

LAND DISPUTES, RIGHTS ASSERTION, AND SOCIAL UNREST IN CHINA: A CASE FROM SICHUAN

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I. INTRODUCTION

With social unrest intensifying in China, there is a growing sense that the legal reforms of the past two decades have failed to provide adequate channels for resolving conflicts of interest and viewpoint between government and citizens—especially those citizens who have been disadvantaged by economic development, and who believe that their legal rights have been violated in this process. As early as the autumn of

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2003, Yu Meisun, a former official who had participated in the drafting of China's 1989 Administrative Litigation Law, wrote:

The Party and Government have been investing a great amount of human and material resources into the legal system since 1979, in order to protect the social order and resolve various conflicts in society. But this system has not only failed to serve the function it was supposed to serve, it has even been counterproductive, exacerbating conflicts.¹

The assessment that legal reform has made things worse by “exacerbating conflicts” in China is understandable in its context. Yu's writings about petitioning and administrative litigation cases convey a certain sense of hopelessness: people waste their lives seeking justice from state authorities, whose written or unwritten rules of operation sometimes seem designed to compound citizens' grievances rather than to help redress them. Especially in cases of land requisitioning, the citizens' own livelihoods as well as those of their children may be lost. Yet the case that led Yu to make this assessment is also indicative of a positive aspect of the legal reform process. The case cited by Yu can be seen as part of a broader trend of cases where the promise of a government limited by rights is being taken seriously, and rights are being asserted toward the government at different levels. Injustices are now met with resistance by people who invoke the law to challenge those claiming to act with legal authority.

As also in other places, rights assertion against government in rural China is not always grounded in a proper understanding of what legal rights one has. Furthermore, it sometimes takes illegal forms. Still, once rights have been asserted, they shape the way the underlying disputes should be resolved. Once people insist on the protection of their rights in the resolution of a dispute, the measure of success cannot be the mere quieting of the dispute, even when a successful adjudication mechanism is not available. Sometimes the only success within reach of Chinese citizens is the public assertion of their legal rights outside litigation, through mechanisms characterized as “informal” or “outside the formal legal system.” *Xinfang* (信访, petitioning or, literally, letters

¹ 俞梅荪, 失去土地的农民依法维权民告官难于蜀道(之一: 从央视启动坑农大案说起) [Yu Meisun, *The Plight of Landless Peasants Trying to Defend Their Rights Against Officials* (No. 1: *CCTV Begins to Address the Case of the Peasants Being Framed*)] (Dec. 1, 2003), at <http://www.blogchina.com/new/display/17927.html> [hereinafter *CCTV Begins to Address the Case of Peasants Being Framed*].

and visits) plays an important role as an informal dispute resolution mechanism and is closely intertwined with court adjudication. What is often publicly asserted in “litigation *xinfang*,” for instance, is the fundamental right to fair court procedures. But as recent cases have shown, *xinfang*, especially “collective” or “group” *xinfang*, can also disintegrate into legally prohibited demonstrations and rioting.²

The case mentioned by Yu offers an excellent opportunity to study a process of rights assertion in the broad sense indicated above from the bottom-up perspective of aggrieved citizens. It concerns a land dispute involving several thousand peasants living in areas adjacent to the city Zigong, situated in the Sichuan Province, whose lands and houses were taken from them for the purpose of “property development.” Despite many attempts to get an application for litigation accepted by a court, there was not a single court hearing or decision addressing the substantive complaints discussed in this paper.³ Partly because of this failure of the courts and partly due to disregard by state authorities for already incoherent legal rules, the peasants in the Zigong case were left without effective protection for any individual rights of use or collective rights of ownership in the rural land they had been working and living on, despite language in the Constitution, Land Administration Law, and Principles of Civil Law providing for “collective ownership” or “collective ownership by village peasants,”⁴ as differentiated from state ownership or ownership

² For an extensive discussion of this subject, see Carl F. Minzner, *Xinfang: An Alternative to the Formal, Chinese Legal System*, STAN. J. INT’L L. (forthcoming 2006), with particular attention to the section on “Social Mobilization.” See also 刘伟伟, 农民集体上访中的“选择性激励” [Liu Weiwei, “Selective Incentives” in Peasants’ Collective Petitioning], available at <http://www.chinayj.net/StubArticle.asp?issue=050310&total=90> (last visited Jan. 26, 2006); Sara Davis, *China’s Angry Petitioners*, THE ASIAN WALL STREET J., Aug. 26, 2005, available at http://www.howardfrench.com/archives/2005/08/26/chinas_angry_petitioners/. On the particular issue of petitioning in court, see 丁秀枝 & 张志伟, 完善法院信访制度之我见 [Ding Xiuzhi & Zhang Zhiwei, *Our View on Perfecting the Letters and Complaints System in Courts*] (Mar. 31, 2004), at <http://www.chinacourt.org/public/detail.php?id=109647>.

³ Available material refers to one court hearing the case of an individual peasant family objecting on procedural grounds to a demolition order regarding their house. According to oral sources, there were an unspecified number of further disputes regarding individual households. However, in none of them did the complaining peasant (family) win, and several were not accepted for litigation. The He family complained that the wrong authority had acted in their case. According to the available material, the family discovered, at the Da’an District Level People’s Court hearing on November 14, 2003, that their opponent, a government authority, had hired their own lawyer’s boss and colleagues to represent it. As a consequence, their own lawyer did not dare show up to represent them. See 俞梅荪, 失去土地的农民依法维权民告官难于蜀道(之四:维权失败赴京上访) [Yu Meisun, *The Plight of Landless Peasants Trying to Defend Their Rights Against Officials* (No. 4: *Going to Beijing to Petition Lost Rights*)] (Dec. 4, 2003), at <http://www.blogchina.com/new/display/18212.html>.

⁴ 中华人民共和国民法通则 [General Principles of Civil Law] art. 74 (promulgated by the Nat’l People’s Cong., Apr. 12, 1986, effective Jan. 1, 1987) (P.R.C.), available at <http://www.dffy.com/>

by the people as a whole,⁵ and despite rights of use which some of them had been granted individually.⁶ Their long experience of deprivation and denial of access to administrative litigation galvanized some of the peasants to assert rights which they felt the courts ought to protect.

The case of the peasants of Zigong is not much different from many other cases occurring in China at present; but it happened to attract the attention of legal scholars and journalists, who published material about it on the internet.⁷ One such scholar, namely Yu Meisun, and one

faguixiazai/msf/200311/20031110212803.htm (last visited Feb. 23, 2006) [hereinafter Principles of Civil Law], uses the formulation of “集体所有的土地依照法律属于村农民集体所有。” Article 8 of the 1988 Land Administration Law, in effect at the time of the first requisitioning decision discussed in this paper, read, “农民集体所有的土地依法属于村农民集体所有的,由村集体经济组织或者村民委员会经营管理。” See 中华人民共和国土地管理法 [Land Administration Law] (revised and promulgated by the Standing Comm. of the Nat'l People's Cong., Dec. 29, 1988, effective Dec. 29, 1988) (P.R.C.) [hereinafter 1988 Land Administration Law]. Less clearly, the P.R.C. Constitution provided in Article 10 that rural land was owned by “collectives” without stating whether the collectives in question were collectives of “village peasants” or other kinds of collectives. See 宪法 [CONST.] art. 10 (1982) (P.R.C.).

⁵ Even in the 1982 version, the Constitution differentiates between “ownership by the whole people” and “collective ownership by the working masses” (Article 6) and says that urban land is “owned by the state” (Article 10). See 宪法 [CONST.] art. 6, art. 10 (1982) (P.R.C.). Article 3 of the now expired Implementation Regulation for the Land Administration Law clarified by stating that urban land was owned by “the whole people, namely, the state (属于全民所有即国家所有).” 中华人民共和国土地管理法实施条例 [Implementation Regulation for the Land Administration Law] art. 3 (promulgated by the Standing Comm., Jan. 4, 1991, effective Feb. 1, 1991, expired as of Dec. 31, 1998) (P.R.C.) [hereinafter 1991 Implementation Regulation].

⁶ Rights of use would be enjoyed in accordance with *chengbao* (承包, land contracting arrangements) by individual rural households rather than persons (农户, *yihu*). The current Law on Rural Land Contracting, in this respect, reflecting previous practice, refers to “rural households” belonging to the collective economic organisation owning and/or contracting out the land (“家庭承包的承包方是本集体经济组织的农户”). See 中华人民共和国农村土地承包法 [Law on Rural Land Contracting] art. 15 (promulgated by the Standing Comm. of the Nat'l People's Cong., Aug. 29, 2002, effective Mar. 1, 2003) 09/2002 全国人民代表大会常务委员会公报 [STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.] 347 (P.R.C.) [hereinafter Law on Rural Land Contracting].

⁷ Available material on this case includes the following texts: 自贡“4.20 镇压失地农民事件”向社会各界人士的公开信 [Anonymous, *Open Letter to All Members of Society on the “20 April Incident of Oppression of Landless Peasants in Zigong”*] (May 30, 2005) (on file with the author) [hereinafter *Open Letter to All Members of Society*]; 四川农民申诉冤情遭警察毒打拘押 [Sichuan Peasants Meet with Severe Beatings and Detention When Appealing Against Injustice], 博讯 [PEACEHALL NEWS] (May 5, 2005), available at <http://www.peacehall.com/news/gb/china/2005/05/200505050117.shtml> [hereinafter *Sichuan Peasants Meet with Severe Beatings*]; 程洁, 土地征用不能侵犯公民财产权 [Cheng Jie, *Land Requisitioning Must Not Violate Citizens' Property Rights*] (2003), at <http://www.chinareview.com/everyday/everyday-97.htm>; Human Rights in China, *Peasant Advocates Hospitalized in Clash with Officials* (May 3, 2005), at <http://www.hrichina.org/public/contents/press?revision%5fid=22211&item%5fid=22210> [hereinafter *Peasant Advocates*]; Human Rights in China, *Sichuan Peasants Accuse Official in Land Grab* (June 17, 2004), at <http://www.hrichina.org/public/contents/9705> [hereinafter *Sichuan Peasants Accuse Official*]; 刘正有, 我向总书记, 总理说实话 [Liu Zhengyou, *I Am Telling the General Secretary and Prime Minister the Truth*] (Nov. 2003) (on file with author); 国务院法制办公室, 国务院法制办公室关于对建设部办公厅《关于对房屋拆迁政策法规的答复是否属于具体行政行为的请示》的复函

representative of the Zigong peasants, Liu Zhengyou, figure prominently in the discussion of the case that follows. This account of the process of land seizures, with a particular view to the fate of one village and its inhabitants, and of the villagers' responses, is largely based on material produced by complaining citizens and by authors who sympathized with them.

II. PROPERTY AND COMPENSATION ISSUES IN REQUISITIONING, DEMOLITION, AND RELOCATION

A. Peasant Dispossession

In 1993 Liu Zhengyou, a man in his forties who had run a small business and was regarded as quite wealthy and well-educated among his fellow villagers, was living in a house he had built himself in the village (村, *cun*) of Baiguo. Baiguo belonged to the Hongqi "township" or *xiang* (乡), a group of villages situated on the outskirts and under the administration of Zigong, a city of around 500,000 inhabitants. The peasants⁸ in this village grew different crops, and their average annual per capita income of about ¥2000—made in addition to the food they could grow for themselves—was considered to be quite good.⁹

[State Council Legal Affairs Bureau, *State Council Legal Affairs Bureau's Response Regarding the Request for Instruction, Addressed to the Construction Ministry, on the Question Whether a Response Regarding Demolition and Relocation Regulations and Policies is a Concrete Administrative Act*] (Aug. 27, 2002), available at <http://www.law110.com/law/guowuyuan/2157.htm>; 宿琦, 三农调查报告: 土地篇 [Su Qi, *Investigation Into the Three Peasant Problems: Part on Land Issues*], 经济半小时 [Business Half-Hour] (CCTV television broadcast, June 12, 2003), transcript available at http://lqare.lugiao.gov.cn/news_show.asp?type=c&id=4445&name=%C5%A9%D2%B5%BF%EC%D1%B6; 孙亚菲, "新圈地运动"后遗症 [Sun Yafei, *The Ill Effects of the "New Land Enclosure Movement"*], 南方周末 [S. WEEKEND] (July 15, 2004), available at <http://www.nanfangdaily.com.cn/zm/20040715/xw/tb/200407150002.asp>; CCTV Begins to Address the Case of Peasants Being Framed, *supra* note 1; 张耀杰, 谁来承受中国工业化的成本—对四川失地农民悲惨状况的调查 [Zhang Yaojie, *Who Pays the Price for Industrialization in China – A Study on the Disastrous Situation of Landless Sichuan Peasants*] (June 13, 2004), available at <http://www.dajun.com.cn/shidnm.htm> [hereinafter *Industrialization in China*]; 张耀杰, 四川失地农民维权代表刘正有被警方传讯 [Zhang Yaojie, *Sichuan Landless Peasants' Representative Specially Interrogated by Police*] (Aug. 28, 2004), available at <http://www.asiademo.org/gb/news/2004/08/20040828.htm#art12> [hereinafter *Sichuan Landless Peasants*].

⁸ This word is used deliberately for *nongmin* (农民), most literally translated as "rural people," in preference to the literal translation and to "farmers," because it is often used as a class term in Chinese. Many *nongmin* in China have nothing to do with farming, yet continue to be referred to as "peasants" even when their residence registration status has been changed to "urban." Consider also the expression *nongmingong* (农民工), or "peasant workers," referring to urban migrant workers from the countryside. While it can have a negative connotation, the term *nongmin* can also be used with a special appeal to sympathy and respect.

⁹ Su, *supra* note 7.

By 1992, just when the economic reform process had received a new boost from Deng Xiaoping's famous Southern Tour, officials of the Zigong City government and its Communist Party organization had asked the provincial government of Sichuan for permission to set up a "Zigong High-Tech and New Technology Industrial Development Zone." However, according to their own testimony, not one of the villagers was aware of this.¹⁰ The size of the envisaged development zone was ten square kilometers. Permission was given at the end of May 1992. Then, in 1993, a "Committee for the Administration of the Zigong High-Tech and New Technology Industrial Development Zone" (the "Zigong High-Tech Zone Committee") was established by Order No. 11 (1993) of the Zigong City government.

Thirteen years later, most of the residents of Baiguo village's second group (组, *zu*),¹¹ to which Liu Zhengyou belonged, were no longer living on their land. Many of these residents were dependent upon what they viewed as insufficient compensation payments for subsistence, leaving them impoverished and angry. Liu Zhengyou was mostly living underground in the capital, Beijing, trying to promote the cause of the villagers by petitioning central government and Party offices. There were no newly settled industries, nor any new factories—only many new flats selling at high prices.

This was partly a consequence of legal reforms in the area of land law. The new 2004 Land Administration Law¹² stated that the "socialist ownership system" recognized only "collective" ownership and state ownership. State ownership affected urban land and natural resources. This development left collective ownership as the only remaining mode of ownership in rural land, whether for agricultural or other uses, including the housing of rural residents. The resulting duality of ownership regimes, although superficially seeming to give the rural population something better than their urban counterparts, was actually an important precondition for discrimination regarding land rights, even if such discrimination was benevolent in intention.

The introduction of collective ownership and individual household land use rights allowed peasants, to some degree, to farm for themselves and to sell their own produce. Land use rights according to

¹⁰ Some villagers' committee heads must have known, according to the allegations described at *infra* page 251.

¹¹ Physically, such groups resemble independent, smaller villages within the administrative *cun* (村), and can be called "natural villages."

¹² 中华人民共和国土地管理法 [Law on Land Administration] (art. 8 promulgated by the Standing Comm. of the Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999, as revised through Aug. 28, 2004) (P.R.C.), available at <http://www.cin.gov.cn/law/other/2000111612-00.htm> (last visited Mar. 8, 2006) [hereinafter 2004 Land Administration Law].

the rules on land contracting or *chengbao* (承包), limited to fifteen (or later thirty) years in duration, were largely effective at the village level. They served to define one's rights toward the collective and toward other villagers.¹³ Yet when the government decided to requisition land from rural collectives, the duality of ownership rights meant that such use rights, too, could be easily lost. Importantly, under the post-reform system, it is not possible for the owners of land to alienate the land through sale. In other words, peasants cannot on principle terminate or exit their position as members of the rural collectives, which are designated as owners of rural land, by getting the collective to sell land, and transfer ownership, of its own accord. In one sense, this protects peasants against the loss of land through purely private transactions. But at the same time, they are not protected against transfers of the land to state ownership by administrative decision and against the subsequent granting or selling of urban land use rights (limited in time) by the government to private property developers. The participation of the collective to negotiate agreements on compensation standards, and usually to sign a "requisitioning agreement," is required in such administrative processes; but the significance of this requirement is limited, inasmuch as the administrative decision to requisition is made unilaterally, and as general compensation standards are set by laws and regulations.¹⁴

To understand the implications of these legal provisions for individual peasants, it is necessary to consider some problems of terminology and legal interpretation in the context of collective and individual rights pertaining to land. As mentioned in the introduction, Chinese law contained, and now still contains, various provisions on collective ownership of rural land and on the management (管理, *guanli*) of collectively owned land by political or economic bodies including the

¹³ National legislation now clarifies that *chengbao* (承包) arrangements can also exist with regards to state-owned land in Article 2 of the 2002 Land Contracting Law. See Law on Rural Land Contracting, *supra* note 6, at art. 2. Note that according to Article 12, in the case of collectively owned land, the party contracting out (发包, *fabao*) does not necessarily have to be the owner. See *id.* at art. 12.

