
The Interplay of Power, Rights and Interests:

Law and Economic Analysis of
Urban Housing Demolition
and Relocation in China

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ABSTRACT

This paper traces the growth of the Zhongguancun Science and Technology Zone (ZSTZ) as a c In recent years, the problem of China's Urban Housing *chaiqian* ("Demolition and Eviction/Relocation") has emerged as a field prone to disputes. Such disputes frequently involve various governmental bodies, private developers, the courts, construction companies, and the general public. Conflicts between private rights and public interests, between individual interests, commercial interests and the political power, are becoming increasingly fierce and have raised concerns about social stability. Those well-connected construction developers try to gain the huge illegal profits. Some forced eviction cases have violated basic human rights, but the evictees still lack legal redress. Through an examination of the current legal framework in China and the policy changes that have been tried to deal with the issues associated with demolition and relocation, the author uses the method of law and economics and two kinds of game theory model to directly illustrate situations encountered in practice and the *Property law* (by State Council of China, 2007) , *Law of the People's Republic of China on Land Management*, *the City Planning Law of the People's Republic of China* , *Law of the People's Republic of China on Administration of the Urban Real Estate*, especially *Regulation on the Administration of Urban House Demolishment and Relocation* (by State Council of China, 2001) and other national laws and regulations. Finally, the author describes the current difficulties in legal solution for relocation disputes, and proposes some possible solutions and recommendations.

China Papers

*Der Mensch wohnt dichterisch auf dieser Erde.**

——Holderlin [Germany]

I. Introduction

A house is essential for a human being to settle down and to get on with his pursuit, and it is the carrier of his private life as well as the nexus of his rights to privacy, property, and the like. People are territorial animals, and without private residences they will feel adrift. In China, which is in transformation now, it is particularly significant for most ordinary people to have their own houses, and housing has become the symbol of the development of people's livelihood and the critical issue in the protection of civil rights.

Having experienced too much revolution and chaos and having lived through periods of unendurable shortage, Chinese citizens are now looking forward to better days ahead. Part of this vision is the dream of owning a home, a universal desire for a quiet place of one's own. This consumption requirement together with the rapid modernization, industrialization and urbanization of social life in China all lead to the large-scale expansion of new urban areas and rebuilding of older urban areas, which practically makes China look like "a big construction site".¹ Meanwhile, most kinds of *xìn fǎng* (complaint letters and visits)², *shàng fǎng* (appeals to the higher authorities for help)³, and controversial cases caused by urban housing "*chaqian*" (Demolition and Relocation/Eviction)⁴ are arising.

* Human beings enjoy material abundance, and live poetically on the great Earth.

1 Since 1998, Chinese government stated that it would cancel the housing staff distribution and adopt the housing currency distribution nationwide, Chinese national house construction has increased by 20% to 30% annually. Besides, both the investment scale and established area during all those years have become the first throughout the world. From 2001 to 2005, the established housing area in urban and rural districts amounted to nearly 1.3 billion square meters. In 2005, the average living space in urban areas exceeded 26 square meters. See Guangming Daily, "The Glorious Accomplishment during the Tenth Five-year Period, Exhibition of Prosper," Xinhuanet.com, January 4, 2006. http://news.xinhuanet.com/politics/2006-01/04/content_4007862.htm (accessed May 6, 2006). In 2006, the established housing area in urban and rural districts amounted to 1.33 billion square meters, and it cut down on 0.69 billion square meters in 2007. See ChinaIRN.com, "Analysis on Housing Market in Real Estate in China," April 2, 2009.

<http://www.chinairn.com/doc/40140/406854.html> (accessed April 5, 2009).

2 "letters and visits" (*xìn fǎng*) in China's legal system that means people can write letter or visit the Chinese Communist Party Central Committee/State Council Letters and Visits Bureau or its local branches, talk with the officials, and express their protest and petition.

First of all, Chinese urban housing *chaiqian* has been one of the primary issues that people appeal. It is estimated by the appeals office of the Ministry of Construction that, from 1999 to the first half of 2001, the Ministry dealt with up to 18,000 appeal cases, in which those related to *chaiqian* constituted 18%, while in collective appeal cases 80% were related to *chaiqian*. From January to August of 2002, it has dealt with 4,820 letter appeal cases in which 28% were relevant to *chaiqian*, 1,730 groups in which 70% are relevant to *chaiqian*. By the end of 2003, the State Bureau of Letters and Calls had accepted about 50% more complaint letters and visitors than the same period of the past.⁵

Secondly, disputes relating to China's urban housing *chaiqian* led to a large number of administrative lawsuits. According to the statistics by the administrative court of the Supreme People's Court of China, administrative lawsuits related to urban housing *chaiqian* have been increasing rapidly; they increased more than 15% in 2004-2006. Investigations carried out by the Politics and Law Committee of Zhejiang Province indicated that in recent years disputes caused by older city rebuilding, demolition and relocation, city

3 The importance of review was recognized in Ancient China. Early Han emperors required difficult cases to be forwarded to the imperial court for judgment, and from at least the Sui (589-626) ostensible victims of injustice could carry appeals to the capital in the hope of reaching the emperor's ear. But it was in the Qing (1644-1911) that the appellate system in general and capital appeals(jingkong京控) in particular reached their fullest elaboration. Having exhausted all the judicial remedies at the provincial level, appellants could bring their charges to Beijing and bang the "grievance drum" outside the offices of the censorate. In every instance the aim of the capital appellant was the same—to enlist the interest of the emperor in one's cause. Hence the basic premise of the capital appeal was not that the emperor himself would try a case but that his imprimatur would stimulate officials to resolve a grievance both quickly and justly. See Jonathan K. Ocko, "I'll Take It All the Way to Beijing: Capital Appeals in the Qing," *The Journal of Asian Studies* 47, no. 2(1988):291-315. Many scholars believe that the petition system xinfang(letters and visits) and shangfang in contemporary China, retain many of the traditional elements of the capital appeals(jingkong) of ancient China.

4 "Chaiqian" is a classical word born in the Chinese transitional society; it is also one of the Chinese citizens' important memories about the "open and reform" period. The original meaning of this word refers to the whole process during which the government demolishes and rebuilds the older urban areas based public use or commerce purpose, meanwhile they relocate the tenement and those property owners. It is usually translated as "(Urban Housing) Demolition and Relocation/Eviction" or we can directly use the Chinese Character "拆迁" or its Pinyin "Chaiqian" instead in this article.

5 See Zhifeng Liu(Deputy Minister of Construction Ministry), "The Urban House Demolition Must Accord with the Law," (speech delivered in the Forum Conference of National Urban House Demolition Project), *Chinese Urban Real Estate*, Sept. 24, 2002. Related reports available in "Demolished: Forced Evictions and The Tenants' Rights Movement in China," *Human Rights Watch*, March 25, 2004, Vol. 16, No. 4. "China: Forced Evictions Spur Protests –China Should Implement Constitutional Protection for Property Rights," *Human Rights Watch*, March 25, 2004, Vol. 16, No. 4.

planning, urban house registration and the like have increased so rapidly that relevant administration lawsuits had constituted 25% of the total in the whole province.

Lastly, “*chaiqian*” has led to many violent incidents all over China, pushing this issue closely related to people’s livelihood and civil rights to the core of the disputes in a transitional society. These incidents have shocked and captivated the national consciousness: From Weng Biao, a Nanjing citizen, who die together with the chief executive official, to the forced eviction case of Jiahe County in Hunan Province which raised concern of the Premier; from the 2000 Incident in Beijing in which more than 10,000 evictees jointly filed an administration lawsuit⁶ to the “Chongqing case” that stirred the whole country in the March of 2007,⁷ similar cases emerge endlessly in every city of China, shaking the foundations of social harmony and stability. It can truly be said that *chaiqian* has emerged as an area especially prone to disputes.

Exacerbating the situation is the fact that the relevant regulations including *Property Law*, *Land Management Law*, *City Planning Law*, *Law on Administration of the Urban Real Estate*, especially the *Regulation on the Administration of Urban Housing Demolition and Eviction* are of questionable efficacy, and as a result the efficiency of social resources allocation as currently prescribed has been challenged to some extent. Who is right in the interest conflicts between the parities concerned? What is wrong with the legal relations between supply and demand in the problem of *chaiqian*? What is the actual effect of the current laws and regulations? Why are the current rules invalid and how can they be optimized? How can the rights, liabilities and responsibilities of the concerned parties be optimally distributed? All theses questions urgently need to be researched and answered. .

In this article, the author first gives a brief review of the violent incident of Jiahe County in Hunan Province. Next, from the perspective of law and economics, the author analyzes the interplay of “power, rights, and interests” between the government, developers

6 In February 2000, concerning about the problem of the relocation of the house demolition, 10357 evictees jointly filed an administration lawsuit to the Second Intermediate People’s Court of Beijing. At that time, this incident was quite well-known as the “10000 people appealing incident”. See Cin.gov.cn, “more than 10,000 evictees jointly filed an administration lawsuit”, <http://www.cin.gov.cn/indus/speech/2002091601.htm>(accessed Oct. 5, 2005).

