



OCTOBER 15, 2007 • NO. 3

Securing Land Rights for Chinese Farmers

A Leap Forward for Stability and Growth

by **Zhu Keliang and Roy Prosterman**

Executive Summary

A critical determinant of China's long-term economic growth and social stability will be whether the wealth of its economic boom can reach the majority of its 700 million farmers, who make up approximately 56 percent of the total population. The benefits that the rural population has received from the economic reforms of the past two and a half decades, while significant, were largely achieved in the 1980s, and now the countryside lags badly behind the urban sector. A survey we conducted in 17 provinces, among 1,962 farmers and other respondents, confirms one fundamental cause of the widening rural-urban income gap: most Chinese farmers still lack secure and marketable land rights that would allow them to make long-term investments in land, decisively improve productivity, and accumulate wealth.

Farmers in China face multiple threats to their land rights from local government and village officials. The most prominent threat is land expropriation or acquisition

through eminent domain to satisfy demands of industrial growth or urban expansion. Despite a series of central laws and policies, in practice, farmers who lose their land typically receive little or no compensation. Closely related as another source of insecurity of land rights is the persistent "readjustment" or "reallocation" of farmers' landholdings that is administratively conducted by village officials. Today, such land-related problems are the number one cause for rural grievances and unrest in China, which reported 17,900 cases of "massive rural incidents" of farmers' protests in the first nine months of 2006.

China adopted a Property Law in March 2007 that aims to strengthen the security of farmers' land rights, and the next key step will be full implementation of the law. We calculate that securing rural land rights would bring more than half a trillion dollars of value to farmers. Implementing the property law requires major institutional and legal measures on several fronts that China must tackle in the immediate future.

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The rural economy is lagging far behind the urban sector.

Introduction

The Chinese government often boasts that one of its greatest achievements is feeding China's entire population, constituting 22 percent of the world's population, with only 9 percent of the world's arable land. That is indeed extraordinary considering that only 50 years ago tens of millions of Chinese starved to death.

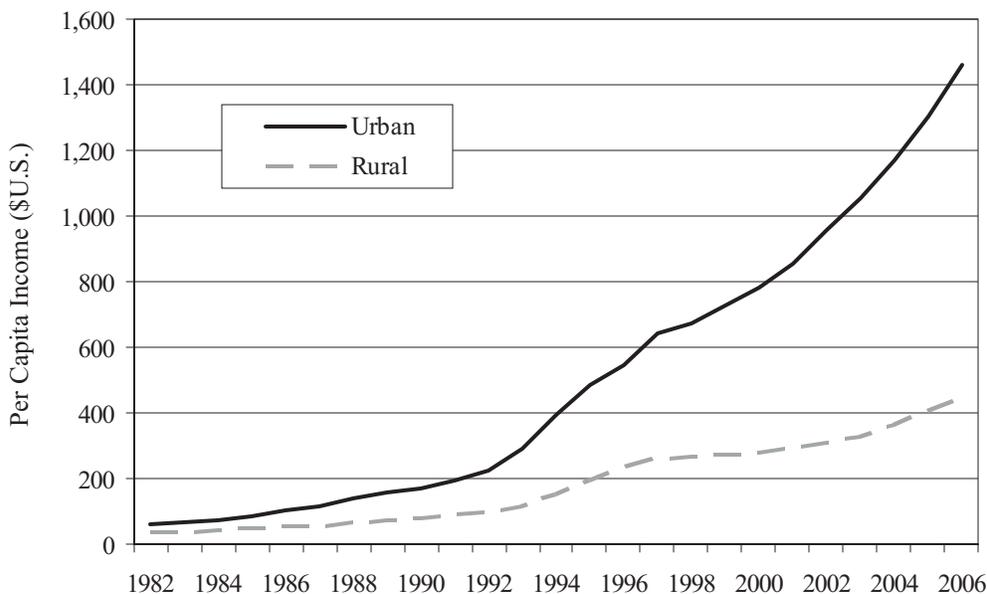
However, visiting China's countryside and asking who actually "owns" the farmland produces answers so drastically different that one could easily conclude that no one really knows. Is the true owner of a given property the national or the local government? Are the owners the villages or the farmers? Considering that China contains 121.8 million hectares of arable land (1 hectare = 2.47 acres), its ownership is probably the biggest unresolved question on property in China, and is, unequivocally, one of the most critical questions for the 700 million rural Chinese who live there.

Despite the stellar growth of the Chinese economy in recent decades, economic production is largely centered in the eastern coastal region. The rural economy is lagging far behind the urban sector. China is now experiencing one of the worst rural-urban income gaps in the world. In 2006, the rural-urban income ratio reached a record low (1:3.28), and the speed of income polarization is accelerating (see Figure 1).

According to official data, the average Chinese farmer made approximately \$450 U.S. in 2006, and 35.5 million rural people earned less than \$120 U.S. (All subsequent currency references refer to U.S. dollars.) Poverty alleviation remains the principal issue for China's countryside.¹

This worsening income disparity reflects a lack of opportunity for, and a threat to the general welfare of, Chinese farmers. If the sources of this income disparity are not addressed in the near future, the country's long-term growth and stability will be in jeopardy. It has been reported that rural healthcare and ele-

Figure 1
Worsening Rural-Urban per Capita Income Disparity



Source: National Bureau of Statistics of China, "2006 Annual State Statistical Report," http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20070228_402387821.htm.

mentary education are facing an impending crisis as numerous farmers struggle to pay children's hospital bills or school tuitions. An urban child is 3.4 times more likely to attend high school and 43.8 times more likely to attend college than a rural child.² Moreover, there are an estimated 700,000 deaths of children under the age of five in China each year—the great majority of which occur in the countryside.³

Both Chinese and foreign observers have noted an increase in incidents of rural unrest, including violent confrontations between local governments and farmers. In the first nine months of 2006, China reported a total of 17,900 cases of “massive rural incidents” in which a total of 385,000 farmers protested against the government. Approximately 80 percent of these incidents were related to illegal land-takings.⁴ Land-related conflicts, especially arising from land takings or expropriations by governments, are now the top rural grievance in China.⁵ In January 2006, Premier Wen Jiabao admitted that the efforts to narrow the rural-urban wealth gap had fallen short and that land grabs by officials were provoking mass unrest in the countryside and could threaten national stability and economic growth.⁶

This paper attempts to shed light on these issues by reviewing the development of China's rural land-rights and the status of farmers' property rights under current laws and policies. It will then discuss how improving the security of land rights can bring about enormous benefits for millions of China's rural poor.