¹⁴ The 1988 Land Administration Law in effect at the time of the Zigong requisitioning decision says in Article 31 that people's governments approving the requisitioning "may" consult with towns, townships, or villages about the various kinds of compensation. See 1988 Land Administration Law, *supra* note 4, at art. 31. Article 18 of the 1991 Implementation Regulation, especially in paragraphs 2 and 3, prescribes a procedure which suggests that compensation standards and resettlement plans should be "negotiated and decided" (商定, *shangding*) with the units whose land is requisitioned before the local government is asked for approval. See 1991 Implementation Regulation, *supra* note 5, at art. 18. But there is no provision on what should happen in the case that no agreement can be reached, and the overall context suggests that government approval for a plan submitted, importantly, by the land administration bureau (not jointly by the parties involved in the negotiation) to the local government is the only strictly required step.

villagers' committees and economic collectives. So far as there is any further characterization of the collectives owning rural land, reference is made to collective land ownership by "village peasants" or "villagers" (村农民, *cun nongmin*).¹⁵

The idea of collective ownership requires us to think of the collective as distinct and different from any individuals belonging to it. The Chinese expression *jiti* (集体) invokes the image of a necessarily abstract body (体, *ti*) which has been aggregated (集, *ji*) from a number of (more concrete) entities. It seems that the legal function of this abstraction in the present context is to allow for differentiation from a) the state and b) the individual as conceivable alternative owners of land. Chinese law does not allow for individual land ownership and, indeed, the most important way in which the word "individual" (个人, *geren*) figures in various legal provisions on land ownership is in the context of prohibitions of interference by "any individual or organization" with collective or state ownership of land. The socialist underpinnings of both state ownership and collective ownership are emphasized, for instance, in Article 6 of the Constitution, which characterizes both as a form of "socialist public ownership, [which] supersedes the system of exploitation of man by man [and] applies the principle of 'from each according to his ability, to each according to his work.'"¹⁶

Since the economic reforms triggering the new land law regime described here, Chinese law has recognized and protected certain individual rights of use pertaining to land, as well as other private individual ownership rights, and it seems no longer inconsistent with any wider purpose of Chinese property law to see individuals as indirectly protected (albeit not directly entitled) by rules on collective land ownership. Again, so far as land in a rural context is concerned, references, for instance, in the context of rural contracting for rights of use in land appear to avoid the word for "individual," yet they do refer to people, and thus indirectly to individuals. The important point here is probably that individuals do not matter so much in the context of rural land distribution, because practical exigencies and perhaps also tradition¹⁷ make households the relevant economic entities. Reference to individual persons belonging to such households is implied when perceived to be necessary, as for instance when people are to be counted one by one when

¹⁵ The Chinese language does not differentiate by the use of grammatical flexions or the like between the singular and plural, and the expression 村农民 (*cun nongmin*) has no strong connotation of a plurality of individuals or of individual personhood.

¹⁶ 宪法 [CONST.] art. 6 (1982) (P.R.C.) (as amended Mar. 14, 2004).

¹⁷ It has been argued that in the Confucian tradition, for instance, the idea of person is more "relational" than in traditions that produced the idea of individual rights.

land use rights are distributed by a collective to individual households according to the land contracting or *chengbao* (承包) mechanism. This is implicit in the injunction to give “women equal rights with men” contained in Article 15 of the 2002 Land Contracting Law.

Of course, the provisions on the distribution of mere rights of use do not by themselves clarify the identity, organization, and internal procedures for decision-making of the collectives that are supposed to be rural land-owners. Such collectives are political as well as economic organizations and therefore require some rules of operation. The administrative village is supposed to be a civil or societal organization of self-rule, exercised through elected villagers’ committees, which have an elected committee head.¹⁸ But existing legal rules on how such collectives should be run are often not observed in practice. The reality tends to be different from the ideal of self-rule, and villagers’ committees tend to be dominated by government and Party authorities.¹⁹

It could be suspected that, in effect, given the structural weakness of land-owning collectives and given their subjection to the control of local government and Party officials, collective ownership was nothing more than ownership by some branch of government or the Party, even though the legislative texts mentioned above, as well as the requisitioning procedure, clearly suggest a differentiation between state and collective land ownership. In that case, “collective ownership by village peasants” would be a mere empty phrase. But this understanding seems to miss the point of disagreement in disputes over rights between citizens and the state, and ultimately reduces law to expressions of state power. Peasants of Zigong in the case discussed herein used the law “on the books” to challenge the state which, they claimed, had acted illegally; so we should not take the concerned state authorities’ assertions that their actions were legal as conclusive interpretations of what is actually legal. But attributing ownership of rural land to local government, despite written

¹⁸ This system was introduced nationwide by the 中华人民共和国村民委员会组织法 [Organic Law of the Villagers’ Committees (Trial Version)] (promulgated by the Standing Comm. of the Nat’l People’s Cong., Nov. 24, 1987, effective June 1, 1988) (P.R.C.), now replaced by the 中华人民共和国村民委员会组织法 [Organic Law of the Villagers’ Committees] (promulgated by the Standing Comm. of the Nat’l People’s Cong., Nov. 4, 1998, effective Nov. 4, 1998) 11/1998 全国人民代表大会常务委员会公报 [STANDING COMM. NAT’L PEOPLE’S CONG. GAZ.] 507 (P.R.C.) [hereinafter Organic Law of the Villagers’ Committees]. Like villagers’ committee members, villagers’ groups’ leaders are elected in accordance with Article 15 of the 1987 law and Article 10 of the currently valid Organic Law of the Villagers’ Committees.

¹⁹ On problems with the implementation of the Organic Law of the Villagers’ Committees and related corruption issues, see Jamie P. Horsley, *A Legal Perspective on the Development of Electoral Democracy in China: The Case of Village Elections*, in UNDERSTANDING CHINA’S LEGAL SYSTEM: ESSAYS IN HONOR OF JEROME A. COHEN 295 (C. Stephen Hsu ed., 2003) and THOMAS P. BERNSTEIN & LÜ XIAOBO, TAXATION WITHOUT REPRESENTATION IN RURAL CHINA 206 (2003).

legal guarantees attributing it to collectives of peasants, would be equivalent to conceding the important authority to interpret the law on ownership to local governments—an interpretation which is ultimately inappropriate.

To reiterate, a transfer of land rights away from the collective owner (for example, the village) and members of the collective who might have individual use rights in the land to other citizens or entities—for instance, in the context of urban development—could occur only through a series of state decisions: the rules for the “requisitioning of collectively owned land.” Ownership of the land fell to the state as a consequence of “requisitioning.” A bureau under the Ministry for the Administration of State-Owned Land and Natural Resources took charge of “requisitioned” land. Under the law, rights of use regarding such land could then be sold (or “transferred” for a fee) by the government. These rights had a time limitation of forty, fifty, or seventy years, depending upon the type of land use. Once land had been turned from rural into state-owned urban land, that land could acquire a significant market value. However, since only urban land use rights with a time limitation and not full ownership could be traded, state requisitioning was the only way for this value to be realized. Peasants were effectively excluded from this newly opened urban market.²⁰ This created, even if unintentionally, a basic inequality at the legislative level. In Deng Xiaoping’s words, the motto was “to let a few people become rich first.” While it remained “rural” land, land had no market value as land for purposes of urban development (although land use rights in agricultural land were commercialized to a certain degree). However, once it became “urban,” the peasants no longer had any claims to it. The possibility of de-collectivization and transfer of land ownership to the state, in combination with transfers of land use rights regarding state-owned land, provided a legal framework for land seizures.

²⁰ Except, theoretically, in cases where they had sufficient money to buy back into it.

B. *Requisitioning and Demolition Decisions*

The general approval granted by the Sichuan provincial government in May 1992 did not yet amount to a requisitioning decision. Decisions to requisition specific plots of land were made by the aforementioned "Zigong High-Tech Zone Committee," established by Order No. 11 (1993) of the Zigong City government. This committee, under the presidency of Shi Jun, who later became vice mayor of Zigong, established offices to handle the various tasks that it had been assigned.²¹ Between 1992 and 1998, the Zigong High-Tech Zone Committee requisitioned over 15,000 *mu* (亩)²² of farmland in the townships Hongqi and Fenghuang.²³ Land use rights for a large proportion of the requisitioned land were then given to property development companies, sometimes after waiting for a considerable time period until prices had gone up. According to a 2004 report on the Zigong case published by Human Rights in China, the gains from land developers' transactions with government were estimated to be at least ¥5 billion, but unofficial oral sources put the likely gains at only ¥1 billion.²⁴

Different authorities were responsible for making decisions to demolish houses in which peasants lived and to arrange for their relocation and/or compensation (as part of the so-called "demolition and relocation procedure").²⁵ However, there was a high degree of personal interconnectedness between the Zigong High-Tech Administration Committee and those authorities. In August 1993, the city government made a general decision that houses on the land to be requisitioned would be demolished and that the people living in them would be relocated. This decision was announced by Document No. 75 (1993), and set off a number of further, more concrete decisions regarding the taking of particular plots of land and the demolition of specific houses.²⁶

The process of taking the peasants' land and houses was legally questionable in three respects. First, while the "requisitioning" of land

²¹ Namely, to requisition land from the peasants living and working within the Zone, to distribute or grant (转让, *zhuanrang*) rights of use, and to "manage" (管理, *guanli*) the Zone.

²² One *mu* equals 666.7 square meters.

²³ Sun, *supra* note 7.

²⁴ *Sichuan Peasants Accuse Official*, *supra* note 7. The sum of ¥1 billion was mentioned in a confidential interview.

²⁵ Not under the authority of the Ministry for the Administration of State-Owned Land, but under the authority of the Construction Ministry.

²⁶ These were usually issued by a bureau under the authority of the Construction Department of Sichuan Province, and not directly by the Zigong High-Tech Zone Committee. Regarding the term "requisitioning," it was frequently used in regard to particular plots of land within the larger area initially designated for requisition in 1992. Journalist Su Qi remarks of Baiguo village's second group that its land "was requisitioned a couple of times." Su, *supra* note 7.

was subject to the general legal requirement that it must be in the “public interest” according to Article 2 of the Land Administration Law (as of 1988 and as of 2004),²⁷ the construction of great numbers of private residential premises was a questionable goal in this context. Of course, “public interest” allows for a wide range of interpretations and has been interpreted differently across different Western jurisdictions.²⁸ It therefore seems important to put the idea of “public interest” in its historical context. Judging by the more detailed provisions of the Land Administration Law as of 1988, the lawful purpose of requisitioning collectively owned land was either “state construction” for the purpose of cultural, economic, or national defense construction projects or to initiate public works (Articles 21-36), or “town (township) and village construction” to set up township-managed enterprises that could immediately benefit local people (Articles 37-42).²⁹ In hindsight, in the case of Zigong, it is not clear whether the construction of residential housing in the context of urbanization through residential property development carried out by private outside developers fell under any of these categories. However, at the time that requisitioning decisions were first made, the declared purpose was the construction of a high-tech industrial zone. The use of designations such as “High-Technology Park,” or “Industrial Zone” for residential property development areas indicates a perceived need to justify requisitioning by the promise of creating new industrial jobs for local people.³⁰ However, such promises were often unfulfilled. In the Zigong case, this kind of public interest justification also played a role, as the designation of “Zigong City High-Tech and New Technology Industrial Development Zone” demonstrates.

According to an economist from the area, Zigong was a typical example of a place in which the only way for local government to generate income was by selling off land. Cheap land and cheap labor might attract investment, and this would advance the personal careers of

²⁷ The current Article 2 explicitly mentions that compensation shall be paid for requisitioned land. 2004 Land Administration Law, *supra* note 12, at art. 2.

²⁸ A particularly striking example is the doctrine of “eminent domain” in the United States. For an interesting Chinese perspective on the recent U.S. Supreme Court’s decision regarding eminent domain, emphasizing restrictions placed on government and citizens’ enforceable right to reasonable damages in the event of land takings, see 林达, 美国人如何处理城市规划中的征地拆迁? [Lin Da, *How Does the U.S. Handle Land Takings, Demolition and Relocation?*], 南方都市报 [S. METROPOLITAN DAILY] (June 27, 2005), available at <http://www.nanfangdaily.com.cn/southnews/spqy/200506270022.asp>.

²⁹ In today’s Land Administration Law, the use of land for construction is dealt with under one general chapter heading, in Articles 43 – 65. 2004 Land Administration Law, *supra* note 12.

³⁰ This is also the logic underlying the differentiation according to various construction purposes in the 1991 Implementation Regulation for the Land Administration Law. See 1991 Implementation Regulation, *supra* note 5, at Chapter 4.

responsible officials, whose promotion depended on the evaluation of their performance in achieving economic development.³¹ Su Qi, an investigative China Central Television (“CCTV”) journalist said that certain peasants he interviewed were promised a factory to work in but, in the end, what was built were only blocks of flats for solely commercial purposes. Su Qi interviewed the former occupants of the land on which the high-rise blocks have been built, and these flats are far too expensive for them to rent or buy.

When they had lost their land, many of the peasants of Hongqi township put their hopes in the industrial factory to be built in the Zigong High-Tech Industrial Development Zone, expecting that they would be able to work there and earn money. But instead commercial blocks of flats were built. What kind of Zigong High-Tech Industrial Development Zone “development” is this?³²

The same CCTV journalist also mentioned that one plot of land was originally to be used for a college, according to the rezoning plan. In a slightly condescending fashion, the journalist seems bemused by the peasants’ willingness to abandon their land for a college building, while they are opposed to the residential buildings actually built on what was their land:

One of the peasants told the reporter: “Requisitioning the land to build an engineering college—to put it modestly, that is done for our children and grandchildren; more grandly speaking it is done so the fatherland can raise more talent, isn’t it? We should make a sacrifice, yes; but what we have got now really doesn’t meet [any of these implicit expectations]”.

We have no idea why these good peasants expressed support for the building of a college.³³

³¹ Gao Guangshen, *A Case Study on Land Requisitioning in Zigong, Sichuan Province, China. The Story of Peasants Deprived of Their Land in My Hometown* (Microsoft Powerpoint presentation, Summer 2005, on file with author).

³² Su, *supra* note 7.

³³ *Id.*

The second reason to doubt the legality of the requisitioning and relocation process is that, according to many substantiated allegations, the procedures intended to protect individual peasants affected by requisitioning were not respected. There was a requirement for negotiation to settle issues of compensation and for the negotiated agreements to be approved by township or city level government.³⁴ This negotiation requirement was, in and of itself, problematic. The peasants did not really have anything with which to negotiate; they had no secure land rights with respect to outside parties to trade for compensation.

At any rate, according to many substantiated allegations, these procedures, however imperfect, were not ultimately followed. It was alleged that agreements were in some cases faked, and that in most cases the peasants did not know what was going to happen to them at all until it was too late. By their own accounts, provided to CCTV journalist Su Qi, the villagers were not consulted before such agreements were concluded,³⁵ but simply told later that they would have to give up their land. In the case of the second production group of Baiguo village, where Liu Zhengyou lived, various agreements viewed by the journalist revealed mistakes: in one of these form agreements, he says, not even the “agreeing” parties’ names had been filled in.³⁶

In another instance, Su Qi tried to find out if and when government approval had been given for the requisitioning of land collectively owned by a group in the village of Dayan.³⁷ Approval of such an agreement was needed according to the then effective

³⁴ Effectively, the Zigong High-Tech Zone Committee ended up approving many “agreements” itself.

³⁵ The then-valid 1988 version of the Land Administration Law does not provide a detailed provision on the procedure for determining compensation and obtaining agreement from collectives whose land is requisitioned. See 1988 Land Administration Law, *supra* note 4. But the State Council’s 1991 Implementation Regulation does so in Article 18. In subsection (b) it requires that “land administrations of people’s governments above the county level shall examine and check on the application for use of construction land, mark the area for such use and organize the construction unit, the land-owning unit and other related units in negotiations in accordance with law on plans of compensation for the acquired land and settlement which shall be sent to the people’s governments above the county level for endorsement.” See 1991 Implementation Regulation, *supra* note 5, at art. 18(b). Subsection (c) requires that “the applicant for use of construction land, upon approval by people’s governments above the county level within the legally endorsed authority, shall be issued documents of approval for use of construction land by people’s governments above the county level in the locality where the land is acquired, and the land administrations shall allocate construction land once for all or in installations in line with the speed of construction.” See *id.* at art. 18(c). Article 48 of the current Land Administration Law reads: “After the plan for land compensation and resettlement fees is finalized, the appropriate local people’s governments shall make an announcement and hear the opinions of the rural collective economic organizations and peasants whose land has been expropriated.” See 2004 Land Administration Law, *supra* note 12, at art. 48. This process is also referred to as consultation.