7 Back when the tenth National Congress the fifth meeting passed the “Real Right Law” by high votes, a news report and pictures about “Chongqing Case” prevailed on the Internet, which stirred the politicians and general public’s additional concerns about the urban house demolition problem. A citizen still refused the demolition when he had dug a deep hole more than 10 meters after the developer could not satisfy his reasonable demand for compensation, and the conflict has lasted for three years. This not only tests the new “Property Law” (the new law brings potential danger because it hasn’t given a clear concept about the term ‘benefit of the general public’ in the permission of forced demolition), but also offers a vivid case about the phenomena of the citizens’ personal oppose against the alliance of the rich developer and powerful government. Please refer to various kinds of paper media and Internet news in the corresponding period.

and evictees in the process of *chaiqian*, based on which the author carries on research of different roles' behavior regulated by *Property Law* (by State Council of China, 2007), *Land Management Law*, *City Planning Law*, *Law on Administration of the Urban Real Estate*, and *the Regulation on the Administration of Urban House Demolishment and Relocation* (by State Council of China, 2001), and use cost-benefit analysis, so as to directly illustrate situations encountered in practice and difficulties in legal relief for *chaiqian* disputes. Lastly, the author presents solutions and legislation suggestions, based on a transnational comparison of relevant legal problems in rural land requisition and urban housing *chaiqian*.

II. *Jiahe* Cases --Violent Forced Demolition and Relocation Incident⁸

Narrative of the Incident

“Whoever dares to disregard the face of Jiahe, will be dismissed”; “Whoever can not do his duty will be transferred to another post”; “Whoever dares to delay the development of Jiahe for a short while will be affected for a life-time whole life”.

The above-quoted slogans appeared on big character posters put up at the site of the opening ceremony for the *Zhuquan Shangmao Cheng* (*Zhuquan Commerce Mall*) in Hunan Province's *Jiahe* County, which took place in the second half of 2003. At that time, a company operating under the name *Zhuquan Shangmao Cheng Development Corporation of Jiahe* undertook the construction of a local commercial development area.

In order to cause the residents occupying the 1100 residential housing units located on the site selected for the development project to immediately vacate their homes on terms stipulated by the developer, the *Jiahe* County government assumed a direct role throughout the *chaiqian* process.

On 2003 August 7, the *Jiahe* County Communist Party Committee and County government jointly issued official document (No.136) demanding that all the employees and staff of the government organs, enterprises and public institutions assume responsibility for assuring the timely compliance of their relatives who resided in the planning area of *Zhuquan Commerce Mall* with the four-point *chaiqian* project.⁹ Public

⁸ The case study, the statistics and facts mentioned in the following are available in *Sina.com.cn*, “*Jiahe* Incident of Hunan province,” <http://news.sina.com.cn/temp/z/hnjiahe/index.shtml> (accessed Dec.2, 2005). Also available in some related reports on *South Weekly*, *New Beijing*, *Beijing Youth*, etc. According to a rough estimation, in quiet a short period of time, dozens of domestic media has reported the “*Jiahe* County Forced Demolition Incident”, such as the web media *Sina*, *Sobu*, *Renming net*, *Xinhua net*, *Zhonghua net*, *CCTV International*, *Guangming Net*, *People's Law net*, *China Railway net*, etc. And the prominent media in foreign countries have also published news and comments concerning about this incident. As a result, people started to regard this incident as a synonym for “Urban House Forced Demolition Incident”. “*Jiahe* Incident of Hunan province” has more than 96900 searching results on the *Google*.

⁹ This four-point (*Si Bao*) project included: (1) concluding within the timeframe established by regulations

employees who were unable to persuade their relatives to agree to vacate their homes in a timely manner or whose relatives refused to sign the *chaiqian* agreement would face the two results that as follow:

(1) temporary suspension of their public employment; (2) loss of the right to receive their salaries”¹⁰

Through complaint letters and visits by the evictees, the plight of Jiahe County’s citizens attracted a great amount of attention from the Chinese national press, especially by the internet. Finally, the State Premier Wen Jiabao was aware of the matter. And then under Premier Wen’s order and the central government policy, the Ministry of Construction together with the Hunan Provincial Government dispatched a special investigation team to look into the incident.

2. Investigation Result

The investigation concluded that the Jiahe County Government had:

(1) issued a “Construction Land Use Planning Permit” to the developer without having conducted a planning survey of the development site;

(2) issued a “Construction Land Use Approval Notice” to the developer prior to having undertaken the prescribed procedures for selling and conveying land use rights;

(3) issued to the developer a “Public Lands Usage Permit” without the developer having paid the requisite land sale fee;

(4) issued a residential *chaiqian* permit to the developer without the developer having established a *chaiqian* plan or having adequately provided for the required compensation fund for displaced persons;

the process of appraising the fair level of compensation to be paid; (2) concluding and signing the formal compensation agreement between the developer and the occupants to be displaced; (3) vacating the land and buildings being condemned and handing over the relevant deeds, titles, permits, etc.; and (4) making appropriate arrangements for assisting displaced households in locating new homes. In addition the aforementioned public employees were charged with the task of ensuring that their relatives not “create deliberate provocations,” “start quarrels,” collectively participate in petitioning higher-level governmental organs for relief, or join in any class action lawsuits to oppose the Demolishment and Relocation process.

10 One of the stories illustrates the results of this policy. Li Jing is a nurse at the Jiahe County Hospital. Because Li’s elderly parents were unable to vacate their home in accordance with the developer’s timetable, she not only lost her salary for that year, but also was involuntarily reassigned from the County Hospital to a small rural clinic.

(5) issued forced eviction execution notices to 11 households without having complied with the issuance procedures established by regulation, such as formal hearing requirements;

(6) together with the County Communist Party Committee, abused its executive powers in pushing forward the process of implementing the development project of Zhuquan Commerce Mall, wrongly took retaliatory actions against 11 public servants, and wrongly imprisoned three people.¹¹

3. Final Resolution

As a result of the investigation, the Hunan Communist Party Committee and Hunan Provincial Government held a meeting, **declaring** that in the Jiahe Incident administrative power was abused, laws and regulations were broken, and that citizens' interests were damaged bringing about severe consequences, **demanding** that in the future leaders of all levels should learn a lesson from this incident to establish procedure and supervision system of execution, should carry out liability system, assessing system and accountability system of administration law, and **forbidding** the courts to participate as wrecking crews. The county mayor and the Communist Party Secretary of Jiahe County were both dismissed, other officials involved in the development project received various degrees of Party and administrative disciplinary actions, and the Hunan provincial procurator's office initiated criminal proceedings. In addition, the residents of the area designated for the project brought suit against the County Housing Management Bureau demanding that the *chaiqian* at issue be carried out in accordance with the applicable laws. Meanwhile, punishment to public servants involved in this incident was repealed.

III . Analysis of Various Parties' Expected Benefit-Costs in Chaiqian

There were three parties involved in the Jiahe case: the local government, the developer, and the evicted residents. One after another these parties appeared on stage to act out a contemporary Chinese urban *chaiqian* drama¹²—the clash of power, rights, and interests. Various parties' expected costs and benefits will be analyzed below.

11 See Xinhuanet, "the State Council agrees the resolution of Jiahe Case", June 4, 2004.

http://news.xinhuanet.com/newscenter/2004-06/04/content_1509005.htm(accessed Dec.10, 2005).

12 Some of the forced demolition incidents also involve other mainstays like community people, banking financial institutions, intermediary organizations and so on. The further illustration will be omitted here.

1. The Government

1.1 Get Land Sale Profits.

Local governments might promote *chaiqian* to reconfigure the city and improve the city's scene, which are valid goals. However, a local government is also induced to engage in *chaiqian* transactions that sold urban lands to developer at a high price in order to reap observable revenues. So the government's land sale profits are directly related to the developer's quoted price (including land sale revenues paid to government and compensation fees paid to evicted residents).¹³ We suppose the total costs of *chaiqian* is relatively unchanged, the developer gives the less compensation fees to the evicted residents, the more revenues will give to the government (although the developer does not need to hand in all the residual capital to the government, the government can get other profits by tax and other means). Therefore, the local government in general shares the developer's interests, and always prefers to form alliance with the developer to promote *chaiqian* and urban reconstruction work.

1.2 Officials Seek to Achieve Performance Goals.

This is a kind of overt interest. In the process of urbanization, industrialization and modernization of China, urban construction has been speeding up; on the other hand, the catchphrase that "Development is the absolute principle"(Deng Xiaoping's remarks) also arouses the enthusiasm of government officials at all levels for professional achievement. Thus, local officials are eager to demonstrate notable results of their work, either for the sake of promoting the public interest of the people or for the sake of personal promotion. Realistically, the latter objective is probably closer to the heart of local officials, and the best way carry that out is to promote those perceptible and public-known urban redevelopment projects, with little bearing on the welfare of the common people. Many local officials obtained higher official position and greater benefits by means of various "image projects" and "short-term actions". Incidents emerge endlessly where officials break away from good practice, act recklessly, and construct blindly, finally causing high

¹³ In recent years, as a result of the great price difference between the land sale and collection, some of the local governments are seeking high land sale profits by way of administrative transference in response to the call of

"Operate the City". According to some statistics provided by some departments, the national land sale gaining has added up to more than 9100 billion yuan in the recent 3 years. In some areas, the land sale gaining has already covered half of their financial revenue. Some of them even outrun the financial revenue in corresponding period if regarded as gaining apart from budgets. See Fang Chen and Honghe Zhang, "how large is the black hole for the loss of land sale profit?" Xinhuanet, August 5, 2004. http://news.xinhuanet.com/newscenter/2004-08/05/content_1715703.htm(accessed Dec.10, 2005).

levels of public outrage. According to the theory of public choice, these posters indicate a plain truth: the government officials are also economic person with the motivation to win promotion and get rich, to seek recognition for professional achievement, and to “maximize self-interest”, their rights and interests are in disaccord between individual officials (or factions of leaders) and the evictees residents, and common people; sometimes they are even in direct conflict: the more returns officials get from professional achievement, the more costs to the public welfare. This situation is well described by the Chinese saying “*yi jiang gong cheng wan gu ku*” (a single general’s victory is built on the drying bones of ten thousand soldiers).

