



SECURE LAND RIGHTS AS A FOUNDATION FOR BROAD-BASED RURAL DEVELOPMENT IN CHINA

*Results and Recommendations from a
Seventeen-Province Survey*

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EXECUTIVE SUMMARY

This paper summarizes the findings of a 2008 nationwide survey on farmers' land rights in China and describes the extensive implications of secure, long-term land rights.

MAIN ARGUMENT

Land is disproportionately valuable to poor households in the world. In China, it could hold the key to sustainable, broad-based development and lay the foundation for wealth-creation and empowerment for over 750 million rural people. Today, the countryside of China—where some three-fifths of the country resides—is lagging badly behind the urban sector by virtually every economic and social measure. A fundamental reason for the rural-urban disparity is that a majority of Chinese farmers do not have secure rights to the land that they farm. More than 40% of farmers lack any written documentation to confirm their land rights, and local governments can frequently take away or sell off farmers' land rights using strong-arm methods. Where land rights have been implemented, however, Chinese farmers have a sense of security and are increasingly investing in their land and benefiting from market transfers reflecting a substantial land value. China can improve its legal regime for rural land rights by further improvements in the written legal framework and by implementing the existing laws on the ground.

POLICY IMPLICATIONS

- With secure, long-term land rights, as now provided by law, a high proportion of China's 200 million farm households could soon start making long-term investments in their land. This will greatly increase farm productivity and income, leading these farmers to become market participants and consumers whose unleashed spending power can benefit the entire world.
- Secure land rights will represent a massive new source of wealth—one that can be estimated at \$1.2 trillion—in Chinese farmers' hands.
- A concerted campaign for full implementation of farmers' land rights is needed to achieve these sweeping benefits, including publicity and documentation on land rights and further "rule of law" measures.

Unless the majority of the Chinese mainland's rural population is assured of ownership, or at least of owner-like security, on the agricultural land that remains foundational to these people's livelihood, China's efforts to achieve full modern "development" are likely to be severely held back, social and political stability is likely to be compromised by land-based grievances, and the growth of the country's internal market is likely to be constrained by persisting rural poverty. From the standpoint of the law, at least three crucial questions then arise:

- Do present Chinese law and policy seek to ensure either ownership or owner-like security for the rural population on the land they farm?
- If so, to what degree are these legal rules being effectively implemented in the countryside?
- Finally, to the extent these rules are not being implemented, what changes in the relevant legal rules, or in the regime for their implementation, are desirable?

This study seeks to answer those questions, at least in a preliminary way and in light of the current economic context, bringing to bear particularly the results of a recent comprehensive survey of 1,773 rural households in 1,657 villages of seventeen major agricultural provinces in China. The survey was done jointly in mid-2008 by the Rural Development Institute (RDI), Renmin University of Beijing, and Michigan State University. It is the fourth in a series of such surveys carried

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out since 1999.¹ The surveys are the outgrowth of research and policy-advisory work carried out by RDI in China beginning in 1987.²

The essay will offer a brief background on China's lagging rural sector in section two. Section three will review the history and results of China's principal laws and policies affecting rural land from the period before the Communist Party's coming to power in 1949 through the early years after the decollectivization of the early 1980s. Section four will summarize the efforts to give farm households long-term security on their individual plots spanning the period from 1993 to the present. Section five will discuss the genesis and carrying out of the survey. Section six, the majority of the paper, will present the results of the 2008 survey. Section seven will set forth recommendations, both as to desirable additions or refinements to the existing regime of legal rules affecting rural land and concerning more effective implementation of that body of rules.

The Lagging Rural Sector

Between 750 and 800 million out of China's estimated population of 1.3 billion—that is, around 60%—still reside in the rural area and rely significantly on agricultural land for their livelihood. A large gap exists between this majority rural population and its urban counterparts by virtually all available measures. **Figure 1** shows the changes over time in China's urban versus rural per capita incomes in equivalent U.S. dollars:³

As the figure shows, rural per capita incomes have risen but not nearly as rapidly as urban per capita incomes. The ratio as of 2008 had increased to 3.33:1. Indeed, if urban benefits such as subsidized education and medical care are factored in, the gap is likely greater than 4 to 1.⁴

Other measures of development show wide urban-rural disparities as well. Consumption outlays (one indicator of how much room for growth there is in the vast market represented by the 750–800 million rural Chinese) in 2008 reflected a 3.07:1 urban-rural ratio.⁵ Life expectancy in the large cities is now twelve years greater than the average in the countryside.⁶ The infant mortality rate is twice as great in the countryside as it is in the urban sector.⁷ Nationally, 51.2% of middle-school graduates continue to high school, yet the rate in the countryside is merely 7.1%; and the

¹ On past surveys, see Roy Prosterman, Brian Schwarzwalder, and Ye Jianping, "Implementation of 30-Year Land Use Rights for Farmers Under China's 1998 Land Management Law: An Analysis and Recommendations Based on a 17 Province Survey," *Pacific Rim Law & Policy Journal* 9, no.3 (September 2000); Brian Schwarzwalder et al., "An Update on China's Rural Land Tenure Reforms: Analysis and Recommendations Based on a Seventeen-Province Survey," *Columbia Journal of Asian Law* 16 (Fall 2002); and Zhu Keliang et al., "The Rural Land Question in China: Analysis and Recommendations Based on a Seventeen-Province Survey," *New York University Journal of International Law & Politics* 38 (November 2006). See also Roy Prosterman, Robert Mitchell, and Tim Hanstad, eds., *One Billion Rising: Law, Land and the Alleviation of Global Poverty* (Amsterdam: Leiden University Press, 2009).

² Roy Prosterman, Tim Hanstad, and Li Ping, "Can China Feed Itself?" *Scientific American* 275, no. 5 (November 1996): 275. The article basically concludes that China will feed itself quite handily if correct policies are followed.

³ The exchange rate of 6.83 Chinese yuan per \$1 is used throughout this paper.

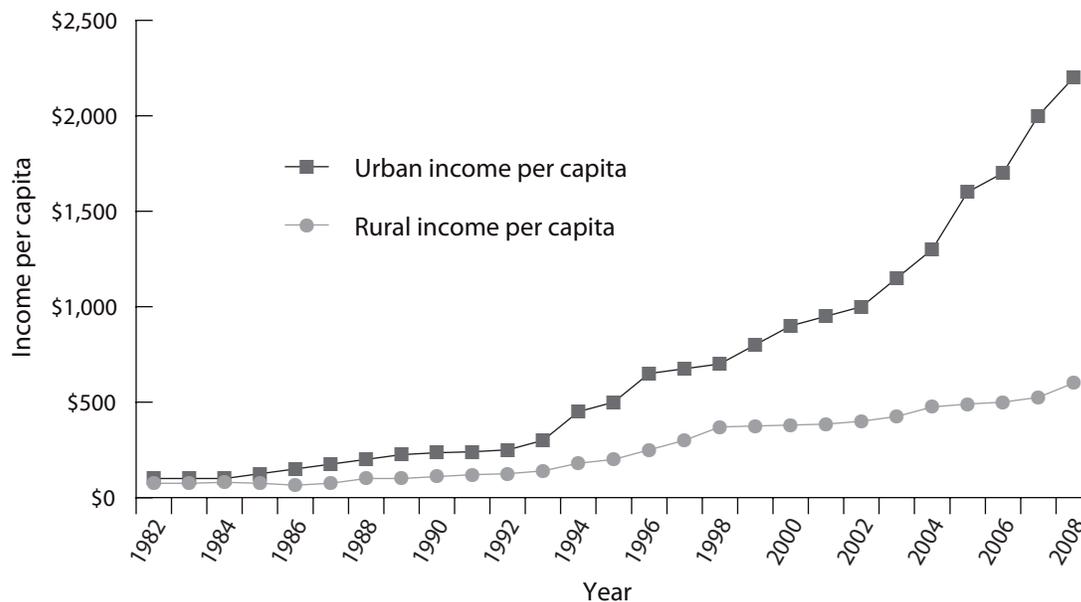
⁴ The real urban-rural income disparity is estimated between 4:1 and 6:1. On the study that contained this data, see "She ke yuan fa bu cheng shi lan pi shu: cheng xiang shou ru cha ju 4–6 bei" [Academy of Social Sciences Announces Urban Development Bluebook: Rural-Urban Disparity reaches 1:4–6], *Sohu News*, June 16, 2009, <http://house.focus.cn/news/2009-06-16/694748.html>.

⁵ In 2008, the per capita rural consumption averaged 3,661 yuan while per capita urban consumption reached 11,243 yuan. *Rural Economy Green Book*, Rural Development Research Institute, Chinese Academy of Social Sciences, 2009.

⁶ Zhao Zhongwei, "Establishing a Harmonious Social Environment: Reducing China's Mortality Rate, Successes and Challenges" (conference presentation, Beijing, November 16, 2005); and "Zhong guo da cheng shi ren jun shou ming bi nong cun gao 12 nian, shi he yuan yin?" [Residents of Chinese Cities Live on Average 12 Years Longer than Those in Rural Areas—What Is the Cause?], *Xinhua*, November 17, 2005, http://news.xinhuanet.com/house/2005-11/17/content_3791672_1.htm.

⁷ "Zhong guo ren kou su zhi de xian zhuang" [The Present Conditions of Chinese Population], July 10, 2008, <http://www.dqt.com.cn/adv/rkr/rk1/6.html>. The total number of deaths of children under five years of age nationwide is roughly three times as great in India as it is in China. Yet it is still shocking that the absolute number in China is around 700,000 per year, second only to India. On the figures, see Robert E. Black et al., "Where and Why Are 10 Million Children Dying Every Year?" *Lancet* 361, no. 9,376 (2003): 2,226–34.

FIGURE 1 The worsening rural-urban income gap



SOURCE: “China Annual Statistics” bulletins, 1982–2008, National Bureau of Statistics of China.

average figure for years of schooling in rural areas lag the urban figure by almost three years.⁸ Moreover, in 2006, more than 60,000 cases of “massive social unrest,” involving 3.07 million people, were officially reported, and land-related problems constituted the number one cause of rural unrest in China.⁹

Indeed, the rural situation has probably worsened over the past year, with an estimated 20 million migrant rural workers believed to have returned to the countryside due to the economic downturn.¹⁰ The recession has also underlined the importance of China developing its internal market to reduce the enormous dependence on exports,¹¹ and the greatest concentration of unmet consumer needs anywhere on the planet lies in the Chinese countryside.

One cannot understand why the prosperity and wealth created in China’s three-decade reform has not spread proportionately to the countryside without appreciating both the role of land and the farmers’ relationship to land.

⁸ “Ji chu jiao yu de cheng xiang cha ju” [The Rural-Urban Gap in Basic Education], February 13, 2008, <http://news.edu-chn.com/newsadmin/htmlnews/2132008/1000938514132532.html>.

⁹ “Qun ti xing shi jian qiao xiang jing zhong xue zhe jian yi bao zhang min yi su qiu chang tong” [The Alarm Bell of Massive Social Unrest], China.com, December 28, 2008, http://news.china.com/zh_cn/domestic/945/20081229/15258107.html. See also Premier Wen Jiabao’s statement in 2006 that efforts to narrow the urban-rural wealth gap were inadequate and that land seizures by local officials were causing mass rural unrest that could threaten China’s national security and economic growth. Joseph Kahn, “In China, a Warning on Illegal Land Grabs,” *New York Times*, January 20, 2006, http://www.nytimes.com/2006/01/20/world/asia/20iht-china.html?_r=1.

¹⁰ “Chen xi wen: yue you 2 qian wan nong min gong yin jing ji bu jing qi shi qu gong zuo gang wei fan xiang” [Estimated 20 Million Migrant Workers Were Forced Going Back Home], Hine news.cn, August 15, 2009, <http://www.hine news.cn/news/system/2009/02/02/010406199.shtml>. Fortunately, due to recent improvements in the land regime, it appears likely that more migrant workers than would have been the case previously—perhaps even most of them—have had undiminished land plots to return to despite their tentative urban foray, as discussed in section six below.

¹¹ Frederik Balfour, “The Global Recession Slams China,” *Business Week*, January 22, 2009.

