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NOTES

2 DOUSING THE FLAMES: THE TANG FU
3 ZHEN SELF-IMMOLATION INCIDENT
4 AND URBAN LAND TAKINGS REFORM
5 IN THE PEOPLE’S REPUBLIC OF CHINA

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7 I. INTRODUCTION

8 A. THE CASE THAT LIT THE SPARK FOR REFORM

9 On November 13, 2009, on the rooftop of a house in Jinhua
10 community, a Jinniu District suburb outside Chengdu city in Sichuan
11 province, People’s Republic of China (P.R.C.), a woman lit herself on fire.¹
12 A new road was being built and Tang Fuzhen’s home and garment
13 processing plant were in the way.² The forty-seven-year-old Tang and her
14 siblings had been trying to stop demolition workers from tearing down the
15 building for days.³ As the thuggish demolition workers brutally beat her
16 siblings, Tang stood atop the roof of the building and doused herself with
17 gasoline in an attempt to scare them away.⁴ The demolition workers pressed
18 on and Tang burned herself in protest.⁵ She died from the resulting injuries
19 sixteen days later.⁶

20 Tang’s protest sparked public outrage in the Mainland, expressed
21 mostly through such media as blogs and news articles. The tragedy led five
22 professors from Peking University to publicly demand that the P.R.C.

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¹ Roger Cohen, *A Woman Burns*, N.Y. TIMES (GLOBAL ED.), Jan. 25, 2010, at 7, available at <http://www.nytimes.com/2010/01/26/opinion/26iht-edcohen.html>; *Authorities Under Fire After Woman’s Suicidal Protest*, CHINA.ORG.CN (Dec. 4, 2009), http://www.china.org.cn/china/2009-12/04/content_19011665.htm.

² Cohen, *supra* note 1, at 7.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

1 government consider a reform of its land expropriation regulations.⁷ On
2 December 7, 2009, the professors wrote a public letter to the Standing
3 Committee of the National People's Congress arguing that, among other
4 things, the government had improperly allowed private developers to take
5 over the responsibilities related to urban land expropriation activities.⁸
6 Under urban land expropriation regulations in effect at the time, the
7 government only played the role of supervisor, while private developers
8 had the power to demolish buildings and evict and compensate takings
9 subjects.⁹ In response to this letter, the P.R.C. government has spent the
10 past year reforming and rewriting its urban land expropriation regulations.¹⁰

11 In early January 2010, the State Council posted a draft of proposed
12 revised home expropriation regulations on the Legislative Affairs Office's
13 website and asked for public opinion and comment.¹¹ As of the February
14 12, 2010, deadline to submit recommendations, 13,437 people had visited
15 the website and left comments online.¹² Additionally, over seven thousand
16 Beijing residents who had had their homes demolished by the government
17 without reasonable compensation have written and signed a letter to the
18 government with their comments and suggestions about the proposed
19 reform.¹³ On January 21, 2011, the State Council announced that it had
20 approved a new set of regulations.¹⁴

21 Though Tang's case may be considered the spark of such proposed
22 reform, such cases are far from rare. Land takings in the P.R.C. are a
23 prevalent and well-documented problem that has affected millions of
24 people since Deng Xiao Ping initiated the Open Door Policy in 1978,
25 which allowed the formerly closed country to open up and trade with the
26 rest of the world. Ever since, the P.R.C. has been racing to boost its
27 economy, improve infrastructure, and give its cities modern makeovers.¹⁵
28 To achieve the modernization and growth of cities in a manner that is as

⁷ See *Urban Land Grab Sparks Unrest in China*, MSNBC (Dec. 16, 2009, 3:44:58 PM), <http://www.msnbc.com/id/34450213>.

⁸ *Id.*; *China's Draft House Expropriation Regulation Sparks Debate*, PEOPLE'S DAILY ONLINE (Jan. 30, 2010, 9:56 AM), <http://english.people.com.cn/90001/90776/90882/6883205.html>.

⁹ *Urban Land Grab Sparks Unrest in China*, *supra* note 7.

¹⁰ *Cf. Urban Land Grab Sparks Unrest in China*, *supra* note 7.

¹¹ *China's Draft House Expropriation Regulation Sparks Debate*, *supra* note 8.

¹² *Fagui Guizhang Caoan Yijian Zhengji Xitong* [Online Recommendation System for Draft Laws and Regulations], LEGIS. AFF. OFF. OF THE ST. COUNCIL, <http://www.chinalaw.gov.cn> (click on link "Fagui Guizhang Caoan Yijian Zhengji Xitong" on left of page; log in as guest) (last visited Mar. 30, 2010).

¹³ Wen Tao, *Letter Urges Adequate Land Compensation*, GLOBAL TIMES, Feb. 12, 2010, <http://www.globaltimes.cn/www/english/metro-beijing/update/society/2010-02/505560.html>.

¹⁴ Zhang Xiang, *China Issues New Rules to Ease Tensions Over Forced Demolition*, XINHUA ENG. (Jan. 22, 2011, 9:10:04 PM), http://news.xinhuanet.com/english2010/china/2011-01/22/c_13703002.htm.

¹⁵ *Cf. Open Door Policy*, BBC NEWS, http://news.bbc.co.uk/2/shared/spl/hi/in_depth/china_politics/key_people_events/html/8.stm (last visited Feb. 16, 2011).

1 swift and cost-efficient as possible, the government has used land
2 expropriations as a convenient and lucrative instrument.¹⁶

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

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

¹⁶ *Id.*

¹⁷ Julie Chao, *Relocation for Giant Dam Inflames Chinese Peasants*, NAT'L GEOGRAPHIC NEWS, May 15, 2001, http://news.nationalgeographic.com/news/2001/05/0515_threeorges.html; *Major Problems Found in Three Gorges Dam Resettlement Program*, HUMAN RIGHTS IN CHINA, 1, 2 http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/three_gorges_98.pdf.

¹⁸ Jane Macartney, *Thousands of Homes Destroyed to Make Way for Olympic Tourists*, THE TIMES, May 26, 2005, <http://www.timesonline.co.uk/tol/news/world/article526586.ece>.

¹⁹ *Residents Refused to Make Way for Beijing Olympics*, N.Y. TIMES, Aug. 3, 2007, <http://www.nytimes.com/2007/08/03/world/asia/03iht-beijing.1.6972501.html>. *But see Briefing on the Relocation Project for Olympic Venues*, OFFICIAL WEBSITE OF THE BEIJING OLYMPIC GAMES (Feb. 20, 2008), <http://en.beijing2008.cn/news/official/preparation/n214253222.shtml>. The Beijing Olympics Committee denied these allegations and stressed that compensation to affected residents complied with state and local regulations and that the relocations of the takings subjects will “enhanc[e] accommodation and quality of life.” *Id.*

²⁰ Malcolm Moore, *Middle Class Protestors March Over World Expo Threat to Shanghai Homes*, DAILY TELEGRAPH, Feb. 8, 2010, [available at http://www.telegraph.co.uk/news/worldnews/asia/china/7189446/Middle-class-protestors-march-over-World-Expo-threat-to-Shanghai-homes.html](http://www.telegraph.co.uk/news/worldnews/asia/china/7189446/Middle-class-protestors-march-over-World-Expo-threat-to-Shanghai-homes.html).

²¹ *Id.*; *Shanghai Citizens Protest Expo Evictions*, EDMONTON J., Feb. 9, 2010, <http://www.edmontonjournal.com/business/Shanghai+citizens+protest+Expo+evictions/2540110/story.html>.

