



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN36171 – Fujian Province –
Fuqing – Land projects – Corruption –
Compensation – Whistleblowers – Legal
proceedings – Family members

2 March 2010

1. Is there any information indicating that local or provincial government land projects in the Fuqing City area have disrupted sea-farming operations or livelihoods?

No information was located about government land projects specifically disrupting sea-farming operations or livelihoods in Fuqing City. However, one report of a disputed government land project in Fujian Province was located and involved a protest by oyster farmers whose livelihood was disrupted by infrastructure development. In 2009, oyster farmers in Dongzhang protested over the construction of a sewage plant. In this instance, farmers claimed the plant had poisoned drinking water and caused increased levels of cancer among the local population. According to the *South China Morning Post*, the government agreed to compensate oyster farmers who claimed their reputation and businesses were ruined, and also agreed to treat cancer victims.¹

2. Deleted.

3. What is the process of appeal against such actions by the local government?

Since 1989, a citizen may sue administrative organs of the local government through local courts under guidelines of the Chinese *Administrative Litigation Law*. Other dispute resolution avenues include mediation committees, labour administration committees and administration reconsideration organs, but success is limited.² Nationwide, local courts heard 10 711 275 cases in 2008, but are overwhelmed by the case load and there is an extensive backlog, according to information in the Congressional-Executive Commission 2009 Annual Report.³

The most common process of appeal, however, is through the *Xinfang* ‘Letters and Visits’ system, which operates throughout all levels of government. *Xinfang* offices receive citizen petitions and complaints on range of issues, from minor business disputes to serious allegations of corruption and criminal activity. Personnel and offices are located in all local and provincial government offices and at all levels. Once citizens file petitions, the complaint is supposed to be reviewed, facts investigated, and reports produced for every case.⁴ While this system has some merits, at the local level, citizens may risk official retribution from local officials, including harassment, violence, detention, and

¹ Chi-yuk, C. 2009, ‘Villagers seize sewage plant as evidence in pollution row’, *South China Morning Post*, 3 September - Attachment 1

² Congressional-Executive Commission on China 2007 Annual Report 10 October 2007, pp.148-149 – Attachment 5

³ Congressional-Executive Commission on China 2009 Annual Report 10 October 2009, p. 237 – Attachment 6

⁴ Human Rights Watch 2005, “*We Could Disappear At Any Time*”: *Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), p. 17 – Attachment 7

there are even reports of citizens forcibly committed to mental institutions.⁵ According to Human Rights Watch, if a citizen is dissatisfied with the response to their petition, they are free to continue petitions at the next level up from township, county, provincial, and on to national levels.⁶

It is not out of the question that the citizen appealing compensation for sea farming activities could make appeals on the grounds of laws dealing with compensation for property. Compensation is allowed by law for land or property which is acquired for development by the government. People seeking compensation are required to register their claim with the land administrative departments of the local people's governments. However, conflicting laws and regulations have allowed local governments to both override safeguards for property owners and reduce compensation to below market prices.

The *Land Administration Law of the People's Republic of China* (2004)⁷ allows for expropriation of land in the public interest with compensation and this avenue of appeal to the local or provincial office would logically be a possibility. Articles regarding compensation for loss of land use include the following:

The state may make expropriation or requisition on land according to law for public interests, but shall give compensations accordingly. (Art.2)

Owners or users of the land expropriated shall, within the time limit specified in the announcement, go through the compensation registration for expropriated land with the land administrative departments of the local people's governments on the strength of the land certificate. (Art.46)

4. Is there any information regarding corruption of officials in Fuqing City and Fujian province?

No information was located specifically discussing corruption in the Fuqing City government; however, there are numerous reports regarding pervasive corruption problems in China. Freedom House claims that corruption remains endemic in China, and according to some observers, it has risen in recent years. This is despite increased government anti-corruption efforts. The problem is "most concentrated in sectors with extensive state involvement", such as construction, land procurement, and banking. While several government bodies track and prosecute corruption, there is no independent anti-corruption watchdog, and "the accuracy of official statistics is questionable". Despite this, "tens of thousands of cases were investigated at all levels in 2008:"

From November 2007 to November 2008, some 151,000 party officials and members were reportedly disciplined; prosecution may be selective, however, as informal personal networks often influence who is pursued by the authorities. New open-

⁵ Congressional-Executive Commission on China 2009 Annual Report 10 October 2009, pp. 239-241 – Attachment 6