The History of Modern China's Land Reforms

Mao Zedong had pursued the importance of land rights for the tenant farmers of China to gain their support for his nascent revolution as far back as the 1920s, on a track parallel to that which was soon to be traversed in non-revolutionary settings in Japan under Douglas MacArthur, in South Korea under Syngman Rhee, and across the Taiwan Strait by the Kuomintang under Chiang Kai-shek after fleeing the Chinese mainland. Each of the four came to recognize the political power of peasant ownership of land. Each likewise recognized the economic power of such ownership—except in Mao's case that realization faded (disastrously for mainland China) in the mid-1950s.¹²

Mao had built peasant support for his revolution with promises of land for families with little or no land of their own, which were formalized in law as far back as the Jinggangshan Land Law of 1928 in a region controlled by the Communists.¹³ After the Communist Party formally came to power in October of 1949, it adopted the Land Reform Law of the PRC (June 1950). Perhaps paradoxically, the law was not much different from the land-to-the-tiller programs carried out around the same time in Japan, Taiwan, and South Korea,¹⁴ except for the important differences that lands of landlords were to be confiscated without payment, and that implementation involved considerable local violence and score-settling against landlords. The mainland's massive land-to-tiller program allocated about one-half of total arable land in full private ownership to over 60% of the total rural population.¹⁵ As in those other programs, the mainland's land-to-the-tiller program resulted in large and rapid economic gains for the peasantry. From 1949 to 1956 grain production increased by 70% and total farm income by 85%.¹⁶

It is all the more tragic, then, that Mao decided to collectivize beginning in the mid-1950s, following what we now know was the unhappy path followed by the Soviet Union in the 1930s. By 1958 smaller collectives had been merged into giant communes where individual farming was prohibited.¹⁷ What was perhaps the planet's worst famine of the twentieth century ensued, with an estimated 15 to 30 million incremental deaths.¹⁸ Even after reversion to much smaller collectives, per capita grain production by 1977 remained lower than it had been in 1956, the last year of predominantly individual farming.¹⁹

The year 1978 saw initial experiments in individual household farming, and this was expanded in 1979 to become the new "Household Responsibility System" (HRS), under which arable land (which had become and remained collectively owned)²⁰ was contracted by the collective to its

¹² Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 2, 7.

¹³ Mao Zedong, "Jinggangshan Land Law (adopted in December 1928 on the Jinggangshan)," in *Mao's Road to Power: Revolutionary Writings 1912-1949*, vol. 3, ed. Stuart R. Schram and Nancy Jane Hodes (M.E. Sharpe 1995), 128-32.

¹⁴ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 2.

¹⁵ *Ibid.*, 283.

¹⁶ By way of comparison, on Taiwan, where the land-to-the-tiller program was meticulously tracked, rice yields increased by 60% in the decade following implementation, and average farm incomes rose by 150%. The latter figure partly reflected enormous diversification, as rice dropped as a proportion of the farmgate value of all agricultural products, while fruits, vegetables, and livestock expanded from just over one-fifth to three-fifths of the much larger agricultural pie. Cheng Chen, *Land Reform in Taiwan* (Taipei: China Publishing, 1961), 84, chart 12; and Prosterman, Mitchell, and Hanstad, *One Billion Rising*, 63.

¹⁷ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, 283-84.

¹⁸ Susanne Weigelin-Schwiedrzik, "Trauma and Memory: The Case of the Great Famine in the People's Republic of China (1959-1961)," *Historiography East & West* 1, no. 39 (2003): 41-43; and Xizhe Peng, "Demographic Consequences of the Great Leap Forward in China's Provinces," *Population and Development Review* 13, no. 4 (1987): 639.

¹⁹ Colin A. Carter and Fu-ning Zhong, *China's Grain Production and Trades: An Economic Study* (Boulder: Westview Press, 1988), 5, table 1.2; and Nicholas Lardy, "Agricultural Reforms in China," *Journal of International Affairs* 39, no.2 (1986): 91.

²⁰ There was increasing ambiguity as to what was meant by "collective" when used in this sense, discussed further below.

individual farm households for private farming. The farm households, in turn, each committed to meeting specified collective demands for quota grain, taxes, and fees, based on the quantity of land allocated—usually on a per capita basis—to each household. The resulting farms were small, typically a fraction of a hectare in size.

Given this permission to leave the collectives and farm individually, virtually every farm household seized the opportunity to do so. By 1983, collective farming had almost ceased to exist in China, the first of the centrally planned economies to take this critical step, as we were able to confirm for ourselves in rural fieldwork carried out by RDI in 1987 and 1988.²¹

Productivity gains from individual farming were substantial and rapid, with grain production increasing an average 8.6% per year in 1980–84; from 1979 to 1984, the gap between urban and rural per capita incomes narrowed from 3.03:1 to 2.49:1, and the gap in consumption from 2.8:1 to 2.3:1. During the years between 1981 and 1987—when 70% or more of the total population made a living from agriculture—the proportion of China’s people living beneath the poverty line of one dollar a day declined dramatically, from 64% to under 30%.²²

Yet, while Chinese farmland had thus been successfully decollectivized, it had not been privatized. The collective remained the formal owner of that land, and the use rights that farmers had, in practice, were generally only for one crop-season or year at a time (there was a 1984 declaration that land-use rights should last for fifteen years, but little was done to implement this policy).²³

RDI’s village fieldwork in China began about this time in 1987.²⁴ We consistently found that farmers had achieved their large initial yield increases under individual farming by making a series of improvements in their annual farming practices, relative to what had been done on the collective farms: they made informed, local judgments as to when best to plant and harvest; they selected seed carefully; they used inputs, such as fertilizer, in careful and appropriate ways; and they carried out other operations on their small, often only one or two acre farms or even smaller—such as spotting and pulling out weeds when they appeared—in a meticulous manner that might almost be called gardening rather than farming. This was, after all, these farmers’ livelihood, and they would get the bulk of the benefits and bear the consequences of any failures.

However, we also found that Chinese farmers were stymied in terms of making any medium-to-long term improvements on the land they cultivated. The reason was great insecurity of tenure on the small separate parcels (often three or four or more) that made up a farm. For farmers were not only lacking knowledge of any affirmative rule that might give them rights to their land parcels that would extend over time but were generally subject to a devastating regime called “readjustment,” which left them uncertain as to how long they would remain on any particular portion of the land that they presently farmed. Hence, their usual “investment horizon” extended no further than what could be recovered, with a profit each season or at most each year.

Readjustment is a concept that was introduced with the advent of decollectivization with the purpose of maintaining a continuing per capita equality of every village household’s land

²¹ Vietnam, which had permitted a significant individual farming sector in the reunited south, followed with nationwide decollectivization soon after. It should be noted that two of the eastern European Communist societies, Poland and Yugoslavia, never collectivized the bulk of their agricultures. Prosterman, Hanstad, and Li, “Can China Feed Itself?”

²² Prosterman, Mitchell, and Hanstad, *One Billion Rising*, 285–86; and Jeffrey Sachs, *The End of Poverty: Economic Possibilities For Our Time* (New York: Penguin Press, 2005), 154–55.

²³ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, 323–24.

²⁴ For a description of RDI’s early work and fieldwork findings in China, see Prosterman, Hanstad, and Li, “Can China Feed Itself?”

holding. “Big” readjustments were carried out when the local cadres thought that the population of a village had grown enough to warrant a lower per capita land allocation for every resident. Such readjustments generally consisted of taking all of the land back and reallocating it in new and different configurations in which every per capita land “share” was correspondently smaller than it had been. “Small” readjustments tended to be more frequent and were carried out between individual households that had lost members (for example, through a death or a daughter’s marriage and relocation outside the village) and individual households that had gained members (as through the addition of a daughter-in-law or new birth). In such small readjustments, the population-losing households gave up proportionate land, which was then allocated by the cadres to population-gaining households, while households that had no net loss or gain retained their present land. There were other, hard-to-measure impacts of readjustments as well, such as enhanced power for the cadres (who had lost much of their previous power due to decollectivization) and, as land became increasingly valuable, providing the cadres an occasion to retain some land without reallocation for potentially profitable non-agricultural uses. (Especially as the land became more valuable, a further source of tenure insecurity was direct taking for such non-agricultural uses, unaccompanied by adequate compensation to land-losing farmers.)

As the senior leadership came to understand the serious negative impacts of farmers’ lack of secure tenure—the inability to invest in land improvements, the potential for cadre abuses, the fact that no meaningful land market could develop for land that might be taken away at any time—it began to move toward substantial reforms of the Household Responsibility System.

China’s Laws and Policies for Reform of the Household Responsibility System

Recognizing the inadequacy of the Household Responsibility System, the leadership in Beijing launched a series of reforms that began in 1993. In that year a policy document, “Document No. 11,” called for extending farmers’ land rights for a further 30 years. Additionally, a 1997 central policy explicitly prohibited the big, village-wide form of readjustment, substantially restricted small readjustments, and banned the dangerous and then-emerging practice of taking back farmers’ contracted land for “scale farming.”²⁵

This was quickly followed by the first embodiment of long-term land rights in formal law—as distinct from policy documents—in the revised Land Management Law (LML) adopted by the Standing Committee of the National People’s Congress in August 1998.²⁶ On the duration of use term, Article 14 explicitly states that collectively owed land “shall be” contracted to the members for 30 years. That article also requires a written contract to be executed, “stipulating the rights and obligations of the two parties.” It also enacts into law the strict limits on readjustment from Document No. 16 prohibiting all big readjustments and permitting the conduct of small readjustments only among “isolated households” and upon “consent by two-thirds of villagers or villager representatives and approval by township government and county government agencies in charge of agriculture.”

²⁵ “Notice Concerning Further Stabilizing and Protecting the Rural Land Contracting Relationship,” Central Committee of the Communist Party of China, Policy Brief, no. 16, August 27, 1997.

²⁶ “Law of Land Management” (promulgated on Aug. 29, 1998, effective Jan. 1, 1999), trans. LEXIS.

A much more extensive enactment entirely devoted to these issues—the Rural Land Contracting Law (RLCL)—followed in 2002.²⁷ Going further than the LML, the RLCL mandates an end to the practice of land readjustments in all but extreme cases. Article 27 states:

During the contract term, the contract issuing party shall not readjust contracted land.

During the contract term, in cases of where a natural disaster has seriously damaged contracted land and other special circumstances, and an appropriate readjustment of arable land or grassland between isolated households is necessary, the approval of 2/3 of the members of the Village Assembly or 2/3 of the Villager Representatives must be obtained, as well as approval by the township government and the county government administrative unit responsible for agriculture. The terms of any land use right contracts stipulating that readjustments shall not be conducted must be honored.

The RLCL also requires issuance of both written land-rights contracts and land-rights certificates (issued by the county or higher levels of government, with substantially the same content as the contracts but representing higher-level acknowledgment of land rights).

Beyond this, the RLCL spells out the transactability of farmers' land rights, allowing transfer or lease to either village or non-village transferees and only requiring permission from the collective in case of a full assignment of the entire remaining use term.²⁸

The RLCL, in its 65 articles, contains many other provisions of importance:

- Women have equal rights to land. Consistent with the virtual end to readjustment, it is explicit that women who marry and move to their husband's village but receive no specific allocation of land there (which could happen legally, as through reclaimed land) are to retain their share of the land in the maiden village (rather than lose it to readjustment, as was common before).
- Loss of any contracted land because of urban migration is to become extremely rare and not to occur at all if only one or two household members migrate. Loss occurs only if all members move to a multi-district (large) city and change their household registration from rural to urban.²⁹ Even then, any transfer of the land rights made prior to that time remains valid; so, for example, members can continue to receive land rents from a transferee.
- There are extensive remedial provisions. The RLCL explicitly gives farmers a choice that includes going immediately to the People's Court without exhausting burdensome administrative hearing procedures.

Although the RLCL represents a breakthrough in many ways and remains the most detailed expression of legal rules governing farmers' land rights, there have been later developments of importance. Most notable is the new property law, adopted in March 2007 by the annual plenary session of the National People's Congress—not the smaller Standing Committee of that body, which adopted both the LML and RLCL.³⁰ Of particular significance are the following provisions of the new property law:

²⁷ "Law on the Contracting of Rural Land" (promulgated on Aug. 29, 2002, effective March 1, 2003), trans. LEXIS.

²⁸ This provision is easily circumvented, given that a "lease" for 29 years and 364 days (even with a lump-sum payment up front) would not appear to require any permission.

²⁹ Note, too, that if these household members are permitted by the authorities to make such a registration change, the safety net of urban educational, health, and other benefits then extends to them.

³⁰ "Property [Real Rights] Law" (promulgated on March 16, 2007, effective Oct. 1, 2007).

- It reaffirms the major provisions of the RLCL, including that law's prohibition of virtually all readjustments, and now with the maximum legislative authority of a plenary session of the National People's Congress.
- It defines farmers' land rights as usufructuary property rights (only implied in the RLCL), giving farmers much stronger protection under the law than obligatory (contract) rights.
- It expressly permits farmers to continue using their currently contracted land when the existing 30-year term expires, at least opening the possibility that such rights might be repeatedly renewable, and hence potentially perpetual.
- It contains language on partitioning common property, which may add protection to women's land rights, especially for situations such as divorce or the allocation of possible compensation for a land taking.
- It addresses in a positive legislative way, for the first time, one of the central problems associated with inadequate compensation for land taking for non-agricultural purposes—a further source of tenure insecurity—by providing that compensation for the land taken is to be paid to the farmer rather than to the cadres.³¹
- It clarifies, importantly, that collective ownership means ownership by the members of the collective and goes on to specify that various land-related matters shall be decided collectively by the members.³²

There have been further developments since the property law was promulgated. In August 2007, seven ministries and ministry-level bodies announced a joint implementation campaign, including the goal of remedying widespread non-issuance of land certificates and land contracts.³³ Even more authoritative mandates for comprehensive implementation were issued by the leadership in October 2008 and in January 2009.³⁴

Implementation of the Law: The Why and How of the Survey

The previous section has described the steady development of central law and policy supportive of farmers' 30-year (now extendable) land rights. With their potential impact on 750 to 800 million rural Chinese—including security in their relationship to the land, which is their principal productive asset; ability to invest in the land and increase agricultural production; the accession of wealth represented by transactable land rights; and the potential to head off land-based conflict—these legislative norms may be counted among the most important presently on the books in any developing country.

