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Faure, Alexandre

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Alexandre Faure,
Universite de Rennes (Departement de Droit) /France/

Public international law debate concerning forced evictions in China

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Summary: The aim of this study is to present legal and social controvercies concerning current scale of forced eviction in China. My particular attention is devoted to the controvercies in the sphere of public international law. At least three millions Chinese citizens are evicted each year to make space. Forced evictions are sometimes considered as the part of the issue of development-induced displacement and resettlement. The most important caues of development-induced displacement and resettlement in China include construction of dams and hydro-power plants, urban evictions and preparation of mega-events. The object of this study is to draw attention of the controvercies converning evictions in urban areas from the point of view of public international law.

Introduction

Forced evictions and involuntary resettlement (e.g. dam-induced displacement) are considered as one of the important social issues in contemporary China. Forced eviction in the People's Republic of China refers to the practice of involuntary land requisitions from the citizenry, typically in order to make room for development projects. In many instances, government authorities working in collusion with private developers seize land from villagers, often with little to no compensation. Forced evictions are particularly common in rural areas, and are a major source of unrest and public protest. By some estimates, up to 65 percent of the 180,000 annual "mass incidents" in China stem from grievances over forced evictions. Citizens who resist or protest the evictions have reportedly been subjected to harassment, beatings, or detention. The rate of forced evictions has grown significantly since the 1990s, as city and county-level governments have increasingly come to rely on land sales as an important source of revenue. In 2011, the Financial Times reported that 40 percent of local government revenue comes from land sales. Guan Qingyou, a professor at Tsinghua University, estimated that land sales accounted for 74 percent of local government income in 2010. Under Chinese property law, there is no privately held land; "urban land" is owned by the state, which grants land rights for a set number of years. Rural, or "collectively owned land," is leased by the state for periods of 30 years, and is theoretically reserved for agricultural purposes, housing and services for farmers.

The underlying assumptions of property law are radically different in Chinese law than in most Western countries, and specifically the "Common Law" of English-speaking countries. In Common Law there is often a degree of ambiguity as to who should benefit from public investment. Governments can legally expropriate land for the public benefit. The State may forcibly evict occupants and extinguish the rights of owners and tenants upon payment of compensation. In most Common Law jurisdictions, the state may expropriate land for on-sale to a private individual or company. To this extent Chinese and Common Law are the same. The difference is that in Common Law there is a presumption that any increase in the value of the land due to changed conditions which give rise to the opportunity for redevelopment for a higher usage should accrue to the land-owner; while in China it is considered just that the economic benefits of public investment should accrue to the people in general.

In China, therefore, when the state invests in public infrastructure – roads, trains, water, electricity distribution, etc. – there will simultaneously be a reconsideration of land use in the areas affected. If a planning decision is taken to re-zone land for a higher use, the state will generally expropriate the land, consolidate it into parcels consistent with the proposed new usage, and then offer it on the market on a new 40–70 year lease (the term depending on the usage). This operation also allows for civic improvements including road widening and the creation of public open space. In most Western countries, by contrast, public investment in infrastructure and rezoning lead to mass windfall profits for private landholders who happen to own land in the areas affected – or who corruptly influence planning decisions for their own benefit. Not only do Chinese regard there system as more just than prevalent Western models, it also makes for more efficient land use and less corruption surrounding zoning decisions than in the West. Forced evictions are

forbidden under the ICESCR which China has ratified. Under China's constitution and other property laws, expropriation of urban land is permitted only for the purpose of supporting the "public interest," and those being evicted are supposed to receive compensation, resettlement, and protection of living conditions. The "public interest" is not defined, however, and abuses are common in the expropriation process, with many citizens complaining of receiving little or no compensation. Collectively owned rural land may be "reallocated" at the discretion of authorities. By reclassifying rural land as urban land, it can then be sold at a profit.

In 2011, China's legislative body implemented a new law limiting the use of violence in forced evictions, as well as outlawing the clearing of property at night and during holidays. Under the 2011 regulation, violent law enforcement measures are to be used only in "emergencies," though the term is not defined. Chinese authorities declared that the law—which took twelve years to draft—would help protect human rights

It is estimated that 43 percent of villages surveyed across China report being the victims of land grabs, and from the mid-1990s to mid-2000s, an estimated 40 million Chinese peasants were affected by land requisitions. Since 2005, surveys have indicated a steady increase in the number of forced evictions in China, with local government appropriating the land of approximately 4 million rural Chinese citizens annually.

