



## Chinese Human Rights Defenders (CHRD)

Web: <http://crd-net.org/> Email: [networkcrd@gmail.com](mailto:networkcrd@gmail.com)  
Promoting human rights and empowering grassroots activism in China

### THROWN OUT

#### HUMAN RIGHTS ABUSES IN CHINA'S BREAKNECK REAL ESTATE DEVELOPMENT

Introduction

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On a cloudy day in Chengdu, Sichuan Province, a middle-aged woman set fire to herself to protest against the demolition of her three-story home. The woman, Tang Fuzhen, died a month later and the ghostly images and videos taken of her on that fateful morning, a lonely grey figure perched on the rooftop suddenly set ablaze, quickly spread on the internet, creating an uproar among netizens in China and triggering a nationwide debate about the practice of forced evictions.

Although her reaction was extreme, the broad outline of Tang's story is, unfortunately, all too common in China. This report is based on a steady stream of reports of forced evictions CHRD has received from 13 provinces and municipalities, as well as a number of interviews conducted specially for this report, including five with members of households evicted for the Shanghai World Expo. Although the exact number of forced evictions across the country is unclear, CHRD believes that the problems described here are widespread, touching the lives of residents of major as well as smaller cities. The experiences of the individuals documented in the report indicate serious violations of the right to adequate housing, involving abuses of a range of civil, political, economic, and social rights.

Against their will, individuals and families have been removed from their homes in older districts of cities and in the suburbs surrounding the cities. A combination of government officials, men hired by developers and workers from demolition and relocation companies are usually responsible for carrying out the evictions and demolitions, often using excessive force. Before these dramatic confrontations between evictees and evictors occur, there is a period of haggling between them, where the evictees try to seek higher compensation or alternative relocation arrangements, while the evictors try to pressure them to leave, often by beating, detaining or otherwise intimidating and harassing them and their families.

Officials and official media are often harsh towards these "nail householders," portraying them as "stubborn," "unreasonable" and "greedy" people. However, a closer examination of the laws and regulations governing evictions and demolitions, as well as the practice of forced evictions, show that people's resistance is often a reaction to serious violations of their rights.

Typically, the process of demolition and forced eviction is initiated by the local government, which decides that a certain area of the city or its suburbs should be demolished and redeveloped. Without informing or consulting the occupants or owners of the homes in the area, the government strikes a deal with a developer to redevelop the area. Once the deal is made, residents have no choice but to move—Chinese laws do not empower them to challenge the redevelopment decision.

In some cases, the government needs the power to expropriate private property; for example, to make way for critical public works. Chinese laws stipulate that private property can only be seized for reasons of “public interest,” but leave this critical concept undefined.<sup>1</sup> Local governments and developers are not required to demonstrate that the projects truly are in the “public interest.” In practice, local governments give permission for developers to demolish citizens’ homes not for public purposes, but often purely for commercial gain, primarily for real estate development.

Citizens ordered to relinquish their homes cannot refuse to move, but they can try to negotiate with developers for higher compensation. If they are dissatisfied with what is offered them, they can seek an administrative adjudication over the amount, or sue the relevant government office for failure to follow legal procedures. However, Chinese laws and regulations do not specify that developers and evictees must agree to terms before the demolition takes place—so as long as developers have offered some compensation, they can proceed with the demolition.

The current legal framework governing demolition and eviction offers little protection to homeowners. In many cases, evictees receive inadequate notice prior to the eviction; they are given vague and sometimes false information about the purpose to which the vacated land will be put; and the people who demolish their homes are not properly identified, making it very difficult for them to seek accountability afterwards. Evictions are often carried out in the middle of the night and without prior notice. Evictees are rarely, if ever, given any legal aid and some sink into poverty after being evicted from their homes.

Following Tang’s death, a number of Beijing legal scholars issued a statement calling for a review of the administrative regulations which local governments rely on to justify the practice of forced eviction. The scholars argued that the regulations violated higher level legislation. While it is true that contradictory laws and regulations are probably part of the problem, a more fundamental problem seems to be one of political will: the government is unwilling to take concrete action to set up a legal framework that provides adequate protection against forced evictions.

In part, this is because development and construction occupy a crucial role in driving GDP growth nationwide and are a priority for central government officials. But it is also because of greed, which plays a role in forced evictions quite different from that in official accounts. It is more often the desire of officials, developers and their associated demolition and relocation companies for greater profits that fuels these unfortunate incidents. To the officials, the profitable real estate market provides much-needed revenue for the local government and its offices. A more active real estate market also means greater political achievements, as the local economic growth rate is one of the main criteria in evaluating officials’ performance. Officials often stand to gain personally by receiving kick-backs. And

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the developers and the demolition and relocation companies can achieve a higher profit margin by keeping their costs low, which often means offering as little compensation as possible. They often manage to succeed in this quest because occupants have little bargaining power.

Even when they know their homes will inevitably be demolished, some homeowners try to resist the demolition in a variety of ways: by refusing to sign relocation agreements, by petitioning, protesting, filing lawsuits, working together with other evictees to publicize their plight and seek redress and by resisting at the scene. Even after their homes are demolished, some continue to seek justice using similar methods. As the number of petitions, protests, and lawsuits grows, there are emerging trends in the language in which victims couch their grievances. While the specifics of individual requests may vary, these concerns are presented in the context of property rights as well as the right to adequate housing. The adoption of this terminology, and the growing rights consciousness which it signifies, binds together citizens across China and marks a small yet significant step towards a better defense of their homes and properties.

CHRD concludes this report with recommendations to the Chinese government. We call on the government to act immediately to halt the widespread abuses occurring in the process of urban redevelopment. Urgent action should be taken to bring the regulatory regime and the practice of relocation up to the standards in the UN Covenant on Economic, Social and Cultural Rights, which China ratified in 2001. To this end, we urge the National People's Congress Standing Committee (NPCSC) to undertake a constitutional review of the main regulatory instruments used in the process of forced evictions detailed in this report.

The report focuses on owners of demolished homes and expands on a report previously published in Chinese by CHRD. That report was authored by a researcher who has worked in the real estate business and closely followed property and law issues in China. It does not cover renters, who may only receive compensation or relocation expenses from the property owners, or people living in informal housing; their situation is even more precarious, and awaits further research.

## **I. An overview of forced evictions**

*Forced evictions are prima facie incompatible with the requirements of the Covenant [on Economic, Social and Cultural Rights]*<sup>2</sup>

*The term 'forced evictions'...is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*<sup>3</sup>

The rapid rise in real estate development since 1998 after the State Council announced an end to state-allocated housing has led to a concomitant rash of forced evictions and relocations across the country.<sup>4</sup> Other factors also contributed to the boom, such as rapid urbanization, economic growth and increased job opportunities in the city, the introduction of a market in Land Use Rights (LURs) in 1988,

which marked a fundamental turning point in the relationship between individuals and real estate, and urban market liberalization policies and reforms introduced by the government since the 1980s.<sup>5</sup> The rapid growth of the real estate market is the main engine driving the demolition of existing housing to make way for newer properties for sale, though some demolition is carried out for public projects such as highways and university campuses.

Residents who live in older parts of urban areas are particularly vulnerable to forced eviction, as these lands in prime locations are rapidly rising in value. Residents in “city villages” (城中村)—villages that have been engulfed by the city—and those who live in villages near the city’s suburbs are also vulnerable as the value of their land is also increasing due to rapid urbanization. Occupants of temporary “illegal buildings,” including commercial facilities and schools for migrant children, or old and dilapidated buildings, are also often targets for demolition and redevelopment. Finally, residents and owners of those homes that have disputed ownership rights resulting from China’s transition from a planned economy to capitalism, such as “nationalized rental properties” (经租房) (discussed in Part



Ye Guoqiang, a victim of forced eviction in Beijing, holding a shirt which says, “Give me back my housing rights!”

V of this report) or residential properties built by state-owned enterprises, are also threatened by forced evictions.

Local governments and property developers are the main instigators of demolition and evictions. Usually local governments initiate the process by deciding that an area in or near the city should be redeveloped. Often without consulting or notifying the owners or occupants of the homes in that area, the government then issues an invitation to tender. The developers who win the tender then proceed with the paperwork for the process, which includes obtaining a permit from the Demolition and Relocation Office (拆迁办公室) under the local government’s Bureau of Housing and Lands (房地局), according to the Urban Housing Demolition and Relocation Management Regulations (hereafter known as “the Demolition Regulations”).<sup>6</sup> This is the main administrative regulation local governments use for demolitions and evictions in cities. According to the Demolition Regulations, the developers

need to submit an application for redeveloping a particular site. In practice, the local government often takes the lead in the process and the developers are the executors carrying out the decisions of the local government. Often, too, developers and local government authorities are connected in complex ways. For example, certain officials may hold shares in development companies, or have relatives in

these companies.

