation Law is generally interpreted to preclude challenges to 'normative documents' such as those setting compensation sums. Eva Pils, Zigong case.

⁴⁴ In 2003 it was put to the author that revenue from land takings was greater than revenue from tax, for instance in Beijing and Shanghai.

⁴⁵ United Nation's Development Programme For China's "China Human Development Report" dated 15 October 2005 and available at http://www.undp.org.cn/downloads/nhdr2005/NHDR2005_complete.pdf.

process; and there are many opportunities to do so.

Even if peasants get legal compensation payments, they do not get it according to a 'fair market value' standard. Compensation for them is basically limited to the equivalent of thirty years of rural production output.⁴⁶ Such payments fall far short of the gains made through the urbanization process. Several scholars have attempted to calculate the scale at which people are 'losing out' – if one assumes that fair market price compensation would be fair; a big 'If.'. In a 2005 book-length study of development issues, for instance, Zhou Tianyong, an academic at the Chinese Communist Party Central Party School, estimated the total value of land taken from peasant collectives each year at three trillion Yuan Renminbi (ca. 400 billion USD). The same author estimates that peasants get between 5 and 10% of the value added through the transfer of land from agricultural to urban construction purposes,⁴⁷ and that the city governments, property developers and officials get the rest.



An official poster used in the context of an urban eviction in a Beijing district, encouraging residents to move out early: 'One should mind one's own interests; those who sign their agreement early can soon settle into a new home'⁴⁸ Despite technical legal differences, the strategy of encouraging affected citizens to sign agreements about compensation early is similar in rural areas.

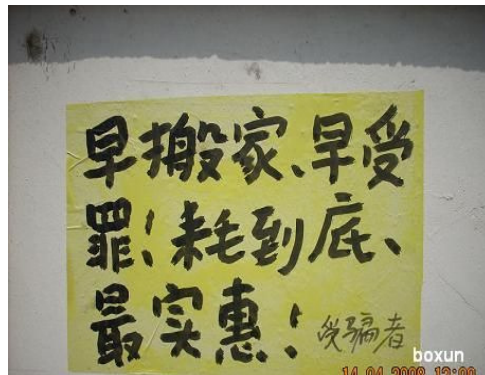
Often, peasant evictees (like their urban counterparts, residents evicted from their homes) do not actually get the compensation legally due to them. In the just-mentioned

⁴⁶ See above for more details.

⁴⁷ Zhou Tianyong (周天勇) *Breaking Through the Obstacles to Development* (突破发展的体制性障碍) Guangzhou, 2005, pp. 2 – 6..

⁴⁸ 'Propaganda and satirical slogans on Beijing walls affected by demolition' (北京拆迁墙上的宣传和讽刺标语), 22 April 2008, <http://www.peacehall.com/news/gb/china/2008/04/200804220341.shtml>.

publication, Zhou Tianyong estimates that in the period between the early 1980s and 2003, peasant collectives across the country were denied 4,5 trillion Yuan Renminbi, which, he said, ought to have been their legal compensation.⁴⁹ The PRL and previous laws have implicitly recognized the existence of this problem by stipulating clearly that corrupt practices are not allowed; for instance, the PRL says in Art 42 (3) that ‘no entity or individual may embezzle, misappropriate, privately share, detain or delay in the payment of the compensation fees for takings.’



A poster ridiculing the official assurances: ‘Those who move out earlier will be wronged earlier! Those who hold out as long as they can are the clever ones!’ (Signed ‘a victim of fraud’)⁵⁰

Process issues. Peasants are affected by land takings in three major ways. Firstly, there is the loss of the land. Second, they may be denied compensation to which they are legally entitled (or compensation standards may be set so low that they violate national law). Thirdly, there are coercive and sometimes violent measures taken against the affected households to evict them or to suppress protest or legal action against the takings. These issues are discussed further below in the context of resistance to takings. For affected individuals, takings can have widely different further consequences. Younger people, for instance, may find new work quite easily, and not have to rely on the compensation arranged for them. But those who are too old or infirm to get work in the cities may face the uncertain prospect of living their lives out as ‘landless peasants’ (*shidi nongmin*). This experience can lead to the formation of communities of collectives who have lost land, often around a few central figures or ‘peasant representatives.’

⁴⁹ *Supra* note 45.

⁵⁰ *Supra* note 46.

II. 4. Scarcity of land and State efforts to restrict wasteful development projects and fight corruption

There is no doubt that the central government is acutely aware of the abovementioned issues and that efforts are made to control the problem.⁵¹ According to a July 2007 report, there were 121.8 million hectares arable land left at the end of last year, compared with 122 million in 2005; and the 'red line' below which the total amount of agrarian land must not drop was described as at 120 million hectares by the Ministry of Land and National Resources Administration. The Ministry reportedly also said that eighty percent of illegal land use in China was due to corrupt local officials flouting regulations.⁵² The scale of the problem and the extent to which the central government is concerned about it is perhaps illustrated by the fact that it decided to use satellite imaging as a means of tracking down illegal land use (in most cases, unauthorized use of farmland for industrial/urban construction).⁵³

Many central policies and most recently also the Property Rights Law have addressed this problem; for instance, the PRL says in its Article 43: 'The state provides special protection for farm lands, strictly restricts the conversion of farm lands into construction lands and controls the aggregate quantity of construction lands. No one may requisition any collectively-owned land by violating the statutory power limit and procedures.' The 2008 'First Central Document' of the Party Central and State Council, which traditionally addresses rural problems in each year, is particularly explicit about land issues this year, demanding that the rules on approval for expropriations and on compensation be strictly enforced, and that China's new land registration system be implemented so as to secure land use rights, which are now clearly recognized to have the status of property (not just contractual) rights.⁵⁴

But it would appear wrong to think that the problem was one simply of 'law

⁵¹ For a discussion of the number and extent of these takings see 'China's illegal land use cases on the rise' (中国土地违法案件有增无减), Radio Free Asia, 21 March 2007, at

<http://www.rfa.org/mandarin/shenrubao/2007/03/21/zhengdi>. [to be updated]

⁵² 'Officials blamed in China land misuse', 13 July 2007, <http://sg.biz.yahoo.com/070713/1/49tea.html>.

⁵³ 'Beijing Uses Satellites to Monitor Land Use', *Xinhua News Agency*, 28 October 2006, at <http://english.cri.cn/2906/2006/10/28/65@156278.htm>.

⁵⁴ Party Central, State Council Opinions on Strengthening the Basis of Agriculture (党中央国务院关于加强农业基础设施建设若干意见), at http://www.china.com.cn/policy/txt/2008-01/31/content_9620310.htm.

implementation' in the sense that if all the central directives on restricting urban development and takings from peasant collectives were implemented, all would be well. For one thing, urban construction is in many ways also encouraged by the state at central and local levels, for instance by making individual officials' promotion (based on officially measured achievement, *chengji*) dependent on successfully initiating urbanization/industrialization in their area.⁵⁵ Moreover, the central government relies on local governments carrying out its responsibilities to supply public services, without in many cases supplying them with adequate funding. Finally, it seems that the amount of control which government officials exercise over land use according to law, combined with the potential gains to be made through corruption, are a recipe for systemic and endemic corruption. In that sense, many problems appear to result from the hybrid character of the system, combining 'socialist public' land ownership with a fiercely capitalist real estate market based on private land use rights, and discriminating against peasants by imposing the consequential legal distinction between rural and urban land. Nevertheless, the state has not chosen to alter the property regime through more fundamental overhaul of the land law.