³¹ This reverses the prior rule under Article 26 of the LML Implementation Regulations (effective January 1, 1999), under which compensation for the land was to be paid to the collective cadres, who were to use it supposedly "for designated purposes of the collective."

³² "Property Law," Article 59.

³³ "Nong ye bu guo tu zi yuan bu jian cha bu min zheng bu zhong nong ban guo wu yuan jiu feng ban guo jia xin fang ju guan yu kai zhan quan guo nong cun tu di tu chu wen ti zhuan xiang zhi li de tong zhi" [Notice on Conducting a Special Campaign on Serious Rural Land Problems by Ministry of Agriculture, Ministry of Land and Resources, Ministry of Supervision, Ministry of Civil Affairs, Central Leading Office on Rural Affairs, Discipline Bureau of State Council and National Administrative Grievances Bureau], August 24, 2007, http://www.agri.gov.cn/govpublic/NCJJTZ/200803/t20080304_23509.html. A quantitative goal was set for issuance of certificates to "be above 90%," though impractically adding "by year end." See the discussion of document issuance in section six below.

³⁴ "Zhong gong zhong yang guan yu tui jin nong cun gai ge fa zhan ruo gan zhong da wen ti de jue ding" [Decisions on Several Key Matters to Push for Rural Reform and Development], Central Committee of CCP, October 19, 2008, http://news.xinhuanet.com/newscenter/2008-10/19/content_10218932_1.htm; and "Zhong gong zhong yang guo wu yuan guan yu 2009 nian cu jin nong ye wen ding fa zhan nong min chi xu zeng shou de rou gan yi jian" [Opinions on Pushing Stable Development of Agriculture and Continuous Growth of Farmer Income in 2009], Central Committee of CCP and State Council, December 31, 2008, <http://theory.people.com.cn/GB/49154/49369/8734542.html>.

Yet are these laws being implemented? That was the question, paradoxically, that two RDI lawyers doing fieldwork in late 1998, shortly after the August 1998 enactment of the LML, asked themselves when Chinese press reports indicated that the leadership in one province was boasting that they had already achieved “90% implementation” of the LML. RDI attorneys had conducted semi-structured rapid rural appraisal interviews with roughly 250 Chinese farming families from 1993 (when a broad policy looking toward 30-year land rights had first been announced) to late 1998 in ten provinces: in light of those interviews, as well as based on conversations with other researchers, the RDI attorneys doubted that anything remotely close to 90% progress had been made in any province in implementing the new land tenure rules through informing farmers of the new land rights and issuing the related documentation.³⁵

Something between 10% and 20% seemed generally more plausible than 90%, even if some provinces might be ahead of others. The fundamental concern was that provincial officials might begin “declaring victory” while in fact doing little toward actually carrying out the central government’s mandate as now formally embodied in the LML. The RDI lawyers therefore decided, in consultation with faculty from China Renmin University in Beijing who had joined them in recent fieldwork, to visit the province from which the 90% claim had issued and do a series of rapid rural appraisal interviews that would give some sense of whether anything close to that was a plausible figure. About 30 farm households were interviewed, one per village and one or two per township, in about a half-dozen counties.³⁶

The conclusion of this very preliminary and quickly mounted research was that the 90% figure was almost certainly pure invention and that a figure not much in excess of 10%–20% probably held for that province as well as many others. The fieldwork findings were received with considerable interest by officials in Beijing, many of whom had suspected that this might be true. Even ministries of the central government may sometimes err badly in their assessments of what is going on in the villages, due to the tradition of collecting information from local-level officials rather than from the intended beneficiaries of various central government programs.³⁷ Recognizing the need for independent assessments, all of RDI’s village interviews—whether rapid rural appraisal or sample surveys—have been conducted directly with randomly selected farmers without the presence of local cadre or local officials.

Given the initial experiences of provincial government claims versus facts on the ground, and the importance of effective implementation of farmers’ 30-year land rights for China’s development, RDI decided at the end of 1998, and in cooperation with interested faculty at Renmin University and Michigan State University, to carry out a more formal random-sample survey. The survey focused on how farmers actually understand, experience, and act on their rights to the land they farm, or not, and on how those rights are either respected or ignored by the local cadres and officials. The first such survey was carried out in the summer of 1999, and subsequent surveys were carried out in the summers of 2001, 2005, and 2008.³⁸ As new issues arose—for example, with the

³⁵ For a description of the fieldwork carried out between 1987 and 1996, see Prosterman, Hanstad, and Li, “Can China Feed Itself?”

³⁶ Document issuance is almost always done on a village-wide basis: either every household receives the document or none at all receive it. Other features, however, may be more individualized (e.g., subjective confidence in one’s land rights).

³⁷ Thus, less than two years after adoption of the LML, the Ministry of Agriculture claimed that 98% of villages had implemented farmer’s 30-year land rights. Hong Chaohui, “Lun zhong guo nong min tu di cai chan quan li de pin kun” [The Scarcity of Chinese Farmers’ Land and Property Rights], *Modern China Studies* 1 (2004), <http://www.chinayj.net/StubArticle.asp?issue=040107&total=84>.

³⁸ For the citations of these studies, see fn 1.

adoption of important additional legal provisions in the RLCL of 2002—or some older ones faded in importance, the survey questionnaire was modified accordingly.³⁹

After filtering out invalid interviews, the 2008 survey covered 1,773 farm households in 1,657 villages⁴⁰ and 945 counties in 17 provinces (about 100 households in each province).

While most of the western provinces have not been covered, these are generally more sparsely populated. The objective has been to cover major agricultural provinces. The seventeen survey provinces—Anhui, Fujian, Guangxi, Guizhou, Hebei, Heilongjiang, Henan, Hubei, Hunan, Jiangsu, Jiangxi, Jilin, Shaanxi, Shandong, Sichuan, Yunnan, and Zhejiang—together contain an estimated 83% of China's rural households.⁴¹

A sample of this size should provide results that are descriptive of the situation in the seventeen provinces as a whole to an accuracy of $\pm 2.3\%$ at the “95% confidence level.”⁴² The much smaller sample taken at the individual province level, if reporting or commenting at that level proves useful, should provide results to an accuracy of $\pm 9.8\%$.⁴³

Survey Results

Household Characteristics

Household characteristics provide important background information, given that these survey results should reflect the situation in seventeen provinces containing 83% of China's rural population, generally to an accuracy of $\pm 2.3\%$. The 1,773 survey households report a median of a little less than four members and have a median of just over 3.5 allotted land shares, containing just under 4.0 *mu* of arable land.⁴⁴ One *mu* is one-fifteenth of a hectare, so 4.0 *mu* would equal 0.27 hectare or 0.67 (two-thirds) acre. If we use a total rural population figure of 800 million and four persons per household, this indicates roughly 200 million rural households.

Household land is divided into a median of just over three separate land parcels, although one-quarter of households have five or more parcels. Although farm size in China is clearly small, there are three important matters that have bearing: (1) highly successful processes of rural development—with resulting prosperous farmers—have taken place in other settings of small farm size such as Japan, South Korea, and Taiwan;⁴⁵ (2) small farms are generally more productive, per unit of land, than large farms;⁴⁶ and (3) no magic wand can be waved, in any case, to transform the rural sector into one of larger farms: collective farms have been a disaster, and any fifty-acre (20 hectare) “medium-size” farm run by a single family or a company in lieu of existing small holdings

³⁹ Though the same seventeen provinces have been used in each of the four surveys, each survey is separately randomized as to counties and villages selected and farmers interviewed. It is therefore not a “panel” survey that returns to the same respondents each time.

⁴⁰ This refers to administrative village as distinct from the several hamlets or natural villages that normally make up an administrative village.

⁴¹ *China Agricultural Statistical Yearbook* (Beijing: China Agricultural Press, 2004), pt. 2, 1.

⁴² That is, the results should fall within that range in 95 out of 100 cases if it were possible to take a complete census that encompassed every farm household in the seventeen provinces.

⁴³ A more extensive discussion of the survey methodology, in the context of the 2005 survey, will be found in the article on that survey that is cited above. Zhu et al., “Rural Land Question,” 835–39.

⁴⁴ Quite consistently, entirely separate survey questions as to total village population and total arable land yield median figures that are both very close to 1,100, or one *mu* per person.

⁴⁵ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 2, 4. See also Tim Hanstad and Robert Mitchell, “Small Home-Garden Plots and Sustainable Livelihoods for the Poor,” United Nations Food and Agricultural Organization Livelihood Support Program, Working Paper, no. 11, 2004.

⁴⁶ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 3. See also Roy Prosterman and Jeffrey M. Riedinger, *Land Reform and Democratic Development* (Baltimore: Johns Hopkins University Press, 1987).

would require, on average, finding alternative livelihoods for the members of 75 households. (This is not, of course, to say that market transfers by the present farmers to others who might wish to cultivate a multi-acre holding are inappropriate, so long as they are purely voluntary—that is, so long as they are market decisions of the farmers concerned and not of external cadres or bureaucrats.)⁴⁷

The survey finds that median household cash income is just over 14,000 yuan (excluding production for own consumption and other non-cash items), with less than one household out of ten (9%) receiving 80%–100% of its cash income from farming—indeed, nearly half (47.8%) receive less than 20% of their cash income from farming. Interestingly, for fully one-half of households, the most important source of non-farm cash income is local, about equally split between self-employment and off-farm wages. Fewer than one out of six (15.4%) report the main source of non-farm cash income to be jobs in big cities outside the province—even adding jobs in the provincial capital or prefecture city only brings the total up to one out of four (24.8%). This may be important to bear in mind in assessing the likely maximum number of those at legal risk, under the current rules, of losing the household’s land rights due to big-city employment.

The median age of respondents is between 44 and 45 years. The median level of education is between 7 and 8 years.

Land Readjustments

Since the beginning of the HRS, 61.4% of respondents recall at least one readjustment in their village, whereas 36.1% recall none. A further 2.5% are unsure. The percentage of people in the 2005 survey who recalled no readjustment was 25.7%, and we are inclined to think that an increasing proportion of respondents may not recall early readjustments.

For the universe of those who did recall one or more readjustments, **Table 1** shows the number of readjustments reported.

Of the villages conducting only one readjustment, a majority conducted it at the time of preparing for issuance of 30-year contracts (often referred to as the “second round of contracting” to distinguish this new contracting process from the original implementation of the HRS). This was permissible in that context.

TABLE 1 Number of times a village has readjusted land since the introduction of the HRS

Number of readjustments	%
1	34.3
2	29.5
3	17.7
4	6.9
More than 4	11.6

NOTE: n = 1,089. Percentages may not add up exactly to 100 due to rounding.

⁴⁷ Even then, there may be questions as to adequacy of information in a newly developing market, distress sales, etc. Some market development issues are touched on below.

Important related issues include the number of post-second round readjustments that have been conducted, their purported purpose, and farmers' attitudes toward the legal banning of all readjustments for the contract period.

Since 30-year land rights were introduced in the village (or since 1995 if a village has not carried out the second round), just over one out of three villages (34.1%) has carried out a readjustment, with the vast majority of them being illegal. This is of considerable concern in relation to the extent of the effective implementation of farmers' 30-year land rights, but it is also worth noting that the comparable percentages for the 2001 and 2005 surveys were 17.9% and 30.3%, respectively.⁴⁸ Thus, the "34.1%" figure in 2008 suggests that the pace of the new readjustments may be slowing.⁴⁹

The reasons given for post-second round readjustments are shown in **Table 2**.

TABLE 2 Main reasons for readjustments after the second round of contracting

Reason	%
Population changes	67.0
Land takings	9.9
Consolidation of small land parcels	8.8
Land leased to non-villagers	2.7
Introduction of scale farming	2.4
Change in cadres	2.4
Natural disasters	1.0

NOTE: n = 580. Percentages may not add up exactly to 100 due to rounding.

Of these, the only category of readjustments that is clearly allowed under the RLCL is that for natural disasters, and it is likely that even most or all of these would not have complied with the strict procedural requirements of the LML and the RLCL, as described above.