³⁶ Su, *supra* note 7.

³⁷ *Id.*

Implementation Regulation for the Land Administration Law; it depended on the size of the plot to be requisitioned and what level of government, starting from the county level, was authorized to grant approval.³⁸ But neither repeated remonstrations by villagers to various officials nor a laborious search by Su Qi could bring to light any documents on official approval decisions taken at the time that the requisitioning process began to affect the villagers. According to Su Qi, the earliest document that could be found in the archives of one of the concerned offices dated from 1996. This document, Sichuan Province government Document No. 347 (1996), approved the requisitioning of land of the second group of Dayan village. However, the provincial approval document revealed an important mistake in the requisitioning process, saying that “[i]t was wrong for Zigong City High-Tech Development Zone Administration Committee to begin using the land at a time when they had not yet applied for approval. It should conscientiously receive education and strengthen its legal-mindedness.”³⁹ This exhortation seemed more concerned with the correctness of the administrative process than with the effects of mistakes on citizens.⁴⁰ One gets a clear sense from Su Qi’s report that the villagers suspect the former village group head of collusion with the township government.⁴¹

Third, the requisitioning process seemed legally questionable because the compensation standards applied in this case appeared inadequate, and because compensation actually paid to the collectives or to individual peasants apparently fell short of even these standards. It has already been pointed out that there is a fundamental difficulty in determining what the compensation for rural land should be. How should one value the land that is lost to the peasants in a situation in which they have no right to sell it to developers and when only future commercialization will ascribe a market value to it? Indeed, in contrast to legislative texts governing urban land,⁴² legal rules on compensation for

³⁸ See 1991 Implementation Regulation, *supra* note 5, art. 18(c).

³⁹ Su, *supra* note 7.

⁴⁰ Interestingly, there is a 1992 response by the NPC Standing Committee legal affairs working group stating that illegal requisitioning approvals have no effect and that those responsible should be given administrative punishment. It does not, however, say anything about requisitioning decisions that have not been approved at all. See 全国人大常委会法制工作委员会答复 [NPC Standing Committee Legal Affairs Working Group Response No. 116] (July 9, 1992).

⁴¹ Su, *supra* note 7.

⁴² Compare 中华人民共和国城市房屋拆迁管理条例 [Urban Housing Demolition and Relocation Management Regulation] art. 24 (promulgated by the State Council, June 13, 2001, effective Dec. 1, 2001) (P.R.C.), available at <http://www.dffy.com/faguixiazai/xzf/200407/20040701201401.htm> (last visited Feb. 24, 2006) (“The amount of monetary compensation shall be determined according to the location, use, building area, and other factors [related to] the demolition subject’s housing as well as an evaluation of the market price.”).

rural land requisitioning contained in Articles 27-30 of the Land Administration Law (as of 1988) and Article 18 of the then effective 1991 State Council Implementation Regulation for the Land Administration Law required compensation that related to the annual agricultural output of a certain plot of land and various additional factors, rather than to the land's prospective market value. It is interesting to note that the maximum compensation in this context—up to fifteen years' annual output—corresponded to the duration of a land use right. In Article 27, the Land Administration Law also provided that certain individual investments should be compensated for as "compensation for fixtures on the land" (附着物, *fuzhuowu*) and "compensation for young [or green, that is not matured] crops (青苗, *qingmiao*)." According to Article 30, this latter kind of compensation could be paid out individually, whereas compensation for land was to be used by the "units" (单位, *danwei*) whose land was requisitioned to develop production and create employment opportunities and/or as living subsidies to its members. Article 31 of the Land Administration Law provides that compensation owed to the collective shall be "negotiated and handled" by local government if all the land of a particular collective is requisitioned. The implication is that, in such a case, the collective has ceased to exist.

Considering that the villagers' collectives affected by these provisions are collective owners of the land in question, and so far as one's status as a member of a particular village and group was not normally subject to changes, one could argue that the collectives' members at one point had a legitimate expectation to be able to live off the land for life, rather than just for a few years. It is this expectation which is captured in the colloquial expression *minggenzi* (命根子, lifeblood) when referring to the importance of land to peasants in China: it is viewed as the basis of their life and, it is often implied, of that of later generations, on an implicit and obviously generalized assumption that the peasants in question are farmers. Alternatively, one could argue that the peasants should be compensated according to "fair market value." The latter would perhaps make the most sense if peasants had access to a market in land. But as already pointed out,⁴³ there was (and still is) no market mechanism to which peasants have access in the context of "urbanization" of land previously designated as "rural."

According to peasant representatives in the present case, compensation payments for the loss of land and for individual investments made before requisitioning, as required by the provisions of the Land Administration Law and the Implementation Regulation for the

⁴³ See discussion, *supra* pages 240-41.

Land Administration Law, were either never made or were withheld from the collectives and individual peasant households to whom they were owed by the local government; or, so far as it was legal for the government at the township level to "handle" such money because the collective in question had ceased to exist,⁴⁴ the money was not used for the purpose prescribed by law. The Zigong High-Tech Zone Committee, a few months after having been set up in 1993, established an "Office for Demolition and Relocation from Requisitioned Land." This office did not only manage, organize, and carry out demolition and relocation but, fatefully for the peasants, it also set its own standards and guidelines for compensation and re-settlement of peasant households.⁴⁵ Liu Zhengyou says that the Zigong High-Tech Zone Committee failed to hold any meetings with villagers to seek their approval. Non-authorized "agreements," he alleges, were signed only by the villagers' committee heads, and were in some cases backdated. The villagers' committee heads, he further insinuates, were also bribed.⁴⁶ From the material available to the author, it is not clear what payments were made to whom, and not even the allegations made by Liu Zhengyou allow for any clarity on who withheld what amount of money at what level of government. Yet according to these allegations, the principal payment of compensation was made to township level government, and did not subsequently reach the peasants or peasant collectives. The stated reason for the "withholding" of compensation money was that it was in the peasants' long-term interest to use the money to set up a factory where they could work after losing their land. To quote Liu Zhengyou:

As for the compensation for requisitioning land and compensation for the loss of collective property of the peasants, these were withheld according to a land policy of the City government; and even the piteous sum of compensation money which the peasants were supposed to get, was allotted in a lump sum to the township government for unified administration. The reason they gave for this was that "funds owned collectively by the villagers cannot simply be distributed and consumed

⁴⁴ See discussion on implications of Article 31 of the Land Administration Law, *supra* page 250.

⁴⁵ It issued its own documents on compensation for demolition and relocation, to which Liu Zhengyou refers as "the red-letterhead documents (红头文件, *hongtou wenjian*) no. 20 and no. 27 (1993)," issued by the Zigong High-Tech Zone Administration Committee. See Liu, *supra* note 7.

⁴⁶ "The officials of the Zigong High-Tech Zone Administration Committee arranged for pleasure trips for cadres at the levels of township, village, and group; they gave money and presents to these cadres." *Id.*

separately by each recipient, so that nothing remains;⁴⁷ there must be long-term considerations for the peasants, and we will set up an enterprise for them [to work in].” Ten years have passed since then but no enterprise has yet been set up and it is unclear where the several tens of millions of *yuan* which the peasants ought to have received have gone.⁴⁸

According to Liu Zhengyou, what happened instead was that people who lost their land were assigned to existing enterprises that did not really have the capacity to employ them. Liu Zhengyou further explains:

The Zigong High-Tech Zone Administration Committee requisitioned land [in the first phase] from 1993 to 1997. The provisions they made for the peasants during that time were as follows: The City Government was to employ all the people between eighteen and forty years old and they were to get the city household registration.⁴⁹ Those honest and naïve peasants, when they heard that they would become factory workers, and even be given an urban household registration, they were delighted! For as peasants, of course, they had been suffering discrimination. More than 2000 peasants made landless were dealt with in this manner by the City government. They were assigned to various enterprises belonging to the districts and street committees, in addition to privately run enterprises and enterprises run by collectives. But the gains made by these enterprises were already poor, and when the City government forced dozens of further

⁴⁷ 不能分光吃光 [*Bu neng fenguang chiguang*]. This has some legal basis in Article 31 of the 1988 Land Administration Law. It stipulates that certain types of compensation for green crops and fixtures on the collectively owned land should be paid to the individuals whose fixtures and crops were lost, but that the remainder must not be distributed individually (私分, *sifen*). In the Zigong case, a differentiation between compensation for individual and collective losses was apparently never made.

⁴⁸ Liu, *supra* note 7. Further grievances concerned the question of where the peasants turned out of their houses would live. The “provisional housing” arranged for the peasants upon eviction was deficient and often badly insulated, unsanitary, dilapidated, and not accessible by proper alleyways. Three people allegedly died by falling into unsecured latrines or ditches at night. Years passed and the peasants could not move out. See Su, *supra* note 7.

⁴⁹ This is in accordance with Article 31 of the 1988 Land Administration Law, according to which a household registration change to “urban” may occur when all the land of a collective has been taken. 1988 Land Administration Law, *supra* note 4, at art. 31.

workers upon them, they could bear their costs even less and soon had to close down. At most, these poor landless peasants worked in those enterprises for one year; some even only worked for two months [before they were dismissed].⁵⁰

According to available information, an effective, or at least partially implemented compensation scheme involving actual payments to the peasants was not worked out by the Zigong High-Tech Zone Administration Committee for Baiguo village until 1997, about four years after the Committee had been set up. The standards it set seemed to have been determined by an assessment of the peasants' needs rather than the agricultural value of their land. It was alleged that the monthly subsistence money to be paid out to some of the peasants according to this scheme fell short not only of what would have been required according to the Land Administration Law, but even of the sum paid as social welfare to Zigong citizens.

According to the compensation scheme decided by the Zigong High-Tech Zone Administration Committee, allegedly in accordance with the requirements of the [then] Land Administration Law, the compensation was to consist of two parts: 1) a one-time payment to subsidize new housing, called "resettlement compensation," in the amount of approximately ¥8000 per person for people between eighteen and forty years old, and 2) a monthly subsistence allowance of ¥54 (later adjusted to ¥90) per month for persons aged forty or older, and the same amount for minors until they were sixteen or, if they were studying, had graduated from high school.

It has been calculated that according to these standards the peasants, who in 1997 had an average annual per capita income of US\$213.00, should have received either a lump sum payment of US\$967.40 or a monthly payment of US\$6.53 per person in compensation, whereas the market price of the requisitioned land was US\$73,373 per acre. Before requisitioning, one household had on average one acre of land allotted to it. The average price of a commercial flat in Zigong would have been US\$8000, beyond the reach of most of those evicted.⁵¹

It was not made clear whether this type of legal compensation was meant to represent compensation for the loss of land or for the loss of

⁵⁰ Liu, *supra* note 7.

⁵¹ Gao, *supra* note 31. The author explains how the gains from property development could have been siphoned off by officials and property developers acting in collusion.

housing.⁵² There was apparently no explicit mention of “land compensation” which, according to Liu Zhengyou’s allegations, had already been received and diverted by officials. A further complaint of the peasants, in addition to the problems just mentioned, was that compensation for the loss of houses, when finally paid out, applied a standard for rural rather than urban housing demolition. As a result of these various flaws in the compensation process, many peasants were allegedly left destitute. To quote Liu Zhengyou again:

Not a few among them had to live on scavenging waste for recyclable items, cleaning shoes, pulling rickshaws, and working as unskilled laborers After repeated manifestations of resistance, the local government decided in 2002 to raise the subsistence aid paid out to peasants to ¥84.60, and to raise it by ¥5 every second year from then on. But that means that it would still take twenty one years for the subsistence support to catch up with the [current] minimum social welfare payment for Zigong city and town dwellers.⁵³

C. *No Rights to Assert? The Fragile Condition of Collective Ownership and of Rural Rights of Use*

As noted above, later legal arguments put forth in an effort to obtain a judicial (or reconsideration) procedure retreated into areas that were comparatively “safe” to contest, such as the standard for a particular kind of compensation. Arguments put forth by or on behalf of the peasants rarely addressed the subject of ownership and rarely suggested that the peasants actually perceived themselves as owners, or that they identified with the abstract collective owner, of the requisitioned land. This, of course, should not lead one to conclude that dispossession and the loss of collective ownership did not matter to the peasants, or indeed that they might not have thought of the land in question as “belonging” to them in some politically, economically, and legally relevant way. For historical reasons, challenges to the control of land were especially

⁵² Technically speaking, it appears that houses such as that of Liu Zhengyou, built by individual peasants upon collectively owned land designated as land for housing (宅基地, *zhaijidi*) would, in the terminology of the Land Administration Law, have to be characterized as fixtures on the land (附着物, *fuzhuowu*).

⁵³ 俞梅荪, 失去土地的农民依法维权民告官难于蜀道(之十:向国家领导人告状) [Yu Meisun, *The Plight of Landless Peasants Trying to Defend Their Rights Against Officials (No. 10: A Complaint to National Leaders)*] (Dec. 16, 2003), at <http://www.blogchina.com/new/display/17927.html> [hereinafter *A Complaint to National Leaders*].

sensitive politically, and therefore could not be fully raised by the peasants. As noted below, in one recorded instance when the possibility of characterizing the issue as an ownership dispute was suggested it was immediately suppressed.⁵⁴

So what about the peasants' rights? The present case involved all three forms of ownership in things (moveable and immoveable) now recognized by the Chinese Constitution⁵⁵ but, most importantly, of course, it involved land, or "immoveable property (things)" in Chinese terminology. Regarding land, as already mentioned, Chinese law only recognizes state and collective ownership, although it does recognize individual (household) rights of use. Commercially speaking, the transformation of land from collectively-owned to state-owned was a technically necessary step to make it an object of trade in private urban land use rights.⁵⁶ Article 6 of the Constitution states that "[t]he basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people⁵⁷ and collective ownership by the working people,"

⁵⁴ See *Industrialization in China*, *supra* note 7 (including what looks like a transcript of a meeting held in March 2004).

⁵⁵ While Article 6 of the 1982 Constitution, recognizing collective and state ownership, refers to "ownership systems" and "ownership of the means of production," Article 13 of the Constitution as revised in 2004 recognizes private ownership in *chan* (产) by referring to *siyouchan* (私有产); in the present context, *chan* is best translated as "things" (in German, which in this respect is closer to the Chinese, the appropriate translation would be *Sachen*). See 宪法 [CONST.] art. 6 (1982) (P.R.C.); see also 宪法 [CONST.] art. 13 (1982) (P.R.C.) (as amended Mar. 14, 2004).

While the General Principles of Civil Law clarify in Article 71 that a citizen's personal (that is, individual) property can include housing (房屋, *fangwu*), it appears that the effect of requisitioning land will eventually be to destroy such property rights along with rights of use regarding the land originally granted by the land-owning collective, according to the principle that the right of use in land on which buildings have been erected are inseparable from rights in the buildings (colloquially, 地随房走, 房随地走, *di sui fang zou, fang sui di zou*). Principles of Civil Law, *supra* note 4. But there seems to be no clear legal provision saying so and it is not clear when such individual rights would vanish (except that they will vanish when the actual buildings are destroyed). Personal housing is referred to as housing owned by natural persons (自然人所有的房屋, *ziranren suoyou de fangwu*) in the literature. For instance, in 民法 [CIVIL LAW] 232 (魏振瀛编 [Wei Zhenying ed.], 2000). At page 235 in this book, it is pointed out that the registration of individual housing rights (房屋产权登记, *fangwu chanquan dengji*) in the countryside lags behind registration in urban areas in China. In conversation, it was mentioned to the author that this was also a problem in the Zigong case.

According to Liu Zhengyou's own account of the destruction of his home, his immoveable personal property was also taken away or destroyed in the present case. See description, *infra* page 265-66.

⁵⁶ Land use rights limited in time may be characterized as private; by contrast, collective ownership cannot be characterized as a form of private ownership. For a discussion of current property law reform see 物权法应突出私产救济 [*Property Law Must Give Prominence to Remedies for Infringement of Private Property Rights*], 南方都市报 [S. METROPOLITAN NEWS] (July 5, 2005), available at <http://www.nanfangdaily.com.cn/southnews/spqy/200507050005.asp>.

⁵⁷ On this concept see the discussion and sources, *supra* note 5.

and that “[t]he system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of ‘from each according to his ability, to each according to his work.’” The Constitution provides that “land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law.”⁵⁸ Further legislation protects collective ownership as an institution.