Some developers see forced evictions as one of the main ways in which they can increase their profit margins. These developers are sometimes directly involved in carrying out the demolition and eviction, but this is now less often the case; to avoid direct confrontation with the occupants, most developers hire "demolition and relocation companies" (拆迁公司). These companies are legally-registered entities and they employ laborers, many of them temporary workers, to demolish homes. Local governments may be involved in the demolition of homes, but their involvement varies depending on the situation. In projects which the local government feels it has a strong stake, as in public projects or commercial developments that substantially increase tax revenues, raise economic growth figures as well as those which give officials kick-backs, it is often directly and actively involved in the actual event. In some cases CHRD documented, the government has not been directly involved in removing residents from their homes, but has dispatched local policemen or special police forces to escort or assist developers during evictions. And, as will be seen in Section III, the government is primarily responsible for evicting individuals from their premises after they refuse to move following an adjudication decision by the government.

In most cases documented by CHRD, only after the local governments and the developers strike the deal to demolish the homes are owners and occupants told about the impending demolition. They may be informed by the developers, the demolition and relocation companies, or government officials, or they may only learn about it through the grapevine. Owners of buildings on the eviction site are required by law to be given compensation and/or to be given alternative housing. As we will discuss in Section III, however, compensation is often inadequate or nonexistent. Owners have two basic choices when faced with forced eviction: either sign the agreement presented to them by the developers, accept the compensation and move out, or stay put to fight for higher compensation. As discussed in Section III, the relevant Chinese laws and regulations put occupants in an unequal position vis-à-vis the developers. It is almost impossible for the occupants to refuse to move, and it is difficult to obtain adequate compensation. In many cases, residents are subjected to violence, detention and intimidation as developers and local governments try to force them out of their homes. The general threat of violence is indeed so great that it is difficult to characterize any of the "agreements" signed by evictees as the result of a voluntary negotiation process.

## **II. The use of violence & detention**

*In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.<sup>7</sup>*

One of the most appalling aspects of the practice of forced evictions in China is the brutality of these operations, which violate the principle of "reasonableness and proportionality" even if they *could* be justified, which in many cases they are most evidently not (see Section III).

## Harassment & intimidation

In order to force residents to sign their agreements and move out of their homes, demolition and eviction companies make life miserable for them, with the complicity of local governments. Water and electrical supplies are sometimes cut off during a sweltering summer or freezing winter. Door locks are destroyed and keyholes blocked, creating a sense of insecurity among residents. Dangerous-looking young men are hired—described as thugs and triads by many evictees—who wander around the neighborhood intimidating residents. Using a variety of means, demolition and eviction companies threaten the occupants with “serious consequences” if they fail to move out.

“...the government has mobilized the police and hired thugs to beat and threaten residents. They cut off the running water, electricity, telephones, TV, they climb the walls, damage the toilets, block the roads, use high-frequency loudspeakers to harass us, they use enormous machines which vibrate and stir up the dust, they damage sewers so that the sewage spreads into the streets, they use all these means to force residents to move,” said evictees in Xi’an City, Shaanxi Province.<sup>8</sup>

“Every day the head of the gang leads a group of bullies to wait downstairs from our home... whoever discusses the issue of demolition, those bullies beat them. These people bang and kick our doors, you can hear the sound of the kicking reverberating through the whole building, they intentionally broke down the door of a home in Unit 3. They even block the keyholes, almost every household has had their keyhole blocked,” said **Liao Lingli** (廖玲丽), an evictee from Wuhan City, Hubei Province.

If the residents work for the state, the local government sometimes even mobilizes its offices and work units to pressure them, threatening to fire them or suspend their social security unless they agree to move. In addition to putting direct pressure on residents, the government also mobilizes its offices to pressure employees who are relatives of those facing evictions. These employees are threatened with the loss of their jobs or a cut in their salaries or pensions if they do not manage to pressure their reluctant relatives to move before the deadlines.

## Beatings & violence

If the above tactics fail to force residents to leave, demolition companies sometimes resort to using physical violence. Prior to the evictions, thugs are often hired by developers to beat some of the residents in order to intimidate the



**Residents of Xicheng District, Xi’an City, Shaanxi Province, had to live with overflowing sewage after a demolition crew damaged the sewers to force the residents to leave.**

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rest to move. Violence is then used to force out those who refuse to leave until the bulldozers arrive. In the mildest cases, evictees are forcibly dragged out of their homes, but sometimes they fare much worse.

“As soon as they arrived, they broke down the door and the windows, forced their way in, beat us and smashed the furniture.” said an evictee from Jinan City, Shandong Province, describing an attack on the family home. The group began attacking family members, and savagely beat the speaker’s 30 year-old daughter, who was two months pregnant. “We pleaded with them, asked them not to beat her... this gang of demolition thugs just would not listen, six young men in their early 20s beat her... they mercilessly kicked her pregnant belly, she felt waves of pain, a small amount of bloody liquid flowed out, and the next day she miscarried.”<sup>9</sup>

On the morning of November 9, 2009, the Daxing District Management Committee of Xi'an City dispatched more than 600 workers to carry out the forced demolition of an apartment complex attached to a bankrupt foundry in northeastern Xi'an. Some of the more than 2,000 residents of the complex turned out to resist the forced demolition, which they claimed was being pursued without providing fair compensation or reasonable arrangements for replacement accommodation. The demolition workers responded to their refusal to leave by hurling bricks and beating them with clubs; ten were injured. Following the violence, hundreds of residents gathered at the Shaanxi provincial government offices to protest.<sup>10</sup>

### **Arbitrary detention**

Residents who try to resist evictions are sometimes detained. They may be taken from their homes and temporarily held until the bulldozers have demolished their homes, or they may be taken away by the police and subjected to administrative detention. Residents who use violence to resist the demolition are often criminally detained or sentenced to a term of imprisonment.

At 9 a.m. on April 17, 2008, local authorities dispatched about 200 police, security guards and court officials to demolish the home of **Wang Lianmin** (王连民), a resident of Yangshan Village which lies at the center of the Olympics Village in Beijing. Wang's father and wife, who were home when the demolition crew arrived, were forced out into the street and guarded by a group of officials. Wang, who was out at the time, hurried home, and photographed and filmed the demolition. He was pushed to the ground and had his camera taken away by court police. He was then handcuffed, taken away and told he would be detained for between five and 15 days.<sup>11</sup>

Hangzhou resident **Xu Guizhu** (徐桂珠) was detained for “disrupting work unit order” in December 2009 after refusing to sign an agreement which would allow officials to relocate her and her husband and demolish their home. Xu had earlier been summoned by a police officer from the Jianqiao Town police station and threatened with seven days’ detention if she did not consent to the demolition. Xu was held at the Hangzhou City Detention Center.<sup>12</sup>

Those who persist in complaining to the government through petitioning or staging protests in provincial capitals or in Beijing risk more severe punishment. They may be repeatedly held in detention centers and black jails, sent to Re-education through Labor (RTL) or detained in psychiatric institutions, during which they are subjected to further abuse and violence.

Sixty-five-year-old Tianjin petitioner **Li Shuchun** (李树春), who went to Beijing to petition about the demolition of his property, was intercepted in Beijing and sent back to Tianjin by officials from the city and his work unit. On October 17, 2007, he was sent to a psychiatric institution in Hexi District, Tianjin. The hospital admitted that Li was not mentally ill and said he could leave if officials from the government or his work unit would come and take him home. Li was eventually released on October 30.<sup>13</sup>

### **III. Protections & remedies insufficient**

#### **Defining “public interest”**

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), although forced evictions “are prima facie incompatible with the requirements of the Covenant [on Economic, Cultural and Social Rights],” there are “circumstances under which forced evictions are permissible.”<sup>14</sup> State parties to the Covenant, which include China, must legislate to “specify in detail the precise circumstances in which such interferences may be permitted” and these circumstances should be “most exceptional.”<sup>15</sup>

Article 13 of the Chinese Constitution as well as Article 4 of the Property Law, which went into effect on October 1, 2007, proclaim that “citizens’ lawful private property” is “inviolable.” However, Articles 13 and 20 of the Constitution, Articles 42 and 148 of the Property Law as well as Article 6 of the Law on Administration of Urban Real Estate<sup>16</sup> (hereafter referred to as the Real Estate Law) allow for the expropriation of private property in the “public interest.” However, neither the Constitution, the Property Law, nor the Real Estate Law defines the term “public interest,” and it is not mentioned in the Demolition Regulations. Attempts by scholars to introduce a restrictive definition of public interest in the drafting process for the 2007 Property Rights Law were unsuccessful. However, the concept of “public” exists without a legislative definition in other jurisdictions, without any negative consequences.<sup>17</sup> In these other jurisdictions, there is a commercial alternative to coercive expropriation, namely the private sale of land by its private owners to property developers (or the state, in some cases) as a result of a negotiation process which, while not necessarily perfectly fair, usually leaves owners with better options. Therefore, expropriations happen more rarely – as an exception to the normal case of private transaction. Moreover, in these other jurisdictions, the courts have often been able to develop reasonable interpretations of the concept of public interest through case law, but Chinese courts have thus far not been able to do this.

