NOTES

DOUSING THE FLAMES: THE TANG FU ZHEN SELF-IMMOLATION INCIDENT AND URBAN LAND TAKEINGS REFORM IN THE PEOPLE’S REPUBLIC OF CHINA

ANNIE DENG*

I. INTRODUCTION

A. THE CASE THAT LIT THE SPARK FOR REFORM

On November 13, 2009, on the rooftop of a house in Jinhua community, a Jinniu District suburb outside Chengdu city in Sichuan province, People’s Republic of China (P.R.C.), a woman lit herself on fire. A new road was being built and Tang Fuzhen’s home and garment processing plant were in the way. The forty-seven-year-old Tang and her siblings had been trying to stop demolition workers from tearing down the building for days. As the thuggish demolition workers brutally beat her siblings, Tang stood atop the roof of the building and doused herself with gasoline in an attempt to scare them away. The demolition workers pressed on and Tang burned herself in protest. She died from the resulting injuries sixteen days later. Tang’s protest sparked public outrage in the Mainland, expressed mostly through such media as blogs and news articles. The tragedy led five professors from Peking University to publicly demand that the P.R.C.

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2 Cohen, supra note 1, at 7.

3 Id.

4 Id.

5 Id.

6 Id.
government consider a reform of its land expropriation regulations. On December 7, 2009, the professors wrote a public letter to the Standing Committee of the National People’s Congress arguing that, among other things, the government had improperly allowed private developers to take over the responsibilities related to urban land expropriation activities. Under urban land expropriation regulations in effect at the time, the government only played the role of supervisor, while private developers had the power to demolish buildings and evict and compensate takings subjects. In response to this letter, the P.R.C. government has spent the past year reforming and rewriting its urban land expropriation regulations.

In early January 2010, the State Council posted a draft of proposed revised home expropriation regulations on the Legislative Affairs Office’s website and asked for public opinion and comment. As of the February 12, 2010, deadline to submit recommendations, 13,437 people had visited the website and left comments online. Additionally, over seven thousand Beijing residents who had had their homes demolished by the government without reasonable compensation have written and signed a letter to the government with their comments and suggestions about the proposed reform. On January 21, 2011, the State Council announced that it had approved a new set of regulations.

Though Tang’s case may be considered the spark of such proposed reform, such cases are far from rare. Land takings in the P.R.C. are a prevalent and well-documented problem that has affected millions of people since Deng Xiao Ping initiated the Open Door Policy in 1978, which allowed the formerly closed country to open up and trade with the rest of the world. Ever since, the P.R.C. has been racing to boost its economy, improve infrastructure, and give its cities modern makeovers.

To achieve the modernization and growth of cities in a manner that is as

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9 Urban Land Grab Sparks Unrest in China, supra note 7.
swift and cost-efficient as possible, the government has used land expropriations as a convenient and lucrative instrument.16 During these years, the government has embarked on many large-scale land expropriation projects designed to modernize the country and boost production and investment. For example, over the past decade or so, the construction of the Three Gorges Dam has led to the eviction of between 1.3 and 1.9 million people from their homes.17 The building of Olympic venues alone in Beijing caused the involuntary eviction of over 300,000 urban residents.18 Furthermore, the development of other projects aimed to make the capital city look more modern has forced the relocation of another million urban residents, all with little or no notice and with minimal compensation.19 By February 2010, almost 1000 middle-class urban residents had marched from Shanghai to Beijing to protest being thrown out of their homes to make way for the national pavilions and other developments that were being built for the Shanghai World Expo in May 2010.20 Some of the individuals evicted by these takings have not been compensated even though their homes have already been demolished; this leaves them homeless and without the ability to purchase or rent a new place in the highly priced Shanghai real estate market, in which house prices have allegedly risen 68 percent from 2009 to 2010.21

The Open Door Policy has almost undisputedly been an economic success and rapid economic growth has resulted in a quickly expanding urban middle class eager to improve its standard of living by purchasing new homes. In addition, a vast population in search of work opportunities amidst this economic boom has also resulted in mass migration to urban areas, leading to an “accelerated real estate boom” since 2005. The Open Door Policy has almost undisputedly been an economic success and rapid economic growth has resulted in a quickly expanding urban middle class eager to improve its standard of living by purchasing new homes. In addition, a vast population in search of work opportunities amidst this economic boom has also resulted in mass migration to urban areas, leading to an “accelerated real estate boom” since 2005.22 Property

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16 Id.
22 Koyo Ozeki, The Chinese Real Estate Market: A Comparison with Japan’s Bubble, PIMCO ASIAN PERSPECTIVES (Dec. 2009),
prices have thus skyrocketed in large cities, and as the owner of all urban land, the P.R.C. government has received ample financial gains from this urban real estate boom. In 2009, for instance, about 50 percent of local government revenues came from sales of land use rights to developers throughout the P.R.C. This gives the government a massive incentive to defer to the wishes of developers instead of protecting the interests of individual homeowners, and this is reflected in the urban land expropriation problems that the P.R.C. faces.

B. INSTITUTIONAL PROBLEMS WITH PROMULGATING AND ENFORCING LAWS AND REGULATIONS THAT PROTECT THE MASSES

The P.R.C. government has recently succumbed to increasing public pressure and revised its urban land expropriation regulations in an attempt to better protect individuals. However, given the system of government within the P.R.C., in which the Communist Party is assumed to stand above the law and local governments wield large amounts of power and influence, passing and ultimately enforcing regulations that adequately protect the private property interests of urban residents is highly difficult.

The process of drafting and passing laws and regulations in the P.R.C. is opaque and undemocratic. Party officials are appointed in a top-down approach and are not elected by the people. As a result, any laws or regulations passed by these officials will only reflect a privileged portion of society’s view of the law and not necessarily the changes that ordinary citizens want to see. Moreover, though countless urban residents have protested the demolition of their homes without reasonable notice or compensation, the government did not revise the regulations until influential law professors from Peking University wrote to the government urging it to abolish the current regulations for fear that more violent takings cases would cause widespread social unrest.


24 Cohen, supra note 1, at 7.


Though the new legislation is meant to protect ordinary citizens, these citizens had little or no control over the drafting of the new urban land expropriations regulations. They were given a brief window of time to comment on the revised regulations either by mail or through the State Council’s Legislative Affairs Website, but simply allowing them to send in comments did not ensure that their views would be incorporated into the revised regulations. Powerful local governments and developers have immense bargaining power in the P.R.C. Any compromises to urban property owners’ rights that appear in the final regulations will not be compromises made between urban residents and local governments, but compromises made between the central government, local officials, and developers. Homeowners do not have the power to vote on whether or not to pass regulations, and so the new regulations still contain many weak areas and may compromise homeowners’ interests in favor of the interests of the unelected elite.

Assuming that the regulations passed are legitimate, despite the absence of voting, and that they do substantially protect the interests of urban residents, enforcement problems remain because of lack of effective checks on local governments and the existence of widespread and institutionalized corruption in the country. The judiciary in the P.R.C. does not have the power to independently interpret or review laws and regulations, and it tends to comply with local government decisions. In addition, the central government does not have the resources to effectively monitor every step of every takings case in the country. In a system that cannot effectively check their actions, local officials have the ability to apply any new regulations in ways that suit their own interests. This is especially true because local governments have become increasingly autonomous in recent years and are less likely than before to do what the central government commands if it comes at the expense of local economic development. 

Even though there will be problems ensuring that the regulations are followed and enforced in every future takings case, this Note will assume that the revised urban land expropriation regulations will allow the public to experience at least an incremental increase in the fairness of land takings. This Note will explore both the improvements and pitfalls in the recently promulgated land expropriation regulations.

