

Multiple-criteria Decision Analysis (MCDA) of the Schemes to Terminate Small House Concessionary Right in Hong Kong

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ABSTRACT

The entitlement of indigenous male residents in the New Territories to construct a small house is commonly known as small house concessionary right (ding rights). People from all walks of life, such as property developers, government officials, and indigenous inhabitants, have raised various proposals to cancel ding rights. In regard to the various proposals, policy objectives and the related criteria shall be evaluated to decide the feasibility of the initiatives. This study shows that the securitization of ding rights is the most desirable way to satisfy the interests of various groups.

KEYWORDS

Removal Plan; Ding Rights; Land Development Right; Securitization.

1. INTRODUCTION

In 1898, under the pretext of strengthening the defense of Hong Kong, Britain compelled the Qing Government and rented the “New Territories”, an area nine times the size of HK Island and Kowloon combined. Being aware of the “huge differences” between the newly leased land and the areas of HK Island and Kowloon which had already started the journey of urbanization, the British colonial government adopted a different way to govern the New Territories in order to preserve the traditional practices of the indigenous villagers [1]. In fact, plenty of traditional Chinese customs that are no longer present in both urban districts of Hong Kong and mainland China are still maintained in the New Territories [2]. One is exemplified in the custom of land use and land inheritance, which exists typically in a patriarchal society. In 1972, as a way of maintaining its governance and satisfying the public, the colonial government implemented the “Small House Policy (SHP)”. It allows an indigenous male villager to apply for permission from the government, for once in his lifetime, to erect a three-storey small house of no more than 8.23 meters high nor more than 65.03 square meters for the top floor on a suitable site within his own village. The entitlement of indigenous male residents to construct a small house (Ding) is commonly known as small house concessionary right (ding rights) [3].

In a nutshell, this paper revolves around the issues of the small house concessionary right in the New Territories, Hong Kong, and a legal research on the progression of the relevant systems is also conducted. It is a remarkable challenge faced by current policymakers and legal scholars to work out the ways in which traditional rights and interests shall get terminated in an orderly manner and in which the existing legislation shall better integrate with traditional rights. Also, such similar

challenges do not only exist in Hong Kong but also the rest of the world. Therefore, this paper analyzes the issues of traditional rights and interests in Hong Kong, in hope of offering suggestions for governments around the world to handle such problems.

2. INTRODUCTION TO THE CONCEPT OF SMALL HOUSE CONCESSIONARY RIGHT

Under the British Administration of Hong Kong, the region inherited the British legal tradition of dividing land ownership into two types: freehold and leasehold [4]. The land in Hong Kong was nominal property of the King of England, and only the King had the freehold properties in theory. It was very rare for other individuals or groups in Hong Kong to own the freehold properties. At present, only the base and grounds of St. John's Cathedral are the freehold lands, while all other lands for private use leasehold, including those on Hong Kong Island, Kowloon and the New Territories. However, an exception stands out. Since the New Territories was nominally leased from the Qing Government in 1898 by the UK, the Chinese traditional norms of the real estate system were retained in this area under the ruling of the British colonial government, and the permission for the clans to preserve their essential freehold properties, including the lands for living, the sacrifice and temples in the area, was also obtained [5]. After the Hong Kong handover, the Chinese government had met its commitment to maintain Hong Kong's capitalist system and way of life for 50 years. All the land in Hong Kong was no longer a property of the King of England but that of China, while other systems remained unchanged.

Article 40 of The Basic Law clearly stipulates that the lawful traditional rights and interests of NTIIs shall be protected by the HKSAR. As stated in The Small House Policy of the New Territories, eligible NTIIs are allowed to apply once in their life to build a maximum three-storey house of no more than 700 square feet per floor in an approved village area. An eligible resident shall be a male adult who is at least 18 years old and is descended through the male line from a villager who had been recognized as a resident in the New Territories prior to 1898. The small house concessionary right is thereby defined as the entitlement of a qualified indigenous male in the New Territories to build a house in an approved village of the region.

3. THE DEVELOPMENT ORIENTATION THAT DING RIGHTS SHALL FORGE TOWARDS

Laws should not be left unchanged, but should advance with the progression of social changes and time. No matter the presence or absence of the Basic Law after 2047, the ding rights are always at variance with Hong Kong's urbanization. Hence, this paper considers the removal of ding rights necessary.