III. Avenues of redress and protest used by peasants

Whether or legal rules intended to protect them have been violated, peasants will in many cases try to protest takings (the term for 'taking' as used here is *zhengyong* or – according to the new terminology introduced by the 2007 PRL - *zhengshou*). They will at least seek better compensation. Since rural land cannot be sold, the process of seeking better compensation is in some ways functionally similar to that of bargaining in other economic orders, but this 'bargain' is in many ways an unequal one.

II. 1. Administrative and judicial avenues

Chinese law offers citizens the option of civil litigation and – on restrictive conditions – administrative litigation before different divisions of the ordinary courts. Since takings of land and/or buildings are administrative decisions litigation in this context is usually 'administrative litigation' governed by a special law.. Administrative litigation against specific administrative acts usually have to be preceded by an administrative reconsideration procedure, which gives the administrative authority an opportunity to change its decision

⁵⁵ It has been argued that continued economic growth is needed to keep the population content in China, and real estate and construction are important aspects of economic growth.

before courts become involved.

The Party and authorities under it can generally not be sued, nor can its decisions be challenged in court.⁵⁶ In individual case studies this may turn out to be important when a major decision was made by a party committee, which does not represent the state.

There are many difficulties with using the law to protect one's rights in takings cases. Major difficulties are briefly described below. Ultimately, these issues are not doctrinal or technical issues of interpreting the law, as long as courts are not allowed to make decisions independently.

Litigation against land takings as such? It is difficult to bring a lawsuit against a land taking as such. The rural collective is the owner of rural land,⁵⁷ and in general it has legal personality to bring lawsuits.^{58,59} The SPC has also ruled that individual holders of *chengbao* land use rights may litigate against government decisions affecting the collectively owned land, from which they derive ownership.⁶⁰ However, the administrative expropriation decision is widely considered not to be amenable to judicial review, because it has the same status as law in the present context, and is therefore excluded according to Art 12 (2) Administrative Litigation Law. It is regarded as a regulation of 'generally binding' character, rather than an individuated or 'specific' administrative act. Known cases of collectives or individual peasants suing the government have all concerned aspects of the expropriation process such as compensation, or concerned cases in which no formal expropriation decision

⁵⁶ Whether or not the Party can be sued has occasionally been a subject of academic discussion, but the reality remains that it cannot be sued. Professor He Weifang was one of only a few law professors ever to have criticized this fact publicly, in March 2006. He Weifang, *Zhongguo hongguan jingji yu gaige zoushi zuotanhui* [Macro-economy and Reform Trends], Speech in Xinglin Shanzhuang (Mar. 4, 2006), available at <http://www.peacehall.com/forum/gmlt/118.shtml>; www.peacehall.com/forum/gmlt/119.shtml; <http://www.peacehall.com/forum/gmlt/120.shtml>; 'What He Weifang Said', EastSouthWestNorth, <http://www.zonaeuropa.com/02212.htm> (last visited Apr. 11, 2006).

⁵⁷ And the PRL states now quite clearly that the collective consists of individual peasant members in Art 59.

⁵⁸ Art 24 of the Administrative Litigation Law says that organizations have such legal personality. There have been various reports of villagers' committees bringing lawsuits against, for instance, urban governments. For one such report see e.g. 土地变“性” 村委会告武威市政府, Gansu Daily, at <http://www.gansudaily.com.cn/20051228/205/2005C28A02155019.htm>. It concerned a case in which an urban government had allocated (huabo) land use rights without having gone through an expropriation procedure. This 2005 case was characterized as the first case of a villagers' committee suing government in Gansu province (a poor western province).

⁵⁹ Cp Huang Songyou (黄松有 (主编)), 《中华人民共和国物权法》条文理解与适用, 人民法院出版社: 2007) at p. 207. At p. 206 Huang characterises collective ownership as a form of joint ownership and this would probably mean that the joint owners individually, but not the collective, had legal personality. On the other hand the villagers' committee is viewed as exercising ownership rights on behalf of the collective (Art 60) and owners generally have a right to sue according to Art 32. Under new law, members of a rural collective may apply to courts for annulment of decisions made by the collective, which violated their interests (Article 63 PRL).

⁶⁰ Supreme People's Court Judicial Interpretation on Implementing the Administrative Litigation Law, 8 March 2008, Art 16.

had been made.

Even if litigation could be brought to challenge a decision to expropriate a rural collective, the success of such litigation would be doubtful under current substantive law. It would be doubtful, for instance, whether the 'public interest' requirement could be used effectively to challenge the legality of a taking. (It could probably be used in cases where there had been fraudulent deception about the purpose of a taking, for instance, and it is being used in negotiations with government officials about compensation, according to anecdotal evidence.) As to procedural requirements such as the lack of approval from the appropriate higher-order state authority for a decision to expropriate, it is unclear what the consequence of such lack would be if brought up in court.

Apart from these more technical legal problems there are political ones. The villagers' committees, acting on behalf of the collective, are in many ways an administrative authority rather than a living collective able to assert the interests of its members against the state or against local political power. Despite the theory that villages have self government by elected village officials, and despite encouraging signs that rural self-government works in some cases, the villagers' committee is also part of a system of political governance following the principles of democratic centralism. In land takings cases, the rural collective is represented by the villagers' committee or village head acting on its behalf,⁶¹ and if these village officials are corrupt, a decision to expropriate may be communicated to them, but not passed on to the villagers, for years.⁶² Article 59 now seeks to address this problem by demanding that decisions about allocation of compensation be distributed according to a plan decided on by all members of the collective. Of course, while peasants do not know that their land has been the subject of an expropriation decision, they have no opportunity to protest against the decision. Beyond that, there is the general problem of the weakness of the judiciary, in the present context especially of 'local protectionism' of the local courts.

In sum, any litigation or administrative reconsideration proceedings have to be initiated by individual peasants or groups of peasants as members of the collective, and this means that the issue of expropriation itself will be raised only indirectly. But this does not by any means imply that there is no collective action against takings, as the remaining sections of this paper will explain.

⁶¹ Art 60 (1) PRL. If [a collectively owned plot of land] is owned by a farmers' collective of a village, the ownership shall be exercised by a collective economic organization or the villagers' committee of the village on behalf of the collective. See also Huang Songyou, *id* at p. 201 commenting critically on the phenomenon of villagers' committees making decisions about collectively owned land even when the collective in question is a sub-group or part of the village.

⁶² This happened in the Zigong case, *supra* note 23.

Litigation about compensation. Legal action, so far as there is any, concentrates almost always on the amount of compensation paid out to peasants and re-housing arrangements made for them. The administrative expropriation decision stipulating standards for compensation is usually considered to be 'normative' administrative decision – a regulation of generally binding character, rather than an individuated administrative act. It is therefore considered not to be amenable to judicial review (art 12 (2) Administrative Litigation Law). Only an administrative decision further specifying the consequences of expropriation for instance for a particular household, and agreements reached with individual households about compensation according to the Land Administration Law and its Implementation Regulation come within the scope of judicial review.

Information on the number of cases in which compensation about litigation has been brought successfully, and in particular about cases in which it was the compensation scheme, rather than the more individuated problem of how the scheme was implemented, does not appear to be available from anywhere.⁶³

Litigation regarding compensation is also fraught with the problem of 'local protectionism' described below.

Criminal prosecution of corrupt officials and property developers. There are frequent attempts on the part of peasants to get the state to prosecute officials whom they perceive to be responsible in illegal land grabs. Apart from a sense of injustice, the motivation for this may also be to see powerful officials removed from their posts, so as to be able to have more direct complaints about compensation, etc., addressed later. These attempts to get officials charge are directed at use of the legal system (institutions), but generally made in the context of petitioning (see below).