Historical Background

In the first half of the 20th century, the Chinese revolution led by the Communist Party gained much of its support from the deeply aggrieved rural poor. This support was especially derived from the large population of tenant farmers who had neither secure nor equitable access to land and who paid high rents to their landlords. After com-

ing to power in 1949, the Communist Party's initial land reform gave farmers full, private ownership of their small farms through a Land Reform Law and other accompanying regulations. Through this law China redistributed over half of its arable land to 50–60 million poor rural households—more than 60 percent of its rural population—on an equitable, per capita basis.⁷ Land titles or certificates were issued to farmers as well. This “land to the tiller” campaign lifted hundreds of millions of poor Chinese out of destitution and hunger. Annual crop production increased 70 percent from 113.2 million tons to 192.7 million tons between 1949 and 1956. Similarly, total farm income rose 85 percent during the same period.⁸

The Chinese land-to-tiller program, and its initial results, paralleled the successful postwar land-to-tiller programs in Japan, South Korea, and Taiwan, although with two important differences: the mainland program was avowedly confiscatory as to larger landlords, and at the village level physical punishment, including the death sentence, was often carried out against landlords.

Disastrously, in the mid-1950s, China followed in the footsteps of the former Soviet Union and started the collectivization of all farming.⁹ Private ownership of land became illegal. With “collectives” (villages or village teams) as the new owners, farmers became collective farms' “working members,” who normally received pay (mostly grain and other agricultural products) on the basis of how much time they put into work. In 1958 the situation was further exacerbated, with a move to giant “communes” and the termination of the “private lots” that had allowed farmers to hold up to five percent of the land privately, outside the collective-farming system. Agricultural production plummeted causing 15 to 30 million deaths between 1958 and 1962.¹⁰ Modest reforms, beginning in 1962, ratcheted back the production unit from the communes to village teams and restored private plots. Production then began a long, slow recovery.

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collective farms and giving individual farmers limited freedom to farm. Technically, the collectives retained ownership of the land and allocated or “contracted out” land parcels to individual households for private farming for a period of time. The land allocation was mostly in equal per capita shares based on family size. The contracting households, in return, were obligated to fulfill their “responsibilities” in harvest quotas or taxes to the collectives every year (in the form of grain or cash). This scheme was called the “Household Responsibility System” or the HRS.

After its initial success, the experiment spread rapidly and became the fundamental system of rural land tenure throughout China. The introduction of the HRS unleashed the energy and resources of millions of rural families and jump-started China’s agricultural growth. Between 1979 and 1984, average net income for rural residents increased by 11 percent annually, resulting in the narrowest rural-urban income gap of the past several decades. The HRS was an enormously successful reform, lifting the living standards of hundreds of millions of rural people and was the driving force behind the single greatest poverty-reduction achievement worldwide in the past three decades.¹¹

Despite the achievements of the HRS, several looming questions were left unresolved and still remain. One is the definition of farmers’ rights to their contracted land, technically referred to as “land-use rights” or “land-contracting or -operating rights.” Since collectives still officially own the land, there is little guidance as to what land-use rights really entail. The other problem is the duration of farmers’ land-use rights. Initially, in the early 1980s, the rights lasted only about three years, or even less. A 1984 policy document purported to increase the duration to 15 years, but it was never seriously publicized or implemented. The lack of secure and long-term rights discouraged farmers from making the mid- to long-term investments in land that were needed to achieve further, larger production increases.

As a response, the Chinese government adopted a series of policies and laws to

address these issues. Four of them are particularly important:

- In 1993, the central government issued a policy directive that extended farmers’ land-use rights to a continuous and fixed term of 30 years.¹² This was the first time that farmers’ land-use rights were substantially lengthened and followed by at least some degree of actual implementation.
- In 1998, the 30-year policy was embodied in formal law for the first time as a result of the adoption of the revised Land Management Law. The law explicitly mandates that land be contracted to farm households for a term of 30 years.¹³ At the same time, China initiated a massive campaign to implement the new policy, including issuance of land-rights documentation to farmers and widespread publicity of the 30-year rights.
- In 2002, the National People’s Congress enacted a Rural Land Contracting Law devoted entirely to the relationship between collectives’ land-ownership rights and farmers’ land-use rights. The RLCL clarified the content of land-use rights and provided legal remedies for any violations.¹⁴
- In 2007, China adopted a Property Law, the first comprehensive civil property code in modern Chinese history.¹⁵ The Property Law characterizes farmers’ rural land-use rights as property rights or rights *in rem* (as opposed to the contractual rights defined by previous laws), providing greater protection for small farmers’ land rights.

China’s land reform has been significant, but the road to fully secure, marketable, and long-term land rights for all farmers is still a long one. Japan, South Korea, and Taiwan all conducted extremely successful land reforms after World War II by providing small farmers with private ownership of land. China will be able to replicate such experiences if the gov-

ernment can effectively and faithfully implement its recent pro-farmer policies and laws.

There are two contextual points to keep in mind here. First, the rule of law is not firmly established in China, and the government relies heavily on policy or administrative initiatives to push its agenda, in addition to or in lieu of formal legal measures. A case in point is the 1993 policy extending farmers' land rights to 30 years, which the government began to carry out before formalizing it into law. The Central Committee of the Communist Party often leads the charge by issuing policy directives, and then the National People's Congress, which is controlled by the Communist Party, follows by codifying the policies into formal law. The policies are not legally binding, but they receive close attention from local bureaucrats who are responsible for carrying out the programs or campaigns.

The second point is related to how China's political structure is being shaped by competing economic interests. China revamped its tax revenue system in 1994. Power over taxation was centralized and local governments lost most of their freedom to collect and keep local taxes. That had two consequences that are relevant to this paper. First, virtually all local governments have been facing fiscal shortages and are forced to seek extra-budgetary revenue. In fact, extra-budgetary revenue makes up more than 60 percent of local governmental expenditures.¹⁶ The biggest source of extra-budgetary revenue is the sale or lease of land (often rural land). The new tax system also partially explains why the tax burden on Chinese farmers increased dramatically starting in the late 1990s (though the tax was eliminated or greatly reduced during a recent pro-farmer program, as discussed below). Second, local governments have been unable to fully implement a number of unfunded or underfunded policy directives from the central government (e.g., mandatory elementary education or basic healthcare). Local governments may just pay lip service or turn a blind eye to central policies that are against their own interest, including policies that restrict their authority to sell off farmers' lands.

Those background conditions have affected the three primary aspects of land rights: security, marketability, and duration.