People from all walks of life, such as property developers, government officials, and NTIIs, have raised various proposals to cancel ding rights. In 2006, Hu Yingxiang, founder of Hopewell Holdings Limited, put forward a public proposal to securitize ding rights. Apart from the permission to erect their own houses, qualified NTIIs are allowed to apply to the government for a securitization certificate on ding rights, which brings about legal trades as they wish. Hu assumes that this solution may lead to an increase of housing supply in the New Territories [6]. When serving as the secretary for Development Bureau in 2012, Carrie Lam, the current Chief Executive of Hong Kong, suggested that the small house concessionary right is fundamentally unsustainable and SHP shall be terminated by 2047. On this regard, Carrie Lam claimed that the NTIIs born in 2029 will be the last generation to be 18 years old before 2047. Therefore, with 2029 a boundary line, she pronounces that any male NTIIs born after 2029 will no longer be eligible to embrace their ding rights [7]. One specific approach to the proclamation is to stipulate sunset clauses for the exercises of small house concessionary right. In 2019, the High Court ruled that The Basic Law does not guarantee the

purchases of land from the government by concluding a private contract as well as the exchanges of land with the government to construct small houses [8]. A host of NTIIs thereby took initiative to raise their plans for the removal of small house concessionary right, which claimed that as long as the construction of a recognized mansion (Ding Mansion) is granted from the government, they would accept the 2029 sunset clauses on ding rights which was previously announced by Carrie Lam [9].

These initiatives all offer possible policy options to the long-term development of small house concessionary right, no matter the timetable raised by Carrie Lam to discontinue ding rights, or Hu Yingxiang’s proposal to securitize ding rights, or NTIIs’ recent suggestion to relax the height limit of small houses as a way to construct their Ding Mansion. Besides, the redemption scheme to the lands and the exchange entitlements both bring inspiration to resolve the issues on ding rights in Hong Kong.

4. MULTIPLE-CRITERIA DECISION ANALYSIS (MCDA) OF THE SCHEMES TO TERMINATE SMALL HOUSE CONCESSIONARY RIGHT

MCDA meets its common application when decision-makers have to finalize a recommendation scheme from multiple options. By identifying schemes available and measuring out each criterion to discern their relative importance, different schemes will be evaluated from each perspective. In this way, the most optimum scheme among all alternatives is selected by policymakers [10]. Since this paper ends with policy recommendations, it is necessary to identify the pros and cons of various schemes. In regard to the various proposals of canceling small house concessionary right raised by Hong Kong citizens from all walks of life, policy objectives and the related criteria shall be evaluated to decide the feasibility of the initiatives.

Taking the public opinions into account, this paper puts a focus on five removal schemes worth analyzing. They include I. Legislative clampdown, i.e., to ban small house concessionary right via local legislation; II. Securitization, i.e. to issue the certificates allowing legal trades of the right; III. Ding Mansion scheme, i.e. to relax the height limits of small house with the set sunset clauses designed for the right; IV. Land redemption, i.e. to directly redeem lands for rural development which haven’t been used to build small houses, as a way of preventing the practical exercise of the right; V. Governing by doing nothing, i.e. to allow the natural termination of the right.

This paper identifies a couple of criteria for evaluating the feasibility of the schemes mentioned above: 1. whether the scheme requires demolition in villages; 2. whether there is obvious incentive to obtain support of the proposal from NTIIs; 3. whether the general public is positive about it; 4. whether it raises an exact completion date for the right; 5. whether the implementation of it requests additional financial support from the government; 6. whether it promotes urbanization. The five schemes are evaluated in the following table, which is based on MCDA and the above six criteria. The numbers in the table refer to the corresponding schemes and criteria and follow the order mentioned above.

Table 1. MCDA of the schemes to terminate small house concessionary

Scheme \ Criterion	I.	II.	III.	IV.	V.	Weight
1.	Y	Y	N	Y	N	N: 1
2.	N	Y	Y	Decided by the amount of compensation(1)	N	Y: 2
3.	Y	N	N	N	N	Y: 2
4.	Y	Y	Y	Y	N	Y: 3
5.	N	N	N	Y	N	N: 2
6.	N	Y	N	Y	N	Y: 3
Total	7	10	8	7	3	

Concerning the criteria related to policy objectives, the weight should be 3, as the essential principle is to fulfill policy objectives. Concerning the criteria of having an impact on policy implementation, the weight should be 2 to showcase its importance. Concerning the criteria of bringing convenience for policy implementation, the weight should be 1. Then, the feasibility of each removal plan is evaluated by the author according to different criteria.

4.1. Whether the Scheme Requires Demolition in Villages

The schemes which demand the demolition may make it more difficult to implement the policy and to finish the action on time. Of the five schemes, land redemption is in immediate need of demolition in villages, while legislative clampdown and securitization also involve demolition in the long run, but the rest do not.

4.2. Whether there is Obvious Incentive to Obtain Support of the Proposal from NTIIs

The initiative of NTIIs has a significant impact on policy implementation. The securitization allows NTIIs to obtain additional economic incentives to transfer their ding rights. The Ding Mansion scheme, which is proposed by the indigenous residents, intends to secure NTIIs' support by relaxing the height limit of the small houses, and thereby obtains certain advocacy from NTIIs. On the contrary, neither legislative clampdown nor the scheme of governing by doing nothing brings about additional incentives for NTIIs to give up their rights. With regard to the legislative clampdown, NTIIs may even consider that it deprives them of ding rights, and give their rejection of the scheme. It is worth mentioning that to compensate at the price of the agricultural land stipulated in the land redemption scheme is not so attractive to NTIIs, but they are likely to accept the scheme if the compensation is raised.

