

**OLYMPIC IDEAL DEMOLISHED: HOW
FORCED EVICTIONS IN CHINA RELATED
TO THE 2008 OLYMPIC GAMES ARE
VIOLATING INTERNATIONAL LAW**

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I. INTRODUCTION

The lone Chinese student halting an advancing column of tanks during the 1989 Tiananmen Square Protests¹ is a familiar image in the international conscience.² Protests continue in China³ today; however, the snapshot portraying the current situation might include a man standing in front of a bulldozer poised to destroy his home⁴ instead of a tank sent to suppress a demonstration. Rather than denouncing China's political corruption and inflation,⁵ recent protests decry forced evictions and demolition related to the 2008 Olympic Games.⁶

1. See Pico Iyer, *The Unknown Rebel*, TIME, Apr. 13, 1998, at 192 (describing the image of the single protester whose actions halted an advancing column of tanks for over half an hour). TIME magazine dubbed the anonymous student the "Unknown Rebel," and to this day he symbolizes Chinese freedom. See *id.*

2. See *id.* (proposing the man "may have impressed his image on the global memory more vividly, more intimately than even Sun Yat-sen did" and was seen "by more people than ever laid eyes on Winston Churchill, Albert Einstein and James Joyce combined").

3. The Author uses the terms China and P.R.C. interchangeably to refer to the People's Republic of China throughout the remainder of this Comment.

4. See, e.g., Zhu Zhongshun, *Suzhou yili chaiqian 'dingfeng zuoan' shimin shenye zao yeman bangjia* [Suzhou forced evictee brutally kidnapped in middle of night], *JIANGNAN SHIBAO* [JIANGNAN TIMES], Dec. 12, 2003, <http://news.sina.com.cn/c/2003-12-12/06531321126s.shtml> (reporting developers sent bulldozers in the middle of night to destroy residences).

5. See Teresa Martin, Note, *Hong Kong Right of Abode: Ng Siu Tung & Others v. Director of Immigration—Constitutional and Human Rights at the Mercy of China*, 5 SAN DIEGO INT'L L.J. 465, 474 n.49 (2004) (briefly surveying the reasons behind the 1989 protests and the government's reaction to the protests).

6. See, e.g., Daniel Griffiths, *China Faces Growing Land Disputes*, BBC NEWS,

The Olympic Committee's decision to select Beijing as the host for the 2008 Games could arguably reflect China's advancement in civil liberties.⁷ In reality however, the decision has spurred a host of human rights violations.⁸ Since accepting the Beijing bid, the Chinese government has destroyed many Chinese citizens' homes in order to make way for the upcoming Games.⁹ These citizens have received little or no compensation and have had no effective way to contest the government's decision.¹⁰ Because the Olympic Movement¹¹ has committed itself to high ideals¹² and the promotion of peace through competitive sport for more than a century,¹³ its endorsement of Beijing, China is inapposite to its stated goals and offensive to human rights activism.

The International Olympic Committee (IOC) is the supreme authority of the Olympic Movement and the body responsible for selecting which cities will host upcoming Olympic Games.¹⁴ In

Aug. 2, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4728025.stm> (observing on July 20, 2005, hundreds of people blocked the entrance to land assigned for use in the 2008 Olympics).

7. Cf. Jiangyu Wang, *China and the Universal Human Rights Standards*, 29 SYRACUSE J. INT'L L. & COM. 135, 141–42 (2001) (suggesting negative international public opinion of China's human rights record was at least partly responsible for its defeat in the 1993 bid for the 2000 Olympic Games).

8. See Sara Meg Davis, *Demolished: Forced Evictions and the Tenants' Rights Movement in China*, HUMAN RIGHTS WATCH VOL. 16, NO. 4(C), Mar. 2004, at 6, available at <http://199.173.149.140/reports/2004/china0304/china0304.pdf> (detailing reported incidents of forced evictions and demolition); *infra* Part III.

9. See Davis, *supra* note 8, at 1–2, 22.

10. See *id.* at 13–15.

11. "The Olympic Movement includes the International Olympic Committee (IOC), Organising Committees of the Olympic Games (OCOGs), the National Olympic Committees (NOCs), the International Federations (IFs), the national associations, clubs and, of course, the athletes." Official Website of the Olympic Movement, http://www.olympic.org/uk/organisation/index_uk.asp (last visited Oct. 14, 2006).

12. See INT'L OLYMPIC COMM., OLYMPIC CHARTER, at 9 (2004) [hereinafter OLYMPIC CHARTER], available at http://www.olympic.org/uk/organisation/missions/charter_uk.asp (identifying the six Fundamental Principles of Olympism). The Olympic Committee's goal is to "buil[d] a peaceful and better world by educating youth through sport practised in accordance with Olympism and its values." *Id.* at 10.

13. See *id.* at 8 (reflecting on the history of the modern Olympic Games that were first celebrated in Athens, Greece, in 1896).

14. Official Website of the Olympic Movement, *supra* note 11.

2001, fifty-six of the one hundred and five IOC members voted for Beijing.¹⁵ Before casting their votes, IOC members reviewed a report written by the IOC Evaluation Commission, a subgroup of the Movement.¹⁶ The Evaluation Commission is comprised of experts who visit and report on cities that pass the initial selection phase. The Commission assesses each city's ability to meet the basic technical requirements necessary to successfully host the Olympics.¹⁷ Although the Commission is limited to evaluating technical capabilities, in its 2008 report it declared that "it is impossible to ignore the public debate on political issues such as human rights"¹⁸ The Commission said it would not address the human rights issue in detail other than to acknowledge its existence, but recommended IOC members reach their own conclusions regarding applicant countries' human rights abuses.¹⁹

The IOC did reach a conclusion—Beijing won the 2008 Olympic bid. Such a decision implies the IOC members acknowledged the existence of human rights violations in China and ignored them. Furthermore, they apparently did not consider that an Olympic bid victory for Beijing might in fact increase these practices. If the IOC did recognize this possibility, it chose again to ignore the warning signs, resulting in more egregious consequences.

Olympism claims to utilize sport to symbolize the "harmonious development of man, with a view to promoting a peaceful society concerned with the preservation of human

15. Official Website of the Olympic Movement, Beijing 2008: Election, http://www.olympic.org/uk/games/beijing/election_uk.asp (last visited Oct. 14, 2006). For a detailed description of the voting process, a list of member countries, and how they voted see *id.*

16. *Id.*

17. See INT'L OLYMPIC COMM., REPORT OF THE IOC EVALUATION COMMISSION FOR THE GAMES OF THE XXIX OLYMPIAD IN 2008, at 5 (2001), available at http://multimedia.olympic.org/pdf/en_report_299.pdf. The Commission considers technical factors such as legal issues, customs and immigration formalities, environmental protection and meteorology, finance, marketing, medical/health, security, accommodation, transport, technology, and communications and media services. *Id.* at 58–73.

18. *Id.* at 5.

19. *Id.*

dignity.”²⁰ Additionally, the Fundamental Principles of Olympism, as stated in the Olympic Charter, explain “[o]lympism seeks to create a way of life based on the joy of effort, the educational value of good example[,] and respect for universal fundamental ethical principles.”²¹ However, China’s blatant flouting of fundamental property rights that are guaranteed in several multinational human rights instruments²² does nothing to “promot[e] a peaceful society concerned with the preservation of human dignity,” and is a far cry from respecting “universal fundamental ethical principles.”²³ By choosing Beijing as the 2008 host to the Olympic Games, the international community is ignoring, if not encouraging, egregious violations of international law.

This Comment highlights the property rights violations perpetrated in gearing up for the 2008 Olympic Games by the People’s Republic of China upon its citizens despite its international obligations to the contrary. Part I introduces the Olympic Movement’s mission and explains how host cities are chosen. Part II briefly explores the complex historical development of property rights in China. Part III details land reclamation procedures under the current property regime and “illegal” takings associated with Olympic construction. Part IV outlines the international instruments containing property rights protection to which China is bound. Next, current land reclamation practices, specifically those associated with the upcoming Olympic Games, are analyzed in light of these obligations. Finally, specific solutions are offered to curb these

20. OLYMPIC CHARTER, *supra* note 12, at 9.

21. *Id.*

22. See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 74, art. 17, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), art. 1, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR]; International Covenant on Civil and Political Rights, art. 12, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR].

23. OLYMPIC CHARTER, *supra* note 12, at 9. The Olympic Charter does not define “universal fundamental ethical principles.” This Comment assumes “universal fundamental ethical principles” are equivalent to universal human rights found in international agreements.

international law violations, bringing the Olympic ideal back to the 2008 Games.

II. PROPERTY RIGHTS IN CHINA

During the twentieth century property in China vacillated between complete national ownership and control, and local, communal ownership. Dramatic changes in the Chinese property law landscape coincided with major economic reforms and constitutional amendments beginning in the last quarter of the century.