But these abstract guarantees alone do not translate into concrete rights for the land-owning collectives of villagers, or into protection for individual peasants and peasant households. Several factors combined in the present case to weaken the peasant collectives’ concrete rights of collective ownership over their land. The discussion of the requisitioning process described above showed that certain rules of the Land Administration Law and the Implementation Regulation Regarding the Land Administration Law were simply disregarded in the Zigong case. The absence of a real discourse on the legality of dispossession in the present case already indicates that the institution of peasants’ collective ownership in land is fragile. The collectively-owned land was too easily requisitioned, and hardly anyone discussed the first and most substantive issue in the expropriation context: namely, the question of whether collective ownership and private land use rights had to give way to public interest. Importantly from an economic perspective, there was no option to sell and get a share of the commercial gains made from rural land.⁵⁹ While, to a limited extent, rural rights of use might be the object of commercial transactions (a recent Land Administration Law reform has clarified this), such rural rights of use as might, for instance, be created by a contract (承包, *chengbao*), could not be sold to “urban” developers. Further, these rural use rights also effectively vanished as a consequence of land requisitioning transforming the land into state-owned land.

⁵⁸ Article 10 of the 2004 Constitution reads: “Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives. The state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law. No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The rights to the use of land may be transferred according to law. All organizations and individuals using land must ensure its rational use.” 宪法 [CONST.] art. 10 (1982) (P.R.C.) (as amended Mar. 14, 2004).

⁵⁹ Interestingly, it is not really evident that the peasants were demanding a share in such gains, although they certainly felt bitter about individual corrupt officials getting rich. Their complaints, too, concentrate very much on mere subsistence. But this should not lead us to think that they did not consider the land as theirs; only that they may have been thinking of it as theirs in much less commercial terms than we might superficially expect. In this context, traditional notions of the wrongness of alienating land from the family, and of the way land was connected with a family, rather than one individual owner, may have played a role.

It is a reflection of the fact that only land *use* rights are considered as truly belonging to the peasants, that compensation owed to them is to be calculated according to lost income from original agricultural land use for a limited time period, rather than according to a standard reflecting the expectation of continued land use for at least the lifetime of the adult presently involved in agricultural use of the land, and typically falls widely short of commercial or speculative gains made in the land “urbanization” process. On this interpretation, the loss of collective ownership as such does not enter into the calculation of compensation owed to the collective. This is another aspect of the apparent fragility of the institution of collective land ownership abstractly protected in the Constitution. Of course, it is by no means obvious as a policy matter that gains completely out of proportion to the value of the land before requisitioning *should* go to the landowning collectives and benefit their members only, rather than a larger community of citizens. On the other hand it is difficult not to see some duplicity in the current structure of land law, holding out an abstract promise of “collective ownership by village peasants,” but not allowing this collective economic right as such to translate into concrete economic value.

The fragile condition of “collective ownership” makes it more difficult to determine when the taking of rural land is illegal according to property law rules by blurring the line between legally and illegally requisitioning collectively-owned land.⁶⁰ Just like other forms of ownership, collective ownership relates to a particular form of political organization, the proper functioning of which is required for the collective to act as real owner. The collective in question in the present case is the Chinese village (at the *cun* (村) or *zu* (组) level). From the internal perspective of a villager and member of the collective owning the requisitioned land in Baiguo, therefore, a principal cause of the erosion of property rights in the present case must have been the failure of village self-government at the level of villagers’ committee heads, and the impotence of village “groups” as the entities to whom collective rights of ownership in land had been allotted. Village government ought to have worked as a self-governance mechanism through villagers’ committees and committee heads accountable to all villagers. Although it clearly failed to work, it is worth noting that this mechanism did not fail because

⁶⁰ If available accounts are correct, the processes described above were certainly illegal in some other respects, including the corruption affecting “agreements” on requisitioning and compensation or the even more egregious rights violations described in the following sections of this essay. Even if property rights were unclear in this case, this did not make other rights—such as that of access to courts, the right to be involved in compensation negotiations, or the more basic right to be treated as equal citizens—disappear.

of “grassroots” conditions within the village. Rather, the potentially functional mechanism of village self-government was undermined. As alleged in detail in some cases in Zigong,⁶¹ one problem was that villagers’ committee heads were not the chosen leaders, but had been appointed by higher-level government figures or the Party. The resulting lack of accountability meant that committee heads had no real incentives to be open to the villagers or act in their interests. Even though it appears that proper village elections would improve this situation, we can also draw a cautionary lesson from the fact that collusion with and corruption by higher-level party and government officials appears to have been a big problem, and that approved decisions made by higher level government could in certain crucial ways replace agreements entered into with the affected villagers. Even if village elections worked better, it seems that opportunities for corruption affecting village communities “from above” would remain.

Due partly to the way in which collective ownership is connected to village self-governance and partly to the dimensions of the loss experienced by peasants whose land is requisitioned, the implications of collective land ownership may become clearer when it is lost than while it still exists. In some cases, they may amount to a loss of status or identity; or they may lead to a new sense of belonging to a group of people who have been wronged. As mentioned, in accordance with the Constitution, there is no privately owned rural (agricultural) land in China. Thus farmers who lose their land cannot buy themselves new farmland. So far as they see themselves as representing one generation in a long line of future generations, this loss is even greater. In an interview in 2004, Liu Zhengyou is quoted as saying that, unlike tax burden issues, “[t]he land issue is not a problem of just one generation; it affects all of a family’s future generations, and therefore the entire family, the young as well as the old, are all required to participate [in rights protection activities].”⁶² It should be noted that in some regions, rental markets in limited land use rights under household responsibility contracts are emerging,⁶³ but of

⁶¹ Corruption at the level of individual village heads “negotiating” compensation into their own pockets is frequently a problem. Su, *supra* note 7, describes such a process regarding the village Dayan, also part of the Zigong case, and a village group head named Wu Yingxin [吴应鑫], who did not hand over the group’s accounts and thereby exposed himself to suspicion of embezzling money or accepting bribes.

⁶² 赵凌, 农民维权重心重大变化: 从税费争议到土地维权, [Zhao Ling, *Major Change Regarding the Focus of Peasant Rights Defense Activities: From Tax Burden Conflicts to Land Rights Protection*], 南方周末 [S. WEEKEND] (Sept. 2, 2004), available at <http://www.southcn.com/news/china/china05/sannong/snpol/200409020413.htm>.

⁶³ See Qian Forrest Zhang et al., *Development of Land Rental Markets in Rural Zhejiang: Growth of Off-Farm Jobs and Institution-Building*, THE CHINA Q., Dec. 2004, at 1050. It is not entirely clear from this discussion whether rentals usually occur within a community of collective owners or

course these markets are only open to those who can afford to buy. Unless they acquire, as some of the Zigong "peasants" did,⁶⁴ an urban household registration as part of their compensation package (welfare plan), the landless peasants are often forced to join that part of China's large "floating population" of city-bound migrants, who cannot gain legal recognition as "urban residents," and suffer further discrimination as a consequence.

The role of Liu Zhengyou and other so-called "peasant representatives" or "rights protection representatives,"⁶⁵ indicates that the people thought to live at the "grassroots" level of society were quite ready to be represented by leaders of their own choosing. Indeed, many peasants rallied around such representatives with regards to compensation, which was the one legal question that still seemed open to discussion once the peasants had been forced to abandon their land. Their attempt to protect their rights to fair and legal compensation described below could therefore also be considered as effectively maintaining a community of former collective owners,⁶⁶ now a community of "landless peasants."⁶⁷

III. RESPONSES: LEGAL ACTION, PETITIONING, PUBLIC MEDIA ATTENTION, AND PUBLIC UNREST

A. *Petitioning and Administrative Reconsideration Applications.*

Liu Zhengyou, the resident of Baiguo village, was twice affected by requisitioning, demolition, and relocation.⁶⁸ When a second requisitioning decision was made regarding his newly built house in 1995, Liu Zhengyou was unwilling to accept the offer of compensation money,

also with people outside that community, but there is some mention, especially in the richer eastern provinces, of organized "outside agribusinesses" acquiring land use rights and employing paid workers. The authors point out that land use rights will often be rented out by families whose bodily able members have migrated to cities to work. The authors argue persuasively that collective ownership, where it works as intended, can protect against entirely demand-driven land rights markets.

⁶⁴ It is not clear from available material how many people were transferred to urban residential status or ought to have been transferred as a consequence of being accommodated in urban districts.

⁶⁵ 农民代表 (*nongmin daibiao*), 维权代表 (*weiquan daibiao*).

⁶⁶ That is, in the same area. This is not to indicate that all of them were members of the same collective.

⁶⁷ 失地农民 (*shidi nongmin*).

⁶⁸ He lived in a house near a road that was broadened in 1995. When part of the land on which his home stood was requisitioned for this purpose, he decided to take compensation offered by the Zigong city government and then demolish and build another house in a different plot. Not long after this, requisitioning for the Zigong High-Tech Zone began in Baiguo village. See *Industrialization in China*, *supra* note 7.

based on the already-mentioned Document No. 75 (1993). He thought Document No. 75 (1993) was illegal, as did several other peasants in similar positions.

According to Liu Zhengyou's argument, the main reason why Document No. 75 (1993) was illegal was that it applied incorrect compensation standards. The Committee had set its own standard for compensation and cited the 1986 Land Administration Law in support of the substantive standard for compensation chosen, which was for "superior peasant [housing or land]." The Zigong High-Tech Zone Administration Committee claimed that the basis for Document No. 75 (1993) was the Article 27, Section 2 of the 1988 Land Administration Law and a complementary provincial regulation partially delegating the power to set standards to cities.⁶⁹ But in 1997, by the time an agreement on compensation for the loss of their houses was reached, all the land affected by "demolition and relocation" decisions had already been designated as urban for several years, and the peasants argued that, therefore, compensation standards according to the Urban Housing Demolition and Relocation Regulations should apply. The applicable compensation standard was important because the standard for peasants did not clearly relate to the value of property taken away, whereas the urban standard did. It was alleged that if the urban standard had been used, compensation would have been five times higher than that available under the rural standard.⁷⁰ Because they thought the standard determined for them by the Zigong City Government and Committee had no legal basis, the peasants of Baiguo village, led by Liu Zhengyou and a few others, decided to take action.

Liu and his fellow aggrieved citizens had two methods by which to vent their discontent. There are two main forms of addressing specific complaints toward government in China, and although both have different histories, in reality they tend to blend into each other. The one more recently introduced is administrative reconsideration, a procedure designed for internal administrative review of decisions, which can then lead to administrative litigation in court. The more traditional one is the aforementioned petitioning, or "letters and visits" (信访, *xinfang*) process. Article 41 of the Chinese Constitution guarantees citizens the "right to criticize 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

⁶⁹ For a full quotation of this document, see *id.*

⁷⁰ Gao, *supra* note 31.

dereliction of duty.”⁷¹ There are a number of both State Council and local regulations concerning letters and visits,⁷² and most state authorities in China, including courts, have an “office for answering letters and receiving visitors.” Besides opening an avenue for responses to government injustice, the institutionalization of complaints to the government also institutes a kind of supervision over officials. Moreover, it represents a channel through which government at all levels can receive information on citizens’ grievances.⁷³ “Litigation petitioning” (信访诉讼, *xinfang susong*) is made possible by the peculiar openness of the Chinese judicial process. Judges experience interference from within their court (e.g., by the court president or the adjudication committee), and courts experience external “supervision” by people’s congresses⁷⁴ in addition to interference by Party committees.⁷⁵ Last-instance decisions (that is, decisions after which no further appeal (上诉, *shangsu*) is allowed) are often open to further revision in re-trial (再审, *zaishen*) procedures.⁷⁶ These conditions of adjudication in China naturally lead litigants and complainants to “go where the power is,” and seek support from all those institutions influencing or even controlling the courts.

Liu and his friends, turning to the Zigong High-Tech Zone Administration Committee and to the Zigong City government, petitioned and applied for administrative reconsideration. In response, the

⁷¹ The first paragraph of Article 41 of the 2004 Constitution 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.” See 宪法 [CONST.] art. 41 (1982) (P.R.C.) (as amended Mar. 14, 2004).

⁷² See 信访条例 [Letters and Visits Regulation] (promulgated by the State Council, Oct. 28, 1995) (P.R.C.), available at http://www.gzgov.gov.cn/pages/zfjg/pages/szf_ly_gwxyftl.htm (last visited Feb. 24, 2006) [hereinafter Letters and Visits Regulation 1995]. This regulation has since been replaced by new regulation effective May 2005. See 信访条例 [Letters and Visits Regulation] (promulgated by the State Council, Jan. 10, 2005, effective May 1, 2005) (P.R.C.), available at http://www.chinacourt.org/flwk/show1.php?file_id=99030 (last visited Feb. 24, 2006) [hereinafter Letters and Visits Regulation 2005].

⁷³ For a thorough discussion of the *xinfang* (信访) system, including its historical origins and its function as a governance tool, see Minzner, *supra* note 2.

⁷⁴ See, e.g., RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 309 (2002).

⁷⁵ See STANLEY B. LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 263 (1999). The Political and Legal Committees may demand specific decisions in cases of particular significance [重大案件, *zhongda anjian*].

⁷⁶ According to Article 63 of the Administrative Litigation Law, for instance, a new court procedure can be instituted simply when “the law or regulations have been violated” and “a re-trial is considered to be required” by the president of the court that made the original decision and, upon referral, its adjudication committee, or by a higher court. See 中华人民共和国行政诉讼法 [Administrative Litigation Law] art. 63 (promulgated by the Nat’l People’s Cong., Apr. 4, 1989, effective Oct. 1, 1990) (P.R.C.), available at <http://www.molss.gov.cn/correlate/xzssF.htm> (last visited Feb. 22, 2006) [hereinafter Administrative Litigation Law].

Committee initially argued that the new buildings were built on what *used to be* collectively owned land. All later decisions in regard to them were a mere “continuation” of the requisitioning process initiated in 1993.

However, this response seems flawed. In a discussion of the Zigong case, law professor Cheng Jie points out that, had the committee or city government compensated the peasants for land requisitioning in a timely manner, as required by law, then land requisitioning compensation would have been arranged long before the demolition of houses began. The land in question was part of the city’s urban, industrial development zone. Some of the land had already been cleared of old buildings and the new buildings on it were designated as urban housing; only its former occupants (and members of the collective owner) themselves were still frequently being referred to as “peasants” or “rural people.”⁷⁷ Also, there was a procedure for changing the registration status of *houses* from “rural” to “urban” in these kinds of cases, but it had not been followed.⁷⁸ According to this argument, it appears that former villagers of Baiguo were paid “rural” compensation, not because of the nature of the houses demolished, but because those who lived in them were still regarded as “peasants.” To quote from Liu Zhengyou’s November 2003 petition:

In November 1999, on the petitioners’ reception day of the Mayor, when the peasant representatives reported the problems of the landless peasants to Executive Vice Mayor Shi Jun . . . the Vice Mayor said that “the policy of giving compensation to peasants in accordance with the demolition [compensation standard] for peasants and of compensating urban residents according to the urban standard has been approved at the provincial level. Document No. 75 (1993) was collectively discussed at a meeting at the office of the Mayor. You say it is an illegal document; but we as the government at City-level have the authority to issue [normative] documents.” . . . Mayor Luo Linshu said: “Peasants just can’t get the same ‘demolition and relocation’ treatment as city residents. That’s a policy decision. No mayor can change anything about it. All this petitioning in all places only gives the government a

⁷⁷ Although they had occasionally been referred to as “urban residents” in official documents.

⁷⁸ “It is evident that the requisitioning entity at least recognized that they had either failed to give compensation for requisitioning when they set out to requisition land and thereby caused losses to those whose land was requisitioned or failed to compensate in accordance with the law and legal regulations at the time that they took urban land.” See Cheng, *supra* note 7.

bad reputation! And in the end it is anyway [always] local government that decides.”⁷⁹

Perhaps because it saw a problem with its own argument, the Zigong City Housing Administration Bureau sought instruction from the provincial-level Sichuan Construction Department. In November 1999, it showed Liu Zhengyou a response from that authority on the legality of Document No. 75 (1993). This response was Document No. 0125 (1999) of the Construction Department of Sichuan,⁸⁰ which stated that the provincial bureau of construction had no authority to decide upon the legality of Document No. 75 (1993) since this was an instance of an “abstract” administrative act. To use a more colloquial phrase, it was a “red letterhead” document (红头文件, *hongtou wenjian*), issued from a government authority using a red letterhead.

This claim constitutes the central procedural difficulty of the case, and is a kind of claim often made by courts and administrative reconsideration authorities. Given the ubiquity of “red-letterhead” documents in Chinese law and administration, it has significance far beyond this one case. According to Article 12, Section 2 of the Administrative Litigation Law, the courts may not accept litigation applications directed at administrative decisions or orders “of generally binding force.”⁸¹ In practice, this rule and related rules are widely understood to prohibit courts from declaring “abstract administrative acts” illegal or invalid even in the context of judicial review of concrete administrative decisions.⁸² At most, it is supposed that courts may ignore illegal “abstract administrative acts” when conducting such review.⁸³ In

⁷⁹ See Liu, *supra* note 7, at 4.

⁸⁰ According to Liu’s November 2003 petition, a department within the provincial construction committee that should not have been in charge of the peasants’ petition must have produced this document. This allegation is not repeated or confirmed by any of the other people writing on this case. See *id.* at 3.

⁸¹ Administrative Litigation Law, *supra* note 76, at art. 12, § 2.