When commercial real estate developers forcibly evict residents from their homes, they are not required to demonstrate, or even declare, that the homes are being expropriated in the “public interest.” It is simply assumed that they are, and this assumption is often supported by banners

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enjoining residents to “support the national construction project” or displaying similar statements. Even when homes are demolished to make way for non-commercial projects, such as the Beijing Olympics or the Shanghai World Expo, in the absence of genuine public consultation and participation in the process, it is unclear whether these projects truly serve the interests of the public.

### **Lack of adequate compensation**

In cases in which forced evictions are justified and the narrowly-defined circumstances specified in the laws are met, it is essential that “all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.”<sup>18</sup> The level of compensation is frequently inadequate, and this is often the main reason people refuse to move.

The Constitution stipulates that individuals should be given compensation. Article 42 of the Property Law also states that individuals evicted should be given compensation, and that evictees’ “living conditions” should be protected in the eviction process. The Demolition Regulations and the Guidance Opinion on Urban Housing Demolition Appraisal<sup>19</sup> (hereafter referred to as the Guidance Opinion) provide details about how compensation should be calculated: “The amount of monetary compensation shall be determined according to the location, use, building area, and other factors [related to] the housing to be demolished as well as an evaluation of the market price.”<sup>20</sup> The Demolition Regulations also stipulates that the developers pay the residents a relocation subsidy.<sup>21</sup>

However, there are a number of problems regarding the current methods of calculation in these laws and regulations. First, the compensation offered is not the market value of the buildings, but is calculated based on formulas determined by the local government at provincial, autonomous region and municipal levels.<sup>22</sup> These formulas are generally outdated, and do not approach the true market value of the properties.<sup>23</sup> Second, according to the Demolition Regulations, the occupants are only compensated for the area of their homes that is listed in property certificates. Even though the occupants’ family might have lived there for generations, and have added new extensions to their homes, they will not be compensated for the extensions because they are not listed in the property certificates if they have not undergone an official approval process.

In the cases of forced evictions CHRD has documented, relevant standards on compensation are often ignored. Evictees are approached by the developers or the demolition and relocation companies, and offered a lump sum, replacement housing, or a combination of the two. When the developers offer a lump sum, they usually make the offer verbally, and rarely explain to the evictees how the figure was calculated or show them a break-down of the amount of compensation.

“They said ‘We will give your family RMB 4,300 for each square meter. For your broken house... that is already very good!’” said **Cui Fufang** (崔福芳), a 52-year-old woman forcibly evicted to make way for the Shanghai World Expo who was interviewed for this report. Cui said on average the price of replacement housing in her area was RMB 10,000 per square meter. The developers did not explain to her how they calculated the figure they quoted her.

Evictees have to either accept the arbitrary figure, or try to fight with the developers for an increased amount. According to a report by a Hubei-based organization, Civil Rights and Livelihood Watch (CRLW), which surveyed 100 cases of forced evictions to make way for the Olympics in Beijing and in Qingdao, Shandong Province, such efforts often achieve very little. The report found:

None of the demolition and resettlement standards were formulated according to market prices... the standards were set by the authorities and the developers, and ordinary people were unaware of this beforehand. Once the standards for compensation and resettlement have been published, no matter how dissatisfied ordinary people are with them, they are forced to accept them. Standards for demolition and resettlement are rarely raised because of ordinary people's [objections].<sup>24</sup>

In some cases, the occupants are not offered compensation at all:

"The demolition company did not talk to me about compensation. They only said if I had difficulty [buying a new home], I should ask the government for a portion of the money, and then I should top it up with about 100,000 RMB. I said 'Why would I have difficulties? I own this house and I live here!'" said **Wan Huijuan** (万惠娟), a 48-year-old evicted for the Shanghai Expo.

Even after the evictees agree with the developers on the amount of compensation, the money sometimes fails to materialize. The Demolition Regulations does not require that compensation be delivered prior to the demolition. Evictees often suspect that the compensation is embezzled by government officials. When **Li Shengyu** (李盛玉), an evictee from Shenyang City, Liaoning Province, petitioned higher authorities regarding compensation that had not been delivered, the cadres at the Ministry of Construction said: "The case regarding your demolished home has been resolved. The Shenyang government has sent us reports of the demolition... you were given three 160 square-meter apartments on the 2nd and 3rd floors and a 400 square-meter shop on Taiyuan Street in Shenyang, in addition to a card with RMB 1,100,000 cash... this is more than what three generations of your family would need! Why are you still complaining? You have signed and printed your thumbprint [on the agreement]. When you go back, stop petitioning. If you petition again, we will send you to RTL." Li's four houses were demolished in November 2004, and to date, Li has not received any of the promised compensation, saying "I don't know which cadres have embezzled [it]."<sup>25</sup>

Without adequate compensation, evictees are often unable to buy another home in the city, or they may not be able to purchase a home of equivalent size. Some evictees end up purchasing a much smaller apartment. For example, **Ding Juying** (丁菊英), a 61-year-old woman evicted for the Shanghai Expo, bought a 50 square-meter apartment with her RMB 440,000 compensation, which is one tenth the size of her original home.

Some evictees are forced to move out of the city. This may mean they have to give up their original jobs, or they have to spend more time and money commuting to work. For evictees who work in the service industry, the further they are from the city, the harder it is to find jobs. Their children may have

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to move to a new school or spend more time commuting to their original schools. Access to public transportation, services and shops may be poorer in the new location.

Those who receive no compensation can be plunged into poverty.

"Several years have passed [since my home was demolished] and I have not received a penny in compensation. I have nowhere to live and I have to move constantly... I had wanted to attend the old people's university before the eviction, but for the last five years I have had no shelter... I have slid into poverty. My health is not good and I feel anxious every day. Illegal demolition has wrecked the second half of my life," said **Cui Fufang**, evicted for the Shanghai Expo.

Evictees who have accepted replacement housing are often unhappy with their new homes. According to CRLW, about 3,000 households were moved from Chongwen District in the heart of Beijing to Daxing District, between the city's Fourth and Fifth ring road. "The infrastructure, such as the water supply, drainage, transport and many other aspects was incomplete, making it very inconvenient to live there," said one evictee. Ninety percent of the residents refused to pay their recent rent because they were "unhappy that they had exchanged the homes they used to own for rental housing, and secondly they were unhappy with the resettlement conditions."<sup>26</sup>

### **Lack of procedural protections**

Forced evictions are also often characterized by a complete lack of procedural protections for the rights of the evictees:

*The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons give their consent; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>27</sup>*

### **Evictees are not genuinely consulted**

According to the Administrative Licensing Law,<sup>28</sup> for "licensing matters of great importance to the public interest for which that the administrative organ considers it necessary to hold a hearing, the administrative organ shall announce it to the public and hold a hearing."<sup>29</sup> However, the Law gives local governments wide discretion in deciding whether or not to hold a hearing and usually they do not

bother. Occupants are not informed, let alone consulted, before the demolition permit, a form of administrative license authorizing the demolition of their homes, has been granted to the developers. Once the permit has been granted, occupants are just told to move:

“People from the demolition company came but they didn’t reveal their identity or names. There was no hearing, no assessment [of the value of my house]. [They] only said you are being relocated for the Shanghai Expo. [They said you] have to move even if [you] do not want to,” said **Wan Huijuan**.

“They did not organize a hearing and did not consult us. We were told that our house was to be demolished 20 days before it happened. At 3 a.m. on August 8, my husband was forced to sign the agreement because he was detained in the office of... the Relocation Committee,” said **Ding Juying**.

Even in the rare cases when the developers and demolition companies hold a hearing on the impending eviction, these are pro forma rather than genuine consultations.

“Ostensibly, the demolition company has followed legal procedures and conducted mediation, hearings and debates regarding our demolition and relocation problem recently, but none of these made a difference... On the contrary, the amount of compensation dropped from RMB 1,200 per square meter to RMB 1,152,” said **Zhang Hua** (张华), an evictee from Suizhou City, Hubei Province.<sup>30</sup>

#### **Evictees not given adequate & reasonable notice prior to eviction**

As discussed earlier, residents often do not learn about the decision to demolish their homes until the local government has granted a demolition permit to a developer. By that point, residents might be approached by local officials, developers or members of the demolition and relocation companies and verbally informed that they have to move. If they refuse to sign an agreement with the developers or if they have signed one but later refuse to move, either party can, according to the Demolition Regulations, then apply to the local government or the court for adjudication on the amount of compensation. Once the local government or court makes a decision, if the residents refuse to move within the time limit stated in the decision, they can be forcibly removed from their homes. Prior to the eviction, local governments may deliver a notice to the residents, informing them of the date by which they have to vacate their property, usually in a short time period. For example, Shanghai interviewee **Wan Huijuan** said, “The forced eviction notice was [issued] on September 5, 2005, it says that [we] must move out within 15 days of the receipt of the notice.”

Some provincial demolition regulations stipulate a minimum time period between notification and eviction. In Anhui Province, the regulations state that residents must be informed 15 days prior to the eviction. Sometimes they are only verbally informed about the decision to evict them.