²² Koyo Ozeki, *The Chinese Real Estate Market: A Comparison with Japan's Bubble*, PIMCO ASIAN PERSPECTIVES (Dec. 2009),

1 prices have thus skyrocketed in large cities, and as the owner of all urban
2 land,²³ the P.R.C. government has received ample financial gains from this
3 urban real estate boom. In 2009, for instance, about 50 percent of local
4 government revenues came from sales of land use rights to developers
5 throughout the P.R.C.²⁴ This gives the government a massive incentive to
6 defer to the wishes of developers instead of protecting the interests of
7 individual homeowners, and this is reflected in the urban land expropriation
8 problems that the P.R.C. faces.²⁵

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

11 The P.R.C. government has recently succumbed to increasing public
12 pressure and revised its urban land expropriation regulations in an attempt
13 to better protect individuals. However, given the system of government
14 within the P.R.C., in which the Communist Party is assumed to stand above
15 the law and local governments wield large amounts of power and influence,
16 passing and ultimately enforcing regulations that adequately protect the
17 private property interests of urban residents is highly difficult.²⁶

18 The process of drafting and passing laws and regulations in the P.R.C.
19 is opaque and undemocratic. Party officials are appointed in a top-down
20 approach and are not elected by the people.²⁷ As a result, any laws or
21 regulations passed by these officials will only reflect a privileged portion of
22 society's view of the law and not necessarily the changes that ordinary
23 citizens want to see. Moreover, though countless urban residents have
24 protested the demolition of their homes without reasonable notice or
25 compensation, the government did not revise the regulations until
26 influential law professors from Peking University wrote to the government
27 urging it to abolish the current regulations for fear that more violent takings
28 cases would cause widespread social unrest.²⁸

http://media.pimco.com/Documents/PIMCO%20Asian%20Perspectives%20by%20Koyo%20Ozeki%20Dec%202009_US.pdf.

²³ *China's Land Law: An Overview*, HABITAT INT'L COAL, Feb. 20, 2011, <http://www.hic-net.org/topdf.php?type=A&pid=1553>.

²⁴ Cohen, *supra* note 1, at 7.

²⁵ *Id.*; Chenglin Liu, *The Chinese Takings Law from a Comparative Perspective*, 26 WASH. U. J.L. & POL'Y 301, 317 (2008) [hereinafter Liu, *The Chinese Takings Law from a Comparative Perspective*].

²⁶ See Peter Yuan Cai, *In the Shadow of Pandora: China's Expropriation Law*, EAST ASIA FORUM (Feb. 6, 2010), <http://www.eastasiaforum.org/2010/02/06/in-the-shadow-of-pandora-chinas-expropriation-law>.

²⁷ See *National People's Congress*, CHINA.ORG.CN, <http://www.china.org.cn/english/27743.htm> (last visited Sept. 3, 2011).

²⁸ See *Letter from Qian Mingxing et al., to the Standing Committee of the National People's Congress* (Dec. 10, 2009), <http://npc.people.com.cn/GB/14840/10553850.html>, translated in *Recommendations for the "Regulation Governing House Demolition and Resettlement in Urban Areas"* (Dec. 12, 2009), <http://ezertrans.com/index.php/en/resources/law/134-hsun-chu-po-visits-his-friend.html>.

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

16 Assuming that the regulations passed are legitimate, despite the
17 absence of voting, and that they do substantially protect the interests of
18 urban residents, enforcement problems remain because of lack of effective
19 checks on local governments and the existence of widespread and
20 institutionalized corruption in the country.²⁹ The judiciary in the P.R.C.
21 does not have the power to independently interpret or review laws and
22 regulations, and it tends to comply with local government decisions. In
23 addition, the central government does not have the resources to effectively
24 monitor every step of every takings case in the country. In a system that
25 cannot effectively check their actions, local officials have the ability to
26 apply any new regulations in ways that suit their own interests. This is
27 especially true because local governments have become increasingly
28 autonomous in recent years and are less likely than before to do what the
29 central government commands if it comes at the expense of local economic
30 development.³⁰

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

²⁹ Deep-rooted institutionalized corruption is the biggest problem that the P.R.C. faces in its attempt to form an accountable legal system. See generally Ting Gong, *Corruption and Local Governance: The Double Identity of Chinese Local Governments in Market Reform*, 19 PAC. REV. 85 (2006); Chengze Simon Fan & Herschel I. Grossman, *Incentives and Corruption in Chinese Economic Reform*, 4 POL'Y REFORM 195 (2001).

³⁰ See *infra* Part IV.A.

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

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

25 The P.R.C. adopted its current Constitution in 1982 and has since
26 revised it four times, most recently in 2004. Under the Constitution, the
27 Communist Party is the supreme ruler of the land. This is made clear in the
28 preamble to the Constitution, which states that “[u]nder the leadership of
29 the Communist Party of China and the guidance of Marxism-Leninism and
30 Mao Zedong Thought, the Chinese people of all nationalities will continue
31 to adhere to the people's democratic dictatorship and follow the socialist
32 road.”³¹ The P.R.C. is a one-party country, and the conventional view of its
33 legal system is rule by law and the government's monopoly on power.³² No
34 independent judiciary exists, as judges are fiscally dependent on the
35 government and do not have the power to interpret or review the P.R.C.'s
36 laws and regulations.³³ In the P.R.C., there is no concept of separation of

³¹ XIANFA preamble (2004) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html>.

³² Kenneth Winston, *The Internal Morality of Chinese Legalism* 4–5 (Harvard Univ. John F. Kennedy Sch. of Gov't Faculty Research Working Paper Series, KGS Working Paper No. RWP05-041, 2005), available at <http://ssrn.com/abstract=757354>.

³³ Randall Peerenboom, *More Law, Less Courts: Legalized Governance Judicialization and Dejudicialization in China* 9 (La Trobe University, Legal Studies Working Paper Series, Paper No.

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

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

24 III. CHINESE PROPERTY RIGHTS THROUGHOUT HISTORY AND 25 THE 2007 P.R.C. PROPERTY RIGHTS LAW

26 A. HISTORICAL DEVELOPMENT OF CHINESE PROPERTY LAWS

27 1. *Chinese Property Rights Under Imperial Rule*

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

2008/10, 2008), available at <http://www.ssrn.com/abstract=1265147>. Peerenboom argues, however, that despite common belief that the judiciary only plays a nominal role in the P.R.C., its influence is increasing and a certain degree of judicial independence does exist. *See id.* at 8.

³⁴ Winston, *supra* note 32, at 21.

³⁵ XIANFA art. 10 (1982) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html>.