⁸² See 行政法与行政诉讼法 [ADMINISTRATIVE LAW AND ADMINISTRATIVE LITIGATION LAW] 173 (姜明安编 [Jiang Ming’an ed.], 2002). Note that this practice means a much more serious restriction of the scope of judicial review than, for example, the doctrine of ripeness in U.S. law.

⁸³ The authority to invalidate administrative rules and regulations is supposed to rest with the Standing Committee of the National People’s Congress. See 中华人民共和国立法法 [Legislation Law] art. 90 (promulgated by the Standing Comm. of the Nat’l People’s Cong., Mar. 15, 2000, effective July 1, 2000) 03/2000 全国人民代表大会常务委员会公报 [STANDING COMM. NAT’L PEOPLE’S CONG. GAZ.] 112 (P.R.C), available at <http://www.cnlawservice.com/chinese/law®ulation/flcx/a003.htm> (last visited Feb. 22, 2006). For the procedure for filing new legislation, see also *id.* at art. 88. This authority concerns rules and regulations within the meaning of the Legislation Law; there is no national law providing a formal review mechanism for other “abstract administrative acts,” although agencies under the Supervision Ministry may intervene in such cases.

the present case, however, the court chose not to accept applications for litigation at all, on the grounds that it could not decide on “abstract administrative acts.”

But was this argument correct? According to a Supreme People’s Court judicial interpretation of the relevant articles of the Administrative Litigation Law, abstract administrative acts are “all documents of a normative character which are issued or publicized addressing an indefinite number of persons and which can be applied multiply.”⁸⁴ It is doubtful whether Document No. 75 (1993), as a decision setting the standard for compensation to be given to residents of a particular area, was an abstract administrative act, especially when considering that this standard could be executed in a fashion similar to a specific administrative decision, so that once all the peasants had been removed and compensated, it no longer applied to anyone.

Beyond this, the claim that abstract administrative acts cannot be challenged legally at all in China is also doubtful. It can be argued that such documents purporting to have binding force *can* be challenged, at least in an administrative reconsideration procedure or, in the context of administrative litigation, perhaps in a court procedure. In accordance with Article 7 of the Administrative Reconsideration Law, which governs review within the administration at the request of citizens, “when a citizen, a legal person or other organization at the time of applying for administrative reconsideration of a specific act considers that a norm of one of the kinds listed below, on which the administrative act relies, is illegal, he can also apply for an examination of said regulations with the administrative reconsideration authority,” and “norms made by local governments above county level” are on this list.⁸⁵ This argument might be further supported by the fact that the Constitution protects collective property in several of its provisions, and that it also binds Chinese courts and individual judges serving on these courts.⁸⁶ More generally, judges

⁸⁴ See 最高人民法院, 关于执行行政诉讼法若干问题的解释 [Supreme People’s Court, Judicial Interpretation No. 8] art. 3 (2000).

⁸⁵ See 中华人民共和国行政复议法 [Administrative Reconsideration Law] art. 7, § 2 (promulgated by the Standing Comm. of the Nat’l People’s Cong., Apr. 29, 1999, effective Oct. 1, 1999) 05/1999 全国人民代表大会常务委员会公报 225 (P.R.C), available at <http://www.molss.gov.cn/correlate/xzfyF.htm> (last visited Feb. 23, 2006) [hereinafter Administrative Reconsideration Law]. If the requirement for abstract administrative act review can be brought up within a court procedure, this marks an even greater breakthrough. Article 53 of the Administrative Litigation Law could be read as taking the competence of actually examining the legality of abstract administrative acts back out of the hands of courts again by requiring the submission of provisions considered inconsistent with other administrative rules or regulations to the State Council for decision. See Administrative Litigation Law, *supra* note 76, at art. 53.

⁸⁶ The judge’s duty according to Article 7 of the Judges’ Law, is “strictly to respect the Constitution and the law,” and “to take facts as the basis, and laws as the criterion when trying cases, to handle

can be expected to apply law coherently, and this suggests that they must also be allowed to make judgements about the status and validity of rules and decisions produced at different administrative levels. Although it may have been put forth, this argument had no effect in practice.

It appears that after the City administration had obtained support from the provincial Construction Department in the form of the November 1999 response, pressure was put on Liu Zhengyou to sign an agreement regarding the demolition of his house and compensation for it, but that he refused to comply. The Committee then applied to a Zigong court for the legal enforcement of its order, according to Liu Zhengyou.⁸⁷ "Enforcement," when it occurred, served two combined functions: the execution of the order just mentioned, but also what can best be characterised as a punitive function. Liu Zhengyou was singled out for having made trouble by having challenged the City government and the Zigong High-Tech Zone Administration Committee. This is his account:

On January 13, 2000, the Da'an District People's Court, in accordance with Administrative Decision (xingzheng caijue) No. 8 (1999), made by the Zigong High-Tech Zone Committee, carried out enforcement. The government officials assembled [personnel from] the Zigong City Intermediate Level People's Court,⁸⁸ Zijing District Level People's Court, Zigong City Police, Huidong subsidiary police office, each branch police office, the High-Tech Administrative Committee, the *Zigong Daily Newspaper*, the *Zigong Television Station*, etc. They mobilized a few dozen police and other cars. They used police batons, handcuffs, firearms cartridges, explosives, etc. to carry out coercive enforcement of the demolition order against Liu Zhengyou, the petitioning representative, upon his three-storey house. There was no one at home at Liu Zhengyou's. They broke through the outer security door and looted the inside of his home, taking all personal property away (until today these things have not been traced). Since Liberation, this was the first time that explosives had been used to

cases impartially, and not to bend law for personal gain." See 中华人民共和国法官法 [Judges' Law] art. 7 (promulgated by the Standing Comm. of the Nat'l People's Cong., Feb. 28, 1995, effective July 1, 1995, as amended through June 30, 2001) 07/2001 全国人民代表大会常务委员会公报 [STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.] 388 (P.R.C).

⁸⁷ Liu, *supra* note 7.

⁸⁸ Courts in China have their own enforcement officers, *fajing* (法警).

blow up a private home in Zigong and it caused great outrage among the locals. The surrounding crowd of landless peasants witnessing this example being set amounted to about 2000. They cried at the top of their voices and full of rage: *Shi Jun is a bandit! Robbing people in broad daylight! Shi Jun is a Guomindang bandit!*⁸⁹ The peasants bought a large number of firecrackers and set them off to express their outrage.⁹⁰

The above account continues to detail arrests and further demolitions. Liu says that all “petitioning representatives” were thrown out of their houses without being given temporary places to live.

B. Going to Court and Petitioning in Beijing

Liu Zhengyou decided to go to court. He and others tried to get their application for litigation accepted by the Zigong City Intermediate Level People’s Court. We have no conclusive information on whether they ever alleged police misconduct in this context, but it seems unlikely, given the abundant participation of court police in the incident described above and in other related incidents. The Zigong City Intermediate Level People’s Court refused to accept their application do so, and also refused to allow an appeal against this decision. The reason stated by the court was essentially the one already used by administrative authorities to reject reconsideration applications: namely, that the court would not consider a legal challenge to an “abstract” administrative act. It was apparently not considered whether the complaints brought by individual villagers affected by requisitioning should be regarded as specific applications of this “abstract administrative act,” and therefore as challengeable in court.

Liu then tried to make a stronger impression on the court by bringing a collective lawsuit. In November 2000, Liu and 1300 peasants tried to file a case for adjudication with the Zigong City Intermediate Court. In December, a year after Liu’s house and other property had been destroyed, the Court again refused to accept the case. It might have seemed as though the matter was now “settled” and the peasants had finally lost, but they still had the aforementioned “letters and visits”

⁸⁹ Shi Jun was the Vice Mayor and President of the Zigong High-Tech Zone Administration Committee.

⁹⁰ Liu, *supra* note 7. Liu states that several households were affected and that the peasants who were forcefully evicted received no compensation at all. He also relates a conversation with Shi Jun, the Vice Mayor.

option.⁹¹ Liu Zhengyou continued to plead with various government agencies in Zigong City and at the Sichuan Province level. In summer 2001, the Letters and Visits Office of Zigong City issued a “final”—and negative—reply.⁹² Concluding that his only chance was to alert the central government to what was occurring in his city, Liu traveled to Beijing to lodge petitions. Some time later, certain scholars in Beijing began to take an interest in his case; among them was Yu Meisun.⁹³ Together with several friends, he became involved in this case and began to keep a diary recording its progress. This diary was later posted online.

Petitioning, or *xinfang*, in Beijing has long been an issue of particular political and social concern.⁹⁴ The petitioning process is long, difficult, and rarely successful.⁹⁵ For example, regulations in force when Liu Zhengyou arrived in Beijing in 2001 allowed for the administrative detention of petitioners considered unreasonable and not amenable to “criticism and education.” Furthermore, oral reports suggest that the detention and relocation of petitioners continues, even after the new and less explicit regulation came into force in May 2005.⁹⁶ Recent occurrences of public protest, especially in Beijing, show there is a point when the letters and complaints mechanism collapses.⁹⁷

Nevertheless, on December 14, 2001, Liu and others managed to gain an interview at the Supreme People’s Court. There they were

⁹¹ Especially in the context of cases not yet filed there is a wide understanding that one can continue to attempt to file a case by addressing higher ranking courts or other state or Party authorities. This seems consistent with a “generous” practice regarding the availability of re-trials.

⁹² *Industrialization in China*, *supra* note 7.

⁹³ In 1994 Yu was arrested on charges of leaking state secrets to a journalist, according to Human Rights in China, *The Diary of a Peasant Advocate*, CHINA RTS. F., No. 3, 2004, at 61-67. “In a closed trial,” he was sentenced to three years imprisonment. He has since been working as a lawyer and researcher in Beijing. See *id.*

⁹⁴ All of the ministries, the Supreme People’s Court, the Central Secretariat of the CCP, the State Council, and the NPC have Letters and Calls Offices in Beijing. Many petitioners live in poor conditions in an area in the south of Beijing called the “petitioning village” (上访村, *shangfangcun*), which is situated relatively close to most of the “letters and visits” offices of central state authorities, such as the Supreme People’s Court. For a description of the petitioning village see Pierre Haski, *Bureau des Pleurs et des Coups à Pékin [The Beijing Office for Tears and Blows]*, LIBERATION, Mar. 5, 2005, at <http://www.liberation.fr/page.php?Article=280198>.

⁹⁵ A November 2004 report summarizes responses to questionnaires distributed to 632 petitioners. Among these, 401 said that they had previously tried to solve their problem through court litigation, and in 42.9% of these 401 cases the court refused to file their case, whereas in 54.9% of these cases the petitioners claimed more generally that the court was not “handling matters in accordance with law” and that this was why they had been unsuccessful. According to the questionnaires, moreover, 90.5% stated that they had come to Beijing “to let the center know of this,” and 88.5% that they were there “to exercise pressure on the local government.” 赵凌 & 苏永通, 国内首份信访报告获高层重视 [Zhao Ling & Su Yongtong, *First National Report on Letters and Calls Given Attention at High Levels*], 南方周末, [S. WEEKEND] (Nov. 4, 2004), available at <http://www.nanfangdaily.com.cn/southnews/zmzg/200411041014.asp>.

⁹⁶ See Letters and Visits Regulation 1995, *supra* note 72, at art. 22.

⁹⁷ Zhao & Su, *supra* note 95.

given—apparently not by the letters and calls office, but by the case filing division—an unnumbered “official letter” (公函, *gonghan*) addressed to the Sichuan Provincial Higher Level People’s Court:

Liu Zhengyou and others came to our court today to lodge a petition [上访, *shangfang*] in a matter of conflict concerning “demolition and relocation” resettlement. In accordance with the regulation of our court regarding the responsibility for handling matters at the appropriate court level, we hereby introduce Liu Zhengyou to you and ask you to receive him and take care of him conscientiously, and to handle the matter in accordance with law.⁹⁸

Yu Meisun writes that the peasants “joyfully” took this letter back to Sichuan Province’s Higher Level People’s Court. They were certain that their application for litigation would now be accepted, and that they would be able to access a public court procedure addressing the compensation issue. However, in Sichuan, Yu Meisun continues, they were disappointed by a judge of the Higher Level People’s Court of Sichuan Province: “‘So you’re actually counting on the law and the Supreme People’s Court, are you! Let me tell you, as long as there’s no approval from the leadership, that letter isn’t even good as paper to wipe your asses.’ He did not grant their request [to accept the case for adjudication].”⁹⁹ The “leadership” to whom the judge referred was obviously not the Supreme People’s Court, but one of the external local authorities, mentioned earlier, which influence Chinese courts.

Liu and his friends were not going to accept *this* decision rejecting their case for litigation. They considered whether there were any other government actions that they could attempt to challenge. There was the 1999 decision—Document No. 0125 (1999) of the Construction Department of Sichuan, saying that Document No. 75 (1993) by Zigong City had been legal. To challenge this administrative decision made at the provincial level looked like a good move because it could be done in Beijing, far away, it seemed, from the influence of corrupt local officials. The authority directly above the Sichuan Construction Department was the National Ministry of Construction. In January 2002, Liu Zhengyou

⁹⁸ 俞梅荪, 失去土地的农民依法维权民告官难于蜀道(之二:央视被摆平)[Yu Meisun, *The Plight of Landless Peasants Trying to Defend Their Rights Against Officials (No. 2: CCTV is Satisfied)*] (Apr. 8, 2004), at <http://www.blogchina.com/new/display/18014.html> [hereinafter *CCTV is Satisfied*].

⁹⁹ *Id.*

and 1300 other peasants submitted an application for administrative reconsideration to the Ministry, requesting that Document No. 0125 (1999) be declared illegal.

After three months had passed without an answer,¹⁰⁰ on May 14, 2002, Liu Zhengyou, accompanied by local friends, visited Beijing City's First Intermediate Level People's Court to ask Judge Li to accept their case for litigation. They requested the court to "order the Ministry of Construction to fulfill its legal obligation to produce a response to the peasants' application for administrative reconsideration."¹⁰¹ They had an inconclusive discussion with Judge Li, lasting for over an hour, about whether he could file their complaint. Ten days later, Liu Zhengyou had another discussion with Judge Li, who now told Liu that he could not accept their application for administrative litigation without previously "clearing" this with the Construction Ministry. But, he explained, he had already contacted the Legal Regulations Department Head of the Ministry, Wang Rongmei, and had arranged for Wang to receive Liu at the Ministry. Liu was aware, and pointed out to Li, that mediation must not be practiced in administrative litigation (according to Article 50 of the Administrative Litigation Law, which reflects the fact that mediation in administrative contexts may be easily flawed by a power imbalance between a complaining citizen and the state authority complained against). The judge therefore ought not to have suggested an informal negotiation with Liu's opponent, especially while, at the same time, refusing to file the case as a court case. Although he knew this, Liu felt that he had no choice.

Three days later, persuaded by Judge Li, Liu visited Wang Rongmei at the Construction Ministry. Wang declared that the problem could only be solved if they withdrew their application for administrative litigation against the Construction Ministry. However, Liu told him that since they had not even succeeded yet in getting this application for litigation accepted, or in getting their litigation properly filed, there would be no way of "withdrawing" it. He distrusted Wang's suggestion to pursue some kind of settlement.¹⁰²

Subsequently, the embarrassed Ministry of Construction allegedly persuaded the Beijing Intermediate Level People's Court to change the

¹⁰⁰ According to the Administrative Reconsideration Law, the reconsideration authority has five days to reject the application or transfer it to another authority on procedural grounds (Article 17); if no such procedural rejection or transfer occurs, the application must be dealt with within sixty days (Article 31). It should be noted that neither the peasants nor the Ministry appear to have addressed the issue of a time limitation affecting the peasants' right to apply for reconsideration (Article 5). See Administrative Reconsideration Law, *supra* note 85.

¹⁰¹ See *CCTV is Satisfied*, *supra* note 98, at 25.

¹⁰² *Id.*

date of the application for administrative litigation that Liu had made in mid-May to the beginning of June—that is, to a date *after* Liu had actually seen Wang Rongmei at the Construction Ministry. According to Yu's allegations, this illegal falsification of the real date of the application then allowed the Ministry to make an "earlier" decision to accept the application for administrative reconsideration. The court then declared that "after investigation we found that the application for administrative reconsideration has already been accepted for handling by the Construction Ministry, on June 13, 2003," so that there was no cause of action and the application for administrative litigation was rejected.¹⁰³

After that, finally, the Construction Ministry produced a decision on the application for reconsideration. Declining to review the response made by the Sichuan Construction Department to Zigong City, it stated that it had sought an instruction from the State Council on this matter. Yet judging from a document made available by a Chinese legal aid website, it appears that the State Council had merely repeated the Construction Ministry's own words by saying that Document No. 0125 (1999) could not be challenged because it was not a specific administrative act.¹⁰⁴ If the document reproduced on the website is accurate, this letter is a fine example of bureaucratic evasion. To quote:

On the problem of determining the nature of the document by the Sichuan Provincial Construction Committee, namely the Committee's Document No. 0125 (1999) entitled *Regarding a Request for Instruction Made by the Zigong High-Tech Administration Zone on How to Implement the Regulations and Policies*, you take the following view: "The said response is a response regarding the

¹⁰³ Liu tried to file a case with the Beijing court because he had not received any notification of the case having been accepted for handling by the Construction Ministry, but did not succeed. See *A Complaint to National Leaders*, *supra* note 53.

