



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN37490 – Fujian Province –
Land confiscation – Land compensation –
Petitioners – Compulsory acquisition
28 September 2010

1. Deleted.
2. Deleted.
3. **Is there any information on the treatment of petitioners who protest against inadequate land compensation?**

The most recent US Department of State report on China provides some examples of the treatment of those protesting against the confiscation of land and inadequate compensation. Demonstrations with political or social themes, such as those concerning land disputes, were reportedly “broken up quickly, sometimes with excessive force”. It is also reported that “persons petitioning the government continued to face restrictions on their rights to assemble and raise grievances”, even though such rights are protected by law. Reports of retaliation against petitioners were evident throughout 2009, in part “due to incentives provided to local officials by the central government to prevent petitioners in their regions from raising complaints to higher levels”. In 2007, a group of farmers “seeking resolution of a land dispute were abducted and taken to a military base, where they were tortured, threatened, and starved”. In addition, a land rights activist was among many political prisoners who remained in detention at the end of 2009, while an internet writer was sentenced to 18 months imprisonment “for publicizing the efforts of farmers who fought local officials over land rights”.¹ The Department of Foreign Affairs and Trade (DFAT) advised in October 2008 that “protests and arrests relating to land resumption in China are common but rarely reported in the state media or acknowledged by Chinese authorities”.²

Country Advice provided in August 2009 refers to sources that suggest that protesters against land confiscation and inadequate compensation may be targeted for ill treatment by the Chinese authorities.³ A 2008 *BBC News* report identifies a violent clash between demonstrators and police in Gansu Province, during a protest over land seizures in which “thousands of people angry at having to relocate to make way for government developments used chains and axes to attack police”. It is reported that several people

¹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009: China (includes Tibet, Hong Kong, and Macau)*, 11 March, Sections 1b, 1e, 2a, 2b – Attachment 5

² Department of Foreign Affairs and Trade 2008, *DFAT Report 894 – China: RRT Information Request: CHN33731*, 1 October – Attachment 6

³ RRT Research & Information 2009, *Research Response CHN35302*, 26 August (Question 1) – Attachment 7

were injured and property was damaged in the violence.⁴ The UK Home Office reported in 2008 that the Chinese authorities used violence to suppress protests over land confiscation and detained land rights activists. The report identifies land confiscation and inadequate compensation as a major source of discontent in China, stating that “[p]rotests in rural areas have...become increasingly common in recent years”; several of which have turned violent as “[l]ocal authorities...employ excessive force to quell the disturbances”.⁵

A 2009 article in *The Economist* reports that “[t]he illegal seizure by local party officials of valuable farmland at the edge of burgeoning cities is a rampant and growing abuse...petitions...are so common that this week the government issued a regulation to stop petitioners coming to Beijing”. The report notes that in 2003, one woman “was arrested when she tried to lead a group of 24 farmers to Taiyuan, the provincial capital, to protest against the village leader’s confiscation of their land. She was thrown into prison, where she was beaten every three days and later contracted tuberculosis”.⁶ A 2009 *Asian News* article reports police intimidation and arrests of residents in Zhejiang “for protesting against what they believe is inadequate compensation for farmland that was seized from them some time ago”. It is also reported that “[a]ccording to Interior Ministry figures, some 87,000 incidents occurred last year involving residents and the authorities as a result of economic disputes like forced expropriations and unfair compensation”.⁷

A 2006 paper by Thomas Lum provides further examples of violent clashes between police and demonstrators over land confiscation and compensation. Protests in rural areas include the following:

- In January 2006, hundreds or thousands of protesters clashed with police over inadequate compensation for farmland taken for industrial use in Panlong village, Sanjiao township, Guangdong province. A teenage girl reportedly was killed.
- In December 2005, a dispute over the construction of an electricity generating plant and related property seizures culminated in a violent clash in Dongzhou village near Shanwei city, Guangdong province, which 3-20 demonstrators were killed. PRC authorities suspended the deputy police chief of Shanwei, restricted movement in and out of the area, imposed a news blackout, and arrested three protest leaders.
- ...
- In June 2005, about 100 miles southwest of Beijing, approximately 300 hired thugs attacked a group of farmers who had camped on disputed land that the local government had planned to use to build a power plant. The farmers protested the lack of proper compensation for their land. Six villagers reportedly were killed in the attack, which was captured on video by a protester and shown on Chinese websites. Communist authorities fired the local party chief and mayor and returned the farmland.⁸