Forced evictions with inadequate compensation occur frequently in both urban and rural contexts, with even fewer legal protections for rural citizens. In most instances, the land is then sold to private developers at an average cost of 40 times higher per acre than the government paid to the villagers

Among the most notable example of forced evictions in China we can mention these associated with the construction of the dams, urban renewal, preparation of mega-events (2008 Summer Olympics in Beijing). Although forced evictions occur throughout China in both rural and urban environments, there are several notable examples in which hundreds of thousands of people were evicted. From 1993 to 2003, 2.5 million people were evicted in the city of Shanghai. In preparation for the 2008 Summer Olympics in Beijing, many of Beijing's densely populated neighborhoods were torn down in order to make way for new developments and infrastructure projects. The Center on Housing Rights and Evictions estimated that 1.5 million people in and around Beijing were forced from their homes, often with inadequate compensation. Chinese authorities maintained only 6,000 families were relocated, and that all received proper compensation.

From 1995 to 2005, an average of 86,754 people were evicted annually in connection to the Three Gorges Dam totaling an estimated 1.4 million people. Recalcitrant residents in the city of had their water and electricity turned off in order to force them to move; the residents said they had not yet left because proper resettlement hadn't been arranged.

Forced evictions are among the major social problems in China. Forced evictions are a common catalyst for organized protests and demonstrations. According to some estimates, as much as 65 percent of the estimated 180,000 annual "mass incidents" (protests) in China stem from grievances over forced evictions. Notable examples of large-scale demonstrations against forced evictions include the December 2011 protests in the Southern village of Wukan, which resulted in the temporary expulsion of Communist Party authorities, and the 2005 Dongzhou protests, which ended with the shooting deaths of several protesting villagers by armed police.

A number of individual protests have also made international headlines: on 26 May 2011, Qian Mingqi, a farmer from Fuzhou whose home had been demolished to make room for a highway, complained of losing 2 million yuan in the forced eviction. After numerous failed attempts to petition authorities for redress, on 26 May 2011, Qian at government buildings. He was hailed as a hero by many Chinese internet users, who viewed the attacks not as a form of terrorism, but as "righteous vengeance."

In August 2008, two elderly women in their 70s were sentenced to a year of reeducation-through-labor when they applied for a permit to protest in the government's approved "protest zone" during the 2008 Beijing Olympics. Wu Dianyuan, 79, and Wang Xiuying, 77, were evicted from their Beijing homes in 2001. They were promised compensation and resettlement, but it was never delivered.

Citizens have also resorted to a variety of semi-institutionalized forms of resistance, including petitioning actions and the use of legal channels to challenge forced land requisitions or demand compensation. In the first half of 2004, for instance, China's construction ministry reported receiving petitions from more than 18,600 individuals and 4,000 groups over forced evictions and unlawful transfers of

land. Numerous lawyers identifying with the Weiquan (rights defending) movement have taken on cases related to forced evictions. These include lawyers and activists Ni Yulan, Tang Jitian, Gao Zhisheng, and Li Dunyong, among others

Legal and public international law aspects of forced evictions

Though the procedures for evictions differ depending on the specific laws of various jurisdictions, the general process consists of 1) giving notice to the tenant (and any other person residing there as well) to leave the premises, 2) if the tenant fails to leave the premises, filing a lawsuit to evict the tenant and regain possession of the property (along with amounts owed for damages, unpaid rent, and/or court costs and attorney's fees) and appearing in court, and 3) if the tenant still remains in the premises, forcibly removing the tenant from them via legal action.

Most jurisdictions do not permit the landlord to evict a tenant without first taking legal action to do so (commonly referred to as a "self-help" eviction; such actions include changing locks, removing items from the premises, or terminating utility services). Such evictions are generally illegal at any time during the process (including after a landlord wins an eviction suit); a tenant facing such measures may sue the landlord. Prior to filing a suit in court for eviction, generally the landlord must provide written notice to the tenant (commonly called a *notice to quit* or *notice to vacate*). A landlord may evict a tenant "without cause" (i.e., the landlord simply desires to end the landlord-tenant relationship without the tenant being in breach of the lease, such as when a lease is about to expire) or "for cause" (i.e., the tenant is in breach of the lease, such as non-payment of rent or allowing criminal activity to take place on the premises).

The notice to vacate may either be conditional (i.e., the tenant may remain in the premises if certain actions are taken prior to the specified date) or unconditional (i.e., the tenant can not do anything to avoid the eviction and must leave by a specified date).

If the termination is without cause, the tenant is generally given a longer period of time (generally 30 days) to vacate than if the termination is for cause, in which case the tenant may have a short amount of time (perhaps as few as three days) in which to correct the violation. In some jurisdictions, landlords may not be able to terminate a lease without cause (such as in rent control jurisdictions). Where the law permits, a landlord and tenant may agree to a different period of time for notice requirements than specified in the law.

If the tenant remains in possession of the property after the notice to vacate has expired, the landlord would then serve the tenant with a lawsuit.

Depending on the jurisdiction, the tenant may be required to submit a written response by a specified date, after which time another date is set for the trial. Other jurisdictions may simply require the tenant to appear in court on a specified date. Eviction cases are often expedited since the issue is time-sensitive (the landlord loses rental income while the tenant remains in possession). A jury trial may be requested by either party.