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30 See infra Part IV.A.
Part II of this Note gives a brief overview of the P.R.C. Constitution and the concept of Communist supremacy. Part III will explore the history and background of Chinese property law. By explaining Chinese property rights throughout history, beginning from the Zhou Dynasty over two millennia ago, leading to the socialist ideology of the Communist revolution, and subsequently the Open Door Policy and economic reform in China, Part III will give the reader a basic understanding of how and why urban land expropriation has become such a massive and complex problem within the P.R.C. Part III will also explain relevant details of the 2007 Property Rights Law of the P.R.C. and the effect it has on the country’s land expropriation policies. Part IV will delve into the details of the recently superseded urban land expropriation regulation in the country, including analyzing the conflicts that it has with the 2007 Property Rights Law and the P.R.C. Constitution. Part IV also will examine Tang’s case in closer detail to see how past laws have contributed to its tragic outcome. Part V will discuss and evaluate key portions of the newly passed urban land expropriation regulations. Finally, this Note will conclude that the new regulations will not make a visibly meaningful difference in the way takings cases are handled in the P.R.C. because the regulation still lacks certain specific procedural requirements and clear definitions. In addition, due to the P.R.C.’s lack of checks on local government power, simply revising the land expropriation regulations is unlikely to solve the takings problem at its core.

II. THE P.R.C CONSTITUTION AND COMMUNIST SUPREMACY

The P.R.C. adopted its current Constitution in 1982 and has since revised it four times, most recently in 2004. Under the Constitution, the Communist Party is the supreme ruler of the land. This is made clear in the preamble to the Constitution, which states that “[u]nder the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and follow the socialist road.” The P.R.C. is a one-party country, and the conventional view of its legal system is rule by law and the government’s monopoly on power. No independent judiciary exists, as judges are fiscally dependent on the government and do not have the power to interpret or review the P.R.C.’s laws and regulations. In the P.R.C., there is no concept of separation of

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powers: all branches of government are funded by and answer directly to
the Party, including the judiciary, law enforcers, and legislators. Thus, no
institutionalized checks on the government’s legislations and policies exist
under this system; the law furthers the central government’s aims, whether
these aims are benevolent or selfish. 34 Public opinion may somewhat
constrain the P.R.C. government’s actions, but the government has the final
say.

The P.R.C. Constitution briefly mentions the country’s land
expropriation laws. In pre-2004 versions, Article 10 of the Constitution
simply stated, “[t]he State may, in the public interest, requisition land for its
use in accordance with the law.” 35 This language demonstrates the
government’s assumption that it had the power to take land away from
homeowners whenever it deemed necessary, without needing to pay any
compensation. In response to increased public criticism and international
scrutiny about how unfairly citizens were being treated when the
government exercised its power under this clause, the 2004 revision of the
Constitution revised the eminent domain clause to say that the government
“shall make compensation for land expropriated or requisitioned” 36 for a
public purpose. More details about the problems associated with this clause
and how it conflicts with the country’s current eminent domain regulations
will be discussed in later sections of this Note. In order to allow a better
understanding of how these problems came to be, this Note will next
discuss the historical development of Chinese property law.

III. CHINESE PROPERTY RIGHTS THROUGHOUT HISTORY AND
THE 2007 P.R.C. PROPERTY RIGHTS LAW

A. HISTORICAL DEVELOPMENT OF CHINESE PROPERTY LAWS

1. Chinese Property Rights Under Imperial Rule

Throughout its history, Chinese society did not have a comprehensively
developed concept of private property rights. 37 For over two thousand
years, China was ruled by successions of emperors that, as the “Sons of
Heaven,” 38 owned everything and anything on Chinese soil and had the

34 Winston, supra note 32, at 21.
35 XIANFA art. 10 (1982) (China), available at
36 Id.
37 Mo Zhang, From Public to Private: The Newly Enacted Chinese Property Law and the Protection of
Property Rights in China, 5 BERKELEY BUS. L.J. 319, 320 (2008) [hereinafter Zhang, From Public to
Private].
38 The title of “Sons of Heaven” originated in the Zhou Dynasty (1100–770 B.C.) and predates the Qin
Dynasty (221–206 B.C.) unification of China. Though the Qin emperor Qin Shihuang did not use this
title, beginning from the Han Dynasty, subsequent emperors in China reestablished this concept of
right to “determine the ultimate fate of all kinds of property in the
country.” Though some semblance of private property rights has existed
since the Zhou Dynasty (1100–256 B.C.), when the king during that
period distributed land to peasants using the feudalistic system called the
Well-Field System, proper legal recognition and protection of property
rights never existed. Under the Well-Field System, eight Chinese families
were each given 100 mu of land that surrounded 100 mu of public land in
the middle (in the shape of the Chinese character well: 井). The public
land in the middle had to be cultivated first, and this public land’s proceeds
to be given to the king. Chinese farmers and peasants were allowed
to inherit the land granted to them over generations, as long as they could
afford to keep paying taxes. Eventually, the Well-Field System evolved
into a feudalistic tenure system, though the ruler of China was still
considered all-powerful and able to do what he wanted with all property.

2. Property Rights After the 1911 Fall of the Qing Dynasty

The feudalistic system of land ownership in China ended in 1911 with
the fall of the Qing Dynasty (1644-1911). During the nineteenth century,
China had endured what the Chinese still consider humiliating years at the
mercy of various foreign powers due to the Qing emperor’s perceived
ineptitude. During this time, China was rife with the spirit of revolution,
aimed at overthrowing the Qing Dynasty and imperial rule, as well as
ridding the country of the presence of foreign powers. Leading China’s
fight were the Chinese Communist Party and the Nationalist Party. These
two political parties banded together to eliminate foreign presence in
China, but also fought a civil war with each other to vie for political
supremacy. Eventually, the Chinese Communist Party won the internal
power struggle and established the People’s Republic of China in 1949.

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59 Zhang, From Public to Private, supra note 37, at 319.
60 Id. at 319; Deng Feng, A Comparative Study on Landownership Between China and England,
MUNICH PERSONAL REPEC ARCHIVE 1, 12 (Feb. 2007).
61 Mu was a system of measurement for areas; one mu is equivalent to about 670 square meters. Deng
Feng, supra note 41, at 13.
62 Id. at 12.
63 Id.
64 Id. at 12–17.
67 Beginning with the British-initiated Opium War in 1840, leading to the treaties ceding various regions
of China that the Qing Dynasty government signed with the members of the Eight Power Allied Forces:
Britain, Germany, the United States, France, Tsarist Russia, Japan, Italy and Austria, and ending with
the final forced Protocol of 1901 after the Allied Forces quashed the Boxer Rebellion. J.A.G. ROBERTS,
69 Zhang, From Public to Private, supra note 37, at 320.
3. Property Rights After 1949 and Before the 1978 Open Door Policy Reforms

The Communists initially gained popular support and strength from farmers and peasants who had little or no property rights and had been obligated to pay massive taxes to their landlords because they promised the peasants land ownership.50 Indeed, when they first established the P.R.C., the Communist Party kept its promise to peasants and farmers by passing the Agrarian Reform Law in 1950.51 This law allowed the government to confiscate the land of the “former [Nationalist] government, foreigners and persons identified as war criminals, traitors, bureaucratic capitalists, and counter-revolutionaries” and redistribute it to peasants, thus abolishing the feudal system and giving peasants ownership rights to land.52 However, the Communist Party changed gears in the 1950s and began to follow the Soviet model of socialism, in which the government ran a centrally planned economy and “owned all the means of production.”53 Private ownership of property and private interests became discouraged because they were considered “synonymous with capitalism and the bourgeoisie.”54 Urban and rural areas were treated differently. In rural areas, farmers were pressured to join communes by donating all of their assets, including any land that they had been given earlier, to the collective, so that farmer’s collectives eventually owned all rural land.55 In urban areas, the government confiscated property owned by foreign landowners and people that the state considered antirevolutionaries, but initially still allowed private ownership and land transactions.56 Eventually, by confiscating homes and placing strict controls on rent and land transfers, the state ended up owning essentially all urban land and housing.57 Public housing was strongly pushed and the state allocated land to state-owned enterprises or work-units, which in turn built housing to provide to the majority of urban workers for nominal rental amounts.58

51 CI HAI (辞海) 512 (1979).
53 Zhang, From Public to Private, supra note 37, at 326; Keliang & Prosterman, supra note 50, at 1.
54 Zhang, From Public to Private, supra note 37, at 320.
56 Ding & Knapp, supra note 55, at 1.
57 Id.
This urban public housing system turned out to be highly inefficient, leading to overcrowding and draining of the government’s financial resources. After years of government monopoly on the urban housing sector, the P.R.C. government was stretched to the point of bankruptcy and finally determined that it could not sustain such an uneconomical policy.

