

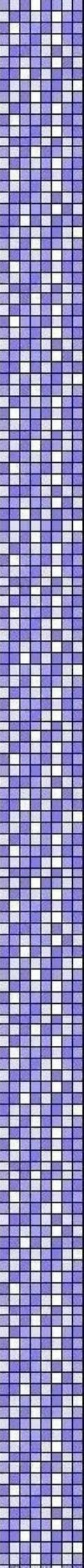
CHINESE URGENT ACTION WORKING GROUP

人权卫士紧急救援协会

PAPERING OVER THE CRACKS:

REFORM OF THE FORCED EVICTION
REGIME IN CHINA

A REPORT TO THE UNITED NATIONS SPECIAL
RAPPORTEUR ON ADEQUATE HOUSING



ABOUT THE CHINESE URGENT ACTION WORKING GROUP

The Chinese Urgent Action Working Group (人权卫士紧急救援协会) undertakes direct interventions on behalf of Human Rights defenders in distress through investigations, public advocacy, communication with international institutions and organizations, and through providing legal aid. The group is located inside mainland China, and was formed as a response to increased persecution of Human Rights defenders during 2008 and 2009. The organization also regularly releases reports and background briefs on issues concerning Human Rights, and especially Human Rights defenders, in China.

关于人权卫士紧急救援协会

人权卫士紧急救援会从事的是代表置身于危难中的人权卫士而进行的研究调查，公共宣传，与国际机构和组织交流，提供法律援助等的直接干预。该组织位于中国大陆，其成立的初衷是对2008年北京奥运会的举办而造成的对人权维护者更多迫害的一个回应。该组织还定期就中国人权维护者的问题发布报告和背景简要。

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CONTACT INFORMATION

<http://China-Action.org>

| China.Action@hushmail.com

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Released MARCH 29, 2010

ABSTRACT IN CHINESE

中国新拆迁条例 - 实质性的改革还是政府走过场？

备受社会各界关注的《国有土地上房屋征收与补偿条例（征求意见稿）》2月12日截止征求公共意见。征求意见期间有教授，律师，维权人士，开发商，官员与平民各发表各自意见，在国务院指定意见箱投的意见数目还创了新高。是何等重要的条例能引起这么强烈的反应？

中国政府颁布新拆迁条例的背景情况是平息中国人民对于近些年来地方政府大肆进行强制性拆迁造成悲剧的愤怒与抗议。就看进些月来的悲惨强制拆迁事件，2009年11月13日有成都市民唐富珍面对地方政府的暴力袭击而自焚身亡让人们极为愤怒，接着就有12月的席新柱抵抗政府的强制拆迁而自焚重伤。但新条例的内容具体是什么样的？它们真的能够约束地方政府与开发商的财富的贪求，能够阻止他们勾结起来剥夺人民的合法房屋权益吗？

人权卫士紧急救援协会的最新研究项目报告就是探讨中国现行的拆迁条例的弊端，中国现状引起拆迁暴力事件的主要因素与新拆迁条例的详细内容。

报告的另外一个重要焦点是中国赤脚律师在维护人民合法房屋权益中的作用与经历。通过山东省有名赤脚律师的拆迁案例经验，此研究项目报告还揭露了地方政府与法院为了支持非法拆迁活动而采取的黑暗措施。

此研究项目报告表明，虽然新拆迁条例跟将被替代的条例有所进步，但他们医治不了中国强制拆迁的问题。除了新条例的某些具体的缺点与遗漏，最根本的问题就是地方政府财政过度依靠卖地的经济收获。另外一个严重的遗漏是农村土地征收问题 - 新条例不涵盖集体所有土地，所以对这个问题没有丝毫解决。

TABLE OF CONTENT

INTRODUCTION.....	6
THE NEW “REGULATIONS GOVERNING THE REQUISITION AND COMPENSATION OF STATE-OWNED LAND”	8
CHANGES IN THE NEW REGULATION.....	12
AN INCOMPLETE SOLUTION.....	16
Background.....	34
Ineffective legal protection.....	36
Abuses.....	39
Reform.....	44
AVENUES OF ACTION: PRACTICAL ROUTES FOR DEMANDING JUSTICE.....	47
BAREFOOT LAWYERS (赤脚律师).....	53
REFUSAL TO HEAR EVICTION CASES.....	55
COLLUSION BETWEEN THE GOVERNMENT, THE COURTS AND PRIVATE DEVELOPERS.....	58
OBSTRUCTION DURING COURT PROCEEDINGS.....	61
WINS AND LOSSES.....	62
PERSONAL DANGER.....	63
RECOMMENDATIONS.....	64
CONCLUSION.....	67
INTERNATIONAL STANDARDS ON HOUSING RIGHTS.....	69
ALSO FROM THE CHINESE URGENT ACTION WORKING GROUP.....	72

INTRODUCTION

“But over the past 10 years, millions of people have been evicted around China. Quite a few have wound up homeless, and we are really beginning to see that this is not just a natural stage in the process of development, but that in some respects it may even be development out of control, development that the central state is not able to regulate to the degree that it may even wish to. The problems around forced evictions are beginning to point up weaknesses of the court system which could really threaten the long-term stability of the state”. - Sara Meg Davis, speaking before the Congressional-Executive Commission on China Roundtable: Property Seizure in China, June 21, 2004.

The forcible eviction of urban residents and the demolition of their homes and businesses by syndicates of government entities and private developers is an issue that has received extensive media coverage both in China and abroad. The situation for rural residents is often even worse as a result of the decentralization of power which exists in the countryside, giving local authorities a kind of de facto carte blanche from the central government to illegally appropriate farmland. Property rights violations, predominantly related to forced eviction and demolition, are one of the major causes of conflict and instability in China today.

Despite this, it is only as a result of two very recent and tragic cases of self-immolation in the face of forced eviction (Tang Fu Zhen of Chengdu¹ and Xi Xin Zhu² of Beijing) that the Chinese government appears to have woken up to the seriousness of the problem and is now proposing new regulations aimed at providing greater protection to citizens faced with eviction.

The primary focus of this report is not the wide-ranging abuses of state power and infringements of the human rights of Chinese citizens which frequently occur during

¹ See article in the China Daily online edition 5 December 2009:
http://www.chinadaily.com.cn/cndy/2009-12/05/content_9122972.htm

² See article in the China Daily online edition 17 December 2009:
http://www.chinadaily.com.cn/china/2009-12/17/content_9190702.htm

forced evictions and demolitions³, as a number of important reports documenting such incidents in great detail have recently been released by non-governmental organizations. Please see in particular *Thrown Out: Human Rights Abuses in China's Breakneck Real Estate Development*, a report published by Chinese Human Rights Defenders available at <http://chrdnet.org>, and *Developing at the Expense of Residents: Forced Evictions in Chongqing*, a report published by the International Federation for Human Rights available at <http://www.fidh.org/>.

The aim of this report is to provide a detailed legal analysis of the legislative reforms proposed by the Chinese government, including the deficiencies of the current regulations, the proposed replacement regulations and the views and opinions of a number of experts on the effectiveness of the new regulations. The report will present a number of cases to document the failures of the current regulations. Following the legal analysis the report will present an overview of the practical remedies for contestation and redress available to Chinese citizens. The final section will closely examine the role of so-called 'barefoot lawyers' (赤脚律师), an increasingly important resource in the repertoire of the aggrieved.

³ There are a number of important international treaties and covenants providing rights relating directly to housing and the enjoyment of property, extensive breaches of which have been uncovered and detailed in the two reports mentioned above. For details of such international standards please see *Appendix 1 – International Standards on Housing Rights* at page 81 of this report.

Part 1:

THE NEW “REGULATIONS GOVERNING THE REQUISITION AND COMPENSATION OF STATE-OWNED LAND”

Legislation currently on the Chinese statute book governing evictions and demolitions includes the Constitution of the People’s Republic of China itself, the 2007 Property Rights Law, the 2007 Urban Real Estate Management Law, the 2004 Land Management Law, the 2003 Rural Land Contracting Law, the 2003 National Regulations for Urban Residential Eviction and Demolition Administrative Arbitration Work and the 2001 Regulations Governing Housing Demolition in Urban Areas. It is the 2001 regulations in particular which have been the target of near-continuous academic criticism from within China for their failure to adequately protect the property rights of Chinese citizens.

The latest episode took place in December last year when five professors of law at Beijing University submitted an open letter to the National People’s Congress (China’s national legislative body) calling for the amendment or repeal of the regulations, which in their view are incompatible with the Constitution, the Property Rights Law and the Urban Real Estate Management Law. The letter was apparently prompted by the self-immolations of Tang Fu Zhen and Xi Xin Zhu mentioned above, which received unusually wide coverage in the Chinese media and were the subject of fierce criticism from Chinese netizens.

The professors’ criticisms of the 2001 regulations were as follows:

1. The regulations fail to distinguish between appropriations of property in the public interest and those for private profit, and more specifically do not provide that forced evictions can only be carried out when they are deemed to be in the public interest. According to the professors this is incompatible with Article 13 of the Constitution, Article 42 of the Property Rights Law and Article 6 of the Urban Real Estate Management Law which all provide that

appropriations of property can only be carried out when they are in the public interest⁴. The result of this conflict has been local governments authorizing evictions and demolitions of residential buildings on a huge scale to make way for commercial developments largely for selfish reasons, with officials often personally profiting from such developments and justifying them on the basis that they are complying with the regulations.

2. In the regulations the issue of the compensation to be paid to the evicted residents is dealt with as part of the demolition procedure rather than as a prerequisite to the demolition, meaning there is nothing stopping the demolition of residents' properties taking place before compensation has been settled. According to the professors this is incompatible with Article 13 of the Constitution, Article 42 of the Property Rights Law and Article 6 of the Urban Real Estate Management Law which all provide that compensation must be provided during the requisition process i.e. before and as a condition to demolition taking place. As a result demolition often proceeds without agreement on compensation, which puts residents in a very weak bargaining position and facing the unpalatable choice of accepting the compensation offered (which is likely to be set at a deliberately low level in order to maximize the profits to be made from the development) or challenging it after the event using prescribed methods of redress in which the odds are stacked against them, as we will see below.
3. The regulations provide that a private 'agent' is to demolish the properties and pay compensation to the residents rather than the local government, which effectively turns demolitions into a civil matter between two private parties rather than an administrative matter between the state and its citizens. According to the professors this is in conflict with Article 13 of the Constitution and Article 6 of the Urban Real Estate Management Law which require these functions to be carried out by the state only.
4. The regulations authorize the Housing Demolition Management Bureau of the

⁴ Although it should be said that the Property Rights Law is also purposefully vague on exactly what the public interest is, the issue having been argued over long and hard during the drafting process without resolution.

relevant local government to issue demolition permits to the party who is to carry out the eviction and demolition without having completed the requisitioning of the property in accordance with the relevant procedures. This means that demolition permits can be obtained simply by providing a number of documents which have nothing to do with justifying the demolitions or the requisition process itself to the Housing Demolition Management Bureau. According to the professors this is incompatible with Article 13 of the Constitution, Article 42 of the Property Rights Law and Article 6 of the Urban Real Estate Management Law which all require the requisitioning to take place before demolition. As a result of this conflict demolitions are often authorized before the requisitioning of the property and the issue of compensation has been settled, again putting residents in an impossibly weak position should they wish to challenge any aspect of the process.

The letter from the professors is not the first time that experts within China have directly criticized the 2001 regulations and called for reform. In 2003 retired professor Wang Jin Cheng from Hangzhou brought a group of supporters to Beijing to petition the central government to amend the regulations on the grounds of unconstitutionality⁵. The movement ultimately failed when a discussion meeting organized by the government concluded that the regulations did conform with the Constitution, however there has been speculation since that this was due to the fact that the discussion forum was dominated by officials and property developers with an interest in this conclusion being reached.

The second reform movement took place in late 2007 following the enactment of the new Property Rights Law, with many academics calling for the amendment of the 2001 regulations on the grounds that they conflicted with this new law. The famous

⁵ :See article available at: <http://lanzhou.china.com.cn/chinese/difang/377490.htm>. Also see article entitled '*Rang xingzheng quanli jinkuai tuichu chaiqian lingyu*' – '行政力尽快退出拆迁区域' (Translation: *Remove administrative power from eviction and demolitions*) by Xie Guangfei and Wang Xiaoxia in the China Economic Times (中国), October 15, 2003, now available at: <http://blog.china.alibaba.com/blog/xieguangfei/article/b0-i2485069.html>

Chongqing 'nail house' case also appeared around this time⁶, which generated enormous media interest in the issue. The central government itself, through Minister for Construction Wang Guang Tao in a speech on 24 August 2007, admitted that the 2001 regulations were incompatible with the Property Rights Law and stated that they would no longer be enforced following the effective date of the Property Law (1st October 2007). This never happened however, and the power of property developers and local governments prevailed once again.

The Chinese government's response to the professor's letter was to invite nine constitutional experts to a formal, closed-door discussion on the 2001 regulations, the result of which was the release on 29 January 2010 of a consultation draft of the 'Regulations Governing the Requisition and Compensation of State-Owned Land'⁷, slated as a replacement for the 2001 regulations.

The public consultation period, during which members of the public have been able to submit their comments on the draft regulations by post or online, ended on 12 February, and a final draft of the new regulations is currently awaited. The Sina news agency has since reported that the State Council web page set up to receive suggestions and comments from the public received a record-breaking 13,437 visits during the public consultation period⁸, showing the strength of public and professional interest in the issue across the country.

The draft regulations were also discussed during the 2010 sessions of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) held during March of this year, however there have been no reports in the Chinese or foreign media stating the proposed timetable to implementation since the NPC session closed on March 14.

