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ARTICLE

ON THE PETITION SYSTEM IN CHINA

XUJUN GAO* AND JIE LONG**

ABSTRACT:

With distinct Chinese characteristics, the petition system in China has played several important roles in the reflection of public opinion, social supervision of state organizations and personnel, dispute settlement between citizens and the government, and the unification of Chinese people. Since this system faces many challenges going forward, its reform is an important task for the political authorities in China. This article analyzes the design defects of the petition system from both macro and micro perspectives and the consequences resulting from such defects; it then advances suggestions regarding potential reforms.

INTRODUCTION

The petition is also called “*Xinfang*” or “letters and visits.” It is one of the most important ways for the Chinese government to settle social conflict and to keep society stable. The petition system is a mechanism with distinct Chinese characteristics and has developed gradually alongside economic and social development in China. To regulate the activities and the procedure of the petition, the Chinese State Council promulgated “Regulations on Letters and Visits of the P.R.C.” (hereinafter referred to as “Regulations on Letters and Visits” or “RLV”) in 1995 and in 2005.¹ In addition, the new regulation “Opinions regarding further strengthening of the work related to letters and visits in the new period” (hereinafter referred to as “Opinions Regarding Letters and Visits” or “OLV”) was formulated by the Central

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1. “Regulations on Letters and Visits of the P.R.C.” was first promulgated by the State Council in 1995 and was amended in 2005.

Committee of China Communist Party (hereinafter referred to as “CCP”) and the State Council in 2007. In the past, the petition system played an important role in strengthening social supervision and resolving disputes and conflicts. However, it now faces challenges to its existence and further development for several reasons.

From the perspective of citizens on the one hand, petition is not only a legal right granted by the law but also a method of legal remedy that is explicitly stated in the law. In fact, the huge number of annual petitions indicates that the Chinese people especially trust this system. Indeed, they prefer the petition to the normal judicial remedy procedure, so much so that there is a popular saying in China: “trust petition rather than the law, trust the central [government] rather than the local [government], trust [causing] trouble rather than [being] rational.”² Thus, this phenomenon has seriously damaged the authority of the state judicial organizations as well as the laws.

From the perspective of the government, however, the petition is viewed skeptically. This is evidenced by the fact that the government has obstructed the use of the petition system. In terms of direct obstacles, the subordinate governments send their people to Beijing and the provincial capital cities to prevent petitioners from appealing to the higher government or state authorities by means of “intercepting and abducting petitioners” (see Part I, E *infra*) and then imposing compulsory punishment measures,³ such as imprisonment and detainment, upon petitioners. There are also indirect obstacles, one example being that the government at all levels in China regularly drafts and publishes a “ranking-list of petition disposition” (see Part I, C *infra*) and adopts it as a major criterion of the appraisal system of the subordinate governments as well as their officials. If a responsible government falls behind others in the ranking-list, it reflects poor performance on the part of that government and the corresponding chief official.⁴

Both direct and indirect obstacles restrict Chinese citizens from exercising their legal rights. The concern and restrictions from the government suggest that there are significant defects in the existing petition system. Therefore, its reform has become an important issue this year for the authorities and legislature in China.⁵ This article analyzes the existing design

2. Hu Jianmiao (胡建淼), 信访制度改革的出路在哪里 [Where Is the Way Out of Petition System Reform], 学习时报 [STUDY TIMES], May 27, 2013, at 5.

3. Yu Jianrong (于建嵘), 中国信访制度批判 [Critics on the Chinese Petition System], 中国改革 [CHINA REFORM], Feb. 2005, at 26, 28.

4. *Id.* at 26, 27; Peng Mei (彭美杜强), 《国家信访局信访排名停数月 尚不知是否永久取消》 [Petition Ranking Is Suspended for Months, Still No Idea if it Will Be Cancelled Permanently], NANJING DAILY, May 8, 2013, <http://www.njdaily.cn/2013/0508/400061.shtml>.

5. Cui Qingxin (崔清新) & Liu Yizhan (刘奕湛), 中国将推进劳教、户籍等制度改革 [China Will Carry Forward the System Reform of Household Register and Re-education Through Labor], XINHUA NET (Jan. 7, 2013, 8:33 PM), http://news.xinhuanet.com/politics/2013-01/07/c_114284800.htm.

defects of the petition system in China, as well as their results, and puts forth some suggestions for its reform.

I. CONCEPTS OF THE CHINESE PETITION SYSTEM

Before entering into an analysis of the systemic defects of the Chinese petition system, it is necessary to explain the meaning of several important concepts.

A. *Petition and the Petition System in China*

Petition (“*Xinfang*” in Chinese) is the abbreviation of “letters and visits” in the Chinese language. According to Art. 2 of the RLV, the term “letters and visits” means that citizens, legal persons, or other organizations give information, make comments or suggestions, or lodge complaints to the relevant departments of Chinese governments. The “letters and visits” (e-mails, faxes, phone calls, in-person visits, and so on) are sent to the government at the county level or above and are dealt with by the relevant administrative departments.

According to this definition, the petition system is an administrative system in which state authorities at all levels set up a special department with a dedicated staff to deal with the letters, visits, and calls from the people. The system is based on the principles that “each level of government shall assume responsibility for its own work” and “the matter of a petitioner should be dealt with by the corresponding authority, which has the necessary competence.” The petition system includes not only the regulation mechanism defined in the RLV and the OLV, but also the concrete measures adopted by the governments at all levels in the petition practice (e.g. “ranking-list of petition disposition” and “responsibility system of chief officials”).

