
Introduction

In March 2007, the photo on the cover of this book went viral online: a two-story brick building perched over a huge 17-meter deep excavated pit, like an isolated island in the ocean. The house, located in Chongqing, the mega-metropolis in southwestern China, belonged to a couple, Wu Ping and Yang Wu, who refused to make way for the local government's decision to expropriate the property. Until then, they had held out for more than two years while the other 280 households in the same area had all given up, moved out and made room for a commercial development project supported by the local government. Regarded by millions of netizens as a symbol of grassroots courage and perseverance, the house was widely applauded as the “toughest nail house in history.”¹

The reason that the house was called a “nail house” is not difficult to understand: it endured against the government order of expropriation just like a nail against a hammer. The picture soon attracted extensive media coverage and stirred up a heated public outcry. In defense of their house, Wu and Yang put up two banners around their building. One reads that “citizens' lawful private property must not be violated” and the other “the state respects and protects human rights,” both of which are excerpts from the 2004 amendment to the 1982 PRC Constitution. To millions of Chinese, the toughest nail house effectively becomes a public test case as to whether in China the “fundamental law of the country” really holds “supreme legal authority,” and whether the first-of-its-kind *Property Law* (*wuquan fa*) that had recently been passed would make any difference in reality.

In China today, incidents such as the nail house in Chongqing are common occurrences.² Most notably, in Wukan Village in Guangdong

¹ Jeremy Goldkorn, “Property Rights: the Coolest Nail House in History,” March 22, 2007, available at www.danwei.org/bbs/property_rights_the_coolest_na.php.

² For an incomplete list of the nail house incidents in China over the years, see “Cases of the Toughest Nail House in Various Localities (盘点各地最牛钉子户),” November 23, 2012, available at bbs.tianya.cn/post-worldlook-621557-1.shtml.

Province in 2011, a scandalous land-taking deal escalated into a full-blown standoff between villagers and the local government which dragged on for three months.³ In the end, the provincial government stepped in with a rather reconciliatory approach, which diffused the situation through negotiation and was applauded as an innovative model of governance in an authoritarian state.⁴ Similarly, the nail house in Chongqing was ultimately pulled out after the local authority conceded a satisfactory compensation package to the family.⁵ Nevertheless, these incidents, with their relatively peaceful endings, seem to be the exception rather than the rule. What have frequented the headlines over the years are stories of confrontation and conflicts, destruction and even death in land takings all over the country. In 2005, six farmers were killed and more than 100 others were seriously injured in Dingzhou in the Hebei province, when they were brutally attacked by dozens of armed men hired by the local authority to drive them away and seize their land.⁶ In 2009, Tang Fuzhen from Chengdu died from self-immolation after she pleaded, to no avail, with the local government to stop demolishing her house.⁷ In July 2016, the body of Gong Xuehui, a 60-year-old villager from the Yuelu District of Changsha city in Hunan, was found buried in the debris of her own house. Initially thought to be missing, she was found 21 days after her property was bulldozed without prior notice. Until then, she had insisted on staying and refused to accept the compensation and resettlement arrangements on offer. Early one morning in June, a group of black-uniformed men entered Gong's house by surprise and dragged her family out.⁸ The process was messy and chaotic, and Ms. Gong was somehow left behind. She became

³ For a detailed analysis, see Hualing Fu, "What Does Wukan Offer? Land-Taking, Law, and Dispute Resolution," in Fu Hualing and John Gillespie (eds.), *Resolving Land Disputes in East Asia: Exploring the Limit of Law* (Cambridge: Cambridge University Press, 2014).

⁴ Tie Zhang, "What Does the Wukan Transition Tell Us (乌坎转机"提示我们什么)," December 22, 2011, available at opinion.people.com.cn/GB/16677909.html; Rahul Jacob and Jamil Anderlini, "Wukan Offers Democratic Model for China," January 31, 2012, available at www.ft.com/content/989564ac-4b10-11e1-88a3-00144feabdc0?mhq5j=e3.

⁵ "Nail House in Chongqing Demolished," *China Daily*, April 3, 2007, available at www.chinadaily.com.cn/china/2007-04/03/content_842221.htm.

⁶ Philip Pan, "Chinese Peasants Attacked in Land Dispute," *Washington Post*, June 15, 2005, available at www.washingtonpost.com/wp-dyn/content/article/2005/06/14/AR2005061401542.html.

⁷ Roger Cohen, "A Woman Burns," *New York Times*, January 25, 2010, available at www.nytimes.com/2010/01/26/opinion/26iht-edcohen.html?_r=0.

