URBAN LAND TENURE IN THE
PEOPLE’S REPUBLIC OF CHINA

Master’s Thesis

Presented to
The Faculty of the Graduate School of Arts and Sciences
Brandeis University
Global Studies Program
Gary H. Jefferson, Advisor

In Partial Fulfillment
of the Requirements for
Master’s Degree

by
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February 2011
ACKNOWLEDGMENTS

I would like to extend my greatest gratitude to the following people for their time, understanding, and encouragement:

• the staff and faculty of the Global Studies Program at Brandeis University’s Graduate School of Arts and Sciences, including Mangok Mach Bol, Professor Elizabeth Emma Ferry, Professor Richard Parmentier, and Professor Chandler R. Rosenberger;

• my classmates Ashley Borja, John F. Clark, Rebecca Nadine Gil, Nina Kanakarajavelu, Youngseok Kim, Sarah Knight, Justin P. Phalichanh, Charles Radin, Kayne Ryan, and Shelani Vanniasinkam;

• my colleagues at the Mary Baker Eddy Library; and,

• my family and friends.

Above all, my deepest and humblest gratitude goes to Professor Gary H. Jefferson of Brandeis University’s Department of Economics and International Business School. I do not know how to accurately portray all the work that Professor Jefferson has done, but nonetheless, Professor Jefferson’s patience, guidance, and support has most definitely shaped and eased this writing process, so thank you!
ABSTRACT

Urban Land Tenure in the People’s Republic of China

A Master’s Thesis Presented to the Global Studies Program

Graduate School of Arts and Sciences

Brandeis University

Waltham, Massachusetts

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Despite an increase in the codification of Chinese property rights, more and more evictees are relying on other forms of protest, such as petitioning non-judicial offices, attracting media attention, and attempting suicide. In order to understand the prevalence of insecurity among the Chinese population towards property laws, this paper studies the current land-use rights system of the People’s Republic of China. Specifically, it seeks to answer the following questions: how has land ownership evolved? Why was a reform necessary and how did it parallel earlier concepts of land ownership?
# TABLE OF CONTENTS

**Chapter I: Introduction**

I. Setting..................................................................................................................1

II. Property Rights Theories.................................................................................4

III. Outline..............................................................................................................5

**Chapter II: Land Ownership Reform**

I. Nationalization of Urban Land Ownership.......................................................7

II. Development of Current Land-Use System.....................................................11

III. Economic Incentive........................................................................................16

IV. Earlier Concepts............................................................................................20

**Chapter III: Urban Land-Use Rights**

I. Purposes of Allocated and Granted Land-Use Rights.......................................23

II. Fees for Allocated and Granted Land-Use Rights..........................................26

III. Terms of Allocated and Granted Land-Use Rights........................................28

**Chapter IV: Legal Impact**................................................................................30

**Chapter V: Conclusion**....................................................................................33

References.............................................................................................................35
CHAPTER I: INTRODUCTION

I. Setting

In September 2003, a farm owner, Zhu Zhengliang, from Anhui province attempted to set himself on fire at Tiananmen Square because “he was not satisfied with the local government’s decision to relocate his family to another place” (China Daily, 2003). His son told reporters that “‘[e]ver since the demolition my father said several times that he did [not] want to live anymore. After our home was destroyed, he was so angry that he knocked his head against a wall. Then we stayed up all night, crying’” (Wilhelm, 2004, p. 229).

In November 2009, Tang Fuzhen from Sichuan province “shocked the nation” with her self-immolation act on her rooftop (Huang and Liu, 2009). Tang’s outcry against the violent demolition of her husband’s garment processing plant ignited and triggered anger, frustration, and criticisms from much of the populace (Huang and Liu, 2009). It grabbed national attention and spawned intense discussion and debates about the growth of similar tragic occurrences (Huang and Liu, 2009).
In December 2009, Xi Xinzhu, a Beijing resident, suffered severe burns from a suicide attempt to protect his family’s home (Taipei Times, 2009). His brother said, “‘[w]e tried everything to raise legal questions about this demolition through normal channels, but nobody would do anything, although there are plainly problems.... He [Xi] did this out of helplessness and despair, because the rules are just an excuse to grab land’” (Taipei Times, 2009).

