

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

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15 October 2015

### CHN105284.E

China: Legislation and procedures regarding land expropriation in urban and rural areas; documentation issued in cases of land expropriation; recourse available to citizens who oppose land expropriation; state response to citizens who resist land expropriation (2012-September 2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### 1. Overview

According to sources, land in the People's Republic of China (PRC) is not owned by individuals; urban land is owned by the state while rural land is owned by villages collectively (Freedom House 28 Jan. 2015; ECRAN July 2012, 4); rural land is governed by "village communities and the village's Communist Party branch" (ibid.). Freedom House states that "farmers enjoy long-term lease rights to the land they farm, but are barred from selling or developing it" (28 Jan. 2015). A 2015 report published by the US Law Library of Congress similarly states that according to the country's Constitution and land laws of China, "Chinese individuals cannot privately own land and natural resources," but that citizens are entitled to "privately own real estate, including residential houses and apartments (i.e. buildings and structures on the land)" (US Mar. 2015, 4). Sources state that land expropriated from tenants is used as a source of "revenue" and business development by the Chinese government (Freedom House 28 Jan. 2015; Chuang Sept. 2014, 649).

An article on rural land politics in China published in the journal *China Quarterly* written by Julia Chuang, a postdoctoral fellow in international and public affairs at Brown University whose research focuses on development, ethnography and the social foundations of China's current economic growth (Brown University n.d.), indicates that "incidents of rural land expropriation have become endemic across China" (Chuang Sept. 2014, 649). Freedom House similarly notes that low compensation measures and weak legal protections "have facilitated land seizures by local officials, who often evict the residents and transfer the land rights to developers" (28 Jan. 2015). In a 2012 policy brief on land issues, the Europe China Research and Advice Network (ECRAN), a three-year project funded by the EU "to provide policy advice on China to the European External Action Service (EEAS) and the European Commission (Madariaga College of Europe Foundation 25 May 2011) quoted a researcher from the Chinese Academy of Social Sciences, whose research focuses on protests and crime in rural China (Harvard-Yenching Institute N.d.), as stating that in the last 20 years, "governments have seized 6.7 million ha of rural land and deprived farmers of RMB 2 trillion [C\$ 375 billion] ... in compensation, because local governments often compensate much less than the market price for the land" (ECRAN July 2012, 13).

According to the US Department of State's *Country Reports on Human Rights Practices for 2014*, property disputes in China "were widespread in both urban and rural areas," "often turned violent between citizens and government authorities," and "frequently stemmed from local officials' collusion with property developers to pay little or no compensation to displaced residents" (US 25 June 2015, 23). China Change, a website devoted to "news and commentary related to civil society, rule of law, and rights activities in

China" (n.d.), states that disputes over land expropriation account for about half of "protests, riots, and other forms of [mass] social disorder in China;" the source quotes the Chinese Academy of Social Sciences as stating that there are more than 100,000 of such incidents in the country each year (China Change 16 Dec. 2014). Reuters similarly reports that approximately "90 000 'mass incidents' - a euphemism for social unrest - occur each year in China, of which some two-thirds are triggered by land related disputes" (7 Mar. 2013).

## 2. Legislation and Policies

According to the US Law Library of Congress, the PRC Constitution (as amended in 2004) "provides for the protection of private property" (US Mar. 2015, 1). Article 13 of the Constitution provides that

[c]itizens' lawful private property is inviolable.

The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.

The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and make compensation for the private property expropriated or requisitioned. (China 1982, Art. 13)

The US Law Library of Congress indicates that the Property Rights Law of the PRC, in force since 1 October 2007, also "establishes a framework of property rights protection, including protection for moveable property and real estate (immovable property)" (US Mar. 2015, 2). Concerning expropriation however, Article 42 of the same law provides that

[f]or the purpose of public interest, the collectively-owned land, houses and other real property owned by institutes or individuals may be expropriated in line with the procedure and within the authority provided by laws.