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

1 right to “determine the ultimate fate of all kinds of property in the
2 country.”³⁹ Though some semblance of private property rights has existed
3 since the Zhou Dynasty (1100–256 B.C.),⁴⁰ when the king during that
4 period distributed land to peasants using the feudalistic system called the
5 Well-Field System, proper legal recognition and protection of property
6 rights never existed.⁴¹ Under the Well-Field System, eight Chinese families
7 were each given 100 *mu* of land that surrounded 100 *mu* of public land in
8 the middle (in the shape of the Chinese character well: 井).⁴² The public
9 land in the middle had to be cultivated first, and this public land’s proceeds
10 were to be given to the king.⁴³ Chinese farmers and peasants were allowed
11 to inherit the land granted to them over generations, as long as they could
12 afford to keep paying taxes.⁴⁴ Eventually, the Well-Field System evolved
13 into a feudalistic tenure system, though the ruler of China was still
14 considered all-powerful and able to do what he wanted with all property.⁴⁵

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

16 The feudalistic system of land ownership in China ended in 1911 with
17 the fall of the Qing Dynasty (1644-1911).⁴⁶ During the nineteenth century,
18 China had endured what the Chinese still consider humiliating years at the
19 mercy of various foreign powers due to the Qing emperor’s perceived
20 ineptitude.⁴⁷ During this time, China was rife with the spirit of revolution,
21 aimed at overthrowing the Qing Dynasty and imperial rule, as well as
22 ridding the country of the presence of foreign powers. Leading China’s
23 fight were the Chinese Communist Party and the Nationalist Party. These
24 two political parties banded together to eliminate foreign presence in
25 China, but also fought a civil war with each other to vie for political
26 supremacy.⁴⁸ Eventually, the Chinese Communist Party won the internal
27 power struggle and established the People’s Republic of China in 1949.⁴⁹

legitimizing the emperor because he was the Son of Heaven and had the Mandate of Heaven (Tian Ming) to be the benevolent ruler of the world. See David W. Pankenier, *The Mandate of Heaven*, 51.2 *ARCHAEOLOGY* 26, 26–34 (1998).

³⁹ Zhang, *From Public to Private*, *supra* note 37, at 319.

⁴⁰ *Id.* at 319.

⁴¹ *Id.* at 319; Deng Feng, *A Comparative Study on Landownership Between China and England*, MUNICH PERSONAL REPEc ARCHIVE 1, 12 (Feb. 2007).

⁴² *Mu* was a system of measurement for areas; one *mu* is equivalent to about 670 square meters. Deng Feng, *supra* note 41, at 13.

⁴³ *Id.* at 12.

⁴⁴ *Id.*

⁴⁵ *Id.* at 12–17.

⁴⁶ XINHUA ZIDIAN 681 (1998).

⁴⁷ 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, *THE COMPLETE HISTORY OF CHINA* (3d ed. 2003). See Long Qinglan, *Reinterpreting Chinese Property Law*, 19 *S. CAL. INTERDISC. L.J.* 55, 60 (2009).

⁴⁸ See generally EDWIN PAK-WAH LEUNG, *THE A TO Z OF THE CHINESE CIVIL WAR* (2010).

⁴⁹ Zhang, *From Public to Private*, *supra* note 37, at 320.

1 3. *Property Rights After 1949 and Before the 1978 Open Door Policy*
2 *Reforms*

3 The Communists initially gained popular support and strength from
4 farmers and peasants who had little or no property rights and had been
5 obligated to pay massive taxes to their landlords because they promised the
6 peasants land ownership.⁵⁰ Indeed, when they first established the P.R.C.,
7 the Communist Party kept its promise to peasants and farmers by passing
8 the Agrarian Reform Law in 1950.⁵¹ This law allowed the government to
9 confiscate the land of the “former [Nationalist] government, foreigners and
10 persons identified as war criminals, traitors, bureaucratic capitalists, and
11 counter-revolutionaries” and redistribute it to peasants, thus abolishing the
12 feudal system and giving peasants ownership rights to land.⁵²

13 However, the Communist Party changed gears in the 1950s and began
14 to follow the Soviet model of socialism, in which the government ran a
15 centrally planned economy and “owned all the means of production.”⁵³
16 Private ownership of property and private interests became discouraged
17 because they were considered “synonymous with capitalism and the
18 bourgeoisie.”⁵⁴ Urban and rural areas were treated differently. In rural
19 areas, farmers were pressured to join communes by donating all of their
20 assets, including any land that they had been given earlier, to the collective,
21 so that farmer’s collectives eventually owned all rural land.⁵⁵ In urban
22 areas, the government confiscated property owned by foreign landowners
23 and people that the state considered antirevolutionaries, but initially still
24 allowed private ownership and land transactions.⁵⁶ Eventually, by
25 confiscating homes and placing strict controls on rent and land transfers,
26 the state ended up owning essentially all urban land and housing.⁵⁷ Public
27 housing was strongly pushed and the state allocated land to state-owned
28 enterprises or work-units, which in turn built housing to provide to the
29 majority of urban workers for nominal rental amounts.⁵⁸

⁵⁰ Zhu Keliang & Roy Prosterman, *Securing Land Rights for Chinese Farmers: A Leap Forward for Prosperity and Growth*, 3 CATO INST. CTR. FOR GLOBAL LIBERTY & PROSPERITY DEV. POLICY ANALYSIS Oct. 15, 2007, at 3, available at <http://ssrn.com/abstract=1066812>.

⁵¹ CI HAI (辞海) 512 (1979).

⁵² *Id.*; Katherine Wilhelm, *Rethinking Property Rights in Urban China*, 9 UCLA J. INT’L L. & FOR. AFF. 227, 237 (2004). See also Keliang & Prosterman, *supra* note 50, at 1.

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.

⁵⁵ Wilhelm, *supra* note 52, at 237; Chengri Ding & Gerrit Knaap, *Urban Land Policy Reform in China*, 15 LAND LINES, no. 2, April 2003 at 1–2, available at http://www.lincolnst.edu/pubs/793_Urban-Land-Policy-Reform-in-China.

⁵⁶ Ding & Knapp, *supra* note 55, at 1.

⁵⁷ *Id.*

⁵⁸ CECC 2004 Annual Report: *Forced Evictions and Land Requisitions*, CONG.-EXEC. COMM’N ON CHINA, <http://www.cecc.gov/pages/virtualAcad/rol/property2004.php> (last modified Oct. 19, 2004); Liu, *The Chinese Takings Law from a Comparative Perspective*, *supra* note 25, at 309; Wilhelm, *supra* note 52, at 237.

1 This urban public housing system turned out to be highly inefficient,
2 leading to overcrowding and draining of the government's financial
3 resources.⁵⁹ After years of government monopoly on the urban housing
4 sector, the P.R.C. government was stretched to the point of bankruptcy and
5 finally determined that it could not sustain such an uneconomical policy.⁶⁰

6 4. *P.R.C. Property Rights After Deng Xiaoping's 1978 Open Door Policy*
7 *Reforms*

8 The P.R.C. government finally determined that continuing its system of
9 state-owned and centrally-distributed housing was inefficient and
10 unsustainable, and began to experiment with housing reform, aiming to
11 privatize public housing after Deng Xiaoping initiated the Open Door
12 Policy in 1978.⁶¹ At first, the government attempted to sell public housing
13 to residents at severely discounted prices.⁶² However, in the absence of any
14 legal protection of private ownership rights, most people were unwilling to
15 purchase housing because they feared that the government could arbitrarily
16 confiscate the housing again at any time.⁶³

17 In order to encourage private housing purchases, the P.R.C.
18 government enacted regulations commercializing land use rights in May
19 1990.⁶⁴ The Provisional Regulations on the Grant and Transfer of Use
20 Rights in Urban Land provided that urban land could be leased from the
21 state for up to seventy years, depending on the use, and could subsequently
22 be relatively freely transferred.⁶⁵

23 The Decision on Deepening Urban Housing Reform passed by the
24 State Council in 1994 gave individuals further confidence in decisions to
25 purchase housing.⁶⁶ This law guaranteed that if people paid more when
26 purchasing housing, their property rights would be broader.⁶⁷ Rich families
27 then could purchase housing at market value and have nearly full
28 ownership of the property, meaning that they had the right to use, inherit,
29 profit from, and dispose of the housing.⁶⁸ Poor families, on the other hand,
30 could buy houses at construction cost and gain the right to use and inherit
31 the housing, as well as gain a limited right to profit from it.⁶⁹ If families
32 that bought housing at construction cost held onto their purchased housing

⁵⁹ Liu, *The Chinese Takings Law from a Comparative Perspective*, *supra* note 25, at 311.