In March 2010, Tao Huixi, a farm owner from Jiangsu province, attempted to set himself and his father on fire as a protest to the forced demolition of their home for the construction of a national highway (Li, 2010).

Despite an increase in the codification of Chinese property rights, why are more and more evictees relying on other forms of protest, such as petitioning non-judicial offices, attracting media attention, and attempting suicide. In order to understand the prevalence of insecurity among the Chinese population towards property laws, this paper studies the current land-use rights system of the People’s Republic of China. Specifically,

- How has land ownership evolved legally since the founding of the PRC? Who owns the land? Who owns the buildings?
- Why was a reform in land ownership necessary? Who gained from this transition? Who lost?
- How did this land ownership reform parallel earlier concepts of land ownership in China?
• What is the current land use rights system in the PRC? How are these rights acquired?

• Why is there a weak protection for urban property rights despite a reform in land ownership?
II. Property Rights Theories

Property rights are “a set of legal relations between people with regard to some means of production” (Wu, 1994, p. 3). This set of legal relations is among people and property and not rights holders and property because “our rights of property depend fundamentally on prohibiting others from interfering with our use of the object of property” (Wu, 1994, p. 3). Property rights holders can be individuals, organizations, or states and the means of production does not include materials that do not generate income such as personal possessions (Wu, 1994). Also, property rights require the state to exercise and enforce power: “private property rights are as dependent on the power of the state to prevent incursions by non-rights holders as are public property rights” (Wu, 1994, p. 3).

The perception of property rights in the West is similar to current Chinese property rights in that these rights are divisible. In Roman (and Chinese) law, there is “the usus (the right to use a thing), the fructus (the right to the proceeds of a thing), and the abusus (the right to dispose of a thing)” (Wu, 1994, p. 4). Thus, property rights are a bundle of rights of control, income, and transfer (Oi and Walder, 1999, p. 5).
III. Outline

The remainder of this paper is organized as follows:

Chapter II traces land ownership reform under these four legal frameworks:

- Instructions on Confiscating the Property of War Criminals, Traitors, Bureaucratic Capitalists, and Counter-revolutionaries (1951);
- Constitution of the People’s Republic of China (1982);
- Land Administration Law of the People’s Republic of China (1999); and,

It also accounts for the economic incentive of the ownership reform by looking at the economic gains of the land-use rights system since the pilot schemes in the 1980s. In addition, it briefly examines the traditional ownership system and the household responsibility system as background models of the current Chinese land ownership system.

Chapter III discusses land-use rights: what are land-use rights and how are they acquired or purchased by developers? It also distinguishes the rights of a land-use rights holder and a landowner. The legislation reviewed in this chapter includes:

- Interim Regulations of the People’s Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (1990);
• Urban Real Estate Administration Law (1995); and,

• The Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction, and Quotation (2007).

Chapter IV looks at the impact the land-use rights system has had on the legal institution. Specifically, it discusses the lack of legal protection for citizens despite a growing promulgation of property-related legislation.

Chapter V draws conclusions from the paper’s analysis and presents an answer to the motivating question that frames the research of this paper.
CHAPTER II: LAND OWNERSHIP REFORM

I. Nationalization of Urban Land Ownership

After the CPC won the Chinese Civil War against the Chinese Nationalist Party in 1949, it expropriated much of the country’s urban real estate, property that had belonged to their political and ideological opponents, as stipulated in the following nationwide mandate by the State Council:

In accordance with the law, confiscation of all public-private joint ventures and private enterprises that hold stocks and properties of war criminals, traitors, and bureaucratic capitalists must be reported to the greater administrative areas (Military and Administrative Committees) for review and later transferred to the State Council…for approval of implementation.

In order to prevent damages, transfers, concealments, registrations, freezing, or seizures, confiscation cannot be announced before approval.

(Instructions on Confiscating the Property of War Criminals, Traitors, Bureaucratic Capitalists, and Counterrevolutionaries, 1951)

Besides war criminals; traitors; and, bureaucratic capitalists (a Marxist term that refers to government officials who influence, exploit, and monopolize sectors of
the economy in order to increase their own wealth and fortune—
that is, “bureaucratic factions and capitalist undertakings…and their contacts with an imperialist power” (Chi, 1975, p. 676), bandits, spies, tyrants, and counterrevolutionaries were also included among the list of those targeted for real estate removal (Instructions on Confiscating the Property of War Criminals, Traitors, Bureaucratic Capitalists, and Counterrevolutionaries, 1951).