⁶ See BBC News online edition article '*Woman defies Chinese developers*' available at: <http://news.bbc.co.uk/2/hi/asia-pacific/6483997.stm>

CHANGES IN THE NEW REGULATION

The consultation draft of the new regulations contains a number of changes to the way evictions and demolitions can be carried out:

RE-BRANDING “DEMOLITION AND EVICTION”

In a highly symbolic move, the term ‘chaiqian’ (拆迁) meaning demolition and eviction does not appear in the new regulations, which instead use the terms ‘zhengshou’ (征收) meaning appropriation and ‘banqian’ (搬迁) meaning relocation. The term ‘chaiqian’ and the ubiquitous Chinese character 拆 (chai), which on its own means to demolish or tear down, had become potent symbols of China’s breakneck urban redevelopment and the demolition of entire swathes of residential neighborhoods across the country in recent years, with the 拆 character painted onto buildings facing demolition. The decision to replace this with less emotive terms which belie the violence which often accompanies forced evictions reflects the Chinese government’s acute awareness of the sensitivity of the issue amongst the Chinese public.

THE PUBLIC INTEREST

The new regulations distinguish between demolitions which are in the public interest and those not. Public interest demolitions are defined by reference to an exhaustive set of 7 categories⁹. Importantly forcible demolitions (i.e. those carried out without the agreement of residents) can only be authorized by governments where they are found to be in the public interest. Demolitions which don’t meet the public interest criteria must be accompanied by an agreement entered into voluntarily and in the absence of any coercion or intimidation between the developer and the residents¹⁰.

⁷ Chinese title: ‘Guoyou tudi shang fangwu zhengshou yu buchang tiaoli’- ‘国有土地上房屋征收与
□□ 条例’

⁸ See article available at: <http://yn.house.sina.com.cn/news/2010-02-14/111916426.html>

Residents of buildings slated for demolition due to dilapidation (which is one of the 7 categories of public interest demolitions) are given additional protections as a result of perceived abuses and over-use of this reason by local governments in the past and the difficulties in arriving at an objective standard of dilapidation. The new regulations provide that demolitions which are claimed by local governments to be in the public interest due to dilapidation must receive the approval of 90% of the residents of the relevant buildings before a final decision to requisition and demolish can be made by the local government¹¹. If 90% approval is achieved, at least 2/3rds of residents must approve the compensation package offered¹², and if this is achieved at least 2/3rds of residents must approve the specific terms of the compensation contract before the demolition can proceed¹³.

PUBLIC PARTICIPATION

In response to calls for greater transparency in government decision-making regarding evictions and demolitions, the new regulations provide that public consultations and discussion meetings with those residents to be affected by the demolitions, the general public and relevant experts must take place before the decision to appropriate property in the public interest can be taken by local governments. The period during which the meetings are held and the public are able to voice their opinions must last at least 30 days, and can be extended to 60 days where the proposed demolitions are 'large scale' (no definition is offered)¹⁴.

Where "significant objections" to a particular demolition project are received during the consultation period, the final decision on requisitioning a property must be referred up to the next level of government above the government department which was originally handling the process. No definition of "significant objections" is

⁹ Article 3

¹⁰ Article 40

¹¹ Article 13

¹² Article 24

¹³ Article 25

offered in the regulations however¹⁵.

COMPENSATION

The new regulations stipulate that appropriate compensation must be paid to every resident evicted from their property, and that this is to be based on the market value of the property concerned taking into account relevant factors such as location, land use, building structure and the age of the building. The figure is to be calculated by an independent valuer selected in an impartial drawing of lots by the residents concerned¹⁶.

The regulations also state that a demolition cannot take place until compensation has been paid¹⁷, and that a compensation contract must be entered into between the government and the residents¹⁸. It is open to residents to challenge the amount of compensation offered by the government (as calculated by the independent valuer), however where both an administrative reconsideration and a People's Court decision have upheld the government's compensation package (see below), the demolition can go ahead and a forced eviction will take place once the compensation has been paid to the resident by the local government¹⁹.

LEGAL REMEDIES AVAILABLE TO RESIDENTS

Where residents still have objections to a proposed demolition following the consultation stage, the regulations provide for the right to request an administrative re-consideration of the local government's decision to requisition and demolish, which will be carried out by the level of government above that level originally dealing with the demolition, and also the right to challenge the local government's decision in a People's Court²⁰. These remedies are also available in respect of the local government's decision over the level of compensation to be paid (see below –

¹⁴ Article 10

¹⁵ Article 12

¹⁶ Articles 18 to 21 incl.

¹⁷ Article 28

¹⁸ Article 25

¹⁹ Article 28

although an independent valuer is to be used, the government has the final say over compensation disputes in certain circumstances).

PROCEDURAL SAFEGUARDS

In response to the professors' criticisms of the old regulations, the new regulations clarify that the legal requisition of a property must be undertaken first (i.e. including the public consultation period), compensation paid to the residents and only then can the demolition be carried out. If the first two stages are not completed the demolition cannot take place²¹.

Again in reaction to criticisms of the old regulations which allowed a private 'agent' to carry out demolitions on behalf of the local government, the new regulations provide that the local government is the only body with the power to carry out requisition and demolition in the case of public interest demolitions²².

VIOLENCE AND SIEGE TACTICS

The use of violence, intimidation and other 'barbaric' coercive measures during forced evictions in the public interest is strictly prohibited under the new regulations, e.g. the cutting off of electricity, gas, water, sewage etc²³ in order to force residents out of their homes.

This provision in particular is important in as much as it is a tacit acknowledgment by the government that evictions and demolitions have often seen atrocious brutality meted out by government agents in the past. Whilst the majority of such incidents are smothered by government censors, many are reported on by domestic and foreign media and have caused outrage amongst the Chinese public.

For example in 2005 the manager of a property development company in Shanghai and two employees were arrested and sentenced to death for setting fire to a building to drive the residents out; the elderly couple inside perished in the flames.

²⁰ Article 15

²¹ Article 28

The vice mayor, Yang Xiong, then pressed for officials to severely, “punish those relocation employees who force residents to move out by 'barbaric means.'”²⁴

This reflects a political, rather than legal, tactic often employed by the Chinese government, which is to severely try a few cases pertaining to a widespread system of illegal actions in order to make a show of their resolve. In reality the majority of cases go unheard and untried. Police and government officials often watch as abuses occur and or fail to prosecute afterwards.

On March 6, 2010 during a forced demolition in Beijing a 70 year old women was beaten by a worker and then pushed into a pit, whereupon a bulldozer covered her with earth. Her relatives leapt to dig her out but by the time they had reached her she was dead. The police reportedly stood by and did nothing to intervene.²⁵

Despite the fanfare made in the government press about the fact that the regulations now prohibit these actions, they had all in fact already been outlawed under Article 24 of the 2003 National Regulations for Urban Residential Eviction and Demolition Administrative Arbitration Work however²⁶, so should not be considered a new measure as such.

AN INCOMPLETE SOLUTION

The new regulations contain significant improvements to the 2001 regulations, and this is to be welcomed. However they are far from a comprehensive solution to the problem of forced evictions in China today. We outline below a number of concerns with the new regulations which are likely to hinder their effectiveness in protecting the property rights of Chinese citizens:

²² Article 5

²³ Article 33

²⁴ See article in the China Daily online edition 8 March, 2005:
http://www.chinadaily.com.cn/english/doc/2005-03/08/content_422825.htm

²⁵ See article in The Telegraph March 6, 2010:
<http://www.telegraph.co.uk/news/worldnews/asia/china/7374701/Chinese-granny-buried-alive-by-property-developers.html>

"RE-BRANDING "DEMOLITION AND EVICTION"

The change in terminology from "demolition and eviction" to "appropriation" and "relocation" (see above), whilst welcomed by some as a shift in emphasis away from the violent means often used in the past, could potentially allow an expansion of local government power in that demolishing the appropriated property is now no longer necessary. Local governments could potentially use the new regulations to appropriate property and evict residents, leave the buildings as they are or carry out renovation, and then sell or re-rent back onto the market, keeping the profits.

Wang Cai Liang of the Cai Liang law firm in Beijing, a renowned property rights practitioner: (translation from the Chinese) *"'Relocate' is actually worse. In past evictions and demolitions, they had to demolish your house if they wanted to evict you. Now with 'relocate' they can evict you without needing to demolish your house"*

²⁷.

LEGAL REMEDIES AND REALITY

Whilst the regulations provide residents facing eviction and demolition with the right to request an administrative re-consideration and the option to take the local government to court, there is no right to require that the local government stop the requisitioning procedure and payment of their compensation package whilst these processes are ongoing²⁸. This will severely limit their effectiveness as remedies as in practice the requisition and compensation processes can be completed well before the re-consideration or court hearing is concluded, leaving the resident with no actual redress since a forced eviction can take place once compensation has been paid (no matter if it is an amount that they accept as fair or not).

²⁶ See Article 24 – Chinese title: 'Chengshi fangwu chaiqian xingzheng caijue gongzuo guicheng' - '城市房屋拆迁行政裁决工作□程'.

²⁷ "Chaiqian geng kepa.....guoqu de chaiqian de shihou ne, zhe ge fangzi xuyao chai le cai lai [] gan ni zou. Er xianzai ruguo shi banqian de hua, ta de fangzi bu chai jiu gan ni zou" - "搬迁更可怕....过去的拆迁的时候呢,这个房子需要拆了才来[]赶你走.而现在如果是搬迁的话,他的房子不拆还赶你走" - taken from an interview with the BBC Chinese service (BBC 中文网) available at: http://www.bbc.co.uk/zhongwen/simp/china/2010/01/100129_audio_wangcailiang.shtml

Furthermore the likelihood of a resident succeeding in an administrative re-consideration application and the local government's decision being overturned is not high as the application is heard by the level of government above that which originally dealt with the eviction and demolition, rather than an independent body with no interest in the matter. Once an administrative re-consideration has upheld a decision, a People's Court is even less likely to overturn it.

The Chinese judiciary's lack of independence is a well-documented subject in its own right, and for the purposes of this report it is sufficient to note that the People's Courts are effectively controlled by the Chinese Communist Party and are often reluctant (or politically unable) to overturn the decisions of local governments in eviction and demolition cases. Please see Part 2 of this report for further details of the ineffectiveness of the court process as a means for residents to protect their property rights.

THE PUBLIC INTEREST

Several commentators have pointed out that the 7 categories of public interest demolitions are drafted very widely and are very much open to interpretation.

Article 3 of the new regulations provides that demolitions to be carried out for the following purposes are to be considered in the public interest:

- (i) National defense projects;
- (ii) Important national projects involving natural resources, transport, water

²⁸ See Article 28: 'bei zhengshou ren yiji yu fangwu zhengshou jue ding youguan de lihai guanxiren dui buchang jue ding bu fu de, keyi yifa shenqing xingzheng fuyi, ye keyi yifa xiang renmin fayuan tiqi xingzheng susong. zai xingzheng fuyi, xingzheng susong qijian, **bu tingzhi buchang jue ding de zhixing**' – '被收人以及与房屋征收决定有关的利害关系人对补偿决定不服的，可以依法申请行政复议，也可以依法向人民法院提起行政诉讼；在行政复议、行政诉讼期间，**不停止补偿决定的执行**' (Translation: Residents subject to requisitioning who do not agree with the compensation decision and other persons whose rights and interests are affected by the requisitioning who do not agree with the compensation decision shall be able to apply for an administrative re-consideration and shall be able to bring proceedings in a People's Court in respect of the decision. Whilst the administrative re-consideration or court process is ongoing **the implementation of the compensation decision shall not be stopped**)

or other public services;

(iii) Important national projects in the fields of science, education, culture, hygiene, sports, protection of the environment and natural resources, protection of cultural and historic sites, the welfare system and other public service projects required by city governments;

(iv) Residential projects for the improvement of housing conditions of low income families, low rent accommodation organized by the government and other low cost accommodation projects;

(v) The reconstruction and improvement of old and dangerous buildings by the government;

(vi) The construction of necessary government offices; and

(vii) Other projects deemed as being in the public interest by law or the State Council.

Categories (ii) and (iii) in particular are drafted very inclusively and could conceivably include commercial development projects which have little to do with the interests of the general public, for example an entertainment center containing a cinema, bowling alley, swimming pool and other amusements could be said to be a project in the field of culture or sport but is not necessarily in the public interest as it is a purely commercial endeavor.

Many of the categories also seem to be for the benefit of the government rather than the public, i.e. the construction of new government offices (See category (vi)) or public service projects required by city government (See category (iii)).

Wang Cai Liang in particular points to the inclusion of categories (iv), (v) and (vi) as being a step backwards in that they potentially cover virtually all types of evictions and demolitions currently practiced by local governments: (translation from the Chinese) *“This clearly does not accord with current Chinese law. If these three situations can be said to be in the public interest, then they cover nearly every type*

*of activity which causes eviction and demolition disputes in China today*²⁹.

A further issue concerns proportionality, a concept which is notably absent from the new regulations. How many people does a particular project need to benefit before it can be said to benefit the public as a whole? How is this weighed up against the number of people who would need to be evicted to make way for the project? There is no balancing exercise provided for in the regulations, presumably meaning that projects would only need to benefit a very small section of the public to be said to be in the public interest. The Beijing Olympics held in 2008 would probably be said by most Chinese to be a project in the public interest, but would they say the same thing if they knew that some estimates³⁰ put the number of residents evicted to make way for the games at 1.5 million? Perhaps they would but because of the opacity of the political process and urban planning processes we simply don't know. What is lacking in Chinese law, the new regulations included, is the involvement of the public in deciding what kind of development projects should be carried out in their name.