Insecure Land Rights

The biggest threats to farmers' land rights come from the government in the form of land takings and land readjustments.

Land Takings

Land confiscation by governments for non-agricultural purposes through the eminent domain power (state expropriation or acquisition) is probably the most visible and contentious rural issue in modern day China. Under the current legal regime, farmers often do not receive due process, owing to insufficient compensation and a lack of procedural transparency. As a result, China's urban-biased development is heavily "financed" by farmland taken for nonagricultural purposes. Further, the bulk of the compensation allowed by current laws and policies—grossly inadequate as it is—is routinely intercepted by local governments and village officials. Meanwhile, affected farmers have been prevented from voicing their opinions in a meaningful way during the land-taking proceedings because they have no way of receiving proper notice. To make matters even worse, dispossessed farmers seldom have access to independent courts for an unbiased ruling and sometimes resort to violent confrontations. For these reasons, land-related issues arising from state expropriations or acquisitions have recently become the top cause of rural grievances.

According to a 17-province, 1,962-farmer/respondent survey conducted in China in 2005 by the Seattle-based Rural Development Institute, Renmin University (Beijing), and Michigan State University, incidents of land takings have increased more than 15 times during the past 10 years and appear to be accelerating.¹⁷ Accordingly, farmers are facing an ever-increasing threat of losing their land and livelihoods to urbanization and nonagricultural development.

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First, a large amount of rural land is taken or expropriated by governments for purely private or commercial purposes. Both the Chinese Constitution and the 1998 LML require that land takings be for the “public interest.”¹⁸ Under the present legal regime, a farmer has no power to negotiate or make a private transfer of his or her land rights for a nonagricultural use. If a commercial developer is interested in converting a piece of agricultural land to nonagricultural use, he or she has to petition the responsible government agency or local government to exercise its eminent domain power to legally change the land-use designation. Furthermore, as land became a primary source of local governments’ patronage and wealth, it also became a resource for local development by attracting investment and boosting real estate development. Consequently, local governments tend to emphasize their development agenda when expropriating land for new urban residence apartments or roadside gas stations by stating that the new developments are in the best interest of the local community.¹⁹

Second, a lack of due process prevents farmers from voicing their opinions. The 2005 survey indicates that approximately 30 percent of affected farmers were not notified of land takings in advance. On the amount of compensation, arguably the most pivotal issue, only one out of every five farmers was consulted. Less than 1 percent of all surveyed farmers were able to file formal lawsuits to resolve these grievances.²⁰ The central government has promulgated a series of regulations and policies providing farmers with procedural rights such as public hearings. While these rights exist on paper, in practice the decision-making processes are far from transparent, participatory, or fair.

Lastly and fully as important, compensation for farmers’ lost land is often grossly inadequate. The 1998 LML sets up a specific formula to determine the amount of two primary types of compensation: one for loss of land and the other for resettlement. The law explicitly provides that the compensation for loss of land should be 6 to 10 times the average annual yield of the land, and the resettlement subsidy

should be between 4 to 6 times the average annual yield.²¹ The compensation derived from this formula is far from sufficient because the formula does not consider the fair-market value of the land or the full range of negative impacts on farmers. Since the formula does not take market value into account, it does not allow farmers to profit from the appreciation of land value due to development projects. The current compensation scheme allows the government to pay farmers \$5,000 to expropriate one hectare of rural land today, sell it tomorrow to developers at the full market value of \$20,000, pocket a handsome profit of \$15,000, and call it “extra-budgetary revenue.” In contrast, if farmers are allowed to sell their one hectare directly to developers for commercial purposes, they will be paid the full market value of \$20,000.

The injustice doesn’t stop there. Under the current law, the \$5,000 paid to expropriate the one hectare in the example above is not paid to the farmers but to the collective, which technically remains the owner of the land. The collective then decides how much will go into the hands of dispossessed farmers. Because collective villages or collective village teams are not democratically organized, the average farmer who typically knows little about his legal rights, may be at the mercy of a few village officials. As many studies reveal, land-losing farmers typically receive only 10–20 percent of a \$20,000 expropriation. That process has led to approximately two-thirds of affected farmers being dissatisfied with their compensation.²²

The central government seems to be aware of these grave problems but is unable to curb the nationwide phenomenon. Since 2004, the central government issued a number of harshly worded policy directives ordering local governments to behave.²³ These new policy directives and the 2007 Property Law also establish a new compensation standard mandating that compensation for land takings must be adequate to maintain affected farmers’ living standards for the long term. Nevertheless, without strong supporting institutions and accompanying reforms, the

financial incentives behind these land takings are too strong for local governments to resist.

Land Readjustments

Although land-use rights are theoretically allocated to farm households for a specific number of years (30 years under the law), most villages in China have adopted the practice of periodically readjusting or reallocating landholdings. These land shakeups occur due to changes in individual household makeup, total village population, or loss of land through land takings or natural disasters. In those cases that are called “big readjustments,” a village takes back all land from farmers and then redistributes it. A “small” or partial readjustment consists of adding to or taking from a household’s existing landholding when that family’s size changes (e.g., through births, deaths, or marriages), and does not affect the entire village’s landholding pattern. It is not uncommon for a few village cadres or officials to conduct readjustments simply to exert their authority or for other dubious purposes.

Rights to a piece of land subject to periodic and unexpected readjustments cannot be considered either secure or marketable. Farmers will not make mid- to long-term investments on a land parcel that they may not possess the next year or the year after. Similarly, from a transferee’s perspective, land transactions are limited to those whose purpose will be completed by the end of the current crop season or agricultural year.

The 2002 Rural Land Contracting Law (RLCL) was enacted in response to these readjustments and prohibits land readjustments during the 30-year term except for “special circumstances such as natural disasters.”²⁴ Yet, a large number of village collectives are continuing the illegal practice. The farmer survey reveals that 30 percent of villages carried out readjustments after, and despite, farmers’ having purportedly been given 30-year rights.²⁵ This is an alarming discovery because the main policy and legislative purpose of 30-year land-use rights is

to ensure that farmers can confidently possess and farm the same land for a continuous 30-year term, resulting in more mid- to long-term investments that improve agricultural productivity. Any readjustment conducted administratively by villages destroys the security of the 30-year rights and undermines agricultural production. As evidenced by the 2005 survey, more than three-fourths of farmers surveyed did not want any more readjustments.²⁶

In practice, the narrow exception created by the RLCL, whereby readjustments are permissible under “special circumstances such as natural disasters,” has been misunderstood or abused by villages that insist on further readjustments. A number of provinces have issued implementation regulations of the RLCL, and there is great discrepancy among them on the definition of “special circumstances.” Accordingly, many local or village officials consider that the door has not been fully closed, and farmers continue to face this threat to the security of their land rights.