The new administration also purchased urban real property from entrepreneurs and real estate agents (Randolph & Lou, 2000; Wilhelm, 2004). Under the State-Private Joint Management of Private Businesses policy, company owners were compensated annually “in the amount of one half the bank interest rate on the value of the capital” (Randolph & Lou, 2000, p. 9); similarly, under the Central Committee’s Opinions on the Current Situation of Urban Privately Owned Buildings and Their Socialist Transformation (1956), property owners received “20% to 40% of the rent…for a certain period of time” (Randolph & Lou, 2000, p. 10). However, fervent anticapitalism sentiments soon compelled most of these owners to “‘voluntarily surrendered [sic]’” (Wilhelm, 2004, p. 237) their realty that by the end of the 1950s, most of the commercial property in the country were under the possession of the CPC (Randolph & Lou, 2000; Wilhelm, 2004).

Conversely, private residential ownership (in contrast to private industrial ownership as discussed above) and collectively owned firms (cooperatives) continued to exist, with privately owned residences accounting for a large
proportion of housing in cities throughout the early half of the 1950s (see Table) (Randolph & Lou, 2000). Even tenants of state-owned housing later expected and assumed many of these private ownership rights (Wilhelm, 2004). For example, [they] were not bound to any fixed term of residency. Once assigned housing, they enjoyed the de facto right to occupy it for as long as they wished- generally for life. Since at least one grown child often lived together with elderly parents, when the parents died, the child (and his or her family) usually continued in residence. [Also,]…many residents of government housing began operating small stores, repair services, hair salons, and other businesses in their homes, evidence of a de facto norm of use rights. (Wilhelm, 2004, p. 239)

There are arguments, however, that the private housing stock and cooperatives at this time actually belonged to the administration and not to its original owners because “the rights of the former owners had been reduced simply to an expectation of compensation” (Randolph & Lou, 2000, p. 11). In fact, several legislative documents from the State Council- Report Concerning the Socialist Transformation of the Leased Private-Owned Land (1964) and Report on Enhancing the Administration for Buildings Belonging to the Whole People (1964)- initiated the transfer of private urban housing from the individual to the government (Randolph & Lou, 2000).
Nonetheless, any remaining semblance of private ownership was definitively ceased in 1966 at the beginning of the Cultural Revolution (Randolph & Lou, 2000). During this time, both private-owned and state-owned (or collective-owned) urban houses were illegally expropriated or destroyed (Randolph & Lou, 2000). According to one statistics report in 1974, “10,551 families’ rights in houses in Shanghai were encroached upon to varying degrees…and 881,000 [m²]…totally seized” (Randolph & Lou, 2000).

By 1982, with the adoption of the Constitution by the NPC, all urban land in the PRC was legally and officially owned by the CPC:

Land in the cities is owned by the State [sic]….

The State [sic] may, in the public interest, requisition land for its use in accordance with law. (art. 10)

(The Constitution, 1982, however, does not define the term city in any of its provisions; instead, in the City Planning Law, enacted in 1989 under the authority of the NPCSC, a city is

a municipality directly under the Central Government [sic] [Beijing, Chongqing, Shanghai, and Tianjin or]…a city or a town established as one of the administrative divisions of the state. (art. 3))
II. Development of Current Land-Use System

Due to a reform of the economics system in the PRC beginning in 1979, land nationalization as completed by the 1982 Constitution under a planned economy became inadequate and insufficient for the new socialist market economy (Li & Isaac, 1999). In a highly centralized economy, “there was no need to maximise [sic] the efficient use of the factors of production…and [so] under these circumstances a land market was considered irrelevant” (Li & Isaac, 1999, p. 17). However, in a market-driven economy, the absence of a land market could bring about inefficient allocation of land resources and sale losses for the government (Li & Isaac, 1999). Thus, in order to allow for the new land-use system, article 10 of the Constitution was revised in 1988 from

no organization or individual may appropriate, buy, sell[,] or lease land or otherwise engage in the transfer of land by unlawful means

to

no organization or individual may appropriate, buy, sell[,] or otherwise engage in the transfer of land by unlawful means. The [granted] right to the use of land may be transferred according to law.

