



Australian Government
Refugee Review Tribunal

Country Advice China

China – CHN36489 – Fujian Province –
Land expropriation – Compensation –
Corruption – Petitioners – Money lenders –
Police – State protection
23 April 2010

1. Please provide a map with the location of Kemen Village, Donghan.

In the map below, Kemen Village (“Ke Gate” – 东瀚镇) is marked by the red circle on the right, and Donghan Town (东瀚镇) by the red circle on the left.



Figure 1. Map of Kemen (“Ke Gate”) Village (可门村), Donghan Town (东瀚镇), Fuqing City, Fujian¹

¹ Map of Kemen (“Ke Gate”) Village (可门村), Donghan Town (东瀚镇), Fuqing City, Fujian from Google Maps <http://maps.google.com/> – Accessed 13 April 2010 – Attachment 1.

A second map (below) also shows Fuqing City, Yuxi, Donghan Town and Pingtan (all highlighted in yellow).



Figure 2. Fuqing City (includes peninsula and the following townships (zhen 镇) - Chengtou (城头镇), Donghan (东港镇), Dongzhang (东张镇), Gangtou (港口镇), Gaoshan (高山镇), Haikou (海口镇), Honglu (宏路镇), Jiangjing (江镜镇), Jiangyin (江阴镇), Jingyang (镜洋镇), Longtian (龙田镇), Nanling (南岭镇), Sanshan (三山镇), Yangxia (阳下镇), Yinxi (音西镇), Yidou (一都镇), Yuxi (海溪镇). Also 融城镇 Rongcheng (Fuqing urban area)).

2. Provide information on the construction/route of the Yuxi–Pingtan highway.

Although the proposed route of the expressway highway from Yuxi, Fuqing City to Pingtan could not be found, an October 2009 article in *China Daily* indicates that several large infrastructure projects are underway in Fujian, including a Fuqing²–Pingtan expressway:

...Currently, massive infrastructure projects are under way in the county. ...A 4,976-m Pingtan cross-Straits bridge (with a total investment of 1.4 billion yuan) will be completed in September 2010, ending the need to use ferries to reach the island. A second cross-Straits bridge is being planned. ... An expressway connecting Pingtan and Fuqing, scheduled for completion in 2011, will shorten the travel time between Pingtan and Fuzhou to 1.5 hours.³

It is unclear if the Yuxi–Pingtan expressway will use either of the above-mentioned bridges or another bridge that is also yet to be built. No information could be located on the route of the highway. [*Note: the 4976-m Pingtan cross-Straits bridge is indicated by

² Note, Yuxi is close to Fuqing – see Map of Fuqing City (includes peninsula townships) from Google Maps <http://maps.google.com/> – Attachment 14

³ Quanlin, Q. 2009 'Pingtan county economic zone will invite Taiwan investments', *China Daily*, 26 October http://www.chinadaily.com.cn/bizchina/2009-10/26/content_8848556.htm – Attachment 2.

the dotted line in Figure 1 and the proposed route of the second bridge could not be found].

3. Please provide information on compensation for land expropriation in China. Is the process corrupt? What is the government doing to ensure fair compensation for land users?

Under the Chinese Constitution and the 2004 *Land Administration Law*⁴, the state, acting in the public interest, may lawfully requisition land owned by collectives. This enables local governments to acquire land cheaply from farmers and sell it to developers at much higher prices. Since 2004, compensation for land expropriation has been enshrined as a constitutional right; however, many observers – including farmers – consider the compensation process to be unfair and corrupt. In 2007, the government passed the *Property Rights Law*⁵, designed to define and protect the property rights of citizens; however, in practice these rights were not always protected and land disputes over compensation remain common across China. The passage of a law on rural land disputes, which came into effect on 1 January 2010, demonstrates the government's intent to provide farmers with recourse to arbitration; however, no reports of it being applied were found.

Under Article 10, paragraph 3, of the Chinese Constitution, the state must provide compensation for land expropriation:

The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.⁶

The 2004 *Land Administration Law* and the 2007 *Property Rights Law* also enshrine the right to compensation:

Land Administration Law of the People's Republic of China

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

Article 46: 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.⁷

⁴National 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 3.