1.3 Rent Seeking by Officials.

This is a kind of covert interest. After the *Jiahe* incident took place, relevant organs carried out investigations, finding out that the developer (*Jiahe Zhubuan Shangmao Cheng Development Corporation*) only spent 2.1 million RMB yuan in getting the right to use 120,000 square meters state-owned land (equal to 30 RMB yuan per square meter). However, according to *Rules of Jiahe County on Norm Land Price and Collecting Fees of State-owned Land Use*, the price of this land should have all been 900-1,500 yuan per square meter, which means that the developer only paid 2.1 million RMB yuan to buy the right to use of state-owned land that worthy 100 million RMB yuan, 30 times the difference between the both. Obviously, the tremendous margin was carved up by corrupt officials and those offered bribes. ¹⁴ When interviewed by one reporter from CCTV, Xia Shemin, deputy director general of *Jiahe* Bureau of State Land and Resources, explained, “(through negotiation) the land price was reduced from 808 yuan to 100 yuan (but only 30 yuan turned in to state finance), and the margins were aimed to be used as *Chaiqian* fees for the evictees.”¹⁵ But so far, it is still unknown where this sum of money has gone. It is most likely that the money has been peculated usurped by some officials or by officials and the developer jointly.

1.4 Earn Follow-up Profits from Administration.

Once an urban construction project is completed, whatever purpose it is for, it will be under the administration of the government and the government can get long-term profits from administration (including revenue, technology supervision, food sanitation and so on); moreover, all underling administration organs of the government can “share the profits”.

¹⁴ See “Beijing Youth” newspaper, “Jiahe County Forced Demolition Incident”, June 29, 2004.

¹⁵ Refer to some comprehensive reports on “New Beijing” newspaper, May 8, 2004.

Thus, it is easy to understand why every time starting a large scale urban development and reconstruction project, the government will organize all executive branches and their employees to help the developers to *chaiqian* and to give a green light to them in relevant administrative procedures, in disregard of procedural prescriptions of the law, including the essential hearings.

2. The Developer

The existing developers generally get the state-owned land in the land market through different ways that include bidding, auction, *chaiqian* and so on. In both bidding and auction, the developers can only obtain those lands fixed predetermined plots. In public auction, generally “the highest bidder” will win the land (the process should be transparent based on law). In addition, as for those lands allocated wholly for public interest, there will be transferred to the users by the government, and the *chaiqian* process should be transparent based on adequate laws and regulations. But in this part, the author only analyzes the developers’ costs and profits under the mode of commercial *chaiqian* such as the *Jiabe* case. It is well-known that the developers aim to seek maximized profits with minimized costs. But how can they get their ends? They in generally have two ways to obtain these ends:

2.1 Seeks to lower the fee for the grant of land use right and the compensation fee for the evicted residents, meanwhile increasing the (evicted residents) price of buying back the houses.

China’s laws (especially *Regulation on the Administration of Urban House Demolishment and Relocation*) have not made any lower limits on minimum fee paid in *chaiqian* compensation, so the developers have definite space to control certain costs amount of maneuvering space, and they certainly expect to pay as little as possible. Article 15 of *Law of the People’s Republic of China on Administration of the Urban Real Estate* stipulates, “A land user shall pay a fee for the grant of land use rights in accordance with the grant contract. Where a land user fails to pay such fee in accordance with the grant contract, the land administration department shall have the right to rescind the contract and may also demand the compensation for the breach of contract.” As for this dealing with this rule prescription, the developers always try to pay lower fewer fees for the grant of land use rights by haggling with the government or even “bribing” the officials taking in charge. In addition, in accordance with the prevailing *Regulation on the Administration of Urban House Demolishment and Relocation* , the sum of payment of monetary compensation to the evictees is decided on the basis of evaluating the real estate market price for the demolished houses in that location, zoning and building area in real estate market according to the location, use and acreages of the demolished houses, but detailed rules are supposed to be made by the governments of every province, autonomous region and municipality directly under the Central Government (Article 24).;

Besides, the standard for the displacement subsidy and the temporary relocation subsidy is also supposed to be set by the governments of every province, autonomous region and municipality directly under the Central Government (Article 31). In practice, according to the principle of “adjusting measures to local conditions”, when making “regulations” or “detailed rules” related to *chaiqian*, the governments of every province, autonomous region and municipality directly under the Central Government sometimes leave those “standards” to the control of the subordinate cities and counties. Consequently, real estate appraisal evaluation institutions and the right of deciding detailed executive rules of appraisal are ultimately in the hand of every local government, while the evictees have no rights to decide to resist or to petition. Naturally, the developers put the emphasis pressure on the local governments, so as to greatly cut short the costs in getting land use rights, house price evaluation, the subsidies of displacement and temporary relocation.

When the evicted residents buy back the newly developed houses, the “market price” was constituted of all possible costs in development and all kinds of revenues and government profits.¹⁶ In particular, the sale price of commodity houses usually includes all kinds of costs, resulting in the high price of newly developed real estate that is much more than the compensation fees given to the evictees. This leaves space for the developers to increase the costs of new houses at will.¹⁷

In the following text, the author will take issues in *chaiqian* and reconstruction of affordable housing (housing project for low-income urban residents) as an example. The Chinese government promotes “housing projects for low-income urban residents” to solve housing problems for low-and-medium wage earners, so the developers are supposed to sell affordable houses at a price composed of compensation fees for the taking and *chaiqian*, surveying and design fees, prophase engineering fees, fees for construction and erecting work, fees for establishing basic facilities in residential quarters, 1% to 3% of managing fees, interest of loans, revenues and the like. At the same time, in order to decrease construction costs of “housing project for low-income urban residents”, the government stipulates that all those lands used for “housing project for low-income urban residents” shall be supplied by the municipality government through administrative transfer, and that local

16 Usually includes fees for taking and *chaiqian*, fees for land exploitation, fees for revenue, fees for mating, fees for municipal fundamental facility, interests, tax, and governmental gains.

17 Seeing from its composition in a certain real estate exploitation project in Beijing, the house price includes 13 kinds and 71 items in total: they are compensation fees for expropriation, compensation fees for relocation, other fees for land exploitation, fees for house construction and erecting work, fees for subsidiary construction, fees for outside construction, fees for public construction of residential quarters, fees for environmental protection and greening, business tax, city construction keeping tax, managing fees, profits, etc. Among all those fees, many are not included in the sale price, for example, the fees for outside construction, fees for subsidiary construction, fees for municipal administration and “four fundamental fees”, etc. And those four items have already covered 30% of the house price.

governments shall derogate relevant charges. In principle, expenses in fundamental facility construction of city planning are paid by the municipality government; expenses in non-profitable public construction of residential quarters are split equally between the government and the house sale price.¹⁸ Therefore, if the developers undertake the construction work of affordable housing, they can be exempted from many costs, so that development costs will be reduced. However, laws in China have few restrictions on sale price and buyers' qualifications; therefore it is easy for the developers to take advantage of affordable housing construction projects to seek large, quick profits. All these problems lead to the result that affordable housing sometimes becomes the "favorite" of the developers---high profits and low limit and supervision, but the common people usually do not benefit.

2.2 Wish to avoid negotiating compensation fee with evicted residents one by one, and lobby the government to carry out forcible execution.

In business district development and reconstruction site, the number of evicted residents varies from several hundred to tens of thousand; in order to save time and costs, the developers wish to avoid negotiating the compensation fees with evicted residents one by one. Therefore, the best choice is to pay some "rent" (or make certain economic promise) to the government so that the government will be "hired" to take forcible measures to finish *chaiqian* work upon the expiration of time limit, but this is totally illegal. Article 10 of *Regulation on the Administration of Urban House Demolishment and Relocation* prescribes that the demolisher may carry out demolishment by himself, or entrust entities qualified to demolish it, but the law issued that administration organs of house demolition and eviction can not be entrusted as the demolisher.

3. The Evicted Residents

3.1 Seeking Maximization of Living Conditions and Chaiqian Compensation by Means of Transfer of Land Use Rights and/or Replacement Housing.