4. P.R.C. Property Rights After Deng Xiaoping’s 1978 Open Door Policy Reforms

The P.R.C. government finally determined that continuing its system of state-owned and centrally-distributed housing was inefficient and unsustainable, and began to experiment with housing reform, aiming to privatize public housing after Deng Xiaoping initiated the Open Door Policy in 1978. At first, the government attempted to sell public housing to residents at severely discounted prices. However, in the absence of any legal protection of private ownership rights, most people were unwilling to purchase housing because they feared that the government could arbitrarily confiscate the housing again at any time.

In order to encourage private housing purchases, the P.R.C. government enacted regulations commercializing land use rights in May 1990. The Provisional Regulations on the Grant and Transfer of Use Rights in Urban Land provided that urban land could be leased from the state for up to seventy years, depending on the use, and could subsequently be relatively freely transferred.

The Decision on Deepening Urban Housing Reform passed by the State Council in 1994 gave individuals further confidence in decisions to purchase housing. This law guaranteed that if people paid more when purchasing housing, their property rights would be broader. Rich families then could purchase housing at market value and have nearly full ownership of the property, meaning that they had the right to use, inherit, profit from, and dispose of the housing. Poor families, on the other hand, could buy houses at construction cost and gain the right to use and inherit the housing, as well as gain a limited right to profit from it. If families that bought housing at construction cost held onto their purchased housing...
for at least five years, they were then allowed to sell it on the housing
market and split the proceeds from the sale with the work unit that had
originally allocated the housing to them.70

As the P.R.C.’s role in the global markets gradually became more
prominent, the P.R.C. government began to realize that to encourage
continued foreign and local investment in the country’s economy, it would
need to grant individuals and legal persons additional private property
protection. In 2004, it amended the P.R.C. Constitution to include a
provision legalizing and protecting private property interests, stating that
“[t]he lawful private property of citizens may not be encroached upon. By
law, the state protects citizens’ rights to own private property and the rights
to inherit private property.”71 Under this amended constitution, urban land
is still owned by the state while rural land is owned communally, but urban
residents increasingly are able to acquire property rights.72 The P.R.C.
strived to align this shift in its treatment of private property rights with its
socialist ideology by treating “[a]ny form of ownership that meets the
criterion of improving social productivity and improving the standard of
people’s lives . . . as serving socialism.”73

Even with this addition in the Constitution, the central government still
felt pressured to further strengthen and clarify the country’s policy on
private property protection. Over the next decade, the government began to
consider passing a law that would officially grant private property
protection to individuals.74 One reason for these efforts was to crystallize
the actual trends in the treatment of property in the country’s emerging
market economy into a law, and another reason was to help prevent the
social unrest that was growing due to local governments’ willingness to
pursue economic growth in their localities at the expense of individual
rights.75 As a result of these efforts, the P.R.C. government eventually
enacted the country’s first property law, the Property Rights Law, in 2007.76

B. THE 2007 PROPERTY RIGHTS LAW AND ARTICLES RELEVANT TO LAND
EXPROPRIATION

In April 2007, after nearly fourteen years of debate and deliberation,
the P.R.C. National People’s Congress finally passed the Property Rights

70 Id.
71 XIANFA art. 13 (2004) (China); Zhang, From Public to Private, supra note 37, at 333.
73 Long Qinglan, supra note 47, at 64.
74 Id. at 60–64.
75 Id.
Law, which became effective in October 2007. The Property Rights Law has been regarded as a milestone for private property rights, since it is the first time the country has granted legal protection for the private property of individuals and legal persons who have long-term leases on land. This Section will discuss the content and problems associated with Article 4 and Article 66 of the Property Rights Law, which are the sections relevant to the P.R.C.’s policies on land expropriations.

Article 4 explicitly grants equal legal status for property rights of the “State, collective, individual, or any other right holder.” Article 4 also states that these rights “may not be damaged by any entity or individual.” Additionally, Article 66, which residents being evicted often cite as a legal basis to protest demolition of their homes, states that “an individual’s legal properties shall be protected by law, any entity or individual may not encroach, plunder or destroy them.”

These provisions in the Property Rights Law were written to protect private land ownership and property rights during expropriation. Despite these efforts, promises to adequately protect private property are often not kept in practice. Indeed, “[f]ormal property laws, such as constitutional provisions and property codes, may be easy to enact, but informal rules are far beyond the lawmakers’ control.” Private property protections are difficult to enforce in the P.R.C. because government policies reward local officials based on quantitative factors such as gross domestic product (GDP) growth in their localities, thus incentivizing impingement on citizens’ rights to meet benchmarks. Further, institutionalized corruption, a lack of checks on the actions of local officials, and a long-standing tradition of not properly recognizing or protecting private property rights also undermine private property protections.

Id. The P.R.C. took more than a decade to pass the law because there was strong debate within the party about whether or not legally granting private property rights to citizens would lead the country away from socialist ideology. Gong Hantian, a law professor at Peking University, was a strong opponent against the enactment of this law. He wrote a public letter of opposition, which he said was endorsed by over 3000 intellectuals and former officials and posted it online. He emphasized that “[t]he reason China has such a fast-growing economy is that we have a very strong public sector . . . . Privatization for a socialist country like China is not a gospel, but a disaster.” Edward Cody, Chinese Lawmakers Approve Measure to Protect Private Property Rights, WASH. POST, Mar. 17, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/03/16/AR2007031600512.html.

Zhang, From Public to Private, supra note 37, at 317.

Wu quan fa.

Id.

Id.

Id.

Id.


See Liu, Informal Rules, Transaction Costs, and the Failure of the “Takings” Law in China, supra note 82, at 125.
As this Note will discuss in the following Section, Article 4 and Article 66 conflict with the P.R.C.’s recently superseded land expropriation regulation, the Regulations on the Dismantlement of Urban Houses (Urban Demolition Regulations), which were passed in 2001.

IV. LAND EXPROPRIATION REGULATION IN CHINA BETWEEN 2001 AND 2011

Before the economic reform in 1978, takings were a “non-issue” in the P.R.C., since the country did not recognize any private property rights and “[a]s the de facto owner, the government had absolute power to use public property at will.” Government takings of urban property became an issue, however, as the P.R.C. increasingly needed to grant greater private property rights to encourage and sustain the P.R.C.’s market growth. Since the reform, the country has experienced unprecedented urban population and economic growth. In 1952, the P.R.C. had an urban population of about fifty-seven million. But by 2009, the urban population had ballooned to over 600 million, accounting for 46.6 percent of the country’s total population.

The government has launched urban renewal programs (jiuqu gaizao) and new housing initiatives to encourage this economic growth and address the increase in urban populations. Its policies have helped property prices in urban areas skyrocket in recent years. This is especially true in large cities such as Shanghai, where prices have increased more than 150 percent in the past eight years. For example, some newly built apartment complexes in the city center have appreciated from 9000 renminbi per square meter to about 40,000 renminbi per square meter. Because

86 Liu, The Chinese Takings Law from a Comparative Perspective, supra note 25, at 304.
87 Many people in China have compared James Cameron’s 2009 movie “Avatar” to the land expropriation situation in the Mainland. For example, my law professor at Hong Kong University began his first lecture to law students in Spring 2010 on Law and Development in the P.R.C. with a slide about the movie. Because the takings issue is so severe in the P.R.C., watching attempts to violently evict the Na’vi from their Hometree on the alien planet of Pandora has struck a chord with many Chinese as a strong reflection of the current expropriation issues in the Mainland. See Cai, supra note 26.
90 Interview with Liu Jiangnan, Beijing homeowner, in Beijing China (March 20, 2010).
92 Anderlini & Mitchell, supra note 91; Barboza, supra note 91.
93 Interview with Liu Jiangnan, supra note 90. This increase in housing cost has become a problem in itself for urban residents, who sometimes need to spend as much as three quarters of their income on mortgage payments. See Jaime FlorCruz, Chinese “House Slaves” Grow in Booming Economy, CNN
property values keep increasing, demolition and rebuilding in urban areas is
highly lucrative for both local governments and property developers.94
Since the P.R.C. is an authoritarian country with very strong local
governments, instead of finding ways to negotiate with individuals about
selling their homes, local governments’ virtually unrestricted power to
expropriate land became the natural vehicle for achieving these new
development goals.95 In addition to being convenient, this practice has been
highly lucrative since current regulations allow urban land expropriation to
occur at a very low cost, providing a windfall to local governments and
developers after fancy new buildings are built and then sold off or rented
out at the ever-rising market value.96

