

SECURE TENURE *boxes & graphs*

Increasing tenure insecurity in China

It is not surprising that a low-income country with as huge and diverse a land mass and population, and a history of tumultuous political and economic change, as China would be afflicted with problems stemming from insecure tenure. It is, nonetheless, surprising how quickly China has evolved from a country with relatively secure tenure for all during most of its history to the opposite during the last decade.

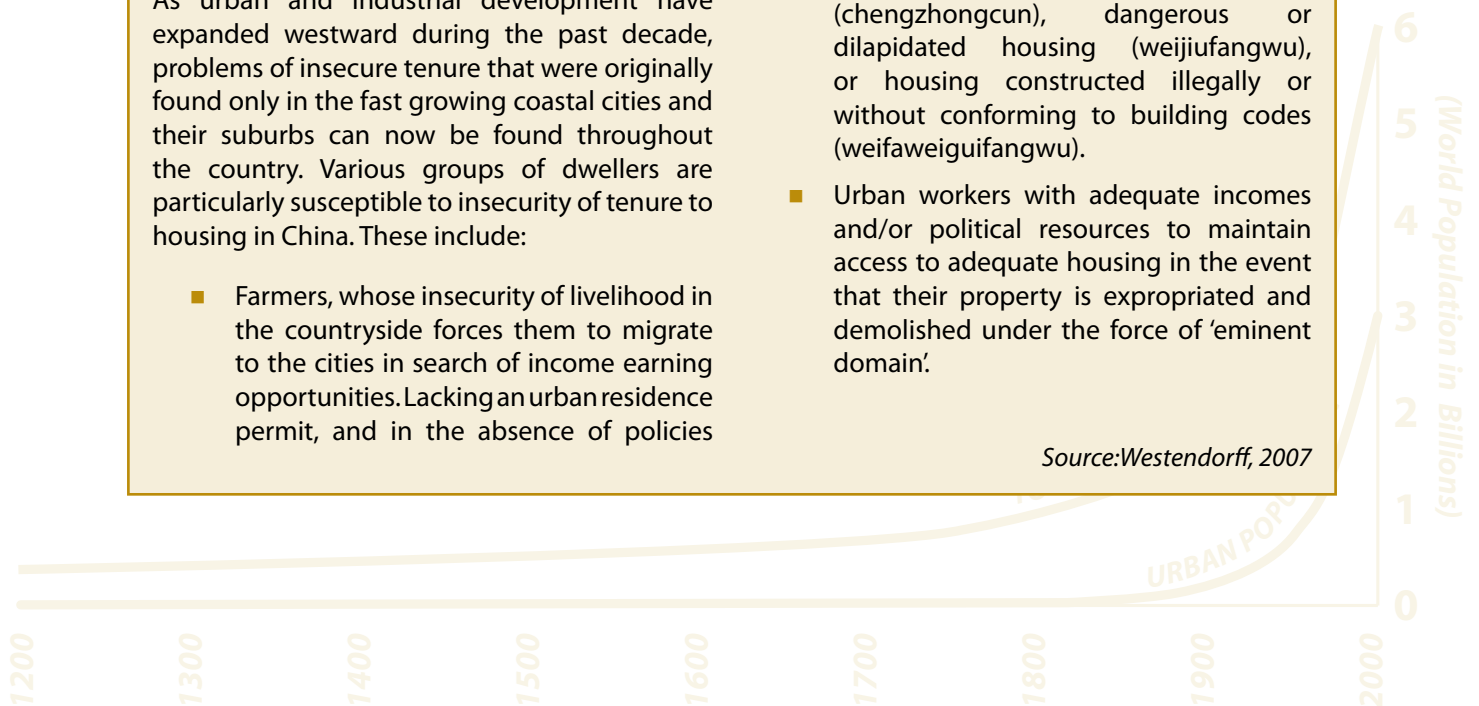
China's largely successful transition to a highly globalized mixed economy from a minimally open-command economy during the years since the Four Modernizations were announced in 1978 has much to do with this: land has become a scarce commodity. Prices now more accurately – if still incompletely – reflect the expected return on investment to alternate uses. Land prices have risen dramatically during the past decade, while the development of the legal and administrative infrastructure governing the allocation, transfer and conversion of rural and urban land has only just begun to adapt itself to existing and emerging economic pressures. As urban and industrial development have expanded westward during the past decade, problems of insecure tenure that were originally found only in the fast growing coastal cities and their suburbs can now be found throughout the country. Various groups of dwellers are particularly susceptible to insecurity of tenure to housing in China. These include:

- Farmers, whose insecurity of livelihood in the countryside forces them to migrate to the cities in search of income earning opportunities. Lacking an urban residence permit, and in the absence of policies

supportive towards rural migrants, their security of tenure to housing remains tenuous, at best. Approximately 120 million to 150 million migrant workers live in major metropolitan centres for a large part of the year.