⁸ Hui Xiao and Liangzi Sun, "Missing for 21 days, a Property Owner Died in Debris after Forceful Demolition (失踪21天, 长沙一业主殒命强拆废墟)," July 8, 2016, available at guancha.gmw.cn/2016-07/08/content_20882304.htm.

yet another name to be added to the long list of casualties in conflict-ridden land takings in China.

The Wu and Yang family, residents in Dingzhou and Wukan, Tang Fuzhen and Gong Xuehui, along with millions of other Chinese citizens, all live in an era when land takings are happening at a scale unprecedented in human history. Some have compared what is going on in socialist China today to the historical episode in capitalist England hundreds of years ago, suggesting that the People's Republic is experiencing a "new enclosure movement."⁹ Although it might be disputed whether or not such an analogy stands in its finer details, it is hardly deniable that land taking features prominently in the social and political landscape of contemporary China. It therefore constitutes a key to unlock the secret behind the transformation and challenges of the largest and fastest-growing developing country in the world. This book is an inquiry into this phenomenon from a legal perspective. What, then, does land taking mean in China?

1.1 Defining Land Taking in China

More than a couple of Chinese words have so far been used to denote compulsory acquisition of land by public authorities. This is because since the late nineteenth century, as will be demonstrated in this book, the idea of compulsory acquisition of land has been taken up by major political forces in China to fulfill distinct strategic objectives, and in different ways. "Land taking," literally translated as *zhengdi*, is the most broadly conceived term to express the idea. Although the term itself is never actually adopted in any statutory texts, it will be deployed as the umbrella concept to cover all kinds of mandatory public acquisition of land described and analyzed in this book. We start by looking at how land taking is defined in extant Chinese law.

Under Article 10 in the current PRC Constitution enacted in 1982,¹⁰ only two types of public land ownership exist in post-reform socialist China: state-owned urban land and collective-owned rural land. While

⁹ Qinglian He, *Traps of Modernization: Contemporary China's Economic and Social Problems* (现代化的陷阱: 当代中国的经济社会问题) (Beijing: Today's China Press, 1998), chapter 2.

¹⁰ The People's Republic of China has in total four written Constitutions to date, which were passed in 1954, 1975, 1978 and 1982. The 1982 Constitution is the one in effect today and has been subject to four amendments, in 1988, 1993, 1999 and 2004. Without specification, the Constitution means the 1982 Constitution as amended in 2004.

land should not be privately owned, aboveground structures such as buildings can be privately owned, which means that publicly owned land can be privately used. Against such a backdrop, there are two types of land takings in Chinese law. One is the transfer of use-rights for state-owned land from private holders back to the state, which is called the state power to withdraw (*shouhui*) land. Its statutory basis currently lies in Article 58 of the 2004 *Land Administration Law* (LAL).¹¹ When privately used state-owned land is withdrawn, privately owned property above the withdrawn land is concurrently expropriated by the state, with a different legal underpinning found in Article 13 of the Constitution, “The state may, for the public interest and in accordance with law, expropriate or requisition private property and make compensation for the private property expropriated or requisitioned.” The second type of land taking under present Chinese law is the power of the state to compulsorily transfer ownership of rural land from collectives to itself, which is enshrined in the third paragraph of Article 10 in the Constitution and is called the power of expropriation (*zhengshou*), which reads, “The state may, in the public interest, expropriate or requisition land and make compensation in accordance with law.”¹² Similar to the urban context, expropriation of rural collective land also involves the expropriation of private property, such as buildings and plants, thereon. This means that as a Chinese legal term “expropriation” refers to the state’s permanent taking of the ownership of any nonstate (communal and private) property on land or otherwise, as prescribed by Article 13 of the Constitution. Hence, in existing Chinese law, land taking can mean

¹¹ It reads, “Under any of the following circumstances, the land administration department of the people’s government concerned may, with the approval of the people’s government that has originally approved the use of land or that possesses the approval authority, withdraw the right to the use of the state-owned land: (1) The land is needed for public interest; (2) The use of the land needs to be readjusted for renovating the old urban area according to urban planning; (3) At the expiration of land transfer contract, the land user has not applied for extending the period or, if he has applied for such extension, the application is not approved; (4) The use of the originally allocated state-owned land is terminated because, among other things, the organization that used the land is dissolved or moved away; or (5) Highways, railways, airports or ore fields become abandoned with approval. The user granted with the land-use right shall be compensated appropriately when its right to the use of state-owned land is withdrawn according to the provisions of sub-paragraphs (1) and (2) in the preceding paragraph.” N.B. The PRC Land Administration Law was initially enacted in 1986 and subsequently revised in 1988, 1998 and 2004. The term first appeared in Article 19 of the 1986 and 1988 versions of the legislation and then in Article 58 of the 1998 version.