3.1.1 Compensation for transfer of land use rights. As saying goes: "House is carried by the land." Citizens' houses are always built on some land. China has a system of Socialist public land ownership. Article 10 of the Constitution stipulates that urban land is owned by the country. Thus, the government, as representative of public land owner, may obtain

18 US New York Public Management Research Institute, and the Economics of Finance and Trade Institute of Chinese Academy of Social Sciences, *The Reform of regulations on Chinese Urban House* (Beijing: Economic Management Press, 1996), 50.

fees for the grant of land use rights when it unilaterally decides to take back the land or agrees to grant land use rights. However, in accordance with the *Regulation on the Administration of Urban House Demolishment and Relocation*, the demolished residents can not get compensations for land use rights when the land use rights they enjoy are abolished (state requisition), but only for their houses demolished. This is unreasonable and illegal. In addition, Article 19 of *Law of the People's Republic of China on Administration of the Urban Real Estate* only protects commercial developers' rights to get compensated in the primary market of land transfer. As for those right owners of land use after transfer, it gives no protection. In accordance with Article 42 of *Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas*, if some one, who gets the land use rights through assignment, transfers his real estate, the term the transferee can enjoy land use for is the remaining years of the term of use as stipulated in the contract for assigning the right to the use of the land minus the number of years in which the transferor has used the land. With respect to residential houses, generally the purchasers buy the houses with the land use rights for more than 65 years after paying the developer for the fees for the grant of land use rights and other revenues, so if the government decides to take back the land use rights, they shall get reasonable compensations. However, in practice, grounded on deficient compensations to the evictees and overrated development costs, the developer gets the marginal profits for free.¹⁹

With regard to land compensation criteria, there are three main calculation methods: market price (such as the US, UK, and Hong Kong of China)²⁰, ruling price (such as France), statutory price (such as Korea, Sweden)²¹. For land expropriation, China adopts the method of statutory price, while for urban land mainly statutory price, supplemented by

19 Once the land comes into the market to join in the free circulation, it will be controlled or manipulated by the tremendous speculator. They first control the land and then resell it at a profit; or they will construct high buildings and then elevate the land price in order to seek high profits. The ultimate result is that: on one hand, the real estate business tycoons are created; on the other hand, the numerous consumers cannot afford the high price so that they still live in a poor house. At present, more than 24 million square meters of commercial building and more than 200 thousand square kilometers of high-ranking apartment are available, however, at the same time, many citizens are badly in need of solving the housing problem. A large number of capital is sediment in the real estate business, and this restricts the economic development. The essential reason is that the numerous kinds of fees are excessive and the profits seeking by the developers are too high. See Shouyu Shen, *A General Survey about the Land Law* (Beijing: China Land Publishing House, 2002), 1st edition, 75.

20 On account of the equality of the market economy, the evictees can negotiate with the demolisher to demand for equal compensation in essence, if the negotiation cannot be reached, the evictees have the right to refuse to transfer his land using right and house ownership.

21 See Ling Yang, "The Legal Intension of Land Expropriation", *Social Science Journal*, 9th issue (1999).

ruling price.²² The price calculated through statutory method and ruling method is indeed lower than the market price, so this method, when applied to commercial development, not only increases possibility of improper administrative intervention but also makes the developers obtain completely commercial profits. However, it is extremely unfair that the evictees can only get compensations lower than market value.

3.1.2 Compensations for the housing *chaiqian* and other damages.

In accordance with relevant prescriptions in *Regulation on the Administration of Urban House Demolishment and Relocation*, the evictees can get compensations including compensation for the demolished houses, remove subsidy, temporary allocation subsidy, compensations for disruption of work and business due to *chaiqian* and the like. *The Ministry of Construction' Reply on the Contents of chaiqian Compensations* (March 8th, 1995) stipulates, “In accordance to *Regulation on the Administration of Urban House Demolishment and Relocation* promulgated by the State Council, ‘*chaiqian* compensations’ are constituted by all fees given by the demolishers to the evictees including marginal price in exchanging property rights, compensations for the demolished houses, expenses in purchasing temporary relocation houses and all kinds of subsidies.” Detailed criteria of compensation are decided by local government in the form of legal document, always on the low side. The demolishers directly work out compensation fees grounded on local government’s criteria. As a result, the clauses of “free will” and “equal negotiation” of *chaiqian* compensation agreement have only meanings of forms.

With respect to business loss of non-residential houses, Article 34 of *Regulation on the Administration of Urban House Demolishment and Relocation* stipulates that the evictees shall be “properly” compensated (rather than complete compensation for all the loss). Additionally, it stipulates that the province, autonomous region, and municipality directly under the Central Government may make detailed implement rules. When making implement rules, the local governments, out of prudence, usually require the evictees to resume heavy burden of proof, so that the evictees can hardly be properly compensated. Take *Detailed Implement Rules of Heilongjiang Province on House Demolishment and Relocation* for example, Article 16 prescribes, “the evaluating price of the demolished houses is decided on the basis of: (1) district and location of the house; (2) usage of the house recorded in the house ownership certification; (3) area of the house recorded in the house ownership certification; (4) the structure and degree of newness. If the house ownership certification does not record the house’s usage, it shall be decided by the approval document of urban planning

22 Take the computing formula stipulated by the “Regulations on Beijing House Demolition Estimation” for example: the compensation price for house demolition = (the standard land price * K = the standard house price) * the demolished house area + the cost price for the demolished house. (In this formula, K refers to volumetric efficiency revised coefficient.)

administration organs.” Article 23 stipulates, “With respect to non-residential houses what will be used to exchange another house, if production or business stops because of *chaiqian*, the demolisher shall compensate the evictee at one time grounded on the revenues the evictee should turn in the last year, average salary and transition period.” Therefore, if claiming for business loss, the evictee has to bring forth the house ownership certification recording the usage or the approval document of urban planning organs. But in fact, none of the counties of Heilongjiang requires that the house owner shall go to relevant organs to do alteration registration, nor requires that house owner of individual business shall get approved by the urban planning organs (even in some places, there are no specific organs taking charge of registration of house usage alteration). Thus, the evictees can not be compensated for business loss. It is evidently unfair.

3.1.3 Seeking maximization of *chaiqian* compensations. In the process of *chaiqian*, the evictees, as reasonable persons, will not in the least “have their hands tied”, and many of them actively safeguard their rights in accordance with the law and strive to come to an agreement at equal status and relatively fair price. Upon the evil effect caused by forced demolition, they also try to protect their interests through petition, litigation and even appeal. In practice, some “shrewd” evictees take the opportunity of economic development to ask for over-high compensation fees, and even exhaust all possible ways of increasing the present appraisal value of the property being condemned and demolished. Motivated by interests, if without common approach to reach the super-profit, they will find out various unbelievable ways. The most typical example still took place in Jiahe county of Hunan province, but the leading actors are those farmers who mobilized to exploit four last-minute means of increasing compensation from the developer or the government (*si qiang*) rather than the county council or government who promotes the policy of “*si bao, liang ting*”.²³

23 When a journalist from the “Economic Reference Newspaper” recently conducted some interview in places including Jiahe County, he found that the former action of forced demolition guided by the government is weakened, but the demolition has not stepped into a sound cycle. On one side, the demolition cost provided by the government is quiet limited; on the other side, the evictees rack their brains to raise the price, so that the interplay of the demolition turns out to be a lose-lose dilemma. After the Jia He Incident, in 2005, the journalist witnessed the farmers in Changsha County “scrambling for building illegal new houses, fitting up, digging fishing pool, and growing fruit trees”. Nowadays, in some combination places between the cities and courtsides, the mood for “4 scrambling” is prevailing. “A lot of regulations on demolition have been published from the central government to the local government; some detailed standard has already been worked out. However, once they are put into practice, they usually don’t work properly.” One of the cadres who is in charge of the Yan Quan River rebuilding

Said to the journalist. “The key is that the demolisher and the evictee have a different understanding about the regulations. The evictee often makes a deliberate misinterpretation out of context, they insisted on those which can benefit them and derecognize those which cannot benefit them.

Objectively speaking, there are some evictees who take the opportunity of *chaiqian* to demand for super-high compensations in every place of China.²⁴ However, one thing that should not be neglected is that those evictees who actually get over compensated are usually closely related to local government officials or the developer and that there are few evictees who only depend on themselves to overpower local government and the developer. Furthermore, compared to the gross profits after land development of the developer, their so-called super-high price is still low. Hereby, only comparing the price asked by the evictees with their purchasing power after demolition, can we judge whether their price asked is super-high.

3.2 Paying High Costs v. Losing Welfare Entitlements, A Possibility Becoming Victims of the “New Enclosure Movement.”

Normally speaking, people’s welfare will be greatly improved, since dwellers can move from old houses to newly-conditioned ones and business men can move from bad-conditioned shops to well-planned and new ones. We should admit that most projects of reconstruction of old city and urban development satisfy common people’s needs. But, in fact, compared to powerful governments and developers, the evictees are at a lowly status. If lacking equal negotiation and fair compensation, *chaiqian* actions can rarely be good for the evictees. It is currently more common to see exploitation and a worsening of living conditions as a result of *chaiqian* actions. Frequently, a *chaiqian* action not only causes an evicted person to lose his or her home, itself, but also various intangible losses relating to the location of the former home. Intangible losses include a series of problems that increase the cost of living, such as loss of sources of livelihood, or inconvenient means of transportation and communications, inconvenient medical care, and inconvenient access to schools. Because various forms of compensation do not reach the actual losses of property interests experienced by evicted persons, this causes the evicted person to suffer an ongoing deterioration in quality of life and living conditions.