The Urban Demolition Regulations, which have governed urban land
expropriations in the P.R.C. for the past two decades, were enacted in 1991
and amended in 2001, before the 2004 amendments to the Constitution and
enactment of the 2007 Property Rights Law.97 The purpose of enacting the
Urban Demolition Regulations was not so much to protect private property
during urban land expropriations, but to manage and expedite the
completion of urban development projects authorized under the P.R.C.’s
City Planning Law that became effective in April of 1990.98

The Urban Demolition Regulations did not adequately protect the
interests of homeowners, and land expropriations were often violent
because residents had little or no effective legal or administrative recourse
available to them.99 Courts tended to defer to the decisions of powerful
local governments, who in turn often backed developers because new
developments brought in investors, increased local prestige, and created
jobs for construction workers.100 To further preclude urban residents from

95 YANG ZHONG, supra note 84.
96 There is a big concern recently about the Chinese real estate market bubble, and analysts fear that
property prices will soon come crashing down. Anderlini & Mitchell, supra note 91; Barboza, supra note 91.
97 Chengshi fangwu chaiqian guanli tiaoli [Regulations on the Dismantlement of Urban Houses] (promulgated by the State Council, June 6, 2001, effective Nov. 1, 2001) (Lawinfochina) (China)
translated in CONG.-EXEC. COMM’N. ON CHINA, VIRTUAL ACAD., (last visited Mar. 30, 2010) (P.R.C.),
e21f551e787db5f9 (last visited Mar. 30, 2010).
98 Chengshi guihua fa [City Planning Law] (promulgated by the Standing Comm. Nat’l People’s Cong.,
Dec. 26, 1989, effective Apr. 1, 1990) (Lawinfochina) (China). The law provides details about the
P.R.C.’s policies and procedures on developing and redeveloping urban areas. It states that the state is in
charge of planning and administering the development of cities and lists a series of rules for zoning and
city planning.
100 Urban Land Grab Sparks Unrest in China, supra note 7; Li Li, supra note 94.
resisting demolition and relocation, demolishers often came in the middle
of the night without warning and used aggressive tactics such as turning off
the water supply or even committing arson to force residents out.\(^{101}\)

Further, the government did not give any consideration to residents,
whether young or old, whose property was the subject of takings. For
example, in March 2010, a seventy-year-old woman was beaten, pushed
into a ditch, and then covered with earth after a confrontation over the
demolition of her house in Hebei Province while three policemen
supervising the demolition work looked on, claiming that the confrontation
between her and the demolishers was none of their business.\(^{102}\)

The Urban Demolition Regulations came under intense scrutiny over
the past year because of the frequency, quantity, and often-tragic nature of
homeowners’ protests. The Peking University professors who led the
country’s call for takings law reform urged the government to abolish the
Urban Demolition Regulations and enact revised land expropriation
regulations that would more closely align with the amended Constitution
and Property Rights Law.\(^{103}\) In their letter to the Standing Committee, the
professors indicated three main areas of the Urban Demolition Regulations
that they believed were especially flawed: (1) inadequate compensation
requirements; (2) incorrect roles of the government and demolishers in
requisitioning land, demolishing housing, and relocating and compensating
takings subjects during land expropriations; and, (3) inadequate land
requisitioning procedures that allow demolition to occur before land has
been properly requisitioned.\(^{104}\) The following Sections discuss further
details about the problematic areas of the Urban Demolition Regulations,
including those illuminated by the professors.

A. **DECENTRALIZED ADMINISTRATION AND SUPERVISION OF DEMOLITION
   AND RELOCATION ACTIVITIES, COUPLED WITH COMMERCIAL-
   DEVELOPMENT-ORIENTED INCENTIVES HAS CAUSED LOCAL
   GOVERNMENTS TO ABUSE THE URBAN DEMOLITION REGULATIONS**

The Urban Demolition Regulations gave provinces and municipalities
the responsibility to pass more detailed rules about demolition and
relocation.\(^{105}\) However, though local governments are theoretically

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\(^{103}\) *Letter from Qian Mingxing et al., supra note 28; Li Li, supra note 94.

\(^{104}\) *Letter from Qian Mingxing et al., supra note 28; Li Li, supra note 94.

\(^{105}\) Chengshifangwu chaqian guanli tiaoli [Regulations on the Dismantlement of Urban Houses] (promulgated by the State Council, June 6, 2001, effective Nov. 1, 2001) (Lawinfochina) at art. 5, (China), *translated in CONG.-EXEC. COMM’N. ON CHINA, VIRTUAL ACAD.,


supposed to follow the orders of the central government, the P.R.C.’s
governance system has become highly decentralized over the past two
decades because the central government has instituted a tax system in
which local governments pay a fixed amount of tax to the central
government, but are allowed to keep any remaining amount. Moreover,
local governments can keep the proceeds obtained from the public leasing
of state-owned land and transfers of land-use rights. This has become an
important revenue source for local governments, resulting in “hundreds of
billions of renminbi as profit from the taxation and sale of land leases . . . .
[I]n some government jurisdictions, taxes on land conversion and
leaseholds accounted for as much as 60 per cent [sic] of local revenues.”

Financial independence from the central government has given local
governments the ability to pursue their own interests with less regard for
central policies. Local urban-demolition regulations passed by municipal
governments thus tend to lean toward the interests of parties requesting
demolition and relocation permits, since the government obtains financial
gains from urban redevelopment. For example, Beijing’s urban
demolition regulations, which have not yet been rewritten since the passing
of the new regulations, state that in the event of a dispute between the
demolishing entity and takings victims, the parties should bring the dispute
to the administration to resolve, but that forced demolition work is allowed
to continue before the administration’s resolution of the dispute.

B. UNDER THE URBAN DEMOLITION REGULATIONS, THE GOVERNMENT IS
ONLY A SUPERVISOR, WHILE DEVELOPERS HAVE THE POWER TO
DEMOLISH, RELOCATE, AND COMPENSATE TAKINGS TARGETS

According to the professors from Peking University, the recently
superseded Urban Demolition Regulations conflict directly with the P.R.C.
Constitution and the Property Rights Law. According to the Constitution,
the government is the party that can exercise land expropriation power.
Under the Urban Demolition Regulations, however, the government took

e214f55c787db592 (last visited Mar. 30, 2010).

106 Wilhelm, supra note 52, at 235–36; Andrew Feltenstein & Shigeru Iwata, Decentralization and
Macroeconomic Performance in China: Regional Autonomy Has Its Costs, 76 J. DEV. ECON. 481, 482
(2005).
107 Ting Gong, supra note 29, at 89.
108 Id. at 89–90; MINISTRY OF LAND AND RESOURCES, GUOTU ZIYUAN DIAOYAN [AN INVESTIGATION OF
109 Wilhelm, supra note 52, at 236.
111 Beijing chengshi fangwu chaiqian guanli banfa [Beijing Municipality Regulations on the
Administration of Urban Demolition and Relocation] (promulgated by the Beijing Municipal
112 See Letter from Qian Mingxing et al., supra note 28.
113 Id.
on an only supervisory role in land expropriation activities, while for-profit organizations, publicly or privately owned, had actual power to expropriate and enforce provisions in the law, such as deciding when to forcibly evict residents and how much to compensate them.\(^{114}\) The definitions at the beginning of the Regulations reflect this, stating that the parties involved in expropriations are (1) the takings subjects and (2) the work unit or organization that has received a permit from the local government to engage in demolition and relocation.\(^{115}\)

This system itself “provide[s] opportunities for corruption” in the current property boom, since allowing private developers to be the principals in land expropriations allows them to find ways to utilize government power to obtain land assets.\(^{116}\) Local government officials often succumb to bribes offered by private developers, who find it much more convenient to requisition land through land expropriation on behalf of the government than to negotiate land use rights transfers with individual residents of a coveted locale.\(^{117}\) The most common way this occurs is the developer asking the local government to sell it land use rights in a certain area at a discounted price, and then promising to pay the government officials proceeds from future profits generated by the development.\(^{118}\)

Because this system allows demolishers and developers to effectively take the government’s place as the principals that exercise eminent domain power, compensation has become a civil dispute between developers, demolishers, and takings subjects, instead of being an administrative dispute between the government and takings subjects.\(^{119}\) However, the Constitution makes it clear that private companies should not negotiate compensation with takings victims and compensation should not come out of private pockets.\(^{120}\) Instead, it should be the government’s responsibility to compensate affected residents.\(^{121}\)

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\(^{115}\) Id.