With land improvements constrained by ongoing takings and readjustments, the initial benefits brought about by the Household Responsibility System tailed off beginning in the mid-1980s, causing Chinese farmers’ income gains to begin to lag far behind those of urban residents.

Marketability Restrained

Land is the single greatest asset for the world’s rural poor. Where the rights to land cannot be freely transferred in the market because of uncertainties, lack of documentation, or legal restraints, the land’s value is greatly diminished. The Peruvian economist Hernando de Soto has aptly called such land “dead capital” and has emphasized the key role that measures intended to make this capital “live” can play in the overall process of economic development.²⁷

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uing agricultural uses for more than two decades, the market for these rights has been severely constrained. The insecurity of farmers' holdings has meant that nearly all transactions have been at will or for one year at a time. Experience elsewhere in Asia suggests that securing land rights for Chinese farmers, in a developed land market—discounting for the 30-year term and considering them for agricultural purposes only—should bring more than half a trillion dollars of value to farmers.²⁸

The rural land-transfer market in China's countryside is still at a very early stage. Roughly a third of rural households have been parties to a land transfer (transfer-out or transfer-in). Scrutinized more closely, nearly half of these transactions cannot be construed as market transactions because they were at will, oral transfers among relatives of the same village without any rent paid.²⁹

The frequency of rural land transfers is tied closely to three factors. The first factor is location. Farmers typically report a greater number of transfers in regions where the economy is more developed, such as certain coastal regions in Guangdong or Zhejiang provinces. Rural land transfers also appear to be somewhat related to how many rural adults become migrant workers and choose to work in cities. Millions have obtained stable urban income and thus moved to the cities. The movement of labor is massive in China and certainly contributes favorably to the development of the rural land-transfer market. Lastly, the low frequency of transfers in some areas is also partially due to farmers' lack of knowledge about their rights to land and various aspects of those rights that affect transfer. The farmer survey confirms that a majority of interviewed farmers still hold mistaken beliefs that are likely to inhibit transfers, especially transfers for long periods of time.³⁰

Another key deficiency in the land market is that Chinese laws ban mortgaging arable land. The main fear is that farmers may engage in unwise deals, using their land as collateral, and eventually losing the land to banks or a small number of rich people. The term

“landlord” carries such heavy political baggage that a meaningful debate on the pros and cons of mortgage becomes difficult. Yet mortgage is universally accepted as a means for urban residents to obtain credit. The controversy surrounding rural land mortgage is reflected in the drafting of the 2007 Property Law. One of the earlier drafts of the Property Law allowed mortgages, but the clause was eventually scratched off.

As the experiences of many countries have consistently proven, access to credit is an important factor in farmers' ability to make long-term, productivity-enhancing and income-generating investments in their land. This issue is made more acute by the fact that only 14.7 percent of Chinese farmers' investments were able to be financed to any degree through borrowing from a bank.³¹ As a result, farmers cannot use their land—their principal asset—to obtain financing for improvements aimed at expanding or diversifying agricultural production.

Thirty Years and Beyond

As discussed above, Chinese farmers' land-use rights extend for 30 years. In a majority of cases, the 30 years began in the late 1990s (1997–99 in particular). Thus, all farmers' rights to their land are set to expire by the late 2020s. What will happen then?

Leaders of the central government have counseled farmers not to worry. Former president Jiang Zemin once formally announced that farmers' land rights should last forever. Premier Wen Jiabao repeated several times that farmers' land rights will “never” be changed.³² There is a consensus at the central level that the Household Responsibility System will be a permanent feature of rural land tenure in China and that Chinese farmers' rights to their contracted land should become more secure and long-term over time.

A telling provision in the new Property Law is that the term for urban land-use rights—currently 70 years—automatically renews. However, in the case of rural land,

when the present 30-year contract term expires, the law states that “farmers should continue extending the contract according to relevant law.”³³ This language is not as strong as the language covering urban land, which automatically renews, but it is a clear signal that the 30-year term will be extended.

The remaining questions, of course, relate to the length and manner of the extension. The best scenario would be automatic and repeated renewal by operation of law, which would essentially perpetuate farmers’ rights to their contracted land. That would entail the least amount of disturbance and uncertainty. If farmers are required to pay a fee, or go through a land readjustment to obtain the renewal, then the security and the market value of rural land will be considerably decreased as the end of the term looms.

Given the ideological inclinations of the current (and recent past) leadership, it is unclear if or when China will consider granting farmers full, private ownership of land. A small number of Chinese scholars have advocated privatization. But the government considers collective ownership of rural land one of the fundamental features of a “socialist” country, so it is unlikely that truly private ownership will come about in the foreseeable future.

Regardless, the issue of utmost and immediate importance is ensuring that all farmers’ land rights are secure and protected during the present 30-year term. If many farmers continue to lose their contracted land through illegal takings or readjustments, the question of future renewal could become steadily less significant.

Land Rights and the Creation of Rural Wealth

Why are land rights so important? The question goes to the heart of poverty alleviation and income growth in the countryside.

Land is the most basic asset of, and the best social welfare guaranty for, farmers. Comparative historical experiences and inde-

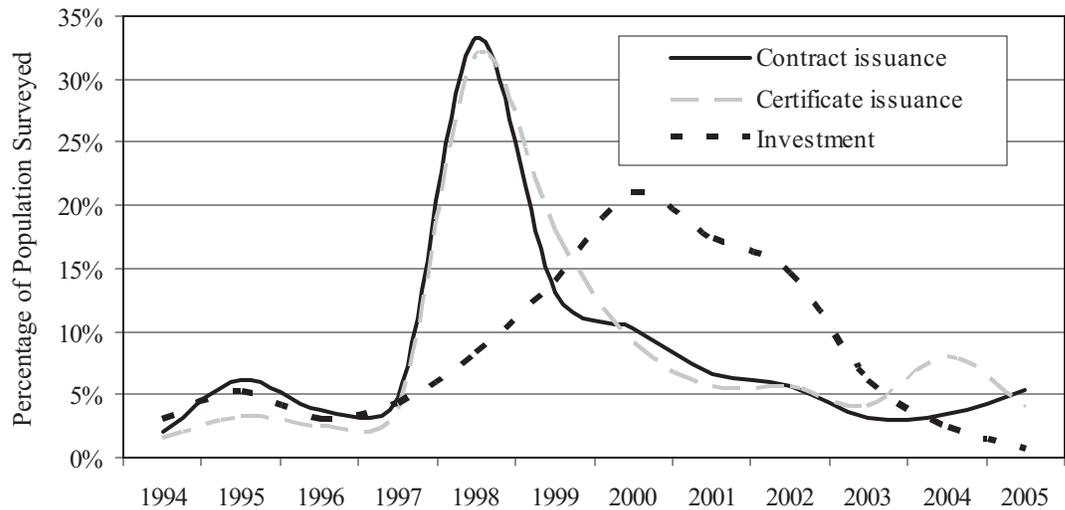
pendent studies have repeatedly confirmed that with long-term, secure land rights, farmers will treasure their land and are likely to make more mid- to long-term investments in their land, resulting in higher-efficiency, market-driven agricultural operations.³⁴