“Nobody formally notified [us]. We learned that we had to move 20 days before we were evicted. They came to us directly, asking us to sign the agreement. There was no public notice about the eviction,” said **Ding Juying**, Shanghai Expo evictee.

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On some occasions residents receive no formal notification about the decision to evict them or of the eviction date and are caught totally by surprise when the demolition team and bulldozers arrive at their door.

On November 4, 2009, about a hundred officials from the Urban Inspection Office, the PSB and the relevant planning departments demolished most of a building at No. 105, Committee Three, Rengang Township, Nantong City, Jiangsu Province. However, the owner of the home, **Zhou Jie** (周杰), had not agreed to the demolition; he had not even been informed it was going to happen. Zhou's home was located in an area wanted for the expansion of a nearby ship engineering company. The company and the local government had asked Zhou to move without presenting him with any kind of legal document.<sup>31</sup>

#### **Evictees are given minimal information about proposed land use**

Residents are sometimes told about the purpose for which the land is to be used only after their homes are demolished, but such information is usually vague and general. "They only said it was for the Shanghai Expo," said **Wan Huijuan**.

However, sometimes former residents find that the land is used for purposes entirely different from what they had been told. They are informed that the land will be used for public works and projects, but then once the land is vacated, it is used for commercial development.

"They said they were going to build auxiliary facilities for the Shanghai Expo, called Dongjiao International Gardens, but it was used for constructing high-end villas and Dongfang High School," said **Ding Juying**.

About 40 households of Caodianze Residents' Committee in Suizhou City, Hubei Province, were told to move to make way for the construction of a sewage pumping station for the city. However, the residents later found out that this was a lie, as the land was to be used for commercial real estate development. In May 2008, in the relevant documents, the demolition purpose was officially changed from



**The aftermath: residents of Guiwu Road in Guiyang City find their homes demolished and their household goods damaged and scattered.**

“sewage pumping station project” to Suizhou City Investment Company, a shell company organized by the Suizhou City government.<sup>32</sup>

### **Persons carrying out evictions are not properly identified**

Government officials are often present during the demolition. Some are involved in beating the residents, tearing them away from their homes, restraining them and even detaining them until their homes are demolished. Officials present rarely identify themselves, but evictees often recognize some of them.

“Someone knocked at my door on February 7, 2007. I saw that it was the factory’s [Communist Party] Secretary so I opened the door, but as soon as I did this many people rushed in... At the time, I didn’t recognize anyone. Afterwards I heard that they were [plainclothes] policemen... Zhoujiadu Street Office workers and the factory’s security guards. I was dragged out of my home by security guards wearing security apparel for the Shanghai Expo... none of them showed their ID.” said **Guan Junli** (管君丽), whose demolished home was in the residential compound of a former state enterprise.

The demolition crews often try to prevent evictees from photographing or filming what they are doing, making it more difficult for the evictees to hold them accountable.

“On the morning of January 13, 2006, I was sleeping when about 20 people barged into [my home] and dragged me away... There were about 200 individuals from 13 government departments. They were from the district government, the street office, the urban inspection office and the police station. But now nobody accepts responsibility for what happened, they all said they were not present. During [the demolition], I struggled to get free because I wanted to take pictures, but my camera was seized and then my phone stopped working,” said **Wan Huijuan**, evicted for the Shanghai Expo

While officials are often involved in using excessive violence, unidentified men, allegedly hired by the developers and the demolition and relocation companies, seem to be the main perpetrators of the violence. In many stories of forced eviction, repeated mention is made of “mobsters” and “goons,” labels used by residents to describe these unidentified characters because of their thuggish behavior.

In the early hours of November 27, 2009, a group of small businesses and homes along South Guiwu Road in Guiyang City, Guizhou Province, were forcibly demolished. Hundreds of unidentified individuals, allegedly dispatched by the developers, abducted the residents, who were threatened with knives, had tape put over their mouths, blindfolds put over their eyes and had their phones seized to prevent them from calling the police. Ten residents were forced into vehicles and taken to the city’s outskirts while their homes were demolished and the property inside them destroyed.<sup>33</sup>

In the cases documented by CHRD, the authorities appeared to approve of the behavior of these unidentified individuals, or at least turned a blind eye when evictees complained about them. In some cases, unidentified “gangsters” worked in concert with government officials during the demolition. Or, in cases where officials were absent, evictees reported long wait times for police to arrive after calling

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the emergency hotline. Then, when police finally did appear, they failed to intervene to protect residents, and did not check the credentials of those carrying out the demolition or hold them accountable for using violence.

At 1 a.m. on August 5, 2009, several hundred unidentified men began the demolition of a number of houses in an urban part of Jing County, Anhui Province. After the homeowners called an emergency hotline the police came: they listened to the residents but did not order the demolition stopped; some of the house owners kneeled and kowtowed, begging them to halt the demolition, but the police were impassive. The residents then began to note down the police officers' numbers; one policeman quickly removed his badge and put it in his pocket. Only when people began throwing themselves in front of the bulldozers did the police finally intervene, but at that point the houses had been devastated.<sup>34</sup>

#### **Demolitions sometimes carried out at night**

In some of the cases CHRD documented, residents were evicted in the middle of the night, or their homes were demolished while they were away from home. Catching residents by surprise seems to be a tactic of the authorities and developers when dealing with difficult "nail households." **Gu Shifang** (顾士芳), a 62-year-old evictee from Huaian City, Jiangsu Province recalled,

At about midnight on the 11th [of November 2008] we were asleep. We didn't expect that these bandit officials would lead the police, the judiciary, anti-riot police... altogether more than 300 people, as well as excavators, bulldozers, police cars... A handful of special policemen climbed into our home through the window, pulled my husband out of bed and beat him with batons. He was only wearing underwear at the time. They handcuffed him and dragged him into a police car... I climbed onto our roof... in the cold dark night, [they] cruelly threw bricks at me and used high-pressure water hoses to spray me, I was thoroughly soaked. Five or six members of the special police force climbed onto the roof and beat me unconscious...<sup>35</sup>

#### **Lack of provision of legal remedies**

The main problem with the current regulatory framework governing demolitions and evictions is that the occupants cannot refuse to move. Residents are not empowered by the relevant laws and regulations to challenge the decision to demolish their homes or the compensation formulae set by local governments, they may only challenge the amount of compensation offered. The Demolition Regulations states that developers and owners should reach an agreement over demolition. If they fail to reach an agreement, either party may apply for arbitration at the local government's demolition and relocation office, the same government office which granted the developers the demolition permit. Once the adjudication decision is handed down, the occupants have to move out within the timeframe stipulated in the decision, and if they fail to do so, "the city or county people's government... shall charge the relevant departments with carrying out forced demolition and relocation, or the housing demolition and relocation management office shall apply to the people's court for a forcible demolition

and relocation according to law.”<sup>36</sup> If either party is unhappy with the arbitration decision, they may file an administrative lawsuit against the demolition and relocation office. While the court is processing the lawsuit, however, the developers can knock down the buildings in question as long as compensation has been offered.

In cases where an agreement has been signed but the occupants subsequently refuse to move, then “the demolition entity may apply for arbitration with an arbitration committee and may also file a suit in a people’s court according to law.”<sup>37</sup> Again, while the lawsuit is being processed, the demolition can proceed.

In other words, the owners’ consent is not a prerequisite for demolition. Homeowners can certainly try to negotiate with the developers for higher compensation, but why would the developers offer this when they are supported by the local government, and when they know they can eventually demolish the homes without the owners’ consent? While in some cases, developers and occupants do reach a satisfactory settlement, this is dependent on the goodwill of the developers and their desire to avoid complications, rather than rights protected by law.

#### **Evictees not offered any legal aid**

Evictees are usually disinclined to seek help from legal aid providers believing that they are unlikely to advocate for their rights, as the vast majority of legal aid institutions are sponsored by the government. When evictees do request assistance from them, they are generally turned down. Broadly speaking, provision of legal aid in China is very insufficient. According to two Shanghai Expo evictees:

“I have requested legal aid, hoping the lawyers could help me to fight for my right to housing. But the Legal Aid Department says I have money and I do not meet the requirements for aid... [but] I don’t have money to hire lawyers, so I ended up not getting any help from them,” said **Cui Fufang**.

“I didn’t have the money to hire a lawyer. Lawyers who provide legal aid all listen to the government, they are afraid to speak the truth. They only speak for the government and the developers, and therefore they cannot represent us. I don’t trust these kinds of lawyers,” said **Ding Juying**.

Even if the evictees had the money, lawyers in general are unwilling to take such cases:

“In the beginning when we were told to move, we did hire a lawyer; he was collectively hired by 18 families. The petition was sent [to the lawyer] on Monday, and on Friday the money was returned [to us]. The lawyer said, ‘You file the lawsuit yourself, otherwise I cannot keep my office open’,” said **Guan Junli**, another Expo evictee.