According to the initial plan of the Chinese legislature, the Chinese petition system was to have three functions. The first function was to gather information from the people. The government could obtain first-hand knowledge of the problems confronting ordinary citizens and adopt proper measures by using the petition system. The second function was to allow citizen participation in the deliberation and administration of public affairs. Chinese citizens are entitled to give their suggestions on urban planning, environmental protection, legislation, and so on, through the petition system. The third function lies in supervision over the government and its officials. In this sense, the petition system would also be a channel for reporting corruption and violations of law by officials. However, the petition system’s most important function over the past several decades has been dispute resolution and claim settlement. In case there is a conflict between citizens and government (or a third party), citizens are able to present their problems through the petition system if they think their interests are at

stake. The aim is to have higher government intervene in the procedure, solve the problem, and settle the claims.

B. *Petition Procedure*

A normal petition case shall be disposed in accordance with the following procedure. The first step involves presenting petition applications. According to the RLV, petition applications shall be presented in writing to the petition department of government, the People's Congress and its standing committee, the People's Court, or the People's Procuratorate Office in accordance with their powers and functions. If petition applications are presented by a visit, petitioners shall present them to the government directly in charge, or to the next highest level of government.

The second step involves the acceptance of petition applications. The petition department shall review whether the presented petition applications are within its authority and, if so, it shall accept the petition applications and forward them to the competent authority, or the next lowest authority, for further handling. The petition department itself does not have any substantial power to handle petition applications independently, but it can transfer petition matters to other authorities and make suggestions on how to proceed.

The third step involves processing petitions. The competent government authorities will determine the facts of the petition and whether its request is lawful. They then support or deny the petitioner's claim and answer in written form after completing their investigation.

C. *Petition Ranking System*

"Petition ranking," also known as "ranking of abnormal petitions," is a monthly ranking published by the state petition office based on the total number of cases of so-called "abnormal petitions" from each province.⁶ Governments at all levels have a similar ranking system. "Abnormal petition" means the petitioner has not presented the application to the corresponding department in charge according to the regulations, but has gone directly to the province's capital city or to the central government in Beijing. Unlawful activities and collective petitions also fall under the umbrella of "abnormal petitions." The legal basis of this ranking is Art. 7 of the RLV. According to Art. 7, the government should use the ranking as an important indicator to assess the performance of the government and its public servants. All petition authorities circulate a ranking of the "abnormal petitions" of their subordinate governments. The more petition cases raised,

6. The State Petition Office has suspended petition ranking since March 2013. However, the petition ranking system is not officially abolished. See 取消信访排名，让信访走向法治 [*Cancel the Petition and Let It Follow the Rule of Law*], XINHUA NET (Nov. 13, 2013, 4:49 PM), http://news.xinhuanet.com/legal/2013-11/13/c_125698195.htm.

the worse the government's ranking. This petition ranking system becomes a main criterion for the appraisal and promotion of the chief officials.

D. A Responsibility System for Officials

Beyond the petition ranking system, a responsibility system for officials in charge of petition-related work has been established at both the central and local levels of government. If petitions take place on a large scale, or if petitioners raise continuous petitions collectively at the provincial government level or in Beijing, the official in charge of the subordinate government (where the petitioners come from) assumes administrative responsibility and will be penalized according to the seriousness of the situation.⁷ As regulated in Art. 7 of the RLV, the individuals responsible for malfeasance or dereliction of duty committed in petition-related work shall be investigated and held responsible for such events.

E. Petition Interception and Abduction

“Petition interception” means that some local petition authorities and personnel intercept petitioners and prevent them from raising a petition at higher authorities. So-called “petition abduction” entails using violence to restrict the freedom of the petitioners and to prevent them from raising their petition. Examples of this include “compulsory mental health treatment” and “re-education through labor.” The former involves local petition authorities and personnel forcing petitioners to stay in psychiatric hospitals and accept compulsory mental health treatment. The latter is an ancient administrative penalty that is usually abused by local government to restrict the freedom of petitioners.⁸ All of the compulsory measures have seriously infringed on the personal and democratic rights of Chinese citizens and are therefore illegal. Such measures are strongly criticized in China and have become a major impetus toward the reform of the Chinese petition system.

II. DESIGN DEFECTS IN THE CHINESE PETITION SYSTEM AND THEIR CONSEQUENCES

The design defects of the Chinese petition system can be discussed from both the macro and micro perspective. The “macro defects” relate to the competition between the petition system and the normal judicial remedy system. The petition system can replace the function of dispute resolution otherwise reserved to the judicial remedy procedure. “Micro defects” are

7. Yu Jianrong (于建嵘), 中国信访制度的困境和出路 [*The Difficult Situation and the Way Out of the Chinese Petition System*], 战略与管理 [STRATEGY & MANAGEMENT], Jan. 2009, at 29.

8. “Re-education through labor” is an ancient administrative penalty in the form of restriction of freedom which can be executed without court decision in a certain period, normally one to three years.

those concrete problems that exist in the petition system. The following will focus on the analysis of the design defects of the petition system and their consequences from macro and micro perspectives.

A. *Macro Design Defects and Their Consequences*

According to Buddhist philosophy, everything that happens in the world—including the development of civilization and the accumulation of knowledge—has a cause and an effect.⁹ This theory of causation also applies to social phenomena that arise under certain conditions. In this sense, we are convinced that there is also a close causal relationship between the design defects of the petition system and the abnormal situation in petition practice, namely “trust petition rather than the law, trust central [government] rather than local [government], trust [causing] trouble rather than [being] rational.”

1. *Macro Design Defects of the Chinese Petition System*

The main defect in the design of the Chinese petition system is that it has a dispute resolution function. This function makes the petition system an alternative to the traditional judicial remedy procedure. In theory, the inherent character of the petition system provides the possibility of replacing the normal judicial remedy procedure. And in practice, the *non-legal* factors existing in Chinese society can, to some extent, make this theory into a reality.

a. *The Shared Function of Dispute Resolution*

First, the petition system has the same dispute resolution function as the normal judicial remedy procedure. Art. 14 and Art. 15 of the RLV have clearly distinguished the difference between “litigation-related petitions” and “non-litigation-related petitions.” Petitioners are required expressly to solve disputes through the judicial remedy procedure. However, many petitioners disregard this stipulation and insist on solving disputes through the petition system instead of using normal judicial procedure. Even if such disputes are already in the normal judicial process, many people still take their claims to the petition department.¹⁰ These claims are usually legal in nature, even though they are raised in a non-litigation-related petition. According to an empirical study, the main issues concerning “non-litigation-related petitions” are unfair treatment of employees in the enterprise

9. Qiao Gensuo (乔根锁徐东明), 关于藏汉佛教因果报应论的比较研究 [Comparative Research on the Karma Theory Between Tibetan and Chinese Buddhism], 《中国藏学》 [CHINA TIBETOLOGY], Apr. 2011, at 44.