For expropriation of collectively-owned land, such fees shall be paid as compensations for the land expropriated, subsidies for resettlement, compensations for the fixtures and for the young crops on land, and the premiums for social security of the farmers whose land is expropriated shall be allocated in full, in order to guarantee their normal lives and safeguard their lawful rights and interests. (China 2007, Art. 42)

A copy of China's Property Rights Law is attached to this Response (Attachment 1). For information on the 2011 regulations regarding urban housing expropriation and housing, see Response to Information Request CHN103768.

Reuters reports that land expropriation across China "has been fuelled by soaring prices and Beijing's urban expansion drive" (7 Mar. 2013). In her 2014 article, Chuang states that evictions are sanctioned under the Chinese government's "constructing a new socialist countryside" campaign, which according to the source, casts land expropriation as a "condition of rural-urban integration" (Chuang Sept. 2014, 650). The article then gave the example of a Hebei village where "township officials deliberately incentivized, through gifts and financial rewards, voluntary *hukou* transfers from agricultural to non-agricultural status" (ibid. 652). The source states that "[o]nly after transfers were complete, did state officials begin forcibly to expropriate land," noting that "[p]rior *hukou* incorporation delegitimized claims to lost land, an entitlement attached specifically to agricultural *hukou* status" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Human Rights in China (HRIC), a Chinese NGO founded by overseas Chinese students and scientists who engage in human rights policy advocacy and capacity building (HRIC n.d.), reports on one example of the implementation of the "New Country Side Plan": in 2012, the Yushan Development District of Jinxiang County, Shandong Province "demanded that farmers leave their land and homes and move into low-quality apartment buildings" (ibid. 28 Feb. 2012). When the farmers refused, "more than 1,000 police officers and staff were sent to the village and forced the farmers out" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Amnesty International (AI), in 2011 the PRC introduced new regulations regarding government compensation over forced evictions that state that "compensation for homeowners must not be lower than market value" and "outlawed the use of violence" in land expropriation (AI 11 Oct. 2012). AI notes however that these regulations apply "only to city dwellers," to homeowners and not tenants, and that "rural communities remain vulnerable to forced evictions, particularly those close to urban areas" (ibid.). The source explains that rural land compensation is based on the agricultural value instead of the true market value of the land (ibid.).

In 2013, Reuters reported that a revised "land management law" was being debated by Chinese parliament; the law stipulates that farmers be paid "a 'fair' commercial or market value, rather than 30 times the land's annual agricultural output as before" (7 Mar. 2013). Freedom House reports that since November 2013, "the government has announced several policies aimed at expanding farmers' land-use rights and abolishing the cap on compensation for land expropriations;" the source notes however that such reforms "had

not been implemented on a large scale by the end of 2014" (28 Jan. 2015). Further information on the implementation of these reform policies and regulations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Reuters, reporting in 2013 on draft land management laws, "even when new laws are in place, the challenge of ensuring adequate enforcement is unlikely to be resolved so long as oversight of local officials nationwide is patchy and lax" (Reuters 7 Mar. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### **3. Documentation**

For information concerning documents issued during land expropriation processes, see Response to Information Request CHN103768.

### **4. Treatment of Citizens who Oppose Land Expropriation**

In its 2012 report on land acquisition in China, ECRAN indicates that individuals whose land is expropriated by the Chinese government "are required to follow the decisions, terms of compensation and relocation plan that have been devised by the local government without their prior consent" (July 2012, 7). An article published in the *China-EU Law Journal* by Chung Peng, a postdoctoral fellow at Peking University Law School, similarly states that county governments decide how much compensation is paid in individual expropriation cases and that it is "not uncommon that they intentionally underestimate the figure in order to suppress the amount of compensation" owed (Peng 14 July 2015, 173, 182). ECRAN indicates that some individuals have reported local governments leasing their land to developers "without informing or compensating" them (ECRAN July 2012, 7). The 2012 report further notes that on average, a household receives compensation of RMB 76,271 [C\$14,220], which covers basic needs for 3 to 4 years; this compensation is prone to "run out" without "healthy investment channels, high inflation and long term planning" for farmers (ibid. 11). The source further notes that a "significant percentage" of farmers are unable "to compete in the tightening urban labour market, given their age and skill level" (ibid.).