- Former state-sector workers who have been laid off (xiagang) or paid off (maiduan) by their employers and are living in original 'welfare' housing that they bought from their employer during earlier housing reforms.
- Non-state sector workers holding urban residence permits whose incomes do not allow them secure tenure to housing. These may be long-term city-centre residents who are, or were, employed in either collective or informal enterprises and who have been renting or subletting affordable housing from private parties or local authorities.
- Registered and non-registered urban residents of informal settlements (chengzhongcun), dangerous or dilapidated housing (weijufangwu), or housing constructed illegally or without conforming to building codes (weifaweiguifangwu).
- Urban workers with adequate incomes and/or political resources to maintain access to adequate housing in the event that their property is expropriated and demolished under the force of 'eminent domain'.

Source: Westendorff, 2007



Erosion of tenure protections in Canada

During the last decade, security of tenure regulations – which is a provincial government responsibility – have been eroded in many of Canada's ten provinces. In Ontario, for example, the largest province with about 40 per cent of Canada's population, 'the entire 50-year evolution of security of tenure legislation was wiped off the statute books in the late 1990s'. In Ontario in 1998, the Tenant Protection Act repealed and replaced the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act.

The previous legislation had allowed municipalities in Ontario to refuse permission for the demolition or conversion of rental apartment buildings until the rental housing supply and affordability crisis had passed. The adoption of the Tenant Protection Act repealed this provision, and it was replaced by provisions for 'vacancy decontrol'. In practice, the new legislation implies that when a unit is vacated, the rent on the unit can be set at any level: 'This accounts for the steep increases in rents, far outpacing tenant incomes.'

Another important feature of the Tenant Protection Act was that it allowed for quick and easy evictions: a tenant has five days during which to reply to an eviction notice. If tenants do not reply (i.e. they were away or did not realize that they have to submit a written intention to dispute, or if they have language problems or other pressing issues), the landlord can obtain a default order that does not require a hearing. A review of the impact of the legislation found that over half of eviction orders (54 per cent) were issued as the result of a default order. The Tenant Protection Act resulted in the number of eviction orders in the City of Toronto increasing from about 5000 at the time of the new legislation to a peak of 15,000 in 2002. Not all orders result in an eviction. The estimate is that about 3900 tenant households (about 9800 persons) are evicted annually in Toronto as a result of the Tenant Protection Act.

Source: Hulchanski, 2007

Recommendations by the United Nations Special Envoy on Operation Murambatsvina

The first ever appointment by the United Nations of a Special Envoy to address the consequences of mass forced evictions in Zimbabwe in 2005 was widely welcomed by the world's human rights community as an important precedent. The recommendations of her report were seen by many commentators to be both firm and constructive:

Recommendation 1: ... The Government of Zimbabwe should immediately halt any further demolitions of homes and informal businesses and create conditions for sustainable relief and reconstruction for those affected.

Recommendation 2: There is an urgent need for the Government of Zimbabwe to facilitate humanitarian operations within a pro-poor, gender-sensitive policy framework that provides security of tenure, affordable housing, water and sanitation, and the pursuit of smallscale income-generating activities in a regulated and enabling environment.

Recommendation 3: There is an immediate need for the Government of Zimbabwe to revise the outdated Regional Town and Country Planning Act and other relevant Acts to align the substance and the procedures

of these Acts with the social, economic and cultural realities facing the majority of the population, namely the poor.

Recommendation 5: The Government of Zimbabwe is collectively responsible for what has happened. However, it appears that there was no collective decision-making with respect to both the conception and implementation of Operation Restore Order. Evidence suggests it was based on improper advice by a few architects of the operation. The people and Government of Zimbabwe should hold to account those responsible for the injury caused by the Operation.

Recommendation 6: The Government of Zimbabwe should set a good example and adhere to the rule of law before it can credibly ask its citizens to do the same. Operation Restore Order breached both national and international human rights law provisions guiding evictions, thereby precipitating a humanitarian crisis. The Government of Zimbabwe should pay compensation where it is due for those whose property was unlawfully destroyed.

Source: Tibaijuka, 2005, pp8–9