⁶⁰ *Id.*

⁶¹ Zhang, *From Public to Private*, *supra* note 37, at 321.

⁶² Liu, *The Chinese Takings Law from a Comparative Perspective*, *supra* note 25, at 311.

⁶³ *Id.*

⁶⁴ Donald C. Clarke, *China: Creating a Legal System for a Market Economy* 10 (The George Washington University Law School Public Law and Legal Theory Working Paper, Paper No. 396, 2007), available at <http://ssrn.com/abstract=1097587>.

⁶⁵ *Id.* at 10.

⁶⁶ Liu, *The Chinese Takings Law from a Comparative Perspective*, *supra* note 25, at 312.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

1 for at least five years, they were then allowed to sell it on the housing
2 market and split the proceeds from the sale with the work unit that had
3 originally allocated the housing to them.⁷⁰

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

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

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

32 In April 2007, after nearly fourteen years of debate and deliberation,
33 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.

⁷² XIANFA art. 13 (2004) (China).

⁷³ Long Qinglan, *supra* note 47, at 64.

⁷⁴ *Id.* at 60–64.

⁷⁵ *Id.*

⁷⁶ Wu quan fa (中华人民共和国物权法) [Property Rights Law] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) (Lawinfochina) (China).

1 Law, which became effective in October 2007.⁷⁷ The Property Rights Law
2 has been regarded as a milestone for private property rights, since it is the
3 first time the country has granted legal protection for the private property
4 of individuals and legal persons who have long-term leases on land.⁷⁸ This
5 Section will discuss the content and problems associated with Article 4 and
6 Article 66 of the Property Rights Law, which are the sections relevant to
7 the P.R.C.'s policies on land expropriations.

8 Article 4 explicitly grants equal legal status for property rights of the
9 "State, collective, individual, or any other right holder."⁷⁹ Article 4 also
10 states that these rights "may not be damaged by any entity or individual."⁸⁰
11 Additionally, Article 66, which residents being evicted often cite as a legal
12 basis to protest demolition of their homes, states that "an individual's legal
13 properties shall be protected by law, any entity or individual may not
14 encroach, plunder or destroy them."⁸¹

15 These provisions in the Property Rights Law were written to protect
16 private land ownership and property rights during expropriation.⁸² Despite
17 these efforts, promises to adequately protect private property are often not
18 kept in practice. Indeed, "[f]ormal property laws, such as constitutional
19 provisions and property codes, may be easy to enact, but informal rules are
20 far beyond the lawmakers' control."⁸³ Private property protections are
21 difficult to enforce in the P.R.C. because government policies reward local
22 officials based on quantitative factors such as gross domestic product
23 (GDP) growth in their localities, thus incentivizing impingement on
24 citizens' rights to meet benchmarks.⁸⁴ Further, institutionalized corruption,
25 a lack of checks on the actions of local officials, and a long-standing
26 tradition of not properly recognizing or protecting private property rights
27 also undermine private property protections.⁸⁵

⁷⁷ *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>.

⁷⁸ Zhang, *From Public to Private*, *supra* note 37, at 317.

⁷⁹ Wu quan fa..

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See generally Chenglin Liu, *Informal Rules, Transaction Costs, and the Failure of the "Takings" Law in China*, 29 HASTINGS INT'L & COMP. L. REV. 119 (2005) [hereinafter Liu, *Informal Rules, Transaction Costs, and the Failure of the "Takings" Law in China*].

⁸³ *Id.* at 125.

⁸⁴ YANG ZHONG, LOCAL GOVERNMENT AND POLITICS IN CHINA: CHALLENGES FROM BELOW 141-42 (2003).

⁸⁵ See Liu, *Informal Rules, Transaction Costs, and the Failure of the "Takings" Law in China*, *supra* note 82, at 125.

1 As this Note will discuss in the following Section, Article 4 and Article
2 66 conflict with the P.R.C.'s recently superseded land expropriation
3 regulation, the Regulations on the Dismantlement of Urban Houses (Urban
4 Demolition Regulations), which were passed in 2001.

5 IV. LAND EXPROPRIATION REGULATION IN CHINA BETWEEN 6 2001 AND 2011

7 Before the economic reform in 1978, takings were a “non-issue” in the
8 P.R.C., since the country did not recognize any private property rights and
9 “[a]s the *de facto* owner, the government had absolute power to use public
10 property at will.”⁸⁶ Government takings of urban property became an issue,
11 however, as the P.R.C. increasingly needed to grant greater private property
12 rights to encourage and sustain the P.R.C.'s market growth.⁸⁷ Since the
13 reform, the country has experienced unprecedented urban population and
14 economic growth. In 1952, the P.R.C. had an urban population of about
15 fifty-seven million.⁸⁸ But by 2009, the urban population had ballooned to
16 over 600 million, accounting for 46.6 percent of the country's total
17 population.⁸⁹

18 The government has launched urban renewal programs (*jiuqu gaizao*)
19 and new housing initiatives to encourage this economic growth and address
20 the increase in urban populations.⁹⁰ Its policies have helped property prices
21 in urban areas skyrocket in recent years.⁹¹ This is especially true in large
22 cities such as Shanghai, where prices have increased more than 150 percent
23 in the past eight years.⁹² For example, some newly built apartment
24 complexes in the city center have appreciated from 9000 *renminbi* per
25 square meter to about 40,000 *renminbi* per square meter.⁹³ 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.

⁸⁸ *China Yearly Macro-Economics Statistics (National): Population of China*, ALL CHINA DATA CENTER, available at <http://chinadataonline.org.eproxy1.lib.hku.hk/member/macroy/macroytshow.asp?code=A0201> (last visited Mar. 20, 2010).

⁸⁹ GUOJIA TONGJI JU (NATIONAL BUREAU OF STATISTICS), 2008 POPULATION CENSUS, http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20090226_402540710.htm; *China Yearly Macro-Economics Statistics (National): Population of China*, *supra* note 88, at 77.

⁹⁰ Interview with Liu Jiangnan, Beijing homeowner, in Beijing China (March 20, 2010).

⁹¹ Jamil Anderlini & Tom Mitchell, *Fears of China Property Bubble Grow*, FIN. TIMES, Mar. 10, 2010, <http://www.ft.com/cms/s/0/a4315ad2-2c59-11df-9187-00144feabdc0.html#axzz1E9wvoZnB>; David Barboza, *Skyrocketing Prices May Point to a Real Estate Bubble in China*, N.Y. TIMES, Mar. 5, 2010, at A1.

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

1 property values keep increasing, demolition and rebuilding in urban areas is
 2 highly lucrative for both local governments and property developers.⁹⁴
 3 Since the P.R.C. is an authoritarian country with very strong local
 4 governments, instead of finding ways to negotiate with individuals about
 5 selling their homes, local governments' virtually unrestricted power to
 6 expropriate land became the natural vehicle for achieving these new
 7 development goals.⁹⁵ In addition to being convenient, this practice has been
 8 highly lucrative since current regulations allow urban land expropriation to
 9 occur at a very low cost, providing a windfall to local governments and
 10 developers after fancy new buildings are built and then sold off or rented
 11 out at the ever-rising market value.⁹⁶

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

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

(Jan. 20, 2010, 10:47 PM),
<http://www.cnn.com/2010/BUSINESS/01/20/china.gdp.narrow.dwelling/index.html>.

⁹⁴ Li Li, *Defending Home*, BEIJING REV., Jan. 4, 2010, http://www.bjreview.com.cn/nation/txt/2010-01/04/content_237935_2.htm.