If the tenant does not file an answer or appear in court, the landlord can then request a default judgement and win the lawsuit automatically, being awarded possession of the property, rent in arrears, court costs, and other costs where allowed by law such as attorney's fees or reimbursement for other costs incurred by the tenant (such as to repair property damage or unpaid utilities). By filing an answer or appearing in court, the tenant may state his or her side of the story, and provide affirmative defenses such as the landlord not giving proper notice to vacate or that rent was paid. If the judge or jury sides with the tenant, the tenant remains in possession of the property, but the judge or jury may still order any past due rent to be paid, plus any fees and costs.

If the landlord wins, the tenant must then move within a specified time, generally less than a week, although the tenant can ask for a stay of execution or appeal the verdict. In some jurisdictions where a tenant has failed to pay rent, the law may allow the tenant a right to redemption, which means that the tenant may avoid eviction and remain in the property by paying the full amount of rent due, plus all other fees owed to the landlord as awarded by the court, by a specified date. Removal from the property. As mentioned above, most jurisdictions do not allow a landlord to evict a tenant without legal action being taken first, even if the landlord is successful in court.

Instead, the landlord would have to obtain a *writ of possession* from the court and present it to the

appropriate law enforcement officer. The officer then posts a notice for the tenant on the property that the officer will return on a specified day to remove the tenant from the property if the tenant has not moved. On that day, if necessary, the officer may physically remove the tenant and any other people on the property (though some jurisdictions will not enforce the writ if, on that day, inclement weather is taking place).

Any possessions of the tenant still on the property may be turned over to the tenant, put in storage for the tenant, placed outside the property, seized and sold under a *writ of garnishment* (which the landlord would also be required to obtain, though certain items such as personal effects are generally exempt by law from forced sale) and/or considered abandoned, depending on local laws. The rental property is then turned over to the landlord. Depending on the jurisdiction, even after eviction the landlord may still bring suit against a tenant for "holdover rent" (i.e., rent for the period between the date of the lawsuit and the date of actual eviction) and other items such as unpaid utilities or property damage.

China's growth has been so rapid that virtually every household has benefited significantly, fueling the steep drop in poverty. However, different people have benefited to very different extents, so that inequality has risen during the reform period. This is true for inequality in household income or consumption, as well as for inequality in important social outcomes such as health status or educational attainment. Concerning household consumption, the Gini measure of inequality increased from 0.31 at the beginning of reform to 0.45 in 2004. To some extent this rise in inequality is the natural result of the market forces that have generated the strong growth; but to some extent it is "artificial" in the sense that various government policies exacerbate the tendencies toward higher inequality, rather than mitigate them. Changes to some policies could halt or even reverse the increasing inequality.

The Nobel-Prize winning economist Sir Arthur Lewis noted that "development must be inegalitarian because it does not start in every part of the economy at the same time" in 1954. China classically manifests two of the characteristics of development that Lewis had in mind: rising return to education and rural-urban migration. As an underdeveloped country, China began its reform with relatively few highly educated people, and with a small minority of the population (20%) living in cities, where labor productivity was about twice the level as in the countryside.

In pre-reform China there was very little return to education manifested in salaries. Cab drivers and college professors had similar incomes. Economic reform has created a labor market in which people can search for higher pay, and one result of this is that salaries for educated people have gone up dramatically. In the short period between 1988 and 2003, the wage returns to one additional year of schooling increased from 4% to 11%. This development initially leads to higher overall inequality, because the initial stock of educated people is small and they are concentrated at the high end of the income distribution. But if there is reasonably good access to education, then over time a greater and greater share of the population will become educated, and that will ultimately tend to reduce inequality.

Non-governmental sector and international responses

Centre of Housing Rights and Evictions (COHRE) is the only internationally known NGO dealing with housing issues and forced evictions in developing countries. At its height in 2008, COHRE maintained offices in Switzerland, Ghana, South Africa, Sri Lanka, Cambodia, Brazil and the United States and carried out work through three Regional Programmes covering Africa, Asia and the Americas as well as five Thematic Programmes covering economic, social and cultural rights strategic litigation; women and housing rights; forced evictions; housing and land restitution; and the rights to water and sanitation. As of the end of 2011, COHRE maintained registered offices in the Asia-Pacific region (Cambodia) and Africa (Kenya). These remaining offices coordinated regional and local activities in pursuit of COHRE's mission. COHRE's mission is to ensure the full enjoyment of the human right to adequate housing for everyone, everywhere, including preventing forced evictions of persons, families and communities from their homes or lands. COHRE ceased operations in early 2012. COHRE had been granted Special Consultative Status by the United Nations Economic and Social Council (ECOSOC, 1999), and the OAS (OAS, 2002), and had participatory status with the COE (COE, 2003) as well as Observer Status with the ACHRP (ACHRP, 2003).

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