The natural disaster category, which involves only 1% of all readjustments, hardly seems to constitute a valid reason to maintain any placeholder in the law for the possibility of readjustment. Far better would appear to be some form of state-provided insurance or rescue program such as is widely practiced elsewhere.⁵⁰

We also asked respondents specifically about their attitude toward strict prohibition of readjustments. This was in response to those local officials and some academics who argue that farmers want readjustment to continue in order to accommodate changes in household and perhaps village population size. The survey offered five choices (apart from those who were "not sure" which of the five they would choose): strongly support the strict prohibition of readjustments, support it,

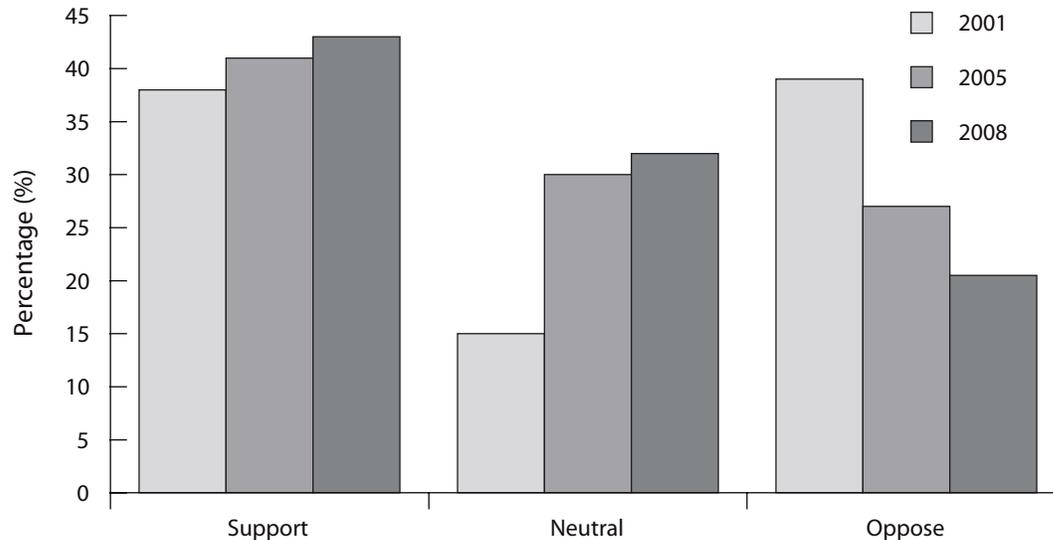
⁴⁸ Zhu et al., "Rural Land Question," 794.

⁴⁹ If in very gross terms, 1998 was to be taken as a base year (the year of passage to the LML, though there was some implementation under the earlier policy pronouncements), it would suggest that about 6% of villages per year were carrying out illegal readjustments from 1998 to 2001; from 2001 to 2005, the figure then drops to around 3% per year; and from 2005 to 2008 it declines to about 1.3% per year.

⁵⁰ See, for example, the assistance programs in the United States provided by the 2000 Agricultural Risk Protection Act (7 U.S.C. § 1505(a) (2)) and the 1994 Crop Insurance Act (7 U.S.C. § 1501). The authors are unaware of any government that spreads the impact of a natural disaster through land readjustments between those who are affected and those who are not, although there may be customary practices to that effect in some of the least-developed and least-productive agricultural communities.

indifferent/neutral as to such prohibition, oppose it, or strongly oppose it. The results—aggregated into the three categories of “support,” “neutral,” and “oppose”—are shown in **Figure 2**.

FIGURE 2 Farmers’ attitude toward strict prohibition of readjustments



Interestingly, excluding the small number of “not sure” responses, only one in fifteen respondents (6.6%) “strongly opposes” the strict end of readjustments, whereas over twice that many (14.1%) “strongly support” their strict end. Overall, 45.2% support and 21.4% oppose the strict end of readjustments—leaving barely more than one in five respondents in opposition. The remaining 33.5% do not care one way or the other. As is often the case, there are leaders and followers, and the 45% who support the strict end of readjustments—which translates to roughly 90 million households out of 200 million in the countryside—might well lead the way in a rural transformation catalyzed by secure tenure for Chinese farmers.

Land Takings

Apart from readjustments carried out in supposed response to population change, the biggest threat to Chinese farmers’ security is the seizure of land for non-agricultural purposes.⁵¹ These two chief causes of insecurity also overlap because some readjustments are carried out on the excuse that a portion of farmers have lost land in a taking and should therefore have their landholding re-equalized through a readjustment that takes land from other farmers.

Since the second round of contracting (or since 1995 if the village has not conducted the second round), respondents in 29.2% of the villages report one or more land takings. More than half of those who report that there have been land takings (262 out of 511) say there have been multiple

⁵¹ For example, Premier Wen Jiabao stated that land grabs by officials eager to cash in on China’s booming economy were provoking mass unrest in the countryside and amounted to a “historic error” that could threaten national stability. Kahn, “Warning on Illegal Land Grabs.”

takings; indeed, 1 out of 7 of those who report takings (75 out of 511) say there have been more than four post-second round takings in their village.

Asking a series of questions as to the most recent land seizures, the picture that emerges is disquieting. **Figure 3** indicates the growth of takings, showing the number of “most recent” land takings reported in each year (with the figure for 2008 annualized), for the villages (here 513) with post-second round takings.⁵²

FIGURE 3 Number of “most recent” land takings

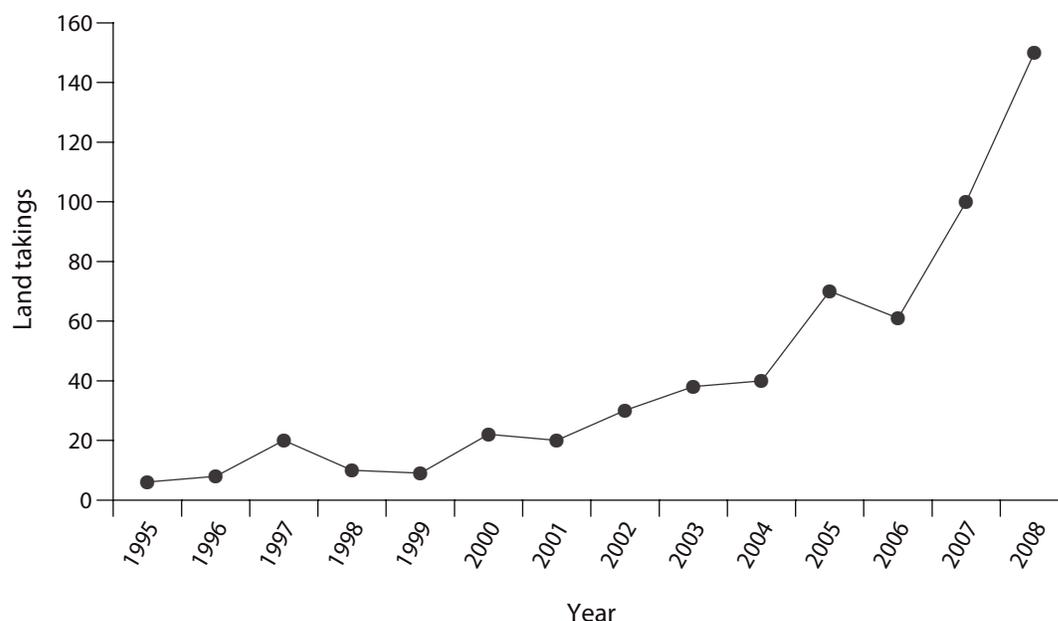


Table 3 indicates the purposes of the most recent takings.

Article 2 of the LML says that “the State may, in the public interest, lawfully requisition land owned by collectives,” without further detail as to what might constitute “public interest.” This follows, at least broadly, the provision of the Chinese Constitution that grants the state authority “to expropriate land, in the public interest, for its use.”⁵³ In actual operation, as Table 3 makes clear, the LML allows expropriation of farmers’ land for any and all purposes, including purely commercial ones. (This appears to apply to at least 22.9% of the takings—“development zone/ industrial park,” “factory,” and “gas station”—and might apply to as many as 17.1% more to the extent that “urban housing” and “others” are included.)

⁵² It was possible—although extremely rare—for the second round to be carried out as early as 1993, when the first policy announcement on 30-year use rights was issued. See the discussion in section four above.

⁵³ Chinese Constitution, art. 10, § 3 (1982) (PRC). There has been ongoing controversy over the meaning of the parallel authorization of takings “for a public purpose” in the U.S. Constitution. See, for example, *Kelo v. City of New London*, 545 U.S. 469 (2005), which considers the condemnation of private properties for a commercial developer in order to revitalize an ailing economy held to serve “public use” within the context of the takings clause of the U.S. Constitution. It should be borne in mind, however, that even when U.S. jurisdictions do occasionally take land for purposes that seem ultimately commercial, it is always in the context of a process that is highly transparent and participatory.

The prominent inclusion of takings of farmers' land for commercial purposes would appear to make the nature of the takings process all the more important. Yet, here, the survey finds that in three cases out of seven (43.5%) there was not even an advance notification of the taking.⁵⁴ In only just over one-quarter of cases (26.8%) were farmers consulted about the amount of compensation to be paid.⁵⁵

The ratio of farmers dissatisfied versus those satisfied with compensation in the most recent land taking is more than 2:1. Yet, as shown in **Table 4**, only very small numbers of the dissatisfied farmers attempted to use dispute resolution processes on the compensation issue, usually unsuccessfully.

TABLE 3 Purpose of most recent land taking

Purpose	%
Road construction	47.4
Development zone / industrial park	12.9
Factory	9.1
Urban housing	6.4
School	5.9
Planned for non-agricultural use but currently vacant	4.0
Irrigation facility	2.7
Gas station	0.9
Others	10.7

NOTE: n = 160. Percentages may not add up exactly to 100 due to rounding.

TABLE 4 Regarding the most recent taking, whether the respondent was involved in any of the following (multiple choice)

Response	%
Was notified of the forthcoming taking in advance	53.9
Was consulted about the amount of compensation	26.8
Demanded a hearing on compensation (<i>Compensation actually increased after a hearing</i>)	7.5 (1.3)
Filed a formal grievance with the government on compensation (<i>Compensation actually increased after filing grievance</i>)	7.3 (1.9)
Filed a lawsuit with a People's Court for more compensation (8 cases only) (<i>Compensation actually increased after lawsuits—2 cases only</i>)	1.6 (0.4)
Availability of free legal aid or assistance in takings	6.1

⁵⁴ "Not sure" was the response in 2.7% of cases.

⁵⁵ According to Article 26 of the LML, compensation paid in land takings typically consists of three components: one for the value of lost land, one for the standing crops and fixtures, and another one for resettlement assistance if relocation of farm families is needed.

There is some, but limited, use of legal services by farmers affected by land takings. About 1 out of every 16 respondents in villages where there has been a post-second round taking (6.1%) say that free legal aid is available to farmers in land takings. Of those saying aid is available, a little under half (13 farmers, or 1 in 40 out of the universe of respondents where post-second round takings have occurred) say that farmers have used such legal aid in takings situations. More respondents (35 farmers, or 1 in 13), however, say that farmers have hired private lawyers in land takings.

As to the compensation actually paid, several findings are notable. In one case out of five (19.9%), local authorities attempted to “spread the pain” by purporting to compensate land-losing farmers, in whole or part, through illegally taking land through readjustment from other farmers who had not lost land.

Where cash compensation was paid for land taken, it is striking that respondents report a median amount of compensation per mu (1/15 hectare) received by the collective, which is six times as great as the median amount of compensation received by the households whose land was taken. The median amount received per mu by the collective was indicated to be 15,000 yuan, equal to 225,000 yuan or roughly \$33,000 per hectare. By contrast, the median amount received per mu by land-losing farmers was indicated to be just over 2,500 yuan, the latter equal to 37,500 yuan or roughly \$5,500 per hectare.⁵⁶

The new property law, effective on October 1, 2007, of course holds the potential to decisively alter the allocation of compensation by requiring for the first time that compensation for land taken be paid to the land-losing farmer rather than to the collective cadres.⁵⁷

Farmers' Knowledge of Laws and Policies

A right that is unknown to its intended beneficiaries (or to those officials or others who are meant to implement it) is unlikely to make any substantial difference in existing practice or to bring about much in the way of desired change. Effective communication of Chinese farmers' land rights as now embodied in law and policy is therefore essential, and the survey asks a number of questions as to what farmers know or believe they know about their land rights and by what means they came to such knowledge.

In one set of questions, the survey asks whether respondents have heard about various laws or policies, ones which would be considered to bear importantly on their land rights. The results are shown in **Table 5**.

Nine out of ten respondents continue to say that they have “heard of the 30-year no readjustment policy,” about the same ratio as in 2001 and 2005.⁵⁸ It remains encouraging that this high a figure has been reached and maintained. It is also encouraging that a clear majority (64.1%) now have heard of the RLCL, a figure that is much higher than the 19.8% found in the 2005 survey.⁵⁹ On the other hand, only slightly more than one in four farmers (27.6%) had heard of the more recent 2007 Property Law by mid-2008.

⁵⁶ This result from the survey is quite consistent with, and appears to further confirm, other estimates as to the collectives' and local officials' receipt of the bulk of compensation in land takings. For example, according to a routine audit of 21 large-scale land takings in 2007, the National Audit Bureau of China in 2007 discovered that a total of 1.637 billion yuan of compensation funds were illegally intercepted and failed to reach the hands of land-losing farmers. “16 yi zheng di bu chang fei bei jie liu, jing liu huan lu wei jing shen pi zhan di” [1.6 Billion Yuan in Compensation Money for Land Appropriation Is Withheld; Beijing's 6th Ring Road-Appropriated Land without Approval], National Audit Bureau, No. 2 Audit Summary Report of 2007, March 28, 2007, http://www.cs.com.cn/fc/02/200703/t20070328_1074547.htm.