⁵National People's Congress of the People's Republic of China 2007, *Property Rights Law of the People's Republic of China* (Promulgated 16 March 2007 & Effective 1 October 2007), Lehman, Lee & Xu PRC Law Firm website <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/property-rights-law-of-the-peoples-republic-of-china.html> – Accessed 23 February 2010 – Attachment 4.

⁶Chan, N. 2006, 'Recent Reform Of China's Rural Land Compensation Standards' Pacific Rim Property Research Journal, vol.12, no.1 – Attachment 5.

⁷National 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 3.

Property Rights Law

Article 42: For the purpose of public interest, the collectively-owned land, houses and other real property owned by institutes or individuals may be expropriated in line with the procedure and within the authority provided by laws.

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

...No institution or individual shall withhold, misappropriate, embezzle or privately divide the compensation for expropriation.⁸

According to Chengri Ding⁹ from the University of Maryland, the government pays farmers a compensation package based on three components factoring in land value, resettlement subsidies and improvements to the land:

Since there is no market data for farmland prices, the government pays collectives and peasants a compensation package that includes three components: compensation for the land itself; resettlement subsidies; and compensation for improvements to the land and for crops growing on the requisitioned land. The law stipulates that compensation for cultivated land shall be six to ten times the average annual output value of the acquired land for the three years preceding the requisition.¹⁰

Ding also highlights several problems with the land acquisition and compensation process. Specifically he notes that farmers' property rights are poorly protected; the lack of policy guidelines on how to divide compensation between relevant parties; government corruption; inconsistent compensation amounts; and the problem of resettlement:

Several significant issues are emerging from this land acquisition process. The first relates to the ill-defined concept of property rights and development rights: who is entitled or empowered to acquire land from peasants for urban development? Currently any entity can acquire land from peasants as long as it can justify public interest or purpose...

The second issue is who is entitled to compensation and at what level. The village collective is the basic socioeconomic organization in rural areas, and its largest asset is the land collectively owned by the members. Even though laws recognize that both the collective and its members should be entitled to sharing compensation, there are no specific policy guidelines or regulations on how to divide the shares in different situations. ...

To make matters worse, different levels of governments take a cut out of the monetary compensation that is supposed to go to the farmers. ...

⁸ National People's Congress of the People's Republic of China 2007, *Property Rights Law of the People's Republic of China* (Promulgated 16 March 2007 & Effective 1 October 2007), Lehman, Lee & Xu PRC Law Firm website <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/property-rights-law-of-the-peoples-republic-of-china.html> – Accessed 23 February 2010 – Attachment 4.

⁹ Chengri Ding, Ph.D. is an Associate Dean and Associate Professor at the University of Maryland. He presently heads the Lincoln Institute of Land Policy's China Program, which was established in 2003 to engage with Chinese in land and urban policy reforms.

¹⁰ Ding, C. 2004, 'Effects of Land Acquisition on China's Economic Future', *Land Lines*, January, vol.16, no.1 http://www.lincolnst.edu/pubs/867_Land-Lines--January-2004--Volume-16--Number-1 – Accessed 20 April 2010 – Attachment 6.

The third issue is the equity of compensation, which involves both the level of compensation as well as variations in payments in different situations. Since there are no market data that can truly reflect the price of farmland, compensation hardly reflects market conditions and it varies dramatically from case to case, mainly depending on who plans to develop the land. For instance, profitable projects such as commercial housing and business developments can afford to pay higher prices for land than public transportation and infrastructure projects such as highways, railroads, airports and canals. ...

... Finally, it is becoming increasingly difficult and costly to resettle peasants. The LAL [Land Administration Law] which has since been replaced requires that the quality of life of farmers shall not be adversely affected by compulsory land acquisition, but does not specify concrete measures to achieve this goal. As a result, many peasants end up living under worse conditions several years after their land was taken than they did before.¹¹

According to Ding and others, the compensation process is corrupt. A July 2009 article by John Lee¹², published in *The Guardian*, quotes researchers at the Chinese Academy of Social Sciences (a government body), estimating that over 40 million illegal land confiscations by local officials have occurred over the past decade. The article also notes that local officials collude with developers to seize the best plots of land and provide farmers with inadequate compensation:

It is not difficult to know why so many of China's 700 million rural citizens resort to protests. The majority of these concern land. Studies by researchers at the Chinese Academy of Social Sciences conservatively estimate that there have been more than 40 million illegal land confiscations by local officials over the past decade. Such confiscations are rising by about 2 million new instances every year. Local officials relying on extra-legal sources of revenue strike a bargain with developers. The best plots of land are identified and seized and farmers are given woefully inadequate compensation.¹³

The government has recently taken steps to provide farmers with recourse to arbitration over land disputes. In June 2009, the government passed a law on rural land disputes, which came into effect on 1 January 2010. The law is intended to help 'settle disputes concerning rural land contract management in a timely and just manner'. According to an article by *Xinhua News Agency*:

The law sets out principles related to the use of mediation or arbitration to settle land disputes. When a dispute arises, the parties concerned can reach a compromise on their own, or resort to a village committee or local government for mediation. If reconciliation fails, the parties can apply for arbitration by a local committee or take their case to court. Under the law, local governments are to set up arbitration committees on rural land contract management disputes at the county or city levels. The committees will be responsible for hiring arbitrators, hearing disputes and supervising the process of arbitration. They should inform applicants of whether they will accept cases in less than five working days. The law also

¹¹ Ding, C. 2004, 'Effects of Land Acquisition on China's Economic Future', *Land Lines*, January, vol.16, no.1 http://www.lincolnst.edu/pubs/867_Land-Lines--January-2004--Volume-16--Number-1 – Accessed 20 April 2010 – Attachment 6.

¹² John Lee is a foreign policy research fellow at the Centre for Independent Studies in Sydney and a visiting fellow at the Hudson Institute in Washington

¹³ Lee, J. 2009, 'China's empty land reform', *The Guardian*, 4 July <http://www.guardian.co.uk/commentisfree/2009/jul/04/china-land-reform> – Accessed 14 October 2009 – Attachment 7.

specifies that disputes over land expropriation that involve government organizations are not subject to arbitration and must be resolved through administrative appeals or litigation. ...The law represents an attempt to standardize the arbitration process, with land contract disputes having become more frequent and varied in recent years. These disputes are addressed as “a factor affecting rural harmony and stability”.¹⁴

Despite a clear demonstration of the government’s intent to provide farmers with an avenue for settling land disputes, no reports of the law being applied were found. As a result it is unclear how the new legislation has affected the situation on the ground, with millions of people forcibly removed from rural land in 2009, according to the US Department of State (USDOS).¹⁵ The new law has already attracted some criticism from observers, including from Lee who considers it will make no difference to farmers – due to corrupt law enforcement and political influence over the judiciary– see Attachment 7.

4. Are people detained for complaining about compensation or appealing to higher levels of government?

Yes. There are numerous reports of people being detained for complaining about compensation or appealing to higher levels of government. For example, in March 2010, authorities detained an official in the state run media who called for an end to forced evictions in the city of Wuxi. As reported by *Radio Free Asia*:

.. in the eastern city of Wuxi, authorities detained Hui Linqun, an official in the state-run media who wrote to the NPC calling for an end to forced evictions in the city. “The government is behaving in a blatantly criminal manner,” Hui wrote in a letter that was posted online Tuesday. “Corruption grows ferociously, spreading like wild grass, where political power is allowed to allocate resources on behalf of the municipality.” “In Wuxi, the government is ... paying compensation well below market rates.... Some of the rural families who were allowed to get rich under the policies of Deng Xiaoping have now found themselves poor again,” he said.¹⁶

The USDOS has also documented the detention of individuals who have appealed land compensation issues to higher levels of government. For example, in 2007, 30 farmers were detained for attempting to appeal a land dispute to a higher level of government:

In 2007, 30 farmers from Chengdu, Sichuan Province, who travelled to Beijing seeking resolution of a land dispute were abducted and taken to a military base, where they were tortured, threatened, and starved. One of them allegedly attempted suicide, “because (the guards) didn’t allow me to sleep or eat in order to force me to write self-criticisms.”¹⁷

¹⁴ ‘China’s legislature eyes stability with law on rural land disputes meditation’ 2009, *China View*, 27 June http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm – Accessed 20 April 2010 – Attachment 8.