Along with the 1988 Constitution, the Land Administration Law (approved by the NPCSC in 1986 and amended twice in 1988 and in 1998 before its promulgation in 1998) jumpstarted real property ownership reform by formally
implementing the granted land-use rights system so as “to commodify the productive [real estate] economy and to establish market transactions as a means of resource distribution” (Randolph and Lou, 1999, p. 516). (The Land Administration Law, most recently revised again in 2004, is often coupled with its Implementing Regulations, which was first approved by the State Council in 1991 and later amended in 1998 before its final promulgation in 1999. This supplementary measure expands and details the basic principles of the Land Administration Law.) Before looking at land-use rights though (see Chapter III), it is important to clarify who actually exercises direct control over the administration of urban state-owned land.

Under the Land Administration Law (1986), land is separated into three categories:

- agricultural land, which refers to “land that is directly used for agricultural production, including cultivated land, forest land, grassland, land for irrigation and water conservancy, and water surfaces for agriculture;”
- construction land, which refers to “land for constructing buildings and other structures, including land for housing in urban and rural areas, for public utilities, for factories and mines, for communications and water conservancy, for tourism[,] and for military installations;” and,
- unused land, which refers to “land other than land for agriculture and construction” (art. 4; see also Implementing Regulations, 1991, art. 10).
Construction land, specifically land in the urban districts, is owned by the state, as provided in article 10 of the Constitution (1982), article 8 of the Land Administration Law (1986), article 2 of the Implementing Regulations (1991), and article 47 of the Property Law (2007). (Technically, this land is in “ownership by the whole people” (Land Administration Law, 1986, art. 2), who have relinquished their rights of ownership to the State Council:

The property owned by the State [sic][,] as is provided for by law[,] belongs to the State [sic][... that is, the entire people.

The State Council shall exercise ownership of State-owned [sic] property on behalf of the State [sic]; and[,] where laws provide for otherwise, the provisions there shall prevail. (Property Law, 2007, art. 45)

This is the only time that state is defined as “the entire people” (Property Law, 2007, art. 45) in this paper. Everywhere else, state is used interchangeably with the CPC.) As a subsidiary agency of the State Council, the Ministry of Land and Resources (2007) is responsible for the regulation, administration, and allocation of land and its resources on a national level:

The land administration department under the State Council [the Ministry of Land and Resources] shall be in charge of unified administration of and supervision over the land throughout the country. (Land Administration Law, 1986, art. 5)
Micromanagement, however, is left to local (county or city levels) land bureaus (Urban Real Estate Administration Law, 1994). Articles 11 and 14 of the Urban Real Estate Administration Law, which was adopted by the NPCSC in 1994, specifies that the granting of the land-use right shall be carried out by the people’s governments of the cities or counties in a planned and step-by-step way. With regard to each lot granted, plans for its purposes, term of use, and other conditions shall be worked out by the departments of land administration under the people’s governments of the cities and counties [henceforth, the local departments of land administration] in conjunction with the competent departments of urban planning [and]…construction and housing administration. Such plans shall, according to the regulations of the State Council, be implemented by the [local] departments of land administration…after their submission to and approval by the people’s governments with due authority for approval….

The contract for granting the land-use right shall be concluded between the [local] departments of land administration…and the land users. Therefore, although the people may have delegated urban land ownership rights to the State Council (the Ministry of Land and Resources), actual land management, such as the allocating and granting of land-use rights, is conducted by local land administrations.
"ownership by the whole people"
III. Economic Incentive

The transition to the current LURs system from the old land use system was mainly due to a reform of the economics system in the PRC (Chen and Wills, 1999). Until the 1980s, the Chinese economy was a planned economy with allocation of resources including land and other natural resources conducted solely by the government (Chen and Wills, 1999). Thus, markets in factors of production did not exist and neither did competition among businesses (Chen and Wills, 1999). Under this economy, “there was no need to maximize the efficient use of the factors of production…and under these circumstances a land market was considered irrelevant and the private market would ‘wither away’” (Chen and Wills, 1999, p. 17).