A. *Development of "Modern" Property Law*

China first implemented Western property law concepts²⁴ in the 1930s,²⁵ but the laws did not have any real effect and were abolished by the Chinese Communist Party (CCP) during the 1949 Communist Revolution.²⁶ Immediately thereafter, China redistributed land to peasants, thus providing them limited ownership rights.²⁷ However, the government began collectivization²⁸ of rural land in 1955, again destroying any individual land ownership rights.²⁹ Collectivization culminated with the Great Leap Forward³⁰ in 1958 when the State combined

24. One example of a fundamental element of Western property law is the "right to exclude," which includes exclusion of the government. *See* *Kaiser Aetna v. United States*, 444 U.S. 164, 179–80 (1979) ("[T]he 'right to exclude,' so universally held to be a fundamental element of the property right, falls within th[e] category of interests that the Government cannot take without compensation." (footnote omitted)).

25. Jonas Alsen, *An Introduction to Chinese Property Law*, 20 MD. J. INT'L L. & TRADE 1, 5 (1996). The first Western property law ideology introduced in China was an adaptation of the German Civil Code, *Das Burgerliches Gersetzbuch*, or "BGB." *Id.*

26. *Id.*; *see* Kari Madrene Larson, Comment, *A Lesson in Ingenuity: Chinese Farmers, The State, and The Reclamation of Farmland for Most Any Use*, 7 PAC. RIM L. & POL'Y J. 831, 834 (1998) (explaining the Chinese government confiscated land from landlords and wealthy farmers through means of "persuasion, intimidation, and confiscation" so they could divide it among all farmers equally).

27. Alsen, *supra* note 25, at 43.

28. Collectivization is "a politico-economic system characterized by collective control [especially] over production and distribution of goods and services" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 445 (Philip Babcock Gove ed., 1986).

29. Alsen, *supra* note 25, at 43–44.

30. The Great Leap Forward was an economic program launched in 1958 that was "designed to expand the flow of food and raw materials from China's traditional, labor-

the collectives into larger communes³¹ of approximately 4,000 families.³² Urban land, on the other hand, was nationalized completely.³³ Individuals in both rural areas and cities owned little more than their clothes.³⁴

B. Major Changes Since 1978

Economic reforms beginning in 1978³⁵ changed the property law landscape in China.³⁶ The government dismantled the commune system and began contracting out farming to peasants, consequently creating a right of land-use.³⁷ In 1982 China adopted a new constitution,³⁸ which explicitly declared the State owned all urban land, whereas collectives owned all rural land.³⁹ Astonishing to some, the Constitution expressly acknowledged the State would protect the “right of citizens to own . . . houses and other lawful property” and the right to inherit private property.⁴⁰

China reiterated its constitutional commitment to its

intensive sector of the economy to fuel the growth of the capital-intensive industrial sector.” David Ben Kay, Comment, *The Patent Law of the People’s Republic of China in Perspective*, 33 UCLA L. REV. 331, 347 (1985).

31. A commune is a “community of people who share property and responsibility.” BLACK’S LAW DICTIONARY 295 (Bryan Garner ed., 8th ed. 2004).

32. Larson, *supra* note 26, at 834.

33. Alsen, *supra* note 25, at 44.

34. *Id.* at 5.

35. China introduced an economic reform strategy in December of 1978, beginning with agricultural reform in the rural sector. Michele A. Wong, Comment, *China’s Direct Marketing Ban: A Case Study of China’s Response to Capital-Based Social Networks*, 11 PAC. RIM L. & POL’Y J 257, 260 (2002); *see also* *Communiqué of the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China*, 21 PEKING REV. 11 (Dec. 29, 1978) [hereinafter *Communiqué*] (on file with author).

36. *See Communiqué, supra* note 35, at 12–13.

37. *Id.* at 12.

38. “The PRC has had five constitutions;” the current constitution is the 1982 version. Alsen, *supra* note 25, at 7.

39. XIAN FA [Constitution] art. 10 (1982) (P.R.C.) (promulgated Dec. 4, 1982 by the Fifth National People’s Congress of the P.R.C. at its Fifth Session); *see also* Elaine Sit, Comment, *Broken Promises: The Status of Expropriated Property in the People’s Republic of China*, 3 ASIAN L.J. 111, 140 (1996) (“Not unexpectedly, [the 1982 constitution] explicitly set forth the principle that land in the cities was owned by the state and land in rural and suburban areas was owned by collectives.”).

40. XIAN FA art. 13 (1982) (P.R.C.); Sit, *supra* note 39, at 140–41.

citizens' property rights several times during the 1980s.⁴¹ In 1986, it adopted the General Principles of Civil Law of the People's Republic of China.⁴² This law enumerated citizens' personal property rights, including the right to possess lawful income, a house, savings, articles used in daily life, cultural objects, and books.⁴³ In 1986 the P.R.C. adopted the Land Administration Law of China (LALC).⁴⁴ This law provided, "The ownership and use right of land registered according to law shall be protected by law and no unit or individual is eligible to infringe upon it."⁴⁵ LALC also stated, "Disputes arising from the ownership or use right of land shall be settled through consultation among parties concerned; should consultation fail[], the disputes should be handled by [the] people's government[]."⁴⁶

Finally in 1988, China amended its constitution to allow individuals the right to retain and transfer land-use rights, although the State maintained actual ownership.⁴⁷ Article 10 of the 1988 constitution, as amended, specifically states:

Land in the cities is owned by the state.

Land in the rural and suburban areas is owned by collectives

The state may, in the public interest, requisition land for its use in accordance with the law.

The rights to the use of land may be transferred according to law.⁴⁸

41. Sit, *supra* note 39, at 141.

42. *General Principles of Civil Law of the People's Republic of China* (adopted by the Fourth Session of the Sixth Nat'l People's Cong., Apr. 12, 1986, effective Jan. 1, 1987) translated in, 52 LAW & CONTEMP. PROBS. 27-87 (Whitmore Gray & Harry Ruiheng Zheng trans.) (1989).

43. *Id.* art. 75; see also Sit, *supra* note 39, at 141.

44. Sit, *supra* note 39, at 141.

45. Land Administration Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 1998, effective Jan. 1, 1999), ch. II, art. 13, translated at <http://www.lawinfochina.com/dispecontent.asp?db=1&id=3673> (last visited Oct. 14, 2006).

46. *Id.* art. 16; see also Sit, *supra* note 39, at 141 (reviewing the provisions of the Land Administration Law of China).

47. Sit, *supra* note 39, at 142; XIAN FA art. 10 (P.R.C.) (amended 1988).

48. XIAN FA art. 10 (1982) (P.R.C.).

Article 11 of the 1988 amendment also added the protection of “economic” land ownership.⁴⁹ Article 13 further protects citizens’ right to own and inherit private property.⁵⁰ A strict reading of Article 13 suggests private property as used here does not include land, as Article 10 exclusively governs land ownership.⁵¹

The most recent governmental action regarding property rights occurred on March 14, 2004, with the passage of three property-related constitutional amendments.⁵² First, the amendments made all legal forms of private property explicitly inviolable.⁵³ Second, they encouraged, supported, and protected the rights of nonpublic sectors.⁵⁴ Third, the amendments subdivided expropriation into takings with ownership change and use without ownership change—both of which require the State to compensate citizens.⁵⁵

49. Alsen, *supra* note 25, at 12 n.45. Article 11 of the constitution, located between Article 10’s ownership rights and Article 13’s private property rights, protects the lawful rights and interests of the private sector of the economy. *See* XIAN FA arts. 10, 11 & 13 (1982) (P.R.C.).

50. XIAN FA art. 13 (1982) (P.R.C.).

51. *Compare* XIAN FA art. 10 (1982) (P.R.C.) *with* XIAN FA art. 13 (1982) (P.R.C.) (specifically noting that Article 10 declares the State and collectives own the *land* in China, whereas Article 13 only protects the citizen’s right to “income, savings, houses, and other lawful property”).

52. XIAN FA arts. 10, 11 & 13 (P.R.C.) (amended 2004); *see also* Frank Xianfeng Huang, *The Path to Clarity: Development of Property Rights in China*, 17 COLUM. J. ASIAN L. 191, 193 n.6 (2003–2004) (explaining the three amendments pertain to: sanctification of individual property rights, elevating the status of the nonpublic sector, and providing closer control over government expropriation of private property).

53. XIAN FA art. 13 (P.R.C.) (amended 2004); *see also* Frank Xianfeng Huang, *supra* note 52, at 193 (“All legal private properties of citizens, regardless of forms, are explicitly made inviolable.”).

54. XIAN FA art. 11 (P.R.C.) (amended 2004); *see also* Frank Xianfeng Huang, *supra* note 52, at 193 (explaining, under the new constitutional amendments, nonpublic sectors of the economy are protected as well as “specifically encouraged and supported”).