⁴ ‘Clashes at China land protest’ 2008, *BBC News*, 19 November <http://news.bbc.co.uk/2/hi/asia-pacific/7737262.stm> – Accessed 24 August 2009 – Attachment 8

⁵ UK Home Office 2009, *Country of Origin Information Report – China*, April – Attachment 9

⁶ ‘A murder in China’ 2009, *The Economist*, 20 August

http://www.economist.com/world/asia/PrinterFriendly.cfm?story_id=14259091 – Accessed 25 August 2009 – Attachment 10

⁷ ‘Zhejiang: police raid against farmers victimised by land confiscation’ 2009, *Asian News.It*, 14 May <http://www.asianews.it/index.php?l=en&art=15244&size=#> – Accessed 25 August 2009 – Attachment 11

⁸ Lum, T. 2006, *Social Unrest in China*, US Congressional Research Service, 8 May, pp.3-5 <http://www.fas.org/sgp/crs/row/RL33416.pdf> – Accessed 24 August 2009 – Attachment 12

In addition, Professor Lianjiang Li of the Chinese University of Hong Kong reported in 2006 that protesters and petitioners against insufficient land compensation have received harsh treatment by the authorities and suffered from police crackdowns. Peaceful petitioners reportedly face fines, destruction of their properties, arrest and detention, physical violence, public humiliation, and being framed for other crimes. In 2004, the Chinese Academy of Social Sciences reported that “hundreds of farmers were injured, 3 killed, and over 160 arrested in 87 clashes that year between farmers and police over land appropriation”.⁹ The *BBC News* reported in 2005 that “[p]aramilitary police last week opened fire on villagers protesting over the seizure of land for a power plant in Dongzhou, Guangdong province. The government has said three people were killed while villagers say that up to 20 were shot dead”.¹⁰

Country Advice provided in September 2009 discusses the treatment of protesters against land confiscation in Fujian Province, referring to a number of sources.¹¹ For example, the *South China Morning Post* reported that although a mass protest against the development of a sewage treatment plant in Fujian in late 2009 turned violent, resulting in “a violent clash between angry villagers and police”, riot police were withdrawn by the authorities and no protesters were arrested. In addition, “[t]he government promised to compensate oyster farmers, who have seen their businesses ruined as their reputation suffered, and promised to treat cancer patients”.¹² The *Epoch Times*, however, reported that in November 2005, a protest over forced land expropriation in Fujian Province was suppressed by more than 100 armed police, resulting in “a dozen villagers [being] admitted to the hospital, including a 55-year-old person in critical condition who required head surgery”.¹³ Furthermore, in 2004 *USA Today* reported a protest over land confiscation in the village of Cangshan, near Fuqing city, which was violently suppressed by the local authorities.¹⁴

Another Country Advice from February 2008¹⁵ refers to two Amnesty International reports that highlight protests over land requisition, legal disputes about land compensation, and the detention of land rights activists. For example, “Gao Lading, a farmer who had spearheaded a two-year campaign against land seizures in Sanchawan village, Shaanxi Province, was sentenced to 15 years’ imprisonment in January 2005... He was convicted of engaging in “illegal gatherings” and “disturbing public order” in connection with his activities on behalf of local farmers whose land had reportedly been seized by local officials with little compensation”. Lading was arrested along with 26 other people, following violent protests in 2004 which culminated in police using tear gas and firing rubber bullets at protesters. Many of those arrested were sentenced to up to

⁹ Li, L. 2006, ‘Driven to Protest: China’s Rural Unrest’, *Current History*, 14 August, pp.250-53
http://www.currenthistory.com/org_pdf_files/105/692/105_692_250.pdf – Accessed 11 October 2007 – Attachment 13