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 chiqian 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.), <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (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.

⁹⁹ See CECC 2004 Annual Report: *Forced Evictions and Land Requisitions*, *supra* note 58; Li Li, *supra* note 94; Peter Sharp, *Grandma Defends Home and Is Buried Alive*, SKY NEWS (Mar. 9, 2010, 2:23 PM), <http://news.sky.com/skynews/Home/World-News/China-70-Year-Old-Grandmother-Beaten--Buried-Alive-By-Property-Developers-Trying-To-Take-Her-Land/Article/201003215570079?f=rss>.

¹⁰⁰ *Urban Land Grab Sparks Unrest in China*, *supra* note 7; Li Li, *supra* note 94.

1 resisting demolition and relocation, demolishers often came in the middle
2 of the night without warning and used aggressive tactics such as turning off
3 the water supply or even committing arson to force residents out.¹⁰¹
4 Further, the government did not give any consideration to residents,
5 whether young or old, whose property was the subject of takings. For
6 example, in March 2010, a seventy-year-old woman was beaten, pushed
7 into a ditch, and then covered with earth after a confrontation over the
8 demolition of her house in Hebei Province while three policemen
9 supervising the demolition work looked on, claiming that the confrontation
10 between her and the demolishers was none of their business.¹⁰²

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

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

31 The Urban Demolition Regulations gave provinces and municipalities
32 the responsibility to pass more detailed rules about demolition and
33 relocation.¹⁰⁵ However, though local governments are theoretically

¹⁰¹ *Demolished: Forced Evictions and the Tenants' Rights Movement in China*, 16:4 HUM. RTS. WATCH REP. 1, 9–10 (2004).

¹⁰² Sharp, *supra* note 99; Malcom Moore, *Chinese Granny Buried Alive by Property Developers*, DAILY TELEGRAPH, Mar. 6, 2010, <http://www.telegraph.co.uk/news/worldnews/asia/china/7374701/Chinese-granny-buried-alive-by-property-developers.html>.

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 Chengshi fangwu chiqian 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.,

1 supposed to follow the orders of the central government, the P.R.C.'s
 2 governance system has become highly decentralized over the past two
 3 decades because the central government has instituted a tax system in
 4 which local governments pay a fixed amount of tax to the central
 5 government, but are allowed to keep any remaining amount.¹⁰⁶ Moreover,
 6 local governments can keep the proceeds obtained from the public leasing
 7 of state-owned land and transfers of land-use rights.¹⁰⁷ This has become an
 8 important revenue source for local governments, resulting in “hundreds of
 9 billions of *renminbi* as profit from the taxation and sale of land leases
 10 [I]n some government jurisdictions, taxes on land conversion and
 11 leaseholds accounted for as much as 60 per cent [sic] of local revenues.”¹⁰⁸

12 Financial independence from the central government has given local
 13 governments the ability to pursue their own interests with less regard for
 14 central policies.¹⁰⁹ Local urban-demolition regulations passed by municipal
 15 governments thus tend to lean toward the interests of parties requesting
 16 demolition and relocation permits, since the government obtains financial
 17 gains from urban redevelopment.¹¹⁰ For example, Beijing’s urban
 18 demolition regulations, which have not yet been rewritten since the passing
 19 of the new regulations, state that in the event of a dispute between the
 20 demolishing entity and takings victims, the parties should bring the dispute
 21 to the administration to resolve, but that forced demolition work is allowed
 22 to continue before the administration’s resolution of the dispute.¹¹¹

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

26 According to the professors from Peking University, the recently
 27 superseded Urban Demolition Regulations conflict directly with the P.R.C.
 28 Constitution and the Property Rights Law.¹¹² According to the Constitution,
 29 the government is the party that can exercise land expropriation power.¹¹³
 30 Under the Urban Demolition Regulations, however, the government took

<http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (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 NATIONAL LAND ASSETS] (Beijing: Zhongguo Dadi Chubanshe 2003).

¹⁰⁹ Wilhelm, *supra* note 52, at 236.

¹¹⁰ CECC 2004 Annual Report: *Forced Evictions and Land Requisitions*, *supra* note 58.

¹¹¹ Beijing chengshi fangwu chaiqian guanli banfa [Beijing Municipality Regulations on the Administration of Urban Demolition and Relocation] (promulgated by the Beijing Municipal Government, Oct. 29, 2001, effective Nov. 1, 2001), available at <http://pro.bjchy.gov.cn/business/policyfg/codechengxgh/cxgl/cxgl13644.htm>.

¹¹² See Letter from Qian Mingxing et al., *supra* note 28.

¹¹³ *Id.*

1 on an only supervisory role in land expropriation activities, while for-profit
2 organizations, publicly or privately owned, had actual power to expropriate
3 and enforce provisions in the law, such as deciding when to forcibly evict
4 residents and how much to compensate them.¹¹⁴ The definitions at the
5 beginning of the Regulations reflect this, stating that the parties involved in
6 expropriations are (1) the takings subjects and (2) the work unit or
7 organization that has received a permit from the local government to
8 engage in demolition and relocation.¹¹⁵

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

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

¹¹⁴ 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) at arts. 4, 13, 22, (China), translated in CONG.-EXEC. COMM’N. ON CHINA, VIRTUAL ACAD., <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (last visited Mar. 30, 2010). See Letter from Qian Mingxing et al., *supra* note 28.

¹¹⁵ *Id.*

¹¹⁶ Ting Gong, *supra* note 29, at 90.

¹¹⁷ *Id.*

¹¹⁸ See Matthew S. Erie, *The Hard Case of the “Toughest Nail-House in History”: Property Rights, Legal Consciousness, and the New Media in China* 17 (Cornell University Working Paper Series, 2009), available at <http://ssrn.com/abstract=1445293>.

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.*

1 C. THE PROCEDURE FOR REQUISITIONING LAND, COMPENSATING
2 TAKINGS SUBJECTS, AND DEMOLISHING HOUSING IS UNCLEAR
3 AND HAS LED TO FORCED DEMOLITION WORK

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

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

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

¹²² 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) at art. 7, (China), translated in CONG.-EXEC. COMM'N. ON CHINA, VIRTUAL ACAD., <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (last visited Mar. 30, 2010).

¹²³ *Id.*

¹²⁴ See Erie, *supra* note 118.

¹²⁵ Regulations on the Dismantlement of Urban Houses at art. 4.

¹²⁶ *Id.* at art. 17.

1 demolition crews' use of coercion and violence against takings victims who
2 resisted moving out of targeted housing.¹²⁷

3 If demolishers and takings subjects disputed the offered compensation,
4 relocation housing, or temporary housing, the parties could first try to settle
5 the dispute through administrative channels and subsequently file a
6 lawsuit.¹²⁸ However, this was seldom helpful to takings subjects, since the
7 properties under dispute were demolished by the time a judge heard the
8 case, rendering the lawsuit meaningless because "once the basis of the
9 dispute has been removed, the homeowner can no longer appeal."¹²⁹ Article
10 16 of the Urban Demolition Regulations legitimized this occurrence by
11 stating, "[w]here demolition entities have already provided monetary
12 compensation or demolition and relocation resettlement housing and
13 transition housing according to these regulations, the implementation of
14 demolition and relocation shall not be suspended during the time of the
15 lawsuit."¹³⁰

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

21 D. THE PUBLIC USE REQUIREMENT WAS UNDEFINED AND ALLOWED
22 LOCAL GOVERNMENTS TO ABUSE THEIR BROAD DISCRETION IN
23 USING THE URBAN DEMOLITION REGULATIONS

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

¹²⁷ *Demolished: Forced Evictions and the Tenants' Rights Movement in China*, *supra* note 101, at 9–10.