¹⁰⁴ 国务院法制办公室关于对建设部办公厅“关于对房屋拆迁政策法规的答复是否属于具体行政行为的请示”的复函 [State Council Reply Regarding a Request for Instruction Submitted to the Ministry of Construction On Whether a Response Regarding a Demolition and Relocation Policy Regulation Is a Concrete Administrative Act] (Aug. 27, 2002), available at <http://www.law110.com/law/guowuyuan/2157.htm>. There is no further evidence to confirm or disprove that this text accurately renders the text of an original letter sent to the Construction Ministry, or that such a letter was ever sent. The content of this letter is nonetheless consistent with the development of the case as described in other sources. Note that the full document as available online speaks of "Liu Zhenglong" in apparently referring to Liu Zhengyou. The legal aid website 'law110.com' is restricted to providing legal information and states at <http://www.law110.com/law/> that, as of October 18, 2005, 11,058 normative documents in the area of building law and construction law from different localities are provided on this website. It emphasizes that it cannot guarantee the accuracy of documents it reproduces.

application of the *Land Administration Law* and the *Regulations on Urban Demolition and Relocation*. It is in no way a unilateral administrative act addressing an administrative subject or subjects, regarding a particular set of circumstances, and determining the rights and duties of such administrative subject or subjects; therefore it is not a concrete administrative act.” We do not disagree with this.¹⁰⁵

Between September 2002 and January 2003, Liu and his friends went through the process of trying to get cases accepted by Beijing courts to appeal this most recent administrative reconsideration decision. However, both their initial complaint and their appeal were rejected.

Looking back at the process of petitioning and applying for administrative reconsideration and litigation briefly described above, one cannot deny that the legal system in action in this case displayed a genuine and elaborate concern for the correctness of administrative decisions. There is a willingness, at least, to ensure that decisions can be corrected “from the top,” and to encourage lower-order administrative authorities to seek instructions “from the bottom.” There are the mechanisms of administrative reconsideration and litigation which are, at least formally, opening up new avenues for seeking redress. There is also the *shangfang* (上访) system, allowing, in theory, for fairly flexible responses to injustices suffered by citizens. One does not have to assume that all this “seeking for instruction” was merely prudential, and there is evidence that some officials in the courts and administration did show concern and tried to help the situation (such as the Supreme People’s Court official who gave the Zigong peasants a letter to take back to Sichuan, and the person in the Sichuan Construction Department informing Liu that Document No. 0125 (1999) might have been “forged”).

Nonetheless, all three types of procedures have also failed in the present case, and in doing so have revealed systemic problems: The “seeking for instruction” procedure resulted in a mere repetition of a lower authority’s words in the situation discussed above. Petitioning also produced a reply in the form of a document that could not be challenged, and also appears to have had no effect. Moreover, the Supreme People’s Court’s instruction to a provincial court was simply not heeded. This case thus, on the one hand, indicates that the ongoing land seizures do not happen entirely outside the law. There is even extreme formalism and authoritarianism, both of which require an assumption of commands

¹⁰⁵ See *id.*

obeyed and sets of rules requiring adherence. Yet, on the other hand, formalism and authoritarianism are undercut by official disregard for legal requirements on a striking number of occasions, and there are also contradictory rules and commands issued by different elements in the bureaucracy.

Even more disturbing, when asked to compare the consistency of various abstract administrative acts, both administrative authorities and courts of law failed to do so. This failure is either because courts are not permitted to do so as institutions or because individuals working in these institutions do not dare to make such judgments. The courts in this case did not become active as real courts, and instead refused to accept cases. This failure was ostensibly because the standard for compensation that the peasants were challenging was not “concrete” enough to come within the scope of their powers to adjudicate. In a sense, the only time the courts became “effective” in this case was when they enforced the administrative decision against Liu Zhengyou to carry out demolition by supplying court police.

This not only thwarted the aim of rights protection, but it also resulted in a senseless volley of the case between different courts and administrative authorities, and the jockeying of elaborately contrived facts, as though procedural correctness mattered only in form and could be disregarded in substance. Furthermore, it seems that there was little substantive legal argument at an official level, not to mention public argument resulting in publicly available records. Yet as the Sichuan provincial court judge’s comment on the Supreme People’s Court’s documents illustrated, the real reason for not accepting the case was not the reason cited; it was merely that the court or individual judges sitting on the case would not act independently. Chinese courts are, in many respects, including financially, dependent on other state and Party authorities at the same administrative level, and were under considerable pressure to conform with their indications of approval or disapproval. To quote He Weifang:

Even though higher levels call on us not to practice local protectionism,¹⁰⁶ I must say, how could a basic-level court president, or even a provincial-level court president, *not* practice local protectionism? The

¹⁰⁶ In Chinese, *difang baohu zhuyi* (地方保护主义). This is an unfortunate term, inasmuch as it elevates the concern motivating judges to be obedient to local government into something one does out of a sense of rightness. Of course, He Weifang’s argues that it *is* right. See 贺卫方, 司法改革八大难题 [He Weifang, *Eight Great Difficulties With Judicial Reform*] (Dec. 21, 2001), at <http://www.civillaw.com.cn/weizhang/default.asp?id=9353>.

clothing, feeding, housing, transport, and social security of a few hundred people [working] in a court all weigh on the court president's shoulders; if the leadership, including the leadership in the administration, the Party, and the People's Congress, thinks that a judgment favorable to the interests of a local party should be made, then in my eyes it is [not only] very difficult to go against that, [but] indeed he also shouldn't go against it. Because the current system provides that your welfare, your economic existence is in the hands of another.¹⁰⁷

It is difficult to imagine any able judge not caring about whether the basis of their decision is legal.¹⁰⁸ It is also difficult to imagine how adjudication can thrive in China on the continued assumption that the legality of normative documents cannot be reviewed in court or court-like procedures, even when one deliberately refrains from discussing the further question of whether the Constitution allows judges the power to declare illegal regulations invalid in the absence of a functioning alternative mechanism for constitutional review or the review of abstract administrative acts.¹⁰⁹ This practice can only be characterized as a current failure of the adjudication system.¹¹⁰

C. *Public Media Attention and Public Unrest*

On June 12, 2003, the aforementioned CCTV program was broadcast.¹¹¹ On that day, according to Yu Meisun's diary, he was called by Liu Zhengyou from Zigong, who told him that their case would be on a popular program about the economy. He was delighted, and records that he "had been worrying about this case so long and now finally there

¹⁰⁷ See *id.*

¹⁰⁸ This makes it understandable that judges resort to the "Abstract Act Doctrine" even when faced with challenges to concrete administrative acts based merely on illegal abstract administrative acts.

¹⁰⁹ In jurisdictions, such as Germany, which use distinctions similar to concrete/abstract administrative acts, the distinction serves a different function. It may influence standing, but does not suspend the general principle that all state action is subject to review for its legality and constitutionality.

¹¹⁰ For impressive statistics on illustrating the difficulties with filing administrative litigation cases and the pressure on withdrawing litigation, and a persuasive reading relating these statistics to a lack of court independence, see Veron Ying-Mei Hung, *China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform*, 52 AM. J. COMP. L. 77 (2004).

¹¹¹ Su, *supra* note 7.

seemed to be a little hope”¹¹² On June 13, 2003, the Mayor, Shi Jun, called a meeting with media representatives, at which he declared that the matter “had been blown out of proportion” and that there was “nothing that could not be sorted out.”¹¹³

A week later, on June 21, another letter arrived from the Sichuan government, informing some peasants that their latest application for administrative reconsideration had not been received for handling. Three days later, Yu Meisun received another phone call from Liu Zhengyou. Four hundred peasants, he said, had gone to the Zigong City government building “to get problems solved.” They were severely beaten by about 100 armored police and more arrests were made.¹¹⁴ Other peasants active in the protests, including Liu Zhengyou, were put under police surveillance. Liu Zhengyou escaped the surveillance on June 28. He traveled back to Beijing to attempt to promote his cause.¹¹⁵ Because he feared that he might be detained and sent back if he checked into a hotel or pension by showing his national ID card, he stayed with friends and did not comply with the legal requirement of obtaining a “temporary residence certificate.”

In Beijing, the concerned—often anguished—Yu Meisun continued to write, recording what information he received on the developments in Zigong and discussing the case with friends and colleagues.¹¹⁶ He recorded public protests and violent clashes¹¹⁷ in several more places in the Hongqi and Fenghuang townships during the next two months.¹¹⁸ At some point during the summer months, he posted his writings online. Also, he tells us that copies of that text and papers reached the peasants, and some of those who read them decided that their

¹¹² *CCTV Begins to Address the Case of Peasants Being Framed*, *supra* note 1. The transcript of this program by journalist Su Qi has been used to explain the problems with compensation noted above.

¹¹³ *Id.*

¹¹⁴ According to Yu Meisun, the married couple Chen Shoulin and Liu Dezhi were detained. When Liu Dezhi was released shortly afterwards, it turned out that they had been taken into the police station only “for the purpose of finding out details about their litigation/reconsideration application against the city government and other government authorities.” *Id.*

¹¹⁵ *Id.*

¹¹⁶ Sometime in July, for instance, he receives a copy and provides a summary of, a document entitled 当地政府可以强行征用农民的土地吗? [*Can the Relevant Higher Local Authorities Requisition Peasants' Land by Force?*]. See *CCTV is Satisfied*, *supra* note 98.

¹¹⁷ Including in some instances roadblocks by the peasants and efforts to obstruct construction work begun on the sites of demolished buildings. See *CCTV Begins to Address the Case of Peasants Being Framed*, *supra* note 1.

¹¹⁸ Yu Meisun records that 200 to 300 police beat up and chased away Baiguo village peasants from the land which “they tried to protect against illegal possession.” Three women, including one Zhou Yufang and one Zhou Shuqin, were heavily injured. They were taken to the hospital where they received treatment initially at the expense of the city government. After a week, however, the government refused to continue to pay, and as a consequence they had to leave prematurely. *Id.*

best strategy was to paste copies upon the walls of the City Party Committee, the City Government, the People's Congress, the police station, the People's Procuratorate, the People's Court, and on walls in various other public places. They realized that attempting to speak to local officials or submitting reports to officials was futile.

At this point, some central government officials in Beijing turned their attention to this case. In August, an investigation team composed of officials and cadres from five different ministries and commissions was set up to conduct investigations in thirty one different locales in the area. However, from his peasant friends, Yu heard of only one sighting of a car carrying the officials from Beijing. They told him that none of the officials had ever contacted them to hear their views on the matter.¹¹⁹

The public media, which continues to be strictly controlled,¹²⁰ became cautious. Yu Meisun writes that he tried several times to submit his newly written texts to the CCTV program *Business Half-Hour* (经济半小时, *Jingji Banxiaoshi*), which had originally broadcast the story on the Zigong case. But after two failed attempts, he phoned them and was told that they "had not seen" these letters. Giving up hope that CCTV would take the matter up again, he decided to send the texts to the Zigong peasants by fax.

For a short period in the first half of September, it seemed that the peasants were gaining the upper hand in the violent conflict taking place between them and the police, other officials, and workers trying to carry out construction projects. This is when Yu Meisun starts describing the conflicts as "warfare." There are also reports of meetings among officials, and even between officials and peasants. Yu writes:

As the present text was widely circulated in the Zigong Development Zone it further stimulated the rights assertiveness of the peasants. From the beginning of September, construction work was completely halted by the peasants in every place; the police were no longer beating up or arresting people, and surveillance toward the peasants was also loosened; moreover, dialogue began between citizens [people] and officials; the situation seemed to be taking a turn for the better.

....

¹¹⁹ *CCTV is Satisfied*, *supra* note 98.

¹²⁰ See Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

In the first ten days of September, the peasants felt very happy when they saw the newly edited first three texts [of mine]. They made over a hundred photocopies and distributed them to each village, each [village] group, so that every family and every household became familiar with them. They submitted copies to the City Party Committee, to the [City] People's Congress, to the [City] government, the police and Procuratorate and courts, etc.; then they made more copies and pasted them onto the walls in streets and lanes. Officials immediately had them removed again and announced that if any more were posted there would be new detentions. The third text was also posted on the Zigong government website by a supportive internet user. (The first of the texts was already placed on this website in July but taken off it not long afterward.)¹²¹

Perhaps the fact that the police began trying to take back administrative notices on administrative punishment—especially detention notices—served on peasants in the past indicated that they were becoming nervous. Yu, who had taken notes of the content of such detention or administrative punishment notices previously, first recorded such efforts on August 15. It appears that the police were not initially very successful in getting any such papers back.¹²² From September onward, therefore, they tried to *buy* them back, offering a “competitive” price of ¥500 per document in the case of detention notices. This seems to illustrate, again, that the peasants initially had had nothing to negotiate with so far as compensation for their land and houses was concerned. Only the threat of discipline or punishment suddenly made bargaining with the peasants worthwhile. The irony of this was not lost on Yu Meisun:

Especially regarding the “detention notices,” the competitive buying price they offered was ¥500 [apiece] but even so they were rejected. The peasant [with whom I spoke] said: “this is criminal evidence of [unlawfully] detaining people; even for ¥5000, we won’t sell!” It looked as though when the Zigong

¹²¹ 俞梅荪, 失去土地的农民依法维权民告官难于蜀道(之三:官民开始对话)[Yu Meisun, *The Plight of Landless Peasants Trying to Defend Their Rights Against Officials* (No. 3: *Officials and Citizens Begin Dialogue*)] (Dec. 3, 2003), at <http://www.blogchina.com/new/display/18104.html> [hereinafter *Officials and Citizens Begin Dialogue*].

¹²² *CCTV is Satisfied*, *supra* note 98.

police had read a chapter in this text (now text number two) entitled *Deep Thoughts Upon Holding Twenty-Five People's Detention Notices in My Hand*, they couldn't sit still anymore; they must have become so nervous that they started collecting back all kinds of police notices and didn't mind how they were doing this. One could call them stupid, but then how much more stupid was the response they got; really so stupid one could neither cry nor laugh. With ¥500 one can buy 500 pounds of rice, that's not a little! I persuaded my peasant brothers to go and sell off the "detention notices" as quickly as they could as this way they would at least be able to put some food on the table. This was just a kind of state compensation. If already used detention notices could still be sold for a high price and count toward compensation for the peasants, all the better! And who, indeed, could have expected any real progress to be made in Zigong, this mysterious and ancient place whose earth has turned out a fair number of dinosaurs.¹²³

Then, the peasants once again began to lose ground. The peasants claim that a reporter dispatched by CCTV on September 17 to report on progress being made was not allowed to talk to them at all, unlike the first time, when CCTV had broadcast interviews with a few peasants rendered destitute. After that, there were new violent clashes and new detentions, following the pattern already described above.

On September 22 Yu Meisun received a faxed letter.¹²⁴ This letter, from Huang Fangying, is quoted in full below, as it gives insight into this peasant woman's attitudes and expectations. It is not, as we can see, an argument in support of a specific legal right. It is rather a plea not to make life impossible for her:

After we lost our land my husband Ye Xinghua (forty years old) and I just barely scratched a living by selling fruit from a stall. From that day when I was detained,

¹²³ *Officials and Citizens Begin Dialogue*, *supra* note 121. Later, Zhang Yaojie's transcript of a meeting between peasants and officials on March 31, 2004 records peasant Yu Guoqi from Baiguo village's seventh group as crying out: "I was beaten, and the police arrested me and put me in [administrative] detention, and then they even wanted to buy my detention notice back for ¥500. But I didn't give it to them; I've kept it, as a souvenir!" See *Industrialization in China*, *supra* note 7.

¹²⁴ This is also recorded in *Industrialization in China*, *supra* note 7.

he had always been very depressed and dejected. The township head of Hongqi, Chen Wenxian, had violently entered our home one night, at midnight, bringing twelve other people with him, and threatening that he would not allow us to make petitions. We were under surveillance from morning to late. When my husband went out to go to fruit-selling he was always followed by an officer from the Huidong [City district] police office, both ways, and that was all because I had once gone to the city government building and asked for our problems to be solved. Having been exposed to all kinds of threats and abuses, his mind was severely affected, and in addition to that came the further pressure of not having anything to live on, and on July 21 he hanged himself in his home and died.

After [my husband] had been forced to suicide,¹²⁵ the head of Fankui Street Committee, Dai Liping, told me that I must not tell anyone about the cause of his death, and the street committee paid me ¥612 for the funeral. All the certificates of the cremation and receipts and other evidence of his death were all taken away by the street committee. My own life and that of my fifteen-year-old daughter are extremely hard now.