¹² The Chinese text is “国家为了公共利益的需要, 可以依照法律规定对土地实行征收或者征用并给予补偿。”

either the state withdrawal of use-rights of urban land it owns (and the expropriation of the private property thereon) or state expropriation of the ownership of rural collective land (as well as the private property thereon).

It is worth noting that in daily language it is demolition and relocation (*chaiqian*) that is most frequently used to refer to land takings, capturing rather bluntly the essence of the incident described. In the legal sense, “demolition and relocation” was once a statutory term used in the 1991 and 2001 *Regulation on the Management of Urban House Demolition and Relocation*, standing for the withdrawal of use-rights of state-owned urban land and the attendant expropriation of any private property above the land. This was officially changed by the 2011 *Regulation on Expropriation and Compensation of Houses above State-owned Land* (RECHSL), which replaces demolition and relocation with expropriation to refer to the taking of private property on state-owned land. Also worth noting is that land takings can be either permanent or temporary. Different terms have been used at different times over the last century to connote permanent land takings, including both requisition (*zhengyong*) and expropriation (*zhengshou*). The 2004 constitutional amendment eventually stipulates that expropriation means the permanent compensatory transfer of ownership to the state, while requisition refers to the temporary compensatory transfer of use-rights to the state.¹³ For the sake of reflecting the terminological change in history, both words will be used in their original form, with *zhengyong* translated as “requisition” and *zhengshou* as “expropriation,” although attention should be paid to the changed meaning of these terms over time.

This book focuses on permanent rural land takings, which is only part of China’s current land-taking regime. It should be admitted that before the 1982 Constitution was enacted to give shape to the present land-taking system there was no formal statutory distinction between rural and urban land, particularly in regards to legal title/ownership. Nonetheless, over the last century, the divide between rural and urban land has been ever present, and rural land continues to assume critical strategic importance in a predominantly agrarian country such as China, as evidenced by the Chinese Communist Party’s (CCP’s) distinctive rural land policies during both the revolutionary years and the PRC period. Against this background,

¹³ Zhaoguo Wang, “Explanatory Report on the Draft Constitutional Amendment at the Second Session of the Tenth National People’s Congress (关于中华人民共和国宪法修正案草案的说明),” March 8, 2004, available at www.people.com.cn/GB/shizheng/8198/31983/32185/2380223.html.

as will be demonstrated in this book, rural land takings have had a much longer and richer history in modern China than its urban analogue. Only with a better grasp of such a history, which has unfortunately been overlooked by previous research, are we able to arrive at a more contextualized understanding of the theories and praxes of compulsory public acquisition of private property in China. Moreover, as China is still urbanizing and industrializing, large-scale conversion of rural to urban land will continue for quite some time to come. As will be shown by this book, rural land taking plays a crucial role in this process. In this situation, besides providing a longer historical perspective, concentrating on rural land taking offers us an opportunity to look into the future.

1.2 Massive Rural Land Expropriation in Contemporary China

Over the years, stories such as those of the Wu and Yang family, Tang Fuzhen and Gong Xuehui, as frequently as they hit the headlines, are but a fraction of a large number of incidents of rural land takings across the country. According to statistical yearbooks published by China's Ministry of Land and Natural Resources (MLR), the total amount of rural land expropriated between 2004 and 2014 was 4,279,633.51 hectares – i.e. almost 10.58 million acres.¹⁴

As to the magnitude of rural land expropriation prior to the 2000s, a research team led by Chen Xiwen, a high-ranking Chinese official in charge of agricultural matters, concluded in 2008 that between 1978 and 2001, 28342500 *mu* or 4.67 million acres of rural land was expropriated.¹⁵ Apparently, there has been a huge spike in the scale of rural land expropriation in China since the turn of this century. Putting these two figures together, we have at least 15.28 million acres, or 61,512.2 km², of

¹⁴ Calculated from data recorded in MLR (ed.), *China Land Resource Statistical Yearbook 2011* (中国国土资源统计年鉴2011) (Beijing: Dizhi Press), p. 89; MLR (ed.), *China Land Resource Statistical Yearbook 2012* (中国国土资源统计年鉴2012) (Beijing: Dizhi Press), p. 77; MLR (ed.), *China Land Resource Statistical Yearbook 2015* (中国国土资源统计年鉴2015) (Beijing: Dizhi Press), p. 89. The MLR first started to publish official statistics on the scale of rural land expropriation annually from 2004.