The weakness of the judiciary. Courts are dependent, primarily, on the Party; although the influence exercised by the Party is visible to varying degrees. For one thing, the Party's political and legal committee can determine how to decide individual cases deemed to be major cases. The Party also effectively controls the hiring process and promotion. In cases in which a Party member who is also an official is investigated for corruption, that process is always initiated by the Party Discipline and Inspection Committee which will hand the individual concerned over to the state prosecution authorities after conducting its own investigation. (As judges especially in poorer areas are underpaid corruption is not infrequent. It is often rationalized by low pay, obligations toward one's family members, etc.)

⁶³ [To be updated if possible].

Financially courts are dependent directly on the local People's Congresses and governments, and responsible to the local People's Congresses.⁶⁴ While there is an ongoing debate about whether People's Congresses should become involved in the handling of individual cases, they anyway sometimes influence the handling of disputes. Influence is also exercised by the 'political and legal committees' of the Party.⁶⁵ Individual judges are dependent in many ways, including financially, on their periodical evaluation (*kaohe*) by the court administration. They often consider themselves under-paid, as just mentioned, and part of their income consists of bonuses which may be withheld if they do not perform well. As a result, courts are in many cases highly unlikely to handle lawsuits against the interests of local government or party officials. From the perspective of potential citizen-litigants, administrative litigation is fraught with various risks, including retaliation by the authorities being sued.⁶⁶

III. 2. The 'letters and visits' system

The letters and visits or petitioning system has a long tradition in China.⁶⁷ Today, petitioning is an alternative - often viewed as preferable - to court litigation. The power to offer redress in such cases often does not lie with the courts, as explained above. Therefore those authorities supposed to have more power will be sought out by complainants hoping to obtain a decision that will help them. These include various government authorities as well as Party committees and People's Congresses at different national and local levels. Most state authorities in China, including courts, have an 'office for answering letters and receiving visitors.' It is also quite common for petitioners to try to influence an ongoing court litigation by petitioning influential other authorities, or to petition to get a final court decision reversed through re-trial. Petitioning also functions as a channel through which government at all

⁶⁴ The way in which an individual court's responsibility to the National People's Congress bears on court practice can be inferred, for instance, from the Supreme People's Court's 1998 最高人民法院关于人民法院接受人民代表大会及其常务委员会监督的若干意见的通知 [Notice on the Supreme People's Court's Views on People's Courts receiving People's Congresses' and their Standing Committees' supervision. .

⁶⁵ The Political and Legal Committees may demand specific decisions in cases of particular significance (重大案件, *zhongda anjian*)

⁶⁶ For information on numbers of cases handled see . Zhu Jingwen, (general editor) of 中国法律发展报告 (北京, 中国人民大学出版社, 2007年6月; on judicial independence Kevin O'Brien & Lianjiang Li, 'Suing the Local State: Administrative Litigation in Rural China', in Diamant, Lubman and O'Brien (editors), *Engaging the Law in China* (Stanford: 2005), pp. 31-53 He Xin, 'Ideology or Reality? Limited Judicial Independence in Contemporary Rural China', *Asian Law* 2004 vol. 6.

⁶⁷ Carl Minzner, ., 'Xinfang: an alternative to the formal Chinese legal system,' 42 *Stanford Journal of International Law* (2006).

levels can receive information on citizens' grievances.⁶⁸ Because of the various functions it serves for different groups and forces in Chinese society, the 'letters and visits' institution has been variously compared with the public media, courts, and institutions such as the Swedish 'ombudsman' in western societies.

Article 41 of the Chinese Constitution guarantees citizens the 'right to criticise and make suggestions regarding any state organ or functionary,' and to 'make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty.'⁶⁹ There are a number of both State Council and local regulations concerning letters and visits.⁷⁰ Due to a surge in petitioning in recent years, there have been attempts to restrict petitioning legally, e.g. by a rule in the State Council Regulation on Letters and Visits which restricts the number of petitioners allowed to visit government offices to five in any given case, and by a rule prohibiting the 'skipping' of hierarchical levels when petitioning: this is intended to prevent petitioners from seeking out provincial and central level authorities to inform them about corruption and similar problems existing at the lowest level of administration.



*Shangqiupingtai, Henan Province, May 2008, kneeling villagers protest demolitions.*⁷¹

⁶⁸ Minzner, *id.*

⁶⁹ The first paragraph of Article 41 of the P.R.C. Constitution of 2004 reads: „Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.“

⁷⁰ The 1995 State Council regulation (国务院信访条例) was replaced in 2005 by a new version.

⁷¹ 'Demolitions in Shangqiupingtai, Henan, make peasants homeless (河南商丘平台镇强制拆迁致使村民无家可归), 8 May 2008, at

At <http://www.peacehall.com/news/gb/china/2008/05/200805082231.shtml>.

Courts are among the authorities petitioned, too; and there are also petitions against court decisions, submitted to courts as well as other state and party authorities. This is due to the peculiar openness of the Chinese judicial process and the weakness of the judiciary. As mentioned, judges may experience pressure or interference from within their court (e.g., by the court president or the adjudication committee), from higher courts, as well as from other party and state institutions. Moreover last-instance decisions are often open to further revision in re-trial) procedures. Citizens may therefore seek to use the petitioning system to make courts file a case in which they are the complainants, for instance; or disappointed litigants may try and get an order for a re-trial of their case.



Zigong, Sichuan Province, September 2007, villagers set off to Beijing to petition against an ongoing expropriation.⁷²

Petitioning is supposed to be inefficient,⁷³ and it notoriously involves coercive and violent practices, despite the fact that the institution of detaining petitioners violating petitioning rules was abolished by the introduction of the 2005 regulation (replacing a 1995 regulation).⁷⁴ Among these is the practice called *jiefang*, which means a ‘reception’ of petitioners by officials from their own locality, and ‘escorting home’ of petitioners to prevent them from going on with their activities. The motivation for this is that petitioners may bring wrongdoing on the part of local authorities to the attention of central authorities. In recent months, it appears that illegal places of detention have also been used to control petitioners, for instance in Beijing.

⁷² ‘Appeal against decision in Zigong petitioner Miao Qunfang’s case’ (自贡上访人缪群芳行政判决上诉状), 12 September 2007, <http://www.peacehall.com/news/gb/china/2007/09/200709121411.shtml>.

⁷³ Yu Jianrong’s research [CITATION].

⁷⁴ For a report on petitioning see Human Rights Watch, “We Could Disappear At Any Time.” Retaliation and Abuses Against Chinese Petitioners, published in December 2005, available at <http://hrw.org/reports/2005/china1205/>; see especially p. 24.

Petitioning in land disputes appears to be frequent, and sometimes it involves large numbers of people. Reports about such cases on overseas websites abound. Often, the number of people affected is as high as several hundred, thousand or – e.g. in large dam cases – sometimes even tens of thousands of people.⁷⁵



*Tianjin 2007, protest against a land taking in front of a government building.*⁷⁶

The fact that petitioning according to the traditional method of ‘letters and visits’ often involves the actual physical ‘visit’ with a government authority means visits can easily take on the character of some sort of demonstration. One form in which people may demonstrate is that of a supplicant sit-in in front of government buildings, for instance.

III. 3. Escalation of protest and physical resistance

There are two major ways in which peasants physically resist the takings processes and evictions. Typically, resistance occurs after the legal channels of administrative reconsideration, administrative litigation and of the ‘letters and visits’ system have been used unsuccessfully for some time; once a land taking or eviction process has involved violence, efforts to obtain legal redress may become more intense.