The lawyer’s fear is well-founded, as lawyers who defend victims of forced evictions, such as Shanghai lawyer **Zheng Enchong** (郑恩宠), may face grave consequences for doing so. Zheng, who advises victims of forced evictions in Shanghai, had his license to practice law revoked in 2001 by the Shanghai City Bureau of Justice. Despite losing his formal license, he has continued to assist nearly 500 victims of forced evictions. Zheng was sentenced to three years’ imprisonment in 2003 for

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advising a group of evicted Shanghai residents trying to bring a case alleging corruption against a prominent Shanghai property developer. On his release in June 2006, he was placed under de facto house arrest and continues to be subject to harassment.

### **Homelessness**

*"Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights."<sup>38</sup>*

Following eviction, evictees may go through a period of homelessness, especially if they have been caught by surprise and have received no compensation. They usually manage to find some form of accommodation, but the living conditions vary. Those who did not receive any compensation fare worse: using their savings and borrowing from family and friends to pay the rent, they are forced to rent cheap homes smaller than the ones they used to own in the city. For a variety of reasons, some of them have to move frequently because they cannot afford to pay their rent, especially if they are old and have difficulties finding stable employment, or because they become long-term petitioners harassed by authorities who pressure landlords to terminate their contracts.

## **IV. Causes of forced evictions: A contradictory legal framework & a lucrative business**

*Forced evictions of long-term residents to make way for new development projects have occurred in numerous cities... The most likely reason for the land grabs in rural areas and forced evictions in urban areas is corruption. Politically connected developers bribe government officials to acquire sweetheart deals on the one hand and to lean on the coercive power of the state on the other... to enforce the eviction orders.<sup>39</sup>*

Both the Chinese Constitution and the Property Law proclaim that a citizen's right to property is "inviolable." If so, how is it possible that the practice of forced evictions continues to persist across the nation?

One of the major problems is that these declarations of rights are not backed up by concrete laws and regulations. In practice the Constitution amounts to a statement of principles and many of its stipulations regarding citizens' rights are not enforceable. According to the standards outlined by the CESCR, the few protections against forced evictions the laws do offer, as discussed in Section III, are vague and inadequate. To reiterate, the laws stipulate that the expropriation of private property must meet three requirements: it is carried out in the "public interest," compensation is offered and it is conducted in accordance with the procedures outlined in the laws. On the third requirement, the issue is further complicated by the fact that the relevant laws are contradictory. Chinese legal scholars have argued that the Demolition Regulations are unconstitutional and illegal and violate a number of laws higher up in the legal hierarchy, notably the Property Law, the Real Estate Law and the Legislative Law.<sup>40</sup> For example, these laws require that the government must first expropriate the homes before

the developers can demolish them and evict the residents, and that this can only take place if it is carried out for a reason of public interest and if the owners are compensated. Yet the Demolition Regulations do not require this sequence of acts.

There is also the question of the legal status of the land on which the occupants' homes are situated. In China, the state owns all urban land. A system of transferable land use rights for urban construction land (LURs) was introduced in 1988 and since then, urban LURs, which are granted or allotted by the state, can be bought and sold.<sup>1</sup> Article 148 of the 2007 Property Rights Law states that, in when the government decides to recall (*shouhui*) the land on which a home is built, "compensation shall be granted for the buildings and other immovable properties on the parcel of land and the corresponding assignment fee [for the LUR] shall be refunded." Though the possession of an LUR entitles a homeowner to compensation for property which will be demolished, it does not offer them any protection from the threat of forced eviction. But for housing built prior to 1988, currently the main targets of forced demolition, the rights of their owners as to the land they live on are often unclear. Many have not obtained LURs and thus they may not have clear legal rights to the land on which they live. The undefined legal status of LURs in older districts of urban areas means that local governments and developers can seize buildings even more easily.

An obvious first step to solve these legal problems would be to undertake an overhaul of the relevant laws and regulations, repeal the Demolition Regulations and draft new laws or revise existing laws so they focus squarely on the protection of citizens' right to adequate housing, including adequate protections against forced evictions. The more fundamental problem, however, is the lack of political will to address this issue. The government has taken no discernible action in recent years to protect citizens against forced evictions. Following the self-immolation of evictee **Tang Fuzhen** in November 2009, and the uproar on the internet surrounding her death, the State Council released a draft of proposed revisions to the key administrative regulations governing the expropriation of urban housing on January 26, 2010.

While ordinary citizens are unprotected against forced evictions, powerful and well-connected individuals continue to reap high profits from carrying them out. Real estate is very profitable in China.<sup>41</sup> Taxes from real estate development have become one of the major sources of income for local governments: it is estimated that between 40% and 60% of some local governments' financial revenue comes from the real estate industry.<sup>42</sup> This also has to do with overall development strategy. According to a noted economist, "In the 1990s, the Chinese government at all levels began to embrace a growth strategy centered on large-scale infrastructural and urban investment projects."<sup>43</sup>

Since the real estate market boom in 1998, a "real estate interest group" has been formed: it is an alliance between the developers and the demolition and relocation companies, and government offices and officials responsible for land management, construction management, city planning and real estate management, directors and Party Secretaries in the villages situated in the cities or in the suburbs. More real estate means more money flows into the coffers of these government offices, and often also the personal accounts of officials involved. The police, the Procuratorate and the judiciary

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are also meshed with this alliance as they protect its interests, as well as the lawyers and the media dependent on the alliance's patronage. The growth of the real estate market also allows local government to score political points: it means a faster economic growth rate, one of the government's top priorities and an important aspect of the performance evaluation for officials. Because developers are so much more powerful than the unprotected homeowners, they are able to keep compensation artificially low and so accrue handsome profits from the redevelopment process. These profits and perks, shared among alliance members, are reaped at the expense of the rights of evictees.

At the beginning of this real estate boom, the developers and the demolition companies were mainly responsible for the actual eviction and demolition. However, in recent years, the above mentioned incentives—economic as well as political—have encouraged the local government to align its interests more closely to those of the developers. The local government intrudes into the buyer-seller relationship and empowers the developers. If a developer has obtained a demolition permit, the demolition becomes inevitable. In the cases CHRD documented, even when the developers had not obtained a permit or failed to follow other procedures stipulated in the Demolition Regulations, such as demolishing homes outside of the area stipulated in the permit, they are rarely punished as long as they have the support of the local government. In the face of these powerful forces, evictees have almost no bargaining power.

Violations of criminal law involved in forced evictions often go uninvestigated and unpunished. In the forced eviction cases CHRD documented, except when an evictee is killed during an eviction, those suspected of committing crimes involved in the process, such as assault and damage to property, are almost never held accountable. The police rarely treat such incidents of violence as crimes requiring investigation, but as "general demolition and relocation disputes" that are best ignored. When a couple from Hefei City, Anhui Province, dialed 110, complaining that someone had smashed their windows, the police advised the couple to "talk nicely" with the demolition and relocation office and said that the police were "powerless" to help them.<sup>44</sup>

Courts are often complicit in these abuses. The judiciary is sometimes directly involved in removing residents from their homes, especially when the court has ordered the evictions. Like the police, the judiciary also applies the law selectively to protect the interests of the "real estate alliance." It does so mainly through omission, by refusing to accept lawsuits filed by evictees. Courts refusing to hear administrative litigation lawsuits is a prevalent problem in China, as the Administrative Litigation Law allows the judiciary very wide discretion to refuse to hear suits without giving a reason. Although the Supreme People's Court has issued an opinion calling on courts at all levels to not use "arbitrary excuses" to refuse administrative litigation lawsuits, courts continue to do so.<sup>45</sup>

When two evictees, **Zhang Hua** (张华) and **Li Mingju** (李明菊) filed a lawsuit at Zengdu District Court, Suizhou City, on July 1, 2008, alleging that Suizhou City Bureau of Housing Management violated the relevant regulations in granting a demolition permit and that the compensation package offered violated the law, the Court told them that they had no authority to accept the case because the Bureau is at a higher level of government. The Court said the pair should file the lawsuit with Suizhou City

Intermediate People's Court instead. Zhang and Li then went to the Suizhou City Intermediate Court, but the officials there told them the Court did not handle small cases, and advised them to return to the Zengdu District Court. By October 2008, Zhang and Li had been sent back and forth between the two courts more than ten times, but no court accepted the case or issued any formal documents on it.<sup>46</sup> The way courts have refused to hear this and other cases has led lawyers handling such suits to suspect that higher levels of the judiciary or of the local government are involved in ordering lower courts not to accept certain types of lawsuits on forced demolition and eviction.

By contrast, if the evictees resist the demolition, or if individuals carrying out the demolition and eviction are injured in the process, the police, the Procuratorate and the judiciary often take action, with the police arresting the offending evictees at the scene and prosecuting them. On April 15, dozens of workers and police knocked down a wall of the home of **Ni Yulan** (倪玉兰), a Beijing-based housing rights activist and former lawyer. Ni tried to stop them; the police alleged that Ni beat a member of the demolition crew. Ni and her husband were then detained. Her husband was released after five days of detention but she was later sentenced to two years' imprisonment for "obstructing official business."<sup>47</sup>

## V. Resistance by occupants—challenges & no redress

As described in previous sections, the current regulatory framework governing demolitions and evictions essentially provides residents with no options to prevent the demolition of their homes once the local government has decided that the area is to be redeveloped. However, despite the almost certain outcome of the demolition and eviction process, cases of resistance to forced eviction are not uncommon.

