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 the public interest, as well as between individual interests, commercial interests and the political power, are becoming increasingly fierce and have raised concerns about social stability. Well-connected construction developers try to gain 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 a law and economics approach and two game theory models to directly illustrate situations encountered in practice under the Property Law (State Council of China, 2007), Law of the People's Republic of China on Administration of the Urban Real Estate, the City Planning Law of the People's Republic of China, especially the Regulation on the Administration of Urban House Demolishment and Relocation (State Council of China, 2001), and other national laws and regulations. The author also describes the current difficulties for the legal resolution of relocation disputes, and proposes some possible solutions.

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Les agences gouvernementales, les promoteurs immobiliers, les tribunaux, les entreprises de construction et la population chinoise sont tous, pour des motifs la plupart du temps diamétralement opposés, parties prenantes dans des litiges qui, bien au-delà de l’antinomie classique entre les intérêts particuliers et collectifs, finissent par remettre en cause certains fondements de la société chinoise.

En effet, il est de plus courant que des campagnes massives d’expulsions et de relocation des populations soient organisées, au mépris des droits de l’homme, par des promoteurs immobiliers avec la complicité plus ou moins officielle des autorités municipales ou régionales chinoise.

L’auteur, à partir du cadre législatif aujourd’hui en vigueur en Chine, de théories économiques classiques et de deux modèles issus de la théorie des jeux, tente d’analyser ce phénomène, d’expliquer les difficultés rencontrées et propose aux lecteurs quelques solutions et des recommandations.

Der Mensch wohnt dichterisch auf dieser Erde." – Holderlin

I  INTRODUCTION

A home is essential to human life. People need homes in order to settle down and follow their pursuits. The home is a space for private life, and is the nexus of a person’s rights to privacy and property. People are territorial animals, and without private residences they feel adrift. In China, which is undergoing transformation, ordinary people find it particularly important to own their own homes. Housing has become the symbol of success in one’s livelihood and a critical issue in the protection of civil rights.

Having experienced intense revolution and chaos and having lived through periods of unendurable shortage, Chinese citizens are now looking forward to better days. Part of this vision is the dream of owning a home – a universal desire for a quiet place of one’s own. This demand for house ownership, together with the rapid modernisation, industrialisation and urbanisation of social life in China, has led to the large-scale expansion of new urban areas and the rebuilding of older

** Translated from the German this reads: "Human beings enjoy material abundance, and live poetically on the great earth."
urban areas, which practically makes China look like "a big construction site."\(^1\) Meanwhile, most kinds of *xinfang* (complaint letters and visits appeals),\(^2\) *shangfang* (appeals to the higher authorities for help),\(^3\) and controversial cases caused by urban housing "chaiqian" (demolition/ eviction and relocation)\(^4\) are on the increase.

Chinese urban housing *chaidian* has resulted in many appeals to government. The appeals office of the Ministry of Construction estimated that, from 1999 to the

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1 Since 1998, when the 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 metres. In 2005, the average living space in urban areas exceeded 26 square metres. See the article on xinhuanet: "The Glorious Accomplishment during the Tenth Five-year Period, Exhibition of Prosper" [http://news.xinhuanet.com/politics/2006-01/04/content_4007862.htm](http://news.xinhuanet.com/politics/2006-01/04/content_4007862.htm) . In 2006, the established housing area in urban and rural districts amounted to 1.33 billion square metres, and it cut down by 0.69 billion square metres in 2007. See [www.chinairn.com/doc/40140/406854.html](http://www.chinairn.com/doc/40140/406854.html).

2 "Xinfang" (complaint letters and visits appeals) in China's legal system means that people can write complaint letters 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.

3 The importance of review was recognised in Ancient China. Early Han Emperors required difficult cases to be forwarded to the imperial court for judgment, and from at least the Sui Dynasty (AD 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 Dynasty (AD 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 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 Kozol "I'll Take It All the Way to Beijing: Capital Appeals in the Qing." (1988) 47(2) Journal of Asian Studies, 291-315. Many scholars believe that the petition system *xinfang* and *shangfang* in contemporary China, retain many of the traditional elements of the capital appeals 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 on public use or commercial purpose, meanwhile they relocate the tenants 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.
first half of 2001, the Ministry dealt with up to 18,000 appeal cases, of which 18% related to chaiqian. 80% of collective appeal cases were related to chaiqian. From January 2002 to August 2002, the Ministry has dealt with 4,820 written appeals, of which 28% were related to chaiqian, 1,730 written appeals from groups, of which 70% were relevant to chaiqian. By the end of 2003, the State Bureau of Letters and Visits had accepted about 50% more complaint letters and visitors than the same period of the past.\(^5\)

Second, disputes over chaiqian have led to a large number of administrative lawsuits. According to the statistics of 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.