Consequently, some have termed China’s current urbanization and modernization process the “**New Enclosure Movement.**” As in *Jiabe* case, the evictees are forced to pay out costs even including their position as civil servants and social relationships. Whether the evictee cooperated with the demolisher was closely related to his relatives’ political future and salaries, which was reported by the media as “penalty of the whole family line” and “taking advantage of hostage to carry out *chaiqian* work”. Even, sometime marriage was

²⁴ Few of the evictees who insist on “fighting” will face two situations: one is gaining surpassed compensation compared with those obedient evictees; the other is being forced to demolish by the government and regarded as the negative typical model, gaining nothing in the end.

sacrificed for *chaiqian* incident.²⁵ Evidently, interests have driven an increase in the compulsory and discretionary nature of the *chaiqian* process, and this has unavoidably become a major stimulus for the rise in conflicts between residents, developers, and local governments. In some districts, compulsory *chaiqian* has proliferated, without any allowance for consultation or negotiation and sometimes even accompanied by violence. In others, the phenomenon of initially plentiful compensation funds being chopped up and misappropriated has become commonplace. In the contemporary social environment, by comparison with well-entrenched governments and developers, evicted households undoubtedly occupy much weaker ground. Because they also lack effective channels to safeguard their own lawful rights and interests, they can only passively endure their plight.

4. Other relevant institutions and groups.

In practice, commercial banks are sometimes the key fourth party, because the governments and most of the developers usually assign an agreement with the bank beforehand, trusting the bank with collecting and paying in *chaiqian* compensation. Besides, relatives of the evictee can be ranged into the evictee; notary institutions, auction companies, law firms, accounting firms, guard companies and other agency also take part in the battle of *chaiqian* with different ways. In order to be convenient, these institutions and groups will be left out of account.

IV . China's present difficulties of legal solution for *chaiqian* disputes

While the causes of a series of pernicious *chaiqian* incidents and the disorderly state of affairs are many, they may be summarized as follows.

1. Systematic contradiction which leads to 30 years' covering old debts.

It can not be denied that housing *chaiqian* in China at present is the inevitable phenomenon caused by rapid development of the city after China's reform and opening up, which has prominent historical and practical meanings.²⁶ In transitional period from planned

25 The JiaHe Incident involves more than 1100 evictees, 160 officials. At least 6 to 7 public employees who were unable to persuade their relatives to agree to vacate their homes in a timely manner or if those relatives refused to sign the Demolition and Relocation agreement (*chaiqian* agreement), faced temporary suspension of their public employment. A former nurse at the County Hospital named Lijing received "four Bao" obligation paper on September 29th, and then she was suspended of her public employment and lost the right to receive her salary. Her husband also received the "obligation paper" and "supervision of task card" for many times. The sisters Li Hongmei and Li Xiaochun divorced on the same day, more seriously, 3 evictees were imprisoned and deprived of freedom, and they were discharged not long ago.

26 Through house demolition, we can optimize the distribution system of the urban land and house resources, raise the living standard of the citizens, improve the living environment, accelerate the

economy to market economy, *chaiqian* of large scale inevitably will cause inter-subjective conflicts of interests and varied disputed incidents. It is no wonder for the systematic contradiction. But readers may ask, “in the era of the planned economy, there were also *chaiqian* actions, why did not cause fatal social problems (perhaps there were also some conflicts, but without severe effect)?”

In the author’s opinion, the reasons are as follows: Under the planned economy, interests are usually unitary---personal interests are consistent with state and social interests; even if there were some conflicts, settling mechanism is unitary---political (administrative) policy were used to solve problems uniformly. Besides, at that time, individuals had neither land ownership nor house ownership; individuals’ residential interests, medical and educational treatment were all tied to their working institutions. Hereby, individuals’ value and interests were hard to emerge, and it became a basic mode that the government put forward requirement, working institutions agree, and individuals moved without any condition. However, under market economy, different classes and different individuals have multiform interests, so that settling mechanisms become multiform too. *Chaiqian* is not limited to public purpose and private purpose, so when government power “controls” economic resource under planned economy whips together with the developer’s interests and takes advantage of administrative resources to promote businessmen’s commercial interests, inevitably the evicted residents will resist government’s demolition actions and be suspicious of their equity. Once this kind of “interest re-allocation” is generalized, resisting and suspiciousness will become the evictee group’s common acknowledge, so that petitions and protests of large scale will take place.

2. The system for property protection is deficient, and norms of land ownership and house ownership are lagging.

China has a system of Socialist public land ownership. *Constitution of the People’s Republic of China* stipulates, “The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.” (Article 10, Item 3 of). According to the above constitutional rules, China has a system of public land ownership. The land is owned by the state, at the same time, the law recognizes private ownership of homes and land use rights of citizens. Thus, when two kind of rights coexist on one thing,

speed of urban fundamental infrastructure construction and rebuilding of the old city, perfect the function of the city, boost the economic development. Reports from the “Beijing Evening Paper” 2004, Feb., 11th: according to some statistics provided by some departments, in those years, more than 17 million square meters of house have been demolished, involving 1.5million citizens. By way of house demolition, about 0.5 million citizens have parted from the houses in poor and dangerous condition, they move to the new houses and their living condition is highly improved.

citizens' ownership over their homes becomes a fragile kind of right that can easily be encroached upon by the power of the state, which is, moreover, carried out under the banner of legality. Even if without an agreement with the evictees, the developer can "legally" start *chaiqian* disregard of the evictees' house ownership, as long as the developer has obtained land use right from the government or from the second land market.

3. Developers and Evictees are not equal before the law

A prerequisite to ensuring the fairness and reasonableness of *chaiqian* compensation is to ensure that the person undertaking a *chaiqian* action and the evicted person have equal legal status. *The Regulation on the Administration of Urban House Demolishment and Relocation* (the first version was promulgated by State Council in 1991, and was amended on June 6 of 2001 and put in force from November 1 of 2001) . We should admit that the amended *Regulation* pays more attention to protection of the evicted residents, for example definitely specializing preconditions for the demolisher to get *chaiqian* permit, stipulating that the government *chaiqian* management organs may not be the person undertaking the *chaiqian* action, and similarly may not be entrusted with carrying out a *chaiqian* action, extends time limit of litigation if the evictees are disaffected with the ruling, modifies "the demolisher may properly compensates for economic losses of disrupted work and business caused by demolishing non-residential houses" into "the demolisher shall properly compensates for economic losses of disrupted production and business caused by demolishing non-residential houses" and the like, in order to prevent inequality between the developer and the evictees. However, reason for statutory *chaiqian* prescribed in the amended *Regulation* is "for the purpose of strengthening urban *chaiqian* management, safeguarding the lawful rights of the parties to a *chaiqian* action, and ensuring the smooth conduct of construction projects." This violates the 2004 Constitutional Amendment Article 13-3. Moreover, it artificially supplies legal protection for the developers in the first class land market higher than for common people.

It is especially worthwhile to mention that the developer seems to be able to find sufficient foundations for his improper actions from *The Regulation on the Administration of Urban House Demolishment and Relocation*. Take expenses of gross costs for example, in accordance to the *Regulation*, the developer shall hand in *chaiqian* fund to administration organs and be subject to their supervision rather than to the evictees, but this rule can not be efficiently carried out in practice. Additionally, in order to guarantee finishing *chaiqian* as scheduled, people's government of the district or county concerned may order relevant departments (such as the people's court or arbitration institution) to enforce the demolition upon the application of the developer based on *chaiqian* compensation agreement. Whereas, after force demolition, no matter what dissenting opinion the evictees have, the demolished

houses can not be restituted any more. For the developer, the ultimate result is nothing more than compensations for the houses, whether demolishing or not, hereby, his best choice is to demolish the houses in the first instance, disregard of the ruling result of the court or arbitration institutions. This can well illustrate, when there seems to be many laws and regulations to protect the rights of evicted residents, why on the contrary their rights and interests are easier to be infringed.

4. The government's administrative power excessive intervention in the private transaction; the roles overlapping among the administrative permission granting, adjudication, and enforcement; lack of administrative behavior supervision mechanisms.

The Regulation on the Administration of Urban House Demolishment and Relocation grants excessive powers to the government, but few articles are related to supervision. Related to government functions are Article 5, 6, 7, 9, 16, 29, and 34 to 38, in which from 34 to 37 stipulate supervision over the developer and evictees, and only Article 38 prescribes recapitulative government liability but without binding force. To the contrary, the Regulation grants excessive powers to the government. For example, administrative departments have the right to decide whether or not permit *chaiqian*; once *chaiqian* is permitted, it means that use of this land has been taken back, thus evicted residents lose possibility to negotiate with the developer (see Article 5 and 6). Article 16 stipulates, "Where the person carrying out the demolishment and the person whose house is to be demolished or the person carrying out the demolishment, the person whose house is to be demolished and the person who rents out his house fail to reach an agreement of the compensation and relocation regarding the house demolishment and relocation, upon parties-concerned application, it is subject to ruling of house *chaiqian* management department. Where the department is the evictee, it is subject to ruling of the government at the same level. Ruling shall be made within 30 days upon application. If disaffected with the ruling, each party may file a lawsuit to people's court within 3 months upon receiving the ruling. Where the demolisher has compensated evictees with money or supplied *chaiqian* relocation house or temporary house, execution of *chaiqian* need not stop during litigation." Article 17 stipulates, "Where the evictee or tenant refuses to move out upon the expiration of the time limit for removal as provided in the ruling, the people's government of the district or county concerned shall order relevant departments to enforce the demolishment, or the demolishment may be enforced by the people's court upon the application of the organ that has made the ruling." According to two articles mentioned above, the government can directly intervene *chaiqian* disputes and decide whether or not a particular *chaiqian* action would be reasonable, thus dominating the demolished houses' fate of exiting or not.