Residents resist forced evictions for any number of reasons: mostly in hopes of securing more compensation or better living arrangements after their homes are torn down, but also to stand up for their property rights, to protest collusion between local officials and developers, to draw attention to the irregularities and unfairness in their cases, or simply because they refuse to believe that their homes are going to be demolished until it finally happens. In some cases, residents' efforts pay off as they delay the demolition, or the developers raise the compensation offer to avoid complications or delays.

In most cases of resistance, the initial step is a refusal to sign the eviction agreement with developers. The two predominant methods used by evictees in the days before their homes are demolished—petitioning and protesting—both have the same goal: to attract the attention of local officials and persuade them to intervene in the case, as well as to



A banner outlining the demands of a group of Hui Muslim evictees in X'ian

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get the attention of the media and the public. If these efforts are unsuccessful, and they almost always are, evictees are then left to fend for themselves on the day of the eviction.

### **Petitioning**

Citizens facing eviction are especially likely to turn to petitioning if they are illegally threatened, harassed, or otherwise abused by developers or local officials. For example, from the end of 2008 through the summer of 2009, residents of the Dajing Community, on the outskirts of Chengdu, Sichuan Province, were pressured to sign demolition agreements, often under threat of violence from the police, private security guards and hired thugs. In response, residents petitioned at county, city and provincial government offices, without success.<sup>48</sup> Evictees who choose to petition also run the risk of being detained or mistreated by interceptors working at the behest of local officials to limit petitions.<sup>49</sup>

Even in the rare instances in which petitioners manage to have their grievances addressed by officials, the resolutions are far from ideal. Beginning in mid-April 2009, residents of 637 households in Chengdu City, Sichuan Province's Shuijingfang District were notified that their homes were slated to be demolished. Despite weeks of violence, threats and intimidation on the part of the developers, by early June over 100 households still refused to sign. According to **Wang Jing** (王敬), one of the holdouts, he and a group of roughly 20 other residents went to the Chengdu City Letters and Visits Office to petition. While the government officials promised to intervene, and the compensation offer for their homes went up by roughly two thirds of the previous month's offer, it was still far below what the residents consider the market value.<sup>50</sup>

### **Protests**

Citizens faced with forced eviction may organize together with neighbors and other potential evictees to stage a public protest, organizing marches or traffic disruptions, or they may protest individually, hanging signs and banners from their property explaining their grievances. For example, in late October 2009, members of the Hui Muslim minority group living in a Xi'an neighborhood scheduled for demolition held a series of protests outside the Xi'an Municipal Minority Affairs Commission and other local government offices over a number of issues related to their relocation, including questions of where they would be able to attend religious services.<sup>51</sup> Evictees often contact members of the media and human rights organizations in an effort to publicize their case. One particularly notable case of resistance which occurred in the spring of 2007, the Chongqing "nail house,"<sup>52</sup> demonstrated the benefit of drawing the attention of both traditional and non-traditional media.

### **Resistance at the scene**

However, it is unusual for homeowners dissatisfied with the terms of their eviction to receive any redress from the government prior to the destruction of their homes, no matter what method of resistance they try. If evictees refuse to give way, they are left with only one choice: to stay put, no matter what measures forced eviction and demolition teams may take. Not all residents who resist

forced evictions pursue arbitration or legal remedies, but all those who refuse to sign agreements consenting to eviction put their bodies on the line in one way or another in an attempt to defend their property rights and their personal interests.

### **Nonviolent resistance**

When demolition crews arrive at a property to carry out a forced eviction, the primary tactic employed by residents is essentially the same: a stubborn refusal to vacate their homes. Most resistance by residents begins nonviolently; however, as mentioned in Section II, this is often met with violence on the part of demolition and eviction workers, with other means of forcing residents to leave their homes being employed, such as abduction and detention. Sadly, these confrontations often end with residents injured, detained, or, in extreme cases, dead.

In December 2008, a group of 40 to 50 residents in Gongshu District, Hangzhou City, joined together to block bulldozers from advancing on their homes, which were apartments in buildings attached to a former state-owned silk factory. They were attacked by a group of more than 100 police and 200 hired thugs; ten residents were beaten and arrested, one hospitalized, three detained and one criminally detained.<sup>53</sup>

### **Violent resistance**

While the vast majority of residents who resist forced eviction take a non-violent approach, the cases which draw the most attention domestically are those in which evictees follow through on threats to kill themselves or those who have arrived to demolish their homes. Along with **Tang Fuzhen**, there have been a number of cases of evictees leaping to their deaths from the tops of buildings, setting themselves on fire in protest, or otherwise committing suicide after failing to reach an agreement with developers or government officials regarding their homes.<sup>54</sup>

### **Continued efforts to seek justice**

Many evictees continue to protest unfair or illegal treatment after their homes have been demolished. These evictees petition, protest and file lawsuits. In some cases new abuses take place or come to light only after homes have been demolished: for example, developers may not provide evictees with compensation as promised (or it is embezzled by local officials), new information about the use of land is found to contradict plans submitted prior to the evictions, or illegal acts may have taken place during the eviction process.

As with residents seeking to prevent a forced eviction, evictees who continue their efforts to seek justice after their homes are demolished often use a variety of means in the hope that one will work.

**Cui Fufang**, an evictee from Shanghai, has petitioned and filed lawsuits. She recalls:

“After my home was demolished in 2005, I sought redress from the appropriate authorities but without success. On March 1, 2006, I began petitioning in Beijing, hoping that the central officials would

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supervise and instruct our local government to resolve our issues, but instead I was seized by police and taken to Majialou [a central black jail for petitioners]... In 2006, I filed a suit alleging that my home was illegally demolished, but the court upheld the original decision to demolish my home, saying it was properly conducted. I sent an appeal to the Supreme People's Court by mail but have never received a response.”

Some evictees band together after their homes are demolished and protest or petition in a group. On October 20, the Chongqing government dispatched a group of police officers, security guards and armed militia to carry out a forced eviction in the city's Yubei District. The evictees, who did not sign agreements consenting to the demolition, lost everything they owned during the demolition and were allocated new housing by the government in a different area of the city, which they deemed to be inadequate. After talks with officials came to nothing, the evictees began living on the streets in protest.<sup>55</sup>

### **Organizing to fight for property rights**

In most cases, citizens who resist forced evictions and stand up for their property rights identify themselves primarily by their residence, that is, they are residents of a certain district, or employees of a certain company, and their resistance is restricted to individual effort, or to that particular residential district. Although forced eviction is widespread in China, there is no nationwide network or movement of evictees pushing the government on the question of forced eviction. One exception to this rule, however, are residents of nationalized rental properties (经租房) which are urban properties that, prior to 1956, were privately-owned. As part of China's “socialist transformation,” and to deal with a severe shortage of housing in major cities, the government took over these homes and rented them out. The legal status of such properties is hazy at best. As development has increased in the past decade, a central contradiction regarding this type of housing was exposed: while tenants currently living in nationalized rental properties are eligible to receive compensation if they are forcibly evicted, the original property owners are not entitled to compensation when the buildings are demolished.

Groups have formed throughout China to defend the property rights of individuals whose housing, nationalized in the 1950s, faces the prospect of demolition. Many have formed strong alliances and organized mass visits to Beijing.<sup>56</sup> Officials, however, have been wary of their efforts and have actively worked to keep them from organizing across different areas by arresting the organizers and closing down their websites.<sup>57</sup>

### **▼ CHRD recommends:**

The Chinese government should act expeditiously to end the extensive violations of human rights occurring in the process of urban redevelopment. A number of specific actions that could be taken towards this end are detailed below.

- The NPCSC should launch a comprehensive review of existing Chinese laws and regulations governing the expropriation and demolition of homes and the eviction of their occupants with a view to undertaking legislative change at the earliest possible date. In particular:
  - It should act to clarify and precisely define the meaning of the term “public interest” and the specific circumstances under which forced evictions are permissible. Such circumstances must be strictly controlled and limited.
  - It should legislate or amend existing legislation to protect the rights of individuals affected by forced evictions under the “most exceptional” circumstances when relocation is necessary. These laws should include legal and procedural protections as outlined in the CESCR’s General Comment No.7, and should ensure that evictees have a right to adequate compensation.
  - It should conduct a constitutional review of the State Council’s Demolition Regulations as well as address allegations that this document violates existing laws, with a view to repealing these Regulations.
  - It should act to clarify the legal status of land use rights in the older parts of cities as well as the legal status of properties with disputed ownership rights, such as owners of nationalized rental properties.