Lastly, "chaiqian" has led to many violent incidents all over China, pushing the 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, after returning from a lunch break one day to find his home demolished, set himself afire and burned to death at the office of the municipal demolition department, to the forced eviction case of Jiahe County in Hunan Province which raised concern of the Premier Wen Jiabao;\(^6\) from the 2000 Incident in Beijing in which more than 10,000 evictees jointly filed an administration lawsuit\(^7\) to the "Chongqing case" that stirred the whole country in the March of 2007,\(^8\) similar cases emerge endlessly in

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\(^6\) This incident is discussed below in Part II.

\(^7\) In February 2000, concerning the problem of the relocation and house demolition, 10357 evictees jointly filed an administration lawsuit to the Second Intermediate People's Court of Beijing. At that time, this incident was well-known as the "10000 people appealing incident". www.cin.gov.cn/indus/speech/2002091601.htm.

\(^8\) When the tenth National Congress (the fifth meeting) passed the "Real Right Law" by a majority, a news report and pictures about "Chongqing Case" appeared on the Internet, which stirred the politicians' and general public's additional concerns about the urban house demolition problem. One citizen still opposed the demolition and he had dug a deep hole more than 10 metres after the developer did 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
every city of China, shaking the foundations of social harmony and stability. It is clear that chaqian has emerged as an area especially prone to disputes.

Exacerbating the situation is the fact that the relevant regulations⁹ are of questionable efficacy, and as a result the efficiency of social resources allocation as currently prescribed have been challenged to some extent. Whose interests should prevail in conflicts between the parties concerned? What is wrong with the legal relations between supply and demand in the problem of chaqian? What is the actual effect of the current laws and regulations? Why are the current rules invalid and how can they be optimised? How can the rights, liabilities and responsibilities of the concerned parties be optimally distributed? All these questions urgently need to be researched and addressed.

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 analyses the interplay of "power, rights, and interests" between the government, developers and evictees in the process of chaqian. On the basis of this conceptual analysis, the author examines the different roles and behaviour regulated by these laws, and uses cost-benefit analysis to illuminate situations encountered in practice and the difficulties in obtaining legal resolutions of chaqian disputes. Finally, the author presents solutions and legislation suggestions, based on a transnational comparison of relevant legal problems in rural land requisition and urban housing chaqian.

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⁹ Including the Property Law (by State Council of China, 2007), the Land Management Law, the City Planning Law, the Law on Administration of the Urban Real Estate, especially the Regulation on the Administration of Urban Housing Demolition and Relocation [Regulation].
THE JIAHE CASE—VIOLENT FORCED DEMOLITION AND RELOCATION INCIDENT

A Narrative of the Incident

"Whoever dares to disregard the face of Jiahe will be dismissed"; "Whoever cannot 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."

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

On 2 August 2003, 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. Public employees who were unable to persuade their relatives

The case study, the statistics and facts mentioned in the following part can be found at the web-page http://news.sina.com.cn/temp/z/hnjiahe/index.shtml and some related reports on South Weekly, New Beijing, Beijing Youth, etc. According to a rough estimation, in quite a short period of time, dozens of domestic media reported the "Jiahe County Forced Demolition Incident", such as the web media Sina, Sohu, Renming net, Xinhua net, Zhonghua net, CCTV International, Guangming Net, People's Law net, China Railway net, etc. And prominent media in foreign countries have also published news and comments concerning this incident. As a result, people started to regard this incident as a synonym for "Urban House Forced Demolition Incident." "The Jiahe Incident of Hunan province" shows more than 96900 search results on Google.

11 “谁不顾嘉禾的面子, 谁就被摘帽子”; “谁工作通不开路子, 谁就要换位子”; “谁影响嘉禾一阵子, 我就影响他一辈子”。

12 This four-point (Si Bao"四包") project included: (1) concluding the process of appraising the fair level of compensation to be paid, within the timeframe established by regulations; (2) concluding and signing the formal compensation agreement between the developer and the occupants to be
to agree to vacate their homes in a timely manner or whose relatives refused to sign the chaqian agreement would face temporary suspension of their public employment and lose their right to receive their salaries.\textsuperscript{13}

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 via the Internet. Finally, the State Premier Wen Jiabao became aware of the matter. Under his 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.