10. Wu Feng (邬丰), 涉诉信访的法律控制—以终结制度的构建为视角 [Legal Control on Litigation Related Petition—From Perspective of Conclusion Mechanism], 《上海企业》 [SHANGHAI ENTERPRISES], Oct. 2011, at 82, 83.

restructure process, as well as labor and social security issues; unfair treatment of farmers in land contracting, expropriation and requisition; economic compensation for urban residents in demolition cases; public reporting of corruption; and the reporting of environmental pollution.¹¹ However, all of these issues are essentially legal issues.

For instance, if an employee loses employment or retires early due to a restructuring of the enterprise, the central point of the dispute concerns re-employment or economic compensation. Disputes arising from a land-contracting agreement are concerned with, in most instances, the implementation and amendment of the agreement along with economic compensation. Disputes regarding land expropriation in rural areas and building demolition in urban areas focus on the resettlement cost or economic compensation, as well as fulfillment of the resettlement conditions. All of these disputes are legal disputes, and they can be resolved through the normal judicial procedure. Public reporting of corruption and bribery are also legal issues regulated by the criminal law. Nevertheless, academic and practical circles¹² in China are of the opinion that they should all fall under the jurisdiction of the petition authority. In fact, the responsible state petition authorities always accept such claims. Art. 21 to Art. 36 in the RLV set the procedure of acceptance and disposition of the petition application and oblige the responsible authority to address the claims.

Thus in both theory and practice, the petition system has become a separate dispute resolution system parallel to the normal judicial remedy procedure. The basic aim is to settle disputes and obtain appropriate remedies by using the administrative process.¹³ As a result, Chinese citizens can use the petition system, the judicial system, or both after they suffer an injury.

b. Petition System Advantages Over Judicial Remedy Procedure

Second, the petition system has evident advantages compared with the normal judicial remedy procedure due to its unique character. As a method of dispute resolution, the Chinese petition system allows petitioners to bring their problems to the attention of the responsible petition authority. The problem will be reviewed and decided by a joint board consisting of all related authorities under the organization of the petition organ, so the interests of the petitioners are safeguarded. The petition system designed by the Chinese legislature has specific advantages when compared with the normal judicial remedy procedure.

11. Chen Jiqing (陈继清), 我国信访制度存在的问题及其完善措施 [Existing Problems in the Chinese Petition System and the Improvement Measures], 《中国行政管理》 [CHINA ADMINISTRATIVE MANAGEMENT], June 2006, at 17, 18.

12. Jianmiao (胡建淼), *supra* note 2.

13. Jianrong (于建嵘), *supra* note 3, at 26, 27.

First, the petition procedure is relatively simple. There is no byzantine legal text and complex court procedure; petitioners only need to report problems and make their requests to certain governmental departments. Second, the cost of a petition is low. Participants in the normal judicial remedy procedure need to bear heavy costs, including attorney fees and court costs; however, they do not need to pay such costs for petitions. Third, the petition system may work more efficiently than the judicial procedure. The normal judicial procedure is regulated by the law, and it moves very slowly. Even if someone wins their case, the enforcement of the judgment can still be complex and time consuming. In contrast, the petition system works relatively efficiently. Especially in the case of an “overstepping petition,” the petitioners may have a positive response, and their claims can be settled quickly. Finally, the results of the petition procedure sometimes exceed petitioners’ expectations. In the normal judicial procedure, the court will make a decision strictly according to the law and there is no space for negotiation. But local governments often make large concessions and provide various benefits to petitioners as consideration for giving up the petition at a higher government level. This is because there is great pressure to maintain social stability from higher levels of government, and local authorities seek to avoid being punished because of overstepping petitions.

These characteristics provide the petition system incomparable advantages that the normal judicial procedure does not possess. That is why many people prefer the petition system rather than the normal judicial procedure.

c. Influence of Other Non-legal Factors on the Selection Decision

Third, in addition to the inherent advantages of the petition system, other non-legal factors also play an important role in whether to settle disputes through petition. One major factor is the problem of corruption in Chinese judicial practice. Bad practices already prevalent in other areas of public life—back-door deals, internal approvals via personal relationships, etc.—have expanded to the judicial field. Sometimes it can be very difficult to initiate a court procedure and enforcement without a personal relationship. According to a survey of 632 farmer-petitioners who came to Beijing for petition at central government departments, 401 of them (63.4%) tried to initiate a lawsuit before starting the petition procedure. Among them, 172 (42.9%) were refused by the court; 220 of them (54.9%) lost and believed that the court did not try their case fairly; and 9 of them (2.2%) won but believed that the judgment was not being enforced.¹⁴ This data may not be absolutely objective, but it still reflects the perceived level of corruption in

14. *Id.*

Chinese judicial practice and demonstrates the reasons Chinese citizens rely on the petition system to solve their problems.

The second factor is the traditional Chinese belief of “longing for honest and upright officials.” Most petitioners believe that officials at higher levels, especially at central authorities, are honest, upright, and just. For this reason, many Chinese petitioners hope to submit their complaints directly to the central authorities in order to pressure local governments to “find a final solution” at last.¹⁵ This is also one reason, from the social perspective, why Chinese citizens prefer the petition system to the judicial remedy procedure.