¹⁵ Chen Xiwen, Zhao Yang and Luo Dan, *Review and Outlook of 30-Year Reform in Rural China* (中国农村改革三十年回顾与展望) (Beijing: Renmin Press, 2008), p. 192. The famed Chinese sociologist Yu Jianrong came up with an even higher figure that, between 1990 and 2002, 47.36 million *mu* or 7.8 million acres of cultivated land were taken for non-agricultural construction. See Jianrong Yu, "Land Loss and Job Loss by the Peasants is a Serious Political Problem (农民失地失业是一个严重的政治问题)" (2004) *1 Exploration and Free Views* (探索与争鸣) 10.

1.2 MASSIVE RURAL LAND EXPROPRIATION

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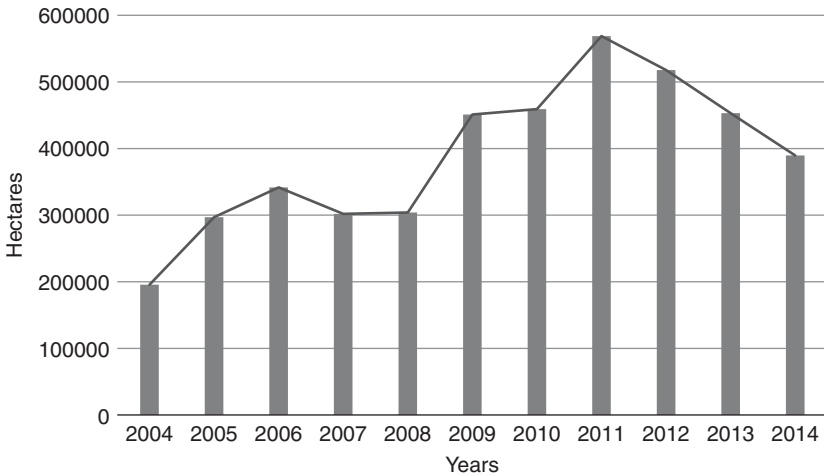


Figure 1.1 Massive and accelerating rural land expropriation in contemporary China

rural land taken in less than four decades – an area twice the size of Belgium. It is no exaggeration to say that rural land taking in contemporary China is unprecedented in human history.

Understandably, land takings of such enormous speed and scale have had a huge impact upon a huge number of China’s rural residents, who are consequently dubbed the “land-losing peasants” (*shidi nongmin*). Over the years, based on divergent calculating methods, leading Party newspapers¹⁶ and top-level officials¹⁷ have supplied different numbers of

¹⁶ In 2001, a People’s Daily report revealed that from 1997 to 2000 nearly 20 million peasants had experienced land expropriation and were in need of relocation and settlement. See Jun Xia, “No More One-off Compensation for Land Acquisition (土地征用不再实行一次性补偿),” *People’s Daily*, October 25, 2001, available at www.china.com.cn/zhuanti2005/txt/2001-10/25/content_5070170.htm. In 2004, another People’s Daily report suggested that there were 40 million land-losing peasants and the annual increase was two million. See Yong Gao, “How do Land-losing Peasants Live: Theoretical Discussion about the Problem of Land-losing Peasants (失去土地的农民如何生活: 关于失地农民问题的理论探讨),” *People’s Daily*, February 2, 2004, available at www.people.com.cn/GB/guandian/1034/2314535.html. In 2012, a third report on People’s Daily claimed that there were 40–50 million land-losing peasants at the time. See Yongping Zhao, “Land Acquisition and Demolition and Relocation: Why in a Hurry (征地拆迁何太急),” *People’s Daily*, July 15, 2012, available at society.people.com.cn/n/2012/0715/c1008-18518505.html.