¹²⁸ *See* Erie, *supra* note 118, at 14, 19.

¹²⁹ *See id.*

¹³⁰ Regulations on the Dismantlement of Urban Houses at art. 16.

¹³¹ XIAN FA art. 13 (2004) (China).

¹³² Wu quan fa (中华人民共和国物权法) [Property Rights Law] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) (Lawinfochina) (China).

¹³³ U.S. CONST. amend. V.

1 Conversely, the public use requirement in Chinese law used positive
2 language that actually expands government power instead of limiting it. In
3 addition, though the public use requirement was the same in principle as in
4 the United States, it has not been properly defined anywhere in Chinese law
5 and as a result has been construed much too broadly.¹³⁴ This, coupled with
6 the pursuit of rapid urban development by power-wielding local officials,
7 has led to many abuses of the public use requirement.

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

17 Common examples of projects that fall in between public and private
18 use are the building of shopping malls, commercial office buildings, and
19 luxury residences in prime locations within urban areas, necessitating the
20 demolition of older buildings and relocation of their residents. Massive
21 urban projects, such as the building of the Olympic Village for the 2008
22 Summer Olympics and the pavilions for the 2010 Shanghai World Expo,
23 also blur the line. Developers and the government may play off these other
24 projects as public use projects, but even if these developments help
25 beautify a city, increase GDP, or boost investment in a locality, it is
26 doubtful whether or not exterior appearance and economic growth should
27 be the definitive indicator of whether a new development project benefits
28 the public.¹³⁵

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

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).

¹³⁵ *See Pamela N. Phan, Enriching the Land or the Political Elite? Lessons from China on Democratization of the Urban Renewal Process*, 14 PAC. RIM L. & POL’Y 607, 608 (2005).

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

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

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

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

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

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

¹³⁶ 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) at art. 3, (China), translated in CONG.-EXEC. COMM’N. ON CHINA, VIRTUAL ACAD., <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (last visited Mar. 30, 2010).

¹³⁷ See Erie, *supra* note 118, at 17.

¹³⁸ XIANFA art. 13 (2004) (China).

¹³⁹ Wu quan fa (中华人民共和国物权法) [Property Rights Law] (promulgated by the Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007) (Lawinfochina) (China).

¹⁴⁰ U.S. CONST. amend. V.

¹⁴¹ “[N]or shall private property be taken for public use, without just compensation.” *Id.* See also Long Qinglan, *supra* note 47, at 67.

1 subjects shall sign a compensation and resettlement agreement covering the
2 form of compensation and the compensation amount, the location and area
3 of resettlement housing, time limits for relocation, form and time periods
4 for intermediate stage relocation.”¹⁴² Over the years, developers used these
5 vague requirements to their advantage by complying with the literal
6 requirements of the regulations and paying as little compensation as
7 possible to takings subjects. Since the government owns the land beneath a
8 building or dwelling in urban areas, it can be assumed that compensation
9 for takings subjects does not include the value of the land that homes are
10 built on. One way that the developer or government unit expropriating land
11 might therefore calculate compensation under the regulations is to pay the
12 construction cost of the building and value of remaining land use rights.
13 Developers thus get a windfall because they are able to obtain target land
14 for a low cost and then generate profits from the new development by
15 renting or selling units at the much higher market price.

16 The Urban Demolition Regulations also allowed compensation to be
17 determined while demolition work is ongoing.¹⁴³ According to the
18 Constitution and Property Rights Law, however, this is unlawful; for the
19 expropriation process to be legally complete, compensation negotiations
20 must have concluded before demolition can begin.¹⁴⁴ Ensuring that
21 residents are compensated to their satisfaction before they have to move out
22 would help avoid unnecessary conflict between residents and demolition
23 workers. Tang Fuzhen’s case provides a fitting example of such conflict.

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

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

31 In 1996 the local government of Jinhua County was trying to entice
32 investors to invest in the economy, and Tang Fuzhen and her then-husband
33 Hu Changming signed an agreement with local authorities to rent land to
34 build a garment-processing plant.¹⁴⁵ Tang and Hu built a three-story tall

¹⁴² 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) at art. 13, (China), translated in CONG.-EXEC. COMM’N. ON CHINA, VIRTUAL ACAD., <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=2335&PHPSESSID=d5c227c436b379e214f551e787db5f92> (last visited Mar. 30, 2010).

¹⁴³ See Letter from Qian Mingxing et al., *supra* note 28.

¹⁴⁴ *Id.*

¹⁴⁵ See Chaiqian zhi si 拆迁之死 [The Chengdu Self-Immolation] (CCTV News 1+1 broadcast Dec. 2, 2009); Huang Zhiling & Liu Weitao, *Burning Issue*, CHINA DAILY, Dec. 8, 2009, http://www.chinadaily.com.cn/china/2009-12/08/content_9136665.htm.

1 house in which to run their business and live.¹⁴⁶ The business was
 2 successful, and they were even “touted as model entrepreneurs—profiled in
 3 newspapers and on local [television].”¹⁴⁷

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

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

¹⁴⁶ Cohen, *supra* note 1, at 7; Huang Zhiling & Liu Weitao, *supra* note 145.

¹⁴⁷ Cohen, *supra* note 1, at 7.

¹⁴⁸ Huang Zhiling & Liu Weitao, *supra* note 145.

¹⁴⁹ *Chaiqian zhi si* [The Chengdu Self-Immolation], *supra* note 145.

¹⁵⁰ Huang Zhiling & Liu Weitao, *supra* note 145.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Qi Bin, *Chengdu: Chaiqianhu zifen siwang chengguan guanyuan jieshao shijian guo cheng* 成都：拆迁户自焚死亡城管官员介绍事件过程 [Chengdu: Officials Describe What Happened in the Demolition and Relocation Immolation Incident], ZHONGXINWANG, Dec. 2, 2009, <http://www.chinanews.com.cn/sh/news/2009/12-02/1995254.shtml>.

¹⁵⁵ *Id.*

¹⁵⁶ Huang Zhiling & Liu Weitao, *supra* note 145.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

1 in compensation, but since this was only one fifth of the requested amount,
2 no agreement was reached.¹⁵⁹

3 Over a dozen demolition workers surrounded Tang's building at five
4 o'clock in the morning on November 13, 2009, with shields and steel pipes,
5 backed by police officers.¹⁶⁰ Witnesses say that the workers beat anyone in
6 their path, including one of Tang's sisters, who was carrying her baby in
7 her arms at the time.¹⁶¹ In response to the onslaught, according to Tang's
8 family and friends, Tang and members of her family who had come to
9 support her cause threw bricks, rocks, and Molotov cocktails (homemade
10 gasoline bombs) at the demolition workers who arrived.¹⁶² Witnesses say
11 that Tang then climbed to the rooftop of her house and repeatedly yelled
12 that she would come down and negotiate with the demolition workers if
13 they backed up and dropped their weapons, but that the demolition workers
14 ignored her requests.¹⁶³

15 After three hours of confrontation, Tang finally threatened to immolate
16 herself if the workers continued to tear down her house and then poured
17 gasoline over her own body.¹⁶⁴ About ten minutes after she first poured
18 gasoline on herself, Tang lit herself on fire.¹⁶⁵ Witnesses reported that
19 during this ten-minute interval, the demolition workers and police present
20 did nothing to prevent her from hurting herself.¹⁶⁶ Instead, they continued
21 to beat her family and engage in the demolition work.¹⁶⁷ After the event,
22 Tang was taken to the hospital and put under intense police surveillance.¹⁶⁸
23 Tang's relatives were not allowed to see her before she succumbed to her
24 injuries and died sixteen days after the incident.¹⁶⁹ "[E]ight of Tang's
25 relatives, including her husband . . . were detained for disrupting
26 government work, and four others were placed under house arrest."¹⁷⁰

27 In this case, Tang and Hu were dealing directly with the local
28 government over land that was being requisitioned for a new urban waste

¹⁵⁹ *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).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *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*].