Therefore, when the PRC began its open-door policies in 1979, the old land use system became insufficient (Chen and Wills, 1999). Economic reforms called for land use reforms- under the socialist market economy, the absence of a land market can lead to inefficient allocation of land resources and deprivation of financial gains (Chen and Wills, 1999). Before the introduction of marketable LURs nationally, the government did a pilot experiment in Shenzhen, Hushuen City, and Guangzhou (Chen and Wills, 1999) to see how this new system would fare, but the government barely waited to see the results before implementing LURs at the national level (Wilhelm, 2004). The regulations governing the sale of
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these pilot LURs became the framework for the current LURs system. Although some details have changed (for example, from 50 to 70 years of use), “the balance of rights between LURs holders and the state as landowner remains fundamentally as it was set in the [pilot schemes] regulations” (Wilhelm, 2004, 245).

The following table shows the fee rate for each area and the amount collected in the first year (Chen and Wills, 1999, p. 19):

<table>
<thead>
<tr>
<th>Date of Introduction</th>
<th>Area</th>
<th>Fee Rate (yuan/m²/pa)</th>
<th>Amount Collected in First Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>Shenzhen Special Economic Zone</td>
<td>1-4</td>
<td>10 million Yuan</td>
</tr>
<tr>
<td>1984</td>
<td>Hushuen City (Liaoning Province)</td>
<td>0.2-0.6</td>
<td>13 million Yuan</td>
</tr>
<tr>
<td>1984</td>
<td>Guangzhou (only the Economic and Technological Districts, new construction projects, and foreign investment)</td>
<td>0.5-4.0</td>
<td>20 million Yuan</td>
</tr>
</tbody>
</table>

The financial impact of the LURs system on the country’s economy was immensely positive and significant (Wilhelm, 2004). According to Wilhelm (2004), in 2001 and 2002, the LURs market contributed 1.5 percentage points to the 7.2 percent and 8.5 percent growth in the nation’s annual gross domestic product, respectively. In 2003, property investment increased to one trillion RMB, about 122 billion USD (Wilhelm, 2004). There was also a burgeoning of housing construction: “A total of 3.4 billion square meters of housing were built in cities
nationwide during the five years that ended in 2002. The average housing space per urban resident reached 22.8 square meters, up from just 8.8 square meters in 1988” (Wilhelm, 2004, p. 247). This new construction work has destroyed much of the older buildings:

In Shanghai, 50 percent of the building stock that existed in 1949 has been razed- including at least 39 structures supposedly on a government list of protected buildings…. Pockets of preservation[, however, will not] stop the tidal wave of redevelopment and new infrastructure- oceans of concrete fashioned into new highways, subways, light rail, overpasses, bridges[,] and airports. (McGuigan, Lin-Liu, and Mooney, 2003)
IV. Earlier Concepts

During the socialist period, employees of the government and of state-owned enterprises received free (or extremely low rent) housing and gradually viewed their privilege as a part of their compensation, their “non-cash remuneration” (Wilhelm 2004). This perception of holding “‘capital rights’” and “ownership stake” seem to be reminiscent of the traditional idea of ownership as divisible—“one party might be recognized as the legal owner, another might hold use rights, and a third might enjoy the profits from its use” (Wilhelm 2004, p. 238-39).

According to Fei’s (1946) anthropological fieldwork conducted in the early 1900s in the rural life of Yangtze Valley, land is seen as divided into two layers: the surface and the subsoil. The owner of the subsoil, also known as the absentee landlord, is “the title holder of the land,” that is, the one that pays taxes on the land (Fei 1946, p. 177). Because the absentee landlord owns only the subsoil, he or she does not have the “right to use the land directly for cultivation” whereas the tenant, who owns only the surface, and the full owner, who owns both the surface and the subsoil, have the right to cultivate the land (Fei 1946, p. 177). The tenant and the full owner can also rent the land to others (lessees and employees) to use and so the actual cultivator of the land may not be the tenant or the full owner, but actually the lessees and the employees (Fei 1946).
On the other hand, “claims on the produce of the land” is more concrete (Fei 1946, p. 178). The absentee landlord received rent from the tenant and if the tenant temporarily leased his land, he could also receive rent from the lessee (Fei, 1946). Lessees received produce as rewards and employees received wage from labor (Fei, 1946). Thus,

Chinese law under the Ming and later dynasties [that is, from 1368 onwards] recognized that a single piece of land could have multiple owners, each enjoying distinct rights. One person might physically occupy and use the land while another would be the officially registered owner and taxpayer. The occupant had ‘surface’…rights, while the registered owner had ‘subsurface’…or ‘root’…rights. The registered owner could not displace the surface owner at will.