¹⁵ United States Department of State 2010, *2009 Country Reports on Human Rights Practices*, US State Department website, Section 1 Respect for the Integrity of the Person, Including Freedom From: F. Arbitrary Interference with Privacy, Family, Home, or Correspondence, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 20 April 2010 – Attachment 9.

¹⁶ ‘China: Petitioners slam rights record’ 2010, *Radio Free Asia*, 12 March <http://www.unhcr.org/refworld/docid/4bab813728.html> – accessed 21 April 2010 – Attachment 10.

¹⁷ United States Department of State 2010, *2009 Country Reports on Human Rights Practices*, US State Department website, Section 1 Respect for the Integrity of the Person, Including Freedom From: Section C. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 20 April 2010 – Attachment 9.

Petitioners who have raised their grievances over land issues have also been detained and forcibly returned to their home provinces. This practice of detention is likely to continue with a structure of incentives in place for local officials. According to the USDOS, most petitions address grievances about ‘land, housing, entitlements, the environment, or corruption’:

The ability of an individual to petition the government is protected by law; however, persons petitioning the government continued to face restrictions on their rights to assemble and raise grievances. Most petitions addressed grievances about land, housing, entitlements, the environment, or corruption. Most petitioners sought to present their complaints at national and provincial “letters and visits” offices. ...Although regulations banned retaliation against petitioners, reports of retaliation continued. This was partly due to incentives provided to local officials by the central government to prevent petitioners in their regions from raising complaints to higher levels. Incentives included provincial cadre evaluations based in part on the number of petitions from their provinces. This initiative aimed to encourage local and provincial officials to resolve legitimate complaints but also resulted in local officials sending security personnel to Beijing and forcibly returning the petitioners to their home provinces. Such detentions occurred before and after the enactment of the new regulations and often went unrecorded. In August the General Office of the State Council issued new guidelines for handling petitioners. According to the new rules, officials are to be sent from Beijing to the provinces to resolve petition issues locally, thereby reducing the number of petitioners entering Beijing. Other new rules include a mandated 60-day response time for petitions and a regulation instituting a single appeal in each case.¹⁸ (section freedom of assembly)

A July 2009 Freedom in the World report published by Freedom House also includes information on the ‘tens of thousands of public protests’ over issues such as land confiscation in China, noting authorities’ ill-treatment of those who protest over perceived wrongdoings by local officials. Specifically the report states that individuals who resist eviction, seek legal redress, or organise protests face the prospect of physical violence:

...workers, farmers, and others have held tens of thousands of public protests in recent years over wrongdoing by local officials, especially land confiscation, corruption, and fatal police beatings. ... Despite a growing body of legislation outlining property rights – including a 2007 Property Rights Law – protection remains weak in practice, and all land is formally owned by the state. Tens of thousands of forced evictions in urban centers and illegal land confiscations in rural areas take place each year, often with inadequate compensation. Individuals who resist eviction, seek legal redress, or organize protests face physical violence at the hands of local police or thugs hired by property developers.¹⁹

Human Rights Watch has also published a report which documents cases of retaliation and abuses against Chinese petitioners – see pages 40–43 in Attachment 15.

¹⁸ United States Department of State 2010, *2009 Country Reports on Human Rights Practices*, US State Department website, Section 2 Respect for Civil Liberties, Including: b. Freedom of Peaceful Assembly and Association, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 20 April 2010 – Attachment 9.

¹⁹ Freedom House 2009, *Freedom in the World 2009: China*, July <http://freedomhouse.org/template.cfm?page=22&country=7586&year=2009> cited in UK Home Office 2009, *Country of Origin Information Report: China*, 1 October, p.53 – Attachment 11.