¹⁶³ Huang Zhiling & Liu Weitao, *supra* note 145; *Self-Immolation Violent Opposition Against Law*, *supra* note 162.

¹⁶⁴ *Self-Immolation Violent Opposition Against Law*, *supra* note 162.

¹⁶⁵ Huang Zhiling & Liu Weitao, *supra* note 145.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *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>.

¹⁶⁹ *Id.*

¹⁷⁰ *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.*

1 management system and a new road. This is not the case of a private
2 developer building a shopping mall, so this case fits better under the
3 concept of eminent domain than other cases in which private developers
4 obtain a permit from the government to build a private commercial
5 development. However, the same problems remain even though the local
6 government here was heavily involved with the demolition and relocation
7 of Tang's land. Local officials hired a state-owned construction enterprise,
8 Chengdu Xingrong Investment Co., Ltd. ("Xingrong Co."), to build its
9 public sewage management system.¹⁷¹ It appears that over the past two
10 years, Xingrong Co. has been under immense government pressure to
11 complete this sewage management system project because it was granted
12 the project in 2007, but only undertook demolition and relocation activities
13 in late 2009.¹⁷² In addition to this pressure to complete the project as
14 quickly as possible, the State Owned Enterprise ("SOE") still operates as a
15 profit-generating corporation, and thus its interests are still to minimize
16 project costs and increase profits rather than serving the public good.

17 Like in many other cases that have occurred throughout the P.R.C., the
18 basic issue of compensation in Tang's case was not resolved prior to the
19 commencement of demolition work. Tang and Hu had asked the
20 government for compensation of eight million *renminbi*, which included
21 lost future profits from relocating their business, as well as compensation
22 for the value of what they considered their legitimately remaining land use
23 rights.¹⁷³ However, the government sought only to compensate them based
24 on the estimated construction cost of their building as of 1996. Because of
25 this vast difference in desired compensation, no agreement was reached.
26 Tang had allegedly told demolition workers that she was willing to
27 continue to negotiate if they stopped demolishing her house before they
28 reached an agreement.¹⁷⁴ However, the Urban Demolition Regulations
29 allowed demolition work to continue, even before a compensation
30 agreement was reached, and the Jinniu District government took advantage
31 of this clause to allow the developer to commence the sewage management
32 project without costly delays.¹⁷⁵

33 The Urban Demolition Regulations did little to protect Tang and Hu's
34 home and place of business from destruction and left no palatable recourse

¹⁷¹ 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.cdcc.gov.cn/SpecialTopic/CJDetail.aspx?NewsID=13703>).

¹⁷² *See id.*

¹⁷³ Tang and Hu are presumed to have nearly sixty of seventy years remaining in any land use rights that they have. *Id.*

¹⁷⁴ *See id.*

¹⁷⁵ *See* 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 "Jinniu qu 2009 zhengfu gongzuo baogao").

1 for them. Tang's suicide was her way of showing the world just how unfair
2 and inhumane the P.R.C.'s current urban land expropriation system has
3 become, and has served as a catalyst to the government's current efforts to
4 abolish the Urban Demolition Regulations and create a new set of
5 regulations. The newly proposed regulations as they are currently written,
6 however, still do not do enough to protect the interests of takings subjects.
7 Moreover, even if the new regulations are revised further to better protect
8 the interests of takings subjects, simply rewriting the regulations without
9 changing the system within which the regulations are framed is unlikely to
10 solve the takings problem. Assuming that passing new land expropriation
11 regulations will at least incrementally improve the takings situation in the
12 P.R.C., the next Section will examine the problems with the recently
13 promulgated regulations and suggest improvements.

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

17 In January 2011, the Legislative Affairs Office of the State Council
18 completed and promulgated a new regulation entitled the Regulations on
19 the Requisition and Compensation of Buildings on State-Owned Land
20 ("New Regulations").¹⁷⁶ One key positive change to the New Regulations is
21 that of language. Under the New Regulations, the process is no longer
22 referred to as "demolition and relocation," but as a "land requisition,"
23 implying that from now on, buildings cannot be demolished prior to the
24 completion of the land expropriation process, which includes first
25 transferring title from the individual or business to the government and then
26 compensating the individual or business.¹⁷⁷ In addition, the New
27 Regulations aim to close the gap between the bargaining positions of local
28 governments, property developers, and individual property owners.
29 However, because of the politics and interest groups involved in drafting
30 this regulation, it is unsurprising that the draft contains language that still
31 potentially allows the government and developers to undermine the
32 interests of individual homeowners. This Section will introduce key articles
33 in the New Regulations and analyze the problems present in them.

34 A. GENERAL PROBLEMS

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

¹⁷⁶ 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), available at <http://www.chinalaw.gov.cn/article/fgkd/xfgwd/201101/20110100332784.shtml>.

¹⁷⁷ See generally *id.*

1 Because the P.R.C.'s legal system does not rely on judicial interpretation of
2 laws and regulations as precedent, the New Regulations need to be more
3 specific and detailed to ensure that they are followed. Accurate and narrow
4 definitions of key terms and step-by-step procedures need to be instituted.
5 Keeping the regulation vague and broad and delegating the responsibility
6 of formulating more detailed regulations to local officials in different
7 provinces and cities in the P.R.C. is ineffective if the central government
8 truly seeks to improve the takings situation. This is especially true given
9 the historical tendency of local governments to use regulations to their
10 advantage instead of following the spirit of the regulations. If decentralized
11 regulation is allowed to occur, then incentives for local government
12 officials must change—either in terms of promotion to high office, higher
13 salaries, or imposing severe punishment for colluding with property
14 developers. Currently, the Liabilities section of the New Regulations is
15 ambiguous and its punishments still do not provide a strong deterrent to
16 abuse.¹⁷⁸ Moreover, a vague and broad set of regulations leaves a lot of
17 room for interpretation, and therefore provides an opportunity to exploit
18 loopholes.

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

22 Article 7 of the New Regulations states that any individual or work unit
23 that observes someone breaking the regulations can report it to the local
24 demolition and relocation authorities, and that these authorities must
25 investigate and resolve the situation in a timely manner.¹⁷⁹ Though this
26 article attempts to provide an enforcement mechanism for compliance with
27 the regulations, the length of time that is considered “prompt” is not
28 defined, and there is nothing in the article that states the standards or
29 process by which the investigation must be conducted. Moreover, the
30 authorities are only required to inform the complainant of the results of the
31 investigation and the regulations do not mention anything about what
32 happens after the complainant receives these results. In order to help assure
33 that action will be taken and investigations conducted in an unbiased
34 manner, more details regarding investigation procedures and the forms of
35 action required for different results should be provided in the regulations.

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

¹⁷⁸ See 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) arts. 30–35, available at

<http://www.chinalaw.gov.cn/article/fgkd/xfgcd/201101/20110100332784.shtml>.

¹⁷⁹ *Id.* at art. 7.