There is also no concept of proximity within the definition of the public interest. As seen in the city-shaping taking place on a huge scale in Shanghai in preparation for the 2010 World Expo³¹ or that which has already taken place in Beijing as part of the 2008 Olympic Games, such projects will often be designed with a core of developments without which the main event could not function, plus a series of subsidiary developments, mostly commercial, which are said to be a part of the whole but which in reality are undertaken in order to take advantage of the perceived legitimacy of the main event. The public interest is often invoked to sanction these projects with only a veneer of public consultation or examination,

²⁹ *"Zhe xianran shi bu fuhe xianxing falv yuanze de. suoyi ruguo yiban zhe san ge qingkuang chuxian, shi gonggongliyi de hua, ta jihu hangai le xianxing zhongguo yinqi chaiqian maodun de suoyou huodong"* - "这显然是不符合现行法律原则的。所以如果一般这三个情况出现,是公共利益的话,他几乎涵盖了现行中国引起拆迁矛盾的所有活□" – taken from an interview with the BBC Chinese service (BBC 中文网) available at: http://www.bbc.co.uk/zhongwen/simp/china/2010/01/100129_audio_wangcailiang.shtml

³⁰ See 'Forced Evictions – Violations of Human Rights 2003-2006' page 70 released by the Centre on Housing Rights and Evictions (COHRE).

whilst thousands of families are evicted, many of whom are shocked to discover their homes are replaced by office towers or shopping malls instead of public facilities. In these situations the line between the public interest and purely commercial concerns is deliberately blurred. Perhaps the most recent example of this in China is Shanghai, where around 18,000 families have already been evicted in preparation for the 2010 World Expo but it is estimated that another 400,000 people will be evicted as part of its urban redevelopment plans, of which the Expo is the jewel in the crown³².

Perhaps the most important failing of this particular article is that it gives the local government the power to decide whether a particular demolition fits into one of the 7 categories of public interest demolitions. This lack of an independent arbiter will in practice work against the interests of residents as the local government is made judge in its own cause, reflects Wang Zhen Yu, Director of the Yi Pai Gong Yi law firm: *"It should be a legal institution involved in property disputes which decides what is in the public interest. I think a 'Property Court' could be set up specifically to deal with these matters"*³³. Professor Zhang Qian Fan of the Legal Studies Department of Beijing University also asks in an article for the Workers Daily newspaper: *"Who is to decide what is in the public interest? In my opinion the public must take part in this. We must let the public decide what is in the public interest"*³⁴.

Professor Wang Yi of the Legal Studies Department of People's University in Beijing

³¹ See *'Shanghai's Boom – A Building Frenzy'* by Howard W. French of the NY Times available at: <http://www.cul-studies.com/english/chinastudies/200604/3752.html>

³² See *'Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights'*, a report compiled by the Centre on Housing Rights and Evictions (COHRE) available at: www.cohre.org/store/

³³ *'Xin chaiqian tiaoli yijian zhengqiu qiu jiang jie zhi 'gonggongliyi' shei lai queding?'* - '新拆迁条例"意见征求将截止"公共利益"谁来确定?' (Translation: *The Consultation Period for the New Demolition Regulations is due to Finish – Who Defines 'The Public Interest'?*) – Gongren Ribao (工人日报) 2010年02月08日 available at: <http://unn.people.com.cn/GB/14748/82703/10950839.html>

³⁴ *'Xin chai qian tiao li yi jian zheng qiu qiu jiang jie zhi 'gong gong li yi' shei lai que ding?'* - '新拆迁条例"意见征求将截止"公共利益"谁来确定?' (Translation: *The Consultation Period for the New Demolition Regulations is due to Finish – Who Defines 'The Public Interest'?*) – Gong Ren Ri Bao (工人日报) 2010年02月08日 available at: <http://unn.people.com.cn/GB/14748/82703/10950839.html>

has also revealed that during the closed-door discussions between legal experts and the government, many participants pressed for the inclusion of the right for the court to decide on whether a particular demolition was in the public interest or not, and expresses his dissatisfaction that this was not included in the draft regulations released³⁵.

DEMOLITIONS NOT IN THE PUBLIC INTEREST

Unfortunately the new regulations say very little about demolitions which are not in the public interest, leaving gaps in the law which could well be exploited to the disadvantage of residents. The regulations simply state that such demolitions must be accompanied by an agreement which has been reached freely and voluntarily between the developer proposing the demolitions and the residents³⁶, but does not explicitly state that in the absence of such agreements a forced eviction cannot take place. This omission has been picked up by commentators and experts alike as requiring amendment in the final version of the regulations.

The regulations go on to state that the provisions regarding monetary compensation, transfers of property rights and compensation contracts in respect of public interest demolitions shall apply to non public interest demolitions³⁷, but say nothing about the procedural requirements which must be followed. Commentators, including a Professor at the Beijing Administrative College writing in the Procuratorate Daily³⁸, have noted that that this is a significant loophole that developers could exploit in the future to pressurize residents into signing compensation contracts, e.g. do developers have to apply for the demolition permits

³⁵ 'Fangwu zhengshou buchang tiaoli yijiangao wu da wenti cun zhengyi' - '房屋征收补偿条例意见稿中五大问题存争□' (Translation: *Five Points of Dispute Regarding the Consultation Draft of the Regulations Governing the Requisitioning and Compensation of Residential Property*) – Zhongguo Qingnian Bao (中国青年报) 2010年01月29日 available at : http://zqb.cyol.com/content/2010-01/29/content_3065546.htm

³⁶ Article 40

³⁷ Article 40

³⁸ 'Xin zhengshou tiaoli neng wanquan tidai jiu chaiqian tiaoli ma?' - '新征收条例能完全替代旧拆迁条例吗?' (Translation: *Can the New Requisitioning Regulations Completely Replace the Old Demolition Regulations?*) – Jiancha Ribao (检察日报) 2010年02月10日 available at: http://newspaper.jcrb.com/html/2010-02/10/content_37459.htm

from the local government before or after they have reached agreements with the residents? If they can apply for such permits before agreement is reached, the residents will be faced with much greater pressure since the local government will have already approved the scheme and may begin to exert pressure of its own in order to push the development through. In these circumstances can the agreements reached be said to be truly voluntary?

COMPENSATION

The issue of compensation is at the heart of the majority of forced eviction disputes, including some of the most tragic. On the 22 August 2003 Nanjing Resident Weng Biao poured petrol over himself and 7 members of the local eviction department and set himself alight during a dispute over the amount of compensation offered by the department for the demolition of his home. The difference between the amount offered and the amount Weng Biao was holding out for was a mere 10,500RMB (around U.S.\$1,500), yet it ultimately cost Weng Biao his life and causes serious burns to the 7 officials³⁹.

In a 2004 report by Human Rights Watch, a Beijing resident recalls the case of his parents' forced eviction without compensation. The interviewed resident noted while still waiting for agreeable compensation terms to be agreed upon by the resident and developer, "the demolition and eviction management department came to say they had only two days to move before forced demolition. The government department did not approach them and offer an agreement.... [My parents] didn't get anything [as compensation], and they had no help with resettlement."⁴⁰

Whilst the new regulations have made some significant improvements to the way compensation is calculated and paid, issues remain.

As mentioned above, compensation is now to be based on the market value of the

³⁹ <http://news.sina.com.cn/w/2003-09-01/0601666041s.shtml>

relevant property calculated in accordance with the area, land use, building structure, building age and other relevant factors. Put together these factors leave a lot of room for adjustment downwards, and the incentive on the government will be to apply pressure on the certifier to do just that, according to lawyer Wang Cai Liang⁴¹. Significantly the regulations do not require that the compensation package should be the subject of the public consultations and discussions, which is inexplicable when this is often the most important issue to the residents affected.

Although the valuation is to be provided by an independent certifier chosen in an impartial manner by the residents, it is debatable whether a certifier exists which is truly impervious to government pressure to produce a valuation on the lower end of the scale. Local governments, being the gate-keepers of all commercial activity in their area, have a variety of means at their disposal with which pressure can be exerted and will be able to make life very difficult for businesses who do not comply with their will.

There is also significant concern that not enough detail is provided in the regulations in respect of compensation for loss of commercial property, i.e. loss of business and the costs of relocating the business to an equivalent location with equivalent commercial opportunities. In practice the compensation offered for commercial properties is often much lower than the true value of the business, which is not usually investigated in any serious way by government. The consequences for business owners provided with inadequate compensation can be very serious, often resulting in poverty through loss of their source of income. Wang Cai Liang also points out that disputes are most frequently seen in relation to commercial properties where a residential building has been converted into a commercial property and the government denies this was permitted, and

⁴⁰ Human Rights Watch, '*Demolished: Forced Evictions and the Tenant's Rights Movement in China*': <http://china.hrw.org/timeline/2004/demolished>

⁴¹ '*Fangwu zhengshou buchang tiaoli yijiangao wu da wenti cun zhengyi*' - '*房屋征收补偿条例意见稿中五大问题存争*' (Translation: *Five Points of Dispute Regarding the Consultation Draft of the Regulations Governing the Requisitioning and Compensation of Residential Property*) – Zhongguo Qingnian Bao (中国青年报) 2010年01月29日 available at: http://zqb.cyol.com/content/2010-01/29/content_3065546.htm

compensation in respect of manufacturing premises and office premises, which are not strictly commercial in nature but are commonly attached to commercial enterprises⁴². In light of this complex situation on the ground, it is therefore particularly unsatisfactory that the new regulations have not included more detailed provisions which would ensure that compensation for the loss of a business is fair and adequate, Article 31 merely stating that *'appropriate compensation shall be paid to evictees of non-residential properties in respect of business interruption'*.

Other commentators such as Ni Wen Hua, a barefoot lawyer with over 10 years of experience of eviction and demolition cases (see Part 3 of this report below), have expressed concern that the compensation provisions in the new regulations only deal with the value of the property lost, and not the loss of amenity, inconvenience, emotional distress and dislocation from social networks that evictions often cause, since these can all have a serious effect on the lives of those evicted. A resident who has to relocate to an area far away from their place of employment will face increased travel time to and from work, or even the impossibility of maintaining their employment. Aside from the effect on a resident's employment, relocation can also mean keeping in contact with friends and relatives becomes much more difficult, resulting in social exclusion⁴³.

Perhaps the most fundamental failing of the new compensation provisions is that they do not comply with Article 42 of the Property Rights Law which says that compensation payable to evicted residents must ensure that their accommodation conditions are guaranteed⁴⁴. To Wang Cai Liang this means that the compensation must be sufficient to purchase a property which is at least of the same size as the

⁴² *'Fangwu zhengshou buchang tiaoli yijiangao wu da wenti cun zhengyi'* - '房屋征收补偿条例意见稿中五大问题存争□' (Translation: *Five Points of Dispute Regarding the Consultation Draft of the Regulations Governing the Requisitioning and Compensation of Residential Property*) – Zhongguo Qingnian Bao (中国青年□) 2010年01月29日 available at: http://zqb.cyol.com/content/2010-01/29/content_3065546.htm

⁴³ *'Zhengqiu yijiangao wenti duoduo, zuihou yi tian zui huang tang'* - '征求意见稿问题多多, 最后一条最荒唐' (Translation: *The Problems in the Consultation Draft are Numerous, the Final Clause Being the Most Ridiculous*) – Boxun (博讯) 2010年01月31日发表 available at: <http://news.boxun.com/news/gb/pubvp/2010/01/201001311054.shtml>

resident's original property⁴⁵, however this is not necessarily going to be possible simply by using the true market value of the original property. For example the value of the original property will take account of the fact that it is a second-hand property, and will often be in a residential block constructed 10, 20 even 30 years previously. If as is common in these cases the area in which the resident lives has seen modern blocks replace older blocks, properties in these modern blocks will command a much higher price on the property market than the old blocks, and the amount of compensation that the resident receives for his/her old property will not be enough to buy an equivalent size property in one of the new blocks. In this situation residents will be faced with a choice to purchase a much smaller property in the same area (if they can afford one at all), or look much further afield where property prices are cheaper. In either case the accommodation conditions the resident finds themselves in after eviction are not equivalent to those they enjoyed prior to eviction.

This was the issue at the heart of the case of Pan Rong, a Shanghai resident whose home was slated for demolition as part of the expansion of the Hongqiao Airport in June 2008. Pan Rong and her husband refused to move out of their own accord because they simply would not be able to find a house equivalent to their original house using the compensation offered by the local government of 673,000RMB. With residential apartments in the area costing as much as 15,000RMB per square meter, 673,000RMB would not go far at all and certainly not far enough to buy an apartment of equivalent size (480 square meters). Pan Rong is reported to have said about the compensation offer: *"You can't take away my lamb and hand me back a chicken. You can't just say that the chicken looks handsome and it can lay eggs, and*

⁴⁴ Article 42 contains the following: 'Zhengshou danwei, geren de fangwu ji qita budongchan, yingdang yifa jiyu chaiqian buchang, weihu bei zhengshou ren de hefa quanyi; zhengshou geren zhuzhai de, hai yingdang baozhang bei zhengshou ren de juzhu tiaojian' - '征收单位、个人的房屋及其他不动产，应当依法给予拆迁补偿，维护被征收人的合法权益；征收个人住宅的，还应当保障被征收人的居住条件' (Translation: In requisitioning the immovable property of individuals or work units, compensation must be paid in accordance with the law, and the legal rights of those subject to the requisitioning protected. When requisitioning residential property, the accommodation conditions of the persons subject to the requisitioning must be guaranteed).

⁴⁵ See comments posted on his blog available at:
<http://cailiang329.blog.sohu.com/138680434.html>

expect me to take it. I don't want it. This is unacceptable."