55. XIAN FA art. 10 (P.R.C.) (amended 2004) (“The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.”); XIAN FA art. 13 (P.R.C.) (amended 2004) (“The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.”); *see also* Frank Xianfeng Huang, *supra* note 52, at 193 nn.9–10 (noting compensation must be made if the government either expropriates property with an ownership change or property use

Because of these numerous changes, land suddenly had value in China, and a real estate market emerged.⁵⁶ However, the economic and real estate boom of the 1990s created new problems, such as where to house the rapidly growing population and business sectors.⁵⁷ The government began taking⁵⁸ large areas of vital agricultural land for housing construction⁵⁹ and evicting urbanites to make way for development.⁶⁰ Beijing's victory in the 2008 Olympic bid "has spurred accelerated demolition, eviction[,] and construction in the city."⁶¹

III. CHINESE GOVERNMENT TAKING LAND IN PREPARATION FOR THE 2008 OLYMPICS AND CITIZENS' REACTIONS

The recent protests by evicted Chinese residents have brought Chinese land reclamation practices into the international spotlight and under the scrutinizing eyes of numerous media outlets⁶² and human rights watch groups.⁶³

without ownership change).

56. Alsen, *supra* note 25, at 46.

57. *See id.* (commenting on the vast amounts of land taken for housing construction as Chinese cities grew after new land regulations gave land value).

58. Technically, the government is not "taking" its citizens' land in the traditional Western sense of expropriating land owned by private individuals. In China, the State already "owns" the land in question. XIAN FA art. 10 (1982) (P.R.C.). Regardless of this pedagogically technical distinction, the Chinese government is essentially taking its citizens' right to use the land. This Comment does not suggest China adopt a private property system. *See* discussion of property rights in socialist societies *infra* Part IV. For ease of readability, when the Author refers to "takings" in China, she implies the broader understanding of property rights, including the right to use land.

59. Alsen, *supra* note 25, at 46; *see, e.g.*, Elisabeth Rosenthal, *Factories Wrest Land from China's Farmers*, N.Y. TIMES, Mar. 23, 2003, at A8 (highlighting the difficulties farmers face in feeding their families as the Chinese government converts land from farming to industrial uses).

60. Theresa Wang, Comment, *Trading the People's Homes for the People's Olympics: The Property Regime in China*, 15 PAC. RIM L. & POL'Y J. 599, 599 (2006) ("China is undertaking a large-scale urban renewal project with the aim of encouraging private development and new infrastructure. . . . In Beijing alone, the government has evicted about 300,000 residents from their homes per year, sometimes forcefully, in order for the city to make way for the thirty-eight billion dollar Olympic project." (footnotes omitted)).

61. Davis, *supra* note 8, at 6.

62. *See* Griffiths, *supra* note 6 (the BBC reporting land disputes in China); Jim

Much of the demolition and eviction in Beijing today relates to China's preparations for the 2008 Games.⁶⁴

A. *Chinese Citizens React in Protest to Land Grab*

The Geneva-based Centre on Housing Rights and Evictions (COHRE)⁶⁵ handed China one of its not-so-prestigious "Housing Rights Violator Awards" in 2005.⁶⁶ The Centre's executive director Scott Leckie stated, "The Beijing government has admitted [to] a minimum of 400,000 people [being] moved to create space to build various Olympic venues . . ."⁶⁷ COHRE also reports the "800 year old Jiaodoku neighbourhood was flattened in July 2003, destroying over 2,000 households, to make way for Olympics-related construction."⁶⁸

These evicted residents, left with few avenues of redress, have increasingly taken to the streets in protest—protests the government has repeatedly attempted to suppress.⁶⁹ Beijing

Yardley, *Olympics Imperil Historic Beijing Neighborhood*, N.Y. TIMES, July 12, 2006, at A1 (the New York Times decrying destruction of ancient neighborhoods in Beijing).

63. See *China: Forced Evictions Spur Protests: China Should Implement New Constitutional Protections for Property Rights*, HUMAN RIGHTS WATCH, Mar. 25, 2004 [hereinafter *Forced Evictions Spur Protests*], available at <http://hrw.org/english/docs/2004/03/22/china8159.htm> (Human Rights Watch condemning local Chinese authorities and developers for forcibly evicting hundreds of thousands of homeowners and tenants who have little legal recourse); *Will China's Government Uphold the Olympic Ideal?*, THE WIRE, Sept. 2005, at 1, available at <http://web.amnesty.org/wire/September2005/China> (Amnesty International recounting continual human rights violations linked to the government's preparation for the Olympics and questioning whether China will uphold the Olympic ideal).

64. Davis, *supra* note 8, at 6; *Forced Evictions Spur Protests*, *supra* note 63; Yardley, *supra* note 62, at A1 ("The reason for the devastation is the 2008 Olympic Games, which have turned much of the city into a noisy, disjointed construction zone.").

65. Int'l Alliance of Inhabitants, Int'l Alerts on Housing Rights Violations, <http://www.habitants.org/article/archive/190/> (last visited Oct. 14, 2006).

66. Rueters, *Forced Eviction as China Eyes Olympics*, THE NEW ZEALAND HERALD, Nov. 30, 2005, available at http://www.nzherald.co.nz/organisation/story.cfm?o_id=600538&ObjectID=10357669.

67. *Id.*

68. Press Release, Centre on Housing Rights and Evictions (COHRE), Zimbabwe, China and the State Government of Maharashtra Cited for Severe Human Rights Violations by Housing Rights Group 17 (Nov. 29, 2005) [hereinafter COHRE] (available at http://www.cohre.org/view_page.php?page_id=138).

69. *Forced Evictions Spur Protests*, *supra* note 63.

police prevented a demonstration by evictees over low compensation by blocking off streets surrounding the central government compound in July 2003.⁷⁰ Beijing authorities foiled another protest that same month by Guan Zengli, a housing rights organizer who had previously led a “protest by about 50 people in front of the Ministry of Land and Resources.”⁷¹ On September 15, 2003 Zhu Qingliang poured gasoline over his body and lit himself on fire in protest against poor compensation for his demolished home.⁷²

Another widely reported protest occurred on October 1, 2003. Beijing resident Ye Guoqiang jumped from the Jinshui Bridge in an attempted suicide to protest how the Chinese government forcefully evicted him from his home to make way for Olympic construction.⁷³ He survived the fall but was jailed for illegally demonstrating.⁷⁴ Apparently Guoqiang was not alone; in November of 2003, over 1,200 Beijing residents signed a petition on the Internet in support of his actions.⁷⁵ Seven other protesters were charged with causing social unrest in October 2003, and two more protesters were detained.⁷⁶ In 2004, another protestor, Ye Guozhu was detained “and sentenced to four years’ imprisonment for protesting against the razing of his home and two of his restaurants.”⁷⁷ Daily protests against demolition and eviction occurred in Tiananmen Square and the Zhongnanhai Compound from September to December of 2004.⁷⁸

All told, COHRE reports “more than three million people

70. Davis, *supra* note 8, at 26.

71. Michael Jen-sui, *Police Foil Protest at Leaders’ Compound*, SOUTH CHINA MORNING POST, July 2, 2003, at 5.

72. Chenglin Liu, *Informal Rules, Transaction Costs, and the Failure of the “Takings” Law in China*, 29 HASTINGS INT’L & COMP. L. REV. 1, 1 (2006).

73. Davis, *supra* note 8, at 1–2.

74. *Id.* at 27.

75. *Id.* at 23; see *Beijing 1204 ren qianming shengming Zhongguo zhengfu zai Ye Guoqiang zisha yi an niezao yaoyan [1204 people sign statement on fabrication of rumor by Chinese government in Ye Guoqiang case]*, <http://www.boxun.com> (Nov. 29, 2003).

76. Wang Manna, *Sanming Beijing chaiqianhu yi bei xingshi juliu mianlin qisu [Three Beijing Relocated Households also by Arrest on Criminal Charge Faced with Prosecution]*, CENTRAL NEWS AGENCY (China), Oct. 30, 2003.

77. *Will China’s Government Uphold the Olympic Ideal?*, *supra* note 63, at 1.

78. Davis, *supra* note 8, at 26.

were involved in 50,000 public protests in 2003, mostly stemming from illegal land grabs, forced evictions and relocations.”⁷⁹ Zhou Yongkang, China’s Security Minister, “admitted that land disputes and economic inequality led to nearly 74,000 protests and riots” in 2004.⁸⁰ Human rights watchdog groups and unofficial websites recount many more tales of forced eviction and demolition.⁸¹

Many frustrated citizens are expressing concern and outrage through protests, international media, human rights groups, and postings to Internet bulletin boards.⁸² These actions are extremely risky given the censorship laws present in China.⁸³ According to Human Rights Watch, “The Chinese government retains its ability to arbitrarily restrict certain speech or punish people for holding and sharing their opinions.”⁸⁴ Despite possible

79. COHRE, *supra* note 68, at 16.

80. *Id.*

81. See, e.g., *Will China’s Government Uphold the Olympic Ideal?*, *supra* note 63, at 1 (estimating 300,000 have as of March 2004 been evicted from their homes in Beijing in preparation for the Games); *Forced Evictions Spur Protests*, *supra* note 63 (“Victims are sometimes evicted by hired thugs or have their homes knocked over by bulldozers while they are asleep in bed . . .”); *OCDC Appeals to 60th UNHCHR and Releases Its 2003 Human Rights Report*, Apr. 2004, available at <http://www.weijingsheng.org/report/report2004/report2004-04/OCDC040414UNHCHR60A60-09-032.htm> (recognizing “[f]orced relocation and violent evictions have erupted throughout China in the last few years” and outlining examples); Theresa Ricci, *Forced Demolitions: An Attempt on Man and Culture*, Mar. 2, 2004, <http://www.asianews.it/dos.php?l=en&dos=10&art=442> (relaying several violent protests and civilian run-ins with police).