**Evictees in Chongqing living on the streets to protest the forced demolition of their homes**

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- It should legislate or amend existing legislation to “provide the greatest possible security of tenure to occupiers of houses,” as recommended in the CESCR’s General Comment 7.
- The Chinese government should hold those individuals responsible for using violence, arbitrary detention, intimidation and harassment against evictees legally accountable.
- The Chinese government should ensure that those affected by forced eviction are provided with “an effective remedy” and that “competent authorities” are available to enforce these remedies, as recommended in General Comment 7. One key aspect would be to undertake the institutional reforms that would ensure that the judiciary is independent from other branches of government.
- The Chinese government should establish a “demolition and relocation fund.” A portion of the profits from real estate development in urban areas should be invested in such a fund so residents who have not received agreed compensation prior to the demolition of their homes receive emergency living expenses until they receive their compensation in full from the developers.
- The Chinese government should establish, at the provincial level, independent “demolition and eviction complaints arbitration committees.” A professional and independent committee, made up of real estate appraisers, judges, lawyers, journalists and members of civil society, should have the power to receive and adjudicate on complaints regarding eviction disputes.
- The Chinese government should undertake an investigation into the current practice of expropriation, eviction and demolition and include its findings and detailed information and statistics in its forthcoming report to the CESCR.

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<sup>1</sup> Though private properties are expropriated in the process, the fact that the government owns all land in China means that, when a parcel is seized for the purpose of public interest, the it is either termed “zhengshou,” the taking of collectively-owned land, or “shouhui,” the “taking back” of state-owned land. The public interest criterion crucially extends to the taking of collectively owned land and the taking back of already state owned land. It is not only limited to private properties.

<sup>2</sup> CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraph 1

<sup>3</sup> Ibid, paragraph 3

<sup>4</sup> The State Council, Notice Regarding Further Deepening of the Reform of the Residential Housing System in Cities and Towns and Speeding up the Construction of Residential Housing (关于进一步深化城镇住房制度改革加快住房建设的通知), effective July 30, 1998.

<sup>5</sup> For more information on the origin of the real estate boom in China, see Xiaojing Zhang and Tao Sun, “China’s Current Real Estate Cycle and Potential Financial Risks,” *China & World Economy*, Vol. 14, No. 4, 2006, pp 57 - 74; Chengri Ding, Policy and praxis of land acquisition in China, *Land Use Policy*, Vol. 24, Issue 1, January 2007, pp 1-13.

<sup>6</sup> State Council, Urban Housing Demolition and Relocation Management Regulations (城市房屋拆迁管理条例), effective November 1, 2001. The current regulations replaced a set promulgated on March 22, 1991, with the same name.

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- <sup>7</sup> CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraph 14. The demolition and relocation office of the local government is responsible for coordinating the process of forced evictions, as it handles the necessary paperwork. It plays an instrumental role at the stage of carrying out forced evictions as well as coercing evictees into signing 'agreements'.
- <sup>8</sup> CHRDR, "Xicheng District Government Forced Residents to Move by Damaging the Sewage Pipes" (新城区政府挖断污水管道逼迫居民搬迁), November 8, 2009, [http://crd-net.org/Article/Class53/200911/20091108221902\\_18177.html](http://crd-net.org/Article/Class53/200911/20091108221902_18177.html)
- <sup>9</sup> CHRDR, "Forced Eviction in Tianqiao District, Jinan Province: Pregnant Woman Suffers Miscarriage After Being Kicked in Stomach" (济南天桥区拆迁: 暴徒狠心踹腹, 孕妇次日流产), December 12, 2009, [http://www.crd-net.org/Article/fmzj/qzqc/200912/20091210094544\\_18783.html](http://www.crd-net.org/Article/fmzj/qzqc/200912/20091210094544_18783.html)
- <sup>10</sup> CHRDR, "Daxing District Management Committee Carries out Violent Forced Eviction in Xi'an Residential Area" (西安大兴新区管委会暴力强拆居民区), November 14, 2009, [http://www.crd-net.org/Article/Class53/200911/20091114214843\\_18303.html](http://www.crd-net.org/Article/Class53/200911/20091114214843_18303.html)
- <sup>11</sup> CHRDR, "Villager Detained during Forced Eviction to Make Way for Olympics Venues," April 21, 2008, [http://crd-net.org/Article/Class9/Class15/200804/20080421191227\\_8447.html](http://crd-net.org/Article/Class9/Class15/200804/20080421191227_8447.html)
- <sup>12</sup> "Hangzhou Citizen Refuses to Sign Demolition Agreement, is Detained" (杭州市民拒签拆迁协议被拘留), December 7, 2009, [http://www.crd-net.org/Article/fmzj/200912/20091207222423\\_18727.html](http://www.crd-net.org/Article/fmzj/200912/20091207222423_18727.html)
- <sup>13</sup> CRLW, "Sixty-five-year-old Tianjin Petitioner Li Shuchun Sent to Psychiatric Institution" (天津六十五岁访民李树春被送精神病院), October 19, 2007, <http://www.msguancha.com/Article/ShowArticle.asp?ArticleID=724>; CRLW, "The Use of Psychiatry for Persecution, Interview No.6: Government Pays for the Detention of Tianjin Petitioner Li Shuchun in Psychiatric Institution" (精神迫害访谈录之六: 天津李树春被关精神病院政府 "买单"), June 11, 2008, <http://www.msguancha.com/Article/ShowArticle.asp?ArticleID=1421>
- <sup>14</sup> CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraphs 1 & 2.
- <sup>15</sup> CESCR, General Comment No. 4, the right to adequate housing, paragraphs 14 & 18.
- <sup>16</sup> NPCSC, Law on Administration of Urban Real Estate (中华人民共和国城市房地产管理法), effective January 1, 1995.
- <sup>17</sup> For example, in the Fifth Amendment to the United States Constitution
- <sup>18</sup> CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraph 13.
- <sup>19</sup> Ministry of Housing and Lands, Guidance Opinion on Urban Housing Demolition Appraisal (城市房屋拆迁估价指导意见), enacted January 1, 2004.
- <sup>20</sup> Ibid, Article 24.
- <sup>21</sup> Demolition Regulations, Article 31
- <sup>22</sup> Ibid, Article 24
- <sup>23</sup> Kathrine Wilhelm, "Rethinking Property Rights in Urban China," *Journal of International Law and Foreign Relations*, Volume 9, Number 2, Fall/Winter 2004 (p.263-265). On p.265, Wilhelm quotes a 2003 survey by the Ministry of Construction, which found that "compensation standards for some cities undergoing heavy redevelopment hovered around 75% of true market value," p.265.
- <sup>24</sup> CRLW, *Report on forced evictions for the Olympics and the protection of citizens' human rights* (奥运城中的强制拆迁与公民人权保护状况报告), October 17, 2008, <http://www.msguancha.com/Article/ShowArticle.asp?ArticleID=1525>
- <sup>25</sup> CHRDR, "Liaoning petitioner held in 'black jail' during National Day Celebrations" (辽宁访民十一期间被关 "黑监狱"), October 11, 2009, [http://crd-net.org/Article/fmzj/200910/20091011200642\\_17685.html](http://crd-net.org/Article/fmzj/200910/20091011200642_17685.html)
- <sup>26</sup> CRLW, *A report on forced evictions in the city of Olympics and the protection of citizens' human rights* (奥运城中的强制拆迁与公民人权保护状况报告), October 17, 2008, <http://www.msguancha.com/Article/ShowArticle.asp?ArticleID=1525>
- <sup>27</sup> CESCR, General Comment No. 7, HRI/GEN/1/Rev.6, paragraph 15.
- <sup>28</sup> NPCSC, Administrative Licensing Law (中华人民共和国行政许可法), effective July 1, 2004.
- <sup>29</sup> Ibid, Article 46.
- <sup>30</sup> CRLW, "Evictees sent to Hospital for Schizophrenia in Suizhou, Hubei Province" (湖北随州拆迁户精神分裂被送医院), May 22, 2008, [http://crd-net.org/Article/Class53/200805/20080522152758\\_8746.html](http://crd-net.org/Article/Class53/200805/20080522152758_8746.html)