¹⁷ In 2011, a member of the national Chinese People’s Political Consultative Committee (CPPCC) suggested that the total number of land-losing peasants in China was no less than 40 million. See “Committee Member Zhang Yuanfu: According to Expert Estimate, Land-losing Peasants in China at the Moment are no less than 40 Million (张富员委员:

land-losing peasants, increasing from 20 million between 1997 and 2001 to 40 million in 2004 and then to 40–50 million in 2012. Meanwhile, the media and academia have also put forward estimates that vary greatly, ranging from 20 million up to 2004,¹⁸ 47 million between 1987 and 2001,¹⁹ 40–50 million up to 2011,²⁰ 40.82 million between 1997 and 2009,²¹ 50.93–55.25 million between 1987 and 2001,²² 66.3 million until 2002,²³ 80 million until 2003,²⁴ 120 million until 2011²⁵ and 200 million as of 2010.²⁶ There are also numerous predicted figures, ranging from 70 million by 2021²⁷ to 100 million by 2020.²⁸ It should be readily apparent that on this front there is thus far no consensus data, except that in 2012 the MLR eventually acknowledged that more than 25 million Chinese peasants had gone through land expropriation between 2008

据专家测算目前中国失地农民累积不少于4000万人),” March 9, 2011, available at 2011lianghui.people.com.cn/GB/214392/14099239.html.

- ¹⁸ Rujiang Ge, Haiping Pan and Xinya Wang, “Who Produces 20 Million Land-Losing Peasants: Investigation of the New Disadvantaged Group in the Waves of Urbanization (谁制造了两千万失地农民: 城市化浪潮中的新弱势群体调查)” (2004) 1 *China Reform (Rural Edition)* (中国改革: 农村版) 12.
- ¹⁹ Haibo Zhang and Xing Tong, “The Adaptability to Urban Context and Self-identity in Acquired Modernity of Groups Forced to be Urbanized (被动城市化群体城市适应性与现代性获得中的自我认同)” (2006) 2 *Journal of Sociological Research* (社会学研究), 86.
- ²⁰ China Academy of Social Sciences (ed.), *Annual Report on Urban Development of China 2011* (中国城市发展报告2011) (Beijing: China Social Science Academic Press, 2011).
- ²¹ Yaping Li, “Research on the Problem of Land-Losing Peasants in China’s Urbanization Process (我国城市化进程中失地农民问题研究),” Master Thesis, Shandong University (2011), p. 21.
- ²² “Scholar’s Count of China’s Landless and Land-Losing Peasants to be Over 1.8 Billion (学者推算我国无地失地农民总数在1.8亿以上)” (2004) 4 *Information for Leader’s Policy-making* (领导决策信息) 29.
- ²³ Yu, “Land Loss and Job Loss by the Peasants is a Serious Political Problem,” 10.
- ²⁴ Xiaowo Ying, “Worries about Land in China (中国土地忧思录),” September 3, 2003, available at www.southcn.com/finance/picture/200309030072.htm.
- ²⁵ Qinglian He, “How Many Land-losing Peasants are there in China? (中国失地农民知多少),” January 9, 2011, available at www.voafanti.com/gate/big5/www.voachinese.com/articleprintview/776030.html.
- ²⁶ Lihua Tong, “Land-losing Peasants across the Country should be over 100 Million at Present (当前全国失地农民应当超过一亿人),” October 20, 2010, available at blog.legaldaily.com.cn/blog/html/20/2443320-9538.html.
- ²⁷ Hui Wang and Ran Tao, “How to Achieve a Systematic Breakthrough in the Reform of Land Acquisition System: Recommendations to the Draft Amendments to Land Administration Law (如何实现征地制度改革的系统性突破 – 兼论对土地管理法修改草案的建议)” (2009) 6 *Southeast Research* (东南学术) 10.
- ²⁸ “Democratic and Progressive Party Center: Number of Land-Losing Peasants over 100 Million by 2020 (民进中央: 2020年失地农民数量将超过一亿),” March 14, 2009, available at news.163.com/09/0314/05/54BHBOPP000136K8.html.

and 2011.²⁹ Since this figure accounts for a mere four-year period and massive rural land takings have been underway in China for decades, the true size of the rural population affected could easily be multiple times larger.

Given the enormity of the area and the vast numbers of people affected, rural land expropriation has long been considered a thorny problem with a series of critical consequences. To start with, as it is usually followed by land use conversion, large-scale rural land expropriation has resulted in loss of agricultural land (cultivated land in particular) to residential, industrial and commercial development on a worryingly scale and at a rapid pace,³⁰ causing widespread concerns about food security and ecological integrity in a country that feeds 20 percent of the world's population with only 7 percent of the world's farmland and that is facing an increasingly severe environmental crisis.³¹ Furthermore, by displacing or even dispossessing millions, rural land expropriation has also led to frequent occurrences of what is called "domicide" across the country,³² characterized by appalling deprivation, dislocation and destitution of those expropriated.³³ This issue has therefore become a breeding ground for contention, resistance and protests in contemporary Chinese society, posing a serious threat to the much-valued social stability and harmony.³⁴ What happened in Wukan and Dingzhou are but the most infamous examples in this regard.