Firstly, methods of squatting on the land, roadblocks and the like are used to resist

⁷⁵ See e.g. Reuters, ‘China deploys troops to quell dam protest,’ 6 November 2004, on the Hanyuan dam protests alleged to have involved several thousand protesters.

⁷⁶ ‘Tianjin evictees stage sit-in, will go to central leadership if their case is not addressed (天津上千拆迁户连续静坐：不行再找中央领导), 20 August 2007, at <http://peacehall.com/news/gb/china/2007/08/200708020730.shtml>.

the possession of agricultural land. Secondly, refusing to vacate houses affected by 'demolition and relocation.' The second method is also used by urban residents in the so-called 'nailhouse' cases.⁷⁷ Holdouts are by no means always successful. Those trying to remain in their homes may be swiftly and effectively evicted in forceful evictions.

Protest against occupation of requisitioned/expropriated land. An example of 2005 was that of Shenyou in Dingzhou, a case in which protest turned to a violent clash reported in western and Chinese language overseas media.⁷⁸ According to reports, one out of thirteen [natural] villages refused to give up its land for a state owned power plant, regarded as one of the most important projects of the province. In one incident, 20 thugs were employed to chase villagers off the land designated for construction and one was reportedly captured and put in a pit by the peasants (not released to the police for some time). Ultimately, some 300 people were employed to strike against the peasants; a video clip showing blurred scenes of violence reportedly from this event was made available on overseas websites.⁷⁹ Several people were killed. As in other such cases, the unrest was stopped by the use of large numbers of police; the military may also be deployed.

In February 2008, the protest broke out again. Peasants took the – exhumed - bodies of those killed in front of a government building to express their protest.⁸⁰ In cases of more recent deaths or of injured people, this is a common form of protest.

Other examples of similar actions – with varying degrees of violence - taken in such cases include that in Taishi, a village in the province of Guangdong about which a documentary film was made by Professor Ai Xiaoming of Zhongshan University, Shanwei, etc.⁸¹ (Some materials on the another dispute, the Zigong, Sichuan, land dispute are provided in the Appendix.)

There is no reliable data on how many escalating or violent land protests there are. Data on the occurrence of 'mass incidents' exist, and the number of such incidents was supposed to be 86000 in the year 2005, for instance, but it is very difficult to tell what

⁷⁷ The most famous has been that of Chongqing, 2007. See e.g. for an English language report Howard French, 'In China, Fight Over Development Creates a Star,' *New York Times*, 27 March 2007, at http://www.nytimes.com/2007/03/26/world/asia/26cnd-china.html?_r=1&hp&oref=slogin.

⁷⁸ Phillip Pan, 'Chinese Peasants' Attacked in Land Dispute', *Washington Post* 15 June 2005; *The Economist*, 'Turning ploughshares into staves', 23 June 2005; Liang Jing, 'The Warning Sounded by the Dingzhou event', made available in translation at EastSouthWestNorth, 22 June 2005; Pan, Phillip, 'Chinese Officials Retreat in Farmland Dispute'.

⁷⁹ See video clip on Dingzhou at <http://www.washingtonpost.com/wp-dyn/content/video/2005/06/14/VI2005061401932.html?referrer=emailink>.

⁸⁰ 河北重演“定州事件”邢台强征地打死 26 岁小伙,

RFA, 30 January 2008; at http://www.aboluowang.com/news/data/2008/0130/article_40145.html;

<http://www.rfa.org/mandarin/shenrubao/2008/01/29/dingzhou/email.html>.

⁸¹ See e.g. ESWN, 'Comparing Taishi and Shanwei', 17 November 2006 at http://www.zonaeuropa.com/20060118_1.htm/.

precisely constituted a mass incident, and some of these may be relatively minor demonstrations; moreover there is no information on how many of them are land-related.

Protest against evictions. To give an example of the second phenomenon, on 18 July 2007 the radio news programme Radio Free Asia and several other websites devoted to reporting events not reported by the mainland Chinese media carried a report about an eviction of a few peasant households living on the outskirts of Zigong, a minor city in Sichuan province (excerpt).

“ The Sichuan City of Zigong, in order to build a private gas station, has carried out forced demolition upon people’s homes, with a team of several hundred city guards and police officers, led by a vice mayor. This happened without having obtained the [legally required] decision of a court of law to enforce demolition. (...) Zhang Yu, the daughter of one of the affected households, described the situation on Wednesday to our journalist as follows: ‘A few hundred or a thousand people attacked the peasant homes and pulled the occupants out by force, they pulled them by their necks and dragged them across the floors, they beat them down the stairwells. Some were from the local police station, some from the court enforcement troupe, but for the most part they were plainclothes people. After dragging the people out they used bulldozers to knock down the house. And among them there were some cadres who said, we made early preparations for this. We already contacted the hospital on your behalf and made sure that the ambulances would be ready. Those who have been wounded will be treated at the expense of the government, The government has enough money to get you treated. My mother had been pushed to a point where she was no longer clear in her mind; she wanted to return to the bedroom. She ran in front of the house already knocked down and then she just stood there and cried. There is nothing at all we can do [for her]. She was beaten so much by them that now she looks like a mad person, with her hair partly torn out, and wounds all over her body.’

On Monday a few former residents had threatened to kill themselves by jumping of their building and so two buildings actually remained standing because of this. The residents locked the doors and barricaded themselves in and hung a banner reading “Respect the Constitutional Protection of Property! Build A Harmonious Society that Puts People First!”⁸² And they prepared bricks and oil to protect their private property. Then the government sent out 300 militia officers, who climbed on top of the buildings and attacked the sleeping residents in the early morning of Tuesday. The residents dialled “110” for the police but the police did not send anyone to help them. (...)

⁸² Two of the official political slogans currently in use.

On Wednesday afternoon, the government forced the evictees to come to the government building to conduct a so-called settlement negotiation. Zhang Yu told the journalist: 'They said that they would only give 400 Yuan Renminbi per square metre in compensation, and that if anyone persisted [refusing to settle] they would only get 45 Yuan Renminbi per square metre.'⁸³

This is a common example such as can be found reiterated, with little variation, in many reports. The scene described here might have been preceded by a series of city government decisions about the necessity to requisition land in that area, followed by forced 'agreements' about the compensation to be paid to the residents, and finally administrative notices delivered to the homes of the residents. Sometimes there might be no prior notice but residents might find a single red character in a circle painted on the walls of their houses: *chai* 拆, '[condemned for] demolition.' At some point after being notified of the impending demolition, demolition would actually be carried out. Depending on how much resistance there had been to the decision, it might happen in an orderly fashion after the evictees had moved out with their things. In case there were people who resisted the decision by refusing to move out, measures such as cutting off supplies would ultimately be followed by forced eviction, sometimes at night so as to minimise resistance;⁸⁴ and reports suggest that for such purposes, not only hired persons and employees of the land developer companies but also various government officials working on law enforcement might be employed to carry out the forced eviction.

⁸³ 自贡日夜暴力拆迁房主崩溃 官员认为强拆不需法律程序, RFA report, 18 July 2007, available at <http://www.rfa.org/mandarin/shenrubaodao/2007/07/18/zhigong>.

⁸⁴ For an account about a January 2007 case in Shanghai in which a citizen suffered severe burns, see 上海市暴力动迁放火烧人!, 20 January 2007, at <http://www.peacehall.com/news/gb/yuanqing/2007/01/200701131223.shtml>.