⁶ Human Rights Watch 2005, "*We Could Disappear At Any Time*": *Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), pp.3-4 – Attachment 7

⁷ National People's Congress of the People's Republic of China 2004, *Land Administration Law of the People's Republic of China* (2004 Revision), (1986 – revised 28 August 2004), Invest in China website http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=50939 – Accessed 4 June 2007 – Attachment 8.

government regulations came into effect in May 2008, but courts hesitated to accept lawsuits seeking to compel the disclosure of information by local officials.⁸

The Economist Intelligence Unit's (EIU) 2009 Country Profile for China mentions that President Hu launched several anti-corruption campaigns among government officials. According to the EIU, in the absence of systemic reforms, these anti-graft efforts more often appear to be "at least partly connected with attempts by senior CCP officials to remove factional rivals in the ruling bureaucracy". It asserts that the 2006 arrest of Shanghai party secretary, Chen Liangyu was a result of his being a rival to Hu.⁹

In discussing corruption, the UK Home Office mentions the importance of connections in Chinese society:

As reported by the BBC on 1 October 2005, "If you want to understand who runs China today you have to understand the meaning of the word 'guanxi'. Literally translated, guanxi means connections. But it is much more than having the same old school tie. In Europe or America who you know might help you get a job, or get your child into a decent school. In China who you have guanxi with can mean the difference between freedom and jail, justice or discrimination, wealth or poverty".¹⁰

In Transparency International's (TI) Corruption Perceptions Index 2009, released in November 2009, China was placed at 79 out of 180 countries, with 1 being the least corrupt and 180 being the most. The survey was based on perceived levels of corruption among public officials and politicians, as assessed by international experts and institutions. China scored 3.6 out of 10, 10 representing low levels of corruption.¹¹

Corruption at local official levels extends to the police force, which has been used against local citizenry. The US Congressional-Executive Commission on China 2009 Annual report specifically states that corrupt officials and police collude to threaten petitioners and other 'troublemakers'.¹²

A "disguised" form of police abuse continued during 2009: the use of hired, unofficial personnel (often referred to as "thugs" in media and human rights reports) to beat, abduct, and torture dissidents, activists, petitioners, and other "troublemakers," with the knowledge of the police or government officials

5. Which department of the national government in Beijing would be the appropriate avenue for appeal?

The most common avenue of appeal taken by citizens to petition the national government in Beijing is through the *Xinfang* system, literally translated as "Letters and Visits". This system of complaints offices is a network found throughout many levels of government and across administrative functions. There are administrative Xinfang offices for citizens

⁸ Freedom House 2009, *Freedom in the World – China 2009*
<http://www.freedomhouse.org/template.cfm?page=363&year=2009&country=7586> - Accessed 8 February 2010 – Attachment 9.

⁹ UK Home Office 2010, *Country of origin information report: China*, 8 January, pp70-71 – Attachment 10

¹⁰ UK Home Office 2010, *Country of origin information report: China*, 8 January, pp70-71 – Attachment 10

¹¹ Transparency International 2009, *Corruption Perceptions Index 2009*

http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table - Accessed 8 February 2010 – Attachment 11.

¹² US Congressional-Executive Commission on China 2009, *Annual Report 2009* 10 October 2009 p.91 – Attachment 6.

to contact located in state councils, courts, and at other levels.¹³ Citizens may write letters of complaint or appear in person at these special petition offices throughout the country in almost all levels of government. These offices are the point of contact for complaints about decisions made by local officials or local courts. According to Human Rights Watch, if a citizen is dissatisfied with the response to their petition, they are free to continue petitions at the next level from township, county, provincial, and on to national levels.¹⁴

The *Xinfang* system is supposed to function as a general complaints clearing house for any government wrong-doing, ranging from bureaucratic misdeeds to serious malfeasance. Petitions are supposed to be reviewed, facts investigated and reports produced for every reported case. However, the system is frequently overwhelmed by filings, officials are not always inclined to investigate colleagues, and many citizens are frustrated by a lack of results.