\(^{116}\) Ting Gong, supra note 29, at 90.

\(^{117}\) Id.


\(^{119}\) See Letter from Qian Mingxing et al., supra note 28. Under the current regulations, if takings subjects wish to dispute the compensation or procedure of property takings, they can petition the government or file a civil suit against the developer, but taking these paths is seldom effective in helping to solve their problems in a fair and transparent manner. Theresa H. Wong, Comment, Trading the People’s Homes for the People’s Olympics: The Property Regime in China, 15 PAC. RIM L. & POL’Y 599, 601 (2006).

\(^{120}\) See Letter from Qian Mingxing et al., supra note 28.

\(^{121}\) Id.
C. THE PROCEDURE FOR REQUISITIONING LAND, COMPENSATING TAKINGS SUBJECTS, AND DEMOLISHING HOUSING IS UNCLEAR AND HAS LED TO FORCED DEMOLITION WORK

Under the Urban Demolition Regulations, the procedures for properly executing urban land expropriations were poorly defined and lead to abuse because developers skipped required steps or exploited loopholes to avoid homeowner resistance when requisitioning homes. In addition, the procedures defined in the regulations were severely biased in favor of developers’ interests. Takings subjects were left without meaningful recourse in the event of a conflict.

In fact, developers who wished to develop an urban area only needed to apply for a demolition permit from the government. Documents necessary for the local government to consider included: “(1) construction project approval documents, (2) a construction land use plan permit, (3) a state owned land use rights approval document, (4) demolition and relocation plan and program, and (5) proof that the financial institution handling deposit work has issued payment for demolition and relocation compensation and resettlement.”\(^\text{122}\) The department in charge of issuing demolition permits then reviewed these documents and issued a demolition permit within thirty days of receiving the application.\(^\text{123}\) Each of these five requirements only directly involved the developer and the government, so takings subjects were essentially cut out of the process. Demolition work was legally able to occur as long as the developer obtained these documents from the government and paid some amount of compensation to takings subjects, without regard to whether or not the takings subjects had actually agreed to the compensation payment and relocation plan.\(^\text{124}\)

In addition, Article 4 of the Urban Demolition Regulations stated that the resident whose home was being demolished must move out of the home and relocate within the time required by government verdict.\(^\text{125}\) Forced demolitions were allowed under Article 17 if homeowners failed to move out within this specified time.\(^\text{126}\) The regulations did not define what constituted forced demolition work and did not limit the amount or type of forceful eviction activity. Article 17 essentially legitimized and legalized


\(^{123}\) Id.

\(^{124}\) See Erie, supra note 118.

\(^{125}\) Regulations on the Dismantlement of Urban Houses at art. 4.

\(^{126}\) Id. at art. 17.
demolition crews’ use of coercion and violence against takings victims who resisted moving out of targeted housing. 127

If demolishers and takings subjects disputed the offered compensation, relocation housing, or temporary housing, the parties could first try to settle the dispute through administrative channels and subsequently file a lawsuit. 128 However, this was seldom helpful to takings subjects, since the properties under dispute were demolished by the time a judge heard the case, rendering the lawsuit meaningless because “once the basis of the dispute has been removed, the homeowner can no longer appeal.” 129 Article 16 of the Urban Demolition Regulations legitimized this occurrence by stating, “[w]here demolition entities have already provided monetary compensation or demolition and relocation resettlement housing and transition housing according to these regulations, the implementation of demolition and relocation shall not be suspended during the time of the lawsuit.” 130

The procedures in the Urban Demolition Regulations provided acutely insufficient protections of homeowners’ rights. The language of the regulations made it too easy for developers to abuse land expropriation power by forcing takings subjects out of their homes before compensation and relocation agreements were reached or disputes were settled.

### D. The Public Use Requirement Was Undefined and Allowed Local Governments to Abuse Their Broad Discretion in Using the Urban Demolition Regulations

The P.R.C. Constitution and Property Rights Law both assert that property can only be expropriated for public use. The Constitution states that “[t]he state may, for the public interest, expropriate or take over private property of citizens for public use.” 131 Article 42 of the Property Rights Law states that for the purpose of public interest, the collectively owned land, houses and other real property owned by institutes or individuals may be expropriated according to the procedure and within the authority provided by law. 132 This language mimics the Takings Clause in the U.S. Constitution, which stresses that no private property shall “be taken for public use without just compensation.” 133 However, the Takings Clause is much stronger and provides better protection for private property rights on its face because it limits government power by using negative language.

128 See Erie, supra note 118, at 14, 19.
129 See id.
130 Regulations on the Dismantlement of Urban Houses at art. 16.
133 U.S. CONST. amend. V.
Conversely, the public use requirement in Chinese law used positive language that actually expands government power instead of limiting it. In addition, though the public use requirement was the same in principle as in the United States, it has not been properly defined anywhere in Chinese law and as a result has been construed much too broadly. This, coupled with the pursuit of rapid urban development by power-wielding local officials, has led to many abuses of the public use requirement.

Though innumerable abuses have occurred, little is heard of takings subjects disputing the purpose of urban land expropriations. This is likely because citizens assumed local governments were generally acting in the public interest. In addition, no mention was made anywhere in the Urban Demolition Regulations about what actions homeowners could take if they disagreed with the purpose of a land expropriation. Local governments had the power to decide what constituted development for public interest and public use. Thus, decisions to expropriate urban land often tended to blur the line between public and private use.

Common examples of projects that fall in between public and private use are the building of shopping malls, commercial office buildings, and luxury residences in prime locations within urban areas, necessitating the demolition of older buildings and relocation of their residents. Massive urban projects, such as the building of the Olympic Village for the 2008 Summer Olympics and the pavilions for the 2010 Shanghai World Expo, also blur the line. Developers and the government may play off these other projects as public use projects, but even if these developments help beautify a city, increase GDP, or boost investment in a locality, it is doubtful whether or not exterior appearance and economic growth should be the definitive indicator of whether a new development project benefits the public.

The root of this problem is that no laws or regulations relating to land expropriation in China define “public interest.” The P.R.C. Constitution and Property Rights Law both briefly mention the term in passing but do not define it, and the Urban Demolition Regulations did not even explicitly state the requirement. The Urban Demolition Regulations simply stated that “[u]rban housing demolition and relocation must conform to the city plan, benefit the transformation of old city areas and improvement of the

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134 The definition of public use has been construed rather broadly in recent U.S. cases as well, and courts have been very deferential to the government. See Kelo v. City of New London, 545 U.S. 469, 489–90 (2005) (holding that because it would increase economic growth, using eminent domain to condemn private land as a part of a city’s redevelopment plan satisfied the public purpose requirement in the Takings Clause).

environment, and preserve cultural relics and historic sites.”\textsuperscript{136} Though there appears to be an understanding that the term “public interest” “refers to matters of health, sanitation, and security that benefit the public, increasingly, private commercial development is seen as synonymous with public interest.”\textsuperscript{137}

The vague requirements in the Urban Demolition Regulations allowed local government officials to exercise discretion in determining whether a project was a beneficial transformation of old city areas and improvement of the urban environment. Thus, local government officials can undertake virtually any kind of lucrative development project simply by stating that the project is in a self-determined public interest.

E. COMPENSATION WAS NOT CLEARLY DEFINED AND RESULTED IN INADEQUATE COMPENSATION

In addition to the public use requirement, the Constitution and the Property Rights Law also state that compensation must be given for expropriated land. Article 13 of the P.R.C. Constitution states that the government must “pay compensation in accordance with the law.”\textsuperscript{138} Similarly, Article 42 of the Property Rights Law enacted in 2007 requires compensation for demolition and resettlement to be paid according to law in order to maintain the legal rights and interests of the expropriated.\textsuperscript{139}

Again, like the public use requirement, the wording of compensation clauses in the P.R.C.’s Constitution and Property Rights Law mimic the language in the U.S. Takings Clause, which states that no property may “be taken for public use without just compensation.”\textsuperscript{140} However, the glaring difference between the compensation requirement in the Chinese laws and the compensation requirement in the Takings Clause is the qualifier “just.”\textsuperscript{141} Neither the P.R.C.’s Constitution nor any other regulations in the country explicitly require that compensation paid to takings victims be “just,” only that some form and amount of compensation be paid.