A graffiti indicating the danger of forceful eviction as a consequence of 'holding out' on the wall of an affected building (source unknown). The characters contain a kind of pun; they read 'people's execution' which is pronounced renmin bi like the Chinese currency Renminbi ('people's currency').

Reports about similar eviction processes are widely available on internet websites and blogs. But it remains difficult to get an understanding of the number of such cases overall.

IV. Legal informality and illegality: the rise and falter of the so-called 'minor property right'

One of the popular responses to the land tenure system dominated by official control has consisted in efforts to circumvent those legal rules, which require an official taking of collective land and its transformation into state owned 'urban' land before urban construction can go ahead. So far as the 'suppliers' of land, the peasants, are concerned, they may seek ways of getting a share in the benefits of construction and value increase of the land. Economic circumstances described below also make urban residents, who are on the 'demand' side, desirous of circumventing the rules.

IV. 1. Economic background

As mentioned above, it is impossible for peasants or peasant collectives to sell rights in rural land to urban developers, and this is the main reason why rural communities which chance to be 'sitting' on commercially potentially valuable land do not get a share in the value increase brought about by urban construction. This is of course a source of grievance to

these communities. It is increased by the various problems affecting the payment and distribution of the comparatively small compensation sums owed to rural collectives when they are expropriated.

At the same time, urban users of the commercial property market also have complaints. They are affected by a highly speculative property market, over which they have little control or influence. The price at which property developers acquire land use rights depends only on how much expropriation compensation, administrative fees and bribes they have to pay. They do not need to persuade originally residents to sell property, and of course, as mentioned, massive urban construction is going on in all of China's urban centres.⁸⁵ But far from resulting in low property prices, the market has been booming in recent years. High property prices push ownership of newly constructed buildings beyond reach for large sections of the urban population, in most cities comprising people with and without urban household registration.⁸⁶ Perhaps most telling are high vacancy rates in new building complexes. What these figures convey is that a lot of newly constructed housing is bought for speculation only; the buyers will not move in, nor will they bother to rent out, but instead quickly sell off again at a higher price. There are now indications that real estate prices are sinking in some cities, but for the moment, the market remains dominated by people who buy for investment purposes only.

An illustration of the seriousness of the issue was provided by an action taken in 2006 in the then booming city of Shenzhen, close to the border with Hong Kong. Shenzhen has in less than three decades grown from a fishing village to a city of eight million, an estimated 7 million of which are migrant workers, i.e. people without Shenzhen resident status. A citizen of Shenzhen named Zou Tao called in 2006 for a campaign of 'not buying flats for three years.' The aim of this boycott was to bring the property prices down, and fight the corruption which was supposed to keep them up.⁸⁷

From the perspective of the property developers, having to pay bribes pushes up the price of land use rights to be acquired, even though good connections with officials responsible for land administration may be to their overall advantage. Property developers must be aware, moreover, of the difficult positions both rural citizens on urban fringes and would-be urban homeowners are in.

⁸⁵ China has currently 160 cities with one million or more residents.

⁸⁶ According to administrative regulations which vary locally, peasant migrant workers without an urban household registration and/or a certain level of income or migrants not employed with particular employers may not be allowed to buy real estate anyway.

⁸⁷ '“If you don't want to be a property slave, do not buy property for three years”' (‘“不想做房奴，三年别买房”') 20 April 2006, at <http://peacehall.com/news/gb/pubvp/2006/04/200604282232.shtml>.

IV. 2. A period of trade in 'minor property rights'

This situation led to the rise of the so-called 'minor property right' (*xiao chanquan*). From the perspective of the topic of this paper, the creation of the 'minor property right' was not so much an expression of peasants' struggle for (agricultural) land, as it was an expression of their struggle for land rights, in particular, to sell land owned by peasant collectives. Would-be urban homeowners and rural or suburban residents in collectives whose land was adjacent to urban centres concluded contracts allowing property developers to build residential houses on land belonging to the collective. Then the developers, or developers and villagers together, sold the new flats to customers interested in buying cheaper. Or alternatively, urban buyers directly bought homes from individual rural owners.

This practice was not in conformity with the Land Administration Law, which does not envisage the sale of collectively owned land, including especially land for residential purposes (*zhaijidi*) and rural homes, and only allows for one dwelling per rural household. It is likely that the 'minor property rights' practice involved bribing land administration officials in some cases. People who bought 'minor property right' properties appeared to hope that their 'minor' property right, their de facto acquisition of flats and land these flats were built on in contravention of Land Administration Law, would eventually be recognized by the law. Or perhaps, they merely hoped that they would not be thrown out.

For an appraisal of the legal status of such informal acquisitions it is in the first place necessary to understand that obligatory and property rights related aspects of property transactions are separate under Chinese law. A contract obligating the seller to transfer property does not by itself constitute transfer. In limited circumstances, moreover, one can assume a contractual obligation to transfer ownership of property which one does not himself own or have a right to dispose of (Art 51 PRC Contract Law). But in the present context, it seems unlikely that a contract of the kind in question would be held valid under Chinese law by a court, since it is directed at a transaction considered to be in violation of the Land Administration Law. In individual, adjudicated cases, however, lawyers pointed out that there was no specific administrative law rule prohibiting such sales. Perhaps the rule that each rural household can only own one home is an administrative law rule affecting the validity of 'minor property rights' sales.⁸⁸ The acquisition of property rights in immovable property (land, houses) is in any case premised on registration (Art 9 Property Rights Law); before, it

⁸⁸ For a report about a court case in which such a contract was held invalid, but without any specification of the administrative law rules violated, see 'Artist falls into the trap of minor property rights, has no home to return to' (北京宋庄艺术家陷小产权困局 或无处可居(图)), *Jinghua Shibao*, 10 July 2007, at http://news.xinhuanet.com/house/2007-07/30/content_6450465.htm.

was premised on the delivery of official property certificates. Some details remain unclear.⁸⁹ But there is no doubt that neither under previous nor under current law, the buyers of 'minor property rights' do not become owners of flats, or holders of land use rights which are acknowledged by the law. In that sense, 'minor property right' is a euphemism. The situation arising was in some ways similar to the phenomenon of an 'informal acquisition' of property rights in other places, most notably to the example described by De Soto for Peru.⁹⁰ But in the Chinese case, the people acquiring 'minor property rights' homes were not – at any point – squatters, and the only 'party' whose demands were ignored in the process was the central party-state, represented by its land administration bureaus.

If reports in official media are accurate, the market in 'minor property rights' was quite large. According to a July 2007 report by Xinhua News Agency, 18 percent of the 400 residential developments then on sale in the Beijing market were 'minor property right projects.'⁹¹ *Nanfang Zhoumo* reported in December 2007 that there were about 5 billion square metres of 'minor property' houses in China at the time. It claimed that minor property housing amounted to 40% of the total (120 billion square metres) of current residential properties in cities and towns.⁹² Others have put the percentage at 30%.⁹³ Whatever its exact size was, the market in minor property rights had developed, according to official media reports, over a period of about ten years.⁹⁴

IV. 3. Government crackdown and remaining uncertainty

Whether or not they involved collusive collaboration from some local officials seeking private gains, the creation of the 'minor property right' mechanism can be understood as an attempt to wrench control over land from the central land administration system. Apart

⁸⁹ For instance, the questions whether another legally binding agreement is required to effect a transfer of property and whether invalidity of the obligatory sales contract automatically vitiates the property transfer, too.

⁹⁰ Hernando De Soto, *The Other Path. The Economic Answer to Terrorism*, New York, 1989, Chapter Two.

⁹¹ Xinhua News Agency, 'Minor Property Right – Better than none?', 19 July 2007, at http://english.sinoec.net/story/english_17211.html.