In order for a *chaiqian* action to be legal, there must first be a *chaiqian* permit. In the *chaiqian* process, the government not only draws the lines with respect to when permission to undertake a *chaiqian* action will or will not be granted, but also decides whether or not a particular *chaiqian* action would be reasonable. The government is not only a player, but also the referee. The government monopolizes each parts of *chaiqian* operation without clear authority and supervision over each other, so that impairs supply value of power resources, which will do great harm to equity of administrative actions and to public confidence in the equity. The *Regulaiton* stipulates administrative ruling and forced demolition, in order to guarantee *chaiqian* to go on smoothly and prevent evictees' lawful rights and interests from infringement. However, in some districts, without parties' application, *chaiqian* administrative department can make administrative rulings. They erroneously believe that adjudication of *chaiqian*-related disputes is without restrictions on circumstances and time, but requires only that demolition be restrained in order for administrative adjudication to be permissible. And in some districts there exists the phenomenon of blindly forcing residents to relocate without distinguishing between circumstances, without discussing form, and without regard for procedures. According to statute, in a commercial *chaiqian* action, the government may only grant administrative permission and conduct administrative hearings, but may not take the place of the person undertaking the *chaiqian* action. Yet in a majority of *chaiqian* cases, the local government not only intervenes through activities such as sending notices or warnings or issuing documents, but even will dispatch enforcement personnel on its own initiative to directly participate, thus substantively interjecting itself in *chaiqian* activities, which causes inefficient supply of administrative resources and harm to public confidence in administrative organs.

5. Civil Remedy mechanism can not be supported by state public power, so that can not efficiently safeguard rights.

On a general level, from the perspective of legal relationships of China law, the *chaiqian* process primarily involves two types of respectively legal relationships: administrative and civil. The former includes: relationship between administrative organ and permit applicant formed by order of *chaiqian* permit; relationship between ruling organ and the applicant and another party formed by administrative ruling, administrative liability in forced demolition. The latter includes: relationship between the demolisher and the evictees formed by *chaiqian* compensation agreement; relationship between the demolisher and the evictees where they fail to reach an agreement of compensation and institute a civil lawsuit to the court; relationship between the demolisher and the evictees where the evictees' lawful rights and interests have been infringed. However, in accordance to one judicial interpretation (Adopted at the 1358th meeting of the Judicial Committee of the Supreme People's Court, *Interpretation No. 9 [2005] of the Supreme People's Court*), "Where the person carrying out the demolition and the person whose house is to be demolished or the person carrying out

the demolition, the person whose house is to be demolished and the person who rents out his house fail to reach an agreement of the compensation and relocation regarding the house demolition and relocation and file a civil litigation on the dispute over compensation relocation, the people's court may not accept it and shall notify the parties concerned of applying to the relevant department for an arbitration according to Article 16 of *the Regulation on the Administration of Urban House Demolishment and Relocation*.” This judicial interpretation fixes the legal status of relationships arising from demolition actions as fundamentally subject to resolution by means of administrative channels. To sum up, prevailing regulations and rules related to *chaiqian* all regulated *chaiqian* procedure generally, civil relief avenue can not be supported by state public power, so it can not efficiently safeguard rights.

6. Compensation Mechanisms and Statutorily Pre-Established Compulsory Chaiqian Procedures are Imperfect; Land Sale and Chaiqian Public Notification Systems and Mechanisms for Public Participation are Inadequate; Evaluation and Legal Supervision Mechanisms are Imperfect.

Firstly, the Urban *Chaiqian* Management Ordinance provides that a compulsory *chaiqian* action may only be undertaken after payment of monetary compensation or making alternative housing arrangements for the displaced person. Detailed rules are lacking. Secondly, urban planning regulations are unguided, resulting in a large quantity of unnecessary *chaiqian* actions and waste. In pushing urbanization, some city governments non-practically accelerate urban construction of fundamental facilities, and carry out image projects exceeding economic endurance and wasting man power and money. At the same time, the governments lower compensation criteria and infringe evictees' lawful rights and interests, so that disputes and even large-scale collective petitions come endlessly. Thirdly, evaluation of *chaiqian* is largely discretionary in nature, resulting in harm to the legal rights and interests of evicted persons. New *Regulation* adopts a criterion different to the old one, but after the new one has come into effect, the developer still compensate evictees in accordance with the old one, hereby, evictees are strongly against this kind of actions, leading to a large number of collective petitions. Fourthly, building demolitions are without controls, with serious safety hazards. Finally, some local administrative organs issue *chaiqian* permits rashly, causing more *chaiqian* disputes.

V. Some Suggestions and Legal Solutions

Though *the Urban House Chaiqian Administrative Regulation* was revised in 2001, its present implementation has been against the gist of the 2004 Constitutional Amendment. Compared with the rights and interests of the evicted households or property owners, the Regulation's guiding ideology concerns more about the needs of city construction. It is

inclined to administrative regulation and executive efficiency but ignores civil rights protection of citizens; it values substances but despises procedures and pays not enough attention to social equality; due to lack of scientific legislation, it does not reflect and regulate the real *Chaiqian* relationship under market economy and therefore, it's not able to balance the interests among interested parties justly, let alone effectively solving the puzzle of weak people that difficult implementation of existing laws and regulations. Obviously, we need to rethink and reconstruct our legal system of demolition and relocation centered by this administrative Regulation.

1. Implement Constitutional Amendments actively and Prohibit Illegal Chaiqian

On March 14, 2004, the Tenth National People's Congress passed the Constitutional Amendment. Article 33 paragraph 3 of the Amendment stipulates that "The State respects and preserves human rights." Article 39 of the Amendment provides that "The home of citizens of the People's Republic of China is inviolable." The above constitutional stipulations are fundamental principles that must be strictly followed during the process of the legislation and implementation of *Chaiqian* laws and regulations. However, due to the resistance and certain traditional ideological elements, the Real Rights Law, enacted by the Fifth Session of the Tenth National People's Congress on March 16, 2007, shows certain retrogression on the establishment, modification, transference and extermination of real rights. Article 42 of the Law stipulates that "For the need of public interest, collectively owned lands and the houses or other real estates of units, organizations or persons can be expropriated in accordance with legal limits of authority and procedure." Paragraph 3 of this article provides that "Compensation shall be paid when expropriating houses or other real estates of units, organizations or persons to protect the expropriated persons' legal rights and interests; when expropriating dwelling houses, expropriated person's dwelling condition shall be ensured." Compared with the Draft of the Law (the sixth one), these provisions eliminated those terms like "prohibiting the unlawful transference of ownership of private property usurping the name of demolition and relocation or expropriation", which not only ignores vicious incidents and cases where public power arbitrarily infringes private legal property rights, but also does not solve many practical problems, like the definition of "public interest" from an essential point of view, in what case "compulsive demolition and eviction" can be applied, the allocation of responsibility between administrative organizations and the Peoples' Court and how to ensure the overall compensation of citizens' and legal persons' interests, etc. The Law's declaration meaning surpasses its practical meaning and effect, which makes the Law, as "a constructive and

important law in our socialist legal system with Chinese characteristics”²⁷, meet great setbacks soon after its enactment.

But in practice, some proactive and effective innovations in legal system have been carried out by some local governments to properly solve the problem of unlawful forced *chaiqian*. For example, according to reports, on March 21, 2005, *the draft of the Administrative Regulation of the Chaiqian of Collectively Owned Houses in Beijing* was published.²⁸ As the first regulation of Beijing on *Chaiqian*, the Draft will explicitly prohibit barbarous forced demolition and eviction when it is passed and implemented. In future, one to 5 billion RMB yuan of fine may be imposed if forced demolition and eviction happen on collectively owned houses when there is no properly signed agreement of compensation and relocation; relative persons in responsibility may be imposed on criminal responsibilities.²⁹ In June 2005, Jiangxi province began to center on the supervision of urban house demolition and relocation and set up a system requiring reports to the higher level when compulsive demolition is necessary. All cities with districts must conduct a general investigation on all the projects of urban demolition and relocation since November 2003 in areas under their jurisdiction.³⁰ At the end of 2003, the Committee of the People’s Congress of Sichuan Province passed and published the Administrative Regulation of Urban House Demolition and Relocation of Sichuan Province (Revised). The Regulation stipulates that without approval from the city or county governments or without decision from the Court for compulsive demolition and eviction, the demolisher and relative units shall not cut off the water, electricity or gas supply of those residents or tenants who refuse to move, and shall not compulsively demolish their houses either.

2. Relative laws and regulations should limit the use of chaiqian actions to those serving a public interest and compensation should be paid before requisition and expropriation.