82. Davis, *supra* note 8, at 3–4.

83. *Id.* For a recent example of the strict censorship laws in China see *Google Censors Itself for China*, BBC NEWS, available at <http://news.bbc.co.uk/2/hi/technology/4645596.stm> (last visited Oct. 14, 2006) (exploring a recent example of the strict censorship laws in China involving the internet and what users do not have access to, including the BBC News site and information on the Falun Gong spiritual movement).

84. *Human Rights and the 2008 Olympics in Beijing: Media and Internet Censorship*, HUMAN RIGHTS WATCH, available at <http://www.hrw.org/campaigns/china/beijing08/censorship.htm> (last visited Oct. 14, 2006); see Law of the Peoples’ Republic of China on Guarding State Secrets (promulgated by the Standing Comm. of the Nat’l People’s Cong., Sept. 5, 1988, effective May 1, 1989), ch. II, art. 8 (promulgating a list of secrets that are considered state secrets, including the catch-all “other matters that are classified as state secrets by the state secret-guarding department”); see also Criminal Law of the Peoples’ Republic of China (promulgated by the Standing Comm. of the Nat’l People’s Congr., July 6, 1979, effective Jan. 1, 1980), ch. I & II, arts. 102–13 (enumerating actions that are considered “crimes of counterrevolution” and “crimes of

prison time or violent suppression, these men and women continue to object to the arbitrariness of the demolition and eviction process and their lack of basic property right protections.⁸⁵

B. The Process and Its Problems

1. The Current Procedure

Because the State owns almost all the land in Beijing, “developers who wish to build on a site must apply for and obtain a series of permits from demolition and eviction management departments.”⁸⁶ These licensed developers are then obliged to inform residents of the project, offer an explanation of the project, and negotiate compensation.⁸⁷ National regulations then require developers to enter into agreements with property owners and any renters regarding the “method and amount of compensation, place of relocation, duration of relocation, and transitional period.”⁸⁸ Once all parties sign the agreement they must relocate.⁸⁹

If the evictee signs an agreement, but then refuses to leave, “the evictor may apply for arbitration, may sue the evictee, and may apply to the court for permission to implement eviction. . . . If the evictee does not sign an agreement, she or he may also apply for arbitration and sue the evictor”⁹⁰ Evictors may seek, and often do seek, to proceed with forced eviction and demolition while arbitration or litigation is still pending.⁹¹

endangering public security,” including propagandizing and inciting).

85. Davis, *supra* note 8, at 3.

86. *Id.* at 6.

87. See Chenglin Liu, *supra* note 72, at 19 (“The Demolition Bureau and the licensed developer are obligated to inform affected residents of the demolition project and offer an explanation of the nature of the project.”); see also Davis, *supra* note 8, at 6 (“The developers . . . are required by law to then approach the existing residents at each site . . . to advise them of their eviction and negotiate compensation.”).

88. Chenglin Liu, *supra* note 72, at 20; see also Davis, *supra* note 8, at 8 (stating the regulations address “compensation and resettlement, and list[] the factors that should be weighed in determining the amount of compensation”).

89. Davis, *supra* note 8, at 8.

90. *Id.*

91. *Id.*

The national “regulations also address[] compensation and resettlement, and lists the factors that [government officials] should [weigh] in determining the amount of compensation.”⁹² For example, Guiding Opinions on the Appraisal of Urban Housing Demolition, which took effect January 1, 2004, “set forth guidelines on how to conduct appraisals of urban housing.”⁹³

2. *Problems with the Current Procedure*

Although the process does not appear extremely arbitrary or illegal on its face, many holes emerge in practice. First, nothing in China’s law requires consultation with residents.⁹⁴ Second, numerous reports claim evictees are given little or no notice of their eviction, perhaps because few or no requirements of advance notice exist.⁹⁵ In extreme cases, residents return home from work to find their homes already torn down.⁹⁶ The national obligation for licensed developers to inform affected residents of the nature of demolition projects “is more of a recommendation than a legal provision, because there is no legal penalty if . . . a . . . unit fails to abide by it.”⁹⁷ This communication requirement is thus largely ignored by demolition departments and developers.⁹⁸ Some local regulations require developers to inform residents within five days of receiving government approval of demolition.⁹⁹ Others require developers to give

92. *Id.*

93. Chenglin Liu, *supra* note 72, at 15 (explaining further that the major effects of the Guiding Opinions have been to base demolition appraisal values on the current market value of the house rather than the value of the house at the time it was built).

94. Davis, *supra* note 8, at 12.

95. *Id.*

96. *Id.*

97. Chenglin Liu, *supra* note 72, at 19.

98. *Id.*

99. *Id.*; *see, e.g.*, Temporary methods for the implementation of the management of urban residential demolition and eviction in Chengdu city, art. 9 (2001), *available at* <http://www.cin.gov.cn/LAW/place/200201150105.htm> (requiring the demolition management department to, within five days of issuing the demolition certificate, publicly announce to the condemnee the scope, duration, and compensation method of demolition).

residents detailed information about a project, but do not specify a timeline for notification.¹⁰⁰

Third, some residents complain that the little information they do receive from developers or demolition departments is intentionally misleading.¹⁰¹ After being told they were being evicted to make way for a “green belt,” Jinhua residents learned their land was instead slated for high-end private apartments.¹⁰² Incorrect or intentionally misleading information not only destroys citizens’ trust in the government, but also leaves them without the tools to contest their eviction or compensation.

Fourth, major disputes arise over compensation.¹⁰³ Although the Guiding Opinions require all demolition appraisals be based on the market value of affected houses,¹⁰⁴ countless residents have complained they are not getting the money to which they are entitled.¹⁰⁵ Reports claim “the amount of compensation may in some instances, be unilaterally decided by the developers or the demolition companies,” or set far below market value, or both, with little account taken for loss of income.¹⁰⁶ Although the Guiding Opinions are a step toward fair compensation, they allow appraisals to be based on either (1) prices annually announced by the government or (2) prices indicated by the real estate market; however, the Guiding Opinions offer no preference when major discrepancies exist between the valuations.¹⁰⁷ One resident indicated the value of his home was based on a five-year-old government price listing.¹⁰⁸ In addition to valuation discrepancies, evictees often experience difficulty receiving the valuation amount. Homeowners report they only

100. *Id.*

101. Davis, *supra* note 8, at 13.

102. *Id.*; Cheng Gong, *Zhi chaiqian zhi tong* [Treat the pains of demolition and eviction], SOUTHERN WEEKEND, Dec. 31, 2003, available at <http://www.nanfangdaily.com.cn/southnews/zt/zstk/zggs/200312310106.asp>.

103. Davis, *supra* note 8, at 13.

104. Chenglin Liu, *supra* note 72, at 15.

105. Davis, *supra* note 8, at 12–13.

106. *Id.*; Wang Xiaoxia, *Chaiqian cheng raomin gongcheng, Zhuanjia jianyi tigao buchang biao zhun* [Chaiqian has become the harassment to people, Experts suggest raising the compensation standard], CHINA ECONOMIC TIMES, Nov. 12, 2003.

107. Chenglin Liu, *supra* note 72, at 15.

108. *Id.* at 16.

receive partial payment, receive no payment at all, or that their payment goes to local authorities.¹⁰⁹ “[I]n some cases developers pay compensation to the local authorities instead of to evictees.”¹¹⁰

Furthermore, China’s judicial system fails its citizens in the arena of enforcing their limited property rights.¹¹¹ The arbitration system has been criticized as deeply flawed because serious conflicts of interest prevent a fair, neutral decision.¹¹² Evicted residents who actually try to seek redress in local courts find most courts unwilling to hear their cases because of pressure from Chinese Communist Party officials placed on judges and attorneys.¹¹³ In the rare instance a court hears a case and finds in favor of the evicted residents, their homes have likely already been demolished.¹¹⁴ Two Beijing residents reported both their homes were demolished “even though the local court had only authorized one of the demolitions.”¹¹⁵

Finally, citizens who have refused to leave their homes have sometimes incurred violence—including threats, assaults, and occasionally death.¹¹⁶ Even the limited protections contained in national and local regulations are violated in practice.¹¹⁷ Tenants are often given little or no notice of their evictions, become bogged down in arbitrations handled by government officials

109. Davis, *supra* note 8, at 14.

110. *Id.* at 13.