\textbf{B 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 chaqian permit to the developer without the developer having established a chaqian plan or having adequately provided for the required compensation fund for displaced persons;

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

\textsuperscript{13} 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.
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.\textsuperscript{14}

\textbf{C Final Resolution}

As a result of the investigation, the Hunan Communist Party Committee and Hunan Provincial Government held a meeting. They declared that in the Jiahe Incident administrative power was abused, laws and regulations were broken, and that citizens' interests were damaged, bringing about severe consequences. They demanded that in the future leaders at all levels should learn a lesson from this incident about the importance of establishing proper procedures and a system of supervision over implementation. Moreover, there should be systems of liability, assessment and accountability in place for administration law, and the courts are forbidden to participate in the process as wrecking crews.\textsuperscript{15} 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 \textit{cháiqían} at issue be carried out in accordance with the applicable laws. Meanwhile, the public servants whose jobs and salaries were lost as a result of the incident were reinstated.

\textbf{III ANALYSIS OF VARIOUS PARTIES' EXPECTED BENEFIT-COSTS IN CHÂIQIÁN}

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 \textit{cháiqían} drama\textsuperscript{16} – the clash of

\begin{footnotesize}
\begin{itemize}
\item[15] In this incident, according to the request of Jiahe County, the court of Jiahe county appoint some judges to participate in the wrecking crews and carry out the forced evictions. The local court lost their independence and became the tool of the executive authorities.
\item[16] Some of the forced demolition incidents also involve other mainstays like community people, banking financial institutions, intermediary organisations and so on.
\end{itemize}
\end{footnotesize}
power, rights, and interests. Various parties' expected costs and benefits will be analysed below.

**A The Local Government**

1. **Get land sale profits**

   Local governments might promote *chāiqiān* to reconfigure the city and improve the city's layout, which are valid goals. However, a local government may also be induced to engage in *chāiqiān* transactions to make money, especially if land is sold to a developer at a high price. 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.\(^{17}\) The total costs of *chāiqiān* are likely to be relatively unchanged, so the government will make more money if the developer pays lower compensation to evicted residents. Although the developer does not need to hand all the residual capital to the government, the government can get other profits by tax and other means.

2. **Officials seek to achieve performance goals**

   Local government officials may have an overt interest in achieving performance goals. In the process of urbanisation, industrialisation and modernisation of China, urban construction has been speeding up. At the same time, the catchphrase that "Development is the absolute principle" (Deng Xiaoping) arouses the enthusiasm of government officials 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. The objective is best met by promoting highly visible urban redevelopment projects, which have little bearing on the welfare of the common people. Many local officials obtained higher official positions and greater benefits by means of various "image projects

\(^{17}\) In recent years, as a result of the great price difference between the land sale and collection, some 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 gain has added up to more than 9100 billion RMB in the last 3 years. In some areas, the land sale gain has already covered half of their financial revenue. Some of them even outran the financial revenue in corresponding period if regarded as gaining apart from budgets. See reports on Xinhua net, Beijing August 5th, “How large is the black hole for the loss of land sale profit?” from the reporter Chen Fang and Zhang Honghe, http://news.xinhuanet.com/newscenter/2004-08/05/content_1715703.htm
“形象工程” and "short-term actions（短期行为）". According to the theory of public choice, these slogans of Jiahe county indicate a simple truth: government officials have the motivation to win promotion and get rich, to seek recognition for professional achievement, and to maximise self-interest. Thus, there is a disaccord, and sometimes even direct conflict, between the interests of individual officials and the evictee-residents, common people. The higher the return officials get from professional achievement, the higher the costs to the public.

3 Rent seeking by officials

Officials may have a covert, corrupt interest in rent seeking. Investigations of the Jiahe incident found that the developer (Jiahe Zhuquan Shangmao Cheng Development Corporation) only spent 2.1 million RMB for the right to use more than 70,000,000 square metres of state-owned land (equal to 30 RMB per square metre). 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 been 900-1,500 RMB per square metre, which means that the developer paid 30 times less than what should have paid. Obviously, the tremendous margin was carved up by corrupt officials and those offered bribes.18

4 Earn follow-up profits from administration

Once an urban construction project is completed, for whatever purpose, it will be administered by the government. The government can then get long-term profits from administration, including revenue, technology supervision, food sanitation and so on. Moreover, lower level administration organs of the government can "share the profits." Thus, it is easy to understand why every time the government starts a large scale urban development and reconstruction project, it will organise all executive branches and their employees to help the developers to chaiqian and to give a green light to them in relevant administrative procedures.