…[T]he surface owner’s claim was based at least in part on the labor he had invested in the land. (Wilhelm 2004, 239)

The following table summarizes each characteristic for each level of ownership from the study conducted by Fei (1946):
<table>
<thead>
<tr>
<th>Title</th>
<th>Legal Right</th>
<th>Reward</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee</td>
<td></td>
<td>Wage</td>
<td>Cultivation</td>
</tr>
<tr>
<td>Lessee</td>
<td>Temporary use of the land</td>
<td>Produce</td>
<td>Cultivation, rent</td>
</tr>
<tr>
<td>Tenant</td>
<td>Permanent ownership of land surface</td>
<td>Produce</td>
<td>Rent, cultivation</td>
</tr>
<tr>
<td>Absentee landlord</td>
<td>Ownership of subsoil</td>
<td>Rent</td>
<td>Taxes to government</td>
</tr>
<tr>
<td>Full owner</td>
<td>Ownership of land surface and subsoil</td>
<td>Produce</td>
<td>Taxes to government</td>
</tr>
</tbody>
</table>
CHAPTER III: URBAN LAND-USE RIGHTS

The creation of land-use rights allows the CPC and its local land bureaus to allocate or grant the use (not the ownership) of its urban land to prospective private institutions and individuals while maintaining their control over all urban land in the country. There are two types of land-use rights: allocated land-use rights and granted land-use rights (Randolph & Lou, 2000). Allocated land-use rights reflect the tradition of the planned economy and have therefore existed even before 1988 whereas granted land-use rights were especially created in 1988 as components of the socialist market economy (Randolph & Lou, 2000). The following three sections will compare the purposes, fees, and terms of allocated and granted land-use rights.

I. Purposes of Allocated and Granted Land-Use Rights

As stipulated in article 23 of the Urban Real Estate Administration Law (1994), local land administrations allocate land-use rights for specific purposes, such as

- for State [sic] organs or military purposes;
- for urban infrastructure or public utilities;
• for projects of energy, communications[,] or water conservancy, etc.[,]
  which are selectively supported by the State [sic]; and,
• for other purposes as provided by laws or administrative rules and
  regulations.

Thus, the design of an allocated land is usually stated in explicit terms, such as an
  “‘office building for the Intermediate People’s Court of Beijing,’ ‘a hospital,’ or ‘a
  middle school’” (Randolph & Lou, 2000, p. 91).

  Conversely, the descriptions for granted land-use rights are relatively
  general; that is, local land agencies may sell a granted land-use right for “‘light
  industrial…’ or ‘commercial office’ use…or ‘residential’ use” (Randolph & Lou,
  2000, p. 126). However, once the uses of granted rights are determined, the
  alteration process is quite bureaucratic:

  Where a land user who needs to modify the land-use purpose agreed upon
  in the contract for granting the land-use right, he [or she] must obtain the
  consent of the granting party and the competent administrative department
  for urban planning under the people’s government of the city or county
  [and]…conclude an agreement on the modification of the granting contract
  or conclude a new contract for granting the land-use right and the fees for
  granting the land-use right shall be accordingly readjusted. (Urban Real
  Estate Administration Law, 1994, art. 17; see also Interim Regulations,
  1990, art. 18; Land Administration Law, 1986, art. 56)
In essence, “if the [land-use right]…purchaser…decides while digging the foundation for a hotel that it would be more profitable to use the building for offices or luxury apartments, this switch must be approved by the land administration bureau and may incur an additional fee” (Wilhelm, 2004, p. 248).
II. Fees for Allocated and Granted Land-Use Rights

According to the Interim Regulations, which went into effect in 1990 under the authority of the State Council, allocated land-use rights are free of charge (with the exception of land taxes):

The allocated right to the use of the land refers to the right to the use of the land [that]…the land user acquires in accordance with the law…by various means…and without compensation.