⁵⁷ When RDI lawyers asked farmers, in rapid rural appraisal interviewing, what the cadres did with the land compensation, a common answer (apart from “we don't know”) was “they ate it up”—i.e., spent it on banqueting. Handsome “village” cars were another visible result.

⁵⁸ Schwarzwalder et al., “Update on Seventeen-Province Survey,” 164; and Zhu et al., “Rural Land Question,” 790.

⁵⁹ *Ibid.*

TABLE 5 Percentage of respondents who have heard of the following listed laws or policies (multiple choice)

Laws or policies	%
30-year no-readjustment policy	90.1
Rural Land Contracting Law (RLCL)	64.1
The campaign to issue certificates or contracts to farmers who do not have them	55.0
The campaign to improve compensation in takings	43.0
The campaign to restrict land takings	39.3
The new Property Law	27.6
2008 Central No. 1 Document	20.3

NOTE: n = 1,773.

Important recent campaigns had achieved at least substantial degrees of awareness, more for the campaign to issue land certificates or contracts to households that have not yet received them (55%) than for campaigns to restrict or better compensate land takings (39.3% and 43.9%, respectively). Only one in five (20.3%), however, had heard of the 2008 Document No. 1—setting farmers’ secure land rights as the highest priority for rural administration efforts during the year—perhaps because it was very new or because its chief intended audience was cadres and officials.

One important conclusion from the above table would appear to be that the government does know how to “get the word out” on legal and policy measures of importance to farmers, even though the success, or perhaps the effort (see the Property Law and 2008 Document No. 1) is not always uniform. But beyond “hearing about” certain major laws and policies, or related campaigns of implementation, what do farmers know about some of the specific new substantive rules that are of greatest importance to the household’s relationship to, and security on, the land they farm? **Table 6** shows the survey results for this set of issues.

On the basic assertion that “farmers have [a] right to contracted land for 30 years without readjustment,” a substantial majority (69.5%) correctly answer “yes.” It should be noted, however, that those who are willing to make this specific averment are exceeded by some 20% by those (90.1%) who simply say they have “heard of 30-year no readjustment policy.” Nearly four out of five (78.1%) correctly understand that village cadres cannot re-contract land to non-villagers without the consent of the affected farmers; far fewer (38.8%) realize that it is no longer true that “household members must return contracted land when they move to the city and change residential registration.”

Only if all household members move to a multi-district city and change residential registration—and even then only to the extent that no prior transfer of the land rights has been made—are land rights lost. A more reassuring three out of five (58.8%) correctly understand the important right a daughter has to keep her share of the household’s land when she marries out to a different village rather than to return this land to the collective. Of these, 16.1% further understand the refinement to this rule that states that this protection fails to operate if she obtains a land share in her husband’s village (which should be very rare under the no-readjustment rules, unless reclaimed or other non-contracted land is available). It is reassuring, too, that over half (54.4%) understand correctly that

the farmer can extend the contract when the 30-year term ends, with only a tiny minority (5.4%) saying no and the rest being unsure. Given that this was a very recent rule (enacted in the 2007 Property Law) and barely more than one-quarter of respondents had heard of the Property Law as such (Table 5), it may be that notions of extendibility have been entertained by large numbers of farmers for some time.

A conclusion from Table 6 would appear to be that—even on specific substantive rules—the government again has the ability to get the word out, although again with some variability seen in the degree to which the government has succeeded. This, in turn, raises the question of just how such information has been communicated. **Table 7** indicates the responses on this question.

TABLE 6 Percentage of farmers who correctly understood the following statements of current land laws and policies (multiple choice)

Statement	%
Collectives may not take back farmers' contracted land and re-contract to non-villagers without farmers' consent.	78.1
Farmers' arable land should be contracted for 30 years without readjustment	69.5
A daughter who marries out to another village need not return her land share to collective	58.8
When the current 30-year term expires, farmers can extend the contracting arrangement.	54.4
When someone in a farmer's household moves to the city and changes residential registration, his or her contracted land need not be returned to collectives.	38.8

NOTE: n = 1,773.

TABLE 7 Percentage of farmers who cite particular channels as a source of legal/policy knowledge (multiple choice)

Publicity method	%
TV	43.7
Publicity by cadres	29.4
Newspaper	23.3
Publicity pamphlets	21.5
Villager meetings	19.5
Village broadcasting	16.7
Issued land contracts or certificates	13.5
Publicity by upper level officials	12.7
Radio	11.7
Publicity vehicles	6.9

NOTE: n = 1,773.

Television appears the most prominent source of information, but even it reaches fewer than half of farmers (though the vast majority of rural homes contain a television). While there has been little change in percentages reported since the 2005 survey for some of the more distant sources of information, such as television and radio,⁶⁰ there appears to have been a substantial decline in use of some of the more local sources. For example, villager meetings, now reported as a source of information on land laws by 19.5% of respondents, were cited by 32.8% in 2005; publicity by cadres, now cited by 29.4%, was named by 38.3% in 2005; and publicity pamphlets, now cited by 21.5%, was previously named by 38.4%. This local-level information outreach may be an important measure of the resources—in particular, political capital—the central government is willing to devote to the implementation of farmers’ land rights as they stand in formal law.

Issuance of Land Contracts and Certificates

Another crucial measure is the issuance of documentation. As noted earlier, Chinese law now contemplates that farmers are to receive two documents that reflect and reinforce their land rights: a “contract,” signed by both a representative of the collective as owner and a representative of the farm household as usufructuary user; and a “certificate,” containing substantially the same content as the contract but issued and sealed by the county level or higher and not bearing local signatures.

In the abstract, and at a global level, considerable controversy rages in academic and development policy circles as to whether individual documentation of land rights is desirable or not.⁶¹ In the abstract, however, the question is unanswerable. The needed answers are highly situation specific, and in China the situation is one in which the documentation process (already well along the way) is desirable. This would be true even in the absence of specific requirements for possession of land-rights documents already in existence: for example, requiring such documentation for those who wish to assert or vindicate their land rights (such as entitlement to compensation for a land taking) in the People’s Court.⁶² And, even more pointedly, there are provisions of the Property Law that can be read as requiring the signing of the land-rights contract for the formal rights of the farmer-usufructuary to even arise.⁶³ Suffice it to say, in terms of the comparative experience of land rights in different country settings, one important sub-class of settings in which documentation of land rights is generally protective and beneficial is in situations where the poor have received land rights under government programs, and those rights are then to be embodied in the documentation.⁶⁴

Table 8 shows the state of document issuance as of mid-2008. Put somewhat differently, 43.1% of respondents had been issued contracts, and 47.2% of respondents had been issued certificates. Of those, 32.0% had been issued both documents. Altogether, 58.3% had been issued at least one document, leaving 41.8% who had received no document whatsoever. Ten years after the first formal recognition of 30-year land rights in the LML, this is a somewhat disappointing figure, although the usual expression about “glass half full, glass half empty” applies. Making the disappointment keener, however, is the prominent announcement of a campaign in 2007 that was supposed to dramatically increase the certificate issuance rate to 90% and also to greatly boost the rate of contract issuance.

⁶⁰ Zhu et al., “Rural Land Question,” 791.

⁶¹ Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 8; and Jan Michiel Otto, “Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto,” *Hague Journal on the Rule of Law*, no. 1 (2009): 173–94.

⁶² “Explanation on the Applicable Laws on Claims Involving Rural Land Contracting,” Supreme People’s Court of China, July 29, 2005.

⁶³ For example, Article 127 of the Property Law provides that farmers’ usufructuary right is established when an applicable land contract becomes effective.

⁶⁴ For a more extensive discussion on the topic, see Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 8, 10.

The campaign initially set an impractical date to meet its goal—the end of 2007—but subsequently extended this deadline. The survey in fact finds that little progress had been made toward the campaign’s goals as of mid-2008:

- Cumulatively, as indicated above, 47.2% of respondents had been issued certificates (compared with the 90% goal), and of those, only 4.0% were issued certificates in 2007 and 1.3% in the first half of 2008. That is, only 5.3% of the 47.2% who were issued certificates, or 2.5% of all respondents, were issued them in the period from 2007 through mid-2008.
- Also, as indicated above 43.1% of respondents had been issued contracts as of mid-2008; of these, only 5.2% were issued contracts in 2007 and 0.8% in the first half of 2008. Thus, only 6.0% of the 43.1%, or 2.6% of all respondents, were issued contracts in the period from 2007 through mid-2008.

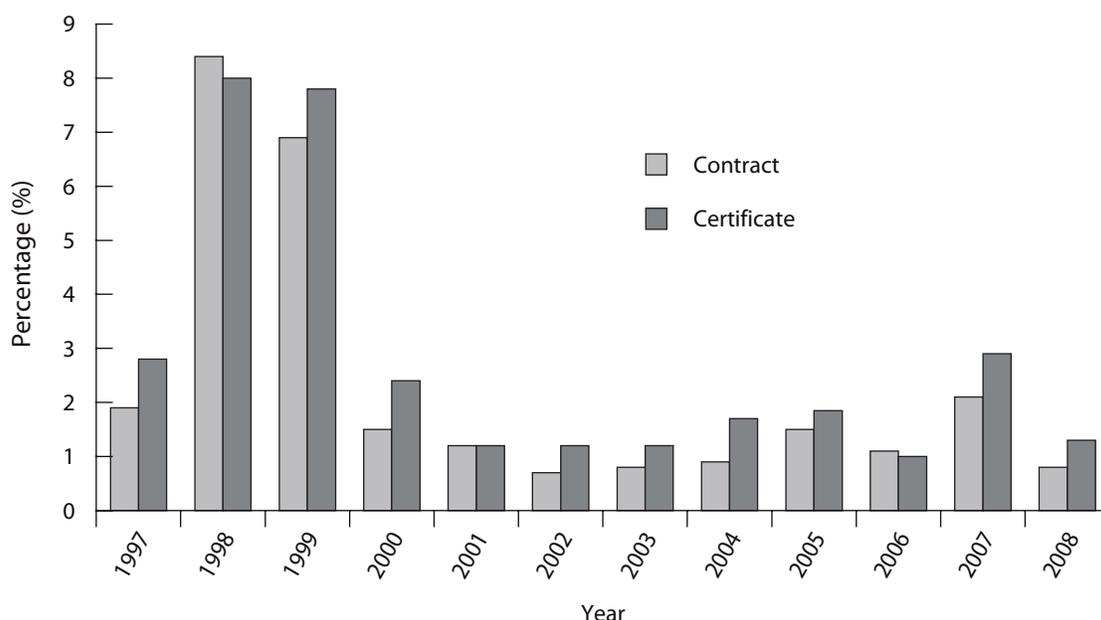
Figure 4 gives a broader picture of the timing of contract and certificate issuance since the initial announcement of the 30-year policy, with the left scale showing what percentage of all respondents were issued a contract or a certificate in the year indicated.

TABLE 8 Issuance of land documentation

Type of issuance	%
Farmers being issued only a land contract	11.1
Farmers being issued only a land certificate	15.2
Farmers being issued both a land contract and a certificate	32.0
Farmers being issued no documentation	41.8

NOTE: n = 1,759. Percentages may not add up exactly to 100 due to rounding.

FIGURE 4 Timing of contract and certificate issuance



The Nascent Rural Land Transfer Market

This and the following subsection describe the survey findings in two areas where important positive results of the allocation of long-term secure land rights to the farmers are beginning to be seen: in the development of a rural land market that is just starting to give farmers' land rights substantial value and in enabling increasing numbers of farmers to venture into longer-term investments on their land.

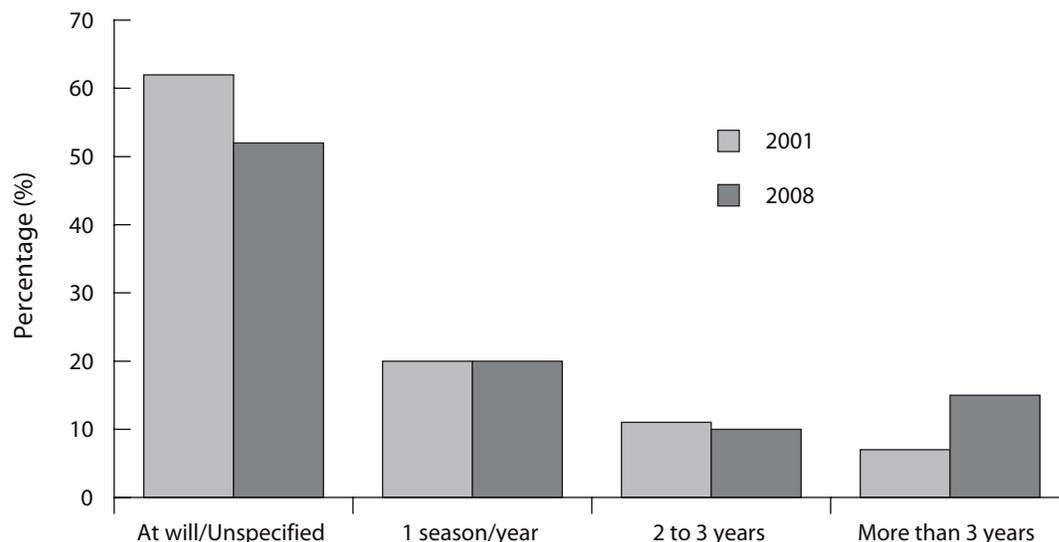
If land rights are insecure and readjustable, it is unlikely that a potential transferee will want to enter into a market transaction in which he or she accepts a multi-year transfer of such rights in return for the payment of consideration to the transferor. The closer the transaction would be to a classic "sale," in which the transferee would receive a full transfer or assignment of all the transferor's land rights in return for an immediate lump-sum payment that would value those rights as very long-term or even perpetual, the less likely such a transaction is to actually occur.⁶⁵

Where land rights are widely regarded as insecure and readjustable, the more likely it is that transactions will be limited to a duration of one crop season, or at most one year, at a time. The briefest transaction would be "at will": for example, "I'll take your land (and pay you for it) until I decide to give it back or you decide to take it back."