B The Developer

It is well known that the developers aim to seek maximised profits with minimised costs. They generally have two ways to obtain these ends:

18 See "Jiahe County Forced Demolition Incident" on "Beijing Youth" newspaper, 29 June 2004.
1 Seek 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 the Regulation) do not set minimum compensation levels for chiqian, so the developers have the latitude to control certain costs, and certainly hope to pay as little as possible. In addition, in accordance with the prevailing Regulation, monetary compensation of evictees is decided on the basis of evaluating the real estate market price according to the location, use and acreage of the demolished houses, but detailed rules are supposed to be made by the local governments (Article 24). The standard for the displacement subsidy and the temporary relocation subsidy is also supposed to be set by the local governments (Article 31). Consequently, local governments ultimately control the rules for market appraisal as well as the bodies that carry out the market appraisals. Evictees have no rights of resistance and no right to petition. Naturally, the developers put pressure on local governments. In particular, the sale price of commodity houses usually includes all kinds of costs. The result is that the high price of newly developed real estate 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.

2 Desire to negotiate reduced compensation fees with evicted residents on an individual basis, and lobby the government to carry out enforced execution

In business district development and reconstruction sites, the number of evicted residents varies from several hundred to tens of thousands. Developers avoid the time and cost of negotiating with individual residents by paying "rent" (or making certain economic promises) to the government so that the government will be

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19 Usually includes fees for taking and chiqian, fees for land exploitation, fees for revenue, fees for meeting, fees for municipal fundamental facility, interests, tax, and governmental gains.

20 Analysing 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 alone already covered 30% of the house price.
"hired" to take enforceable measures to finish chaqian work upon the expiration of time limit, although of course this is totally illegal. Article 10 of the Regulation prescribes that the demolisher may carry out demolition by himself, or entrust entities qualified to demolish to do it. The law also states that administration organs of house demolition and eviction may not be entrusted to act as the demolisher.

C The Evicted Residents

1 Seeking maximisation of living conditions and chaqian compensation by means of transfer of land use rights and/or replacement housing

(a) Compensation for transfer of land use rights

As saying goes: "The house is carried by the land." Citizens' houses are always built on 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 ownership, may obtain fees for the grant of land use rights from the developer when it unilaterally decides to take back the land or agrees to grant land use rights. However, according to the Regulation, residents cannot get compensation for land use rights when their land use rights are abolished. Compensation is limited to loss of their demolished houses. This is unreasonable and illegal.

(b) Compensation for the housing chaqian and other damages

In accordance with the relevant prescriptions in the Regulation, the evictees can get compensation for the demolished houses, removal subsidies, temporary allocation subsidies, and compensations for disruption of work and business due to chaqian. However, detailed criteria of compensation are decided by local government in the form of legal documents, and are always on the low side. The demolishers decide compensation fees based on the local government's criteria. As a result, the clauses of "free will" and "equal negotiation" of chaqian compensation agreement have no substantive effect. With respect to business loss of non-residential houses, Article 34 of the Regulation stipulates that the evictees shall be "properly" compensated, rather than completely compensated for all the loss. Additionally, it stipulates that the province, autonomous region, and municipality directly under the Central Government may make detailed implementation rules. When making implementation rules, the local governments, out of prudence, usually require the evictees to assume a heavy burden of proof. Therefore, in effect it is difficult for evictees to be properly compensated.
(c) Seeking maximum chaiqian compensations

In the process of chaiqian, the evictees, as reasonable persons, will not in the least "have their hands tied". Many of them actively seek to safeguard their rights in accordance with the law and strive to come to an agreement on the basis of equal status and at a relatively fair price. Facing negative effects caused by forced demolition, they also try to protect their interests through petition, litigation and even appeal. There are some evictees who take the opportunity of chaiqian to demand super-high compensations. But the evictees who succeed in getting over-compensated are usually closely related to local government officials or the developer. There are few evictees who can depend on themselves to overpower local government, or the developer.

2 Paying high costs versus losing welfare entitlements: the possibility of becoming victims of the "New Enclosure Movement"

Compared to powerful governments and developers, the evictees have a lowly status. Given the lack of 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. Frequently, a chaiqian action not only causes an evicted person to lose his or her home, but also to incur various losses from moving away from the location. These losses increase the cost of living and could include as loss of sources of livelihood, inconvenient means of transportation and communications, inconvenient medical care, and inconvenient access to schools. Compensation does not cover the actual losses of property interests experienced by an evicted persons, so they suffer an ongoing deterioration in quality of life and living conditions. Consequently, some have termed China's current urbanisation and modernisation process the "New Enclosure Movement." As in the Jiahe case, the evictees are forced to pay costs that may even include their position as civil servants and their social relationships. 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 the contemporary social environment, evicted households undoubtedly occupy a much weaker position than

21 Some of the evictees who insist on "fighting" will face one of two situations: one is gaining higher compensation compared with the obedient evictees; the other is being forced to demolish by the government and regarded as a negative model, gaining nothing in the end.
well-entrenched local governments and developers. Because evicted households also lack effective channels to safeguard their own lawful rights and interests, they can only passively endure their plight.