The land user…shall [also] pay tax for the use of the land… (art. 43)

There are, however, compensation and resettlement fees- “fees designed to compensate parties who already were making use of the land allocated and would be displaced by the new use” (Randolph & Lou, 2000, p. 86), as provided in article 22 of the Urban Real Estate Administration Law (1994):

Allocation of the land-use right refers to acts that the people’s government at or above the county level, after the land user has paid compensation and expenses for resettlement, etc., approves[,] in accordance with the law[,] to allocate the land to the land user or gratuitously allocates the land-use right to the land user.

In contrast, granted land-use rights require full payment as dictated in the terms of the contract:

A land user must pay the fees for the granting of the land-use right as agreed upon in the granting contract. In default of such payments, the
department of land administration shall have the power to rescind the contract and may demand compensation for the breach of contract. (Urban Real Estate Administration Law, 1994, art. 15)

Typically, local land offices need to receive the entire amount for the granted land-use rights within 60 days of the signing of the contract; otherwise, the contract may be terminated with demand for compensation:

The land user shall, within 60 days of the signing of the contract for the assignment of the right to the use of the land, pay the total amount of the assignment fee thereof, failing which, the assigning party shall have the right to terminate the contract and may claim compensation for breach of contract. (Interim Regulations, 1990, art. 14)
III. Terms of Allocated and Granted Land-Use Rights

Allocated land-use rights have an indefinite amount of time:

Where the land-use right has been obtained by means of allocation in accordance with the provisions of this Law [sic], except as otherwise provided by laws [and]…administrative rules and regulations, there shall be no restriction with respect to the term of use. (Urban Real Estate Administration Law, 1994, art. 22)

On the contrary, terms for granted land-use rights have a maximum of

• 70 years for residential purposes;
• 50 years for industrial purposes;
• 50 years for the purposes of education, science, culture, public health[,] and physical education;
• 40 years for commercial, tourist[,] and recreational purposes; and[,]
• 50 years for comprehensive utilization or other purposes. (Urban Real Estate Administration Law, 1994, art. 12)

Extensions can be made when holders of granted land-use rights apply for a renewal at least one year before expiration and unless there is a conflict with public interest, local land departments have to approve all renewal requests (Urban Real Estate Administration Law, 1994, art. 21). This approval begins a new contract along with a new fee established “according to the value of the land[¬]use
right (exclusive of the building[,]…which has distinct ownership) at the time of the renewal” (Randolph & Lou, 2000, p. 129; see also Urban Real Estate Administration Law, 1994, art. 21). Article 21 of the Urban Real Estate Administration Law (1994) reads:

Where the term for the use of land specified in the contract for granting the land-use right expires…and the land user needs to continue the use of the land, the land user shall apply for an extension of the term no later than one year ahead of the expiration. Such an application shall be approved except for the land to be reclaimed as required by public interests. Upon approval of the extension, the land user shall enter into a new contract for the granting of the land-use right and pay fees for the granting in accordance with the relevant regulations.

However, if the extension is denied or if there is no renewal application, local land bureaus do not offer any form of compensation to the improvements made:

Upon expiration of the term of use, the right to the use of the land and the ownership of the above-ground [*sic*] buildings and other attached objects thereon shall be acquired by the State [*sic*] without compensation. The land user shall surrender the certificate for land[-]use and undertake procedures to nullify the registration. (Interim Regulations, 1990, art. 40; see also Land Administration Law, 1986, art. 58; Urban Real Estate Administration Law, 1994, art. 21)
CHAPTER IV: Legal Impact

In effect, under laws governing the LURs market, a hierarchy of interest and position was formed (Wilhelm, 2004). The government (central and then local) belonged at the very top, followed by the LURs buyers, and finally, the building owners, who were at the bottom because they did not have the right to be notified that the LURs under their buildings were being sold until the transactions were complete (Wilhelm, 2004).