The outcome of the couple's defiance was sadly predictable. A demolition team complete with bulldozer turned up at her house and razed it to the ground, but not before Pan Rong and her husband had thrown Molotov cocktails at the team in their desperate efforts to protect their home⁴⁶. As a result Pan Rong's husband was subsequently sentenced to 8 months imprisonment for the crime of disrupting the performance of public duties, and Pan Rong and her 5-year old son were deported from China (they hold New Zealand citizenship). The government-controlled Global Times subsequently reported that the Shanghai authorities' demolition of Pan Rong's home was illegal on two counts, however the Shanghai Intermediate Court subsequently rejected a law suit filed by her father in law Zhang Quan Yu alleging serious breaches of procedure⁴⁷.

LOCAL GOVERNMENT PERFORMANCE AND REVENUE RAISING

There are still significant incentives on local governments to continue to approve redevelopment schemes within their administrative areas which are likely in practice to trump the tightening of the way demolitions can be carried out in the new regulations. Firstly the fiscal reforms of 1993 made local governments responsible for balancing their own books to a much greater extent than they had been previously, tasked them with collecting personal and corporation taxes directly and cut the amount of funding provided by the central government. As a result property redevelopments have come to be seen by local governments as an important revenue-raising tool, as not only do they raise large capital sums via the sale of the land use rights to private developers willing to pay high prices, but they also bring increased cyclical revenues. Typically the developments involve the replacement of low value residential housing with commercial properties which bring with them

⁴⁶ See articles at <http://chinadigitaltimes.net/2009/11/woman-battles-demolition-squad/>, http://special.globaltimes.cn/2009-12/495490_2.html and http://www.bjreview.com.cn/print/txt/2010-01/04/content_238203.htm

⁴⁷ See 'Making Waves', Global Times December 30 2009 available at http://special.globaltimes.cn/2009-12/495490_2.html

increased corporation tax yields, and high value residential accommodation inhabited by high-earning residents bringing increased income tax revenues⁴⁸.

Secondly local government performance evaluation and individual promotions are still very strongly focused on increasing economic growth rates, which is a big incentive to continue to approve commercial redevelopments which contribute to raising the growth rate of the local economy in priority to protecting the property rights of low-earning residents. Recent comments by Zhou Rui Jin, a researcher at the government-controlled Chinese Academy of Social Sciences in an interview with the Xinhua news agency, appear to show an acceptance of this: *"As long as local government officials need GDP growth to improve their merit record for promotion and also need land auction income for government expenses, they tend to stand by the developers instead of the masses"*⁴⁹.

Thirdly personal profiteering is often a prime motive for approving property redevelopments, as developers are able to pay large sums of money as kick-backs and sweeteners to government officials since the returns they stand to make from land transferred to them at prices set by the same officials are huge. The overall lack of government transparency and accountability despite symbolic campaigns against corruption unfortunately means that such practices are widespread.

⁴⁸ See comments by Wu Zheng De (吴正德), deputy chairman of the China Democracy League during the 2010 sessions of the National People's Congress and the Chinese People's Political Consultative Conference: *"Woguo difang zhengfu caizheng shouru guodu yilai tudi churangjin de wenti bu genben zhuanbian, yi lanyong zhengshouquan de zhuli dongji jiu bu keneng jue"* - "我国地方政府财政收入过度依赖土地出让金的问题不根本转变, 其滥用征收权的逐利动机就不可能根绝" (Translation: *"As long as local government finances continue to rely heavily on the sale of land use rights, the motivation to abuse the power to appropriate land for profit will still be there"*) – Oriental Morning Post (东方日报), 6 March 2010 available at: http://cn.china.cn/article/n503496,f0cf84,d2470_11927.html

See also comments by Counsellor Feng Shi Liang (冯世良) of the Shenyang (沈阳) city government: *"Difang caizheng kao shenme, jiu kao mai di, jianfang zhe dian dongxi"* - "地方财政靠什么, 就靠卖地、建房这点儿东西" (Translation – *"What do local government finances depend on? They depend on land sales and residential construction"*) – Taken from article published in the Beijing Daily (北京日报) 5 March 2010 available at: <http://news.sohu.com/20100305/n270592583.shtml>

⁴⁹ See 'Defending Home' by Li Li available at: http://www.bjreview.com.cn/print/txt/2010-01/04/content_238203_2.htm

THE PLANNING PROCESS

Public exclusion from the planning process in general is another reason why local governments and developers are able to collude with a view to profit behind closed doors and free from any independent scrutiny. As mentioned above, it is likely that planning policy will continue to be subject to the overriding objective of increasing growth rates and the rights and interests of residents will be considered to be subordinate to this goal. Experts and commentators, including the government-controlled media, have called for a re-calibration of urban planning policy away from the quest for breakneck growth rates towards safeguarding the well-being, quality of life and property rights of residents⁵⁰, including prioritizing the expansion of low-cost housing a top priority as opposed to allowing luxury apartment blocks which are completely unaffordable to the average citizen to dominate the real estate sector⁵¹. Such a change can only be initiated from the very top levels of the Chinese government, and it is submitted that the likelihood of subordinating economic growth to other policy interests seems remote under the current leadership and in the current economic climate.

⁵⁰ *“Therefore, the root of forced demolitions and the ensuing tragedies is not the demolition regulation itself, but a city's planning and expropriation process. As long as residents are excluded from the decision-making process, and local government and developers regard razing buildings as a ‘profit-making business’, demolitions cannot be a civilized act, no matter how much we amend related regulations. To change this situation, we have to first ensure that local governments and real estate developers cannot make money, or at least easy money, through demolitions. This will reduce their enthusiasm for demolitions. Some local government leaders still believe demolition is equal to development and link local GDP growth to their political achievements and career paths. As a result, they never realize that “no demolition” could actually make local people's life better.”* – China Daily online edition Editorial ‘All-round participation is key to better future’ December 22 2009 available at: http://www.china.org.cn/china/2009-12/22/content_19110966.htm

⁵¹ Despite calls from central government for local governments to build more social and low-cost housing in cities, this has not been a legally enforceable requirement and is routinely ignored by local officials who understand that these projects generate far less revenue for them than expensive private developments catering to the rich. The 2010 Report on the Work of the Government presented by Premier Wen Jia Bao on 5 March 2010 (available at: http://www.china.org.cn/china/NPC_CPPCC_2010/node_7086677.htm) contains figures purporting to show large investment in low cost housing, however for many Chinese this is not borne out in the nation's metropolises, where every new development seems to be another luxury gated compound.

LAND OWNERSHIP IN CHINA

The current system of property ownership operating in China's cities is far from complete in terms of its coverage, leaving many residents in a legal limbo. The ownership of a large amount of property, especially relatively old residential property, is legally tenuous as the relevant registrations and paperwork may not have been completed properly or at all (i.e. they may have been constructed prior to the implementation of the current registration system). Some properties will have been granted only temporary rights to remain which have expired, and other properties may have been constructed without any kind of permission but nevertheless have been in usage for a considerable period of time.

Without a tenable claim to the land usage rights relating to a piece of land, residents will not be able to take advantage of the protections contained in any legislation at all, let alone the new regulations. The problem is compounded by the fact that the local government proposing the demolitions ultimately decides who owns the land usage rights and who doesn't, again making it judge in its own cause. Those residents whose properties are based on temporary rights to remain are particularly vulnerable to government abuse, as such rights are in reality subject to arbitrary cancellation or refusals to renew. Without a comprehensive campaign to (i) allow deficiencies or gaps in the registration of housing rights to be remedied by residents (ii) legalize unauthorized dwellings in appropriate cases and (iii) grant the right to the automatic renewal of temporary rights to remain subject to exceptional circumstances, the new regulations will fail to benefit all urban residents.

Other experts have called for an overhaul of the entire land ownership system in the PRC, and point out that the only way to fully guarantee the property rights of Chinese citizens is to introduce the right to the absolute ownership of land and all buildings constructed upon it. The current system as contained in the 2007 Property Rights Law provides that all land is ultimately owned by the Chinese state or by rural collectives - individuals and enterprises cannot truly 'own' land in China. The majority of urban land is owned by the government and the majority of rural land is

owned by rural collectives.

‘Ownership’ of land exists only by way of a system of land use rights, which in the case of government-owned land are ‘granted’ to individuals or enterprises in return for a premium, or ‘allocated’ by the government, usually to other public institutions. Such land use rights last for a maximum period of 70 years (the exact period depending on the use to which the land will be put), after which they will renew automatically under Article 149 of the Property Law. The Property Rights Law does not however state whether this automatic renewal will continue indefinitely, or whether any additional premium will be payable upon renewal.

This contrasts with the ownership of the buildings constructed upon government-owned urban land, which can be owned in the true sense of the word by individuals and enterprises. The new demolition regulations only apply to the ownership of the buildings constructed on government-owned land, rather than the land itself. This distinction between the ownership of the land and buildings is in most cases artificial, as the two cannot be separated in practice e.g. should the government decide it wants to recover the land rights to a block of flats, what becomes of the flats owned by the residents? Their ownership rights to the flats themselves become useless if they have no rights to the land and so cannot enter their own properties. The distinction very much works in the local government’s favor in the rare cases where a resident owns land without any buildings constructed on it, for example a back yard or a courtyard, as the provisions of the new regulations regarding fair compensation will not apply to this land, which is government-owned and could well be taken back without any compensation at all.

Collectively-owned land use rights are subject to a different legal regime (see below for further details) under which the Communist Party-controlled village committee distributes land use rights to individual households with a maximum term of 30 years.

Without fundamental reform of the current system of government-owned land, many are of the opinion that changes to subordinate regulations will not solve the underlying problem of government control over land and the abuses that inevitably follow.

CONFLICTING LEGISLATION

A further issue is the existence of inconsistent or incompatible local redevelopment regulations across China, which will not be repealed by these new national level regulations. Again these conflicting laws often provide much weaker protections than the corresponding national regulations and are able to be exploited by local governments wishing to get around the protections contained in the new demolition regulations⁵².

On a national level there is still acknowledged to be inconsistency and ambiguity between all of the national laws governing the issue of property rights, something which can only be solved by a root-and-branch review process. This is unlikely to happen when the government's main priority is economic growth and job creation.

THE RURAL URBAN DIVIDE

Perhaps the most significant failing of the new regulations is that they apply only to government-owned land, which makes up the majority of China's urban land⁵³ but does not include the collectively owned farmland which makes up the vast majority of rural land. According to the latest figures as shown in the China Statistical Yearbook 2008 published by the National Bureau of Statistics around 727 million people, or 55% of China's total population, reside in rural areas⁵⁴. Collectively-owned land was also found to make up 46% of China's total land supply in a 1996 survey⁵⁵. On any measure this is a huge omission.

⁵² See the example of conflicting regulations enacted by the Chongqing municipality referred to on page 17 of *'Developing at the Expense of Residents: Forced Evictions in Chongqing'*, a report published by the International Federation for Human Rights available at <http://www.fidh.org/>

These figures also back up the long held views of many involved in land rights cases that the appropriation of collectively-owned land by local governments and the injustices which often follow take place on an even larger scale in the countryside than in cities, and in particular are concentrated on land around the edges of expanding cities which is seen by local governments and businessmen as ripe for development. As the majority of this land is collectively-owned the new regulations and the protections afforded within them will not apply.

Lawyer Xia Lin of the Hua Yi law firm in Beijing recently reflected during an interview with the China Youth Daily (translation from the Chinese): *“I’ve found during my career that these problems are bigger and more numerous than in the cities. A lot of eviction disputes which have lead to mass incidents happen on collectively-owned land around the edges of cities, such as the famous incidents involving Pan Rong and Tang Fu Zhen. Their houses were built on collectively-owned land”*. She further reflects that the value of land at the margins of cities which is still technically collectively-owned farmland has increased rapidly during the last few years due to the rapid urbanization of China. This has proved an irresistible temptation for local governments to buy such land at rock bottom prices from the original residents and sell it to developers at huge mark ups. The abuses and malpractices which occur frequently during this process have been the cause of a large number of disputes and have led to protests and ‘mass incidents’ across China⁵⁶.

In a typical incident which occurred in Guangdong province in November 2006, thousands of residents of Sanzhou village converged on a residential development they claimed had been constructed illegally on land previously used for farming,

⁵³ Article 47 of the Property Rights Law states that all land in cities is government-owned.

⁵⁴ See figures located at: <http://www.stats.gov.cn/tjsj/ndsj/2008/indexeh.htm>

⁵⁵ Ho, S. P. S and Lin, G. C. S. (2003) *‘Emerging land markets in rural and urban China: policies and practices’*, The China Quarterly, 175, pp. 681-707.

⁵⁶ *‘Fangwu zhengshou buchang tiaoli yijiangao wu da wenti cun zhengyi’ - ‘房屋征收补偿条例意见稿中五大问题存争□’* (Translation: *Five Points of Dispute Regarding the Consultation Draft of the Regulations Governing the Requisitioning and Compensation of Residential Property*) – Zhongguo Qingnian Bao (中国青年报) 2010年01月29日 available at : http://zqb.cyol.com/content/2010-01/29/content_3065546.htm

demanding an inquiry into how up to half of the village's land had been sold off to developers at a huge profit. During the course of this protest a group of unidentified men arrived who proceeded to intimidate and assault the locals, however they were quickly surrounded by other locals alerted to the scene. Riot police were also called in and violence ensued, which was captured by a local cameraman and eventually was shown on international news stations across the world⁵⁷.

The notorious 'Dongzhou Incident' which took place in December 2005, also in Guangdong province, was of a similar nature. Local farmers protested as a result of what they saw as inadequate compensation paid to them for their land, which was to be used to build a power plant by the local government. In the ensuing crack-down a number of locals were shot dead by Chinese security forces called in to quell the disturbances⁵⁸.

Even according to the Chinese government's own figures, thousands of incidents such as these are played out across China each year, with only a small percentage every being reported in the media.