As of 2002, total value added per hectare in China’s agricultural sector was about \$1,539.³⁵ That leaves much room for improvement, through diversification into higher value-added crops and also through increased yields of existing basic crops. This can happen only when Chinese farmers know that they will be able to stay on the same parcel of land and can confidently invest the money and labor needed to make long-term improvements. Such improvements include irrigation wells and water catchments, drainage improvements, terracing and careful land leveling, greenhouses or trellises, tree-planting, intensive soil improvement, and new machinery and technologies. As a rough comparison, agricultural value added per hectare in South Korea equaled approximately \$22,400 in 2002 and in Taiwan measured approximately \$13,150 in 1997. While these are of course far more developed societies, this comparison illustrates the lack of investment being made by Chinese farmers. In both of the latter settings, nearly all farmers have long-term security on their land (full private ownership) as a result of post-World War II land reforms and have been able to invest in their land and diversify their production free of any threat of readjustment or taking.³⁶

Implementing secure land rights not only causes farmers to invest more, but has also been shown to stimulate the rural land-transfer market which further promotes agricultural efficiency and overall economic growth. In a developed land market, such as exists in comparable developing countries like India and Indonesia, the average value of one hectare of agricultural land with full private ownership is about \$5,000.³⁷ However, Chinese farmers have 30-year use rights instead of full private ownership. The economic value of a 30-year use term, at the beginning of that term, is roughly 75 percent to 95 percent of the value

Less than 1 percent of all surveyed farmers were able to file formal lawsuits to resolve grievances.

Figure 2
Timing of Contract Issuance, Certificate Issuance, and Investments



Source: 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 and Politics* 38 (February 2006): 798.

of full private ownership. This calculation is based on standard formulas and a likely range of percentage rates for discounting future returns. It follows that the expected value of one hectare of arable land with 30-year rights—for agricultural purposes only—would average about \$3,750–\$4,750 in a developed land market. If Chinese farmers enjoy secure 30-year rights, a rural-land transfer market will most likely develop (and indeed in places where 30-year rights are secure such markets are emerging). Using the figure of 121.8 million hectares of arable land as the total held by Chinese farmers,³⁸ the overall value to them of secure 30-year rights in a developed land market would be about \$457–\$579 billion. With that increased wealth, farmers could make further investments in their land to improve profitability, or liquidate a part or all of their land rights and use the proceeds to move into higher-value opportunities.

Beginning in 2004, the central government eliminated most agricultural taxes imposed on farmers and provided some direct subsidies to farmers.³⁹ Nonetheless, the rural-urban income gap has not been narrowed at all. What

else needs to be done to revitalize China’s rural economy?

According to our survey, the answer lies in land rights. One of the key characteristics of secure land rights is that farmers possess valid, written documentation affirming such rights. Chinese law stipulates that farmers are supposed to receive a written land contract and a written land certificate for their 30-year rights to contracted land.⁴⁰ However, local governments have not been enthusiastic about issuing the contracts or certificates to farmers. After a decade’s efforts, only about 63 percent of farmers have received a contract, a certificate, or both. Moreover, most of the issuances occurred between 1997 and 1999.

As it turns out, there is a strong correlation between issuance of contracts or certificates and farmers’ mid- to long-term investments in land. Our survey strikingly shows that the peak years of investments closely follow the peak years of contract/certificate issuances, with about a two-year time lag (see Figure 2).

Investment may have dropped after 2002 because farmers had satisfied pent-up invest-

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Table 1
Greater Investments Are Related to Well-Documented Land Rights

	No investment	Investment(s) made before 1998	Investment(s) made in or after 1998	Investment(s) made both before 1998 & in or after 1998	Total (count)
Neither contract nor certificate issued	78.7%	7.6%	12.5%	1.2%	100% (649)
Only contract issued	68.8%	11.8%	16.0%	3.5%	100% (144)
Only certificate issued	82.1%	4.0%	12.6%	1.3%	100% (223)
Both contract and certificate issued	63.5%	7.0%	24.1%	5.4%	100% (532)

Source: 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 and Politics* 38 (February 2006): 814.

ment desire or because of the growing time lag between the government’s publicity efforts and the issuance of land-rights documentation. Households may also have chosen not to invest because of their growing concern over illegal takings (some of them widely publicized) and readjustments.

Further analysis shows that there is probably a causal link between issuance of contracts or certificates and investments. For example, among those who held contracts, 16 percent made an investment in or after 1998, while the corresponding percentage among those who held no documentation is 12.5 percent. As Table 1 shows, the investment rate in or after 1998 has been highest among those with both forms of documentation: 24.1 percent. Furthermore, for households whose contract is in a highly compliant form and includes start and end dates, maps or sketch descriptions of their land, and signatures or seals, the investment rate was even higher: 28.8 percent. In contrast, only 20.2 percent of those who held noncompliant documentation and 12.0 percent of those who had no documentation made an investment.⁴¹

This analysis suggests that certificates or contracts are more effective than no documentation, both are more effective than either alone, and compliant certificates or contracts are more effective than noncompli-