111. Davis, *supra* note 8, at 15.

112. *Id.* According to national regulations, demolition departments are the only entity that may arbitrate disputes over compensation and resettlement. Chenglin Liu, *supra* note 72, at 20. The obvious problem is that these departments have already examined and approved the compensation amount and resettlement plan while granting the license to the developer. *Id.*

113. Davis, *supra* note 8, at 16–17; *see also* Chenglin Liu, *supra* note 72, at 23 (noting Chinese courts are not independent and are accountable to corresponding levels of government).

114. Davis, *supra* note 8, at 17 (explaining a judicial injunction blocking demolition pending the outcome of a case is not an option).

115. *Id.*

116. Davis, *supra* note 8, at 8–11. These incidents implicate additional violations of such international human rights as life and security; however, this Comment focuses more narrowly on property rights, as a subset of human rights guaranteed by international law.

117. *Id.* at 8.

with major conflicts of interests, deprived of promised compensation, or denied justice in local courts.¹¹⁸

IV. PROPERTY RIGHTS UNDER INTERNATIONAL LAW

Property rights are fundamental human rights.¹¹⁹ James Madison believed the fundamental integrity of a nation's citizenry expresses itself in the peoples' right to own property and have a property interest in their rights.¹²⁰ This Comment does not attempt to discover why property rights are so cherished worldwide, but, instead accepts this as an observable truth.¹²¹ International law, not just Western law, reflects this reality; property rights are upheld in countless treaties and conventions.¹²²

"Ownership" or "property" rights are seldom absolute in any society.¹²³ Again, recognizing these limitations, international law¹²⁴ does not prohibit governments from exercising the power

118. *Id.* at 8–14.

119. See Loren A. Smith, *Life, Liberty & Whose Property?: An Essay on Property Rights*, 30 U. RICH. L. REV. 1055, 1055–56 (1996) (interpreting James Madison's concept of property).

120. See *id.* at 1056 (arguing *The Federalist Papers* make it clear that each objective enumerated in the Preamble of the Constitution involved the protection of citizens' property rights).

121. Perhaps at the most basic level, property rights are special because people identify themselves through their possessions. See Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, reprinted in ROBERT C. ELLICKSON ET AL., PERSPECTIVES ON PROPERTY LAW 1 (Aspen Law & Business 3d ed., 2002) (analyzing asylum inmates and their attachment to objects).

122. See, e.g., Council of Europe, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, May 18, 1954, CETS No.: 009, available at <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm> (entitling every person to the peaceful enjoyment of his possessions and preventing deprivation thereof except in the public interest and subject to the general principles of international law).

123. See Alsen, *supra* note 25, at 19–20 ("All societies impose at least some limitation on what may be owned privately and on what may be the proper use or disposition of private property."). For example, American law contains numerous property right restrictions such as zoning, covenants, equitable servitudes, nuisance laws, rent control laws, historical preservation laws, and endangered species laws. Moore v. Regents of the Univ. of Cal., 793 P.2d 479, 510 n.6 (Cal. 1990) (Mosk, J., dissenting) (describing in his famous dissent common property restrictions in the United States).

124. International law encompasses both international agreements and customary international law. JORDAN J. PAUST ET AL., INTERNATIONAL LAW & LITIGATION IN THE

of eminent domain¹²⁵ under appropriate circumstances.¹²⁶ Many governments throughout the world retain the power to take their citizens' land without consent.¹²⁷ The Fifth Amendment of the United States Constitution's "Takings Clause" allows the State to take private property for "public use" as long as it provides "just compensation."¹²⁸

"Ownership" is therefore more appropriately viewed as a "bundle of rights" held by the property owner.¹²⁹ The level of permissible private ownership in socialist societies is generally lower than capitalist societies.¹³⁰ Naturally, China—an ideologically communist country with a socialist market economy—does not have a comparably advanced private property law system similar to Western countries such as the United States.¹³¹ Although having a property regime identical to the United States is certainly not necessary to comply with

U.S. 35 (West Group 2000). International agreements are technically only binding upon their signatories. *Id.* Customary international law, on the other hand, is universally binding. *Id.*

125. Eminent domain is "[t]he inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking." BLACK'S LAW DICTIONARY 562 (Bryan Garner ed., 8th ed. 2004).

126. Davis, *supra* note 8, at 18.

127. See, e.g., CONST. ARG. § 17 (Argentina), available at http://www.oefre.unibe.ch/law/icl/ar00000_.html ("Expropriation for reasons of public interest must be authorized by law and previously compensated."); SAUDI ARABIA CONST. art. 18, available at http://www.oefre.unibe.ch/law/icl/sa00000_.html ("No one is to be stripped of his property except when it serves the public interest, in which case fair compensation is due.").

128. U.S. CONST. amend. V ("... nor shall private property be taken for public use, without just compensation."); see also *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984) (holding an act that created a mechanism for transferring ownership of land from a few owners to existing lessees to eliminate a land oligopoly was a legitimate public purpose, and condemnation was not an irrational power to achieve that purpose); *Nollan v. Cal. Coastal Com.*, 483 U.S. 825 (1987) (holding a building permit upon a grant of a public easement constituted a taking of appellants' property and required the state to compensate appellants).

129. Alsen, *supra* note 25, at 20; *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479, 509 (Cal. 1990) (Mosk, J., dissenting) (citing *Union Oil Co. v. State Bd. of Equal*, 386 P.2d 469 (Cal. 1963)) ("Ownership is not a single concrete entity but a bundle of rights and privileges as well as of obligations.").

130. See Alsen, *supra* note 25, at 3 (explaining private ownership of production means is incompatible with Communist philosophy).

131. *Id.*

international law, the current Chinese practice of forced evictions and demolition does not pass international muster.

A. Relevant International Agreements Containing Basic Property Rights that Bind China

As previously mentioned, several multilateral treaties and conventions speak to property right protections.¹³² The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) are particularly relevant to this discussion because China is a signatory to each document.¹³³

1. Authority for Binding Signatories

The obligations set forth in these three instruments are binding on the P.R.C. because it is a party to each agreement.¹³⁴ The Vienna Convention on the Law of Treaties is a codification of the customary international law on treaties and thus governs the interpretation of international agreements.¹³⁵ The Vienna Treaty Convention illustrates the fundamental rule of *pacta sunt servanda*.¹³⁶ Article 26 states “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”¹³⁷ Although China is not a signatory to the Vienna

132. See, e.g., Council of Europe, *supra* note 122.

133. UDHR, *supra* note 22; ICESCR, *supra* note 22; ICCPR, *supra* note 22.

134. See Vienna Convention on the Law of Treaties art. 26, May 23, 1969, S. TREATY DOC. NO. 92-12, 1155 U.N.T.S. 331 [hereinafter Vienna Treaty Convention] (binding the signatories of agreements to their provisions).

135. Cara S. O’Driscoll, *The Execution of Foreign Nationals in Arizona: Violations of the Vienna Convention on Consular Relations*, 32 ARIZ. ST. L.J. 323, 328 (2000) (asserting the Vienna Treaty Convention is the pre-eminent source of law on treaties); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES: PART III INTRODUCTORY NOTE (1987) (accepting the Vienna Treaty Convention as a codification of the customary international law governing international agreements); PAUST, *supra* note 124, at 55 (explaining that even though the United States has not adopted the Vienna Treaty Convention, U.S. courts still cite it as customary international law).

136. O’Driscoll, *supra* note 135, at 328. *Pacta sunt servanda* is “[t]he rule that agreements and stipulations, esp. those contained in treaties, must be observed.” BLACK’S LAW DICTIONARY 1140 (Bryan Garner ed., 8th ed. 2004).

137. Vienna Treaty Convention, *supra* note 134, art. 26.

Treaty Convention, because the provisions are customary international law, China is bound by it.¹³⁸ The Convention reiterates that “[a] State is obliged to refrain from acts that would defeat the object and purpose of a treaty when [i]t has signed the treaty”¹³⁹ Finally, under Article 27, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹⁴⁰

Many nations include in their constitutions a provision addressing the supremacy of international law.¹⁴¹ China’s constitution does not specifically address the supremacy of international law; however, China recognized the existence of the doctrine in its *Land and People Core Document*, which it submitted to the United Nations in 1993.¹⁴² The document explained the Standing Committee of the National People’s Congress must approve accession by China to any international agreement in order for that agreement to be consistent with domestic law.¹⁴³ “Once approved, the instrument is binding under Chinese law and China must honour the corresponding obligations”¹⁴⁴ Should a discrepancy exist between an international treaty and domestic law, “the treaty takes precedence unless China entered a reservation”¹⁴⁵ A number of pieces of legislation clearly codify this idea.¹⁴⁶

138. O’Driscoll, *supra* note 135, at 328; MARK JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 15 (1988).

139. Vienna Treaty Convention, *supra* note 134, art. 18.

140. *Id.* art. 27.

141. *See, e.g.*, Kenp [Constitution] art. 98, para. 2 (Japan) (requiring faithful observance of treaties concluded by Japan); 1958 CONST. art. 55 (Fr.) (providing “[t]reaties or agreements duly ratified or approved shall . . . prevail over Acts of Parliament”); 1975 Syntagma [SYN][Constitution] 28 (Greece) (“The generally recognised rules of international law, . . . as well as international conventions[,] . . . shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law.”).