¹⁰ Lim, K. ‘China scholars condemn shootings’ 2005, *BBC News*, 13 December <http://news.bbc.co.uk/2/hi/asia-pacific/4523504.stm> – Accessed 25 August 2009 – Attachment 14

¹¹ RRT Research & Information 2009, *Research Response CHN35436*, 17 September – Attachment 15

¹² Choi, C. 2009, ‘Villagers seize sewage plant as evidence in pollution row’, *South China Morning Post*, 3 September – Attachment 16

¹³ Zhen, W. 2006, ‘Chinese Regime to Use Military to Suppress Protesters’, *Epoch Times*, 20 November <http://www.theepochtimes.com/news/6-11-20/48361.html> – Accessed 9 September 2009 – Attachment 17

¹⁴ Lynch, D. 2004, ‘Discontent in China boils into public protest’, *USA Today*, 14 September http://www.usatoday.com/news/world/2004-09-14-china-protest_x.htm – Accessed 9 September 2009 – Attachment 18

¹⁵ RRT Research & Information 2008, *Research Response CHN32921*, 17 February – Attachment 1

three year's imprisonment.¹⁶ In addition, Zheng Enchong, a Shanghai lawyer who represented families evicted from their homes with little compensation due to urban development, "was detained in June 2003, days after a group of evicted residents he had advised appeared in court attempting to sue the authorities for adequate compensation".¹⁷

Additional Country Advice from previous years provides similar information on the ill-treatment by the authorities of individuals protesting against land confiscation and inadequate compensation.^{18 19 20 21 22 23}

4. Please provide background as to the law regarding compulsory acquisition of land in Fujian.

Laws which are applicable to China more generally include the *Property Rights Law of the People's Republic of China (2007)* and the *Land Administration Law of the People's Republic of China (2004)*. Article 42 of the *Property Rights Law of the People's Republic of China (2007)* states that:

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.

Where houses and other real properties of institutes and individuals are expropriated, compensations for demolition and resettlement shall be paid according to law in order to maintain the legal rights and interests of the expropriated; where individual residential house is expropriated, the residential conditions of the expropriated shall be guaranteed.

No institution or individual shall withhold, misappropriate, embezzle or privately divide the compensation for expropriation.²⁴

Article 2 of the *Land Administration Law of the People's Republic of China (2004)* states that "[t]he state may make expropriation or requisition on land according to law for public interests, but shall give compensations accordingly". In terms of compensation, the law states in Article 47 that "[i]n expropriating land, compensation shall be made according to the original purposes of the land expropriated":

¹⁶ Amnesty International 2005, *People's Republic of China: Human Rights Defenders At Risk – Update*, ASA 17/002/2005, 1 March – Attachment 19

¹⁷ Amnesty International 2004, *People's Republic of China: Human Rights Defenders at Risk*, 6 December – Attachment 20

¹⁸ RRT Research & Information 2007, *Research Response CHN32404*, 15 October – Attachment 21

¹⁹ RRT Country Research 2007, *Research Response CHN31747*, 5 June – Attachment 22

²⁰ RRT Country Research 2006, *Research Response CHN31124*, 15 December – Attachment 23

²¹ RRT Country Research 2006, *Research Response CHN30705*, 11 October – Attachment 24

²² RRT Country Research 2006, *Research Response CHN30369*, 26 July – Attachment 25

²³ RRT Country Research 2005, *Research Response CHN17233*, 14 March – Attachment 26

²⁴ Chinese Government 2007, *Property Rights Law of the People's Republic of China*, Adopted at the National People's Congress on 16 March 2007 <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/property-rights-law-of-the-peoples-republic-of-china.html> – Accessed 21 December 2007 – Attachment 27

Compensation fees for land expropriated include land compensation fees, resettlement fees and compensation for attachments to or green crops on the land. The land compensation fees shall be 6-10 times the average output value of the three years preceding the expropriation of the cultivated land. The resettlement fee shall be calculated according to the number of agricultural population to be resettled. The number of agricultural population to be resettled shall be calculated by dividing the amount of cultivated land expropriated by the per capital land occupied of the unit whose land is expropriated. The resettlement fees for each agricultural person to be resettled shall be 4-6 times the average annual output value of the three years preceding the expropriation of the cultivated land. But the maximum resettlement fee per hectare of land expropriated shall not exceed 15 times of the average annual output value of the three years prior to the expropriation.