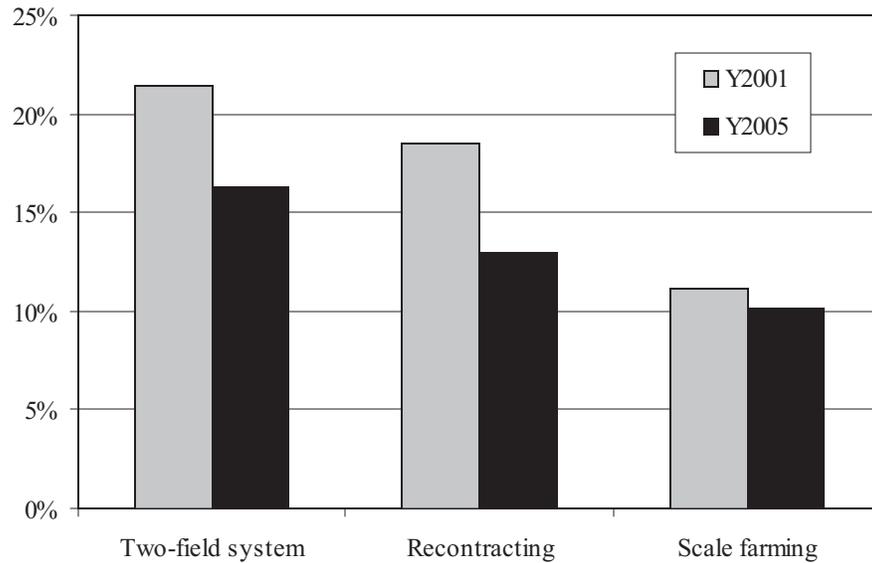
ant ones. Documented land rights—especially better-documented ones—lead farmers to believe that they will retain possession of their present parcels long enough to make a profit from investments that take multiple years to recoup.

It is essential that China pushes the issuance of documentation to all rural families. The central government has in the past shown itself capable of implementing its rural policies or programs given the right amount of determination and resources. In the 1990s, for example, Chinese farmers were subject to threats such as recontracting, a two-field system, and scale farming.⁴² Such practices seriously undermined the security of farmers’ land rights and were later declared impermissible or disfavored by the central government. The farmers survey reveals that the frequency of all of the three practices decreased noticeably, as shown in Figure 3.

The same success can be found in the government’s recent efforts to eliminate farmers’ agricultural taxes. The tax reduction program became quite effective and far-reaching in a short period of time between 2004 and 2005, as the central government kicked off a massive campaign to publicize the policies and to monitor local implementation.⁴³ If the Chinese government devotes the same energy to issuing documentation of land-use rights, tens of millions of additional rural

Securing land rights should bring more than half a trillion dollars of value to farmers.

Figure 3
Fewer Villages Using Three Restricted Practices



Source: 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 and Politics* 38 (February 2006): 778.

families will likely receive appropriate documentation that will greatly improve tenure security and stimulate investment.

The New Property Law

In March 2007, after deliberating for over five years, the National People’s Congress adopted a Property Law. The first overall Chinese property law of the post-revolution period marked a new era in socialist China, as private property rights finally received full recognition in formal law. The law contains fewer ground-breaking provisions than initially expected, but its adoption is nevertheless highly significant.

Besides the provisions that renew the present 30-year term when it expires and reaffirms farmers’ legal rights and remedies as defined by the 2002 RLCL, the Property Law characterizes farmers’ 30-year land rights as property rights or rights in rem (as opposed to the contractual rights defined by previous laws). Theoretically this type of right pro-

vides greater protection for small farmers’ land rights. Future readjustments will be much harder to justify. The collective—as the contract-issuing party that allocates land to farmers—might still somehow find grounds to revise or even revoke contracts with farmers, but the currently defined property rights are less likely to be taken away administratively. Moreover, the law stipulates that full compensation should be paid when government expropriates farmers’ property rights. The language of the Property Law is unmistakable in that the compensation should go directly into the hands of affected farmers because they are the holders of the property that is taken away by state power.

Additional protection for expropriated farmers comes from a provision mandating that compensation for confiscated farmland should ensure the long-term livelihood of the farmers.⁴⁴ This signals that the fixed compensation formula set by the 1998 Land Management Law could be discarded in circumstances under which compensation based on that law’s stated multipliers of average

The rural land-transfer market in China’s countryside is still at a very early stage.

annual yield of land is insufficient to maintain farmers' living standards for the long term.

However, the Property Law still reflects a number of general provisions that are vague or misguided. For example, the law calls for a unified, national registration of real properties (land and houses).⁴⁵ But it avoids some of the biggest practical questions, such as which government agency will be in charge, and how future rural-land registration will be merged and unified with urban registration. In addition, laws on specific property subjects such as the Land Management Law should be amended to become consistent with the Property Law so that a coherent land-takings regime can be formed. Nor does the Property Law permit mortgage of agricultural land, forgoing the opportunity to end the prohibition of such mortgage in the earlier laws.

Further Reforms Needed

To ensure China's sustainable economic growth and social stability, the central government must conduct significant legal and institutional reforms and commit itself to implementing those reforms at the local level. The following items would help to improve the rule of law in the countryside and should top the reform agenda.

Issue Valid and Compliant Land Contracts and Certificates to All Farmers

Secure land rights confirmed by written documentation are a necessary condition for farmers' making mid- to long-term investments in land and for promoting market transfers. The first task for land reformers should be to make sure that more than 90 percent of all farm households receive at least a contract or a certificate. The central government should clearly signal that the achievement of this goal by individual localities within a pre-determined timetable will be one of the key issues on which the adequacy of officials' performance will be judged. The central government should further make it clear that it will widely publicize successes

and failures both within and beyond government circles.

Equally important is that the contracts or certificates to be issued comply substantially with controlling laws and regulations and contain all necessary elements (e.g., adequate land description, specific starting and ending dates for the 30-year rights, etc.). In case of readjustments, takings, or disputes involving transfers, valid contracts or certificates will provide stronger protection for farmers' rights and interests.

Improve Compensation Standards and Procedural Fairness in Land Takings

The compensation formula fixed by the 1998 Land Management Law has been proven drastically inadequate. The overarching principle should be that the living standard of the affected people should not be lowered as a result of the land taking. Because of their relatively low education and skill level, it is extremely difficult to transform traditional farmers into urban workers after their land is gone. Therefore, any compensation package must be able to ensure long-term livelihood, as required by the Property Law. Equally important, the law needs to make sure that the bulk of the compensation actually goes to the land-losing farmers. Since secure 30-year land rights represent 75–95 percent of the economic value of full private land ownership, farmers should be allocated at least 75 percent of the total compensation, and the share for collectives and local governments should not exceed 25 percent.

Moreover, affected farmers should have the right to participate in and influence the decision-making processes. Laws and practices for land takings should be revised to increase farmers' participation in a process that brings government, commercial developers, collectives, and farmers together to resolve relevant issues in a far more transparent and democratic manner. Farmers should receive meaningful notices in advance about forthcoming decisions and be fully informed. Public hearings and legal remedies should be easily accessible to all aggrieved farmers.

A key deficiency is that Chinese laws ban mortgaging arable land.