Background

The central government's policy objectives relating to the protection of rural land rights are conflicting to a degree as one important national policy is to maintain self-sufficiency in food supply which requires the preservation of arable farmland, whilst another policy directs public funding towards investment in infrastructure in order to promote economic growth and create jobs to keep China working (particularly since the introduction of the economic stimulus package in 2008), which requires land for development. The motives of local governments are not as complex however: as we have seen above, economic growth is king, and therefore acquiring more and more land is a top priority.

⁵⁷ 'China Village Fury at Land Grab' – BBC News online 10 November 2006 available at <http://news.bbc.co.uk/2/hi/asia-pacific/6135156.stm>

⁵⁸ 'China Official held over Shooting' – BBC News online 11 December 2005 available at <http://news.bbc.co.uk/2/hi/asia-pacific/4517706.stm>

The legal background to these land appropriations is complex and the protections afforded to rural residents weak and easily avoided. The Property Rights Law stipulates that collectively-owned land can only be used for agricultural purposes (with the exception of collectively-owned ‘construction land’, which is non-arable) and that agricultural land use rights can only be transferred within the collective, therefore where a local government wants to re-develop and construct commercial or residential buildings on such land, it must first convert it into government-owned land.

Article 60 of the Property Rights Law provides that the ownership rights to collectively-owned rural land in villages reside in either the local village ‘economic organization’ (if one exists) or the village committee. The ownership rights to collectively-owned rural land in towns and administrative villages reside in the town or administrative village economic organization. No definition of ‘economic organization’ is provided in the legislation, and the ownership of such land is often far more ambiguous than this article suggests in reality due to the hierarchical administrative structure of the Chinese countryside. Townships (乡 or 镇) are made up of villages (村), which are in turn made up of administrative villages (行政村) and/or natural villages (自然村). Often other levels of government are interposed, such as the suburban district (郊区). Ownership of collective land in reality resides in all such levels.

In terms of day to day administrative control, the general situation which most farmers would recognize is that the local village committee exercises the ownership rights over collectively-owned rural land on behalf of the local farmers, and each household is given a lease of a small part of the collectively-owned ‘pool’ to cultivate individually under the ‘Household Responsibility System’. The terms of such leases are 30 years (extended from 15 years in 1993), after which the village committee can legally decide to re-organize and re-allocate the plots as they see fit.

Recent studies have suggested that such re-allocations occur frequently as a form of land appropriation and in spite of the 2003 Rural Land Contracting Law expressly prohibiting such changes except in cases of natural disasters and other special circumstances⁵⁹. The village committee has full control over the land allocation system and the power to decide who to grant land use rights to and for what price. This control over land use re-allocation is a key lever of control for the village committee and the village leader, and is one which is open to abuse⁶⁰.

Ineffective legal protection

Article 43 of the Property Rights Law provides that the state shall afford special protection to farmland, will strictly limit its conversion for construction purposes, and that appropriations of farmland in breach of legal limitations and processes shall be illegal. Whilst the intention behind this particular provision may be to limit the conversion of farmland for purely commercial purposes, it is no more than a statement of principle and does not go on to provide any further detail or rules governing such conversions.

Appropriations of collectively-owned land are usually justified by local governments (if at all) on the basis of two provisions of the 2003 Land Management Law; Article 2 and Article 65.

⁵⁹ Kung and Liu (1997) found that 70% of their surveyed sample of 800 households had experienced reallocations since 15 year land use arrangements were introduced, and Deininger and Jin (2003) found that 80% of villages experienced one or more reallocations between 1983 and 1990. Kung, J. K. and S. Liu (1997): "*Farmers' Preferences Regarding Ownership and Land Tenure in Post-Mao China: Unexpected Evidence from Eight Counties.*" *The China Journal* **38**(2): 33-63. Deininger, K. and S. Jin (2003): "*The Impact of Property Rights on Households' Investment, Risk Coping, and Policy Preferences: Evidence from China.*" *Economic Development and Cultural Change* **51**(4): 851-882.

⁶⁰ A recently extended pilot project in Guangzhou province which introduced a system under which land use rights to collectively-owned 'construction land' (i.e. non-arable land) could be traded directly by the farmers without needing to go through the conversion to government-owned land may point to a reform of the system nationwide in the future, however this remains an experiment and no formal moves to introduce the system across China have been announced to date. See '*Rural Land Tenure Reforms in China: issues, regulations and prospects for additional reform*' – J.D. Ping Li Land Reform 2003/3 available at: test.rdiland.org/PDF/PDF_Publications/LP-RuralLandTenureReforms.pdf

Article 2 is similar to Article 42 of the Property Law mentioned above in that it allows the state to appropriate collectively-owned land in the public interest. In common with the Property Law however, no definition of the public interest is provided and no regulations equivalent to the 2001 or 2010 urban demolition regulations discussed above exist to expand on the meaning of the term. As with the 2001 regulations, this leaves the decision as to what does constitute the public interest in the hands of the local government, who will have every incentive to approve commercial developments in return for private gain.

Article 65 allows the village economic organization to withdraw farmers' land use rights (i) for the purposes of constructing public infrastructure or welfare facilities, (ii) where the land is not being used in accordance with the permitted usage rights, and (iii) where the land is no longer used because of a revocation of usage rights, the relocation of the holder of the rights or other reasons resulting in the rights are no longer being used by the original holder.

Both grounds of appropriation require compensation to be paid to the original holder of the land use rights, with the exception of scenarios (i) and (ii) in Article 65 above. Article 42 of the Property Rights Law requires compensation to be paid where agricultural land is appropriated for the public interest, which is to include compensation in respect of the value of the land, a re-settlement subsidy and the value of standing crops and fixtures. This would seem generous, however the standard for valuing standard crops is very low, and the valuation standard for the land itself is based on the annual yield rather than the market value, which is likely to grossly under-compensate. The compensation does not take account of the increase in value of land converted into government-owned land, which many have pointed out allows local governments to reap huge profits by selling the land on to

third parties for development⁶¹. Furthermore, control over the payment of compensation is in the hands of the economic organization or village committee, allowing abuses to take place whereby compensation is effectively stolen in whole or part.

In one such case a bank employee told HRW that the development company deposited 8 million RMB into a demolition and eviction compensation fund managed by the local government. According to the banker, the management office then drastically lowered the amount of compensation, and kept 960,000 RMB (about U.S. \$116,000) for the departments' own use.⁶²

The Article 42 compensation provision does not apply to withdrawals of collective land use rights as specified in Article 65 of the Land Management Law. No details on the level of compensation to be paid in such circumstances are provided above the hopelessly ambiguous phrase 'appropriate compensation' in this article.

As might be expected, research suggests that the level of compensation paid in respect of a withdrawal of collective land use rights is extremely low, if anything is paid at all⁶³. The economic organization or village committee will often keep the funds raised through the withdrawal or itself and carry out a re-organization of all land use rights resulting in smaller allocations for all with no concurrent compensation.

⁶¹ Wu Zheng De (吴正德) – “*jinguan you xie defang de buchang biao zhun yi chao chu le 《Tudi Guanli Fa》 guiding de biao zhun, que wanquan hushi le dui nongmin buchang biao zhun yu nongyongdi zhuan wei jianyongdi suo dailai de ju da zengzhi shouyi zuo chu liyi buchang anpai, zhe yang ji bu heli ji bu gongping, ying xiugai*” – “尽管有些地方的补偿标准已超出了《土地管理法》规定的标准，却完全忽视了对农地补偿标准与农用地转为建设用地所带来的巨大增值收益做出利益补偿安排，这样极不合理、极不公平，应修改” (Translation – “*Even though compensation paid in certain areas already exceeds the standards set in the Land Management Law, the huge increase in the value of farm land converted to land for development are ignored in calculating compensation for the appropriation of farm land. This is illogical, very unfair and needs amending*”) – Oriental Morning Post (东方日报), 6 March 2010 available at: http://cn.china.cn/article/n503496,f0cf84,d2470_11927.html

⁶² Human Rights Watch, ‘*Demolished: Forced Evictions and the Tenant's Rights Movement in China*’: <http://china.hrw.org/timeline/2004/demolished>

Abuses

Often the members of such village committees collude with local governments and developers and convert plots of collectively-owned land into government-owned land, which can then be sold on to private developers for profit.

The difference between the amount of compensation paid out to the various parties involved in the collective ownership of the land and the rent which can be obtained from the private developer is where the profit for the local government comes from, and as the rents payable by private developers can be as much as 10 to 20 times the value of compensation paid, these profits can be enormous. Sometimes no compensation is paid to the residents at all, with the local government and village committee sharing the money between them. The Congressional Executive Committee on China reported in its 2004 Annual Report that, "In some cases, corrupt officials, developers, and demolition companies siphon off funds intended for compensation or resettlement, fail to provide promised resettlement housing, or unfairly reduce compensation amounts through fraudulent appraisals or other tactics."⁶⁴

The amount of compensation which eventually reaches the original inhabitants of the collectively-owned land can vary significantly, and due to the ambiguous nature of collectively-owned land is often a small percentage of the total compensation paid. As discussed above, notwithstanding the provisions of the Property Law, collective ownership is complex and ambiguous, with the township, administrative village and natural village competing for their share. How much each entity is actually entitled to has never been clearly delineated in Chinese law, which inevitably works to the detriment of the local residents.

The pot of compensation money is often shared between the 3 (or more)

⁶³ 'Rural Land Tenure Reforms in China: issues, regulations and prospects for additional reform' – J.D. Ping Li Land Reform 2003/3 pg 67. test.rdiland.org/PDF/PDF_Publications/LP-RuralLandTenureReforms.pdf

⁶⁴ CECC 2004 Annual Report, section on Forced Evictions and Land Requisition, Virtual Academy: <http://www.cecc.gov/pages/virtualAcad/rol/property2004.php>

administrative entities and the local residents. A study by Wen and Zhu⁶⁵ based on 1992 figures revealed that compensation fees were shared 10.7% to the township, 17.9% to the administrative village, 50% to the village and only 21.4% to the peasants in the village. If this is indicative of the apportionment of fees it is little wonder that Chinese peasants often feel extremely hard done by in terms of the actual amount of compensation received for the appropriation of the farmland, as shown by recent research⁶⁶.

Dubious valuation methods are also often used by local governments to reduce the amount of compensation payable to local residents. According to petitions submitted to the central government, the residents of Langdong village in the Guangxi Zhuang Autonomous Province found out that the local government was planning to convert 10,000 Mu (666.67m² or 1/6 of an English acre) of their fields, fisheries, fruit orchards and other productive lands into a Special Development Zone in 1992, and evictions began on a huge scale in 1995. The residents soon discovered that when calculating the compensation due to them, the local government was offering 80,000RMB per Mu for farmland and 20,000RMB for non-arable land. This was much lower than the government-approved figure of 112,000RMB applicable to both arable and non-arable land which the residents of neighboring villages were receiving.

What was more, when applying these values to residents' land the government valuers were deliberately including large areas of land as non-arable, and simply not including certain areas of land within their calculations at all. For example when measuring the area of fields, the earth perimeter boundaries and earth walkways running through the fields were put into the non-arable category. When measuring fishery ponds, only the surface area of water was calculated as farmland, with the rest considered non-arable. In this way the government valuers were able to reduce

⁶⁵ Wen, T. J. and Zhu, S. Y. (1996) "Zhengfu ziben yuanshi jilei yu tudi 'nongzhuangfei'" (Translation: 'Governments' capital accumulation and conversion of farmland to non-agricultural land') Guanli Shijie (Management World), 5, pp. 161-169.

⁶⁶ Guo, X. L. (2001) 'Land expropriation and rural conflicts in China', The China Quarterly, 166, pp. 422 – 439.

the original estimated land area of 10,000 Mu to only 6,000 Mu. Of this 4,000 Mu was considered arable and 2,000 Mu non-arable.

Residents subsequently discovered that the reason their compensation was only 80,000RMB per Mu of arable land and 20,000RMB per Mu of non-arable land was due to the illegal deductions and charges levied by three separate levels of local government. Out of a total of 672,000,000RMB compensation payable for the 6,000 Mu of land on the basis of the government-approved compensation standard of 112,000RMB per Mu (whether arable or non-arable), the local suburban district government, the local Jintou township government and the village party committee deducted a total of 312,000,000RMB for their own use, over 46%. The residents have been petitioning all levels of government ever since but have yet to receive any redress or explanation of where the money has gone.

The case of Nanguan village in Pingdu city, Shandong province offers a demonstration of not only the disparity between the compensation offered to villagers for the land compared to the amount the land is then sold for but also the lengths the local authorities and developers will go to coerce villagers to sign 'land acquisition compensation agreements.'

Originally the residents of Nanguan village did not want to sign the required 'land acquisition compensation agreement' form. In order to coerce a two thirds majority approval, the development company, in collusion with local government officials, began a prolonged campaign designed to terrorize the residents into compliance. The local government began requiring parents to sign the agreement otherwise their children would be denied the right to attend school. The coercive tactics escalated. The roads leading in and out of Nanguan were barricaded in an attempt to isolate the recalcitrant villagers; this resulted in one elderly man dying of a heart attack because the ambulance was not able to enter the village to take him to the hospital.

On December 2, 2005 the village secretary and two thirds of the inhabitants finally

relented to the ongoing pressure from the local government and the development company and signed the agreement form. The agreement was that the villagers would be compensated 2,031,022RMB for the approx. 62 Mu of land to be developed. However, a year later the Pingdu City Land Resources Bureau advertised a listing for the sale price of the land with a starting bid of 58,000,000RMB, more than 28 times the amount offered to the villagers in compensation. Discovery of this gross inequality sparked a new round of resistance from the villagers met by increased violence from the developers.

Starting in December of 2007, thugs began routinely entering the village. They broke windows and set houses on fire. When the villagers reported this to the police they were ignored. These actions occurred until at least March of 2008.