In 2012, AI reported that state land expropriation "has resulted in deaths, beatings, harassment and imprisonment of residents who have been forced from their homes across the country, in both urban and rural areas (11 Oct. 2012). According to Freedom House, individuals who "resist eviction, seek legal redress, or organize protests often face violence at the hands of local police or hired thugs" (28 Jan. 2015). Reuters reports on an incident in February 2013 in which residents of Shangpu [a village in Guangdong province] protested the sale of a 33 hectare plot of village land to developers without their consent, and the village residents "fought and chased off several hundred men wielding steel pipes and spades who were hired as thugs to try to intimidate the villages into acquiescing on the deal" (Reuters 7 Mar. 2013).

Sources state that individuals who have protested land expropriation have been arrested and placed in Re-education Through Labour (RTL) Centres (AI 11 Oct. 2012; ECRAN July 2012, 14), a form of "imprisonment lasting up to 3 years that does not require any legal proceedings" (ibid.). A December 2014 article by China Change states that following the expropriation of agricultural land in Beijie Village, Henan province, petitioners were "detained and mistreated," including one instance when an individual was reportedly "held in a mental hospital for over 40 days and tortured" (China Change 16 Dec. 2014). ECRAN similarly reports that provincial governments have been accused of hiring people to abduct "landless farmers" petitioning the government and send them back home or to "black jails," where allegations of torture and mistreatment have been documented by human rights organizations (ECRAN July 2012, 14).

According to AI, in Hexia township, Jiangxi province, after petitioning the government about her eviction, one woman was "beaten and forced to undergo sterilization" in 2011 (AI 11 Oct. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### **5. Recourse Available to Individuals Evicted from their Land**

AI describes the recourse available to individuals against land expropriation as "limited" (11 Oct. 2012). *Country Reports 2014* states that, despite government efforts to control illegal land seizures and standardize compensation, "property related disputes" persist due in part to a "lack of legal remedies or other dispute resolution mechanisms for displaced residents" (US 25 June 2015, 23). In 2012, ECRAN reported that "there is no appeal mechanism for farmers to overthrow the land acquisition decision, although farmers might negotiate better terms of compensation through village committees, protest, or by hiring lawyers" (July 2012, 7). According to a 2014 paper on Chinese land policy reform and forced expropriation published by the Centre for Comparative and Public Law at the University of Hong Kong that was written by Vince Wong, a visiting research fellow at the Centre, because the state owns urban land, "the decision to expropriate itself can never

be challenged, giving authorities and private developers more leverage in terms of subsequent compensation and resettlement negotiations" (Wong May 2014, 34).

According to AI, "[l]ocal officials continue to sanction or turn a blind eye to the harassment of residents by developers" (AI 11 Oct. 2012). The same source states that "police hardly ever investigate such crimes" and that lawyers are "reluctant to take on such clients for fear of the repercussions (ibid.). AI further notes that Chinese courts do not have judicial independence from the state and "means those that seek to challenge an eviction or seek redress have little hope of gaining justice" (ibid.). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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### Additional Sources Consulted

**Oral sources, including:** assistant professor of public policy and administration, Boise State University; postdoctoral fellow in international and public affairs, Brown University; professor of law, King's College London; Yale China Law Institute.

**Internet sites, including:** Al Jazeera; BBC; Brookings Institution; Canada – Embassy in Beijing; China – Embassy in Ottawa; *China Daily*; eoi.net; Factiva; *The Globe and Mail*; Human Rights Watch; The Laogai Research Foundation; *The New York Times*; Radio Free Asia; United Nations – Refworld; *The Washington Post*; The Woodrow Wilson International Center for Scholars; Xinhua News Agency.

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