A survey cited by Human Rights Watch indicates that petitioners using the Xinfang system may appeal to as many as eighteen different government bureaus, including some of the following:¹⁵

- The National Bureau of Letters and Visits
- State Council
- The Supreme Court
- The Communist Party Central Disciplinary Commission
- The Public Security Bureau
- The Supreme People's Procuratorate
- The National Bureau of Land Resources
- The Agriculture Bureau

There are also risks associated with continuing petitions to the national level. Amnesty International reports that thousands of petitioners who have brought their appeals to Beijing have been imprisoned in "black jails". After a period of administrative detention, some are forcibly returned to their home towns to face unpredictable consequences.¹⁶

There are three national offices available for citizens to specifically report corruption:

1. The Central Commission for Discipline Inspection (or Central Disciplinary Inspection Agency)
2. The Bureau Against Graft and Bribery
3. National Bureau for Corruption Prevention

¹³ Congressional-Executive Commission on China 2009 Annual Report 10 October 2009, pp. 239-241 – Attachment 6, and Michelson, Ethan 2006, 'Justice from Above or Justice from Below? Popular Strategies for Resolving Grievances in Rural China', Department of Sociology, Indiana University-Bloomington, 16 July, pp.8-9 [http://www.indiana.edu/~emsoc/Publications/Michelson_Justice\(endnotes\).pdf](http://www.indiana.edu/~emsoc/Publications/Michelson_Justice(endnotes).pdf) – Accessed 19 July 2006 – Attachment 12.

¹⁴ Human Rights Watch 2005, *"We Could Disappear At Any Time": Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), pp.3-4 – Attachment 7.

¹⁵ Human Rights Watch 2005, *We Could Disappear At Any Time": Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), pp.19 – Attachment 7.

¹⁶ Human Rights Watch 2009, *We Could Disappear At Any Time": Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), p. 6 – Attachment 7.

The National Bureau for Corruption Prevention is reportedly responsible for sharing information about corruption cases relevant to local authorities. These organisations, however, have not established a strong record of success in addressing specific corruption cases and reportedly have instead focussed on programs preventing corruption through education initiatives.¹⁷ The central government does encourage citizens to report suspected corruption and has established websites to report irregularities, including one for the National Bureau for Corruption Prevention. It is, however, difficult to gauge citizen success rates; when the National Bureau for Corruption Prevention launched a website in 2007 for citizens to denounce crooked officials, the website crashed due to the overwhelming number of users attempting to access the website.¹⁸

The *Xinfang* system and the central agencies established to fight corruption do have some success. According to Freedom House, and citing government-issued statistics, between 2007 and 2008, tens of thousands of cases were investigated at all levels of government resulting in 151,000 party officials and members being disciplined nationwide.¹⁹

6. What happens to whistleblowers?

Whistleblowers and any citizens questioning the conduct or actions of local government departments and officials, making allegations of corruption against local officials, or bringing attention to perceived injustices, are likely to meet strong resistance. Local authorities may readily perceive whistleblowers as a threat on political and economic grounds. By alleging corruption, whistleblowers draw negative political attention from national levels to provinces and successful petitioners can directly affect the financial well-being of officials.²⁰

The UK Home Office reported in 2008 that local authorities “continue to employ excessive force to quell disturbances” in instances where there is an allegation of corruption levied against local authorities over development projects, land confiscation, and compensation.²¹ The 2008 UK Home *Country of Origin Information Report - China* further states that citizen complaints against inadequate compensation have grown as villagers become increasingly aware of their legal rights. The report cautions, however, that authorities often address some grievances, but frequently arrest ringleaders of protest movements. Also, if an issue threatens to develop into a wider movement, the government “...comes down with a particularly heavy hand on any local protest...”²²

While there are instances of successful petitions and campaigns undoing corrupt practices and leading to reversals of injustices committed, the majority of whistleblowers and

¹⁷ ‘China establishes national corruption prevention bureau’ 2007, [www.chinaview.cn](http://news.xinhuanet.com/english/2007-09/13/content_6715274.htm), 19 September, http://news.xinhuanet.com/english/2007-09/13/content_6715274.htm – Accessed 2 January 2008 – Attachment 13, and ‘Not the best way to clean up’ 2007, *The Economist*, 19 April,

http://www.economist.com/world/asia/displaystory.cfm?story_id=9040393 – Accessed 24 December 2007

¹⁸ ‘China assails official misconduct with fervor’ 2007, *Washington Post*, 20 December

<http://www.washingtonpost.com/wp-dyn/content/article/2007/12/19/AR2007121900678.html> – Accessed 1 March 2010 – Attachment 14.

¹⁹ Freedom House 2009, *Freedom in the World – China 2009*

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2009&country=7586&pf - Accessed 1 March 2010 - Attachment 9.

²⁰ Human Rights Watch 2005, *We could disappear at any time: Retaliation and abuses against Chinese petitioners*, December, Vol. 17, No. 11 C, pp. 5-7 – Attachment 7.