In summary, the Chinese legislature made the petition system capable of dispute resolution, a function previously reserved to the normal judicial remedy procedure. Moreover, the legislature made it more desirable than the judicial route. In addition, non-legal factors also exert a great deal of influence on the selection of the dispute resolution method. Thus, many Chinese people prefer to use the petition system to solve their problems.

2. *Consequences of Macro Design Defects*

As mentioned above, there are design defects in the petition system. These defects inevitably result in Chinese citizens preferring to settle their disputes through the petition system. This is supported by the large number of petition cases in recent years in China.

The present Chinese petition system led to an abnormal social phenomenon described in the popular sayings “Trust petition rather than the law, trust central [government] rather than local [government], trust [causing] trouble rather than [being] rational” and “A problem will be thoroughly resolved if someone causes a lot of trouble. A problem will be partly resolved if someone causes a little trouble. A problem will not be resolved if one causes no trouble.”¹⁶ The fact that many citizens have refused the judicial remedy procedure and chosen the petition system is proof that the Chinese people trust petition more than the law, and trust the central government more than local government. The petition practice in China also indicates that the more trouble people make, the more attention they get from the petition authority and the government, and the sooner the problem will be solved. The attitude and performance of the government in China has led to this abnormal social phenomenon.

To be clear, the Chinese petition system has functions other than dispute resolution. Some examples include gathering information from the people and encouraging people to participate in the deliberation and admin-

15. *Id.* at 27, 28.

16. Jianmiao (胡建淼), *supra* note 2.

istration of state affairs.¹⁷ Had the Chinese legislature restricted the petition system to these two functions at the time of its design, there would not be so many people seeking to solve their problems via petitions. The above-mentioned abnormal social phenomenon should not exist either. In fact, the Chinese government has paid great attention to the matters of letters and visits. In the early 1950s, the general office of CPC established a secretary office to handle people's letters to Mao and other state leaders. However, its main functions at that time focused on getting information from people, strengthening relations with the people, and fighting against bureaucracy. Dispute resolution and safeguarding the interests of petitioners were not included. Hence, concepts such as "petition," "overstepping petition," or "trouble-making petition" did not exist at all at that time.¹⁸

B. *Micro Design Defects and Their Consequences*

1. *Micro Design Defects of the Chinese Petition System*

The Chinese petition system also suffers from micro design defects. The following micro design defects could be the main reason why governments and officials in China restrict or even forbid citizens to raise petitions, especially overstepping petitions. The following sections discuss specific micro defects in the design of the Chinese petition system.

a. *Lack of Petition Authority Power, Poor Communication, and Poor Coordination Among Petition Authorities*

According to Art. 6 of the RLV, any people's government at or above the county level shall set up a department for letters and visits. The relevant department of the people's government at or above the county level and the people's government of the town or township shall, according to the principles of facilitating work and creating convenience for letter-writers and visitors, assign a unit or individuals responsible for the work regarding letters and visits (hereinafter referred to as "the unit or the person for letters and visits"). In accordance with this regulation, all the central and local public organs such as the CCP committee, People's Congress, and People's Court and Procuratorate Office, have a department in charge of issues relating to petition. But in practice, the petition authorities of government at all levels receive and handle the most petition cases. However, many defects exist with regard to the working system of the petition authorities.

First, the petition authorities in China have very limited power. Although the petition authorities at different government levels are responsible for receiving, accepting, and handling petitions, the RLV does not grant

17. Chao (吴超), 新中国六十年信访制度的历史考察 [*Historic Research on the Petition System Since Sixty Years in the People's Republic*], 《中共党史研究》 [THE CHINA COMMUNIST PARTY HISTORY RESEARCH], Nov. 2009, at 46, 47.

18. *Id.* at 46.

petitioners any resources or power to solve problems. According to Art. 21 of the RLV, the petition departments have three powers and functions. The first is the power of acceptance, which includes accepting and registering the petition applications. The second is the power of forwarding. This includes forwarding the related petition applications to the responsible People's Court, the Procuratorate Office, the People's Congress and its standing committee, or the governmental department in charge at the same or lower administrative level, along with a duplicate to the petition authority of the next lowest government level. The third power is the power of advice. Under this power, the petition organ shall make timely suggestions, submitting such matters to the people's government at the same level for decision in case of any important or urgent matters.

It appears that the legal status of petition authorities at all levels is relatively low and that they do not have any power to solve practical problems. However, their responsibilities are quite important: petition cases concern not only the abuse of power and corruption but also the "unfair treatment" of employees in enterprises' restructuring processes and labor and social insurance issues.¹⁹ The legislature in China did not grant petition authorities any real power to solve such problems, but it made petition authorities assume the primary burden of the petition work. This highlights another design defect of the Chinese petition system: the power does not match the responsibilities.²⁰ As a result of this defect and insufficient work personnel, petition authorities can do nothing but forward petitions to the competent authorities.

Second, petition authorities are scattered in a mass of administrative units with no harmonized coordination between them. As mentioned above, the CCP committee, People's Congress, government, People's Court, Procuratorate Office, and other related authorities at all levels have established their own petition offices. However, a subordinate relationship among them does not exist. Even the national petition office has only a limited power of coordination over the local petition authorities, and its opinions have no binding effect on them either. Thus, the entire petition system lacks a harmonized coordination mechanism. As a result, petitioners can get different replies from different petition authorities for the same problem—or petitioners get no help but keep running back and forth among the petition authorities as each passes its responsibility on to another. According to the survey of 632 farmer-petitioners, the average number of visits to petition authorities is more than six. The petitioner with the most visits had interacted with eighteen different petition organs.²¹