Against this backdrop, land expropriation evokes much dissatisfaction, frustration and indignation in China. As well as petitions and

²⁹ "Ministry of Land Resources: Compensation for Land Expropriation in 3.5 Trillion in Four Years (国土资源部:征地拆迁补偿4年支出3.5万亿)," December 26, 2012, available at news.xinhuanet.com/fortune/2012-12/26/c_124148072.htm.

³⁰ Samuel Ho and George Lin, "Non-Agricultural Land Use in Post-Reform China" (2004) 179 *The China Quarterly* 758.

³¹ Erik Lichtenberg and Chengri Ding, "Land Use Efficiency, Food Security, and Farmland Preservation in China" (2006) 18 *Land Lines* 2.

³² John Porteous and Sandra Smith, *Domicide: The Global Destruction of Home* (Montreal and Kingston: McGill-Queen's University Press, 2001). The Chinese manifestation of domicile in Shanghai is documented by Qin Shao, *Shanghai Gone: Domicide and Defiance in a Chinese Megacity* (Lanham: Rowman & Littlefield Publishers, 2013).

³³ You-tien Hsing, *The Great Urban Transformation: Politics of Land and Property in China* (New York: Oxford University Press, 2010), chapter 7.

³⁴ The oft-cited finding in Yu Jianrong's survey concludes that 65 percent of rural "mass incidents" (euphemism for protests) were triggered by local governments' forceful and violent land expropriation. See Yu, "Land Loss and Job Loss by the Peasants is a Serious Political Problem," p. 10.

protests,³⁵ bitter satire is also used to give voice and vent to the social agony surrounding land takings. Released in January 2009, the American sci-fi blockbuster *Avatar* quickly captivated the Chinese audience, as it did around the globe.³⁶ Notwithstanding its popularity, after less than one month it was pulled from screens by China's film authority. The reason behind this was never publicly explained, but widespread speculation suggested that this Hollywood fantasy set on an imaginary alien planet had cut across the political fault-lines in China.³⁷ Parallels had then been drawn between indigenous inhabitants on Planet Na'vi facing earthly colonialism and the Chinese citizens facing government land takings. Many Chinese netizens mockingly commented that the only reason the Na'vi tribes could successfully hold out against invaders from earth was that the all-powerful Chinese state machinery was not summoned. As satirical, if not cynical, as that may be, it reflects the solemn reality that ordinary people in China generally feel vulnerable and helpless in land takings, with their last resort oftentimes reduced to violent or suicidal protests, as epitomized by the case of Tang Fuzhen later that same year.³⁸

This sense of powerlessness was tapped into and smartly twisted when a game called *Nail Household vs. Demolition Team* became an instant favorite among Chinese online gamers in 2010. The ingenuity of it did not lie in its originality, as it was essentially a copy of the international hit *Plants vs. Zombies*. But in changing the two opposing sides to a Chinese family in an isolated house like the one shown on the book cover and demolition crew, it was played 1.8 million times within two weeks³⁹ and

³⁵ In 2013, the deputy director of China's National Bureau of Letters and Visits admitted at a press conference that petitions through the letters and visits system are mostly due to rural and urban land takings. "National Bureau of Letters and Visits: Most Reported Issues from the People's Letters and Visits are about Expropriation and Demolition (信访局:群众来信来访反映突出在征地拆迁等问题)," November 28, 2013, available at www.chinanews.com/gn/2013/11-28/5557433.shtml.

³⁶ In fact, *Avatar* became the highest grossing film in the Chinese domestic market, until finally being overtaken by the Chinese film *Monster Hunt* (捉妖记) in 2015.

³⁷ Ben Child, "Avatar Smashes Chinese All-time Box-office Record," January 19, 2010, available at www.theguardian.com/film/2010/jan/19/avatar-smashes-chinese-record.

³⁸ For a critical analysis of expropriation violence in China, see Sally Sargeson, "Violence as Development: Land Expropriation and China's Urbanization" (2013) 40 *Journal of Peasant Studies* 1065.

³⁹ Tania Branigan, "China Embraces Web Game Depicting Family's Fight with Demolition Crew," September 16, 2010, available at theguardian.com/world/2010/sep/16/china-game-family-fight-demolition.