²¹ UK Home Office 2008, *Country of Origin Information Report – China*, April p. 46 – Attachment 18

²² UK Home Office 2008, *Country of Origin Information Report – China*, April p. 47 – Attachment 18

petitioners are frustrated, or worse.²³ The US Department of State cited several cases in its 2008 *Human Rights Report* wherein land disputes were dealt with by excessive force by authorities and those who chose to petition to the Central government reportedly faced “harassment, detention, incarceration, and restrictions on rights to assemble and raise grievances”. The report includes several examples, including²⁴:

- In 2007, 21 farmers “disappeared” after travelling to Beijing to petition the Government over a land compensation case.
- Also in 2007, seven farmers were convicted of “extortion and blackmail” after protesting land confiscations and one of the farmers reportedly died in prison due to mistreatment and denial of medical attention.

Human Rights Watch also reports that a citizen who collected 10,000 signatures supporting a protest against “illegal” land seizures in 2007 was arrested and charged with “inciting subversion against state power”.²⁵ Another Human Right Report states that “Petitioners are often beaten, intimidated, and even kidnapped, for airing their grievances...over 50 per cent of respondents reported that they had been beaten by state actors or agents.”²⁶

In 2005, Human Rights Watch reported that the majority of violence directed against petitioners emanated from local authorities attempting to stop them from bringing petitions to the central government in Beijing. If petitioners were unsuccessful in Beijing, they risked returning to grave dangers in their home provinces.²⁷ In Fujian Province, a legal activist who sought a permit to demonstrate in Beijing against official corruption returned home to face trumped up charges of “forging official documents and seals” and was sentenced to three years in prison by the Fujian Intermediate People’s Court.²⁸

7. Are there other examples of people in Fuqing City being detained or threatened with imprisonment for appealing to government authorities for compensation over lost business? What charges are commonly levelled against such people by the Court and to what sort of sentence might they be subjected?

No examples were found of people in Fuqing City being detained or threatened for specifically appealing to government authorities for compensation over lost business. Neither was any information found identifying common charges levelled against residents of Fuqing City appealing compensation claims. At the same time, there is no information suggesting that these events are not happening.

8. Are there any consequences for members of their family?

Several sources, both government and media, report that there can be consequences for family members of subjects brought before the courts or for family members of subjects challenging authorities. Authorities may utilize the legal system to punish family members or resort to extra legal punishment.

²³ Lianjinag, L. and O’Brien, J., 2008, ‘Protest Leadership in Rural China’, *The China Quarterly*, p.17 – Attachment 17.

²⁴ US Department of State 2009, *Human Rights Report for 2008 – China*, February, Section 2 – Attachment 20.

²⁵ Human Rights Watch 2009, *China: Olympic Activist Deprived of Due Process*, February – Attachment 17.

²⁶ Human Rights Watch 2005, *We could disappear at any time: Retaliation and abuses against Chinese petitioners*, December p. 5 – Attachment 7.

²⁷ Human Rights Watch 2005, *We could disappear at any time: Retaliation and abuses against Chinese petitioners*, December, Vol. 17, No. 11 C, pp. 6 – Attachment 7.

²⁸ Amnesty International 2009, ‘China: Free thwarted Olympics petitioner Ji Sizun’, 5 May – Attachment 15.

A 2009 National Public Radio program reports that the government practice of punishing family members does exist and suggests that this is happening with more frequency. The report labels this government tactic ‘collective punishment’, stating: “Now, as a matter of practice, not as a matter of law, the Chinese government seems to be bringing back collective punishment, often punishing not just the alleged offender, but also their entire family — children as well as spouses...”²⁹

A 2008 *China Quarterly* report on leaders of protests and petition movements specifically mentions the extra legal risk to family members, stating: “Rural officials may beat protest leaders and their family members, illegally detain them, or have them sentenced to labour education or jail on charges such as ‘resisting taxes’, ‘disturbing social order’ ...’impeding government work’ ...”³⁰

Family members risk extra legal punishment by authorities who may enlist local thugs to physically threaten family members. A 2006 article by Professor Lianjiang Li of the Chinese University of Hong Kong, in a lengthy article addressing Chinese retaliation against petitioners states, specifically states: “Some had family members beaten by cadres...”³¹.

A 2007 DFAT report stated that there have been several instances in which family members of human rights activists have been charged with crimes in order to further punish the principal subject and to send a warning message to others. While family members may often be charged with lesser offenses, the risk of consequences to family members is present:³²

In the case of non-officials, we are aware of several recent cases where family members of human rights activists have been tried on (what we judge to be) trumped up charges in order to further punish the activist and deter others...