142. *See generally* Core Document Forming Part of the Reports of States Parties paras. 49–53, U.N. Doc. HRI/CORE/1/Add.21/Rev.1 (Feb. 25, 1999) *available at* <http://www.hri.ca/fortherecord1999/documentation/coredocs/hri-core-1-add21-rev1.htm> (recognizing that international human rights agreements are superior to domestic law).

143. *Id.* para. 51.

144. *Id.*

145. *Id.* para. 52.

146. *Id.*

2. *The Universal Declaration of Human Rights*

As a member of the United Nations, China has participated in developing several international human rights instruments.¹⁴⁷ In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights.¹⁴⁸ The United Nations did not originally intend for the Universal Declaration of Human Rights to be legally binding, but instead intended it only as a proclamation of standards.¹⁴⁹ However, “[b]y becoming . . . customary international law, the Universal Declaration has acquired a legally binding force, and provides basic obligations to which all signatory nations must adhere.”¹⁵⁰ China has recognized these international standards and officially expressed a willingness to comply.¹⁵¹ In an October 1997 press conference with U.S. President Bill Clinton, the Chinese President, Jiang Zemin, stated: “[I]t goes without saying that, as for general rules universally abided by in the world, China also abides by these rules”¹⁵² Furthermore, a

147. China was one of the original 51 Member States, admitted to the U.N. on October 24, 1945. List of Member States, United Nations, <http://www.un.org/Overview/unmember.html> (last visited Oct. 14, 2006).

148. Kitty Arambulo, *Drafting an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Can an Ideal Become Reality?*, 2 U.C. DAVIS J. INT'L L. & POL'Y 111, 112 (1996).

149. *Id.*

150. *Id.* at 113; see United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action art. III, June 25, 1993, 32 I.L.M. 1661 (“The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights.”; *Locked Doors: The Human Rights of People Living with HIV/AIDS in China*, HUMAN RIGHTS WATCH, VOL. 15, NO. 7, at 22 (2003), available at <http://www.hrw.org/reports/2003/china0803/5.htm> (“China has promised to abide by the Universal Declaration of Human Rights”)

151. See Jiangyu Wang, *supra* note 7, at 152. In April 1994, the Minister of the Foreign Affairs of the Chinese government, Qian Qichen, declared, “China respects the Universal Declaration of Human Rights, the Proclamation of Teheran, the Declaration on the Right to Development, and other international documents related to human rights” INFO. OFFICE OF THE STATE COUNCIL OF THE P.R.C., THE PROGRESS OF HUMAN RIGHTS IN CHINA pt. X, paras. 1 & 2 (1995), available at <http://www.china.org.cn/e-white/phumanrights19/p-11.htm>.

152. *Clinton and Jiang in Their Own Words: Sharing a Broad Agenda*, N.Y. TIMES,

report issued in 2000 emphatically reiterated, “The Chinese government always respects the purpose and principle of the Charter of the United Nations for promoting and protecting human rights, supports the UN efforts in this regard and actively participates in the UN activities in the realm of human rights.”¹⁵³

The Universal Declaration of Human Rights guarantees everyone “the right to own property alone as well as in association with others” and that “[n]o one shall be arbitrarily deprived of his property.”¹⁵⁴ Article 12 further guarantees that “[n]o one shall be subjected to arbitrary interference with his . . . home . . .” and “[e]veryone has the right to the protection of the law against such interference”¹⁵⁵

3. *The ICESCR and ICCPR*

Two additional international covenants adopted in 1966—the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)—explicitly expressed the rights first set forth in the Universal Declaration.¹⁵⁶ “Together, the Universal Declaration and the two covenants constitute the

Oct. 30, 1997, at A20.

153. INFO. OFFICE OF THE STATE COUNCIL OF THE P.R.C., PROGRESS IN CHINA’S HUMAN RIGHTS CAUSE IN 2000 pt. VII, para. 1 (2001) [hereinafter INFO. OFFICE OF THE STATE COUNCIL 2000] available at <http://www.china.org.cn/e-white/2000renquan/a-8.htm>. The 2004 report acknowledges the importance of international conventions on human rights and notes China is a member of 21 such conventions. INFO. OFFICE OF THE STATE COUNCIL OF THE P.R.C., CHINA’S PROGRESS IN HUMAN RIGHTS IN 2004 pt. VII, para. 2 (2005) [hereinafter INFO. OFFICE OF THE STATE COUNCIL 2004] available at <http://www.china.org.cn/e-white/20050418/index.htm>.

154. UDHR, *supra* note 22, art. 17.

155. *Id.* art. 12.

156. Arambulo, *supra* note 14, at 113. “There are arguably two types of rights in property: civil and political rights and social and economic rights.” John McClung Nading, *Property Under Siege: The Legality of Land Reform in Zimbabwe*, 16 EMORY INT’L L. REV. 737, 786 (2002). “The right to land for survival [and] the right to development . . . are social and economic rights,” whereas “the right to [actual] ownership of land is a civil and political right. *Id.* These rights are found in the two conventions, respectively. See ICESCR, *supra* note 22, arts. 1, 11; ICCPR, *supra* note 22, art. 1.

International Bill of Human Rights”¹⁵⁷ and are the foundation of all other human rights instruments.¹⁵⁸

China signed the ICESCR in October of 1997 and the ICCPR one year later.¹⁵⁹ The National People’s Congress of China officially approved the ICESCR on Feb. 28, 2001, indicating the highest level of voluntary agreement to, and acceptance of, its provisions.¹⁶⁰ Article 11 of the ICESCR guarantees “the right of everyone to an adequate standard of living . . . including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁶¹

The National People’s Congress has yet to ratify the ICCPR.¹⁶² The 2004 Government White Paper however stated “With a sincere and responsible attitude, the Chinese government is actively considering approving the International Convention on Civil and Political Rights.”¹⁶³ China’s signature alone, though, represents its “acceptance, in principle, of the international community’s right to monitor the overall condition of its human [] rights.”¹⁶⁴ The ICCPR states “[i]n no case may a people be deprived of its own means of subsistence.”¹⁶⁵ Article 12 guarantees “[e]veryone lawfully within the territory of a State shall . . . have the right to liberty of movement and freedom to choose his residence.”¹⁶⁶ Language similar to the Universal Declaration of Human Rights can be found in Article 17

157. Arambulo, *supra* note 148, at 114. The International Bill of Human Rights also technically includes the Optional Protocol of the International Covenant on Civil and Political Rights. Jiangyu Wang, *supra* note 7, at 138. The Optional Protocol can be found at Second Optional Protocol to the International Covenant on Civil and Political Rights: Aiming at the Abolition of the Death Penalty, G.A. Res. 44/128, at 207, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (Dec. 1989).

158. Jiangyu Wang, *supra* note 7, at 138.

159. *Id.* at 143.

160. INFO. OFFICE OF THE STATE COUNCIL 2000, *supra* note 153, pt. VII, para. 2; Davis, *supra* note 8, at 18.

161. ICESCR, *supra* note 22, art. 11.

162. Jiangyu Wang, *supra* note 7, at 143.

163. INFO. OFFICE OF THE STATE COUNCIL 2004, *supra* note 153, pt. VII, para. 2 (internal quotations omitted).

164. Jiangyu Wang, *supra* note 7, at 143.

165. ICCPR, *supra* note 22, art. 1, para. 2.

166. *Id.* art. 12, para. 1.

protecting against arbitrary or *unlawful*¹⁶⁷ interference with a person's home.¹⁶⁸

B. Chinese Land Reclamation Procedure and Practice Analyzed in Light of International Obligations

1. Right to Own Property

The Chinese governmental takings process and implementation outlined above, while an improvement, still falls short of China's treaty obligations. The most obvious infirmity is the Universal Declaration of Human Rights' promise that everyone has a right to own property as an individual.¹⁶⁹ All land in China is still owned either by the State in urban areas or collectives in rural areas.¹⁷⁰ "Private property" is an anomaly, and none of China's citizens "own" anything remotely similar to a freehold title¹⁷¹ to the land upon which they live and work. Suggesting the privatization of property rights is futile, as it runs completely afoul of the socialist ideal upon which the Chinese State is built. However, a State does not have to be based upon a private property system to successfully comply with the human right referred to in Article 17.¹⁷²

"Ownership" is not an absolute right even in Western

167. The Universal Declaration of Human Rights does not include the word "unlawful." UDHR, *supra* note 22.

168. ICCPR, *supra* note 22, art. 17, para. 1.

169. UDHR, *supra* note 22, art. 17.

170. Alsen, *supra* note 25, at 44.

171. A freehold is "[a]n estate in land held in fee simple, in fee tail, or for term of life." BLACK'S LAW DICTIONARY 690 (Bryan Garner ed., 8th ed. 2004). A fee simple, for example, is "[a]n interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs." *Id.* at 648. A title, in turn, is defined as the "[l]egal evidence of a person's ownership rights in property." *Id.* at 1522.