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:

A System Contradictions and History

It cannot be denied that housing chaiqian in China at present is an inevitable phenomenon caused by the rapid development of the city after China's Reform and Opening, which has prominent historical and practical implications. In the transitional period from planned economy to market economy, large-scale chaiqian inevitably causes conflicts of interests and varied disputed incidents. It is no wonder that there are systematic contradictions. But the reader may ask, "in the era of the planned economy, there were also chaiqian actions, so why did these not cause fatal social problems?"

In the author's opinion, the reasons for this are as follows. Under the planned economy, interests are usually unitary – personal interests were consistent with State and social interests. Even if there were some conflicts, mechanism for settlements were unitary – political (administrative) policy was used to solve problems uniformly. Moreover, at that time, individuals had neither land ownership nor house ownership; individuals' residential interests, medical and educational treatment were all tied to their work units. Under such conditions, it was difficult for individuals' values and interests to emerge, and it became a common mode that the government set forth requirements, working units concurred, and individuals moved without any special conditions. However, under the market economy, different classes and different individuals have varied interests, so that mechanisms for making settlements become varied as well. Chaiqian is not limited to public purposes or private purposes, so when government power that "controlled" economic resources under the planned economy gets bound up with the developer's interests and takes advantage of administrative resources to promote commercial interests, it is almost inevitable that the evicted residents will resist government's demolition actions and be suspicious of the equity of the arrangements. Once this kind of "interest re-allocation" is generalised, resistance and suspicion will become
the evictee group's consensus, so that petitions and protests of large scale will take place.

B The System of Property Protection is Deficient, Norms of Land Ownership and House Ownership are Uncoordinated

China has a system of socialist public land ownership. According to constitutional law, land is owned by the State. At the same time, the law recognises private ownership of homes and land use rights of citizens. Because land is subject to both the rights of the state and the rights of the citizen, the citizens' right to ownership over their homes becomes a fragile right that can easily be encroached upon by the power of the state, which is, moreover, enacted under the banner of legality. Even if without an agreement with the evictees, the developer can "legally" commence chaiqian in disregard of the evictees' house ownership, as long as the developer has obtained land use right from the second land market.

C Developers and Evictees are not Equal before the Law

A prerequisite to ensuring fair and reasonable chaiqian compensation is to ensure that the person undertaking a chaiqian action and the evicted person have equal legal status. However, the stated 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 in the context of a chaiqian action, and ensuring the smooth conduct of construction projects." This violates the 2004 Constitutional Amendment Article 13-3. Moreover, it artificially supplies a legal protection to the developers in the first level land market that is higher than protections offered the common people.

It is especially noteworthy that the developer seems to be able to find sufficient foundation for improper actions in the Regulation. For example, in order to guarantee finishing chaiqian as scheduled, the 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. After houses are demolished, the evictees have no recourse to save their homes. The only remaining option is monetary compensation. This provides an incentive for the developer to demolish first and pay later, regardless of any eventual ruling of the court or arbitration institutions. This illustrates well how the rights and interests of residents are easy to infringe upon even when there seem to be many laws and regulations to protect the rights of evicted residents.

The Regulation grants excessive powers to the government. This includes powers that give administrative departments the right to decide whether or not to permit chaqian. Other powers include the right to make a decision in cases where the party carrying out the demolition and the person whose house is to be demolished, or the person carrying out the demolition and the person whose house is to be demolished along with the party that rents out the house, all fail to reach an agreement about the compensation and relocation. The related parties application, then, is subject to the ruling of the residential chaqian management department. 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 demolition, or the demolition may be enforced by the people's court upon the application of the organ that has made the ruling." The government can directly intervene in chaqian disputes and decide whether or not a particular chaqian action is reasonable, thus determining the fate of the disputed houses slated for demolition. Only Article 38 talks of government liability, but does so without binding force.

In order for a chaqian action to be legal, there must first be a chaqian permit. In the chaqian process, the government not only makes rules about when permission to undertake a chaqian action will or will not be granted, but also decides whether or not any particular chaqian action is reasonable. The government monopolises each part of chaqian operation without clear authority and supervision over parties, which does great harm to the equity of administrative actions and to public confidence in that equity. The Regulation stipulates administrative ruling and forced demolition, in order to guarantee chaqian to go on smoothly and prevent evictees' lawful rights and interests from infringement. However, in some districts, without parties' application, the chaqian administrative department can make administrative rulings. They erroneously believe that adjudication of chaqian-related disputes is without restrictions on circumstances, discussing form, procedures and time, but requires only that demolition be restrained in order for administrative adjudication to be permissible. In a majority of commercial chaqian cases, the local government not only
intervenes through activities such as sending notices or warnings or issuing documents, but will even dispatch enforcement personnel on its own initiative to directly participate, thus substantively interjecting itself, in chaiqian activities. This causes inefficient supply of administrative resources and harms the public confidence in administrative organs.