⁹² 'Not allowing the sale of minor property rights does not mean that the problem is not being solved', Southern Weekend, 20 December 2007, at <http://house.hexun.com/2007-12-20/102402937.html>.

⁹³ John Garnaut, 'Peasants take law into their own hands,' Sydney Morning Herald of 29 December 2007, available at <http://www.smh.com.au/news/world/peasants-take-law-into-their-own-hands/2007/12/28/1198778702606.html>.

⁹⁴ 'Why have minor property rights suddenly become risky after ten years', *China Youth Daily*, 9 July 2007, at http://news.xinhuanet.com/house/2007-07/09/content_6346980.htm.

from representing a covert challenge to the law, this practice presumably also deprived this system of some revenue in the form of fees for land use rights, and it led to legal uncertainty. There were various calls to legalise the 'minor property right', for instance, by Professor Hu Xingdou of Beijing Telecommunications University.⁹⁵

When the central state finally addressed the issue in December 2007, however, its way of doing so raised further questions and left commentators bewildered. Under the headline, 'Not allowing the sale of minor property rights does not mean that the problem is not being solved'⁹⁶ one of China's major newspapers, *Nanfang Zhoumo*, informed readers on 20 December 2007 of a State Council and subsequent Ministry of Construction notice to the effect that urban residents could not acquire land for villagers' residential use, rural houses or minor property rights.⁹⁷ So far as the State Council notice could be considered to affect private law relationships, it answered the question about the validity of contracts concerning the acquisition of 'minor property rights' by declaring them invalid.

There have been reports about its enforcement through destruction of 'minor property right' property.⁹⁸ Even before the notice, of buyers of 'minor property right' properties might find that they got no protection from the legal system.⁹⁹ Other reports detailed that this measure was being taken not only against the acquisition of land under the *zhaijidi* regime, but also of other land in collective peasant ownership. It is difficult to assess the scale at which the crackdown, if any, occurred, or to tell whether it will continue. China has a tradition of campaign-style, periodical law enforcement (the co-called 'strike hard' campaigns). It seems that if the reports released earlier by official and state-controlled media are accurate, the number of 'minor property right' properties is considerable. Drastic measures to enforce land law would have severe social effects, at least regarding those properties which have already been occupied. These severe consequences make a sustained crackdown or law enforcement campaign less likely.

⁹⁵ 'Warning about risks of minor property rights have not stopped trade, expert recommends legalization', *China Economic Weekly*, 2 July 2007 at http://news.xinhuanet.com/house/2007-07/02/content_6316130.htm.

⁹⁶ 'Not allowing the sale of minor property rights does not mean that the problem is not being solved', *Southern Weekend*, 20 December 2007, at <http://house.hexun.com/2007-12-20/102402937.html>.

⁹⁷ 国务院办公厅关于严格执行有关农村集体建设用地法律和政策的通知.

⁹⁸ E.g. Garnaut *supra* note 91: 'Within months apartment compounds were being bulldozed in Shandong, Jinan and other provinces.' No further confirmation of this has been obtained.

⁹⁹ See already 'Artist falls into the trap of minor property rights, has no home to return to' (北京宋庄艺术家陷小产权困局 或无处可居(图)), *Jinghua Shibao*, 10 July 2007, at http://news.xinhuanet.com/house/2007-07/30/content_6450465.htm.



===== 各地“小产权房”情况 =====

*'Granddad, is this not our village's land?'*¹⁰⁰

There is a further danger associated with strict law enforcement against the holders, or the sellers, of 'minor property rights:' for what the above cartoon, from the Xinhua news website, means to capture is the loss of farmland through the illegal practice of selling 'minor property rights.' But of course such loss also happens when land is taken from these communities through state-authorized expropriation procedures. A crackdown on 'minor property rights' might encourage people to ask if the legal taking of rural land was, after all, much different in its effects. It could further increase popular dissatisfaction with the current land law regime.

V. Direct challenges to the legal framework: a land rights movement?

V. 1. The wider debate of current land law and property rights law

As mentioned earlier, the enactment of the new Property Rights Law was preceded by a heated public debate drawing attention to rising social inequality, and proposing widely varying solutions to the problem of rural expropriations, corruption, and urban-rural wealth disparity. In March 2006, this debate culminated in an in this form unprecedented deferral of the new law – the draft was withdrawn from the already scheduled legislative process for further revision. A scathingly critical letter to the National People's Congress, written by a professor of Marxist legal theory at Peking University Law School and later published online, had led to a barrage of further public criticism and discussion. Criticism addressed not just

¹⁰⁰ Xinhua News Agency, at http://news.xinhuanet.com/house/2007-07/30/content_6450465.htm.

the draft law, but more generally the economic and legal reform process, referred to as 'Reform and Opening', for which it stood.¹⁰¹ Professor Gong Xiantian had written that 'in form, the Draft Property Law safeguards equally the property rights of each citizen of the country, but its main goal is to protect the property rights of a small minority...' He argued that because of its general tendency to strengthen the protection of private property rights and facilitate their transfer, enacting the proposed law would amount to a renunciation of socialism, and therefore also of the legitimizing reasons for Communist Party rule. 'The political party of the proletarian classes protects socialist public ownership in order to preserve the material foundations of citizens' right to equality,' he insisted. 'At the same time, this is also to protect the material foundations of the Communist Party's own political rule. If this foundation is lost, then the Communist Party no longer has any ground to stand on!'¹⁰²

Professor Gong Xiantian made two strong points. One was that wealth inequality and corruption were indeed on the rise, as has been pointed out earlier in this paper. The other was that the traditional regime of 'socialist public' ownership has been changed almost beyond recognition though the introduction of private property rights pertaining, not least, to land, and of 'capitalist' market mechanisms. 'Corporate capitalism' is one of the epithets now used to describe the current system. In the case of land, for example, the state has undeniably retained control through the 'public' ownership mechanisms; but such control has translated into interventionist powers held by officials, exercised at a local level of administration. This control has in many cases facilitated corruption, and which is widely resented. A return to pre-reform 'pure' socialism, as advocated by Gong, might lead to a reduction of corruption, but the only experience China has so far had of socialist public ownership is probably widely associated with power abuses in the minds of many people.

Yet on the other hand, the defences offered by proponents of the new Property Rights Law, drawing heavily on staple arguments of liberal (libertarian) economic theory such as Hayek, Nozick, and North, also rang false. For one thing, these arguments failed to recognize the real dominance of the state, in terms of property holdings (ownership) as well as in terms

¹⁰¹ Zhao Lei in *Nanfang Zhoumo* (一封信挡住物权法草案?) at <http://www.nanfangdaily.com.cn/southnews/zmzg/200602230876.asp>; Erie, Mathew, 'China's (Post) Socialist Property Rights Regime: Assessing the Impact of the Property Law on Illegal Land Takings,' *Hong Kong Law Journal*, 2007, Vol. 37, Part 3, pp. 919-949.

