

IHRP Final Summer Internship Report

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The Centre for Comparative and Public Law

The CCPL is a non-profit virtual research centre at the University of Hong Kong Faculty of Law that focuses on public law and human rights issues, mainly by advancing research, providing platforms for dialogue and soliciting community involvement to facilitate social change. Although the CCPL focuses its efforts mainly on human rights issues in Hong Kong, it does also do significant work on issues in mainland China and the broader Pacific region.

My Work Experience

The CCPL at the University of Hong Kong Faculty of Law gave me a 'home base' in which to conduct my studies on the problem of forced expropriations in China. The Centre gave me significant autonomy to shape my research as I saw fit and provided me with contacts and resources along the way that were helpful in completing my project.

From the very beginning, I faced two overarching obstacles. The first obstacle was that my knowledge of Chinese law in general was significantly lacking. Legal development in China has been influenced by German, Soviet, and Western common law systems, as well as retaining its own unique, distinctive characteristics. Furthermore, the current legal system is new, dynamic, and constantly in flux. To overcome this knowledge gap, I spent the large part of the first month of the internship getting familiar with the Chinese legal system by reading books, academic journals, and dropping in on legal lectures at the Faculty of Law with exchange students from the University of California Santa Clara.

The second obstacle was language. At the beginning of my internship, my oral, reading, and written skills in Mandarin Chinese were very limited, essentially precluding me from (1) directly interviewing mandarin-speaking contacts and (2) reading legal documents and articles that had not already been translated into English. In an attempt to overcome this, I hired a mandarin tutor and worked at improving my reading skills. Although my language skills improved over this period, it still did not approach the necessary fluency by the end of the term. Fortunately, many of my interviewees could either speak English or Cantonese, which made communication easier. In other cases, I relied on translators to facilitate interviews, particularly during a week-long field research trip to various urban and rural areas in Guangdong and Guangxi provinces.

My Project

Coercive land grabs in China without proper compensation or relocation arrangements are an extremely common and widespread occurrence and the *de facto* number one cause of social grievance. It is estimated that around 50 to 60 million rural residents in China have lost land to development and expropriation since the 'opening and reform' (*gaige kaifang*) movement started in the late 1970s – half of these residents were left homeless and destitute, eking out a precarious existence. The focus of my paper eventually focused on three issues: (1) the dual track land tenure system, (2) the land

expropriation process, and (3) China's experimental land policy reforms aimed at alleviating the negative consequences of the first two issues.

The dual track land tenure system refers to the completely different land regimes that govern urban and rural Chinese. Due to China's unique political history, the concept of 'social public ownership' remains entrenched in official ideology and is reflected in state ownership of urban land and collective ownership of rural lands. In order to facilitate economic growth in the 1980s, China's leaders separated land ownership from land use rights, allowing urban Chinese to trade what essentially approached private ownership rights. However, rural land use rights remained highly restricted, could not be traded, and could only be used for agricultural purposes. Change has been resisted so far mainly for ideological reasons. This has resulted in rural farmers being left behind in China's rapid economic development as they cannot leverage their most important assets (land) in order to build wealth, greatly exacerbating income inequality between urban and rural China.

This leads to the process of land expropriation. For a country growing as quickly as China, demolition and new development occurs at an incredibly rapid pace. Urban residents can simply sell their land use rights directly to private developers at market prices. However in rural areas, in order to facilitate construction and development, collectively owned rural land must first be converted into urban land. The only way to do this is by having the local government expropriate, convert, and resell the land to developers. Compensation for rural expropriation is determined based off of the value of prior crop output – usually worth only a small fraction of the market value realized by private developers. In fact, it is estimated that rural farmers are only compensated at about 2.5-5% of the realizable market value. The rest of the land value accrues to local governments' budgets, corrupt officials, and private developers.

Another major problem in land expropriation occurs as a result of a generally weak state of rule of law in China. Local officials often do not follow procedures outlined by law and administrative complaints are often disregarded by a rather weak judiciary. Complainants may try alternative ways to make their case heard (for example, by petitioning to Beijing, staging demonstrations, holding out, inviting media and in some extreme cases, self-immolation), but they inevitably face significant obstacles in protecting their legal rights. This leads to systemic abuses and exploitation of evictees including, but not limited to, under-compensation, lack of alternative housing, intimidation, and sometimes outright violence.

Given the pervasiveness and severity of land grievances in China, the central government is rightfully concerned, particularly about potential impacts on social stability. The central government has much more at risk and far less to gain from the current land rights framework than local governments. In light of these concerns, the 2007 property law was expected to grant rural Chinese the same sort of land use rights as urban Chinese, but instead ended up perpetuating the current system. Rather than reflect land reform in the 2007 property law, Beijing has decided to adopt an incremental, experimental approach to land reform, allowing various pockets of China (such as Chengdu, Chongqing, and Shenzhen) to experiment with different versions of land rights liberalization before engaging in real efforts to nationalize reform. What fruits these efforts will bear have still yet to be seen.

Conclusion

My IHRP summer internship has been an excellent experience, broadening my perspective not only on Chinese law and policy, but also the role of academia in safeguarding and promoting human rights. I extend my sincerest gratitude to Sharron Fast, Flora Leung, Professors Simon Young, Fu Hualing, and Eva Pils, as well as the numerous contacts and interviewees in Hong Kong and in mainland China who were generous enough to share their time and knowledge with me. Of course, I also want to thank the International Human Rights Program and Director Renu Mandhane for making this all possible.