And,

In cases where officials are brought before the courts on corruption charges, family members can also be charged with similar (often lesser) offences, on the basis that they or their business interests were also involved in or benefited from the corrupt activity. We have no reason to believe that such charges are simply fabricated.

Attachments

1. Chi-yuk, C. 2009, ‘Villagers seize sewage plant as evidence in pollution row’, *South China Morning Post*, 3 September.
2. Deleted.
3. Deleted.

²⁹ Lim, Louisa 2009, ‘Family Of Chinese Activist Lawyer Escapes To U.S.’, National Public Radio, 16 March <http://www.npr.org/templates/story/story.php?storyId=101865588> – Accessed 2 July 2009 – Attachment 22.

³⁰ Lianjinag, L. and O’Brien, J., 2008, ‘Protest Leadership in Rural China’, *The China Quarterly*, esp. pp. 4, 12, 17-18, 19 - Attachment 16.

³¹ Li, L. 2006, ‘Driven to Protest: China’s Rural Unrest’, *Current History*, 14 August, pp.251-253 http://www.currenthistory.com/org_pdf_files/105/692/105_692_250.pdf – Accessed 11 October 2007 – Attachment 19

³² Department of Foreign Affairs and Trade 2007, *DFAT Report 620 – RRT Information Request: CHN31510*, 30 March – Attachment 21.

4. Deleted.
5. Congressional-Executive Commission on China 2007 Annual Report 10 October 2007.
6. Congressional-Executive Commission on China 2009 Annual Report 10 October 2009.
7. Human Rights Watch 2005, *“We Could Disappear At Any Time”: Retaliation and Abuses Against Chinese Petitioners*, December, Vol. 17, No. 11(C), pp.3-4.
8. National People’s Congress of the People’s Republic of China 2004, *Land Administration Law of the People’s Republic of China* (2004 Revision), (1986 – revised 28 August 2004), Invest in China website
http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=50939 – Accessed 4 June 2007.
9. Freedom House 2009, *Freedom in the World – China 2009*
<http://www.freedomhouse.org/template.cfm?page=363&year=2009&country=7586> - Accessed 8 February 2010.
10. UK Home Office 2010, *Country of origin information report: China*, 8 January, pp70-71.
11. Transparency International 2009, *Corruption Perceptions Index 2009*
http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table - Accessed 8 February 2010.
12. Michelson, Ethan 2006, ‘Justice from Above or Justice from Below? Popular Strategies for Resolving Grievances in Rural China’, Department of Sociology, Indiana University-Bloomington, 16 July, pp.8-9
[http://www.indiana.edu/~emsoc/Publications/Michelson_Justice\(endnotes\).pdf](http://www.indiana.edu/~emsoc/Publications/Michelson_Justice(endnotes).pdf) – Accessed 19 July 2006.
13. ‘China establishes national corruption prevention bureau’ 2007, *www.chinaview.cn*, 19 September, http://news.xinhuanet.com/english/2007-09/13/content_6715274.htm – Accessed 2 January 2008.
14. ‘China assails official misconduct with fervor’ 2007, *Washington Post*, 20 December
<http://www.washingtonpost.com/wp-dyn/content/article/2007/12/19/AR2007121900678.html> – Accessed 1 March 2010.
15. Amnesty International 2009, ‘China: Free thwarted Olympics petitioner Ji Sizun’, 5 May.
16. Lianjinag, L. and O’Brien, J., 2008, ‘Protest Leadership in Rural China’, *The China Quarterly*, p.17.
17. Human Rights Watch 2009, *China: Olympic Activist Deprived of Due Process*, February.
18. UK Home Office 2008, *Country of Origin Information Report – China*, April.
19. Li, L. 2006, ‘Driven to Protest: China’s Rural Unrest’, *Current History*, 14 August, pp.251-253 http://www.currenthistory.com/org_pdf_files/105/692/105_692_250.pdf – Accessed 11 October 2007.
20. US Department of State 2009, *Human Rights Report for 2008 – China*, February, Section 2.

21. Department of Foreign Affairs and Trade 2007, *DFAT Report 620 – RRT Information Request: CHN31510*, 30 March.
22. Lim, Louisa 2009, 'Family Of Chinese Activist Lawyer Escapes To U.S.', National Public Radio, 16 March <http://www.npr.org/templates/story/story.php?storyId=101865588> – Accessed 2 July 2009.