**In March 2007
private property
rights finally
received full
recognition in
formal law.**

Another important complementary measure could be the use of an escrow agent in lieu of directly providing the compensation to the collectives and then asking the collectives to distribute it to farmers. Laws need to be reformed so that an independent state bank⁴⁶ can be designated as the unit responsible for receiving the payment of required compensation from the state or the land developer and for receiving all documentation from the collectives and land-losing farmers. Upon completion of the transaction, the escrow agent would then be responsible for distributing the compensation directly to affected households, greatly decreasing the possibility of illegal interceptions by collectives or local governments.

Narrow the Scope of Land Readjustments

The scope of exceptional “special circumstances” under which readjustments are allowed by the Rural Land Contracting Law should be narrowly defined. There are two particular circumstances that should not be treated as “special circumstances.” One is population change, and the other is land takings. With regard to population changes, it is common for a household or a village to experience fluctuations in the number of family or village members. Any imbalance between the size of a piece of land and the number of people should be addressed by the market for transferring land rights between farmers, as it is in all developed economies, rather than by administrative readjustments that jeopardize everyone’s tenure security.

Moreover, conducting a readjustment after a land taking, thus “spreading the pain” among a larger group of households, should be prohibited. This type of readjustment is used to justify the inadequacy of compensation to land-losing families and, consequently, jeopardizes tenure security for all. Regardless, the RLCL is designed to strengthen and protect farmers’ 30-year land rights from readjustments. Therefore, a term such as “special circumstances” must be construed in the light most favorable to farmers’ land tenure securi-

ty. This interpretation is consistent with not only the general principle prohibiting readjustments stated both in the Property Law and the RLCL but also the wishes of the majority of farmers.

Increase Farmers’ Knowledge about Land Laws and Policies

Widespread publicity at the grassroots level about farmers’ rights, land laws, and governmental land policies is key to protecting farmers’ land rights. Currently, farmers’ knowledge about what specific rights they have under relevant laws and policies is gravely inadequate. Consequently, they are unlikely to vindicate their legal rights when facing illegal takings or readjustments. A combination of TV, publicity cards, newspaper articles, village meetings, and other forms of publicity should be utilized to generate maximum educational impact.⁴⁷ Any public information campaign should focus on the rural land-use rights that are created or defined by the RLCL and reaffirmed by the Property Law, especially on those land rights about which farmers frequently have mistaken beliefs. Preferably, important elements of this publicity should continue over an extended period of time.

Introduce and Strengthen Supporting Institutions

Supporting institutions for secure land rights include land registration, a court system, and legal aid. Today, there is no land registration system in rural China, which creates great uncertainty and hampers the development of a land-transfer market. China should consider establishing a land-registration system that further validates farmers’ property rights. Furthermore, the courts must be reformed to make them more accessible and impartial for rural land disputes. Under the present court system, farmers consistently have little recourse to judicial resolution. Lastly, legal aid should be readily available to average farmers on land issues, which will greatly enhance their ability to assert rights against governmental intrusions.

These supporting institutions are crucial to enhancing the security of land rights. If farmers' rights, even when well documented, fail to receive recognition in public institutions, then the credibility and value of the rights will diminish greatly.

Monitor Progress on Local Implementation

The central government relies heavily upon local governments' reports on land issues, and the official data on implementation progress is routinely skewed. To measure implementation in its various dimensions, the central government should conduct continuing assessments through farmer interviews, surveys, and telephone hotlines. Steps should be taken to ensure the objectivity and accuracy of the findings. Such steps may include random selection of counties, townships, villages, and households, as well as direct farmer interviews without the presence of local officials. These types of assessment tools are essential to providing the government with an accurate picture of farmers' land rights and ensuring that implementation of national land laws and policies at local levels is effective and faithful.

Conclusion

China represents a prime example of what a little land-tenure security—represented in 1979–84 by the incremental advantages that even readjustable individual land rights have over collective farming—can do to dramatically improve hundreds of millions of people's lives. China's successful transition away from collective farming to readjustable land-use rights illustrates the potential impact of improved land-tenure security on agricultural production. However, as China's urban-rural divide continues to worsen, as land takings accelerate, and as the competition from foreign agricultural producers intensifies due to China's WTO accession, the rural land question has become ever more relevant. Powerful evidence supports the view that any

solution to these issues must center on providing farmers with greater land-tenure security. This requires further significant legal and policy reforms, but it rests even more importantly upon concrete implementation at the grassroots level of the already existing body of law.

Notes

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2. Xiong Jian, "How Large Is China's Urban-Rural Gap?" *China Daily*, November 11, 2006, <http://news1.jrj.com.cn/news/2006-11-21/000001793989.html>.
3. Robert E. Black, Saul S. Morris, and Jennifer Bryce, "Where and Why Are 10 Million Children Dying Every Year?" *The Lancet* 361 (June 28, 2003): 2226–34.
4. See news reports in *Singtao News*, January 31, 2007, http://www.singtaonet.com/china/t20070131_458601.html.
5. Zhao Ling, "Rural Activism Seriously Changes: From Tax Disputes to Land Ownership," *Southern Weekend*, September 2, 2004.
6. Joseph Kahn, "Chinese Premier Says Seizing Peasants' Land Provokes Unrest," *New York Times*, January 21, 2006, p. A3.
7. The China Institute for Reform and Development, *History of Changes and Innovations of China's Rural Land System* (Haikou: The China Institute for Reform and Development, 1999), pp. 31–32.
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9. This was done because Chairman Mao erroneously believed that, to be truly socialist and to defeat capitalism, China would have to copy the Soviet model, which prohibited all types of private property ownership.
10. See Susanne Weigelin-Schwiedrzik, "Trauma and Memory: The Case of the Great Famine in the People's Republic of China (1959–1961)," *Historiography East and West* 1, no. 1 (2003): 41–43; Xizhe Peng, "Demographic Consequences of the Great Leap Forward in China's Provinces," *Population and Development Review* 13, no. 4 (December 1987): 639–70.