Why is it so difficult for us to protect our right to live?¹²⁶ I cry to Heaven, give me justice; give me my right to live back. Punish those corrupt persons who harm ordinary people. Make the Party's Three Represents¹²⁷ and [the principle of] "Establishing the Party for the Good of the Public, Running Government for the Good of the People"¹²⁸ come true for ordinary people; make society stable and people's lives happy.¹²⁹

¹²⁵ The expression used is *bei bisi* (被逼死, "to be forced to die").

¹²⁶ *Shengcun de quanli* (生存的权力); an alternative translation would be "ability to live" or "bare livelihood." Perhaps by mistake or due to confusion, she uses a word that sounds the same as "right" (权利, *quanli*), but is written in such a way that it means "power" (权力, *quanli*).

¹²⁷ The principle, put forth by former President Jiang Zemin in 2000, that the Communist Party represents advanced productive forces, advanced culture, and "the fundamental interests of the overwhelming majority of the people of China." See *What is Three Represents Theory?*, at <http://www.china.org.cn/english/zhuanti/3represents/68735.htm> (last visited Mar. 16, 2006).

¹²⁸ A phrase used by President Hu Jintao (胡锦涛) in his July 1, 2003 speech. See *Hu Delivers an Important Speech*, XINHUA NEWS AGENCY (July 1, 2003), available at <http://www.china.org.cn/english/2003/Jul/68635.htm>.

¹²⁹ Huang Fangying (黄芳英) dated this letter faxed to Yu Meisun September 22, 2003, signed it, and put her fingerprint on it. She also attached a "decision to impose administrative punishment"

Little else was recorded in Yu Meisun's text after that, except for further attempts by Zigong peasants to travel to Beijing. Thus, on October 31, Deng Yongchang and four others from Fenghuang managed to escape the surveillance and travel to Beijing, while six people from Hongqi were apprehended by police in Chengdu, the provincial capital, and sent back. The successful group lodged petitions with the State Council, the Ministry of Land and Resources, the Ministry of Construction, and the Party Central Commission for Discipline and Inspection, and finally attempted to complain to Wen Jiabao's office. But when they reached the Zhongnanhai area of Beijing, they were arrested and detained for three days. Then, the township head of Fenghuang, Li Bing, was notified to come to Beijing and have them escorted back.¹³⁰ Subsequently, the surveillance of peasants who might try to leave Zigong and petition was stepped up considerably in the entire Zigong area at various administrative levels.¹³¹ Meanwhile, in November 2003, Liu, who was living underground in Beijing, lodged a petition with the letters and visits offices of Premier Wen Jiabao and President Hu Jintao, in his own name and that of 1300 peasants.

Other academics and journalists published a piece on the Zigong case in the summer of 2004. The sociologist Zhang Yaojie provided what reads like a verbatim transcript of a meeting between several officials and over 160 peasants on March 31, 2004, detailing the names of attending officials—without any comment on whether this is a transcript, whether it is accurate, or how he obtained the text. His own accompanying text clearly sympathizes with the peasants:

Although not a single situation had been sorted out, the host of the dialogue, Yi Yong, now began making some concluding remarks. "Today we have called this meeting following Liu Zhengyou's suggestions made last Friday; I arranged with him to meet up today and to let everybody talk about their problems. Concerning Liu Zhengyou's problem everybody could hear him present his views, and Comrade Wang Dengfu gave an

dated June 24, 2003, relating to her detention, as fully quoted in *Industrialization in China*, *supra* note 7.

¹³⁰ Letters and Visits Regulation 1995, *supra* note 72. In Article 22, the 1995 regulation explicitly provided for a mechanism for escorting unruly petitioners back (收容, *shourong* and 遣送, *qiansong*). See *id.* at art. 22.

¹³¹ *CCTV Begins to Address the Case of Peasants Being Framed*, *supra* note 1.

explanation on that;¹³² [which shows that] Liu Zhengyou's matter is controversial. This is the first thing I wanted to say. The second is, other comrades and other members of the masses have taken the opportunity to bring up their own problems and express their feelings. Some problems draw different responses depending on [the person's] background and standpoint. The standpoint of the government, including the Zigong High-Tech Development Zone as an authorized branch of government, is that we have a responsibility to handle every problem brought up by the masses; we want to solve every problem. If there has been a mistake it must be corrected, small mistakes demand a small correction and big mistakes demand a big correction. Even if no mistake has been made we still want to do everything in the interest of the masses. Both the city government and the Administration Committee have their day for receiving [complainants] on Friday. I suggest that if anyone still has something they would like to say they can come on a Friday for further exchanges."

Yi Yong's bureaucratic jargon was interrupted by the peasant woman Lin Youfen. "Hang on, President Yi, I want to ask Wang Dengfu a question. That plot of land of ours, of the fourth group of Kuihua village; is it true that it is going to be auctioned this afternoon? I would like to hear Wang Dengfu give an answer."

Wang Dengfu said: "That's that plot right next to the City Government building. The City Government's Real Property Exchange published a notice on March 1 about it; but I'm not sure if they were going to hold the auction today, because I am not in charge of this. It's the state-owned land administration bureau's business." Lin Youfen said: "We villagers wish to attend the auction." And Liu Zhengyou chipped in: "Because there is a dispute about that land." When Wang Dengfu heard this, his tone became threatening. He said:

¹³² Wang's complaint that Liu chose the plot of land later affected by a second demolition order is irrelevant if Liu did not then know about the future demolition order.

“There are some businesses that one shouldn’t mind too much. If you are not supposed to mind, you shouldn’t. The dialogue is concluded.”¹³³

In June 2004, another petition, signed by at least 3661 people and submitted to various central authorities, was translated by the non-governmental organization, Human Rights in China, and published in one of its newsletters. There is a marked change in the thrust of this petition: from an assertion of claims to protection to an accusation of corrupt individuals.¹³⁴ No information is available on whether this petition had any effect. It appears, at any rate, that Liu Zhengyou remained in Beijing for several more months, living in the Xiangshan area, until he, too, was finally arrested and escorted back to Zigong in August 2004.¹³⁵ According to the report by Zhang Yaojie, he had already been warned by residents of Zigong of a decision made by “local leadership” to have him arrested.

In Zigong, a new acting mayor came into office in April 2005, Shi Jun having left Zigong to take up another official position. Also at that time, on April 20, 2005, Liu is reported to have staged a sit-in involving around 100 peasants, attempting to petition local government and/or the local people’s congress yet again. According to reports, he and a few of his fellow “peasant representatives” were beaten up and injured by local police, and taken to the police station for questioning.¹³⁶ A more detailed account—an unsigned open letter by “landless peasants” from Zigong—indicates that a much larger gathering was originally planned.¹³⁷ However, the Zigong police and employees of the Zigong Development Zone, street committees, township government, and villagers’ and residents’ committees were dispatched to individual peasant families who might participate, to prevent them from leaving their houses and to “persuade” them not to go. According to this account, these people distributed copies of the Sichuan Public Security Bureau’s and the Sichuan Government Letters and Calls Office’s joint *Communication on*

¹³³ *Industrialization in China*, *supra* note 7.

¹³⁴ *Sichuan Peasants Accuse Official*, *supra* note 7. The content of the accusation corresponds to Article 395 of the Chinese Criminal Code of the crime, limited to state functionaries, of having a large amount of property whose origin he cannot explain. See 中华人民共和国刑法 [Criminal Law] art. 395 (promulgated by the Nat’l People’s Cong., Mar. 14, 1997, effective Oct. 1, 1997) (P.R.C.), available at <http://www.jincao.com/fa/law02.01.htm> (last visited Feb. 25, 2006).

¹³⁵ *Sichuan Landless Peasants*, *supra* note 7.

¹³⁶ See *Peasant Advocates*, *supra* note 3; see also *Sichuan Peasants Meet with Severe Beatings*, *supra* note 7.

¹³⁷ *Open Letter to All Members of Society*, *supra* note 7.

Preserving Petitioning Order [关于维护信访秩序的通告],¹³⁸ dated March 10, 2005. Among other things, the *Communication* orders the police to “deal in accordance with law” regarding the display of scrolls and slogans in front of government offices and public squares, the distribution of leaflets; the shouting of slogans, gathering to make trouble, and illegally causing hold-ups. Of course, it should be noted that the Chinese Law on Assemblies, Processions and Demonstrations, which protects the right to hold demonstrations but does not allow spontaneous demonstrations, requires prior application for permission to hold a procession or demonstration.¹³⁹

According to the open letter,¹⁴⁰ only about 100 people were finally able to participate in the gathering on April 20, but the letter claims that there were many sympathetic onlookers amongst Zigong city residents. A facsimile copy of a subpoena order issued on this occasion¹⁴¹ says that Liu was questioned on suspicion of “illegally demonstrating,” in accordance with Article 54 of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs (公安机关办理行政案件程序规定).¹⁴² It is also reported that Liu Zhengyou was forced to sign a “guarantee letter” that he would not attempt to engage in any further petitioning during the time of the “Two Congresses,” which is traditionally a time for making petitions since it is easier to catch the attention of People’s Congress members and there is a lot of political reporting. The open letter concludes:

When members of the landless peasant masses, during the time of the Zigong City People’s Congress’ and Consultative Political Committee’s plenary sessions, told Congress and Committee members of the people’s

¹³⁸ On file with author and published without identifying the issuing authorities at the website of the Sichuan Food and Drug Administration Office [四川省食品药品监督管理局], at http://www.scda.gov.cn/webportal/portal.po?UID=DWV1_WOUID_URL_161895&TOC=COLUMN_161895&OBJ=161892 (last visited Feb. 25, 2006).

¹³⁹ 中华人民共和国集会游行示威法 [Law on Assemblies, Processions, and Demonstrations] art. 7 (promulgated by the Standing Comm. of the Nat’l People’s Cong., Oct. 31, 1989, effective Oct. 31, 1989) (P.R.C.), available at <http://www.jincao.com/fa/law01.19.htm> (last visited Mar. 20, 2006).

¹⁴⁰ *Open Letter to All Members of Society*, *supra* note 7.

¹⁴¹ On file with author.

¹⁴² According to this regulation, those to be questioned on suspicion of violating administrative provisions, which may lead to administrative punishments, may be requested by *subpoena* to appear for questioning in places designated by the police, with approval by their responsible superior authority. 公安部, 公安机关办理行政案件程序规定 [Public Security Bureau Procedural Provisions for the Handling of Administrative Cases by Public Security Organs] art. 54 (2003) (P.R.C.), available at http://news.xinhuanet.com/zhengfu/2003-09/08/content_1069530.htm (last visited Feb. 25, 2006).

situation, the people's anger and the people's wrongs, what crime did they commit? We were deprived of articles on the Zigong land requisitioning corruption case, which had appeared in the Party organ and other publications, of petitioning material and of the right to express ourselves in accordance with law, yet we had not obstructed traffic or attacked government. Nor had we damaged any public facilities, and even less harmed other citizens' personal freedom; yet the police labeled us with the crimes of illegally demonstrating and disrupting the public order, and other such crimes. Are these not corrupt officials seizing the tools of the state to oppress those who oppose corruption? These small people do not know; we seek instruction from all members of society.¹⁴³

This occurred just a few days before the new State Council's Regulation on Letters and Visits came into effect.¹⁴⁴ According to these new rules, when petitioners with the same complaint wish to appear in person at government offices, they must do so through not more than five representatives.¹⁴⁵ This has not stopped collective petitioning and other "mass incidents" from occurring in China, and it is unclear whether petitioning in the narrower sense now allowed by this regulation will decrease.¹⁴⁶ Liu Zhengyou himself has not been stopped from continuing his efforts, to "seek justice" (讨回公道, *taohui gongdao*), as he would characterize them.¹⁴⁷

IV. CONCLUSION

After more than a decade of conflict, and after the requisitioned land of Baiguo has long become part of a new urbanized area, it has become more difficult to see what, precisely, a just outcome might be in the present case. Incoherent or unclear legal rules that were also ignored

¹⁴³ *Open Letter to All Members of Society*, *supra* note 7.

¹⁴⁴ See Letters and Visits Regulation 2005, *supra* note 72.

¹⁴⁵ See *id.* at art. 18.

¹⁴⁶ For a recent report on petitioning, which to some extent discusses the effects of the 2005 legal reform, see Human Rights Watch, "*We Could Disappear At Any Time*": *Retaliation and Abuses Against Chinese Petitioners* (Dec. 2005), available at <http://hrw.org/reports/2005/china1205/>. "Mass incident" cases appear to have increased again (from 74,000 in 2004 to 87,000) in 2005 according to a Ministry of Public Security estimate; but it is unclear how these cases were distributed over the year. See also Edward Cody, *In Face of Rural Unrest, China Rolls Out Reforms*, WASH. POST, Jan. 28, 2006, at A01.

¹⁴⁷ The Chinese expression suggests something that has been lost and has to be won back.

in practice have made it hard to expect any justice from the legal system as it is, not least because no state authority seems to have both the power and the will to enforce some rules that should protect the Baiguo villagers. And even if the rules most favorable to the peasants' interests were enforced, there would still be some doubt about the fairness of a legal system establishing classifications of land and residential status that led to such great gains and losses on different sides of the divide in the context of urbanization.

Even if, perhaps, we can work out, as an intellectual exercise, what a just political order should be like even when we are in a state of complete anarchy, seeking justice might lose its point when there is no chance of enforceability. In such a situation, it might not be rational to act in a just way, even though one might see how good it would be for oneself if everyone, including oneself, could be brought to act in accordance with these requirements. Perhaps responsibility for injustice cannot be sensibly attributed to anyone in the absence of a powerful sovereign, in a situation where various state authorities contradict and counteract each other, as in the present case, and where the state appears fragmented and weak. In that case, it might be better to forget about justice and concentrate on expedient solutions.¹⁴⁸

However, in cases where there is government, but its periphery is not responsive to laws and lawful commands issuing from its center, it seems that injustice can arise precisely because no one, including the central government, acts as a sovereign, yet many different agents, wielding special power, perform the functions of the state. In such a situation the state's actions seem perfidious, absurd, and wrong—in a word, Kafkaesque, in the sense captured by Franz Kafka's *Before the Law*.¹⁴⁹ In this work, the law has stopped making sense and has become threatening and deceitful. One is promised the protection of the law, one is invited to consult the law and to invoke it, to complain, to file lawsuits, to report corruption—but then when one tries to do so, the officials who are supposed to guard the law will not permit these actions. The law is

¹⁴⁸ In a different but related context, Thomas Nagel suggests that sovereignty is an enabling condition of justice. In *The Problem of Global Justice*, discussing arguments from Hobbes and Rawls, he characterizes sovereignty as an enabling condition of justice, which he describes, without tying it to institutions, as “a property of the relations among human beings.” He concludes that “the path from anarchy to justice must go through injustice;” suggesting that sovereignty is a precondition of injustice as well as justice. In cases like the one discussed here it does become more difficult to attribute wrongs inflicted on citizens to “government” rather than to individual officials; to apply a full concept of agency. See Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113 (2005).

¹⁴⁹ Franz Kafka, *Vor dem Gesetz* [*Before the Law*], in VOM JÜNGSTEN TAG. EIN ALMANACH NEUER DICHTUNG [ON DOOMSDAY. AN ALMANAC OF NEW POETRY] (1914).

somewhere, but citizens have no access to it; and this only compounds previous injustice.

In the Zigong case, law had many Kafkaesque traits. There was law in Zigong, and the peasants kept appealing to the central government and Party authorities, citing laws and legal doctrines in a way suggesting that they wanted the restoration of a public order which, they trusted, the central government also wanted to maintain or restore. But the petitioning and litigation mechanisms failed, and because the peasants could not win against officials who disregarded the law, shielded one another, and made use of the chaotic state of an evolving Chinese legal system, that system, including the Administrative Litigation Law and the rules on compensation for land and houses, apparently left them in an ultimately worse position. The law gave them expectations but did not fulfill those expectations. The law made them expose themselves to reprisals and persecution because they complained, and triggered violent, “warfare-like” confrontation. By triggering failures to act, lies, and deception on the part of some officials, it perhaps worsened the ongoing corruption, thereby undermining the conditions of stable political rule. To quote Yu Meisun again:

Some people “only fear that there will not be disorder in the world [because they profit from disorder]; a dyke of a thousand miles can be destroyed by ant-holes undermining it.” When I read, looking for parallels, in the history of the Party’s early peasant revolution movement, or in the *Stories from the Water Margin*, this case before us strikes me as very much deserving our serious consideration.¹⁵⁰

Despite this “undermining” effect of flawed legal reform and rampant corruption, the peasants insisted, for a remarkably long time, on the protection of their right to be treated fairly through the court system and other mechanisms of redress provided according to law. They acted out a tension characteristic of rights assertion in a weak legal system: it is an assertion of adherence to the law, but also an assertion of opposition and resistance toward those in power who are perceived as disrespecting it, *and* to some of the laws, rules, and regulations which they have laid down.

¹⁵⁰ CCTV is Satisfied, *supra* note 98. This is the immediate continuation of the text quoted in the introduction. *Stories from the Water Margin*, (水浒传, *Shuihuzhuan*) is the name of a serial novel from the late Northern Song Dynasty, whose author is Shi Nai’an (施耐庵). Its heroes—108 people, whose stories are told individually—suffer various wrongs at the hands of local potentates and leave their homes to become bandits.