1 regulation attempts to limit forced eviction.¹⁸⁰ Where the current regulation
2 makes no mention of what constitutes forced eviction and what actions are
3 forbidden to the evictors, the New Regulations specifically state that no
4 coercive or violent means may be used to evict takings victims.¹⁸¹ Also, the
5 New Regulations state that if takings subjects and the government dispute
6 the land expropriation project or cannot agree on the compensation amount,
7 no demolition may occur unless the case is taken to a court that issues a
8 judgment resolving the dispute and allowing demolition.¹⁸² However, since
9 the same government that implements the regulations exerts a very strong
10 influence on the judiciary, it remains to be seen just how neutral the courts
11 will be when cases are resolved there. Takings subjects who appeal through
12 either the courts or the government's administrative litigation system have
13 generally had a low success rate in the past.

14 C. NEW REGULATIONS REALLOCATE LAND EXPROPRIATION POWER TO
15 THE GOVERNMENT

16 The New Regulations clarify that the government is the only entity that
17 can exercise land expropriation power and that the government must be the
18 party that is directly responsible for requisitioning land from residents and
19 handling compensation and demolition issues.¹⁸³ This provision accounts
20 for the concerns addressed by the Peking University professors in their
21 open letter to the Standing Committee and is an improvement from the
22 Urban Demolition Regulations, which leaves these responsibilities with
23 property developers.¹⁸⁴

24 Article 4 of the New Regulations, however, delegates the responsibility
25 to implement these regulations to county officials.¹⁸⁵ This may be the most
26 efficient or convenient way to manage a country with as vast a geographic
27 area as the P.R.C., since it would be costly to have the central government
28 oversee and approve every eminent domain decision in the country.
29 However, the concern with such a decentralized system is that unless local
30 governments are given an incentive to follow the spirit of the regulation
31 and place takings victims' interests at the forefront, the local government
32 still will have the flexibility to collude with developers and abuse the
33 regulations. Though Article 6 does state that higher-level governments
34 should supervise the demolition and relocation activities of local
35 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) art. 4, available at <http://www.chinalaw.gov.cn/article/fgkd/xfgd/201101/20110100332784.shtml>.

1 mandatory step in the process of exercising land expropriation power.¹⁸⁶
2 Moreover, the regulation does not specify how these upper levels of
3 government should supervise each demolition and relocation project or
4 what standards to apply when supervising such endeavors.

5 D. BROAD DEFINITIONS OF THE PUBLIC USE REQUIREMENT WILL CAUSE
6 CONTINUED PROBLEMS ARISING FROM LOCAL GOVERNMENTS'
7 ABUSE OF DISCRETIONARY POWERS

8 Unlike the Urban Demolition Regulations, which did not define “public
9 use” at all, the New Regulations define what constitutes public use.¹⁸⁷
10 Under the New Regulations, public interest projects include: (1) projects
11 necessary for national defense and foreign relations; (2) public
12 infrastructure such as transportation, water utilities, and energy; (3) state-
13 supported facilities for science and technology, education, culture, health,
14 sports, environmental and resource protection, conservation, social welfare,
15 and municipal utilities; (4) urban renewal projects necessary to improve
16 building safety, modernize outdated infrastructure, and renew old
17 neighborhoods; and, (5) other facilities that the law or government entities
18 require as necessary for the interest of the public.¹⁸⁸ This definition of
19 public use is not limited by negative or exclusionary language but is, in fact,
20 expanded by including positive examples of uses that do qualify, thus
21 automatically broadening the meaning of “public use.”

22 An example of a vague use is the clause that allows the government to
23 expropriate land to build or preserve sports and culture facilities.¹⁸⁹ This
24 gives local governments the opportunity to engage in such large scale
25 activities as the building of the Olympic Village or Shanghai Expo
26 pavilions without accounting for the wishes of the people whose homes are
27 affected by the projects. It is difficult to see how developing venues for
28 these types of large international events can justify evicting residents from
29 their homes and businesses, even if the events help attract tourism and
30 foreign investment. The international community has already berated the
31 P.R.C. for the way it has handled the building of Beijing’s Olympic venues
32 and Shanghai’s World Expo national pavilions.¹⁹⁰ This scrutiny will not
33 disappear.

34 The definitions given in the New Regulations are problematic because
35 they are too broadly construed. The inclusion of the last clause, which
36 states that land expropriation can also occur for other needed facilities

¹⁸⁶ *Id.* at art. 6.

¹⁸⁷ *Id.* at art. 2.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ 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/SB121788405566611245.html>.

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

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

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

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

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

¹⁹¹ 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) art. 2, available at <http://www.chinalaw.gov.cn/article/fgkd/xfpwd/201101/20110100332784>.

¹⁹² *Id.* at arts. 19, 21.

¹⁹³ *Id.* at art. 31.

¹⁹⁴ *Id.* at art. 12.

¹⁹⁵ *Id.* at art. 21.

1 To ensure fairness and accountability in evaluating the market price of
2 a property and helping avoid the influence of developers or the government
3 on appraisal companies, the New Regulations require that a neutral, third-
4 party appraisal company must appraise a condemned property.¹⁹⁶ However,
5 this does not require a method of appraisal. Though the New Regulations
6 state that appraisals should be conducted in an unbiased manner,¹⁹⁷ they
7 give the Rural and Urban Development Division of the State Council the
8 responsibility for passing actual rules that these appraisal companies must
9 follow when appraising condemned property. It remains to be seen whether
10 or not this division of the central government will be able to create
11 guidelines that can adequately ensure the impartiality of future appraisals.
12 Nonetheless, the State Council has shown progress in declining to delegate
13 this rulemaking task to local governments or appraisal companies because
14 these entities are likely to set appraisal guidelines that undervalue
15 condemned property to increase profits from urban land expropriation
16 activities.

17 The New Regulations also state that no compensation needs to be paid
18 for the takings of illegal buildings or buildings that have expired permits.¹⁹⁸
19 A potential for abuse exists here, since local officials, like in Tang's case,
20 might find excuses to demolish older buildings without compensating
21 residents if these buildings were built before enactment of the law that
22 requires construction permits for buildings. Though it may be assumed,
23 nothing in the New Regulations explicitly states that the law on building
24 construction permits cannot be applied retroactively, and local governments
25 may find ways to get around it. In addition, since residential and
26 commercial buildings have limited land use rights, if local governments
27 decide to expropriate a building near the date that land use rights are
28 supposed to expire, it could abuse its power by refusing to issue a renewed
29 land use rights permit and waiting until the land use rights have expired
30 before demolishing the building without compensation.

31 VI. CONCLUSION

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

¹⁹⁶ *Id.* at art. 19.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at art. 23.

1 little, if any, recognition of the rights. The increase in both official and
2 public recognition of these rights, and the changes implemented to protect
3 these rights, has occurred relatively rapidly.

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

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

31 If the New Regulations are revised to contain more detailed
32 expropriation, demolition, and compensation procedures and narrower
33 definitions of public use, then the Chinese public might be able to
34 experience an incremental increase in the fairness of land expropriations.
35 However, no matter what changes in wording are made, because no
36 effective checks on corrupt local government powers currently exist,
37 enforcement problems will remain and the takings problem will not be
38 solved. Citizens of the P.R.C. can only hope that their local leaders will be
39 accountable and make fair decisions. However, this dependence is risky
40 and cases like Tang Fuzhen's will likely continue to occur no matter how
41 much effort the central government invests in revising regulations. To solve
42 the issue at its core, citizens must be able to check local and central

- 1 government power. The most effective way of doing so would be to not
- 2 only give citizens an opportunity to voice their concerns, but also to give
- 3 them the power to vote and decide for themselves what they want.