The standards for land compensation and resettlement fees for land expropriated shall be determined by various provinces, autonomous regions and municipalities in reference to the land compensation fees and resettlement fees for cultivated land expropriated.

... Whereas the land compensation fees and resettlement fees paid according to the provisions of the second paragraph of this article are not enough to maintain the original level of living, the resettlement fees may be increased with the approval of the people's governments of provinces, autonomous regions and municipalities. But the combined total of land compensation fees and resettlement fees shall not exceed 30 times the average output value of the three years prior to the expropriation.

In special circumstances, the State Council may raise the standards for land compensation and resettlement fees for land expropriated according to the social and economic development level.²⁵

Previous Country Advice from February 2010²⁶ refers to other laws and regulations that call for appropriate compensation for land, including Chapters 2 and 3 of the 2001 *Urban Housing Demolition and Relocation Management Regulations*,²⁷ and Article 6 of the 2007 *Real Estate Management Law*.²⁸

In Fujian Province, the provincial government follows the *Procedures of Fujian Province on the Implementation of Land Administration Law of the People's Republic of China (Adopted at the 14th Session of the Standing Committee of the Ninth Fujian Provincial People's Congress on October 22, 1999 and effective as of January 1, 2001)*. This specific document could not be located; however, a 2005 Fujian Provincial Communications Department report on the Fujian Rural Roads Reconstruction Project quotes these procedures in relation to compensation and resettlement for those affected by land confiscations for road construction. Standards for land compensation in the Fujian Rural Roads Reconstruction Project are outlined as follows:

²⁵ 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 28

²⁶ RRT Country Advice 2010, *Country Advice CHN36230*, 23 February – Attachment 29

²⁷ State Council of China 2001, *Urban Housing Demolition and Relocation Management Regulations*, 6 June US Congressional-Executive Commission on China (CECC) website <http://www.cecc.gov/pages/virtualAcad/index.php?showsingl=2335> – Accessed 23 February 2010 – Attachment 30

²⁸ National People's Congress of the People's Republic of China 2007, *Law of the People's Republic of China on Urban Real Estate Administration*, (1994 – amended 30 August 2007), Lawinfochina website <http://www.lawinfochina.com/law/display.asp?db=1&id=6353&keyword=real%20estate> – Accessed 23 February 2010 – Attachment 31

- (1) Compensation for requisition of cultivated land, which refers to paddy field, vegetable plot and fish pond, shall be eight to ten times the average annual output value of land of the same type for three years preceding such requisition; if it refers to other cultivated land, compensation shall be six to eight times the average annual output value of land of the same type for three years preceding such requisition;
- (2) Compensation for requisition of orchards or other cash tree land shall be 60% to 70% of compensation for paddy field; compensation for the original cultivated land shall be the same as compensation for land of the same type;
- (3) Compensation for non-cash tree land shall be 40% of compensation for paddy field;
- (4) Compensation for water surfaces or tidal flats for aquaculture shall be 60% to 70% of compensation for paddy field;
- (5) Compensation for saltpans shall be 50% of compensation for paddy field;
- (6) Compensation for other unutilized land shall be 15% of compensation for paddy field.

Standards for compensation of houses are outlined as follows:

According to the laws, regulations and policies of PRC and the related principles of the World Bank, standards for compensation for houses for Fujian Highway Project III – the World Bank Loaned Fujian Rural Roads Reconstruction Project shall be determined according to replacement cost. In the course of house reconstruction, the project owner shall pay all expenses in land leveling, electric connection, water connection and road connection, etc.

The principles relating to compensation for private house demolition and reconstruction are as follows:

A. Compensation for house demolition shall be made at replacement cost with any deduction, taxation and depreciation. Compensation shall be directly paid to the displaced persons (or households), any intermediary agency shall not hold back or spend on behalf of the displaced persons (or households) the compensation funds.