This conclusion, though it is limited to one case, sheds some doubt on the claims advanced by some Western writers on Chinese law who believe that Chinese people do not have a concept of rights “prior to being granted,”¹⁵¹ or who believe that the proper understanding of “Chinese” rights is “instrumental.”¹⁵²

Even if a discussion of what property rights the peasants had remains, to some extent, inconclusive,¹⁵³ the implicitly or explicitly asserted right to be treated as equal citizens with access to the protection of the law, and the “right to live”—the right not to be deprived by one’s own government of one’s basis of subsistence without adequate compensation—cannot be easily refuted. So far as available material allows us to understand, it never was refuted by any substantive argument in the present case over the course of more than a decade. Of course, when they refer to “the right to live,” peasants are using their rulers’ own language.¹⁵⁴ The cries of “thieves” and “Guomindang bandits,” coming from peasants trying to protect “their” land by squatting on it, accentuates the claim to be on the right side of the conflict—not only on the side of the law, but also on that of the centralist communist party state which, perhaps, is still perceived as having good intentions and as willing to protect people’s rights in accordance with the proclamations of recent years. It is noteworthy that those at the forefront of petitioning and litigation activities often grow more skeptical of the legal and political system as a whole. In one of their latest compositions—not a “petition” but an “open letter”—petitioners address themselves to “the leadership of the Party and government at every level, the experts and scholars in

¹⁵¹ See, e.g., David Hall & Roger Ames, *A Pragmatist Understanding of Confucian Democracy*, in *CONFUCIANISM FOR THE MODERN WORLD* 124, 152 (Daniel Bell & Ham Chae-bong eds., 2003) (“Contemporary China remains, even under ‘communism,’ a ritually constituted society, without even a rhetorical appeal to the belief in objective principles often associated with liberal reflections upon the issue of human rights. The very idea of some regimen of human rights possessed prior to their being granted by the particular society to which one belongs, has never been an assumption of Chinese rulers or peoples.”).

¹⁵² Randall Peerenboom has variously used the terms “utilitarian,” “pragmatic,” or “instrumental” to characterise conceptions of rights appropriate to contemporary China. See, e.g., PEERENBOOM, *supra* note 74.

¹⁵³ As has been argued at some length above, the right most obviously at issue in the present case, the right of collective ownership of land, appeared empty given the way it was institutionally disregarded throughout the process narrated here, and individual rural land use rights were tied to the already fragile institution of collective ownership.

¹⁵⁴ See, e.g., 国务院新闻办, 2003 年中国人权白皮书 [State Council’s Public Relations Office, 2003 WHITE BOOK ON HUMAN RIGHTS IN CHINA] Chapter 1 (Mar. 2004), at http://news.xinhuanet.com/newscenter/2004-03/30/content_1391353.htm. “Right to live” translates as 生存权利 (*shengcun quanli*) and Huang Fangying, in her letter discussed above, used the expression 生存的权力 (*shengcun de quanli*). See *Industrialization in China*, *supra* note 7.

economics and law, the media, and the entire nation.”¹⁵⁵ With the growing international media interest in social unrest in China, moreover, people have been jumping at any chance to circulate their stories abroad, even if it is often unclear what good international news coverage may do them.¹⁵⁶ In a situation such as the one considered here, the significance of having rights lies in the way they justify a range of responses to perceived government injustice, though of course not every kind of response.¹⁵⁷ It is worth noting that any public reaction to such measures, however small, may strengthen a sense of solidarity among people whose own interests are not immediately affected by a particular grievance.¹⁵⁸

Yu Meisun, and even more so Liu Zhengyou, were not outsiders but involved participants in the Zigong case. With the exception of some statements allegedly made by government officials at the meeting in March 2004 and a few official documents, officials' viewpoints have not been made available. This situation reflects a general difficulty affecting the discussion of rights in a situation where rights are not institutionally protected. The availability of a forum for public disagreement and decision, often in the face of continued open disagreement between the parties, is important for rights protection to work. The fact that there was no such forum for the citizens of Zigong, or that any available forum was extremely flawed—that they could only protest, and only protest under considerable risks, but not litigate—made it difficult for them to assert everything they might have asserted in less oppressive conditions. From the above narrative account, it seems that the peasants were desperate to litigate in court. Had they been successful, it would have both forced and allowed these government authorities to defend themselves. If such a defense had become available, it would have been easier to understand what the peasants disagreement with the government was about, and this

¹⁵⁵ In Chinese, “尊敬的各级党政领导, 经济、法律专家、学者, 新闻界和全国人民” (*Cunjing de geji dang zheng lingdao, jingji, falü zhuanjia, xuezhe, xinwenjie he quanguo renmin*). See *Open Letter to All Members of Society*, *supra* note 7.

¹⁵⁶ International attention is also asserted in the slogans used during the April 20, 2005 gathering in Zigong, according to *id.* One such slogan goes, “The major land requisitioning corruption case of Zigong is getting national and international attention, but who is being held responsible (国内外高度关注自贡征地腐败大案谁问责!)”

¹⁵⁷ In better-ordered societies, this is an aspect of rights rarely considered; but much of the original appeal of the idea of individual rights in the Age of Enlightenment arose in situations similar to the one this essay discusses.

¹⁵⁸ The Zigong case most recently became the topic of yet another effort to appeal for protection, this time made not by residents of Zigong but instead by residents of Sichuan's provincial capital Chengdu, according to an online report. If accurate, this report indicates a significant new force, since it would mean that there are efforts to stimulate solidarity among city residents and “peasants.” See 成都市民支持自贡失地农民维权的呼吁书 [*Chengdu Citizens Appeal in Support of Zigong Peasants Who Have Lost Their Land*], 博讯 [PEACEHALL NEWS] (Oct. 30, 2005), at <http://www.peacehall.com/news/gb/china/2005/10/200510302314.shtml>.

response would have sharpened the question of what rights they were asserting. Viewed in this fashion, the fact that they were denied these procedures changed the character of the injustice they suffered without obliterating it.

In recent years, according to government statistics, there have been many thousands of land dispute cases. Indeed, a recent paper on the danger of "Latin Americanization" of China mentions a Ministry of Land and Resources report, citing more than 168,000 cases of "illegal land seizure" in the first eleven months of 2003, "twice as many as in the entire previous year."¹⁵⁹ It is a safe assumption that some of these cases have, or had, similar features to the one studied here, and Chinese researchers have asserted that the problem of land disputes (land seizures) now constitutes the main cause of peasant grievances leading to complaints, and sometimes to unrest. In an article about Liu Zhengyou and the Zigong case in its wider context, Zhao Ling describes the results of research done at the Chinese Academy of Social Sciences. He says that land seizures have overtaken the "tax burden" problem as a cause of grievance, and suggests that this scenario has somewhat changed the language of complaints against government:

The language of rights protection is changing, too. Regarding the reduction of burdens through taxes and fees, because there were clear central policies to support these causes, slogans would often be "implement the center's policies/the requirements of the center's documents; reduce the peasant burden." Since the land issues are a matter of survival for the peasants, their language has become more direct. For instance, [they say:] "How shall we live without land!"¹⁶⁰

There are indications of a certain general decline of respect toward the Party and government even at central levels. Indeed, if wronged citizens, such as peasants made landless, have no serious expectation of redress for

¹⁵⁹ See George Gilboy & Eric Heginbotham, *The Latin Americanization of China?*, 103 CURRENT HIST. 256, 258 (2004), which provides further estimates on the number of people and the amount of land affected. They observe that 6.7 million hectares of farmland were lost between 1996 and 2003, compared to 1.9 million between 1986 and 1995, according to the State Statistics Bureau. Further, "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*" See *id.* This last figure seems to be inconsistent with those cited earlier.

¹⁶⁰ Zhao, *supra* note 62. The author also notes that, increasingly, landless peasants get help "from society"; for example, from lawyers, to draw up petitions, etc.

their wrongs, why should they respect claims to legal authority made by the Party and government? If no reason can be found, we may have to conclude that such “peasant” citizens are not, or are no longer, part of a Chinese society striving toward rule of law—toward a justified form of government upholding justice through its institutions. For the moment, as this essay has endeavored to show, most protest takes the form of appealing to the existing order even when people resist local potentates. But this may change as increasing numbers of peasants come to courts and government offices to seek the protection of the law, but find no one willing or able to help them.

Better legal protection might be provided to peasants in the context of the ongoing reform of property law. This approach would require the creation of a more equal status of rural and urban citizens, and the strengthening of peasants’ negotiating position. While such reform remains a possibility, it should be noted that in March 2005, Premier Wen Jiabao made a commitment that “Chinese farmers’ rights to manage and use their land” will not change in the long run, or “ever change.”¹⁶¹ Unless the institution of collective ownership is rendered more functional, this means that peasants will remain at risk of being suddenly expropriated without sufficient justification.

The draft for the new property (real rights) law, whose recent publication triggered thousands of comments from the public,¹⁶² contains some interesting new stipulations which might improve the situation of collective peasant owners of rural land facing land requisitioning. For instance, Article 11 of the draft specifies matters that must be decided by the general assembly of peasants belonging to one collective. Among these is “the method of using and distributing compensation for land and similar payments.”¹⁶³ Article 62 deals with representatives of collectives consisting of the entire community of villagers, or of economic organizations or smaller groups within one village, and Article 64 provides that if decisions taken by the collective “infringe legal rights and interests of a member of the collective, that member may apply to a people’s court for annulment of this decision. If a decision by the

¹⁶¹ See *Premier Wen Meets the Press*, XINHUA NEWS (Mar. 14, 2005), at http://www.chinadaily.com.cn/english/doc/2005-03/14/content_424729.htm. Wen also stated on this occasion that the rights of collective landowners “have been continuously extended.”

¹⁶² See, e.g., 李红军, 物权法草案收到各地人民群众意见6515条 [Li Hongjun, *Draft Property Law Attracts 6515 Suggestions from the Masses in Various Places*] (July 27, 2005), at http://news.xinhuanet.com/legal/2005-07/27/content_3273909.htm.

¹⁶³ 中华人民共和国物权法(草案) [Property Law (Draft)] (posted July 10, 2005) (P.R.C.), at <http://www.npc.gov.cn/zgrdw/common/zw.jsp?label=WXLK&id=339451&pdmc=zxbd> [hereinafter Property Law (Draft)].

villagers' assembly infringes rights and interests of a member that member can apply to a people's court for annulment of this decision."¹⁶⁴

In other respects, however, the draft does not contain changes that might eliminate the basic discrimination between rural and urban land owners of land rights (immoveable property rights). For instance, Article 45 says that "owners of immovable and movable property enjoy, *in accordance with the laws and regulations*, the rights to possess, use, enjoy the fruits of, *and alienate* their property."¹⁶⁵ While the institution of different kinds of ownership for different kinds of land, as classified by state authorities, remains, Article 45 leaves only theoretical room for the argument that rural collectives could sell their collectively owned land. Moreover, Article 162 of the draft contains a prohibition on the purchase of residential rural land (宅基地, *zhaijidi*) by urban residents.¹⁶⁶ Commentators have observed the discriminatory effect of this article.¹⁶⁷

Several articles of the draft contain references to "public interest" as a precondition for requisitioning land use rights (征用, *zhengyong*) or expropriation (affecting one's position as owner (*zhengshou*, 征收)),¹⁶⁸ without explicitly defining "public interest." Further provisions concern compensation: Article 48 provides that there must be compensation for requisitioning and expropriation in accordance with state law, and that in the absence of special provisions, compensation must be "reasonable."¹⁶⁹ This provision does not add much substance to currently valid law, although formulas such as "public interest" and of "reasonable compensation" can be useful when a robust legal and judicial practice can supply principles for the consistent and correct application of what they require.

It is important to understand to what extent property rights depend on the political conditions in which they are enjoyed. The present

¹⁶⁴ *Id.* at art. 64.

¹⁶⁵ *Id.* at art. 45 (emphasis added).

¹⁶⁶ *Id.* at art. 162. This could be understood as a provision protecting peasants against being "bought out" by urban citizens but, crucially, there is no exit option for peasants from their respective rural community, even when they physically leave (e.g. as migrant workers).

¹⁶⁷ 童大煊, 关注物权法: 农民物权不应歧视, [Tong Dahuan, *Showing Concern for the Draft Property Law: We Must Not Discriminate Against Peasants' Property Rights*], XINHUA NET (July 21, 2005), at http://news.xinhuanet.com/legal/2005-07/21/content_3247475.htm.

¹⁶⁸ This means that collectively owned rural land would henceforth be "expropriated" as opposed to "requisitioned."

¹⁶⁹ See also Property Law (Draft), *supra* note 163, which prohibits illegal seizures of property "under the name of demolition and relocation, expropriation, etc." Regarding criticism of this phrase, see Li, *supra* note 162. See also 张千帆, "公共利益"与"合理补偿"的宪法解释 [Zhang Qianfan, *A Constitutional Interpretation of "Public Interest" and of "Reasonable Compensation"*], 南方周末 [S. WEEKEND] (Aug. 11, 2005), at <http://www.nanfangdaily.com.cn/southnews/zmzg/200508110830.asp>.

discussion emphasized that the collective ownership rights of political micro-communities such as villages or village groups should not be thought of as independent of “surrounding” conditions of political rule. If surrounding political processes all work properly, collective ownership might function as well as private individual ownership of rural land, and current land disputes seem to be a consequence not so much of the existence of collective rural land ownership, but of its fragility and the fact that this form of ownership is not respected by the state, laws, and officials. Control over land use was of great importance to the Communist Party in its ascent to power, and it was linked to political control over people and exercised, for instance, through the control of migration and occupation. In both these areas, the state has lost or relinquished much of the control it formerly exercised, as an obvious consequence of those market reforms which triggered the creation of the Zigong High-Tech and New Technology Industrial Development Zone in the early 1990s. But it has not provided adequate means of exiting or entering land ownership relations through commercial transactions across the rural/urban divide.

Interestingly, in an interview conducted in July 2005, Professor Jiang Ping remarked that the draft originally contained a provision which would have allowed for the interpretation that outside the administrative jurisdiction of cities, collectively owned (rural) land could be sold by rural collectives, and that peasants might themselves develop property and sell land use rights on the property market. However, according to the draft as it was publicized, peasants would remain excluded from the market in land for construction in the context of urbanization, and are still threatened by expropriation. Jiang Ping concludes that the worst problem with the current draft is its continued differentiation between rural and urban property rights.¹⁷⁰ Peasants are being deprived of their land, denied fair compensation, and denied access to the courts, while at the same time the protection of private property rights in other areas has improved. One gets a sense that peasants are denied the status of agents in the newly created legal system.¹⁷¹ They are driven into illegality when trying to protect themselves from expropriation, as well as when seeking

¹⁷⁰ 陈敏, 江平: 主要问题是财产权利的城乡二元分割 [Chen Min, Jiang Ping: *The Main Problem Is the Differentiation Between Urban and Rural Property Rights*], 南方周末 [S. WEEKEND] (July 21, 2005), at <http://www.nanfangdaily.com.cn/zm/20050721/xw/sd/200507210031.asp>.

¹⁷¹ In their lengthy *Investigation Into China's Peasantry* Chen Guidi and Chun Tao argue that discrimination against peasants has become pervasive and present some accounts of individual cases of misrule. They summarize an interview with Lu Xueyi (陆学艺), president of the Chinese Society for Sociology (中国社会学学会), who mentions the household registration and social welfare systems as important further aspects of a gradual “loss of balance.” See 陈桂棣 & 春桃, 中国农民调查 [CHEN GUIDI & CHUN TAO, *INVESTIGATION INTO CHINA'S PEASANTRY*] 176-87 (2004).

alternative livelihoods by becoming “peasant workers” (农民工, *nongmingong*) without residence registration in cities.

Regarding rural land disputes, effective legal reform is therefore impossible if it remains limited to substantive property law. True reform would at least address the problem of “abstract administrative acts” and make them amenable to judicial scrutiny. At the level of legal application, failure to apply the law correctly and bad legislation became hard to distinguish, as the administration and structures under it (the “Zigong High-Tech Zone Administration Committee”) effectively legislated for themselves. The problem was one of central power failing to control local powers and, most obviously, one of courts failing to adjudicate independently. Even if abstract administrative acts could be challenged in courts, courts might find other ways of evading adjudication in cases of politically sensitive legal challenges to local government. On the other hand, while courts are failing, the *xinfang* mechanism will continue to be used. As part of the Chinese legal system, and reflecting the weakness of the Chinese courts, *xinfang* activities indicate with precision where the real power lies, and where consequent protection is sought by landless peasants and other aggrieved citizens, even as they seek admission to the process of court litigation. The institution of *xinfang* allows for rights assertion, but only independent and effective courts can protect rights such as land rights now asserted by peasants. While such courts are not available, many more landless peasants will continue to feel they have no choice but to seek justice in *xinfang* offices and in the streets.