The Urban Demolition Regulations, which were supposed to clarify the compensation requirement, also did not specify how much compensation must be paid. They simply stated that “demolition entities and demolition


\textsuperscript{137} See Erie, supra note 118, at 17.

\textsuperscript{138} XIANFA art. 13 (2004) (China).


\textsuperscript{140} U.S. CONST. amend. V.

\textsuperscript{141} “[N]or shall private property be taken for public use, without just compensation.” Id. See also Long Qinglan, supra note 47, at 67.
subjects shall sign a compensation and resettlement agreement covering the form of compensation and the compensation amount, the location and area of resettlement housing, time limits for relocation, form and time periods for intermediate stage relocation.

Over the years, developers used these vague requirements to their advantage by complying with the literal requirements of the regulations and paying as little compensation as possible to takings subjects. Since the government owns the land beneath a building or dwelling in urban areas, it can be assumed that compensation for takings subjects does not include the value of the land that homes are built on. One way that the developer or government unit expropriating land might therefore calculate compensation under the regulations is to pay the construction cost of the building and value of remaining land use rights. Developers thus get a windfall because they are able to obtain target land for a low cost and then generate profits from the new development by renting or selling units at the much higher market price.

The Urban Demolition Regulations also allowed compensation to be determined while demolition work is ongoing. According to the Constitution and Property Rights Law, however, this is unlawful; for the expropriation process to be legally complete, compensation negotiations must have concluded before demolition can begin. Ensuring that residents are compensated to their satisfaction before they have to move out would help avoid unnecessary conflict between residents and demolition workers. Tang Fuzhen’s case provides a fitting example of such conflict.

F. ANALYSIS OF THE CASE OF TANG FUZHEN UNDER THE URBAN DEMOLITION REGULATIONS

The opening paragraph of this Note described the horrors that occurred in Jinhua County, Sichuan Province, on November 13, 2009. Tang Fuzhen’s case is more complex than stated in the introductory paragraph, and this Section will analyze in detail what happened in light of the problems with the Urban Demolition Regulations.

In 1996 the local government of Jinhua County was trying to entice investors to invest in the economy, and Tang Fuzhen and her then-husband Hu Changming signed an agreement with local authorities to rent land to build a garment-processing plant. Tang and Hu built a three-story tall

143 See Letter from Qian Mingxing et al., supra note 28.
144 Id.
house in which to run their business and live.\textsuperscript{146} The business was successful, and they were even “touted as model entrepreneurs—profiled in newspapers and on local [television].”\textsuperscript{147}

Tang and Hu did not have any trouble with the government until over a decade later, in 2007, when the government initiated a new urban plan, which included a decision to “link two roads in order to lay underground pipelines for a sewage treatment plant in the city,” with the planned construction passing through the land on which the Tang’s building stood.\textsuperscript{148} In order to complete the sewage-treatment project, the government needed to requisition Tang’s building. It was only then that the government accused the couple of never receiving a construction permit or proper land use papers for the building.\textsuperscript{149} The law requiring permits before the construction of rural and urban buildings had just been passed that year,\textsuperscript{150} and using the new law to label Tang’s building illegal gave the Jinniu District government an excuse to offer Tang minimal compensation. However, Tang and Hu vehemently denied that their building was illegal.\textsuperscript{151} They argued that they had received a business permit from the local bureau of industry and commerce years ago.\textsuperscript{152} Further, they contended this permit listed the building address as their business location and no one had informed them that the building was illegal when they applied.\textsuperscript{153} Despite Tang and Hu’s arguments, the county issued a notice in October 2007 ordering Tang and Hu to demolish the building.\textsuperscript{154} The county claims that Tang and Hu did not appeal to relevant authorities before the given deadline.\textsuperscript{155}

When the final news of the demolition came, Tang and Hu asked for eight million renminbi, approximately one million dollars, as compensation.\textsuperscript{156} The government disagreed with this amount, since the building had apparently only cost around fifty thousand renminbi, about seven thousand dollars, to build.\textsuperscript{157} The local government claimed that it had attempted to negotiate with Tang and Hu nineteen times before the demolition work began.\textsuperscript{158} It eventually offered Tang 1.3 million renminbi.

\textsuperscript{146} Cohen, supra note 1, at 7; Huang Zhiling & Liu Weitao, supra note 145.
\textsuperscript{147} Cohen, supra note 1, at 7.
\textsuperscript{148} Huang Zhiling & Liu Weitao, supra note 145.
\textsuperscript{149} Chaiqian zhi si [The Chengdu Self-Immolation], supra note 145.
\textsuperscript{150} Huang Zhiling & Liu Weitao, supra note 145.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Huang Zhiling & Liu Weitao, supra note 145.
in compensation, but since this was only one fifth of the requested amount, no agreement was reached.\footnote{Chengdu chaiqian zifen shijian de jingren yinmi [The Shocking Secrets Behind the Chengdu Self-Immolation Incident], ZHUOZHUOWANG, Dec. 3, 2009, http://www.izhuozhuo.com/article-59737.html (last visited Mar. 30, 2010).}

Over a dozen demolition workers surrounded Tang’s building at five o’clock in the morning on November 13, 2009, with shields and steel pipes, backed by police officers.\footnote{Id.} Witnesses say that the workers beat anyone in their path, including one of Tang’s sisters, who was carrying her baby in her arms at the time.\footnote{Id.; Wang Yilin, Chengdu jiang zifenshijian dingxing wei baoli kangfa [Chengdu Labels Self-Immolation Incident as Violent Opposition Against the Law], Dec. 3, 2009, http://news.sohu.com/20091203/n268635575.shtml [hereinafter Self-Immolation Violent Opposition Against Law].} In response to the onslaught, according to Tang’s family and friends, Tang and members of her family who had come to support her cause threw bricks, rocks, and Molotov cocktails (homemade gasoline bombs) at the demolition workers who arrived.\footnote{Huang Zhiling & Liu Weitao, supra note 145; Self-Immolation Violent Opposition Against Law, supra note 162.} Witnesses say that Tang then climbed to the rooftop of her house and repeatedly yelled that she would come down and negotiate with the demolition workers if they backed up and dropped their weapons, but that the demolition workers ignored her requests.\footnote{Id.}

After three hours of confrontation, Tang finally threatened to immolate herself if the workers continued to tear down her house and then poured gasoline over her own body.\footnote{Self-Immolation Violent Opposition Against Law, supra note 162.} About ten minutes after she first poured gasoline on herself, Tang lit herself on fire.\footnote{Id.} Witnesses reported that during this ten-minute interval, the demolition workers and police present did nothing to prevent her from hurting herself.\footnote{Id.} Instead, they continued to beat her family and engage in the demolition work.\footnote{Id.} After the event, Tang was taken to the hospital and put under intense police surveillance.\footnote{Chengdu Police Officer Witnessed the Entire Process of Self-immolation of Women Entrepreneurs Wrongfully Dead, EPOCH TIMES, Dec. 2, 2009, http://epochtimes.com/gb/9/12/2/n2741486.htm.} Tang’s relatives were not allowed to see her before she succumbed to her injuries and died sixteen days after the incident.\footnote{Id.} “[E]ight of Tang’s relatives, including her husband . . . were detained for disrupting government work, and four others were placed under house arrest.”\footnote{Authorities Under Fire After Woman’s Suicidal Protest, supra note 1. The security and administrative arm of the local government said that the demolition was legal and proper because Tang’s building had been built without a deed or land-use permit. Id.}

In this case, Tang and Hu were dealing directly with the local government over land that was being requisitioned for a new urban waste
management system and a new road. This is not the case of a private developer building a shopping mall, so this case fits better under the concept of eminent domain than other cases in which private developers obtain a permit from the government to build a private commercial development. However, the same problems remain even though the local government here was heavily involved with the demolition and relocation of Tang’s land. Local officials hired a state-owned construction enterprise, Chengdu Xingrong Investment Co., Ltd. (“Xingrong Co.”), to build its public sewage management system.\footnote{Vice Mayor of Chengdu Province Deng Quanzhong, Speech at Chengdu Construction Commission Municipal Meeting on City Construction Work (Mar. 4, 2004) (transcript available at http://www.cdec.gov.cn/SpecialTopic/CJDetail.aspx?NewsID=13703).} It appears that over the past two years, Xingrong Co. has been under immense government pressure to complete this sewage management system project because it was granted the project in 2007, but only undertook demolition and relocation activities in late 2009.\footnote{See id.} In addition to this pressure to complete the project as quickly as possible, the State Owned Enterprise (“SOE”) still operates as a profit-generating corporation, and thus its interests are still to minimize project costs and increase profits rather than serving the public good.