On the morning of April 24, 2008, numbering around 300, public security officers, local government officials, developers, and thugs descended on the village with several bulldozers. The incident was recorded by a villager and is available online. The police were wearing helmets and brandishing truncheons, electric batons, and shields. They demolished several houses. When they got to the home of Shi Xin Liang they took him and his wife and held them in handcuffs while they bulldozed their home. They were targeted because they already had a history of activism against the developers.

On April 17, 2008 the police apprehended Shi Xin Liang on charges of 'Failure to Fulfill Obligations,' his wife was taken on charges of 'Obstructing Public Duties,' in response to their refusal to vacate and their vocal opposition against the developers and the local authorities. The local court fined them 10,000RMB. In the process of being taken Shi Xiao Feng, Xin Liang's wife, was repeatedly hit with an electric baton. She suffered serious electric shock and went into convulsions.

Despite the torment the couple, and other residents, persisted in resisting the developers. On April 25, 2008 a group of about 20 thugs showed up in the village

with truncheons and machetes. They attacked Shi's brother's home and other villagers. Villagers sustained serious cuts and blows from the assailants, leaving at least one in a coma with blood flowing from his wounds. Again the villagers called the police and again the police ignored their calls. On May 23, the local court heard the case again but again ruled in favor with the developers, leading to further displacement of residents as their homes were demolished.

This is yet another example of the way local authorities and developers will work within the law only as much it is in their favor to do so. The level of collusion between the developers, local police, court, and government in Nanguan guaranteed that the residents had no power in refusing the will of the developers and has further made it impossible for them to find any kind of justice in the traditional legal channels. While this may be an extreme case, the kind and level of abuse is often contingent on the particular circumstances of the village.

Feelings of injustice are often further exacerbated by the fact that very little if any of the increased rents from the converted land reaches the residents. Wen and Zhu found that 60 – 70 percent of land rents go to governments at various levels (township and above), 25 – 30 percent are taken by the village collective, and only 5 – 10 percent are given to the peasants⁶⁷.

As we have seen above, not only does the current compensation system allow the local government to pay a certain amount per Mu of land to local residents, only to turn around and sell it to developers for the full market value often many times larger, but the value paid in compensation is not given to the individual farmer but to the collective (i.e. the local government entities), which then decides how the funds are to be dispersed. It is no wonder that this system has led to about a two-thirds dissatisfaction rate among affected farmers with regard to compensation.⁶⁸

Urbanization is not the only driver of land appropriations in rural China. Sometimes

⁶⁷ See article referred to in footnote 66 above

the existing agricultural land use rights are transferred to outside agriculture companies for crop diversification, meaning the local officials are able to levy charges on such companies which they would not have been able to legally levy upon the original household tenants. This often leaves the farming households who originally held the land use rights with inadequate compensation if any is received at all, and no land with which to earn an income for the future.

In parallel to formal appropriations of rural land carried out by local governments, other informal schemes have been devised to allow such land to be developed and the profits shared between the participants. Developments are sometimes authorized by local governments without going through the complex and time-consuming conversion to government-owned land or the prescribed appropriation processes and compensation standards, technically making transactions based on the land illegal and unenforceable. To get around this certain local governments have invented their own category of property rights, issued by themselves to developers and enforceable only within their local jurisdiction. Whilst there is no national authority whatsoever for issuing such rights, the continuing demand for these informal ownership rights illustrates the strength of competition for land and the lengths local governments will go to access the profits which accompany its development⁶⁹.

Reform

Recent media reports emanating from the 2010 sessions of the NPC and the CPPCC have suggested that the central government is now looking at revising the current laws and regulations governing the appropriation of collectively-owned rural land, and that there is at least an acknowledgment that the compensation paid by local governments has been far too low, the process behind such appropriations lacks

⁶⁸ Keliang, Zhu and Prosterman, Roy, '*Securing Land Rights for Chinese Farmers: A Leap Forward for Stability and Growth*'. Cato Development Policy Analysis Series, No. 3, October 15, 2007. Available at SSRN: <http://ssrn.com/abstract=1066812>

⁶⁹ See the example of the Beijqijia township, Beijing in '*Disordered Land Rent Competition in China's Peri-urbanisation*' (Jieming Zhu and Tingting Hu). Available from the Social Science Research Network (SSRN) website www.ssrn.com

transparency and that local governments have often completely ignored the current legal framework.

In a recent interview, the Chief Justice of the High Court of Henan province (the top level court in the province) Zhang Li Yong stated that a comprehensive property appropriation law governing both government-owned land and collectively-owned land may be drafted in the future⁷⁰. This would give the same protections given to urban residents under the new demolition regulations to rural residents occupying collectively-owned land. Whilst such informal statements offer some hope for the future, there is currently no draft law available and no further details could be located explaining how it would work in practice. Until such time as a new law is put forward dealing with the abuses outlined above, the situation for rural residents threatened with the appropriation of their land and their livelihoods therefore remains bleak, with abuses rampant and the protection offered by current legislation very much inadequate.

IMPLEMENTATION AND RESISTANCE

Assuming that the new regulations are enacted at some point in the future in the form of the consultation draft (this is not a given, and amendments weakening the protections in the consultation draft could well make their way into the final version), many expect their implementation to be strongly resisted by local governments extremely concerned about their primary source of funding being made much more difficult to pursue⁷¹. Whilst it is unclear at the moment what effect such resistance will have on progress of the draft regulations through the Chinese legislative process, if local governments are not willing to implement the protections in full it is difficult to see what action the central government could take, especially as local governments are likely to make a persuasive case that complying with the regulations will threaten the achievement of national economic growth targets. One

⁷⁰ See article entitled '*Henan sheng gaoyuan yuanchang: zhiding 《Tudi zhengshou zhengyong fa》*' - '河南省高院院长：制定《土地征收征用法》' (Translation: *Chief Justice of the High Court of Henan province: Enacting a 'Land Appropriation Law'*) - 中国经济网 3月5日 <http://news.qq.com/a/20100306/001073.htm>

thing is for certain however, there is no longer any doubt about the contribution that forced evictions and demolitions have made to the Chinese economic miracle, and this over-reliance is an issue which the Chinese government is likely to be grappling with for some time.

As a result of concern over the effect of the new regulations, there are fears that local governments may now be racing to push through demolition projects whilst the current regulations are still in force in order to avoid such projects becoming subject to the provisions of the new regulations, including the public interest requirements and the revised compensation provisions. Despite the shortcomings of the new regulations, it is hoped that a final version and an implementation schedule will be released as soon as possible to end this period of uncertainty during which abuses of the property rights of urban residents can be expected to intensify.

⁷¹ See Professor Wang Xixin's comments in an interview with the Beijing Daily published 5 March 2010: "*zai Wang Xi Xin lai kan, 'chaiqian xin fa' chutai, bingqie shi you shizhi zhidu gaige fangan de chutai ke yuqi, ke qidai de, bu hui deng tai jiu. jibian shi muqian de fangan chutai, hai shi hui zai zhixing guocheng zhong zaodao hen duo zuli*" - "在王锡铎来看, "拆迁新法" 出台, 并且是有实质制度改革方案的出台是可预期、可期待的, 不会等太久。但即便是目前的方案出台, 还是会在执行过程中遭到很多阻力" (Translation: *In Wang Xi Xin's opinion the new regulations have been released, and a plan for the reform of the current system is not far off. However even if a plan were to be announced now, it would still face a good deal of obstruction in its implementation*) - <http://news.sohu.com/20100305/n270592583.shtml>
See also comments by Professor Wang Xixin in the same article in which it is suggested that up to 70-80% of demolitions currently in progress would have to be stopped should the new regulations be implemented, as they would not meet the new public interest criteria.
See also comments on the enforceability of the new regulations made by China University of Political Science and Law Professor Cai Dingjian, who has said that even if the new regulation clearly defines public interest and forced demolition and compensation procedures, local governments still might choose only to implement clauses in line with their interests: 'Defending Home' by Li Li available at: http://www.bjreview.com.cn/print/txt/2010-01/04/content_238203_2.htm

Part 2:

AVENUES OF ACTION: PRACTICAL ROUTES FOR DEMANDING JUSTICE

We have noted above that two legal remedies for residents wishing to challenge the decision to demolish their properties or the amount of compensation payable have been provided for under the new regulations: the administrative re-consideration and civil litigation in the People's Courts.

An additional remedy available to Chinese citizens under the law is the right to petition: 'xin fang' (信訪), literally: letters and visits, also sometimes 'shang fang' (上访): to seek an audience with a higher authority. The petitioning system has been an essential element of Chinese culture for centuries, while the current system, the right to petition and the rights of the petitioner, dates back to the first set of legal standards on petitioning set up in 1951⁷²; it is further enshrined in the Constitution⁷³. The current Regulations on Letters and Visits took effect on May 1, 2005.

This extra-judicial means of seeking the redress of grievances has seen an exponential increase of petitions over the last decade, according to Human Rights Watch there was a 94.9% increase in 2005 over 2004⁷⁴. This increase is seen as a result of growing frustration at the lack of effective remedies in the judicial system and distrust of local authorities.

⁷² The right can be traced back to the *'Decision on the Work of Handling People's Letters and Receiving People's Visits'* issued by the State Council on 7 June 1951

⁷³ Article 41. Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law.

The general structure of the petitioning system in China requires every government bureau to have a related letters and visits office, as stated in Articles 3 to 7 of the Regulations on Letters and Visits. The highest level is in Beijing. While petitioners will sometimes first turn to the local level offices to register complaints, because of perceptions of local corruption, more and more petitioners choose to bring their complaints directly to the national letters and visits office in Beijing. Traveling to Beijing entails considerable expenditure both on transportation to and accommodation in Beijing, and petitioners are sometimes forced to live on the streets or in tent cities in harsh conditions. Furthermore, there are myriad psychological impacts, e.g. being in Beijing often means being away from one's family and livelihood for extended periods of time while awaiting an audience.

The chances of achieving a successful outcome by petitioning in Beijing are acknowledged by most to be very small, although the Chinese government does not release comprehensive figures. Hundreds of petitioners swamp the Office for Letters and Visits on most days, and to even manage to hand over petition documentation to an officer there is considered something of a success. More often than not this is the last that is ever heard of the matter. The .15% success rate, according to an independent investigation carried out by the Chinese Academy of Social Sciences⁷⁵, is indicative of the failure of the system. In the rare cases where an official in Beijing agrees with the petitioner and asks the local government to take action, the local government often fails to respond, despite being legally required to do so. There is very little petitioners can do in this situation.

In addition to the often frustrating rate of success, petitioners routinely report widespread abuse at the hands of thugs hired by the local authorities they are petitioning against. This abuse ranges from intimidation of the petitioner and/or his or her family, beatings, kidnapping and illegal detention in a Black Jail,⁷⁶ the forced return to their hometown, and even imprisonment in a Reform Through Labor complex.

⁷⁴ Human Rights Watch, *"We Could Disappear At Any Time: Retaliation and Abuses Against Chinese Petitioners"* December, 2005.

For these reasons petitioning Beijing is used sometimes as more of a forum for protest when other routes have been exhausted rather than a system which can provide substantial redress. While petitioning is generally regarded as the last legal resort of the abused, many also turn to more contentious actions ranging from nonviolent sit-ins to protesting at the site of the demolition, villagers travel to provincial capitals or Beijing to stage larger protests. Occasional violent confrontation between villagers and demolition workers arise.

A 2006 white paper released by the Immigration and Refugee Board of Canada on civil unrest in China stated that the fastest growing cause of protests in China has been the seizure of land and the ensuing disagreements over compensation.⁷⁷ In the first nine months of 2006 alone, about 17,900 cases of 'massive rural incidents' of farmers protesting were recorded; around 80 percent were related to allegations of illegal land confiscation.⁷⁸ This number was up from around 1,500 incidents related to demolitions recorded in 2003.⁷⁹

In terms of the legal redress provided for in the new regulations, both an administrative re-consideration and litigation in a People's Court are complex formal procedures which can be very difficult even for residents with the requisite level of education and some knowledge of the law and the legal process to undertake, let alone those who have never had to deal with such matters before. Furthermore, because of the limited dissemination of rights knowledge many villagers are not even aware of many of the laws mentioned in this report. The Rural Development Institute reported noted that, out of 1,773 surveyed rural residents, only 27.6% were aware of the New Property Law.⁸⁰ The same study revealed that, 69.5% of surveyed residents understood the statement, "Farmers' arable land should be

⁷⁵ Yu Jianrong of the Chinese Academy of Social Sciences, a total of 2000 petitioners interviewed. Irene Wang, "Petition offices told to act faster," South China Morning Post, January 18, 2005.

⁷⁶ For a detailed account of the Black Jail system see: Chinese Urgent Action Working Group, 'Black Jails in China: Systems, Victims, and Facilities' February 1, 2009: <http://China-Action.org> and Human Rights Watch "An alleyway to hell", November 12, 2009: <http://www.hrw.org/en/reports/2009/11/12/alleyway-hell-0>.

contracted for 30 years without readjustment,” while only a shocking 54.4% correctly understood the statement, “When the current 30-year term expires, farmers can extend the contracting arrangement.”⁸¹

Therefore many residents wishing to challenge the proposed demolition of their homes will often look to those with the requisite knowledge and experience to help them defend their property rights. The first point of call may be the legal profession. There are lawyers with experience in taking on demolition cases, however because of the risks that such cases bring their numbers are few.