E Civil Remedy Mechanisms cannot be Supported by State Public Power, so that it cannot Efficiently Safeguard Rights

On a general level, from the perspective of legal relationships within Chinese law, the chaiqian process primarily involves two types of legal relationships: administrative and civil. Administrative relationships include the relationship between administrative organs and permit applicants formed by order of chaiqian permit; the relationship between ruling organs and the applicant and another party formed by administrative ruling, and administrative liability in the context of forced demolition. Civil relationships include the relationship between the demolisher and the evictees formed by the chaiqian compensation agreement; the relationship between the demolisher and the evictees in the event that they fail to reach an agreement on compensation and file a civil lawsuit in the court; the relationship between the demolisher and the evictees where the evictees' lawful rights and interests have been infringed upon. However, in accordance with 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) states:

When 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 on the compensation and relocation necessitated by the demolition, and therefore file a civil litigation on the dispute over compensation relocation, the people's court may not accept it and shall notify the parties concerned to apply to the relevant department for arbitration according to Article 16 of the Regulation.

This judicial interpretation makes demolition actions fundamentally subject to resolution by means of administrative channels. To sum up, with regard to prevailing regulations and rules related to chaiqian and all regulated chaiqian procedures more generally, civil relief avenues will not be supported by State public power, and thus will not be able to efficiently safeguard rights.
F Prevailing Regulations and Rules Provide Imperfect Compensation Criterion, and Especially Disregard the "Non-Economic Losses" of Evicted Residents

Conflicts arising from chaiqian exist mainly because it is easy to demolish the house but difficult to buy a new one. The evicted households are unwilling to move, and thus suffer forced eviction. The major reason is the evictees cannot get sufficient compensation and have low purchasing power. Some relevant investigations indicate that most of the evictees in China have very low purchasing power, particularly in the comparison between chaiqian compensation and the market price of a new house.

G 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

First, while 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. Second, urban planning regulations are unguided and lower compensation criteria, resulting in a large quantity of unnecessary chaiqian actions. Third, evaluation of chaiqian is largely discretionary in nature, resulting in harm to the legal rights and interests of evicted persons. Fourth, building demolitions are without controls, with serious safety hazards. Fifth, some local administrative organs issue chaiqian permits rashly, causing more chaiqian disputes.

V SOME SUGGESTIONS AND LEGAL SOLUTIONS

Although the Urban House Chaiqian Administrative Regulation was revised in 2001, its present implementation has been in conflict with the spirit of the Constitutional Amendment 2004. In comparing the rights and interests of the evicted households and property owners, the Regulation's guiding ideology is concerned more about the needs of city construction than ordinary residents. It is inclined towards administrative regulation and executive efficiency but ignores civil rights protection for citizens. It values substance but despises procedures and pays too little 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 is unable to balance the interests among involved parties in a just manner, let alone effectively solve the problems caused by difficult implementation of existing laws and regulations on behalf of the weaker parties. Clearly, we need to rethink and reconstruct our legal system of demolition and relocation centered by this administrative Regulation.

A Implement Constitutional Amendments Actively and Prohibit Illegal Chaiqian Actions

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.

Certain proactive and effective innovations in the legal system have been implemented by some local governments to address the problem of unlawful forced chaiqian. For example, In June 2005, Jiangxi province began to focus on the supervision of urban house demolition and relocation, and set up a system requiring reports to the higher level when compulsory demolition is necessary. All cities with districts must conduct a general investigation into all the projects of urban demolition and relocation since November 2003 in areas under their jurisdiction.22 At the end of 2005, 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 prohibits developers from cutting off amenities or demolishing houses of tenants who refuse to move without either the approval from the city or county governments or a decision from the Court for compulsive demolition and eviction.

B Relevant 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 USA, expropriation has two forms. One is expropriation without compensation, which is a kind of government police power. It is the restriction on or taking of private properties without compensation, for the protection of public health, security, ethics or well-being. The application of this kind of expropriation is very limited and strictly regulated by relevant laws. The other form is expropriation with compensation from governments before taking private properties, called eminent domain or condemnation. What is noteworthy is that there are three elements stipulated in the Fifth Amendment of Federal Constitution of the US: due process of law, just compensation and public use.23

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 protections on peasant and house owner when they lose their right to use the land and suffer certain loses due to expropriation or requisition. In fact, Article 10 and Article 13 of the Constitution clearly stipulates the three conditions requisition of lands and urban demolition and relocation must satisfy: first, for the need of public interest (elaborated in later parts); second, under the regulations of law in practice; and third, with compensation paid. Not one of these is dispensable.

