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Abstract: land disputes and social unrest in China – a case study

Chinese law implicitly recognises rights to complain against government injustice. But as land disputes occurring in China at present illustrate, many Chinese peasants are being denied this right. One such dispute is discussed here: over a period of over ten years, thousands of peasants in China's southwest were affected by a process of 'requisitioning' of their collectively owned land for the purpose of urban development. They lost their farmland and their houses, while some property developers and city government officials made large profits. Their protest against this treatment, as exemplified in the efforts of one 'peasant representative', covers the main forms of citizens' protest in China today. An analysis of this case allows the following conclusions.

(1) While peasants are nominally collective owners of the land they live and work on, collective ownership regarding rural land is a fiction, because the rules to protect it are insufficient and systematically disregarded. This makes it more difficult – or indeed pointless - to determine when the taking of rural land is illegal according to property law rules.

(2) The recognition of rights to complain in Chinese law presupposes the possibility of something to complain about: of state wrongs. But the institutions available for the assertion of rights are dysfunctional. The role of administrative review procedures, in particular, is weakened by widespread adherence to a doctrine that disallows review of normative documents; and administrative authorities and courts often seek to avoid filing cases. Little substantive legal argument can be carried out as part of available legal procedures in such conditions. As a consequence, peasants engage in petitioning all the way up to central government, as well as in warfare with local officials.

(3) Those affected by state wrongs in the context of requisitioning and demolition and relocation are increasingly rights-assertive. In the absence of property rules giving them certainty of land rights, they fall back on their general right to be treated as equal citizens.