Like in many other cases that have occurred throughout the P.R.C., the basic issue of compensation in Tang’s case was not resolved prior to the commencement of demolition work. Tang and Hu had asked the government for compensation of eight million renminbi, which included lost future profits from relocating their business, as well as compensation for the value of what they considered their legitimately remaining land use rights.\footnote{Tang and Hu are presumed to have nearly sixty of seventy years remaining in any land use rights that they have. \textit{Id.}} However, the government sought only to compensate them based on the estimated construction cost of their building as of 1996. Because of this vast difference in desired compensation, no agreement was reached. Tang had allegedly told demolition workers that she was willing to continue to negotiate if they stopped demolishing her house before they reached an agreement.\footnote{See id.} However, the Urban Demolition Regulations allowed demolition work to continue, even before a compensation agreement was reached, and the Jinniu District government took advantage of this clause to allow the developer to commence the sewage management project without costly delays.\footnote{See \textit{CHENGDU JINNIU GOV’T AFFAIRS NETWORK, CHENGDU JINNIU QU 2009 NIAN ZHENGFU GONGZUO BAOGAO [2009 REPORT ON JINNIU DISTRICT GOVERNMENT ACTIVITIES]} (2010), http://www.jinniu.gov.cn (roll mouse over “zhengfu gongkai”, select “gongzuo baogao”, then select “Jiniiu qu 2009 zhengfu gongzuo baogao”).}

The Urban Demolition Regulations did little to protect Tang and Hu’s home and place of business from destruction and left no palatable recourse
for them. Tang’s suicide was her way of showing the world just how unfair and inhumane the P.R.C.’s current urban land expropriation system has become, and has served as a catalyst to the government’s current efforts to abolish the Urban Demolition Regulations and create a new set of regulations. The newly proposed regulations as they are currently written, however, still do not do enough to protect the interests of takings subjects. Moreover, even if the new regulations are revised further to better protect the interests of takings subjects, simply rewriting the regulations without changing the system within which the regulations are framed is unlikely to solve the takings problem. Assuming that passing new land expropriation regulations will at least incrementally improve the takings situation in the P.R.C., the next Section will examine the problems with the recently promulgated regulations and suggest improvements.

V. THE NEW REGULATIONS: REGULATIONS ON THE REQUISITION AND COMPENSATION OF BUILDINGS ON STATE-OWNED LAND

In January 2011, the Legislative Affairs Office of the State Council completed and promulgated a new regulation entitled the Regulations on the Requisition and Compensation of Buildings on State-Owned Land (“New Regulations”). One key positive change to the New Regulations is that of language. Under the New Regulations, the process is no longer referred to as “demolition and relocation,” but as a “land requisition,” implying that from now on, buildings cannot be demolished prior to the completion of the land expropriation process, which includes first transferring title from the individual or business to the government and then compensating the individual or business. In addition, the New Regulations aim to close the gap between the bargaining positions of local governments, property developers, and individual property owners. However, because of the politics and interest groups involved in drafting this regulation, it is unsurprising that the draft contains language that still potentially allows the government and developers to undermine the interests of individual homeowners. This Section will introduce key articles in the New Regulations and analyze the problems present in them.

A. GENERAL PROBLEMS

Like the Urban Demolition Regulations that it recently abolished, the New Regulations continue to use vague and somewhat weak language.

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177 See generally id.
Because the P.R.C.’s legal system does not rely on judicial interpretation of laws and regulations as precedent, the New Regulations need to be more specific and detailed to ensure that they are followed. Accurate and narrow definitions of key terms and step-by-step procedures need to be instituted. Keeping the regulation vague and broad and delegating the responsibility of formulating more detailed regulations to local officials in different provinces and cities in the P.R.C. is ineffective if the central government truly seeks to improve the takings situation. This is especially true given the historical tendency of local governments to use regulations to their advantage instead of following the spirit of the regulations. If decentralized regulation is allowed to occur, then incentives for local government officials must change—either in terms of promotion to high office, higher salaries, or imposing severe punishment for colluding with property developers. Currently, the Liabilities section of the New Regulations is ambiguous and its punishments still do not provide a strong deterrent to abuse. Moreover, a vague and broad set of regulations leaves a lot of room for interpretation, and therefore provides an opportunity to exploit loopholes.

B. ENFORCEMENT ISSUES WILL CONTINUE BECAUSE LOCAL GOVERNMENT INCENTIVES TO COLLABORATE WITH DEVELOPERS HAVE NOT CHANGED

Article 7 of the New Regulations states that any individual or work unit that observes someone breaking the regulations can report it to the local demolition and relocation authorities, and that these authorities must investigate and resolve the situation in a timely manner. Though this article attempts to provide an enforcement mechanism for compliance with the regulations, the length of time that is considered “prompt” is not defined, and there is nothing in the article that states the standards or process by which the investigation must be conducted. Moreover, the authorities are only required to inform the complainant of the results of the investigation and the regulations do not mention anything about what happens after the complainant receives these results. In order to help assure that action will be taken and investigations conducted in an unbiased manner, more details regarding investigation procedures and the forms of action required for different results should be provided in the regulations.

In order to prevent violent confrontations between takings victims and demolition crews, such as in the case of Tang Fuzhen, the proposed

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179 Id. at art. 7.
regulation attempts to limit forced eviction. Where the current regulation
makes no mention of what constitutes forced eviction and what actions are
forbidden to the evictors, the New Regulations specifically state that no
coercive or violent means may be used to evict takings victims. Also, the
New Regulations state that if takings subjects and the government dispute
the land expropriation project or cannot agree on the compensation amount,
no demolition may occur unless the case is taken to a court that issues a
judgment resolving the dispute and allowing demolition. However, since
the same government that implements the regulations exerts a very strong
influence on the judiciary, it remains to be seen just how neutral the courts
will be when cases are resolved there. Takings subjects who appeal through
either the courts or the government’s administrative litigation system have
gen erally had a low success rate in the past.

C. NEW REGULATIONS REALLOCATE LAND EXPROPRIATION POWER TO
THE GOVERNMENT

The New Regulations clarify that the government is the only entity that
can exercise land expropriation power and that the government must be the
party that is directly responsible for requisitioning land from residents and
handling compensation and demolition issues. This provision accounts
for the concerns addressed by the Peking University professors in their
open letter to the Standing Committee and is an improvement from the
Urban Demolition Regulations, which leaves these responsibilities with
property developers.

Article 4 of the New Regulations, however, delegates the responsibility
to implement these regulations to county officials. This may be the most
efficient or convenient way to manage a country with as vast a geographic
area as the P.R.C., since it would be costly to have the central government
oversee and approve every eminent domain decision in the country.
However, the concern with such a decentralized system is that unless local
governments are given an incentive to follow the spirit of the regulation
and place takings victims’ interests at the forefront, the local government
still will have the flexibility to collude with developers and abuse the
regulations. Though Article 6 does state that higher-level governments
should supervise the demolition and relocation activities of local
governments, it is phrased more as a caveat or suggestion than as a

\[^{180}\] Id. at arts. 31, 32.
\[^{181}\] Id.
\[^{182}\] Id. at art. 28.
\[^{183}\] Id. at arts. 5, 6.
\[^{184}\] See Letter from Qian Mingxing et al., supra note 28.
\[^{185}\] Guoyou tudi shang fangwu zhengshou yu buchang tiaoli [Regulations on the Requisition and
Compensation of Buildings on State-Owned Land] (promulgated by the State Council, Jan. 19, 2011)
mandatory step in the process of exercising land expropriation power.\footnote{Id. at art. 6.}
Moreover, the regulation does not specify how these upper levels of government should supervise each demolition and relocation project or what standards to apply when supervising such endeavors.