Demolition cases are risky for professional lawyers as they involve directly confronting and challenging a local government which has the power to make life very difficult for them when it feels its interests are being threatened. Lawyers in China must have a license in order to practice law, which is issued by the local Judicial Affairs Bureau of the Ministry of Justice or local lawyer associations and must be renewed by application in May every year. Although the Judicial Affairs Bureau professes to treat all lawyers equally, this is not borne out in practice and often lawyers who take on cases involving sensitive issues such as forced evictions and demolitions find that their renewal applications are rejected and their livelihoods effectively taken away. Once a license is rejected lawyers are theoretically able to sue the Ministry of Justice for reinstatement, but there have been no successful cases in the past. The Judicial Affairs Bureau can also exert pressure through the firms employing lawyers, threatening to close them down if they do not stop taking on sensitive cases. These are but a small sample of the control mechanisms which lawyers in China are subject to – for more information on this subject please see our report entitled *Manipulation as Insulation: The Non-Renewal of Weiquan Lawyer’s Licenses in China*, available at: <http://china-action.org/>.

⁷⁷ Immigration and Refugee Board of Canada, Issue Papers, Extended Responses and Country Fact Sheets: http://www2.irb-cisr.gc.ca/en/research/ndp/ref/index_e.htm?docid=298&cid=0

⁷⁸ Keliang, Zhu and Prosterman, Roy, October 15, 2007.

⁷⁹ CECC 2004 Annual Report Available online at:
<http://www.cecc.gov/pages/virtualAcad/rol/property2004.php>

⁸⁰ RDI-NBR 2009, p. 19

⁸¹ *ibid*, p. 20

In common with residents challenging the demolition of their homes, lawyers taking on such cases have also found themselves the target of repeated harassment and sometimes brutal violence at the hands of local law enforcement agencies and their proxies. The most famous example of such treatment is the case of Gao Zhisheng (高智晟), a prominent human rights lawyer who by his own account was detained by security agencies and subjected to weeks of torture as a result of taking on politically sensitive cases, which included amongst other issues legal challenges involving compensation paid to residents evicted as part of the redevelopment of Beijing in preparation for the 2008 Summer Olympic Games. Gao was eventually convicted of inciting subversion and sentenced to three years in prison in 2006. Following his release he again disappeared, leading to fears that he has once more been detained and tortured by security forces⁸².

Although less well-known abroad, Shanghai lawyer Zheng En Chong (郑恩宠) represented over 500 families who had been evicted to make way for numerous development projects in Shanghai and offered inadequate compensation. Comments he made suggesting that local officials had colluded with a property developer to evict the residents incurred the wrath of the local party officials and as a result his license to practice was revoked in 2001 and several attempts to have it reinstated were rejected. Zheng was sentenced to 3 years imprisonment in 2003 on charges of stealing state secrets following his refusal to discontinue his activities, and has been subject to repeated harassment and periods of house arrest since his release⁸³.

Following Zheng's sentence many lawyers in Shanghai and beyond who had previously been willing to take on property and land rights cases began to express

⁸² Despite statements by the Chinese government and Gao's brother that he is 'fine', his whereabouts are still unknown. See recent BBC article available at: <http://news.bbc.co.uk/2/hi/asia-pacific/8571669.stm>

⁸³ See reports by Radio Free Asia containing details of Zheng's treatment at the hands of public security agencies: http://74.125.153.132/search?q=cache:rNMe_33ANRoJ:radiofreechina.wordpress.com/2009/06/25/christian-attorney-zheng-enchong-interrogated-and-tortured-by-psb/+zheng+enchong&cd=1&hl=en&ct=clnk&client=firefox-a

more concern over or refuse taking such cases if they involved a direct challenge to the government. This tactic of harassing and or imprisoning one lawyer who takes more sensitive cases works to severely limit the availability of other lawyers willing to put themselves at risk, further diminishing legal access.

Those professional lawyers who are willing to take on eviction and demolition cases often charge fees which are beyond the means of the majority of residents. Whilst a national system of legal aid which theoretically covers civil claims for state compensation in eviction and demolition cases does exist in China, in practice residents will find it very difficult to obtain any assistance. This is because firstly the legal aid system as a whole is chronically under-funded, relying on donations for a large part of its expenditure. Secondly the quality of legal aid service has not yet reached a consistently high level, if it exists at all (many legal aid departments around China exist in name only). Thirdly and perhaps most importantly the legal aid system relies on lawyers willing to take on cases in return for little or no fee. With the personal risks in taking on sensitive eviction cases being so high, and faced with the prospect of economic hardship as a reward, it isn't any surprise that the number of lawyers willing to provide legal aid is tiny.

Part 3:

BAREFOOT LAWYERS (赤脚律师)

As a result of the reasons outlined in Part 2 above, there is a chronic shortage of professional lawyers willing to take on eviction and demolition cases in China. This leaves residents faced with the unpalatable choice of representing themselves, which would be almost impossible without knowledge of the law and legal system, or seeking the assistance of someone else.

Barefoot lawyers are individuals who agree to take on legal cases on behalf of others, often in return for payment, but who are not qualified legal professionals. They have often gained their knowledge of the legal system through personal experience of fighting their own legal battles, and are driven by a sense of justice to use their knowledge to help others facing similar situations. It is to these people who many residents facing eviction and demolition turn to in the absence of professional legal representation.

Barefoot lawyers are in fact often a much more appropriate choice than professional lawyers for a number of reasons. Their fees, if charged at all, are usually much lower than those charged by professional lawyers and are within the reach of many more residents. Their sense of justice will often mean that they often take on cases with little hope of payment, and endure financial hardships that few professional lawyers with office overheads, license fees and support staff to pay for would be willing to accept.

A lawyer's license is necessary to operate a legal practice in China, but it is not needed to represent someone in an administrative hearing or a civil trial. The fact that barefoot lawyers do not hold lawyer's licenses makes them more effective than professional lawyers in some respects. This is because without the mechanism of the license, the legal authorities have no administrative powers to pressure barefoot

lawyers to stay away from certain cases under threat of revocation of their license

This is not to say barefoot lawyers are able to represent their clients without any hindrance from the state at all. They are still often subject to the same degree of harassment, intimidation and violence as their clients, and put themselves at great personal risk as a result of their activities. Often the greatest protection they can find is media attention, as government agencies are usually less likely to interfere with their activities under public scrutiny.

Barefoot lawyers also face the same obstacles as professional lawyers would when attempting to represent their clients against local governments. Even with their knowledge of the law and legal procedure, there is no guarantee that a fair hearing will be allowed.

Ni Wen Hua (倪文华) of Jinan, Shandong province is a 65 year old barefoot lawyer who has been actively representing residents in disputes with the government over evictions and demolitions for the past 10 years. He has no formal legal qualifications, but he is well-versed in the intricacies of challenging government decisions, a fact attested to by the shelves in his small apartment stacked with various textbooks and manuals on legal procedure. Ni has gained a reputation as a formidable advocate of his clients' interests, and has appeared in the national media on several occasions following successes in court. To date he has defeated provincial governments in 46 separate cases involving the eviction of residents and demolition of their homes, and has traveled the country in doing so.

Ni's experiences reflect the fact that whilst China now has no shortage of legislation providing protection for the property rights of China's urban residents, the reality is that attempting to enforce legislation against government entities is fraught with difficulty. Ni has seen many different obstructive tactics used to frustrate his cases, involving the government, law enforcement agencies and the judiciary.

REFUSAL TO HEAR EVICTION CASES

Aside from harassment and intimidation used by local governments and law enforcement agencies to dissuade residents from bringing claims, the courts themselves often use spurious reasons to refuse permission for residents' cases to be heard.

Ni provides the example of an official notice released by the top court in the Guangxi Zhuang Autonomous Province on 1 September 2003 which states that the courts in the province will no longer accept cases of a certain types for a period of time, the common factor between them being that they involve highly sensitive matters with the potential to result in protests amongst the general public. Amongst the types of case included are disputes between peasants and village collectives regarding compensation for appropriations of land and re-settlement allowances. The notice suggests that these cases are dealt with by the relevant government departments instead.

Ni points out that this notice claims to be issued in accordance with the spirit of the directions of the Supreme People's Court, but later goes on to acknowledge that no rules have yet been promulgated by the Supreme People's Court to support this action. It is not known how many cases of land appropriation this notice prevented being heard in a People's Court, but given the huge number of land appropriation protests which take place every year in China (see figures released by the Immigration and Refugee Board of Canada on page 62) and the fact that the notice is still in effect nearly seven years later, one can imagine it is a significant number.

In a very recent case Ni has been involved with, the Gangzha District People's Court in the city of Nantong, Jiangsu province, refused to hear local resident Zhang Hua's civil suit requesting that the notarization of her eviction carried out by the local notarization office be revoked. The grounds for refusing the suit when analyzed turned out to be based on completely flawed interpretations of the relevant laws,

and were issued in an informal note rather than the official signed and sealed document required by Chinese law, immediately raising suspicions of outside influence.

Zhang Hua's request for the revocation was based on several grounds, including the fact that she had been illegally detained by members of the eviction team whilst the notarization of her personal property was carried out at her home, as well as several other breaches of the require notarization procedure.

The Gangzha District People's Court refused the civil suit on the basis of three reasons: (i) that the local notarization office was not an 'interested party' in the suit under the Civil Litigation Law (a term meaning that its rights and interests must be at stake), (ii) the Notarization Law prevents a civil suit being brought against the notarization body to challenge a notarization which that notarization body has already reviewed. The document claimed that once a review has upheld a notarization a civil suit can only be brought against other individuals present at the time of the notarization; and (iii) the Notarization Law only allows for civil suits to claim compensation as a result of an incorrect or fraudulent notarization, it does not allow for such suits to request that the notarization be revoked.

On investigating these reasons, Ni found that each one was flawed:

- (I) The Civil Litigation Law does not require the respondent in a civil case to be an 'interested party', and clearly the local notarization office in this case was the correctly identified as the respondent since it issued the notarization in question. The Civil Litigation Law in fact requires that the applicant must be someone who is an 'interested party' in the matter, not the respondent. Zhang Hua clearly qualified as it was her house which was demolished.
- (ii) Nowhere in the Notarization Law does it say that a civil suit cannot be brought against the notarization body to challenge a notarization when the notarization body has already completed a review of the matter. The Court's interpretation of the relevant article was not only in conflict with the Civil

Litigation Law but is also illogical as ‘those present at the time’ would not have the authority to issue the notarization and consequently would not have the authority to revoke it either. Only the notarization body has such authority.

(iii) There is also nothing in the Notarization Law that limits the ambit of civil suits to claims for compensation only, with Article 40 of the Notarization Law simply providing that all disputes regarding notarizations can be subject to a civil suit. It would be illogical for Article 43 of the Law to provide that compensation could be claimed in respect of an incorrect notarization but that the notarization itself could not be revoked.

These misinterpretations of the relevant laws and the suspiciously unofficial document that was issued by the Court have convinced Ni Wen Hua that pressure has been applied by an outside agency to ensure that Zhang Hua’s case is not accepted.

The Gangzha District People’s Court is still refusing to hear Zhang Hua’s challenge. Unfortunately for Zhang Hua, Ni will not be able to represent her in her challenge. He was forbidden by the local government from representing clients in Nantong in

2009 on the grounds that his popular blog on legal matters⁸⁴ had a detrimental effect on the legal process.

COLLUSION BETWEEN THE GOVERNMENT, THE COURTS AND PRIVATE DEVELOPERS

Ni has also uncovered shocking evidence of collusion between government officials in charge of evictions and demolitions and senior members of the public security and court apparatus in Pingdu city, Shandong province. He has managed to obtain a document produced by the city government containing measures designed to speed up the ‘modernization’ of Pingdu city, which effectively acts as an eviction and demolition department with sweeping powers⁸⁵.

The document sets up a body whose name translates as the ‘Pingdu City Modernization Headquarters’, headed by the Deputy Mayor Guo Ping. The other members of the body are listed in an appendix to the document⁸⁶, and include the head of the construction bureau, the head of the land resources department and the head of the environment department amongst others.

The names which really stood out for Ni however were Jiang Zhen Zhu, Sun Li Min and Zhou Cai Jin. As the city’s top judge, head of the Procuratorate (the Chinese equivalent of the public prosecutor) and head of the Public Security Bureau, one might wonder why they felt it appropriate to become members of a political body under the explicit control of the Deputy Mayor whose purpose is essentially to speed up demolition of large areas of the city.

⁸⁴ Available at: <http://niwenhua234.blog.163.com/>

⁸⁵ The document is entitled: ‘*Shandong sheng pingdu shi renmin zhengfu wenjian, ping zheng fa 2003 51 hao, pingdu shi renmin zhengfu guanyu jiakuai chengshi gaizao de yijian*’ - ‘《山东省平度市人民政府文件，平政发【2003】51号，平度市人民政府关于加快城市改造的意见》’ (Translation: “*Shandong Province Pingdu City People’s Government Document No. 51(2003), Submissions of the Pingdu City Government on Speeding Up the Modernisation of the City*”).

⁸⁶ Document entitled: ‘*Pingdu shi jiu cheng gaizao zhihuibu chengyuan mingdan*’ - ‘《平度市旧城改造指挥部成员名单》’ (Translation: “*List of Members of the Pingdu City Modernisation Headquarters*”).

Instead of acting as independent protectors of local residents' property rights, these three institutions have revealed that their priority is to support and facilitate the wide scale evictions and demolitions taking place in the city today. Little wonder then that residents have found that the Public Security Bureau has often turned a deaf ear to complaints of brutal violence by developers and instead turned their batons on residents resisting eviction from their homes. Little wonder that instead of prosecuting those responsible for such violence against local residents, the Procuratorate has used the full force of the law to illegally detain local residents in their own homes or in so-called Black Jails and to prosecute residents resulting in imprisonment and/or time in a Reform Through Labor complex. Little wonder that so many of Ni Wen Hua's law suits filed on behalf of aggrieved local residents have been refused by the Pingdu city court.