4.3. Whether the General Public is Positive about the Scheme

The general public expect to cancel ding rights, as a way of promoting Hong Kong's urbanization. A number of citizens previously supposed that there was "government-business collusion" during the development of the New Territories [11]. Also, they consider that the system involving interest transfer behaviors is unjust, and that such behaviors are absent only in legislative clampdown and governing by doing nothing among all five schemes. The securitization poses the question of fair pricing for securities; the Ding Mansion scheme may not conform to the land planning; and the land redemption may encounter doubts from the public as to whether the valuation of land is fair. In reality, however, even the scheme of governing by doing nothing would not be considered righteous by citizens. For example, in a review case of ding rights, in which a breach of Article 7 of The Basic Law was declared, Guo Zhuojian accused the Hong Kong government of failing to fulfill its obligations to manage, utilize or develop land in Hong Kong for the benefit of all Hong Kong citizens. The inactions of the government partly lead to the controversy over small house concessionary right.

4.4. Whether the Scheme Clarifies an Exact Completion Date for the Right

The consideration of Hong Kong's future after 2047 is noticeably influenced by the reduced uncertainty of whether upholding or abolishing small house concessionary right. The first four schemes all come up with a specific date to terminate the right. Both the legislative clampdown and the Ding Mansion scheme announce the completion date, while the securitization and the land redemption shall witness the termination of the right upon their immediate implementation. The reason why the securitization may terminate the right is that all eligible NTIIs trade the certificate on the right, instead of exercising their right. The land redemption scheme takes into effect to prevent NTIIs from exercising the right when the government compensates all the land for rural development. Only the scheme of governing by doing nothing does not present an exact completion date.

4.5. Whether the Implementation of the Scheme Requests Additional Financial Support from the Government

Only the land redemption proposal needs that support. The legislative clampdown scheme involves the support to deliberate relevant bills, which, however, are in constant availability and do not require additional efforts. The securitization requires the government to issue written certificates to NTIIs and additional administrative expenses such as confirming the identity of NTIIs are included. In general, the extra expenses are not so great that they can be ignored. The Ding Mansion scheme only engages the government in relaxing several restrictions in The Buildings Ordinance, and additional resources are thus not required to implement it. In regard to the expenses of the acceptance of ding mansions whether paid by NTIIs or the government, the cost is not such a huge number that can be disregarded. The scheme of governing by doing nothing presents what the policy goes on at present, so it won't cost the government any fortune.

4.6. Whether the Scheme Promotes Urbanization

The key to advancing urbanization lies in whether the private sector, such as real estate developers, shall secure incentives to push for the development of the New Territories. The securitization, mainly operated in the free trading of the certificates, is able to encourage the developers who own a broad swath of farmland to purchase more as a way of converting the farmland into the lands for construction. When the government redeems the lands which are intended for village development, it may auction them off as high-density residential lands or utilize them for public housing or facilities, thus promoting the urbanization of the New Territories. By contrast, the legislative clampdown is not capable of offering any extra motivation to develop the New Territories. That is also the case for the Ding Mansion scheme. The construction of the mansions will not give rise to the expansion of high-density housing which is supported by traffic and other resources. It may only raise the efficiency of using land and allow the possibility for NTIIs to exercise their ding rights when in land supply shortages. Unless the government announces that several stories of the building must be transferred to the Hong Kong citizens who are not NTIIs, the scheme will not be helpful for the overall development of the society. The scheme of governing by doing nothing will not offer any positive change to villages and hence leave the situation as it is.

In summary, the securitization scheme, obtaining the highest score, is apparently an optimal one among all five. Even if the weight of its few criteria remains to be discussed, the overall score of the securitization scheme is still higher than that of others. Hence, the scheme shall receive more attention and consideration.

5. CONCLUSION

With the development of Hong Kong, although some traditional customs are still preserved in form, their role in guiding the distribution of social resources is no longer significant. Against the backdrop of the blurring boundary between urban and rural areas, it is not necessary for a host of Hong Kong's traditional customs to exist as a law to regulate the life of rural residents. In fact, the remarkable differences present in Hong Kong Island, Kowloon and the New Territories in the last century have vanished with the homogenized life in the countryside and the city. The lifestyle and values of NTIIs are akin to those of other Hong Kong citizens. Currently, Hong Kong's traditional customs only play a part as a non-statutory source of law to supplement the legal texts when the judiciary authorities are not capable of interpreting certain legal provisions.

In summary, this paper comes up with the main factors influencing the implementation of the removal plan through a literature review. Then, these factors are viewed as criteria in the MCDA of the termination of ding rights, and the score for each scheme is given by the paper. It concludes that the securitization of small house concessionary right is the most desirable way to satisfy the interests of

various groups, which may present inspiration and enlightenment for other areas in the world to handle the issues concerning traditional rights in the future.

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