



Chinese Human Rights Defenders (CHRD)

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Victims of “Development”: Extensive Violations of Human Rights in Forced Evictions of Rural People in China Urgently Need Effective Remedies (1)

For immediate release

CRD , July 6 , 2006

Victims of “Development : ”

Human Rights Violations Widespread in Land/Housing Eviction of Internally Displaced Persons in the PRC

CRD has submitted this report to relevant UN human rights procedures to communicate its concerns about the alarmingly widespread abuses of human rights involved in forced eviction due to land requisition and housing demolition in the People’s Republic of China. The report offers an overview and analyses of the grave situation. It then presents two typical but also urgent cases : the Zigong case and the Putian case. But the abuses are geographically widespread.

Overview

Disputes over state requisition of land in rural areas are probably the most common cause of social unrest in China’s countryside today. Given that in many of these cases people’s livelihood is at stake , this is not at all surprising. The scale of the problem is also indicative : more than 66 million farmers are thought to have lost their land between 1990 and 2002 , [1] and up to two million more may be joining their number annually.[2] Unlawful and unjust expropriation of land has resulted in the displacement of millions of farmers , who have lost not only their land , but also their homes. The three principal areas which give rise to disputes over land requisition in rural China today are inadequate compensation ; lack of transparency and consultation ; and the absence of effective remedies.



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These disputes and the failure to resolve the issues that have caused them lead to extensive violations of human rights, including civil, political, economic, and social rights. Where cases remain unresolved, the economic and social rights violations are compounded over time, due to the severe effects on the affected people's livelihoods and living environments.

Sometimes such disputes have become violent, most notably in Shanwei, Guangdong Province, in December 2005 where police opened fire on villagers demonstrating against expropriation of their land, killing at least three and probably many more.[3] Authorities in other cases have used violent thugs to try to break up villager protests. In some cases, frustrated villagers have fought back and peaceful protests turned violent when all their efforts to find a resolution to their grievances come to naught. In such cases, long-standing disputes finally get the attention from higher authorities they deserve, although often so-called "ring leaders" of protesting villagers are sent to prison.

But what of those land requisition disputes where displaced people continue to pursue their claims through peaceful means? Mostly they fall under the media radar screen, and remain unresolved year after year, while those affected suffer increasing hardship. Even when they are reported by domestic and international media and taken up by concerned scholars, there is no guarantee that this will result in resolution of the original grievances. In two appendices, we provide a brief account of two such disputes from the suburbs of Zigong City, Sichuan Province, [4] and one from Putian, Fujian Province, which has recently resulted in the imprisonment of a leader of protesting farmers, Huang Weizhong. Echoing many such cases from around the country, one involves the building of a huge new university campus, while the other relates to a purported "development zone" which turned out to be essentially a real estate development.

Disputes over the expropriation of rural land on the borders of urban districts highlight the problems of a system that gives too much discretionary power to local governments to make deals apparently in the "public interest"[5] in which they may reap huge profits without requiring proper consultation or a clear and transparent approval process. Such a system, combined with the pressure on local officials to show "results" in their pursuit of "development,"[6] often leads to unholy alliances between government and business interests in which the real public interest—the rights of local people, the environment, cultural preservation and so on—is ignored.[7] "[I]n the use of rural land, the state tends to assume a predatory role in the sense that the local state and its agents often ignore the basic interests of the peasantry." [8] These disputes also reveal how the available avenues of redress and remedy often fail to deal with cases in which interests of officials come into conflict



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with those of local people. When frustrated local people try to voice their grievances or protest , their actions are often criminalized , and they become subject to police harassment and intimidation.

Land and human rights

For rural people in China, land means livelihood and is generally the only safety net in a system where welfare remains mainly the preserve of urban residents. Yet under the current legal framework, farmers facing requisition of their land have few rights they can assert to prevent land loss, to question its legality, or to insist on consultation and negotiations over resettlement arrangements and compensation levels. Mechanisms of redress when officials violate existing laws and regulations—as is frequently the case, most informed observers say—are weak, subject to capture by the local state, or non-existent.

Thus requisition often results in violations of the economic and social rights that the Chinese government has stated are its priority.[9] But violations of civil and political rights are a common feature too. Local authorities frequently try to suppress collective efforts to assert rights, since “preventing collective protests/petitions” is a critical element for higher levels in evaluating local political leadership. The fact that local officials have strong financial interests (whether in terms of collecting funds to make up shortfalls in the local budget or for illicit personal gain) in the “development projects” for which land is requisitioned often serves to sharpen the conflict between the local state and people attempting to question expropriation or seek redress. This is the key to understanding why land disputes often turn into deadly conflicts between the local state and farmers.

International human rights law is virtually silent on the question of land rights.[10] Some have argued that the absence of land rights in the Universal Declaration of Human Rights is a reflection of the bias of industrialized society where land has lost its vital importance. The gap also reflects ideological divisions, as well as the complexity and variety of land-holding systems around the globe.

This is not to say that there is no relevant international human rights law covering the types of human rights issues raised in the land requisition cases all over rural China and particularly those



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covered here. The key provision is Art. 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the right to “an adequate standard of living.” [11] This includes the right to adequate housing, for which there is now an extensive jurisprudence that broadens the scope of this right to cover procedural and substantive elements of the cases at issue here. Below is a brief outline of some of its key aspects.