19. Jiqing (陈继清), *supra* note 11.

20. *Id.*

21. Jianrong (于建嵘), *supra* note 3, at 26, 27.

Since petition organs do not have real power to resolve petitions and can only forward the petitions on to other authorities, their opinion does not have any binding force. Meanwhile, the petition authorities do not coordinate with each other. All these factors leave petitioners with the obvious impression that petition departments are not working seriously. Therefore, it is not surprising that petitioners regard petition authorities as their opponents.²²

b. Design Defects in the Legal Principle of Petition Disposition

Second, the legal principle of petition disposition suffers from design defects. Petition departments usually forward petitions to the related government authorities for disposition after they accept the petition request. The principle for determining the concrete authority in charge is set forth in Art. 4 and Art. 21 Para. 3 of the RLV, which outline the principles of “territorial jurisdiction, responsibilities assumed at corresponding level, and the department in charge being responsible.” These principles mean that petition cases shall be handled by the government where the incident in question transpired or the government of the petitioner’s residence. The government of the petitioner’s residence shall be responsible for handling petitions wherein the place of residence and the place of occurrence differ. The government at the next highest level can also dispose the petition case if the local government is not competent. However, the government at a lower level is not allowed to shift the problem directly to the government at a higher level. This arrangement helps clarify the responsibilities between the levels of government.

“The department in charge being responsible” means, once the authority in charge of the petition is determined, this authority shall assume the full responsibility to dispose of the petition and is not allowed to shift the problem to other government departments. The basic idea here is that the government with jurisdictional authority shall find the solution independently and preempt petitions from the people, especially overstepping petitions. Nothing is wrong with this idea. To some extent this mechanism can compel the government departments to deal with petitions carefully and prevent them from making decisions that could damage the people. However, there are still some significant defects in this mechanism. First, if the place of occurrence is the same as the place of residence, then the government whose administrative act has caused the petition will be one party of the dispute but will also play the role of adjudicator. Second, if the place of occurrence differs from the place of residence, the government in charge of the petitioner’s residence is responsible for the petition. In either case, such

22. Jiqing (陈继清), *supra* note 11.

an arrangement risks a legal but unreasonable resolution of the dispute, which creates instability in society.

In the first case, the government department acts both as player and referee, although the government department initiated the dispute. According to this principle, if a town government terminated a lease agreement of a factory building early but failed to pay compensation in full, this town government would be finally responsible for dealing with the tenant's petition, even if the tenant raised his petition at a higher level government department. The result is predictable under such circumstances. Maybe there are a few government departments that would admit and correct their mistake. However, it is not realistic to have such expectations in most cases. On the contrary, many officials will think that the petitioner is making trouble that will smear their reputation and have negative effects on their careers. Thus, many officials will retaliate. Retaliation is the reason why a large number of "compulsory mental health treatments" occur in the petition practice.

In the second case, the government department in charge is incapable of solving the problems of the petitioners at all, because the petition is initiated through the administrative act of another government department. In addition, such petition cases take place out of the jurisdiction of the government department in charge. In this case, the petitioner is obviously dissatisfied with or antagonistic toward the government department or state organ whose administrative act has caused the petition. However, if the government in charge is not entitled to review the decision of the government department of the place of occurrence, or to ask it to make an apology to the petitioner, how can it prevent the petitioner from raising the petition?

The famous "Tang Hui case" is typical for such a situation.²³ At the beginning of the petition, Tang Hui raised her petition because she was not satisfied with the judgment of the court. Her youngest daughter was raped by a group of criminals and only two of them were sentenced to death. Tang Hui began her petition with the hope of increasing the penalty of the other criminals. However, she changed her cause of action and raised her petition against the city government's commission of "re-education through labor." The commission decided to send her through "re-education through labor" because of her petitions, which was not acceptable to her.²⁴ However, according to "territorial jurisdiction," the government in the place of Tang Hui's residence, Fujiaqiao, was directly responsible for her petition. That meant that the government of Fujiaqiao had to try to settle Tang Hui's claim and stop her petition to higher government. The Fujiaqiao government had

23. Chai Huiqun and Shao Ke (柴会群/邵克), 什么造就了唐慧 [What Makes Tanghui], 《南方周末》网络版 [SOUTHERN WEEKLY ONLINE], Jan. 8, 2013, <http://www.infzm.com/content/93030>.

24. 永州"上访妈妈"唐慧的2012 ["Mother of petition" Tang Hui's 2012], PEOPLE'S DAILY ONLINE (Apr. 8, 2013, 9:26 PM), <http://legal.people.com.cn/GB/43027/353896/index.html>.

no right to require the People's Court or municipality's commission of re-education through labor to change its decision, nor could it hinder her petition. However, the town government officials would have received an administrative punishment if Tang Hui continued her petition at higher levels of government. Therefore, the only thing they could do was provide various benefits to Tang Hui and ask her to give up her petition.²⁵ But the acts of the local government encouraged Tang Hui to continue her petition.

Hence, both methods have disadvantages in solving a petitioner's problems. In the first case, the retaliation of local governments will likely deepen the grudge of the petitioner and his family. The second case might temporarily satisfy the petitioner by providing some benefits; however, it will send an improper signal that the government can also be "blackmailed" and people can get benefits by raising a petition. More and more people are therefore either directly or indirectly encouraged to realize their interests through petition. According to a journalistic investigation of Southern Weekly, at least seven households in the local circle in Yongzhou are willing to imitate Tang Hui's way of raising petition one after another.²⁶ This is also a reason why the people in China "trust petition rather than the law" and "trust trouble making rather than the law."

In either case, petitioners do not trust their local government because it cannot adequately solve their problems. That is the major reason why overstepping petition cases increase so rapidly despite the prohibition set forth in Art. 16 of the RLV.

c. Defects in the Petition Ranking and Responsibility System

Third, the petition ranking and responsibility system has defects. According to Art. 7 of the RLV, the People's governments at all levels shall: [E]stablish and improve the responsibility system for letters and visits . . . investigate the individuals who are responsible for malfeasance or dereliction of duty committed in the work regarding petition, and circulate a notice of the matter within an appropriate scope. The people's governments at all levels shall incorporate the achievements scored in the work regarding petition into the performance assessment of public servants.