D. **BROAD DEFINITIONS OF THE PUBLIC USE REQUIREMENT WILL CAUSE CONTINUED PROBLEMS ARISING FROM LOCAL GOVERNMENTS’ ABUSE OF DISCRETIONARY POWERS**

Unlike the Urban Demolition Regulations, which did not define “public use” at all, the New Regulations define what constitutes public use.\footnote{Id. at art. 2.} Under the New Regulations, public interest projects include: (1) projects necessary for national defense and foreign relations; (2) public infrastructure such as transportation, water utilities, and energy; (3) state-supported facilities for science and technology, education, culture, health, sports, environmental and resource protection, conservation, social welfare, and municipal utilities; (4) urban renewal projects necessary to improve building safety, modernize outdated infrastructure, and renew old neighborhoods; and, (5) other facilities that the law or government entities require as necessary for the interest of the public.\footnote{Id.} This definition of public use is not limited by negative or exclusionary language but is, in fact, expanded by including positive examples of uses that do qualify, thus automatically broadening the meaning of “public use.”

An example of a vague use is the clause that allows the government to expropriate land to build or preserve sports and culture facilities.\footnote{Id.} This gives local governments the opportunity to engage in such large scale activities as the building of the Olympic Village or Shanghai Expo pavilions without accounting for the wishes of the people whose homes are affected by the projects. It is difficult to see how developing venues for these types of large international events can justify evicting residents from their homes and businesses, even if the events help attract tourism and foreign investment. The international community has already berated the P.R.C. for the way it has handled the building of Beijing’s Olympic venues and Shanghai’s World Expo national pavilions.\footnote{See e.g. Sky Canaves, **Beijing’s Olympic Cleanup Sends Migrants and Homeless Packing**, WALL ST. J., Aug. 5, 2008, at A12, available at http://online.wsj.com/article/SB12178840566611245.html.} This scrutiny will not disappear.

The definitions given in the New Regulations are problematic because they are too broadly construed. The inclusion of the last clause, which

\footnote{Id. at art. 6.}
\footnote{Id. at art. 2.}
\footnote{Id.}
\footnote{Id.}
undefined in these New Regulations makes the public use definition even more ambiguous.\textsuperscript{191} It gives officials too much discretion and leaves too much room for self-serving local governments to fill in the blanks as they please. In order to better protect the interests of urban residents, “public use” should be very narrowly construed so that the government cannot have the power to expropriate land for whatever projects it decides to undertake.

E. COMPENSATION MUST BE AT LEAST ‘MARKET VALUE’ AND MUST BE AGREED UPON AND PAID BEFORE DEMOLITION CAN OCCUR

Compensation is only mentioned in passing in the Urban Demolition Regulations and no substantive guidelines regarding entitlement to or calculation of it exist. In the New Regulations, there is finally something more substantive regarding compensation.

The New Regulations state that takings victims must receive at least market value as of the requisition date for condemned property, as well as payment for relocation expenses, and that the compensation can be paid in the form of cash or a grant of property rights to different housing.\textsuperscript{192} For properties that are used for business purposes and must be closed due to a taking, the New Regulations mandate appropriate compensation for business losses sustained.\textsuperscript{193} Additionally, the New Regulations state that compensation must be agreed upon and paid to the takings victim before demolition begins.\textsuperscript{194}

These requirements are meant to alleviate the problem of disputes arising from severe under-compensation of takings subjects, but several concerns remain. For example, because the P.R.C.’s housing boom has caused property prices to rise rapidly, receiving the market value of housing may not ensure that the takings subject will be able to afford new housing of comparable quality that is located in a similar area of town. If the takings subject chooses to be compensated with housing instead of cash, however, the New Regulations states that the takings subject can choose to acquire new housing located in the takings vicinity or on the site of the new development if it is a residential development project.\textsuperscript{195} Many takings subjects may, thus, end up choosing to be compensated with housing rather than cash, but the New Regulations do not state what the takings subjects should do or where they will live while new housing is being built, and this lack of clarity may also lead to conflict.

\textsuperscript{192} Id. at arts. 19, 21.
\textsuperscript{193} Id. at art. 31.
\textsuperscript{194} Id. at art. 12.
\textsuperscript{195} Id. at art. 21.
To ensure fairness and accountability in evaluating the market price of a property and helping avoid the influence of developers or the government on appraisal companies, the New Regulations require that a neutral, third-party appraisal company must appraise a condemned property. However, this does not require a method of appraisal. Though the New Regulations state that appraisals should be conducted in an unbiased manner, they give the Rural and Urban Development Division of the State Council the responsibility for passing actual rules that these appraisal companies must follow when appraising condemned property. It remains to be seen whether or not this division of the central government will be able to create guidelines that can adequately ensure the impartiality of future appraisals. Nonetheless, the State Council has shown progress in declining to delegate this rulemaking task to local governments or appraisal companies because these entities are likely to set appraisal guidelines that undervalue condemned property to increase profits from urban land expropriation activities.

The New Regulations also state that no compensation needs to be paid for the takings of illegal buildings or buildings that have expired permits. A potential for abuse exists here, since local officials, like in Tang’s case, might find excuses to demolish older buildings without compensating residents if these buildings were built before enactment of the law that requires construction permits for buildings. Though it may be assumed, nothing in the New Regulations explicitly states that the law on building construction permits cannot be applied retroactively, and local governments may find ways to get around it. In addition, since residential and commercial buildings have limited land use rights, if local governments decide to expropriate a building near the date that land use rights are supposed to expire, it could abuse its power by refusing to issue a renewed land use rights permit and waiting until the land use rights have expired before demolishing the building without compensation.

VI. CONCLUSION

The P.R.C. has become one of the fastest growing economies in the world since Deng Xiao Ping’s Open Door Policy was implemented in 1978. The rapid marketization of the P.R.C.’s economy awakened a consciousness about the value of private property rights in Chinese society. As a result, the P.R.C.’s recognition of private property rights was able to progress substantially in recent years, even though historically, there was

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196 Id. at art. 19.
197 Id.
198 Id. at art. 23.
little, if any, recognition of the rights. The increase in both official and
public recognition of these rights, and the changes implemented to protect
these rights, has occurred relatively rapidly.

However, the P.R.C.’s authoritarian and theoretically socialist
government fundamentally opposes the concept of private property, and
this system of government has impeded the effective protection of these
rights, especially in the domain of land expropriations. During the rapid
marketization of its economy, which has driven the P.R.C. into a
moneymaking frenzy, the P.R.C. government has struggled with its
tries to reconcile its increased need for protection of private property
with its perceived need to hastily modernize the country using its vast
government power. Policies that encourage local officials to develop cities
as quickly as possible by measuring their performance on quantitative
growth, combined with a highly lucrative real estate market, have helped
skew the values and decreased the accountability of local officials. Many
abuses of power have occurred.

Though the central government has been forced to heed public
criticism and calls for reform to the country’s urban land expropriation
regulations, the current reforms are only a baby step toward a solution. In
creating the New Regulations, the State Council attempted to make them
consistent with the Constitution and Property Rights Law. But due to
pressure from elite interest groups, much protection to property owners has
been sacrificed. The New Regulations are not an independent document
that truly abolishes the current urban land expropriation system; they are
merely a compromise with the deeply flawed Urban Demolition
Regulations composed in the name of expediency and not the protection of
individual property interests. As such, the New Regulations are still skewed
toward the benefit of local governments and real estate developers and, as
they currently stand, will not adequately protect the interests of takings
subjects in the P.R.C.

If the New Regulations are revised to contain more detailed
expropriation, demolition, and compensation procedures and narrower
definitions of public use, then the Chinese public might be able to
experience an incremental increase in the fairness of land expropriations.
However, no matter what changes in wording are made, because no
effective checks on corrupt local government powers currently exist,
enforcement problems will remain and the takings problem will not be
solved. Citizens of the P.R.C. can only hope that their local leaders will be
accountable and make fair decisions. However, this dependence is risky
and cases like Tang Fuzhen’s will likely continue to occur no matter how
much effort the central government invests in revising regulations. To solve
the issue at its core, citizens must be able to check local and central
government power. The most effective way of doing so would be to not only give citizens an opportunity to voice their concerns, but also to give them the power to vote and decide for themselves what they want.