In the U.S., What worth notice are the three elements stipulated in the Fifth Amendment of Federal Constitution of the U.S.: due process of law, just compensation and public

27 See Zhaoguo Wang, “Explication of the Draft of the Real Rights Law,” (Explication in the Tenth National Congress the fifth meeting on March 8, 2007), Sina.com.cn. <http://news.sina.com.cn/c/2007-03-08/095612462756.shtml>(accessed May 26, 2007).

28 See Jinghua Times, “The Draft of Beijing Administrative Regulation of Chaiqian: barbarous Chaiqian may receive a fine as high as 5 billion,” A09, March 16, 2005.

29 See New Beijing Report, “Least 1 Billion Fine on Barbarous Demolition if Not Properly Relocated and Possible Criminal Responsibility,” March 16, 2005.

30 See Ywol.cn, “Jiangxi: Compulsive Demolition Must Report to Higher Level Government,” June 3, 2003.

<http://news.ywol.cn/20050601/ca32634.htm>(accessed Oct. 13, 2005).

use.³¹ Article 10 item 3 of China's Constitution stipulates that "The state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law." The Amendment of the Constitution clearly requires compensation for both expropriation and requisition. These provisions ensure constitutional protection on peasant and house owner when they lose their right to use the land and suffer certain losses due to expropriation or requisition. Actually, article 10 and article 13 of the Constitution clearly stipulates the three conditions requisition of lands and urban demolition and relocation must satisfy: firstly, for the need of public interest (elaborated in later parts); secondly, under the regulations of law in practice; and thirdly, with compensation paid. Not one of them can be dispensed with.

*3. To clarify the nature of *chaiqian* actions as administrative actions, to strictly restrict the authority over *chaiqian* and to promote the unification and essentialization of the power and responsibility of *chaiqian* subjects.*

Firstly, The Regulation of Urban Housing *Chaiqian* does not give a clarified definition of "Chaiqian", nor does it distinguish commercial exploitation and public use. However, whether it's from the perspective of semantics or from the perspective of practice, "Chaiqian" is a concept with a color of administrative compulsion. Therefore, it should be clarified that administrative organs are direct subjects of demolition and relocation; its action of demolition and relocation should belong to Specific Administrative Actions.

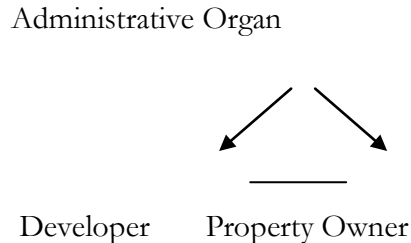
Secondly, the authority to demolition should be strictly limited and proper procedure in accordance with law should be followed.

Thirdly, disputes in demolition and relocation could be solved through administrative reconsideration or administrative litigation. Generally speaking, there are three practicable

31 The Fifth Amendment of American Constitution specifically provides that "no one shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Amendment requires two conditions before the government requisitioning someone's property. Firstly, the government must pay the land owner just compensation, in other words, compensation on fair market price. Secondly, the government can only requisition the land for public use, which is generally understood as constructions of roads, bridges and other infrastructures for public use or owned by the public. The Fourteenth Amendment of the Constitution requires state governments to get private properties through due process of law and to ensure citizens equal protection by law. The two conditions required by the American Constitution are also included in almost all state constitutions. All those provisions show that without due process of law or just compensation, no private property shall be expropriated or requisitioned, which actually gives land owners rights to sue governments who did things wrong or unlawfully. See Dawei Zhou, "Judicial Principles and Precedents in Land Expropriation and House Demolition and Eviction: Brief Discussion on Reform in Administrative Regulations of Urban House Demolition and Eviction in China," Beijing Planning and Construction, Vol. 1, 2004.

use for pure commercial purpose is civil action between developer and property owner, which is for civil law to regulate.

b. Triangle Model (picture 2)



In the triangle model, administrative organ only plays a role for macro-regulation. After administrative ratification for demolition, only developer and property owner play roles in compensation issues, where the developer is the direct subject for compensation. Therefore, compensation in agreement is the legitimate way of compensation. Where agreement cannot be reached, administrative organ can intervene as an arbiter, which is the model our country follows.

Finally, illegal administrative actions involved in demolition include illegal ratification, illegal decision and illegal compulsive demolition. While The Demolition and Relocation Law authorizes governments right of compulsive demolition, compulsive demolition is based on administrative decisions. Due to the involving relationship between compulsive demolition and administrative decisions and localism and regionalism, power-money exchange and many other negative elements in practice, compulsive demolition always causes worse effect to administrative decided matters and a series of social problem. Therefore, I propose to take back the right of compulsive demolition for the court to implement *The Law of Land Administration of the People's Republic of China*

4 . Each procedure of *chaiqian* (including public hearing, public notice, appraisal, compensation and etc.) shall be open and transparent.

As specified in the above, lack of public notice and public participation in house demolition practice leads to various disadvantages such as the evictee's preventive protection of rights and interests is weak, reasonable countermining state has not been formed, perfect supervision mechanism of administrative actions has not been formed and the like. Therefore, we should adapte from the experience of developed western countries that always introduce public participation mechanism as early as land planning period and keep carrying out the policy of transparency and democracy from the beginning to end of requisition. According to the provision of "due process of law" in the Fifth Amendment of US Constitution, expropriation usually should follow the steps as follows: (a) preliminary

notice. (b) The government appraises the expropriated property. (c) the government delivers appraisal report to the expropriated party and initiates the first offer related to compensation fee, while the expropriated party may also put forward counter-offer. (d) the government holds public hearing to explain necessity and rationality of the expropriation; if the expropriated party is doubtful of lawfulness of expropriation, they can bring forward judicial challenge to force the government to give up expropriation. (e) If the government and the expropriated party could not reach an agreement as for compensation fee, usually the government submits the dispute to the court for ruling. In order for public interest, the government may pay the compensation fee of proper amount as earnest money and petition for getting expropriated property in advance before final verdict. Except that the property owner can prove the amount is too small, the court will sustain the amount of earnest money. (f) the court requires both parties to engage independent asset appraiser respectively to submit appraisal report and exchange in the court. (g) both parties negotiate over compensation fee for the last time, striving for reconciliation. (h) if they can not get to an agreement, civil jury formed by ordinary citizens will decide the amount of “reasonable compensation fee”. (i) as the verdict goes into effect, the government shall pay compensation fee and get expropriated property within 30 days.³²

5. Broaden Channels for Land Control Funds and Financing; Set up Reasonable Compensation Criteria; Adjust Measures to Local Conditions; and Take Various Effective Measures to Compensate Fairly so as to Ensure the Implementation of Chaqian Plan.

5.1 Broaden Channels for Land Control Funds and Financing.

China resorts to a public ownership of land. And after pursuing the market economy, China has implemented the mode of government’s monopoly over land market³³, namely, the government controls land circulation in the first market; developer’s sale price is based on the cost of land. This includes parts of land sale fee and compensation. If it goes up, the cost of land and the final price will rise correspondingly. Firstly, the government on the one hand carries out land plan strictly and controls the total volume of land; on the other hand

32 See Dawei Zhou, “Judicial Principles and Precedents in Land Expropriation and House Demolition and Eviction—Brief Discussion on Reform in Administrative Regulations of Urban House Demolition and Eviction in China”, Beijing Planning and Construction,” Vol.1, 2004.

33 This mode is characterized by: (1) monopoly over policy making; (2) monopoly over market admittance of construction land and control over vested market; (3) monopoly over producing of construction land (the government determines a uniform mode of expropriation, purchase, development, price-fixing, transfer); (4) monopoly over competition in land managing, such as expropriation, purchasing, reservation, appraisal, price-fixing, trade and so on.

it resorts to developers due to the financial inadequacy. This easily leads to not only the unneutral place of the government, but the shortage of capital and lack of liquidity keep the land price up in the first market. Second is the single form of purchasing in the present real estate market. Basically house purchasers use their earnings to buy commodity houses or affordable houses. The later have a good many problems as mentioned above, and purchasing commodity houses again would be the value-added goods in the next circulation phase. This is legal for the developers. However, as to *chaiqian* for personal interests, compared to commercial margin the developers make, the evictees cannot get enough compensation when their right of land use is deprived unconditionally. In a word, in order to solve the problems like deficient use of land resources, low ability for citizens to repurchase houses, unbalanced market price, etc., we have to broaden channels for land control funds, explore land securities, bank credit funds, non-bank financial institutions funds, foreign bank funds, urban land reserve bonds, the land trust, and other financing means.³⁴

5.2 Set up Reasonable Compensation Criteria and Compensate Fairly.

According to the legal practice in the U.S., fair compensation mainly can be seen in the following three aspects. 1. The fairness among parties/subjects, which means that it is not only the owners of the property but also the related beneficiaries, such as the tenants of the real estate, that can be entitled to compensation; 2. The fairness among objects, which means the object of the compensation does not limit to the real estate itself; it should also include the accessories to the real estate and the intangible assets concerning the good will of the real estate; 3. The fairness of appraisal, which should based on the fair market value.³⁵

34 See Zhaoyun Liu, and Wenyu Li, “General Theory on Rasing Capital for Land Reservation,” *Social Science Journal*, Vol.1, 2003; Shuangxing Dai, “Securitization of Land: Important Selection of Financing Modes in Urban Land Reservation System,” *Real Estate Financing*, Vol.1, 2004.