Petition authorities at all levels, including the national petition office, will work out a regular "petition ranking" and circulate it internally. This ranking has become an important criterion of governments at all levels for assessing the achievement of officials. Besides, governments at all levels have further established a responsibility system for officials. The chief leader of CPC committees and governments shall take general responsibility, the leaders directly in charge shall take primary responsibility, and the

25. Huiqun and Ke (柴会群/邵克), *supra* note 23.

26. *Id.*

department head dealing with the petition cases shall assume direct responsibility. If the work is done insufficiently, or the responsibility is fulfilled improperly, or the leaders are not diligent such that large-scale collective petitions are continuously raised at provincial CPC committees or in Beijing, then the related leader directly in charge shall assume responsibility and be punished according to the facts of the case.²⁷ Objectively speaking, this petition ranking and responsibility system can actually give CPC committees and governments at various levels the motive to pay more attention to the work of petition, and to speed up the resolution of problems. However, the ranking and responsibility system has a number of defects.

First, the ranking system and responsibility system have legal defects. It is doubtful that they are in accordance with Chinese law. According to this system, the number of man-hours devoted to petitions, especially in overstepping petitions, is one of the criteria for examining the performance and achievement of subordinate officials. The more overstepping petitions are raised, the poorer the performance of the local officials, and the greater their potential administrative responsibility and severity of punishment. This responsibility system is strictly implemented in some places. Any overstepping petition warrants a punishment. The legitimacy of this ranking and responsibility system is problematic because presenting petition applications is a legal right granted by the RLV. Although Art. 16 of the RLV does not encourage overstepping petitions, it is not explicitly forbidden by the RLV or defined as an illegal act by any other Chinese laws or regulations. Since it is a citizen's legal right to initiate overstepping petitions, there is no legal basis to pursue the administrative responsibilities of the subordinate officials due to the overstepping petition ranking.

Second, the system design contains severe defects that tend to prevent undertaking appropriate measures to fulfill its purposes. The ranking and responsibility systems' ultimate purposes are to control and reduce overstepping petitions. But by merely emphasizing the reduction of petitions, the system fails to explicitly require the authorities to handle the claims and wishes of petitioners properly. Therefore, the system design can hardly help solve the petition problem. Furthermore, the system does not expressly prescribe the measures necessary to realize its purpose.

In a general sense, there are three ways to control and reduce the number of overstepping petitions. The first is to satisfy the petitioner's claims. For example, in the case of early termination of a lease agreement, if the town government could cancel its decision on early termination of the contract or make compensation for the losses suffered, no petition would occur and the number of petitions would be reduced. The second way is to bribe the petitioner with temporary benefits and make them dismiss, at least for a while, the idea of an overstepping petition. The third option is to limit the

27. Jianrong (于建嵘), *supra* note 3, at 26, 27; Mei (彭美杜强), *supra* note 4.

personal freedom of the petitioner, which makes an overstepping petition impossible.

The first approach is clearly the most effective. It fully resolves the petition and best complies with the RLV's original purpose. But it is also the most complicated and difficult option to implement, mainly because the petitioner usually has objections to particular decisions made by government officials. In the case of land contracting, the petitioner was angry with the official who cancelled the contract. The anger could only be eased if the involved official decided to revoke the prior decision, make appropriate compensation, and apologize. However, given the complexity of the current political system, it is hardly imaginable that the involved authority could make such a decision.

In comparison, the second and third approaches cannot solve the fundamental petition problem and probably conflict with national law. However, they seem to be more simple, practical, and effective. Since the ranking system only focuses on the control and reduction of petitions and does not set any restrictions on the measures to be taken, the government authorities are thus free to select any of the available approaches. It is natural that the simple and practical ways will be preferred. In fact, all levels of government generally take the second and third approaches in response to overstepping petitions. Several examples of the latter two approaches include comfort money before holidays, restraint of personal freedom, or illegal interception of petitioners.

Moreover, the joint liability is defective. The ranking and responsibility system is a kind of joint responsibility. Under this system, once an overstepping petition occurs, especially in the case of group petitioners, the party government officials of several levels could face administrative sanctions, even if some officials do not have anything to do with the petitioner's "grievance." For example, consider a group petition due to demolition compensation. Officials who might be required to take responsibility include, but are not limited to, the party and chief officer of the neighborhood, the officer in charge of petition in the neighborhood, the party and government chief officer of the district that the neighborhood belongs to, the officer in charge of petition of the district, and the official in charge of house demolition. Among these officials, only the party and government chief officer of the neighborhood have a direct connection with the demolition project and are consequently directly responsible for the petition. None of the other officials have much to do with the issue.

It is doubtful that such joint responsibility is legitimate. Chapter 6 of the RLV contains eight clauses stipulating the liabilities of related persons in detail, but almost all of them are based on the fault of the concerned party. The legal basis for joint liabilities is not in the RLV. In addition, the rationality of such joint responsibility is questionable. Quite a few officials who are supposed to assume administrative responsibility do not have any

direct relation with the petitioner or the petition. They do not have the power or resources to resolve the petitioner's claim. In such circumstances, it is unreasonable to require them to take on administrative responsibility. Furthermore, such joint responsibility encourages the different levels of party and government officials responsible for the petitioner's district to form a community of common interest. In order to prevent the petitioner from affecting their political careers, they will band together to stop the overstepping petition.

2. *Consequences of the Micro Design Defects*

Based on the analysis above, the petition system mainly contains the following design defects from the micro perspective:

- Government departments in charge of petitions have responsibility, but possess no power, and thus fail to maintain effective internal coordination of petitions.
- According to the RLV, the government authority that gives rise to the petition shall be responsible for its settlement. This contradicts common principles of dispute resolution and the principle that "No one should be his own judge."
- As for the petition ranking and account liability, in addition to their questionable legitimacy, the system design merely focuses on the reduction of petitions and fails to place sufficient emphasis on a proper solution to petitioners' claims.
- Finally, the system imposes joint liability on unrelated officials, which is neither legally justified nor reasonable.