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12. "Notice on Certain Policy Measures Regarding Countryside and Rural Economy Development," promulgated by the Central Committee of the Chinese Communist Party and the State Council, November 5, 1993, http://www.agri.gov.cn/zcfg/t20030624_94259.htm.
13. Land Management Law (LML), Chapter 2, Article 14.
14. Rural Land Contracting Law of the People's Republic of China (enacted on August 29, 2002 by the 29th Session of the Standing Committee of the People's Congress).
15. Property Law of the People's Republic of China (enacted on March 16, 2007 by the fifth plenary session of the People's Congress).
16. Chang Xiaohong, "Redistributing Land Transfer Revenues," *Caijin Magazine* 155 (March 20, 2006): 27, www.caijing.com.cn/newcn/econout/other/2006-03-20/7792.shtml and <http://www.xici.net/b498653/d35940754.htm>.)
17. See 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 and Politics* 38 (February 2006): 761-839.
18. Article 10 of the Chinese Constitution and Article 2 of the LML.
19. It must be pointed out that China should not regard as relevant or persuasive the American precedent established by *Kelo v. City of New London*, 545 U.S. 469 (2005) (condemnation of private properties for a commercial developer in order to revitalize an ailing economy held to serve "public use" within context of the Takings Clause of the Fifth Amendment to the United States Constitution). The substantive and procedural *due process* that ensures fairness of compensation, and the democratically elected decisionmaking body to which a court could defer its decision on how much the public interest is actually served by a project, are lacking in China. Therefore, the logic underlying *Kelo*, even if accepted in an American setting, cannot be meaningfully applied to the Chinese context.
20. See Zhu et al., 783.
21. Article 47 of the LML.
22. See Zhu et al., 794.
23. "Decision on Deepening Reform and Exercising Strict Land Administration," promulgated by the State Council, October 21, 2004, also known as the Central Document no. 28; "Notice on Several Issues in Regard to Tightening Land Management," promulgated by the State Council, August 31, 2006, also known as the Central Document no. 31.
24. Article 27 of the RLCL.
25. See Zhu et al., 783, 826.
26. See Zhu et al., 796.
27. See Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), p. 6. The positive effects of land titling have been documented in a number of studies, although there are significant situation-specific exceptions (for example, complex, customary land rights that are difficult to capture in documentation and are not under threat).
28. See Zhu et al., p.784, n. 47.
29. See Zhu et al., p. 786.
30. See Zhu et al., 791. Mistaken beliefs are common, for example, about the different levels of permission required to conduct different kinds of transactions.
31. Based on our 2005 survey. See Zhu et al., p. 799.
32. "Transcript: Premier Wen Jiabao Responds to Domestic and Foreign Journalists' Questions," *Xinhua News Agency*, March 14, 2005, <http://news.sina.com.cn/c/2005-03-14/10106077756.shtml>.
33. Article 126 of the Property Law.
34. See generally Emmanuel Jimenez, "Tenure Security and Urban Squatting," *The Review of Economics and Statistics* 66, no. 4 (November 1984) 556-67, which finds that formal-sector unit dwelling prices are about 18 percent to 58 percent more than in the informal squatter-settlement sector; Lee J. Alston et al., "The Determinants and Impact of Property Rights: Land Titles on the Brazilian Frontier," *The Journal of Law, Economics and Organization* 12, no. 1 (April 1996): 25-61, which finds general support for predictions regarding the effects of title and investment on land value, the role of expected change in value in increasing demand for title, and the contribution of title in promoting land-specific investment; Timothy Besley, "Property Rights and Investment Incentives: Theory and Evidence from Ghana," *Journal of Political Economy* 103, no. 5 (October

1995): 903–37, which finds that, in Ghana, better land rights facilitate investments; Quy Toan Do and Lakshmi Iyer, “Land Rights and Economic Development: Evidence from Viet Nam,” World Bank Policy Research Working Paper no. 3120, May 2003, which indicates that additional land rights led to significant increases in the share of total area devoted to multi-year crops, as well as some increase in irrigation investment in Vietnam.

35. The term “value added” also includes value created after harvest, such as processing, packaging and transportation. See FAO, *Production Yearbook* (Rome, Italy: FAO, 2001).

36. See generally Ki Hyuk Pak, “Outcome of Land Reform in the Republic of Korea,” *Journal of Farm Economics* 38, no. 4 (November 1956): 1015–23; Sang-Hwan Jang, “Land Reform and Capitalist Development in Korea” (Paper presented at the spring conference of the Institute for Social Sciences, Gyeongsang National University, Jinju, Korea, May 2005); Chen Cheng, *Land Reform in Taiwan* (Taipei: China Publishing Company, 1961); Anthony Y. C. Koo, “Economic Consequences of Land Reform in Taiwan,” *Asian Survey* 6, no. 3 (March 1966): 150–57.

37. RDI’s field research has determined approximate land value in sales, for agricultural purpose only, in other Asian settings that are roughly similar to much of rural China, except that they have relatively developed land markets. In India’s Karnataka state, average market values of about \$2,500 per hectare are found; in India’s West Bengal state, about \$5,000 per hectare; and in densely populated East and Central Java, Indonesia, about \$10,000 per hectare.

38. Xinhua News, “Ministry of Land & Resources: Nation’s Total Arable Land Decreased to 1.827 Billion Mu” (April 12, 2007), http://news.xinhuanet.com/politics/2007-04/12/content_5968006.htm.

39. This was done because excessive tax burdens were forcing many farmers to abandon their farmland.

40. Contracts are issued by villages and executed between farmers and village officials, and they differ in content and format. Certificates are designed

at the provincial level with uniform content and format. The issuance of certificates is more unilateral than contracts because farmers typically don’t have to sign them.

41. See Zhu et al., 815–16.

42. “Recontracting” refers to village officials who take back some or all of various households’ land—usually a contiguous area—and then lease or assign it for agricultural use to a nonvillager for a fee. “Two-field system” divides cultivated land into two categories: consumption land and responsibility land. Consumption land is divided in each village on a per capita basis to meet each household’s basic needs. The remaining land is contracted to farm households as responsibility land through a variety of methods that in many cases result in a nonegalitarian land distribution. Villages typically charge an additional contracting fee for responsibility land. Lastly, “scale farming” involves the consolidation of small, labor-intensive farms into larger, mechanized farms. Scale farming typically involves the contracting of large areas of arable land to a few farmers or the operation of large-scale farms by the collective land owner. Recollectivization of farmland was the ultimate goal of at least some experiments with scale farming in the early 1990s.

43. Several years earlier, farmers’ crop “quotas”—paid to the collective and the state since the beginning of the HRS—were successfully ended.

44. Article 42 of the Property Law.

45. Article 10 of the Property Law.

46. Nearly all banks are government-owned, especially in the case of the banks servicing the countryside. China is in the process of reforming its financial sector and the banks are gaining more independence.

47. A publicity card in the Chinese context is a piece of paper that describes the essential terms of the law or policy in plain language. The card is issued to every rural household, affixed to the walls of their houses or laminated for long-time possession.

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