23 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 requisitions someone's property. Firstly, the government must pay the land owner just compensation, in other words, compensation at a 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 acquire 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 do things wrong or unlawfully. See Zhou Dawei, 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.
C Clarify the Nature of Chaiqian Actions as Administrative Actions, to Restrict the Authority over Chaiqian and to Promote the Unification and Activating of the Power and Responsibility of Chaiqian Subjects

First, the Regulation of Urban Housing *chaiqian* does not give a clarified definition of *chaiqian*, nor does it distinguish commercial exploitation and public use. 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. Second, the authority to demolish should be strictly limited and proper procedures in accordance with law should be followed. Third, disputes in demolition and relocation should be solved through administrative reconsideration or administrative litigation. Finally, illegal administrative actions involved in demolition include illegal ratification, illegal decision and illegal compulsive demolition. While the Demolition and Relocation Law authorises governments with rights to undertake compulsory demolition, compulsory demolition is based on administrative decisions. Due to the involved relationship among compulsory demolition, administrative decisions, localism and regionalism, power-money exchange and many other negative elements in practice, compulsory demolition always causes worse effects than administratively decided matters, as well as a series of social problems. Therefore, the right of compulsory demolition should be for the court to implement the Law of Land Administration of the People's Republic of China.

D Each Procedure of Chaiqian (Including Public Hearings, Public Notices, Appraisal, Compensation and etc) should be Open and Transparent

As specified above, lack of public notice and public participation in house demolition practices leads to various disadvantages such as the evisceration of evictees' preventive protection of rights and interests. These should be remedied. Current regulations specify that all *chaiqian* projects have to go through a process including seeking bids, auction, and publication on the Internet. In reality, however, organisations in the bids process²⁴ are infused and controlled by either family members of government officials or by government officials directly through "hidden stock shares." Therefore, lessons should be learned from the

²⁴ Such as 1) a project command unit created through the combined efforts of many government bureaus; 2) a demolition and relocation institution created by the government; or 3) a land developer company operating under the approval of the government.
experiences of developed western countries that always introduce public participation mechanisms as early as the land planning period and adhere to a policy of transparency and democracy from the beginning to end of requisition.25

E Broden 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 the Chaqian Plan

1 Broden channels for land control funds and financing

China has a system of public land ownership. And after pursuing a market economy, China has implemented a model of state monopoly over the land market.26 The government controls land circulation in the first market. The sale price to developers is based on the cost of land. This includes the land sale fee and compensation. If compensation goes up, the cost of land and the final price will rise correspondingly. First, the government on the one hand carries out the land plan strictly and controls the total volume of land; on the other hand it resorts to developers due to the financial inadequacy. This easily leads not only to non-neutrality of government, but also to the shortage of capital and lack of liquidity which keeps 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 latter 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 chaqian for personal interests, compared to the 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, we have to broaden channels for land control funds, explore land securities, bank credit funds,  


26 This mode is characterised 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.
non-bank financial institutions funds, foreign bank funds, urban land reserve bonds, the land trust, and other financing means.  

2 Set up reasonable compensation criteria and compensate fairly

According to the legal practice in the USA, 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, who can be entitled to compensation; 2) The fairness among objects, which means the object of the compensation is not limited to the real estate itself; it should also include the accessories to the real estate and the intangible assets concerning the goodwill of the real estate; 3) The fairness of appraisal, which should based on the fair market value.

3 If the economic conditions permit, chaiqian compensation criteria should be raised to introduce a new mode of house mortgage financing

For example, in June 2005, Shenyang promulgated the Standard for the Compensation/Indemnity of the Dismantlement of House. It stipulated that the unit price set by the government would prevail if the unit price of the real estate market was lower. As to the compensation for commercial buildings, Japan has

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29 For instance, in developing and improving residential policies, Canada formed financial development modes of house mortgage. In addition, mortgage and domicile organisations successively promoted payable residential policies, insurance plans and other methods to help many Canadians to realise their "dream of having a domicile" and greatly improve living and residential conditions. See Huang Bing "Analysis of Domicile Financial Market Construction and Development Modes of China" (2000) 1 Social Science Journal.

30 See Gong Yihua "Zhang Baohua Shenyang Implemented Connecting and Recording System of Chaiqian in order to Stop Evil Chaiqian" news of July 7th from Xinhua agency.

31 See "Shenyang Increases Compensation Criteria of House Demolition and Eviction" news of 3 July 2005 from Xinhua net.
given evictees an option to purchase and to buy back;\textsuperscript{32} Macao has stipulated to compensate in cash, and convert into stocks, etc. In addition, they all stress the necessity of rendering comparatively sufficient compensation for business loss.