The various strange scenes in petition practice are directly or indirectly caused by these system defects.

Petition authorities are believed to be irresponsible and only good at shuffling responsibilities and passing the buck. This is, however, the inevitable outcome of the regulations. The most important function prescribed by the RLV to the petition authorities is to forward the issue to the related government authorities. It is no wonder that the petition authority is at its best when passing the buck. As to whether the authority receiving the petition will handle it promptly and lawfully, the petition authorities do not have any impact. Therefore, there is no justification to require the official in charge of the petition authority to assume administrative liability for petitions—especially overstepping petitions.

According to the principles of petition treatment, the government authority, which is triggered by the "grievance" of the petitioner, shall be responsible for resolving the issue at petition. Such a principle is reasonable to a certain extent but conflicts with the international common practice of dispute settlement, according to which an independent third party should be authorized to mediate and settle a dispute. This defect is the main reason that petition numbers have remained high in recent years.

The principle of petition treatment has other negative consequences. The willingness of some officials to act could be confined by the so-called principle of “territorial jurisdiction, responsibility assumed at corresponding level, the department in charge being responsible.” In order to avoid being the department in charge or the official in charge, and thus being the target of potential petitions, quite a few officials and departments will find different reasons to avoid their duties or responsibilities. For example, they can reject the launch of a city reconstruction project that ought to be launched or refuse to hear a claim in their jurisdiction. The PRC court is a classic example of an institution adopting such an attitude. Many courts conduct a so-called “social stability assessment” before deciding to hear a case. If the assessment concludes that hearing a case and handing down a verdict could trigger riots and lead to social instability, the court will refuse to hear the case. In this way, the court will not become the petitioner’s target or the institution responsible for the petition. Neither rejection by government departments nor the refusal of the courts to intercede will help find a solution to the problem of the petitioner. Consequently, the petitioner has no other option than an overstepping petition.

As the system of petition ranking and accountability focuses merely on the reduction of the number of petitions and fails to stipulate the measures necessary to realize its purpose, it is no wonder that the petition practice in China often sees such illegal measures as “petition interception,” “black jails,” “declared mental disease,” “illegal detention or re-education through labor,” or even assault and rape.²⁸ Although none of these measures comply with the RLV, and some of them constitute serious breaches of law, petition authorities of different levels only adopt these easy and effective measures for the sake of their political life. And such measures also get the support of many other officials who are threatened by joint liability.

In addition to the above-mentioned measures, petition authorities also adopt another temporarily effective method—offering the petitioner a variety of benefits (holiday subsidies, inviting the petitioner and his/her family to travel, etc.)—to make the petitioner dismiss the idea of an overstepping petition.

Whichever road is taken, the problem that gave rise to the petition is not resolved. In fact, these measures only make things worse. By limiting personal freedom, the authority only fosters more distrust and hatred by the petitioner. Thus, the concerned party and his family will try every means to conduct an overstepping petition. By offering benefits, the authority gives the negative impression that those who cause more waves get more benefits from the government. This encourages others with far more trivial concerns to seek a petition. It also explains the existence of the notion that citizens “trust trouble making rather than the law.”

28. Jianrong (于建嵘), *supra* note 3.

III. PROPOSALS FOR REFORM OF THE CURRENT PETITION SYSTEM

Based on the analysis above, the various strange phenomena observed in the petition system are directly related to its design defects. To remedy these problems, we should eliminate the defects through reform. More specifically, the petition system should be reformed in a number of areas.

A. *Reform of the Petition Authority—Redefining the Function of Petitions*

In order to reduce the number of petitions (including the overstepping petition) and reverse the trends toward “trusting petition rather than law” and “trusting trouble making rather than being rational,” the Chinese legislature should redefine the function of the petition. The petition authorities should be deprived of the function of dispute settlement and interest protection, while their mandate to learn about public life and participate in the administration and discussion of state affairs should be strengthened. This fundamental reform should force citizens to pursue their claims solely through judicial proceedings. Another advantage of this reform scheme is that it is not necessary to dissolve the petition authority or cut its staff. On the contrary, in order to transform the petition authority into a qualified consulting institution participating in the administration and discussion of state affairs, it should recruit a large number of qualified experts.

B. *Reform of the Judicial System*

To remove the function of dispute settlement and interest protection only constitutes part of what is necessary to reform the petition system. Its success depends on whether China will be able to reestablish the authority of law, to restore social trust in the judicial system, and to conduct the necessary supporting reforms in the judicial system. Such reforms include the following measures.

1. *Expansion of Jurisdiction and Strengthening of Administrative Court*

First, the court’s jurisdiction should be expanded and the administrative court should be strengthened. To free the petition system from the function of dispute settlement, the court should hear those cases that might otherwise be resolved through petition. This is quite practicable. Some scholars are of the opinion that all petition matters can be distinguished between legal issues and non-legal issues. Non-legal issues shall include matters about restructuring of state-owned enterprise, labor and social security of employees, so called “three-dimensional rural problems,”²⁹ compensation for house expropriation and relocation of residents, complaints of

29. *I.e.*, problems with regard to agriculture, rural areas, and peasantry.

inappropriate conduct and illegal acts of cadres, and problems in primary-level institution reform as well as environmental pollution.³⁰ Such an opinion implies that non-legal issues cannot be resolved through a judicial approach. However, this has no legal basis. Per the analysis above, all of these problems are legal problems. The one feature that they all have in common is that one of the concerned parties is a government authority; this alone cannot change the fact that they are legal disputes. According to the *Administrative Law* and *Administrative Proceeding Law* of China, a government authority can always be a party in litigation.