172. *See* UDHR, *supra* note 22, art. 17 (not requiring a particular property regime). Other scholars argue not only that a State without a private property system will fail to comply with internationally accepted human rights, but moreover will ensure their own collapse. *See, e.g.*, Richard Pipes, *Human Nature and the Fall of Communism*, AM. ACAD. ARTS & SCI. BULL. 38, 39 (Jan. 1996) ("A government that monopolizes a nation's wealth and prohibits its citizens from accumulating any property beyond mere personal effects ensures its own destruction.").

cultures; rather, it is better understood as a bundle of rights.¹⁷³ Thus, China could continue giving more land-use rights and protections against interferences with the use of its citizens' land, thereby increasing the number of "rights" in the bundle. An increase in land-use rights and actual protection of those rights would place China in step with the spirit of the Universal Declaration of Human Rights. The recent constitutional amendments seem to be an attempt at alignment; however, without effective enforcement, the amendments are meaningless. Continued protests throughout China leave the new amendment's promises moot.¹⁷⁴

Despite the recent positive changes in China's constitution, the ever-increasing forced evictions and demolition in China are clear violations of the property protections in the Universal Declaration of Human Rights, ICECSR, and ICCPR. Evictions carried out in accordance with the law and conforming to the provisions of the International Covenants on Human Rights are not prohibited by international law.¹⁷⁵ However "forced evictions," according to the U.N. Committee on Economic Social, and Cultural Rights,¹⁷⁶ are per se "incompatible with the requirements of the [ICESCR]."¹⁷⁷ "Forced evictions" have been defined by the Committee "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

173. See *supra* notes 120–26 and accompanying text.

174. For a detailed discussion of the various problems in China that render the 2004 amendments and other formal rules unenforceable see Chenglin Liu, *supra* note 72, at 6–15. "The deep-rooted bias against private ownership, a weak judiciary, the unrestricted power of the government and widespread corruption problems are among" the problems. *Id.* at 6.

175. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights [CESCR], Implementation of the Int'l Covenant on Econ., Soc. and Cultural Rights, *General Comment 7: The right to adequate housing (Art. 11 (1) of the Covenant)*, para. 4, U.N. Doc. E/C.12/1997/4 (May 20, 1997) [hereinafter CESCR, *General Comment 7*].

176. The Committee on Economic, Social and Cultural Rights is entrusted with authoritatively interpreting the ICESCR. Davis, *supra* note 8, at 18.

177. *Id.* (quoting CESCR, *General Comment 4: The right to adequate housing (Art. 11 (1) of the Covenant)*, U.N. Doc. E/1992/23 (Dec. 13, 1991)).

legal or other protection.”¹⁷⁸ The Chinese expropriation practices fall squarely within this definition. Furthermore, the U.N. Commission on Human Rights has interpreted the Universal Declaration of Human Rights to mandate that “forced eviction[s] [are] a gross violation of human rights”¹⁷⁹

2. *Right to Choose Residence and to Adequate Housing*

A forced eviction, on its face, violates the right to choose your own residence found in the ICCPR.¹⁸⁰ Forced evictions also violate ICESCR’s guarantee to adequate housing in that many Chinese residents have been displaced onto the streets.¹⁸¹ Although national laws cover resettlement, reports indicate in reality citizens get poor options or no help at all.¹⁸² A Beijing resident told Human Rights Watch in a phone interview “[my parents] didn’t get anything [as compensation], and they had no help with resettlement.”¹⁸³ Furthermore, because of low compensation rates, “evictees may be unable to afford property in the area where they had been living, and may be forced to resettle in the developing suburbs where employment is difficult to find.”¹⁸⁴ A Nanjing resident complained “she couldn’t find work in the desolate resettlement area and could not afford to travel into town to work.”¹⁸⁵

178. *Id.* at 18 (quoting CESCR, *General Comment 7*, *supra* note 175).

179. U.N. Comm. on Human Rights, Res. 1993/77, para. 1, U.N. Doc. E/1993/23 (Mar. 10, 1993); *see also* Office of the High Comm’r for Human Rights, Res. 1998/9, U.N. Doc. E/CN.4/SUB.2/1998/L.11 (Aug. 20, 1998) (declaring “the practice of forced eviction constitutes a gross violation of a broad range of human rights”).

180. ICCPR, *supra* note 22, art. 12, para. 1.

181. *See* Spencer Anderson, *Olympic construction in Beijing leaves thousands homeless: Advance notice and compensation invisible*, METROVOX.CO.UK, Mar. 10, 2005, available at <http://cgmj.jour.city.ac.uk/news.php?story=129> (“The demolition and relocation of homes to make way for the city’s Olympic village has been occurring at a staggering rate, leaving hundreds of thousands of Chinese people homeless and frequently without sufficient compensation.”).

182. *Id.* at 13–15.

183. *Id.* at 14 (brackets in original).

184. *Id.* at 15.

185. *Id.* at 15 n.36.

3. *Depriving People of Their Own Means of Subsistence*

Some accounts also point to violations of the ICCPR's prohibition against depriving people of their means of subsistence.¹⁸⁶ Residences are not the only buildings being demolished—many small businesses, which provide families with their sole means of income, are being appropriated.¹⁸⁷ Beijing resident Chang Liang recalled his parents' Heavenly Light photo studio, a business run from their home, being forcefully demolished.¹⁸⁸ The photo equipment and tools the family depended on for their livelihood were destroyed in the incident.¹⁸⁹ Additionally, if any compensation is received, the evictor rarely takes into account a business' loss of future income, which further exacerbates the problem.¹⁹⁰

4. *Arbitrary Interference with Property*

These forced evictions often arbitrarily¹⁹¹ interfere with Chinese citizens' property—State action that is prohibited by both the Universal Declaration of Human Rights and the ICCPR.¹⁹² Arbitrariness is first evident in the lack of consultation with evictees.¹⁹³

Without consulting property holders, especially in large-scale redevelopment plans such as sports stadiums,¹⁹⁴ the

186. ICCPR, *supra* note 22, art. 1, para. 2.

187. See, e.g., *Will China's Government Uphold the Olympic Ideal?*, *supra* note 63 (recounting a Beijing resident's imprisonment after protesting the razing of his two restaurants).

188. Feng Changle, *Forced Demolition: The Story of Young Chang Liang's Life*, THE EPOCH TIMES, Sep. 1, 2004, available at <http://english.epochtimes.com/news/4-9-1/23080.html> (detailing the numerous tragedies befalling a young Chinese citizen).

189. *Id.*

190. Davis, *supra* note 8, at 14.

191. Black's defines arbitrary as "[d]epending on individual discretion" or "founded on prejudice or preference rather than on reason or fact." BLACK'S LAW DICTIONARY 112 (Bryan Garner ed., 8th ed. 2004).

192. UDHR, *supra* note 22, art. 12; ICCPR, *supra* note 22, art. 17, para. 1.

193. See Davis, *supra* note 8, at 12.

194. Collecting the amount of land necessary to construct sports venues displaces scores of people. See Cynthia Carr, *Life in the Footprint: Voices of the Fading Community in the Shadow of the Atlantic Yards*, VILLAGE VOICE, Aug. 1, 2006, available at <http://www.villagevoice.com/nyclife/0631,carr,74022,15.html> (revealing the proposed 22-

government is not making an informed decision based on reason. It seems that in many cases, developing companies are making decisions about what land to raze unilaterally, and required governmental permits are a mere formality.¹⁹⁵ Even in the best-case scenario, where a developer submits a request and the governmental entity charged with approving it seriously considers the reasons given for why eviction is necessary, the decision maker may still fall prey to arbitrariness. Because the companies are not required to consult residents about their plans to demolish residents' homes,¹⁹⁶ the information they submit to the government is by nature one-sided. Without complete information about the impact a particular project will have on all interested parties, the government's decision will unavoidably be founded on the company's preference.

Arbitrariness is also found in the available legal remedies. A citizen may seek arbitration if he or she cannot reach an agreement with developers and demolition companies on compensation.¹⁹⁷ These arbitral bodies, however, have troubling conflicts of interest.¹⁹⁸ Demolition and eviction departments, the only available arbitrators, often have close connections with the companies that do the work, leaving the arbitrator little incentive to find in favor of residents and crack down on their own companies.¹⁹⁹ These conflicts render the arbitrators unable to make a decision free from personal prejudice or preference. Similar allegations have been made against judges in the court system.²⁰⁰

5. *Unlawful Interference with Property*

The ICCPR goes further than prohibiting "arbitrary" interference with property by adding the word "unlawful" to its

acre Atlantic Yards project for the NBA Nets affected 463 residents (renters and owners), 400 people in a homeless shelter, and many small businesses with a total of 225 employees).

195. *See* Davis, *supra* note 8, at 14.

196. *Id.* at 12.

197. *Id.* at 15.

198. *Id.*

199. *Id.* at 15–16.