¹⁰² Gong Xiantian, 'A Property Law (Draft) that violates the constitution and basic principles of socialism. An open letter prompted by the annulment of section 12 of the constitution and section 73 of the General Rules of the Civil Law of 1986,' posted online on 12 August 2005; at <http://www.europe-solidaire.org/spip.php?article4161>; Gong Xiantian, original version of above letter, at <http://www.chinaelections.org/NewsInfo.asp?NewsID=45986>. See also Joseph Kahn, 'A Sharp Debate Erupts in China over Ideologies,' *The New York Times* 12 March 2006; <http://www.nytimes.com/2006/03/12/international/asia/12china.html>.

of the party-state's power to determine the rules of the property regime. Defending the new law, Professor Yang Lixin of Renmin University Law School wrote, 'the divide between the poor and the rich is not a problem of the *Property Law*. It is a problem of society. The protection of the law has a guiding function in the sense that if you have one kuai [Yuan], can't you develop it to ten thousand kuai, or a million kuai? (...) The law only ensures protection. The law cannot give any money to anyone. It cannot say, of your one million, 990000 will go to the poor. That would be revolution, not law.'¹⁰³ This line of argument was unpersuasive in a situation in which the state retained much more control over resources than ever envisaged by the liberal thinkers whom the reform drafters so frequently invoked.

According to reports, Professor Gong and others were eventually ordered to stop their opposition to the new law,¹⁰⁴ and the law was passed. But as of this writing, a few months after it has come into force, calls for a thorough-going reform of the land tenure system have not been muted. For one thing, there is an ongoing academic debate about how the system could be reformed.¹⁰⁵ This is an issue of achieving more justice in substantive law which is evidently of great importance, but beyond the scope of this paper. However, according to reports in late 2007, challenges to the existing substantive property law regime have now also been raised by various peasant groups themselves, and have in at least one instance met with swift and harsh suppression. A few reports of peasant opposition to the land law regime are briefly described in the following.

V. 2. 2007 reports about peasant community actions

Within a few days at the end of 2007, a number of open letters and related reports appeared on various internet websites outside China.¹⁰⁶ A public announcement 'to the entire

¹⁰³ Yin Jie, Beida professor vehemently opposes property draft', at 北大教授上书激烈反对导致物权法草案推迟表决, February 2006, at <http://news.enorth.com.cn/system/2006/02/09/001229339.shtml>.

¹⁰⁴ Radio Free Asia, 'Peking University Professor Gong Xiantian requested by Party Committee to withdraw from collecting signatures against property law, 10 March 2007, at 北大教授巩献田被校党委要求退出反物权法签名. <http://www.rfa.org/mandarin/shenrubao/dao/2007/03/09/gong/>.

¹⁰⁵ To provide a recent example for the academic debate, see the exchange between Yale based economist Chen Zhiwu and Beijing/CASS based sociologist Yu Jianrong at http://crd-net.org/Article/Class7/200802/20080214072008_7578.html.

¹⁰⁶ A summary of these in English language is available at http://chinadigitaltimes.net/2007/12/chinas_emerging_land_rights_movement.php. For an English language report including a video, see http://www.ft.com/cms/s/0/46d53b1e-df1d-11dc-91d4-0000779fd2ac.html?nclick_check=1. For another account, including a link to a video-clip, see Jamil Anderlini, 'Losing the Countryside: A restive Chinese peasantry calls on Beijing for land rights', 19 February 2008, at

nation', declaring that forty thousand peasants from Dongnangang village and 72 other villages in Fujin city, Heilongjiang province, had full land ownership, was made on 9 December 2007.¹⁰⁷ An open letter dated 12 December 2007 by or in the name of about seventy thousand peasants from 76 villages in Dali county, Huayin city and Tongguan county in Shaanxi province declared on behalf of the peasant communities that they were 'taking back' their collectively owned land from the state.¹⁰⁸ On 16 December 2007 an open letter in the name of 250 peasant households in Jiangsu province declared eternal ownership of their land, by themselves and their descendants.¹⁰⁹ An open letter dated 18 December 2007, signed by three people in the name of some 8000 peasants in suburban Tianjin (Wuqing), said that the land of their ancestors had been taken without giving proper compensation, for a water reservoir, and that they were 'taking it back' for the purpose of distribution to individual households. If the officials of Wuqing wished 'to serve the people, do so. If you don't want to serve the people, please go.'¹¹⁰

The first of these incidents, the action taken by peasant communities in Heilongjiang, is the best documented one. It involved participation from rights defender Yang Chunlin. Yang has since been convicted of inciting of subversion of state power, and sentenced to five years in prison, after a legal process involving torture and physical punishment even in the courtroom, according to reports.¹¹¹ The two other activists involved have been put in

http://www.ft.com/cms/s/0/46d53b1e-df1d-11dc-91d4-0000779fd2ac.html?nclick_check=1. See also John Garnaut, 'Peasants take law into their own hands,' Sydney Morning Herald of 29 December 2007, available at <http://www.smh.com.au/news/world/peasants-take-law-into-their-own-hands/2007/12/28/1198778702606.html>.

¹⁰⁷ Letter entitled '40,000 peasants from 72 villages in Fujin City, Heilongjiang, declare their ownership of land to the entire nation' (黑龙江 72 村 4 万农民宣布拥有土地所有权向全国的公告

南岗村, 富锦市), 9 December 2007, at <http://www.peacehall.com/news/gb/china/2007/12/200712091236.shtml>.

¹⁰⁸ 'Ca. 70,000 peasants of the Sanmenxia Water Reservoir area declare they are taking back their land ownership right' (三门峡库区约 7 万农民宣布收回土地所有权), 12 December 2007, at http://a.xzzg.org/news_view.asp?newsid=485, signed by six persons who – as the authors of the other letters – provide their phone numbers: Ma Lianbao, Xu Lianzhong, Zhao Delong, Zhang Sanmin, Chen Sizhong, and Xi Xinji.

¹⁰⁹ '250 peasant household of Shengzhuang village, Yixing city, in Jiangsu province maintain their ownership right in residential land and demand realization of the policy 'each resident should have a home' (江苏省宜兴市省庄村 250 户农民坚持宅基地所有权 要求实现“居者有其屋”), 16 December 2007, at <http://www.fireofliberty.org/article/6694.asp>.

¹¹⁰ 'Over 8000 peasants of Wuqing, Tianjin, take action to protect ownership of nearly 10,000 mu of land', (天津市武清区 8000 多农民 采取行动保护近万亩土地所有权)

at <http://www.newcenturynews.com/Article/china/200712/20071218215058.html>.

¹¹¹ Report of 24 March 2008 at <http://www.peacehall.com/news/gb/china/2008/03/200803242115.shtml>.

administrative detention for 'Re-Education Through Labour,' a form of detention without criminal trial for up to four years. Apart from his Yang Chunlin was reported to have headed a petition declaring 'We Don't Want the Olympics We Want Human Rights.'¹¹² It was widely supposed that using this slogan was considered to amount to subversion, although Foreign Minister Yang Jiechi rejected this claim.¹¹³ A further explanation is that Yang Chunlin was considered to incite subversion, because he was involved in challenging the land rights regime.

V. 3. Layers of rhetoric and appeals to justice

The Heilongjiang letter asserting 'full ownership' to realize the promise of the revolution. On the internet, a version of the open letter from Heilongjiang, signed by Yu Changwu and Wang Guilin, can be found.¹¹⁴ It declares that the land ownership of the 150 *mu* of land in question 'belongs to the peasants belonging to the 72 administrative villages concerned and shall be distributed equally to the peasants' on a village by village, household by household basis. Ownership, according to the declaration, comprises 'the right to revenue from the land, the right to inherit land, the right to alienate land, and the right to negotiate and ask for a price in case the government and property developers want to develop the land.' Certain plots currently occupied by property developers and the government are 'taken back,' according to the declaration, which says that a corrupt village official colluding with government officials in the expropriation process has been recalled from office.¹¹⁵ The Communist Revolution, the letter says, 'promised that every farmer should have their plot of farmland, every resident should have a home.' But this promise has been broken, according to the authors: the land tenure system has become a pretext for local government officials to act as *de facto* landowners, merely in the name of the state, whereas the peasants, supposedly the landowners, have become serfs on the land (*nongnu*), farming it as mere tenants of the landlords.