The 2008 survey finds that about one farmer in seven (14.9%) has transferred out rights to part or all of their land, with a third of these having made multiple transfers out. Further questions related to the most recent transfer. The biggest reason given is "lack of labor," cited by 55.3% of the transferors. **Figure 5** shows the length of transfers out.

The pattern, in terms of length of transfer, does not differ greatly from that in 2001 and 2005.⁶⁶ The dominant category remains "at will" transfers, the shortest possible, at 53.7% of all transfers

FIGURE 5 Length of transfer-out leases



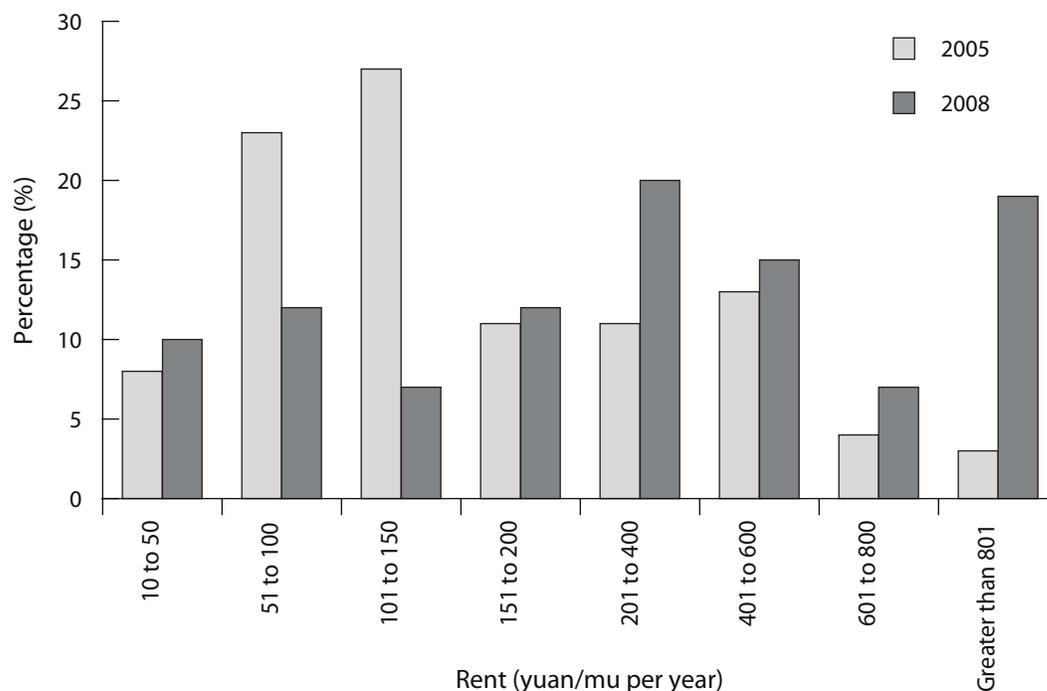
⁶⁵ Note should be made here that we need to discount for the value of 30-year rights compared to that of full private ownership. Applying the common formula, net present value ($NPV = \sum_{t=1}^n \frac{C_t}{(1+r)^t} - C_0$), that bases present value on discounted future streams of income, and for any likely range of discount rates, 30-year rights (in year 1) should have somewhere between 75% and 95% the value of full private ownership. There will probably be no need for the discount once the 30-year rights become renewable or perpetual.

⁶⁶ Schwarzwalder et al., "Update on Seventeen-Province Survey," 163; and Zhu et al., "Rural Land Question," 786.

out. Transfers for one year or less account altogether for nearly three-quarters of transfers (73.6%). The remaining 26.4% are transfers for two years or more, with one out of ten transfers (10.1%) being for the entire remaining years of the transferor's term.

Nearly four-fifths (79.1%) of the transfers out were to others within the village. 39.1% of all transfers out involve compensation, and here a particularly interesting finding emerges. **Figure 6** shows the proportions of transfers out that involve the indicated amount of cash payment per mu per year (the most common compensation method).

FIGURE 6 Rent comparison between 2005 and 2008 findings



The median amount of cash to be paid per mu per year in the most recent transfer out was 300 yuan per mu—and by 2008 nearly three-fifths of these transfers (57.8%) had been made in 2005 or later. This was roughly twice the amount per mu found in the 2005 survey, which was between 130 and 140 yuan per mu.⁶⁷

Parallel figures indicate 16.1% of respondents have transferred in land rights (just over two-fifths of these have transferred in multiple times); no single reason emerges as most prominent, but transfer in “to diversify production” leads with 30.3% of transferees citing it.⁶⁸ Of transfers in, 48.2% are “at will” and just over two-thirds of transfers in (67.6%) are for one year or less. The remaining 32.4% are for two years or more, with 6.0% being for the entire remaining years of the

⁶⁷ Zhu et al., “Rural Land Question,” 786.

⁶⁸ It should be noted that there may be differences in the parallel responses for transfers-out and transfers-in. The sample design used here, surveying a single household in most villages, means that there is no necessary balance between transfers out and transfers in, whether measured in terms of frequency, duration, compensation, or land area involved. Such a balance might be expected if a large number of households were surveyed in each village.

transferor's term. Seven-eighths of transfers in (87.1%) were with transferors within the village, and 30.6% of all transfers in involved compensation. Here the median amount of cash to be paid per mu per year was about 190 yuan, versus a median figure of 117 yuan per mu found in the 2005 survey.⁶⁹

The average of the two medians for cash payment per mu per year for transfers out and transfers in comes to 245 yuan in the 2008 survey, compared with 126 yuan in the 2005 survey. In constant 2008 U.S. dollars,⁷⁰ this payment per mu is equivalent to \$538 per hectare in the 2008 data, versus \$277 per hectare in the 2005 data, an increase of 94.5%. This, of course, represents only the initial stirrings of a rural land-rights market, with land of respondent households that hold about 5.8% of arable land involved in compensated transfers out,⁷¹ and land of respondent households that hold about 4.9% of arable land involved in compensated transfers in.⁷² Thus, altogether perhaps one-tenth of arable land (10.7%) may be considered as involved in the compensated-transfer process. Projected to China's roughly 200 million farm households, this would suggest the involvement of some 20 million households in the compensated land market, through either transfers out or transfers in.

If an annual payment of \$538 per hectare is capitalized at 5%, it would suggest an emerging per-hectare value for arable land—for agricultural purposes only, not for urban or commercial development—of somewhat over \$10,000.⁷³ Further, if such a value (which is quite in line with agricultural land values in some other densely populated Asian small-farm settings) were projected over the approximately 120 million hectares of China's arable land, it would suggest at least the first inkling of a rural land-rights market that might create roughly \$1.2 trillion of land wealth in the hands of Chinese farm households.⁷⁴

Farmers' Investments on Their Land

To make land more productive and increase farmers' incomes, the making of mid-and long-term investments on the land will be crucial. One of the great consequences hoped for from successful implementation of the legal regime that provides farmers long-term and secure land rights is that growing numbers of farmers will make such investments on their land. The survey, therefore, asks a number of questions as to whether respondents have made one or more of six specific mid- to long-term investments on their land.⁷⁵ The six investments, and the percentage of farmers who the survey shows as having made each of them, are set out in **Table 9**.

Altogether, as of mid-2008, nearly one-quarter of farmers (24.1%) had made one or more of the six investments in their land. The great majority have made just one of the six kinds of investments, with a total of 466 investments made by 431 households. For the 1,785 households

⁶⁹ Zhu et al., "Rural Land Question," 787; see also fn 54.

⁷⁰ Again, the exchange rate of \$1 to 6.83 yuan is used here. Using constant dollars actually understates the relative growth in payment per unit of land, because the Chinese yuan appreciated substantially over the intervening period. The exchange rate used for analysis of the 2005 survey was \$1 to 8.2 yuan.

⁷¹ Roughly reflecting 14.9% of respondents transferring out, of which 39.1% were for compensation.

⁷² Here reflecting 16.1% of respondents transferring in, of which 30.6% were for compensation.

⁷³ China's 10-year treasury bonds yielded around 5% at the time the survey was carried out. "Notice on Matured Treasury Bonds Settlement and Interest Payment," Chinese Ministry of Finance, no. 1, January 7, 2008, http://www.moc.gov.cn/zizhan/siju/caiwusi/caijingzixun/jinrongwaihui/200801/t20080109_458094.htm.

⁷⁴ Capitalized at 3%, an emerging value of as much as \$17,900 per hectare would be suggested; capitalized at 7%, the value suggested would be \$7,600. The corresponding potential values projected for all arable land would be \$2.1 trillion and \$900 billion, respectively.

⁷⁵ The farmers were also asked as to unspecified "others," to which 4.1% answered yes. We exclude those responses as too uninformative and also possibly including investments made by the village collectives. The six named types of investments are ones virtually never made except by the individual farm households.

surveyed, this comes out to a rate of 26.1 per 100 households. For the 200 million farm households in China, this rate would suggest a cumulative total of 52 million in such investments.

Figure 7 shows the rate of investments made annually per each time period.

The rate of investment appears to have picked up substantially from around 0.6 per 100 households per year to just over 2.0 beginning in 1998, the year the LML was adopted (and also the peak year for issuance of contracts and certificates: see Figure 5 above). The annual investment rate then remained around the 2.0 per 100 households level through 2006 but then increased strongly in 2007–08 to more than 5.0 investments per 100 households per year. If projected to China’s roughly 200 million farm households, the 2007–08 rate would suggest that over 10 million households a year were making one of the six investments on their land.

TABLE 9 Investments on land (multiple choice)

Type of investment	%
Fixed greenhouse	1.0
Removable greenhouse	4.6
Fixed vine trellises	2.2
Fishery ponds	2.5
Orchards/nursery/tea garden	9.4
Farms for domesticated animals (pigs, chickens, etc)	6.5

NOTE: n = 1,773.

FIGURE 7 Investments made per 100 households per year

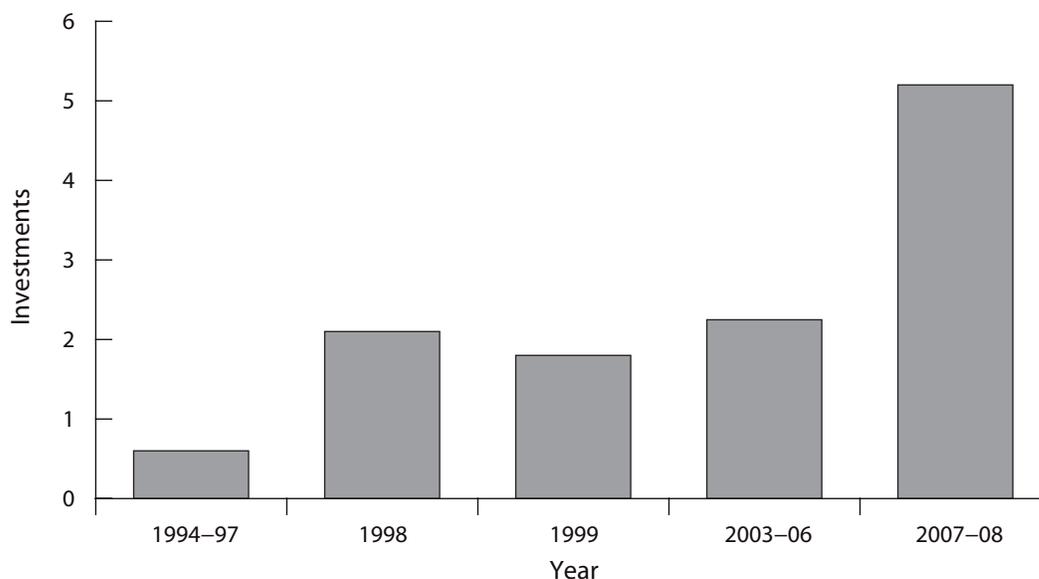


Table 10 shows what resources the farmers used to make the investments.