According to the Committee on Economic, Social and Cultural Rights (CESCR),[12] the right to adequate housing incorporates a number of elements, including “a degree of security of tenure which guarantees legal protection against forced eviction”.[13] Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”[14] They often occur in the name of development,[15] and are frequently associated with violations of civil and political rights, including the rights to life, to non-interference with privacy, family and home, to peaceful enjoyment of possessions, and to security of the person.[16]

The obligation to prevent forced evictions is immediate and governments generally cannot argue that they do not have sufficient resources as a justification for failing to prevent them.[17] Legislation to protect people against forced evictions is considered “essential” in implementing the rights in the ICESCR, and the main objectives of such legislation should be strictly to limit evictions and to provide the greatest possible security of tenure.[18] Particular attention should be paid to ensuring that disadvantaged groups are protected.[19] The principal methods for preventing violations of rights associated with forced evictions are procedural in nature. All of the following should be provided in time to be meaningful: genuine consultation with those affected; proper notice of any eviction; and information on the proposed evictions, including the purpose for which requisitioned property is to be used. In addition, government officials should be present during any eviction, those carrying it out must be properly identified, and evictions should generally not occur during bad weather or at night. Affected people should have access to effective legal remedies and, where possible, to the legal aid necessary to pursue them.[20]

A principle emerging from Comprehensive Human Rights Guidelines on Development-Based Displacement is that alternatives to displacing people from their land and/or housing should always be considered. “States should refrain, to the maximum extent possible, from compulsorily acquiring



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housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through, for instance, measures of land reform or redistribution.”[21] Consultation with and participation by affected people is crucial to ensuring that this is the case. These Guidelines also indicate that where displacement is unavoidable, people resettled should have “the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable”. Such resettlement should be based on a clear, agreed upon policy accepted by affected persons, and all costs should be met by “the actor proposing and/or carrying out resettlement”. [22]

The CESCR has expressed concern about China’s adherence to these standards. Following its review in 2005 of China’s initial report under the ICESCR, the CESCR expressed concern about “reports of forced evictions and insufficient measures to provide compensation or alternative housing to those who have been removed from their homes in the context of ... rural development projects,” as well as about the “lack of effective consultations and legal redress for persons affected by forced evictions and demolitions.”[23] The Committee recommended that China enforce laws preventing forced evictions, ensure “that persons evicted from their homes be provided with adequate compensation or offered alternative accommodation” and that “open, effective and meaningful consultations with affected residents” be undertaken before any development projects are implemented.[24]

[1] The figure comes from a study by the Chinese Academy of Social Sciences, cited in Pamela N. Phan, “Enriching the Land or the Political Elite? Lessons from China on the Democratization of the Urban Renewal Process,” *Pacific Rim Law and Policy Journal*, Vol. 14, June 2005, p 627.

[2] Li Baiguang, “Forms of violations of rights in land requisition and the way forward in seeking redress” (Tudi zhengyong qinquan moshi yu quanli jiuji zhi lu), speech at Conference on Land Requisition and Seeking Redress, April 16, 2006, Beijing.

[3] For an investigative report on the Shanwei bloodshed, see: [Article_Show.asp?ArticleID=207](#)

[4] For a fascinating and detailed examination of these cases and the legal issues involved, see Eva Pils, “Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan,” *Columbia Journal of Asian Law*, Vol. 19, Spring/Fall 2005, p 235.



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[5] This is the language used in the Constitution (Art. 10) and the Land Management Law (Art. CK?) to justify land appropriation, but no definition is provided.

[6] Jiang Zemin speech to 16th CCP Congress: “Development is the fundamental principle. We must seize all opportunities to accelerate development.”

[7] See for example, Phan, “Enriching the Land or the Political Elite?” pp 615-621.

[8] Yongshun Cai, “Collective Ownership or Cadres Ownership? Non-Agricultural Use of Farmland in China,” *The China Quarterly*, No. 175, 2003, p 663.

[9] As an expression of this prioritization, China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2001, but has yet to ratify the sister treaty, the International Covenant on Civil and Political Rights.

[10] There is one key exception to the silence: ILO Convention 169 on Indigenous and Tribal Peoples has a number of provisions relating to land, since connection with a particular territory is a central aspect of the (contested) definition of an indigenous people. While this Convention is applicable only to a limited number of population groups and views land rights mainly in a collective sense, it does advance some important principles that may be taken into consideration in framing a human rights approach to such questions: namely, consultation, compensation and redress.

However, some protection for land rights can be derived from other rights in international instruments. As a report on housing rights puts it, “Though not established to the same extent as housing rights within international human rights law, land and property rights are embodied in certain international instruments. The rights to land for the most part revolve around the rights to possession and use of resources. Property rights, with the exception of housing as property, are usually limited to equality rights, the right to non-interference and the prohibition against arbitrary expropriation.” United Nations Human Settlements Programme and Office of the High Commissioner for Human Rights, *Housing Rights Legislation: Review of International and National Legal Instruments* (Nairobi, 2002), p. 15.



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[11] The full text reads: “The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

[12] The body which monitors the implementation of the ICESCR, in general, and in states that have acceded to the treaty.

[13] CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraph 1, p. 45.

[14] Emphasis added. Ibid, paragraph 3, pp. 45-6.

[15] Ibid, paragraph 7, p. 46.

[16] Ibid, paragraph 4.

[17] Ibid, paragraph 8.

[18] Ibid, paragraph 9.

[19] Ibid, paragraph 10.

[20] Ibid, paragraph 15.

[21] The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement, adopted by the Expert Seminar on the Practice of Forced Evictions, Geneva, June 11-13, 1997, paragraph 17. This seminar was convened by the UN Secretary General at the request of the UN Commission on Human Rights. See E/CN.4/Sub.2/1997/7.

[22] Ibid, paragraph 28(c).



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[23] Concluding Observations of the Committee on Economic, Social and Cultural Rights: People's Republic of China (Including Hong Kong and Macau), E/C.12/1/Add.107, May 13, 2005, paragraph 31.

[24] Ibid, paragraph 61.