5. Do police protect people from violence from money lenders?

There is limited information on police protecting, or not protecting, people from violence from money lenders. Informal lending is widespread in China, including in Fujian, and ‘on the whole, the government has turned a benevolent eye toward illicit finance.’²⁰ ‘Grey market’ lending ranges from individual loan sharking to organised criminal networks to microfinance schemes run by family networks (known as ‘hui’).²¹ One source from 2005 indicates that authorities have cracked down on money lenders; however, it must be noted that authorities acted in response to violent crimes and that the money lenders were part of an organised gang:

Four people were arrested for murder in the city of Zhongshan in March, and during interrogation they admitted belonging to a Macao loan shark gang. They were convicted of killing a local clinic owner who failed to repay debts valued at more than 1.8 million yuan (US\$216,000). In March, police in Zhuhai arrested 16 loan shark suspects. The gang kidnapped four mainlanders who lost large sums of money and borrowed from the Macao loan sharks to repay their debts. The prisoners were kept in a wooden hut for two days until police got them out.²²

No reports of violence stemming from family/friend disputes over money lending could be found. As a result there is no reporting of police action, or inaction, in relation to this type of dispute.

A previous RRT Country Advice Response CHN34762 from May 2009 provides general information on tactics adopted by the authorities to tackle organised crime.

²⁰ Fourney. M. 2004, ‘China’s Shadow Banks’, *Time Magazine*, 15 November
<http://www.time.com/time/printout/0,8816,782173,00.html> – Accessed 20 April 2010 – Attachment 12.

²¹ Fourney. M. 2004, ‘China’s Shadow Banks’, *Time Magazine*, 15 November
<http://www.time.com/time/printout/0,8816,782173,00.html> – Accessed 20 April 2010 – Attachment 12.

²² ‘Guangdong police arrest 20 loan sharks’ 2005, *China View*, 31 May – Accessed 24 April 2010
http://news.xinhuanet.com/english/2005-05/31/content_3024985.htm – Attachment 13.

Attachments

1. Map of Kemen (“Ke Gate”) Village (可门村), Donghan Town (东瀚镇), Fuqing City, Fujian from Google Maps <http://maps.google.com/> – Accessed 13 April 2010.
2. Quanlin, Q. 2009 ‘Pingtan county economic zone will invite Taiwan investments’ 26 October http://www.chinadaily.com.cn/bizchina/2009-10/26/content_8848556.htm
3. 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.
4. National People’s Congress of the People’s Republic of China 2007, *Property Rights Law of the People’s Republic of China* (Promulgated 16 March 2007 & Effective 1 October 2007), Lehman, Lee & Xu PRC Law Firm website <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/property-rights-law-of-the-peoples-republic-of-china.html> – Accessed 23 February 2010.
5. Chan, N. 2006, ‘Recent Reform Of China’s Rural Land Compensation Standards’ Pacific Rim Property Research Journal, vol.12, no.1.
6. Ding, C. 2004, ‘Effects of Land Acquisition on China’s Economic Future’, Land Lines, January, vol.16, no.1 http://www.lincolninst.edu/pubs/867_Land-Lines--January-2004--Volume-16--Number-1 – Accessed 20 April 2010.
7. Lee, J. 2009, ‘China’s empty land reform’, *The Guardian*, 4 July <http://www.guardian.co.uk/commentisfree/2009/jul/04/china-land-reform> – Accessed 14 October 2009.
8. ‘China’s legislature eyes stability with law on rural land disputes meditation’ 2009, *China View*, 27 June http://news.xinhuanet.com/english/2009-06/27/content_11609910.htm – Accessed 20 April 2010.
9. United States Department of State 2010, *2009 Country Reports on Human Rights Practices*, US State Department website, 11 March www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm – Accessed 20 April 2010.
10. ‘China: Petitioners slam rights record’ 2010, *Radio Free Asia*, 12 March <http://www.unhcr.org/refworld/docid/4bab813728.html> – Accessed 21 April 2010.
11. Freedom House 2009, *Freedom in the World 2009: China*, July <http://freedomhouse.org/template.cfm?page=22&country=7586&year=2009> cited in UK Home Office 2009, *Country of Origin Information Report: China*, 1 October.
12. Fourny. M. 2004, ‘China’s Shadow Banks’, *Time Magazine*, 15 November <http://www.time.com/time/printout/0,8816,782173,00.html> – Accessed 20 April 2010.
13. ‘Guangdong police arrest 20 loan sharks’ 2005, *China View*, 31 May http://news.xinhuanet.com/english/2005-05/31/content_3024985.htm – Accessed 24 April 2010.

14. Map of Fuqing City (includes peninsula townships) from Google Maps
<http://maps.google.com/>
15. 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.