Furthermore, local land administration departments can end the term use earlier than what is listed on the contract under the following circumstances:

1. The land is needed for the benefits of the public;

2. The use of the land needs to be readjusted for renovating the old urban area according to city planning;

3. At the expiration of the period stipulated in the contract for use of the land by such means of compensation as land assignment, the land user has not applied for extending the period or, if he has, the application is not approved;

4. The use of the originally allocated State-owned land is terminated because, among other things, the unit that uses the land is dissolved or moved away; or
5. The highways, railways, airports, or ore fields are abandoned with approval. (Land Administration Law, 1999, art. 58)

Although the Land Administration Law (1999) requires that the LURs holders be compensated when their rights are terminated early (under the first and second provisions only), there are no specific details on how this compensation is to be calculated (art. 58).

Similarly, under article two of the Land Administration Law (1999), it just stipulates that the State may requisition land owned by collectives according to law on public interests. Also, in article 20 of the Urban Real Estate Law (1995):

Under special circumstances, the State may take back the land in advance out of public interest consideration in accordance with legal procedures and corresponding compensation shall be given to the related land user in accordance with the real term that the land had been used and the real conditions of the land development.

According to the Supreme People’s Court, in 2003, the lower courts accepted 16,418 administrative lawsuits for urban construction, a 31.7% increase from 2002 (Wilhelm, 2004). (In perspective, this is 15.2% of all administrative lawsuits of that year (Wilhelm, 2004).) In Beijing, the Beijing High People’s Court reported that they only received a few hundred property-related lawsuits each year until 1992 (Wilhelm, 2004). Afterwards, they received 8,103 lawsuits in 1999, over 10,000 in 2000, and over 15,000 in 2001 (Wilhelm, 2004).
Unfortunately, there is no reported figure on the number of lawsuits ruled in favor of the people (Wilhelm, 2004).

Most recently, in 2007, as a response to private property that “‘has been increasing with each passing day,’” the Property Rights Law went into effect to further acknowledge and help protect private property- a landmark movement that the CPC said was from the “‘urgent demand of the people’” (Fan, 2007). However, in “satisfying old-guard officials reluctance to jettison the socialist ideals they have relied on since the 1949 communist revolution” (Fan, 2007), ideological references such as “maintaining…the economic order of the socialist market” and “implement[ing] the socialist market economy” were made (Property Rights Law, 2007, art. 1-3). Because the CPC still owns all the land, enforcement difficulties persist. As Liu Xiaobo, a Chinese political dissident succinctly puts it, “‘[a]s long as the problem of landownership is not solved, conflicts on unfair land seizure cannot be avoided. Since land is in the hand of the government, a developer can bribe an official and make the official claim that the land is seized for public use…. If the developer could get the approval from the official, he is legally entitled to seize the land’” (Fan, 2007).
CHAPTER V: CONCLUSION

After more than half a century of reforms and changes, it seems that land ownership in the PRC has come a full circle. Since the Ming Dynasty, land has been recognized to have multiple owners: the owner of the subsoil (the absentee landlord/the title holder of the land); the owner of the soil (the tenant); and, the owner of both the subsoil and the soil (the full owner). From the establishment of the PRC in 1949, private property was gradually abolished and eventually with the adoption of the Constitution in 1982, all land in the country belonged to the State. Yet, reform of the economics system in the PRC (from a planned economy with allocation of resources conducted by the government to a socialist market economy) called for similar land use reforms. Marketable LURs were implemented in 1988, allowing local land administration offices to allocate or grant the right to use land: land became transferable, leasable, and mortgageable again. Therefore, from holding divisible land rights since the Ming Dynasty to nationalizing land ownership during the socialist period, the current land use system is back to where it started with marketable land use rights.

Unfortunately, legal protection for the current property system remains weak. For example, local land administration bureaus can end the term use earlier than what is listed on the contract. Although compensation is required when LURs
are terminated early, there are no specific details on how this compensation is to be calculated. Thus, despite an increase in laws related to property rights, the interest in these legislations is focused on the protection of the central and local governments, followed by developers, and finally the actual building owners. In 2003, property-related issues were the primary cause of public dissatisfaction with the government; 17,000 appeals and complaints alone were made to the State Letters and Visits Bureau in the first eight months of 2003 (Wilhelm, 2004).
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