B. If building materials of the demolished houses belong to the displaced persons (or households), they shall use these materials for new house construction. The value of these materials shall not be deducted from compensation for house demolition paid to the displaced persons (or households).

C. Payment of compensation for house demolition shall be made to the displaced persons (or households) prior to commencement of new house construction. If payment of compensation for house demolition is made in installments, each sum of such compensation shall be paid in full prior to commencement of new house construction.

...(3) Public Consultation

The township governments or villagers' committees shall fully consult with the displaced persons (or households) to reach a consensus before determining the locations and ways of house demolition and reconstruction and the distribution of compensation funds.²⁹

²⁹ Fujian Provincial Communications Department 2005, *Fujian Highway Project III – the World Bank Loaned Fujian Rural Roads Reconstruction Project: Resettlement Policy Framework*, December, pp.19-20, 22-25
<http://go.worldbank.org/FFBNN5HND0> http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/04/14/000012009_20060414132038/R

Attachments

1. RRT Research & Information 2008, *Research Response CHN32921*, 17 February.
2. Deleted.
3. Deleted.
4. Deleted.
5. US Department of State 2010, *Country Reports on Human Rights Practices for 2009: China (includes Tibet, Hong Kong, and Macau)*, 11 March.
6. Department of Foreign Affairs and Trade 2008, *DFAT Report 894 – China: RRT Information Request: CHN33731*, 1 October.
7. RRT Research & Information 2009, *Research Response CHN35302*, 26 August.
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<http://www.fas.org/sgp/crs/row/RL33416.pdf> – Accessed 24 August 2009.
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15. RRT Research & Information 2009, *Research Response CHN35436*, 17 September.
16. Choi, C. 2009, ‘Villagers seize sewage plant as evidence in pollution row’, *South China Morning Post*, 3 September. (FACTIVA)

17. Zhen, W. 2006, 'Chinese Regime to Use Military to Suppress Protesters', *Epoch Times*, 20 November <http://www.theepochtimes.com/news/6-11-20/48361.html> – Accessed 9 September 2009.
18. Lynch, D. 2004, 'Discontent in China boils into public protest', *USA Today*, 14 September http://www.usatoday.com/news/world/2004-09-14-china-protest_x.htm – Accessed 9 September 2009.
19. Amnesty International 2005, *People's Republic of China: Human Rights Defenders At Risk – Update*, ASA 17/002/2005, 1 March.
20. Amnesty International 2004, *People's Republic of China: Human Rights Defenders at Risk*, 6 December.
21. RRT Research & Information 2007, *Research Response CHN32404*, 15 October.
22. RRT Country Research 2007, *Research Response CHN31747*, 5 June.
23. RRT Country Research 2006, *Research Response CHN31124*, 15 December.
24. RRT Country Research 2006, *Research Response CHN30705*, 11 October.
25. RRT Country Research 2006, *Research Response CHN30369*, 26 July.
26. RRT Country Research 2005, *Research Response CHN17233*, 14 March.
27. Chinese Government 2007, *Property Rights Law of the People's Republic of China*, Adopted at the National People's Congress on 16 March 2007 <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/property-rights-law-of-the-peoples-republic-of-china.html> – Accessed 21 December 2007.
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29. RRT Country Advice 2010, *Country Advice CHN36230*, 23 February.
30. State Council of China 2001, *Urban Housing Demolition and Relocation Management Regulations*, 6 June US Congressional-Executive Commission on China (CECC) website <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=2335> – Accessed 23 February 2010.
31. National People's Congress of the People's Republic of China 2007, *Law of the People's Republic of China on Urban Real Estate Administration*, (1994 – amended 30 August 2007), Lawinfochina website <http://www.lawinfochina.com/law/display.asp?db=1&id=6353&keyword=real%20estate> – Accessed 23 February 2010.
32. Fujian Provincial Communications Department 2005, *Fujian Highway Project III – the World Bank Loaned Fujian Rural Roads Reconstruction Project: Resettlement Policy Framework*, December <http://go.worldbank.org/FFBNN5HND0> <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/04/14/00001200>

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Accessed 19 February 2008.

33. RRT Research & Information 2008, *Research Response CHN33724*, 8 September.