Personal labor and personal savings are by far the most prominent forms of investment, each used for more than three-quarters of the investments made. Thus, the survey finds the investment of “sweat equity” by farm households and the mobilization of their personal savings. Formal sources of lending (including microfinance) are used for less than one out of seven investments (13.2%). As such, one can make a serious argument that, even though encouraging banks to lend to small farmers is useful, unleashing farmers’ sweat equity through tenure reform can be a more effective method of bringing dead capital to life.⁷⁶ This should hold true in rural China as well as other parts of the world where surplus labor exists.

TABLE 10 Sources of the investments (multiple choice)

Source of investment	%
Personal labor	78.7
Personal savings	77.8
Money borrowed from relatives	27.4
Money borrowed from friends or neighbors	14.1
Loans from Rural Credit Union or Agricultural Bank	11.9
Loans from other banks	0.8
Loans from informal/private lenders	0.8
Loans from poverty alleviation organization, microfinance entity, or women’s federation	0.5

NOTE: n = 431.

The Correlation between Investments and Implementation of Land Rights

What are the factors that are conducive to these investment behaviors?

The authors have carried out cross-tabulations with the investing farmers’ other responses in order to see if particular measures for implementation of the 30-year rights appear to have special bearing on farmers’ investment behavior, notably documentation of farmers’ land rights and publicity for those rights. To further explore the correlation, the facts as to farmers’ investments have been divided into four groups based on their timing in relation to the year 1998: “no investments made,” “investments made prior to 1998,” “investments made in or after 1998,” and “investments made both before and in or after 1998.” As discussed earlier, 1998 is significant as the year that saw the peak period of the second round of contracting and documentation issuance and the adoption of the revised LML that formally embodied farmers’ 30-year land-use rights. Besides the group of farmers who made investments before 1998 and

⁷⁶ Chinese farmers’ rights to arable land cannot be presently mortgaged (see Guaranty Law, promulgated June 30, 1995, Article 37). Yet even if they could, there would probably be serious questions as to banks’ willingness to make such loans. Even with clear documentation, research in other countries has not generally found extension of credit to small farmers to be a consequence associated with such documentation (the Argentine study cited in fn 77 below, for example, found no difference in extension of credit, either formal or informal, as between the titled and untitled families). The decision that it is worthwhile to invest family labor (and savings, where it exists) is, however, one fully within the power of the farm household to make on its own, regardless of the readiness of credit providers.

the group who made investments in and after 1998, there are also a small number of farmers who made investments both before and after.

To reduce “background noise” in the data, we have filtered out all contracts or certificates that were issued before 1998, most of which were designed and issued prior to any clearly articulated second round of contracting and which are often not well-recognized or respected in regard to both their format and content. Accordingly, the contracts or certificates are only the ones issued in or after 1998 unless otherwise specified.

We have noted earlier the arguments surrounding the need (or not) for documentation, and the conclusion that the global evidence indicates that such need is highly situation specific. Moreover, China’s rural land situation is in a sub-class of situations—where the poor have received land rights under government programs, which rights are embodied in the documentation—in which the issuance of documentation is likely to be highly desirable.

The survey evidence appears significantly confirmatory of that conclusion in the Chinese setting, with specific reference to the vital issue of farmers’ willingness to actually make mid- to long-term investments on the land.⁷⁷ In the 2008 survey, detailed questions were also asked as to another major feature of implementation—farmers’ exposure to various sources of publicity and their knowledge as to long-term land rights—allowing us to see the correlation between investments made and the combined facts of documentation and publicity.

Put most broadly, the 2008 survey finds:

- a correlation between investments made and possession of land documents
- the rate of investments made by farmers without any document to be 14.8%
- the rate of investments made by farmers with both contract and certificate to be 27.6%
- a strong correlation between the publicity of land rights and investments made
- the rate of investments made by farmers without any document and exposure to one publicity channel on land rights to be 18.4%
- the rate of investments made by farmers with both contract and certificate and exposure to multiple publicity channels on land rights to be 35.1%

Table 11 shows the correlation between investments and contract issuance.

Thus, there is a statistically significant relationship between these two phenomena at the 99% or greater confidence level. For the no-contract group, there was a 173% increase of investments (14.2% made such later investments, versus 5.2% previously) in or after 1998. For the contract-issued group, the increase was 214% (26.1%/8.3%). Moreover, the absolute proportion of investments in 1998 or after among the contract holders was 26.1%, higher by 83% than that of the no-contract group (14.2%).

⁷⁷ One of the most recent and interesting studies was conducted in Argentina. More than two decades earlier, a substantial number of squatter families had occupied an area of unused land on the outskirts of Buenos Aires. The area contained, in terms of legal title, various tracts of land with different owners. The Argentinean legislature then passed an expropriation law to take the land for compensation, intending to title the individual parcels to the squatters. A number of the individual owners accepted the compensation, giving up their title to the government, which then gave formal title to the individual squatters who had occupied that land. The other individual owners challenged the adequacy of the compensation in court, and the litigation dragged on, with the squatters who happened to occupy parcels on that land remaining without title. The researchers found that a substantially greater improvement in housing (these were urban land parcels) had been subsequently made by the titled possessors than by the possessors without land titles, quantified as “an overall housing improvement of 37% associated to titling.” There appeared to be other impacts as well: the titled households had added fewer members (including having added fewer children than the untitled households) and the children at titled households went to school longer than children in the untitled households. Sebastian Galiani and Ernesto Scharfrodsky, “Effects of Land Titling on Child Health,” *Economy And Human Biology* 2, no.3 (2004): 353–72; Sebastian Galiani and Ernesto Scharfrodsky, “Property Rights for the Poor: Effects of Land Tilling,” Universidad Torcuato Di Tella, Working Paper, 2005, 1–6, 16–21, 28–29; and Matt Moffett, “Barrio Study Links Land Ownership to a Better Life,” *Wall Street Journal*, November 9, 2005, A1.

A further refinement of the relationship between investments and documentation issuance (contract and certificate) is shown in **Table 12**.

The combination of both contract and certificate issuance thus has a stronger correlation with investments than contract issuance alone. For the no-contract–no-certificate group, the increase of investments made in or after 1998 is 143%. For those who have received both contract and certificate, however, investments made in or after 1998 increase by 268%. Moreover, the absolute proportion of 1998-or-after investors in this latter group is 27.6%, higher by 86% than that (14.8%) of the no-contract–no-certificate group.

TABLE 11 Relationship between contract issuance and investments

	No investment	Investment(s) made before 1998	Investment(s) made in or after 1998	Investment(s) made both before 1998 and in or after 1998	Total (count)
Contract not issued	80.4%	5.2%	14.2%	0.3%	100% (986)
Contract issued	65.4%	8.3%	26.1%	0.3%	100% (479)
	Value	Df	Asymp. Sig. (2 sided)		
Pearson Chi-Square	40.0235	1,461	0.0000		

NOTE: By convention, two-sided Pearson Chi Square values of 0.05 or below, listed under “Asymp. Sig. (2 sided),” represent statistically significant results at the 95% confidence level; values of 0.01 or below are statistically significant at the 99% confidence level. In this table $n = 1,465$. Percentages may not exactly add up to 100 due to rounding.

TABLE 12 Relationship between documentation issuance and investments

	No investment	Investment(s) made before 1998	Investment(s) made in or after 1998	Investment(s) made both before 1998 and in or after 1998	Total (count)
Neither contract nor certificate issued	78.7%	6.1%	14.8%	0.4%	100% (697)
Only contract issued	68.3%	10.8%	20.9%	0.0%	100% (129)
Only certificate issued	87.6%	0.9%	11.1%	0.4%	100% (185)
Both contract and certificate issued	64.6%	7.5%	27.6%	0.4%	100% (337)
	Value	Df	Asymp. Sig. (2 sided)		
Pearson Chi-Square	51.3115	1,343	0.0000		

NOTE: $n = 1,347$. Percentages may not exactly add up to 100 due to rounding.

One seeming anomaly is that issuance of a certificate alone is not significantly correlated with increased investment in or after 1998, as compared with the same period for the no-contract-certificate group. Additional research may be needed to discover the mechanisms that may be at work here, but a plausible, two-part hypothesis might be that (1) the certificate, coming from the county level or higher and bearing no signature or seal from local officials or farmers themselves, when issued in isolation, does not convey additional confidence in the security of farmers' tenure; but (2) when issued in addition to locally issued and signed contracts, this certificate does add further to the confidence in tenure security, which is clearly produced by the latter.

Turning to another aspect of implementation of rights, we have also found a strong correlation between investments and publicity of laws and policies, as reflected in **Table 13**.

TABLE 13 Relationship between publicity channels and investments

	No investment	Investment(s) made before 1998	Investment(s) made in or after 1998	Investment(s) made both before 1998 and in or after 1998	Total (count)
Exposure to no channels	81.5%	7.1%	11.1%	0.3%	100% (542)
Exposure to one publicity channel	77.6%	5.6%	16.8%	0.0%	100% (332)
Exposure to two publicity channels	74.2%	3.0%	22.8%	0.0%	100% (280)
Exposure to three or more publicity channels	67.4%	8.6%	23.5%	0.5%	100% (561)

	Value	Df	Asymp. Sig. (2 sided)
Pearson Chi-Square	47.4073	1,709	0.0000

NOTE: n = 1,714. Percentages may not add up exactly to 100 due to rounding.

In the above table, we have separated respondents based on the number of publicity channels through which they have received knowledge regarding relevant land laws or policies.⁷⁸ Again, the correlation is statistically significant, and those who have been exposed to three or more publicity channels exhibited a much higher increase of investments than the no-exposure group. Moreover, the absolute proportion of investors from 1998 or later in the group of people exposed to multiple publicity channels is 23.5%, higher by 112% than that (11.1%) of the no-exposure group, and higher by 40% than that (16.8%) of the single-publicity-channel group.

If we combine documentation issuance and publicity channels, **Table 14** measures its relationship with investments:

⁷⁸ The publicity channels include television, radio, newspaper, village broadcasting, villager meetings, publicity by village cadres, informational pamphlets, and land contract or certificate. See Table 7 above.

TABLE 14 Relationship between documentation issuance, publicity, and investments

	No investment	Investment(s) made before 1998	Investment(s) made in or after 1998	Investment(s) made both before 1998 and in or after 1998	Total (count)
Neither contract nor certificate issued, and heard of land rights through one channel	77.7%	3.9%	18.4%	0.0%	100% (139)
Both contract and certificate issued, and heard of land rights through multiple channels	55.9%	8.4%	35.1%	0.6%	100% (219)

	Value	Df	Asymp. Sig. (2 sided)
Pearson Chi-Square	4.95	359	0.0020

NOTE: n = 361. Percentages may not add up exactly to 100 due to rounding.

In this table (again, with statistical significance at the 99% or greater confidence level), the absolute proportion (35.1%) of investors from 1998 or later among people with both documentation and exposure to multiple channels is the greatest seen for any subgroup so far, and is higher by 91% than that (18.4%) of the no-documentation–one-exposure group. Carrying it one step further, we find that the investment rate from 1998 or later for the no-documentation–no-exposure group drops to 11.7%.

It is plainly the case that the issuance of a contract is associated with a substantial increase in mid- to long-term investment in and after 1998. Issuance of both documents (contract and certificate) is associated with a still higher level of mid- to long-term investment in and after 1998. Likewise, the more publicity channels farmers are exposed to, the more likely they will make investments. Issuance of both documents together with exposure to multiple publicity channels is associated with the highest level of investment found. Formal documentation of farmers' land rights as well as the extent of their exposure to publicity on relevant land laws and policies are thus found in our survey to have a strong positive correlation with Chinese farmers' investment in the land.

Furthermore, it is clear that we are seeing causation here and not mere "correlation," in which the issuance of land-rights documentation, the presence of publicity, and the making of investments might somehow all be the results of some further "X" factor. As in medical tests of a new drug, we are seeing a desired response (investment on the land) which is "dose related": contracts are effective; contracts to which certificates have been added are more effective; the combination is still more effective when publicity is added; and the combination is most effective when multiple-channel publicity has been added to the presence of both documents.

Farmers exposed to this documentation-plus-publicity regime in increasing doses are increasingly likely to act on the belief that they can retain possession of their present parcels of land long enough to make a profit from investments that take multiple years to recoup. Such a phenomenon is evident throughout rural China as confirmed by RDI's own extensive rapid rural appraisal interviews of

Chinese farmers over a period of many years, in which farmers have repeatedly given insight into why those who do invest do and why those who do not invest do not.⁷⁹

In sum, when good laws are not only promulgated but implemented, and land rights thereby become secure, Chinese farmers invest. These mid- to long-term investments hold the key to broad-based rural development in China, and the following recommendations are therefore, we believe, of cardinal importance.

Recommendations

In light of the present framework of law and policy, and the situation on the ground, what is to be done to further improve the legal framework on tenure security, and to more fully implement the legal rules to benefit farmers?

