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3 Deaths in China Reveal Disparity in Price of Lives

By JIM YARDLEY

GUOJIATUO, China — He Qingzhi's teenage daughter, Yuan, and her two friends lived on the same street near the Yangtze River, attended the same middle school and were crushed to death in the same traffic accident late last year. After that, the symmetry ended: under Chinese law, Yuan's life was worth less than the others'.

Mr. He, 38, who has lived in this town in central China for 15 years, was told that his neighbors were entitled to roughly three times more compensation from the accident because they were registered urban residents while he was only a migrant worker.

"I was shocked," said Mr. He, as he sorted through legal papers in his apartment recently while his wife sobbed in the next room. "The girls are about the same age. They all went to the same school. Why is our life so cheap?"

Outraged, Mr. He and his lawyer are considering a lawsuit, saying that the decision was discriminatory and that the family was entitled to full compensation under the Chinese Constitution. The problem with that argument is the Chinese Constitution. More Chinese citizens like Mr. He are claiming legal rights and often citing the Constitution, but it is actually a flimsy tool for protecting individual rights.

The problem is not that the document lacks lofty ideals or is considered unimportant. But for citizens in China, the Constitution is largely inaccessible. Even as it describes a broad range of rights, the Chinese legal system essentially does not allow people like Mr. He to use the Constitution as a mechanism to challenge laws or policies that they believe infringe on those rights.

Even so, some legal reformers in China believe that advancing the notion of constitutional law is critical in establishing the rule of law. So, increasingly, reformers are pushing ideas like creating a new and assertive constitutional court. Liberal reformers believe that expanding the reach of the Constitution could ultimately provide a greater check on the Communist Party.

"There is a movement to make the Constitution mean something," said Stanley Lubman, a lecturer at the University of California, Berkeley, and an expert on Chinese law. But for now, Mr. Lubman added, "the Chinese Constitution is an aspirational document."

The debate is hardly an abstract one for the Chinese government. Top leaders have made reducing the urban-rural income gap a domestic priority and have taken some steps to help migrant workers. They have also stressed the need for a fair and modern legal system to regulate Chinese society and safeguard individual rights.

The Constitution has been rewritten or amended several times over the past half century, most recently in

2004, to include protections for private property rights. Such constitutional amendments are considered guidelines when the government drafts laws or regulations. But the Constitution does not stand above the Communist Party and ultimately, expanding the power of the Constitution or increasing the power of the courts could mean introducing changes in the political system, a move the Communist Party has resisted.

Here in the mountains of the vast Chongqing Municipality, Mr. He's family had been a migrant success story before his daughter's death.

Mr. He grew up in a farming village in the hills surrounding the Yangtze but left in 1991 to take a job in the wholesale meat business. He bought and slaughtered pigs in different villages for a butcher who sold the meat at a shop in Guojiatuo, which has about 29,000 people. Mr. He and his wife, Zhan Denglan, moved into the butcher shop, and Yuan was born that year at a nearby hospital.

By 2000, Mr. He had opened his own meat stand at a nearby market, and his daughter had enrolled in a local school. He still has the temporary residency cards that he updated annually in order to live as a migrant worker. He said he had paid local taxes since opening his stand, and his family also has a small red booklet in recognition of their compliance with the one-child policy.

Last year, on the morning of Dec. 15, Yuan, 14, went by the meat stand early in the morning to get money for school materials. Ten minutes after she left, someone told Mr. He that Yuan had been in an accident. At the scene, he discovered that a truck overloaded with bricks had smashed into the small motorized pedicab carrying Yuan and her two friends to school. The truck had toppled and crushed the three girls beneath several tons of bricks.

"I was so grief-stricken that I could hardly stand," Mr. He said.

Within hours, the families of the three dead girls were taken to a local hotel to meet with an ad hoc compensation board: an official from the local street committee; one from the police station; a local education official and two officials from the middle school; the owner of the truck; and three representatives from the transportation company that had hired the truck to transport the bricks.

Mr. He said the meeting soon seemed like house arrest. He and his wife were kept at the hotel for two days as they argued about the value of their daughter's life. A representative for the transportation company, which was liable for payment, said Chinese law dictated that Mr. He and his wife were entitled to only 50,000 yuan, or about $6,170. But he said the company would give them 70,000 yuan, about $8,640, as an expression of sympathy and to help pay for the funeral. The other families received about 200,000 yuan, or roughly $25,000.

"They said, 'You are a rural resident, and you either take the 70,000 or leave it,' " Mr. He recalled. "They said that if I thought it was too little, I could sell the broken truck."

Finally, he signed the compensation agreement. He received an extra 20,000 yuan from the transportation company and the truck owner, but the payout was still less than half of what was given to the other families.

Western legal systems also place different values on people's lives, depending on the person's earnings history and other factors. But in this case, the families involved lived in the same neighborhood, and Mr. He

had established himself as a small merchant, with an income roughly comparable to those of the other families. The main thing that distinguished him was his rural residency status.

Zhou Wei, the family's lawyer, said the compensation disparity illustrated the pervasive discrimination created by China's household registration, or hukou, system, which often still ties individuals and their access to government services to the place where they are registered. The central government has steadily loosened hukou restrictions, but migrant workers still receive far fewer government services.

"It is hard for people to realize that such discrimination and unfairness exists in society against farmers," Mr. Zhou said.

For several years, Mr. Zhou has tested the extent of constitutional rights in China. He has filed cases claiming that government agencies illegally discriminated in hiring policies on the basis of height and gender, as well as against people with hepatitis B. In both the height and hepatitis B cases, the agencies ended up changing their policies. But in none of his cases has he won a judgment on constitutional grounds.

Indeed, China's legal system almost seems designed to avoid such judgments. The authority to make constitutional judgments lies not with the court system but with the leadership of the National People's Congress, the party-run national legislature. And the congress has never publicly issued an opinion clarifying a constitutional dispute.

Mr. He is still pushing for equitable compensation. He has petitioned local officials, courted the Chinese media and written a letter to the National People's Congress and Prime Minister Wen Jiabao. There are tentative positive signs, Mr. Zhou said, which helps explain why he has not yet filed a lawsuit.

Two other provincial high courts have recently ruled for equitable compensation in similar cases. Mr. Zhou said he expected the Supreme People's Court in Beijing to review the compensation issue in June. Even if Mr. He eventually gets more money, it is unlikely he will get any validation of his constitutional rights. Still, Mr. Zhou holds out hope for the long term.

"The development of Chinese culture should empower the Constitution to act as a restriction on the government and as a safeguard on citizen rights," he said.

The loss of Yuan has been devastating for Mr. He and his wife. Mr. He said his fight was as much about his child's dignity as about the compensation money. His wife suffered a breakdown and has tried to commit suicide. Because of health problems, she can no longer have children, and the couple are worried about their future. Without social security benefits, the couple have no nest egg and now no child to care for them in their old age.

"She wanted to settle in the city and buy a big house for us when she was older," Mr. He said of his daughter. "She wanted to be a doctor, a teacher or a flight attendant."

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