If China decides to undergo these reforms, it is foreseeable that the number of administrative legal actions will increase substantially. Consequently, it will be necessary to enlarge the capacity of the administrative division of Chinese courts in the short term. From a long-term perspective, it is advisable to set up independent administrative courts at the proper time.

2. *Hearing of Cases on the Basis of Law*

Second, the courts should hear cases on the basis of law and should be freed from the function of keeping social stability. As described above, the Chinese courts also assume the responsibility of maintaining social stability. This can lead to instances where the court will try every means possible to reject hearing a case if it concludes that there is a high possibility that its resolution might trigger social instability. This practice must be eliminated. First of all, it is doubtful if social stability can really be achieved in this way. When the interest of a citizen is violated, the judiciary should be the last resort. If the last resort fails to work, the citizen has nowhere to air his grievance and no means to protect his interests. He has no option but to go out and make a petition. We should know from experience that such measures do not achieve social stability but rather tend to increase instability. Furthermore, social stability should not be used to assess the performance of courts. In fact, a losing party is usually not satisfied by the verdict and could take certain radical actions. But this should not be the basis for assessment of the verdict. The only criteria to assess the verdict should be whether the principle of “all are equal before law” has been followed during trial and whether the verdict is predicated upon a sufficient legal basis. In fact, if courts wish to contribute to social stability, the best way for them to do so is by the fair and just settlement of disputes. This has been amply demonstrated by the court systems in western countries.

3. *Trials According to Law and Unbiased Decisions*

Third, the court should be allowed to conduct trials according to law and render unbiased decisions. It is key to realizing social stability, to re-

30. Jiqing (陈继清), *supra* note 11.

establishing the authority of law, and to restoring citizens' trust in the rule of law. It is also key that the courts' decisions are objective, impartial, and based on law. For this reason, the Chinese judiciary system needs to be reformed in multiple ways.

First, administrative interference should be prohibited, and independent jurisdiction should be consolidated. In China, the courts often receive different kinds of interference from administrative authorities. In many places courts are to some extent leveraged to protect the interests of local parties whose cases are being tried.³¹ Obviously, such interference will affect the justice of any decision and cause serious damage to the court's authority. The existence of such interference can be attributed to the courts' personal and financial dependence on local government.³² Thus, to eliminate administrative interference, it is necessary for the courts to break with the restrictions of local government. This means reforming the judiciary system from its current horizontal management structure to a vertical structure. On the other side, if certain government officials attempt to exercise their influence in judicial proceedings, the officials as well as the judges should be disciplined accordingly.

Publication is also an effective means to prevent judicial corruption and ensure unbiased court decisions. Court decisions should be standardized in content and form, and all decisions of all courts should be made available to the public. In terms of content, a court decision is hardly comprehensive and convincing if it contains the facts, the controversy, and the arguments of the parties but fails to give a proper analysis and interpretation of the applicable provisions. Therefore, the courts should add into their decisions the analysis and interpretation of related provisions so as to make the decisions sufficiently transparent and comprehensible. With respect to publication, the Chinese Supreme Court now selects and publishes some cases every year, and most decisions are publicized on the homepage of the judiciary. But the published decisions only serve as a guide for other courts. The Supreme Court can hardly play the role of supervisor. It would be much better if all decisions at all court levels were disclosed. More specifically, court decisions should not only be disclosed on the court website, they should also be regularly assembled and published by a special editorial office set up by each province. If this can be achieved, the courts' trial quality will increase and unjust trials will be drastically reduced.

Finally, severe sanctions should apply to judges who engage in illegal trials. Despite all sorts of precautions, judicial corruption is sometimes in-

31. Zhang Lei (张磊/龙州), 建立风险评估审判维稳双赢 [Establish Risk Assessment Mechanism to Have Double Win in Trial and Maintaining Social Stability], GUANGXI COURT ONLINE (July 12, 2013, 9:02 AM), <http://gxfy.chinacourt.org/public/detail.php?id=47610>.

32. Wang Jianqi (王建琦), 独立行使审判权其实不难 [It's Not Difficult to Exercise Adjudicative Powers Independently], LEGAL EVENING, July 5, 2013, http://www.qstheory.cn/zt/bkxj/201307/t20130705_246588.htm.

evitable. Proof of this unfortunate fact is found in a recently published report on 200 corrupt judges.³³ Such judges should be strictly investigated and prosecuted.

C. *Measures for the Transitional Period*

Even if China decides to undergo the above-mentioned reforms, many citizens will continue to bring petitions due to tradition and custom, for which the government authorities of different levels should be well prepared. The authorities should take the following measures to keep the normal social order. First, a safe area should be designated in front of each government institution in order to ensure their normal function. Beyond this safe area, the petitioner should be allowed to sit and express their claims as long as they comply with the *Regulations on Maintaining Social Order*, the *PRC Security Punishment Law*, and other applicable laws and regulations. Second, the authorities should deal with the illegal acts of petitioners according to law. If a petitioner conducts illegal acts in the course of a petition, such as insulting, assaulting, blocking public transportation, or disturbing the working order of government authorities, the police should take appropriate measures against the involved party.

CONCLUSION

From a broad perspective, both the petition system and the judiciary are tools the government can use to solve social problems. In terms of the theory of social systems, the establishment of a new system cannot always resolve the problems incurred by the malfunctioning of its predecessor. Rather, the establishment and utilization of a new system will damage the image of the old system. This has been proven by China's experience in the last ten years. The key to solving existing problems is to investigate the reasons why they arise and then to take targeted measures to reform the current system. Consequently, problems arising out of the judicial system should be resolved by confronting the pathologies of the judicial system. If it is administrative interference or corrupt judges that affect the justice and authority of law, we should strive to eliminate them. If it is the shortage of judges that affects the quality and efficiency of trials, then we need to recruit more judges. As long as measures are not targeted, very little will change. Traditional Chinese medicine admires the principle of "dialectical and targeted treatment" of diseases; the same applies to the handling of social problems.

33. *Id.*