Improving the Legal Framework

Extend the length beyond the present 30-year term. The October 2008 Central Committee decision lays the groundwork for further extension of farmers' land rights by stating that such rights will be "long term without change." There appear to be two alternative legislative routes to embody this in formal law.

On the one hand, China can consider making the rights "perpetual" by following the path apparently now being taken by Chengdu Municipality in Sichuan Province.⁸⁰ The amendment of the LML is on the legislative agenda, and this step might be taken as one of the amendments to that law. Preferably, as is now reportedly being undertaken in Chengdu, new land-rights certificates that embody this change could then be issued; or, at least, an addendum could be issued to attach to already issued certificates (any new certificates or addenda should also include the further improvements as to women's land rights and parcel descriptions discussed below).

On the other hand, allowing automatic renewal of the current 30-year term is also useful. Presently, in formal law the best we have is Article 126 of the Property Law, which provides that upon the expiration of the present contracting term the contracting party may continue extending the contracting relationship "according to national law." However, the "national law" referred to does not exist today, and uncertainty remains as to how the term will be extended and how long it can be extended.

"Long term without change" can quite readily be translated into automatically, and repetitively, renewable 30-year rights (note that under the Property Law the 70-year rights to urban housing land can be automatically renewed).⁸¹ By writing the specifics of "automatic, repetitive renewal"

⁷⁹ Interviews with Chinese farmers indicate that they likely make greater and longer-term investments in land if rights to land are secure. On this data, see Roy Prosterman and Brian Schwarzwald, "From Death to Life: Giving Value to China's Rural Land," *China Economic Quarterly* (Q1 2004): 19–21, <http://www.ft.com/cms/s/ecebe7ca-053a-11d9-8f8e-00000e2511c8.html>. For a discussion of farmers' investment behavior on non-readjustable "wasteland" covered by written long-term contracts versus their investment behavior on arable land, the latter at that time readjustable and not documented, see Tim Hanstad and Li Ping, "Land Reform in the People's Republic of China: Auctioning Rights to Wasteland," *Loyola of Los Angeles International and Comparative Law Review* 19 (1997): 543–84.

⁸⁰ The city of Chengdu (the provincial capital of the Sichuan Province) started so-called urban-rural integration comprehensive reform in early 2008. In July 2008 it was reported that Chengdu has allowed one village to change the term of farmers' arable land rights from the current 30 years to "perpetual" with newly issued land documentation. Chengdu's official plan is to complete this "documentation" reform by the end of 2009, presumably covering all the farmland in Chengdu (440,000 hectares of farmland, or 6.6 million mu). See news report available at "Cheng du shuai xian shi shui nong cun tu di cheng bao quan, qi xian gai wei 'chang jiu,'" [Chengdu Pioneers the Reform of Rural Contracting Rights, Changing the Term to "Long-Term"] *Sohu News*, July 27, 2009, <http://news.sohu.com/20090727/n265496062.shtml>.

⁸¹ Article 149 of the Property Law provides that "the term of the right to the use of land for building houses shall be automatically renewed upon expiration."

into the revised LML, this then becomes the national law, according to which renewal takes place pursuant to Article 126 of the Property Law. For all practical purposes, the automatic, repetitive renewal by operation of law would seem functionally equivalent to perpetual rights.⁸² No replacement or addendum for existing documentation would be needed, although any new documents issued should, of course, contain the new renewal provision.

Prohibit land readjustments without exception. Talking about “long term without change” or “automatic renewal” is meaningless if readjustments continue to occur across rural China. The 2008 survey shows that more than one-third of villages have still conducted readjustments after the second round of contracting (although the pace of new readjustments appears to have slowed since 2005). This is a disturbing figure, because it shows that the general prohibition of readjustments provided by the 2002 RLCL (and reaffirmed in the 2007 Property Law) has not been faithfully carried out.

Keep in mind that both the 1998 LML and 2002 RLCL have allowed a narrow exception where readjustments are permissible—“isolated” readjustments can be done in “special circumstances such as natural disasters” if two-thirds of villagers approve and additional administrative approvals are given. In practice, however, such a narrow exception has swallowed the rule in a substantial number of cases. Many villages have been led to ignore the general rule on the prohibition of readjustments and conduct readjustments for population changes, land takings, and other dubious or illegal reasons—indeed have often, and probably mostly, been led to do so without following the process prescribed, so that the readjustment is both substantively and procedurally defective.

If “long term without change” means anything and is the fundamental rule of China’s rural land system, it must be interpreted as “long term without readjustments.” The revised LML should provide that no readjustments are allowed, with no exceptions whatsoever. Although very rare, the farmers victimized in natural disasters where land is destroyed should receive appropriate relief and assistance from the government, and their loss of land should not be a reason to deprive other farm households of their “long-term-without-change” rights.

It should be underlined that all of the world’s modern and most productive agricultures—including such small-farm agricultures as those of South Korea and on Taiwan—operate without any such mechanism as readjustments and with market transactions (assignment of the entire right or lease of less than the entire right) meeting all desires for alteration in size of landholding.

Record women’s names on land documentation. Under Chinese law, women enjoy the same rights to land as men do. Yet only a small minority of married women’s names appear on land contracts or certificates.⁸³ As additional contracts or certificates are issued—or addenda are issued to existing documents—a space to record the wife’s name should be required by governing regulations, and compliance should be monitored. Also, in any future land-rights registration system (or pilot project for such a system), it should be ensured in the governing rules that the names of both husband and wife are recorded in the system.

Improve compensation standards and procedural fairness in land takings. A much-improved legal regime on land takings is needed, either through amending the LML, through a new and separate law, or in some matters through regulation under existing law.

⁸² Especially if the LML amendment included the contracting party’s power to pass the ongoing renewal right to any full assignee of the contracting party’s land term, as to all or part of the land.

⁸³ Roughly one out of fourteen issued land contracts and one out of seven issued land certificates lists a wife’s name.

One rather straightforward regulation would be one that implemented the Property Law's provision that land compensation must go to the land-losing farmer by requiring an appropriate national bank or banks, through local branches, to set up some form of escrow or trust account on behalf of farmers who have lost land in a taking.⁸⁴ The party paying for the land-right taken would then be required to pay the land compensation into that special account—and to receive a formal document from the bank confirming such payment—in order to be regarded as having fulfilled its obligation to pay land compensation. The special account, in turn, could only be accessed by the land-losing farmer, and cadres or officials would have no access to the funds.

Other matters that need to be dealt with by a law or LML amendments on takings include takings procedures—the survey underlines the need for notification, mandatory public discussion (including discussion of proposed compensation), and a generally far more open and transparent process—and enhancement of the amount of compensation to be paid. It would also seem desirable (while recognizing the political difficulty) to limit mandatory takings to truly public, noncommercial purposes and leave the acquisition of land for commercial or profit-making ventures to negotiation and voluntary transfer by farmers.⁸⁵

Improved Implementation of Farm Households' Land Rights

Widespread publicity to improve awareness. Wide publicity is crucial. The 2008 survey further confirms what was already evident: that many of the key rules on farmers' land rights are not widely known. Moreover, for time reasons the survey included only a selective list of land-rights issues; many more could be explored.

The survey results also suggest that new and amplified publicity as to farmers' land rights should focus not only on distant channels, such as TV or newspapers, but might do well to revive the use of local channels, such as villager meetings or publicity sheets or pamphlets.⁸⁶

Concomitant with the recommendations above, there should be strong and reiterated publicity of farmers' very long-term land rights and of a definitive end to all readjustments.

Issue land documentation to all farm families. The issuance of land contracts and certificates needs to be substantially completed, setting goals that are both time-bound and realistic. For example, 80% completion of issuance of each document within the next three-year period.

Thought should be given to issuing formal regulations that would standardize certain elements of the documents, such as the inclusion of wives' names (see above) and simple improvements in land parcel descriptions. The recent experience with issuance of new certificates embodying perpetual right for farm households in Chengdu Municipality may offer useful lessons. It is also possible that supplemental documents should be issued, correcting common errors and filling in common gaps in the existing documentation. In any new or supplemental certificates, consideration should be given to further exploring and including features of the land-rights contract that appear to make it in various ways more credible and efficacious than the present certificate, especially where the certificate stands on its own as the only document in farmers' hands: for example, adding lines for

⁸⁴ Articles 42 and 132 of the Property Law provide that farmers possessing usufructuary property rights are entitled to receive compensation for land expropriated in land takings as well as other assistance provided by law.

⁸⁵ This is not to say that a law might not contain "holdout" provisions. For example, if a large majority of right-holders, representing a large majority of the land needed, had reached voluntary agreement with a would-be commercial user who had obtained all the necessary land-use or zoning approvals, holdout farmers in a small minority might be required to agree on the same terms and conditions.

⁸⁶ In rapid rural appraisal interviewing, RDI attorneys found that an attractively designed, simple, and informative laminated sheet (which was often prominently hung by the farmers in their house) was extremely helpful in the implementation of the virtual end to farmers' taxes and fees that took place in the middle of the decade.

farmers (and their wives) and collective representatives to enter their signatures on the certificates, by way of acknowledgment, might prove helpful in adding to that document's psychological weight and sense of reliability.

Provide legal aid and education services to farmers. Legal aid and education offices should spread widely through the country, focused on farmers' vital rights to land, perhaps often linked to a major local law school, where they can also provide crucial experience for students. Fully trained lawyers, however, should serve as directors of such programs. Though education of both farmers and officials will head off many potential disputes, and lawyer-assisted negotiations will resolve most disputes that do arise, the "litigation option" must always be an ultimate and available resource. A legal aid program that cannot take an adversary to court is likely to be far less effectual.⁸⁷

Establish grievance-reporting channels for farmers. Another possible implementation measure—especially in light of the extensive spread of cellphones and increasingly computers in the Chinese countryside—would be the creation of a land rights hotline or website operated by an office of the central government. This would be a far better option than the current practice of farmers attempting to travel to Beijing to make their petition (sometimes to be forcibly intercepted on the streets of the capital and sent back).⁸⁸ Moreover, such a site or center could be set up in such a way as to actually receive with respect, courtesy, and interest communications and complaints from farmers who wished to indicate their identity (while also offering anonymous communications). The central processing of complaints would quickly permit the flagging of geographic "hot spots," to which central government inspection teams could, as appropriate, be dispatched.

Monitor implementation progress and hold local officials accountable. Finally, regular monitoring and assessment of progress in implementation, independently of local cadres and local officials, will remain critically important. This should involve both rapid rural appraisal (which also helps flag new or neglected issues to be included in future sample surveys) and large-scale sample surveys such as the one described in this paper. Given what is at stake, however—including the greater productivity and prosperity of 200 million Chinese rural households, not only vital for China but also as a pro-consumption measure in a global setting—it is hard to conclude that such surveys should not be conducted at least annually, if not indeed on a continuous basis.

The goal of ongoing monitoring is to ensure faithful carrying out of the central mandates and directives on the various implementation matters. The progress of grass-roots implementation of farmers' land rights should also be a key criterion to assess officials' performance and in determining their future political careers.

Conclusion

The progress that rural China has made in the last three decades, inaugurated with its dismantling of collective farms, is substantial. Yet much more progress is needed and is possible. Indeed, China represents a striking example of a situation where modern land tenure reform can be successfully carried through to its conclusion with relatively little financial or administrative burden per thousand households benefited. Today's tenure reform in China requires neither

⁸⁷ For a broad, comparative discussion of land rights legal aid programs, see Robert Mitchell, "Land Rights Legal Aid," in Prosterman, Mitchell, and Hanstad, *One Billion Rising*, chap. 8.

⁸⁸ Edward Wong, "China Sentences Women Held after Protest Attempt," *New York Times*, July 31, 2009.

confiscation of land from landlords or a wealthy class nor an enormous amount of funding to purchase land in the market to benefit landless farmers. The farmland in China is already jointly owned by farmers in their respective collectives, and the key task is that of strengthening and improving individual farm household's property rights to land that they already cultivate. The great majority of China's 200 million farm households could very soon be brought to a point where farmers could start making long-term investments in land that will greatly diversify agricultural production, increase productivity and income, and lead them to become market participants and modern consumers.

Despite its struggles elsewhere, the U.S. automaker General Motors (GM) is enjoying spectacular growth in China. GM sold more than one million new cars in China in 2008 and has been the number one carmaker there for four consecutive years.⁸⁹ It should be remembered that virtually all the consumers of GM cars in China come from cities where average income is at least three or four times greater than in the countryside. It takes little imagination to see the potential if 750 to 800 million rural people were given the resources and tools to invest and consume.⁹⁰ Indeed, secure property rights for Chinese farmers not only could bring about broad-based development in the countryside but also could help unleash unprecedented spending from the largest potential consumer market in the world.

⁸⁹ "General Motors Says China Sales Up 38%," Xinhua, July 1, 2009, http://www.chinadaily.com.cn/bizchina/2009-07/01/content_8343764.htm.

⁹⁰ It is worth noting that China's fuel economy standards are significantly stricter than those of the United States. For more details, see Keith Bradsher, "China Is Said to Plan Strict Gas Mileage Rules," *New York Times*, May 27, 2009.

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