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- <sup>31</sup> CHRD, "Sino-Japanese Venture is Suspected of Involvement in Illegal Appropriation of Land; Forcible Demolition of Residential Home" (中日合资企业涉嫌违法占地, 强拆居民住房), November 5, 2008, [http://www.crd-net.org/Article/Class53/200811/20081105191727\\_11582.html](http://www.crd-net.org/Article/Class53/200811/20081105191727_11582.html)
- <sup>32</sup> CRLW, "Evictees sent to Hospital for Schizophrenia in Suizhou, Hubei Province" (湖北随州拆迁户精神分裂被送医院), May 22, 2008, [http://crd-net.org/Article/Class53/200805/20080522152758\\_8746.html](http://crd-net.org/Article/Class53/200805/20080522152758_8746.html); CRLW, "Hubei Suizhou Caodianze Evictee Follows the Law to File Lawsuit but the Court Has not Accepted the Case after Much Delay" (湖北随州草店子拆迁户依法诉讼法院迟迟不立案), October 30, 2008, [http://crd-net.org/Article/Class53/200810/20081030213812\\_11457.html](http://crd-net.org/Article/Class53/200810/20081030213812_11457.html)
- <sup>33</sup> CHRD, "Ugly Incidents of Violent Forced Eviction Reoccur in Guiyang" (恶劣的暴力强拆事件在贵阳再次发生), November 28, 2009, [http://crd-net.org/Article/Class53/200911/20091128223408\\_18597.html](http://crd-net.org/Article/Class53/200911/20091128223408_18597.html)
- <sup>34</sup> CHRD, "Scene of a Violent Forced Eviction in Jing County, Anhui Province" (安徽泾县暴力拆迁现场), August 24, 2009, [http://crd-net.org/article/Class53/200908/20090824231824\\_16992.html](http://crd-net.org/article/Class53/200908/20090824231824_16992.html)
- <sup>35</sup> CRLW, Jiangsu Petitioner Gu Shifang Roves the Capital, Protests against the Robbery of Her Property (抗议财产被掠夺 江苏拆迁户顾士芳春节流浪京城), February 9, 2009, [http://crd-net.org/Article/Class53/200902/20090209084304\\_13530.html](http://crd-net.org/Article/Class53/200902/20090209084304_13530.html)
- <sup>36</sup> The Demolition Regulations, Article 17.
- <sup>37</sup> Ibid, Article 15.
- <sup>38</sup> CESC, General Comment No. 7, HRI/GEN/1/Rev.6, Paragraph 16.
- <sup>39</sup> Yasheng Huang, *Capitalism with Chinese Characteristics*, Cambridge University Press, 2008, p.284.
- <sup>40</sup> For a detailed discussion, see Section V of CHRD's Chinese report, *An investigative report on the problem of violent housing demolition and relocation in cities and towns* (城镇房屋暴力拆迁问题调查研究报告) [http://crd-net.org/Article/Class1/200910/20091002094220\\_17531.html](http://crd-net.org/Article/Class1/200910/20091002094220_17531.html) as well as a recent statement by five prominent Chinese scholars, "A letter of recommendation to the NPC by five Beijing University scholars on the Urban Housing Demolition and Relocation Management Regulations" (北大五学者就拆迁条例向全国人大建议书全文公布), December 10, 2009, [http://crd-net.org/Article/bzsf/200912/20091210164805\\_18795.html](http://crd-net.org/Article/bzsf/200912/20091210164805_18795.html)
- <sup>41</sup> According to Wilhelm, "profit margins typically reach 40% by one account," "Rethinking Property Rights in Urban China," p.269, see above.
- <sup>42</sup> CHRD, *An investigative report on the problem of violent housing demolition and relocation in cities and towns* (城镇房屋暴力拆迁问题调查研究报告) [http://crd-net.org/Article/Class1/200910/20091002094220\\_17531.html](http://crd-net.org/Article/Class1/200910/20091002094220_17531.html)
- <sup>43</sup> Yasheng Huang, *Capitalism with Chinese Characteristics*, p.286.
- <sup>44</sup> CHRD, "Complaint From a Hefei Netizen Regarding Demolition and Eviction During the New Year" (新年合肥网友对拆迁的控诉), January 2, 2010, [http://crd-net.org/Article/Class53/201001/20100102221213\\_19257.html](http://crd-net.org/Article/Class53/201001/20100102221213_19257.html)
- <sup>45</sup> "Supreme People's Court Dispatch on Guaranteeing 'Citizens' Right to Appeal to the Government" (最高院发文保障“民告官”), November 16, 2009, <http://news.bjnews.com.cn/2009/1116/51321.shtml>
- <sup>46</sup> CRLW, "Hubei Suizhou Caodianze Evictee Follows the Law to File a Lawsuit but the Court has not Accepted the Case after Much Delay" (湖北随州草店子拆迁户依法诉讼法院迟迟不立案), October 30, 2008, [http://crd-net.org/Article/Class53/200810/20081030213812\\_11457.html](http://crd-net.org/Article/Class53/200810/20081030213812_11457.html)
- <sup>47</sup> CHRD, "Beijing Housing Rights Activist Ni Yulan Sentenced to Two Years," December 18, 2008, <http://www.crd-net.org/Article/Print.asp?ArticleID=12488>
- <sup>48</sup> CRLW, "Guns Used in Forced Evictions in Dajing Community, Shuangliu County, Chengdu" (成都市双流县大井社区暴力拆迁竟开枪), July 5, 2009, [http://crd-net.org/Article/Class53/200907/20090705235433\\_16178.html](http://crd-net.org/Article/Class53/200907/20090705235433_16178.html)
- <sup>49</sup> See CHRD report, *Silencing Complaints: Human Rights Abuses Against Petitioners in China*, March 14, 2008, [http://crdnet.org/Article/Class9/Class11/200803/20080314221750\\_8056.html](http://crdnet.org/Article/Class9/Class11/200803/20080314221750_8056.html)
- <sup>50</sup> CHRD, "Shuijingfang, Chengdu Bloody Forced Eviction Success Story" (成都水井坊血腥拆迁的后继报道), June 15, 2009, [http://crd-net.org/Article/fmzj/qzcq/200906/20090615002119\\_15849.html](http://crd-net.org/Article/fmzj/qzcq/200906/20090615002119_15849.html), and CHRD, "Shuijingfang, Chengdu Resident Weeps Tears of Blood" (成都水井坊居民的血泪哭诉), June 22, 2009, [http://crd-net.org/Article/fmzj/qzcq/200906/20090622002119\\_15849.html](http://crd-net.org/Article/fmzj/qzcq/200906/20090622002119_15849.html)

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- <sup>51</sup> CHRD, “Hui Minority Residents of Youyi Market, Xi'an Call for Place for Mosque, Residences” (西安游艺市场回族居民要求就地安置依寺而居) [http://crd-net.org/Article/Class53/200910/20091023093737\\_17880.html](http://crd-net.org/Article/Class53/200910/20091023093737_17880.html)
- <sup>52</sup> For more information on the role of citizen journalists in the story of the Chongqing nail house, see CHRD's report on internet censorship, *Tug of War over China's Cyberspace*.
- <sup>53</sup> CRLW, “Gongshu District, Hangzhou City Forced Eviction Triggers Sharp Conflict, 10 Injured and Arrested” (杭州拱墅区强拆引发激烈冲突打伤抓捕十余人), December 28, 2008, [http://www.crd-net.org/Article/Class53/200812/20081228231012\\_12712.html](http://www.crd-net.org/Article/Class53/200812/20081228231012_12712.html)
- <sup>54</sup> One case which attracted a great deal of attention was that of Tang Fuzhen, described at the beginning of this report: see “Chengdu Self-Immolation Called ‘Violent Rebellion Against Law,’ Husband of Deceased Criminally Detained” (成都将自焚事件定性为暴力抗法 死者丈夫被刑拘) *Wuhan Evening News* (reprinted on Sohu.com), December 3, 2009, <http://news.sohu.com/20091203/n268635575.shtml>. For another example, see CHRD, “Forced Eviction Drives Changsha Residents to Set Self on Fire, and Die” (长沙强制拆迁逼人自焚身亡), May 3, 2009, [http://crd-net.org/Article/Class53/200905/20090503125832\\_15246.html](http://crd-net.org/Article/Class53/200905/20090503125832_15246.html)
- <sup>55</sup> CHRD, “Yubei District, Chongqing Evictees Gather Together, Live on Streets” (重庆渝北区被强拆户集体流落街头), November 5, 2009, [http://crd-net.org/Article/Class53/200911/20091105094447\\_18105.html](http://crd-net.org/Article/Class53/200911/20091105094447_18105.html)
- <sup>56</sup> See for example, CRLW, “Many owners of nationalized rental properties petition at the Ministry of Housing and Lands” (全国多个城市经租房主联合赴建设部上访), October 21, 2008; Radio Free Asia, “Dozens of Evictees from Changsha, Hunan Protest at the Changsha Bureau of Housing and Land” (湖南长沙数十名拆迁户到长沙市房地局抗议), October 24, 2007, <http://crd-net.org/Article/Print.asp?ArticleID=6098>
- <sup>57</sup> Websites such as Private Property Rights Web (私有权益网) and Private Interests Net (私有权益网) often face closure during sensitive occasions such as the annual Party Congresses. For details, see CHRD, Appendix B, *Tug of War over China's Cyberspace: A Sequel to Journey to the Heart of Censorship*, March 19, 2009, [http://crd-net.org/Article/Class9/Class11/200903/20090319000543\\_14370.html](http://crd-net.org/Article/Class9/Class11/200903/20090319000543_14370.html). For cases of detained organizers, see CRLW, “Wuhan and Changsha Join Forces to Arrest Representative of Property Rights Activist” (武汉、长沙联合抓捕经租房维权代表), December 14, 2008, [http://www.crd-net.org/Article/Class53/200812/20081214204356\\_12377.html](http://www.crd-net.org/Article/Class53/200812/20081214204356_12377.html); CHRD, “Hunan Jingzufang Housing Rights Activist Wang Jiyong Still Detained in a ‘law education class’” (湖南经租房维权代表王季勇仍被软禁于“学法班”中), March 26, 2008.