200. *Id.* at 16.

text.²⁰¹ The forced evictions in China today are “unlawful” because citizens do not have appropriate procedural protections required by international law, and the limited protections Chinese law does offer are often ignored in practice.²⁰² Not paying some form of compensation to evictees and using violence to remove residents from their homes are both practices made illegal under Chinese law, but are happening regularly today.²⁰³ Evictees also have no meaningful legal remedies, making the evictions “unlawful.” Negotiation does not seem to be a viable option, a fair arbitral process seems impossible because of corruption and conflicts of interest, legal aid seems difficult to obtain, courts seem hesitant to find in evictees favor, and even if the process works, the law allows demolition to proceed regardless of any pending litigation.

The U.N. believes appropriate procedural protection and due process are especially pertinent in forced evictions.²⁰⁴ Human Rights Watch suggests the procedural protections that should exist include:

Genuine consultation with those affected; adequate and reasonable notice of the date of eviction; timely information on the proposed evictions and the alternative purpose for which the land is to be used; the presence of government officials at evictions affecting groups of people; proper identification of those carrying out the eviction; and the availability of legal remedies for those affected and access to legal aid.²⁰⁵

Some of these protections are missing in Chinese regulation and most appear absent in practice.²⁰⁶

C. *Suggested Solutions*

While no simple solution to this complex problem exists, there are steps the Chinese government can take to reduce the

201. ICCPR, *supra* note 22, art. 17, para. 1.

202. Davis, *supra* note 8, at 21.

203. *Id.* at 18.

204. *Id.* at 20–21; CESCR, *General Comment 7*, *supra* note 175, para. 16.

205. Davis, *supra* note 8, at 21.

206. *Id.*

number of evictions considered illegal under international law.²⁰⁷ First, the government should implement stronger enforcement of current laws and regulations at all levels. Second, it should assess hefty fines and penalties against companies who violate these laws.²⁰⁸ More specifically, two protections could be added to the Chinese peoples' property rights bundle to better align the country with its treaty obligations: (1) the ability to effectively contest the validity of governmental takings, and (2) the right to just compensation for property taken by force and the ability to effectively contest that amount.

1. *Ability to Effectively Contest Validity of Governmental Takings*

The ability to effectively contest the validity of a taking requires consultation, information, and notice. No national Chinese law requires developers to consult or notify the actual evictees about impending demolition of their residences.²⁰⁹ Requiring consultation offers an initial informal notice about the possibility a person's property may be used in a future government approved development. Consultation prior to eviction or demolition may also aide in decreasing the negative impact an affected community experiences.²¹⁰ Developers would also gain an appreciation for a community's makeup and thus have the ability to plan construction so as to minimize the number of evictees.

207. For the proposition that "fundamental institutional changes are needed in order to establish a functional body of property laws in China" and a detailed recommendation see Chenglin Liu, *supra* note 72, at 3.

208. Cf. Leigh Hornbeck, *Tree-cutting Developer Faces \$100,000 Fine; Under Stop-work Order Owner Can't Sell 1,400-acre Lake George Tract*, THE TIMES UNION, Feb. 23, 2006, at B1 (reporting a developer was fined \$100,000 for environmental violations).

209. Davis, *supra* note 8, at 12. Human Rights Watch reports extreme cases where residents return home from work to find "demolish" written on the walls of their houses, or worse, their homes have already been destroyed. *Id.*

210. Bede Sheppard, *Condemned Communities: Forced Eviction in Jakarta*, HUMAN RIGHTS WATCH VOL. 18, No. 10(C), Sept. 2006, at 102, available at <http://hrw.org/reports/2006/indonesia0906/indonesia0906web.pdf> (suggesting if local authorities assess the impact of eviction they may "determine whether there is an alternative means of achieving the public order goal which would cause less harm to the . . . evicted individuals").

In addition to consultation, requiring the exchange of adequate and accurate information between the government, developers, and affected residents is imperative. Developers should be required to inform all potential evictees of their proposed plans, so, if approved, citizens have the necessary information to contest the decision in court. Developers should also be required to include in their request for permission to evict people a detailed description of why particular evictions are necessary,²¹¹ details of the company's planned project, and information gained during the mandatory consultation about how many people will be affected and any other possibly negative consequences. With this information, government officials will be able to make appropriate decisions based on reason and fact.

Requiring developers to give residents reasonable notice of the actual date approved evictions will begin is also necessary to ensure a legitimate taking. One of the main sources of conflict arising out of forced evictions is that residents often have insufficient notice. In many instances they find out their homes are being "taken" for demolition only a few days before the government expects them to move.²¹² Although this Comment does not suggest a minimum amount of days, enough time should be given to allow a person to file a lawsuit if she decides to contest the taking. Finally, a law requiring the immediate cessation of planned construction until the outcome of any arbitration or litigation would complete a resident's opportunity to effectively contest a government taking. Advance notice would also allow more time for residents not interested in contesting the government's actions to locate alternative housing.

2. *Fair Compensation and the Ability to Effectively Contest the Amount*

If a legitimate governmental taking has occurred,²¹³ Chinese

211. Requiring specific description of individual lots or areas would decrease the likelihood of developers making "mistakes" and razing more property than is actually approved or necessary.

212. Davis, *supra* note 8, at 12–13.

213. The existence of a system to contest the validity of governmental taking does not preclude forced evictions. *See, e.g.*, *Kelo v. City of New London*, 545 U.S. 469 (2005)

citizens should receive fair compensation and have the ability to effectively contest the compensation amount. Paying evictees just compensation is essential when the government determines a private citizen's land would best be used for a public purpose.²¹⁴ Chinese law requires individuals be paid full market value for their property. However, the government price lists upon which the appraisers base their determinations are outdated and skewed. The marketplace should be the sole source of appraisal information.²¹⁵ Compensation should also include any lost earnings if the property is used for business purposes.

With fair compensation, citizens will be able to find comparable new housing and continue with their lives relatively uninterrupted. Adequate money not only compensates the individual for his financial loss but also builds confidence in the legal system. When people can rest assured they will receive monetary compensation from the government even though they oppose the appropriation of their land or home, confidence vests in the fairness of the process.

If a citizen does not receive compensation or believes the amount given is inadequate, he or she should have legal recourse. The information requirements mentioned above would apply in this situation, too. Residents should know who calculated their compensation sum and how it was calculated. These requirements would provide citizens the knowledge needed to dispute the accuracy of the amount.

3. *Enforcement*

Simply proclaiming these rights will not satisfy international requirements alone. In order to be effective, China

(holding governmental taking to promote economic development may be justified as "public use").

214. Much room exists for arbitrary decisions in determining what a legitimate "public use" is; however, that debate is outside the scope of this Comment. Chenglin Liu argues despite the 2004 constitutional amendments requiring a "public purpose" to seize private property, local Chinese governments over-stretch the scope of the doctrine approving every conceivable project. Chenglin Liu, *supra* note 72, at 7.

215. Chenglin Liu, *supra* note 72, at 16. "Fair market value should be 'the amount of money which a purchaser willing, but not obliged, to buy the property would pay to an owner willing, but not obliged, to sell it.' taking into consideration the other." *Id.*

must also guarantee the enforcement of these rights. To be enforced nonarbitrarily, China should rethink the current arbitration structure. The very officials who grant developers licenses should not sit as the neutral decision makers in compensation disputes. Arbitrators and judges should feel free to rule in favor of the individual citizens in appropriate circumstances, and bribes should be ardently opposed. Lawyers should also be free from fear of retaliation when representing evicted residents in suit over validity or compensation. Finally, citizens should have easy access to these systems, possibly making legal aid available to those who cannot afford court and attorney fees.

Top officials in China have taken a step in the right direction by leading a campaign against illegal land seizures and evictions.²¹⁶ Liu Zhihua, a Beijing vice mayor with final authority for citywide demolitions regarding Olympic venue construction, was accused of corruption and removed from office on June 11, 2006.²¹⁷ This campaign is a positive first move, but China must commit to eradicating corruption at all levels of the property dispute system to ensure their citizens' property rights are not violated.

V. CONCLUSION

Major government-sanctioned construction projects approved in the run up to the 2008 Games have forced countless Chinese citizens onto the streets. Protests regarding forced eviction and demolition have been reported through a host of media, from sophisticated international news conglomerates to informal internet blogs. With the Games approaching swiftly, evictions and protests are certain to continue, and will likely increase. The Olympic ideal has been eroded through the hundreds of thousands of illegal forced evictions occurring to make way for the Games.

Although major advances in property rights have emerged even since Beijing won the Olympic bid, showing at least an effort on the part of the P.R.C. to conform to international law,

216. Yardley, *supra* note 62, at A8.

217. *Id.*

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current practices are not sufficient. First, the Chinese people must be given the ability to effectively contest the validity of governmental takings, which should include adequate consultation, information, and notice. Second, in the event a legitimate taking occurs, residents should receive just compensation and have the ability to effectively contest that amount. The Olympic Committee should take immediate measures to ensure a historically peace-promoting competition is not overshadowed by egregious human rights and international law violations.

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