'The Chinese countryside simply does not fulfill the conditions yet, in which collective economy could be practiced. When it does, we peasants will organize ourselves and practice collective farming.' The letter concludes with a reference to the introduction of

¹¹² See e.g. Deutsche Welle (Chinese) report of 6 September 2007, 不要奥运要人权, at <http://www.deutschewelle.com/dw/article/0,2144,2767502,00.html>.

¹¹³ BBC News, 'China Jails Man Who Urged Rights Over Olympics', 24 March 2008, at <http://www.reuters.com/article/newsOne/idUSHKG35238720080324?pageNumber=2&virtualBrandChannel=0>.

¹¹⁴ *Supra* note 105.

¹¹⁵ It is legally possible to recall village officials according to the Organic Law on Villagers' Committees.

the *chengbao* land use rights some twenty-five years ago, the reform which had brought a period of wealth increase and relative prosperity in the countryside. 'We trust that just as peasants then struggled for the right to manage the land and brought about a great change at the beginning of the Reform and Opening era, so we will now achieve an even greater change by struggling for the peasants' ownership right in the land. We peasants have suffered enough deprivation and betrayal. We have had enough of a life of crying to heaven and hearth but not being heard. (...) Land is the life-line of the peasantry, it is the peasants' greatest human right. Only when we have obtained true ownership of the land can we live in peace and security, can the Chinese countryside live in peace and security, can the entire country live in peace and security.'¹¹⁶

Partly due to its eloquence and acerbity, the authorship of this 'open letter' was quickly called into doubt. It was suggested that it could not have been written by any of the villagers, that the involvement of outsiders such as Yang Chunlin had led to a sharpening of the letter's tone and demands not originally envisaged, and that the villagers were not interested in 'abstract notions about rights' but instead just wanted 'their collective land back.'¹¹⁷

The Jiangsu letter asserting ownership rights based in pre-revolutionary history. The signed authors of the letter in the name of 250 peasant households of Jiangsu also cite some of the revolutionary promises, but rely mainly on a different argument. They write, 'Shengzhuang, our village, lies on the border of three provinces, Jiangsu, Anhui and Zhejiang. It is a national level travel resort famous for its 'bamboo ocean' and the village reaches back 1500 years in history. Generation after generation of villagers lived together harmoniously; they lived in harmony with the land they had been given by Heaven, and they lived in harmony with the officials of the various ages. Throughout all the dynasties and generations, the peasants had their own land to farm, it was clear to whom the bamboo and the hills belonged, and the peasants respected each others' land rights. Land transactions were carried out in accordance with local custom, which the law of the government protected.

Since the revolution, the new terms of 'villagers' collective ownership' and '*chengbao* land management' have been introduced. But we peasants always thought: no matter what we call it, the land is ours, the peasants'; it has served us for many generations as land to build houses on, to farm, and to develop. Like the old governments, the new government should take responsibility for protecting the land ownership rights of the peasants. It should protect

¹¹⁶ *Id.*

¹¹⁷ John Garnaut, 'Peasant Land Movement inflated by outsiders,' 2 January 2008, at <http://www.smh.com.au/news/world/peasant-land-movement-inflated-by-outsiders/2008/01/01/1198949818303.html>.

the rights of the masses (*gongzhong*) and help it develop. Only then can it be called a government (...)' ¹¹⁸

The Shaanxi letter asserting ownership rights as the precondition of independent existence. The Shaanxi letter¹¹⁹ contains a declaration on behalf of the peasant communities originated from villages whose inhabitants had been forced to migrate in the 1950s. As a further online report explained at greater length,¹²⁰ they were ordered to migrate in order to allow for the building of the *Sanmenxia* Yellow River water reservoir in the 1970s. But, the report says, after their relocation in arid regions bordering on the Gobi desert proved unsuccessful, and as a consequence of resistance over a period of thirty years, they were allowed to return. Of the 800,000 *mu* of land originally belonging to their communities, 300,000 *mu* were allotted to them. Upon their return they found that half of this land had been taken 'under various names' and was being leased out by a number of officials, and that only 150,000 *mu*, was left. Like the authors of the Heilongjiang and Jiangsu letters, the letter declares the Shaanxi peasants' ownership rights in the remaining 150,000 *mu*. It goes on to say, 'if, once we have secured ownership rights in the land, we can also get the right to run our own school and healthcare, the 'three great mountains' [of financial burdens] oppressing us will have been removed and our social welfare problems will have been basically solved.'

Appeal to justice. The claims asserted by the letters' authors differ starkly, and some of them are not mutually reconcilable. It would be impossible to insist both on a realization of the goals of the revolution, and on a return to a past of perfect harmony, nostalgically described in Confucian terms, for instance. The claims of the Jiangsu peasants who invoke a land ownership going back many generations are slightly different, too, from those of the Shaanxi peasants, who have a harder time claiming their land back after decades of dispossession, and who emphasize the social welfare implications of land ownership, claiming enthusiastically, and entirely without further argument, that some basic social services will be taken care of by themselves once they have got their land back. Viewed together, these letters make one

¹¹⁸ *Supra* note 106.

¹¹⁹ 'Ca. 70,000 peasants of the Sanmenxia Water Reservoir area declare they are taking back their land ownership right' (三门峡库区约7万农民宣布收回土地所有权), 12 December 2007, at http://a.xzzg.org/news_view.asp?newsid=485, signed by six persons who – as the authors of the other letters – provide their phone numbers: Ma Lianbao, Xu Lianzhong, Zhao Delong, Zhang Sanmin, Chen Sizhong, and Xi Xinji.

¹²⁰ Zheng Yi, 'The foundation stone for a free China – a discussion of declarations of peasants in three provinces taking back their land ownership rights' (自由中国的奠基石 ——评三省农民宣布收回土地所有权文告), 13 January 2008, at http://chinaway.org/nv/article/08/200801/article_487.html.

realise how difficult to argue a claim based on historical entitlement¹²¹ would be.

Regardless of how well they are argued or of which of these arguments might trump, and regardless even of their authorship, these open letters indicate, at least, a common challenge to the existing legal framework. Their arguments are similar to those brought forth by scholars critical of the dual and – it seems - incoherent land ownership system. They insist, by claiming land ownership rights, that the rural-urban divide in the land tenure system is unjust, that the existing expropriation mechanism is unacceptable, and that the law asserted by state and party officials is not true law.¹²²

VI. Conclusion

The purpose of this paper has been to draw a rough sketch of the major grievances affecting Chinese peasants in their struggle for land and land rights to date. A tentative analysis of the various difficulties and grievances, but also of some contradictions of principle in the land tenure system, suggests that the current system needs to be changed. The fact that, as shown in the last section of this paper, there appear to be voices calling for – or indeed declaring - ‘full’ private ownership rights in land does not, of course, prove that such a reform would be correct. It is, however, difficult to think of an alternative reform leading to greater equity and less suffering, which would not require even further-reaching and more difficult reforms of the political and legal system, in particular, of the currently weak judiciary and too strictly controlled media, in order to reduce corruption in the current hybrid, nominally ‘socialist’ yet also fiercely market-driven economy.

¹²¹ Following Nozick’s idea of legal acquisition. Nozick, *Anarchy, State, and Utopia* (1981).

¹²² See also the open letter declaring a ‘land right according to heavenly principle’ on the part of 250 rural households in Yixing, Jiangsu province, *supra* note 105.