Ni reflects that he has encountered other examples of bodies such as the Pingdu City Modernization Headquarters around the country which co-opt government departments, law enforcement agencies and the courts. Whilst they might go under different names, their functions are the same: to quicken the pace of evictions and demolitions in their area of jurisdiction. In these areas it is often impossible for local residents to resist their evictions and the demolition of their homes, notwithstanding gross violations of the law and their rights.

A similar conflict of interest has recently been exposed in Zhushan county, Hubei province. A well-informed blogger has posted details of a particularly brazen example of collusion between developers and court officials: a senior judge going

into business as a property developer⁸⁷.

The blog contains a copy of a development agreement entered into between the Zhushan County Hua Xia Property Development Company and Han Jia Yong, who is also the Deputy Chief Justice of the Zhushan County Court. Under the agreement Han Jia Yong agrees to assist the property development company to obtain the relevant permits and permissions to enable them to construct a multi-use commercial building in the center of Zhushan city, and further agrees to take responsibility for negotiating compensation with the residents who will be evicted to make way for the development.

According to the blog, which is supported by numerous pieces of documentary evidence, Han Jia Yong authorized the demolition of the local residents' properties without having entered into compensation contracts with all residents. In particular a Han Qing Long was not compensated, and he subsequently brought court proceedings against the Housing Management Bureau to challenge the legality of the demolition of his property (as we have seen above the existing 2001 demolition regulations make it clear that compensation must be paid to residents whose properties are demolished). He was shocked to find that Han Jia Yong has used his position as Deputy Chief Justice to rule that the demolition that he himself authorized was carried out in accordance with the law, despite the fact that no compensation was paid to Han Qing Long.

The dispute continues, with Han Qing Long subsequently succeeding in an appeal to a higher court which overturned the ruling given by Han Jia Yong. No further details are available at the current time.

⁸⁷ 'Shangye xieyi baoguang – Kaifashang jing shi zhushan xian fayuan fuyuanzhang' - '商业协议曝光-开发商竟是竹山县法院副院长' (Translation: 'Commercial Venture Exposed – The Property Developer is also the Deputy Chief Justice of the Zhushan County Court') available at: <http://yfwq.blog.sohu.com/145809568.html>

OBSTRUCTION DURING COURT PROCEEDINGS

Even where courts decide to hear cases challenging forced evictions, judges and court officials are often quite blatantly seen to assist the defending government representatives. In 1999 Ni acted for 20 families in challenging the Jinan City Government Real Estate Development Eviction and Demolition Management Department's decision to base the compensation awarded to residents whose homes were demolished to build a new People's Court building on 1995 property prices rather than the then current prices. During the court proceedings, the judge presiding helped the defendant's representatives to organize and present their evidence in a way that left no one in any doubt whose side the court was on in the case. Ni strongly objected to this favoritism but his protests were ignored and the original judge continued to hear the case.

The case is also of interest because of the way the court eventually fudged the outcome in a fashion Ni informs is commonplace in China. The court upheld the local government's original compensation figures based on 1995 property prices, so on the official record the local government won the case. However, during the proceedings the court actively encouraged the local government and the residents to enter into supplementary compensation agreements which guaranteed each resident an additional 5m² in their replacement apartments. The residents agreed to this compromise and entered into the compensation agreements, dropping their claim as a result.

No such supplementary compensation was on offer for the commercial tenants facing eviction as part of the same development however, and the proceedings continued. Ni argued successfully that the local government's compensation decision was flawed and should be rescinded, his first victory in an eviction case.

In a case in the year 2000 against the Eviction and Demolition Administration of the Laiyang City Construction Committee, Ni found himself censured by the judge

hearing the case for daring to argue with him. In a fit of anger the judge stormed out of the court room and refused to continue hearing the case, subsequently banning Ni from representing clients for a period of time. Following this incident Ni also had his case notes confiscated by court officials in an apparent retaliation.

WINS AND LOSSES

Ni identifies three main obstacles to achieving justice for his clients in eviction cases. The first is the widespread collusion between government officials, court officials and private developers in approving and enforcing evictions and demolitions. The second is the existence of conflicting laws on the Chinese statute book which allow local governments to ignore citizens' property rights, the prime example being the conflicts between the current demolition regulations and the Constitution, the Property Rights Law and the Urban Real Estate Management Law. The third is that many abuses are officially sanctioned by the Communist Party, which cannot be tried in a criminal court or be a respondent in a civil trial under Chinese law.

When asked which factors help him to succeed in cases, he cites the role of the internet and national and international media as crucial in exposing corruption and malpractice and bringing public pressure to bear on those responsible. Despite the best efforts of the government censors, once a case becomes widely known amongst the Chinese public it will often become enough of a concern for the government to respond and attempt to remedy the situation. Failures by local governments to follow the required procedures is also a factor in a large number of Ni's successful cases, perhaps reflecting a willingness for Chinese courts to rule against government interests on technical grounds rather than more politically sensitive issues such as breaches of rights. The outcome of such rulings is often that the government department is required to re-start the procedure in question, giving an opportunity to redress the omission.

PERSONAL DANGER

Ni has been besieged in his flat, assaulted and handcuffed by police during his career as a barefoot lawyer. Police officers regularly visit him and politely advise him to stop representing his clients, yet he is undeterred. He receives more request for representation than he can deal with despite working long hours, and consequently has to turn a proportion of requests down.

RECOMMENDATIONS

- Establish an independent tribunal to hear disputes arising out of evictions covered by the new regulations, immune from political pressure and staffed by learned experts with experience in the field. This tribunal should at a minimum be competent to hear cases alleging procedural irregularities, rule on the scope of the definition of the public interest (which should be interpreted restrictively and take account of the proportionality of the demolitions and the proximity of any commercial side developments) and challenges to the amount of compensation to be paid out to evicted residents;
- Amend the new regulations to provide that the property requisitioning procedure is stopped whilst a challenge is being pursued by a resident;
- Amend the new regulations to provide that compensation payments must guarantee residents' housing conditions and take account of other serious effects on the residents' lives (such as their employment and social networks) instead of merely paying the market price for the demolished property;
- Include detailed provisions within the regulations providing that fair compensation is to be paid to evicted residents who lose their business as a result of evictions, which must reflect the true value of the business taking account of reasonable future profits and relocation expenses;
- Draft a detailed addendum to the regulations covering purely commercial demolitions which are not in the public interest, granting equal procedural protections to residents as with public interest

demolitions and explicitly outlawing the forced eviction of residents who do not wish to move;

- Increase central government oversight of local government eviction activities and rigorously guard against collusion with property developers in order to subvert or ignore legal obligations to residents (paying particular attention to the period leading up to the effective date of the new regulations);
- Re-calibrate urban planning policy and local government performance evaluation frameworks away from an overriding focus on economic growth to include factors such as the well-being and quality of life of local residents.
- Open up the planning process to involve residents in those decisions which will have an effect on their lives;
- Draft and implement regulations providing equivalent or better protections to rural residents in respect of their rights to collectively-owned land. This must include fundamental reform of the system of collectively-owned land to provide rural residents with true ownership free from the control of local administrative entities.
- Implement a fundamental review of the system of land ownership in China with a view to:
 1. harmonizing all property legislation currently on the statute book;
 2. removing and outlawing incompatible local regulations;
 3. introducing a comprehensive system of land rights registration which includes a mechanism under which those whose rights are currently undocumented, incomplete or temporary are able

- to register and obtain enforceable rights; and
4. eventually removing government restraints on the absolute ownership of land by individuals and corporations.
- Stop the obstruction and persecution by state agents of lawyers, barefoot lawyers and their clients attempting to protect their property rights immediately.

CONCLUSION

The consultation draft of the new regulations governing urban evictions and demolitions is a step in the right direction and is a welcome sign that the Chinese government is finally taking the issue seriously.

However, as we have seen above there are not only a number of serious gaps in the regulations themselves but also a number of systemic and structural issues which, unless addressed, are likely to mean that even if they are rigorously enforced, unscrupulous local governments will still be able to evict citizens to turn a profit, appropriate and demolish their homes and get away with paying minimal compensation in return.

A positive sign for the future is that the promulgation of the new demolition regulations and the debate surrounding their contents has brought the issue back onto the public and government agenda. With law professors, lawyers, property developers, government ministers and NPC delegates all involved, there is a definite momentum for change which it is hoped the members of the State Council take heed of. What is needed is a fundamental re-think of government policy on property rights, public housing and the role of the State, and to re-focus policy goals away from an all out drive for growth rates towards improving and protecting the housing conditions of every citizen.

Lawyers and barefoot lawyers around the country will continue to play a crucial role in protecting the property rights of Chinese citizens, and will in many cases continue to suffer persecution for doing so unless local governments and court officials cease collusion with property developers for financial and personal gain. It is hoped that the central government will ensure that local governments cease such activities immediately and enforce strict compliance with improved domestic laws and China's international obligations relating to accommodation.

Finally, as evidence above supports, the preponderance of land, housing, and property rights abuses has led to a substantial increase in episodes of conflict and instability. If the current system is not amended relatively promptly and properly, that is if it fails to take into account the concerns and criticisms mentioned above, the level of violent conflicts is certain to increase and the ‘harmonious society’ concept promoted by the Hu-Wen power nexus will remain unobtainable.

Appendix:

INTERNATIONAL STANDARDS ON HOUSING RIGHTS

In addition to domestic Chinese law the legal status of the right to adequate housing is based on the following main relevant international human rights provisions:

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

* Adequate Housing Article 25.1 states that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965)

* Article 5 (e) (iii) obliges States “to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to housing”.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

* Article 11.1 states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

* Article 17 states that: “1. No one shall be subjected to arbitrary or unlawful

interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979)

* Article 14.2 (h) states that: “States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

CONVENTION ON THE RIGHTS OF THE CHILD (1989)

* Article 16.1 states that: “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation.”

* Article 27.3 states that: “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.”

INTERNATIONAL LABOUR ORGANISATION (ILO) CONVENTION NO. 117 CONCERNING BASIC AIMS AND STANDARDS OF SOCIAL POLICY (1962)

* Article 2 states that: “The improvement of standards of living shall be regarded as the principal objective in the planning of economic development.”

* Article 5.2 states that: “In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education.”

The Committee on Economic, Social and Cultural Rights expressed its interpretation

of the content of human rights provisions on the right to adequate housing and has observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of international human rights standards.

ALSO FROM THE CHINESE URGENT ACTION WORKING GROUP



"DEATHS IN CUSTODY – The Police's free rein to abuse power in detention centers"

A 34 page report on the lack of clear and effective legal framework to properly manage China's 6000 detention centers, and how this has led to a string of most unusual deaths of detainees. The report focuses on the fact that Police are largely responsible for investigating their own crimes against detainees, and how the current laws fail to provide clear guidance for the Procuratorate to investigate crimes committed by detention center staff and police. The report also presents information on 26 cases of unnatural deaths, in most cases obvious murders of detainees by Police. The report also looks at the calls made from both politicians, the media and academia in how the system need be reformed to ensure that the rights of detainees are protected. [January 19, 2011]



"THOUGHT CRIMES - China's use of phyciatric institutions as detention centers"

The report details the use and misuse of China's psychiatric institutions by public security officials, and how the lack of clear regulations concerning placing people in psychiatric custody leaves little space for redress concerning these abuses. It provides an in-depth legal analysis of the legal framework concerning these institutions, as well as on 'Ankang' centers, special custodial institutions where politically unwanted people can be locked up. 'Ankang' centers are part of the administrative penalties system, and little external oversight, from for example the Procuratorate, exist. Misuse of the 'Ankang' institutions, which exists in major cities across China, is widespread and no national regulation or law exist governing these centers. [June 16, 2010]



"PAPERING OVER THE CRACKS - Reform of the forced eviction regime in China"

An extensive report on the current sitaution concerning forced evictions and demolitions, and how the proposed new law is falling short of providing remedies for what is one of the most widespread human rights violations in China today. The report also details how people are fighting back against unlawful land confiscation, and what role 'barefoot' lawyers play in this fight. Finally, the report uses case studies to highlight different aspects of the problems related to forced evictions and demolitions. [March 29, 2010]



"NO END IN SIGHT - Sustained persecution of human rights defenders in China"

A report detailing how the persecution of human rights defenders has continued unabated at the same high level as during 2008. The report highlights different methods of persecution employed by central and local governments, and how the application of such methods differs between different groups of activists. The report furthermore presents information on key cases of human rights defenders currently being persecuted for their peaceful expression and use of basic rights enshrined in Chinese law. [January 25, 2010]



“MANIPULATION AS INSULATION - The non-renewal of *weiquan* lawyers’ licenses in China”

This report provides information on the situation for lawyers and law firms in China, with focus on the abuse of non-renewal of lawyers’ licenses. It further analyzes frightening new developments concerning the communist party and the state’s growing control of independent lawyers and law firms in China. It also provides an analysis of the hazardous situation lawyers in China face when taking on politically sensitive cases, and how the administrative authorities use the annual re-registration to effectively disbar any lawyers it feels provokes the status quo. [October 21, 2009]



“OLYMPIAN REPRISALS – The Chinese government's response to domestic criticism of the 2008 Olympic Games”

A report outlining how human rights defenders who publicly opposed the 2008 Olympic Games were persecuted by the Chinese state. The report focuses on participants in two campaigns, both advocating for prioritizing better protection of Human Rights over the hosting of the Olympic Games. The report provides information on the technique used by the government to silence these groups, and how it differed between the two groups. [April 23, 2009]



“A BRIEFING ON BLACK HOUSES – System, facilities, victims”

This brief report provides information on the nationwide system of illegal, but government run and funded, jails. The black jails, or black houses, are used to detain petitioners who seek redress for perceived wrongs. The report outlines how the system functions, how the facilities operate, who detains the petitioners, and how the police and central government aids and assist in the operation of the system, as well as a legal analysis. The report was released ahead of the 2009 UN Universal Periodic Review of China. [February 1, 2009]