35 See Dawei Zhou, “Judicial Principles and Precedents in Land Expropriation and House Demolition and Eviction——Brief Discussion on Reform in Administrative Regulations of Urban House Demolition and Eviction in China,” *Beijing Planning and Construction*, Vol. 1, 2004.

5.3 If the economic condition permits, chaiqian compensation criteria can be raised properly to introduce the financing mode of house mortgage.³⁶

For example, in June 2005, Shenyang promulgated the *Standard for the Compensation/Indemnity of the Dismantlement of House*.³⁷ On the average, compensation for urban house was raised by 100 Yuan per square meter. Compensation standard for floor space in the first area was raised from 3097 Yuan to 3195 Yuan. Moreover, the unit price set by the government would prevail if the unit price of the real estate market was lower.³⁸ As to the compensation for the commercial buildings, Japan has endowed the evictees an option to purchase and to buyback³⁹; Macao has stipulated to compensate in cash, and convert into stocks, etc. In addition, they all stress to render comparatively sufficient compensation for business loss.

5.4 In order to make sure chaiqian goes on smoothly⁴⁰, variously demolition and relocation means⁴¹ would be applied, such as relocation before chaiqian, relocation within certain areas, centralized relocation, and offering incentive to “voluntary chaiqian”, etc.

In practice, Fifth Session of the Tenth Hangzhou People's Congress has promulgated proclamations of relocation before issuing *chaiqian* certificate. It prescribes as “for the

36 For instance, in developing and improving residential policies, Canada formed financial development mode of house mortgage. In addition, mortgage and domicile organizations successively promoted payable residential policies, insurance plans and other methods to help many Canadians to realize their “dream of having a domicile” and greatly improve living and residential conditions. See Bing Huang, “Analysis of Domicile Financial Market Construction and Development Modes of China,” *Social Science Journal*, Vol.1, 2000.

37 See Yihua Gong, and Baohua Zhang, “Shenyang Implemented Connecting and Recording System of Chaiqian in order to Stop Evil Chaiqian,” *Xinhua net*, June 7, 2005.

http://news.xinhuanet.com/house/2005-06/07/content_3054727.htm(accessed March 12, 2006)

38 See Qingwei Shi, “Shenyang Increases Compensation Criteria of House Demolition and Eviction,” *Xinhua net*, June 3, 2005. http://news.xinhuanet.com/zhengfu/2005-06/03/content_3040845.htm(accessed March 14, 2006)

39 Jianshun Yang, *General Theory on Administrative Law of Japan* (Beijing: China Legal Press, 1998),474-475.

40 Such means as relocation before chaiqian, centralized chaiqian and the like are helpful to eliminate the evictees' worries that there will be no dwelling place after chaiqian.

41 According to scholars' investigation of many evicted households unwilling to move, about 6% think that compensation fee is too low, 30% think that after chaiqian there is no place for dwelling or relocation, 48% are unwilling to leave their native land, 16% have other reasons. Most of the evictees unwilling to move is mainly because their non-economic loss has not been fairly compensated. Mingcan Chen, “Research On Protection Of Private Rights in the Process Of Land Development: Take Redelimiting Rural Land As the Example,” *Journal of National University Of Taiwan on Construction and Research on Urban and Rural Areas* (Taiwan District), Vol.9(1998):68.

projects that are not included in the year's *chaiqian* plan, they cannot be granted the *chaiqian* permit. Those that are in the plan would be carefully examined, and those did not carry out the relocation houses would not get *chaiqian* permit. In principle, except for urban infrastructure new *chaiqian* plan will not be approved so as to control the emergence of new transition people. Whoever does not relocate the evictees in time, their new project and real estate development project would not be approved.”⁴²

5.5 Review laws and regulations on chaiqian to identify problems of fair procedure and efficiency; lower the cost of chaiqian procedure; improve the value of good faith of administrative bodies and developers.

Regulations of Sichuan Municipality for the Administration of the Demolishment of Urban Houses was passed and promulgated on Nov.25th, 2005, according to which, when examining the application for *chaiqian* permit, departments in charge of *chaiqian* should invite representatives from People's Congress, the community, etc. to evaluate *chaiqian* plans, *chaiqian* compensation program, and to earmark the *chaiqian* compensation and relocation fund for its specified purposes only. When using the *chaiqian* compensation and relocation fund, the demolisher should report to the departments in charge. According to the principle by the State Council, the amount of the monetary compensation is then set by the evaluation of the real estate market based on factors of the demolished house like location, purpose, floor space. Without the approval of the city or the county government or rulings by the People's Court, demolishers and the concerned units shall not cut the evictee or the tenants from water supply, power supply, and gas supply, and shall not forcibly demolish the houses.⁴³

6. On the basis of judicial independence, deal with civil lawsuits caused by commercial development disputes and encourage parties concerned in chaiqian to deal with the disputes on negotiation; as for those tenant who wish to prevent force eviction through negotiation and reconciliation, provide more methods and legal aid to solve the disputes.

42 See people.com.cn, “Rule of building settling houses before *chaiqian* permit issued,” January 31, 2005. <http://www.people.com.cn/GB/news/37454/37461/3155672.html>(accessed March 14, 2006).

43 See Lihua Zhang, and Ying Luo, “People's Congress of Sichuan Province Amended Regulations to Protect Evictees' Rights and Interest,” people.com.cn. April 5, 2005.

<http://www.people.com.cn/GB/14576/25033/3296326.html>(accessed May 9, 2006).

*6.1 Civil lawsuits caused by commercial development and *chaiqian*.*

This kind of lawsuits includes three instances: the first one is lawsuits of *chaiqian* agreement. In accordance with *The Regulation on the Administration of Urban House Demolishment and Relocation* and relevant rules and regulations of local government, when failing to get to *chaiqian* agreement, the demolisher and the evictee can either apply for administrative ruling to file a civil lawsuit related to compensation. But if the demolisher applies for administrative ruling at first, then the compensation issue will also be resolved together. The second is lawsuits of tort in *chaiqian*. Where the demolisher and the evictee come to an agreement of *chaiqian* compensation, if the demolisher infringes the evictee's other legal rights and interests in the process of *chaiqian*, the evictee may file a lawsuit of tort. The third is to claim for double compensation. In accordance with Article 7 and 8 of *The Interpretation of the Supreme People's Court on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Contract for the Sale of Commodity Houses* (April 28, Interpretation 7 [2003] of the Supreme People's Court) , where the demolisher infringes the agreement of compensating the evictee by alternative housing and resells the housing, the evictee may claim for double compensation.

6.2 The negotiation process of governmental projects of expansions of new urban areas and rebuilding of older urban areas is generally as follows:

(a) the government proclaims development projects in urban areas; the evicted households elect delegates to take part in negotiation; (b) the relevant governmental organ in charge of *chaiqian* communicates with the evictees and initiates relocation plans; (c) the demolisher signs *chaiqian* agreement with those evictees who agree to the plans; (d) the relevant governmental organ in charge of *chaiqian* (or arbitration committee) invites related entities and parties concerned to hold formal consultative conference; (e) grounded on formal consultative conference, for those evictees that have not agreed to the original plans, the relevant governmental organ in charge of *chaiqian* puts forward another relocation plan and discuss with them; for those that have signed *chaiqian* agreement, deeply discusses the contents of relocation plan; (f) the demolisher and the evictee reach an agreement and sign *chaiqian* contract.

6.3 Urban house demolition and eviction can result in temporary traffic inconvenience of those tenants living near the evicted area; on the other hand, after the development is finished, it may bring new opportunities of employment and commerce.

Under the circumstance of urban public construction such as roads and bridges, it may affect their life, work and traffic in the future; meanwhile, this kind of public construction

using public resources for public purposes has an impact on the common interest of the related area. All tenants living in the area shall have the right to know the true information and to participate in negotiation. However, with respect to these tenants who are not parties concerned in *chaiqian*, none of the existing laws and regulations related to *chaiqian* supplies channels for them to air opinions, demur or apply for administrative reconsideration. Therefore, one way to make up this disadvantage is to attract all the tenants in the community to discuss together through announcement and hearing in the period of land planning before *chaiqian*.

6.4 A multiplex dispute solving mechanism means that in society varied dispute solving methods with given functions and characteristics coexist harmoniously and form a kind of complementary procedural system satisfying multiple needs of social beings and dynamic adjusting system.

With social modernization and urbanized development, a great number of urban house demolition disputes emerge endlessly which make the social endurance ability especially judicial mechanism confronted with huge test. Under this circumstance, the state, legal professionals and the public shall all take a realistic attitude. With respect to the choice of public policy, in order to improve efficiency, quality and effect of dispute solving, they should first pursue social stability and harmony, emphasize social effect of dispute resolving, and promote development of multiplex dispute solving mechanism (including highly effective and flexible administrative ruling mechanism, impartial arbitration mechanism, intermediation mechanism of self-ruled organizations, legal aid mechanism of law firms, consulting mechanism in judicial procedure, delegate mechanism in *chaiqian* negotiation, and mechanism of “house demolition agency company”⁴⁴ directly participating *chaiqian* negotiation), so that laws can be implemented normally, the infringed rights can be redressed reasonably, and ultimately the society gets back to harmony.

⁴⁴ At present, in southeast districts along the sea, a lot of house demolition agency companies have been established to help the evictees dun, negotiate and deal with capital.

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