4 \textit{In order to make sure the chайqian process goes smoothly,\textsuperscript{33} various demolition and relocation methods\textsuperscript{34} should be applied, such as relocation before chайqian, relocation within certain areas, centralized relocation, and offering incentives for "voluntary chайqian"}

In practice, the Fifth Session of the Tenth Hangzhou People's Congress has promulgated proclamations of relocation before issuing chайqian certificate. It prescribes:\textsuperscript{35}

for the projects that are not included in the year's chайqian plan, they cannot be granted the chайqian permit. Those that are in the plan would be carefully examined, and those who have not offered the relocation houses would not get the chайqian permit. In principle, except for urban infrastructure, new chайqian plans will not be approved so as to control the emergence of new populations of people in residential transition. Whoever does not relocate the evictees in a timely manner, will not have their new project and real estate development project approved.

5 \textit{Review laws and regulations on chайqian to identify problems of fair procedure and efficiency; lower the cost of chайqian procedures; improve the good faith of administrative bodies and developers}

Regulations of Sichuan Municipality for the Administration of the Demolition of Urban Houses were passed and promulgated on 25 November 2005, according to

\begin{itemize}
\item[33] Such means as relocation before chайqian, centralised chайqian and the like are helpful to eliminate the evictees' worries that they will have no dwelling-place after chайqian.
\item[34] According to scholars' investigation of many evicted households unwilling to move, about 6% think that compensation fee is too low, 30% think that after chайqian there is no place for dwelling or relocation, 48% are unwilling to leave their native area, 16% have other reasons. Most of the evictees are unwilling to move mainly because their non-economic loss has not been fairly compensated. Chen Mingcan "Research On Protection Of Private Rights In The Process Of Land Development: Take Re-delimiting Rural Land As the Example" (1998) 68(9) Journal Of National University Of Taiwan On Construction And Research On Urban And Rural Areas (Taiwan District).
\end{itemize}
which, when examining the application for a *chaiqian* permit, departments in charge of *chaiqian* should invite representatives from the People's Congress, and the community to evaluate *chaiqian* plans, the *chaiqian* compensation programme, 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 principles of the State Council, the amount of the monetary compensation is then set by the evaluation of the real estate market based on factors such as location, purpose, and 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.  

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

(a) Civil lawsuits caused by commercial development and *chaiqian*

There are three types of civil lawsuits available regarding *chaiqian*. The first one is lawsuits surrounding *chaiqian* agreements. In accordance with the Regulation and relevant rules and regulations of local government, the demolisher or the evictee can apply for administrative ruling to file a civil lawsuit related to compensation, if no agreement is reached. If the demolisher applies for an administrative ruling in the first instance, then the compensation issue will also be resolved at the same time. The second is a tort lawsuit 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 tort lawsuit. The third is regarding claims for double compensation. In accordance with Articles 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

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demolisher infringes the agreement of compensating the evictee by alternative housing and resells the housing, the evictee may claim for double compensation.

(b) Urban house demolition and eviction can result in temporary traffic inconvenience for those tenants living near the evicted area, however, after the development is finished, it may bring new opportunities of employment and commerce.

Urban public construction, such as roads and bridges, may affect the life and work for local residents as well as causing traffic; at the same time, 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 current regulations related to chaiqian supplies channels for them to air opinions, oppose or apply for administrative reconsideration. Therefore, one way to make up for 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.

(c) A multifaceted dispute-solving mechanisms means that in society varied dispute resolution methods can coexist harmoniously and form a complementary procedural system satisfying multiple needs and offering a dynamic system for making adjustments.

With social modernisation and urbanised development, a great number of urban house demolition disputes arise. This tests the endurance of social and especially judicial mechanisms. Under the circumstances, the state, legal professionals and the public should all take a realistic attitude. With respect to the choice of public policy, in order to improve efficiency, quality and effectiveness of dispute resolution, they should first pursue social stability and harmony, emphasise the social effects of dispute resolution, and promote development of multifaceted dispute resolution mechanisms (including highly effective and flexible administrative ruling mechanisms, impartial arbitration mechanisms, intermediation mechanisms for self-ruled organisations, legal aid mechanisms for law firms, consulting mechanisms for judicial procedure, delegation mechanisms for chaiqian negotiation, and mechanisms regulating the actions of "house
demolition agency companies37 directly participating *chaiqian* negotiations), so that laws can be implemented normally, the infringed rights can be redressed reasonably, and ultimately the society gets back to being harmonious.

37 At present, in southeast districts along the sea, a lot of house demolition agencies have been established to help the evictees negotiate.