

# Rural land tenure reforms in China: issues, regulations and prospects for additional reform

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*Although tenure security for 810 million Chinese farmers has been greatly strengthened since the introduction of the Household Responsibility System in the early 1980s, some key issues remain. Foremost among these are (a) frequent land readjustments in response to changes in size of households, (b) administrative recontracting of previously household contracted land to non-villagers with little or no compensation to affected households, (c) the lack of effective mechanisms for dispute resolution, (d) compulsory taking of land for undefined "public use" with inadequate compensation, and (e) ineffective protection of women's land rights. The adoption of the Rural Land Contracting Law, which became effective on 1 March 2003, provides an important opportunity to address these issues and therefore achieve the central government's goal to "grant to farmers long and secured land-use rights". However, the ultimate resolution to these problems depends on a full implementation of the law and development of institutions supporting this implementation.*

## INTRODUCTION

Chinese Communist Party Chairman Mao Zedong once said that "China's problems are rural problems, and rural problems are land problems." In terms of ensuring the livelihoods of China's nearly 200 million rural households, Mao's statement remains highly relevant. Nearly two-thirds of China's population still resides in the countryside, making its living solely or primarily from agriculture. The substantial changes in land tenure rights and practices experienced in recent decades have been important determinants of rural development, farmer incomes and living standards, and reductions in rural poverty throughout China. This paper describes the achievements of China's rural land tenure system, which led to the adoption of the Rural Land Contracting Law in August 2002, discusses the major obstacles that remain in providing China's farmers with

long-term, secure land tenure and proposes a series of recommendations for immediate implementation.

## CHINA'S RURAL LAND TENURE SYSTEM: ACHIEVEMENTS AND CHALLENGES

### Development and characteristics

Since the founding of the People's Republic of China in 1949, China's rural land system has undergone a series of dramatic changes. Before the revolution, most Chinese farmers were poor tenants tilling land owned by landlords. Soon after the Communists took power, the government confiscated the holdings of landlords and wealthy peasants and distributed the property among all farming households on an egalitarian basis; these households were then given full ownership to the land they farmed. In the mid 1950s, under the influence of the Soviet system, China began to collectivize its agriculture by

forcing landowning farm households to surrender their land to a newly formed collective entity for collective farming. This monolithic collective ownership of rural land was replaced by the policy known as the Household Responsibility System (HRS) in the wake of agricultural decollectivization in the late 1970s and early 1980s.

Although collective ownership of land was maintained, the HRS reforms provided Chinese farmers with much broader rights to rural land. Seven fundamental characteristics of China's rural land system during the first 15 years of HRS (1983–1998) have been observed by teams from the Rural Development Institute (RDI) and other groups that have undertaken extensive rural field research in China. First, virtually all rural households had access to some arable land; rural landlessness was virtually non-existent (Zhang, 2001). Second, landholdings were distributed among households in a substantially egalitarian fashion (Burgess, 1998). Although land per capita differences among regions resulted in some inter-regional discrepancies, differences within villages and localities were remarkably small. Third, the land system rules and practices were not uniform throughout the country (Turner, Brandt and Rozelle, 1998). Collective ownership of land and allocation of specific parcels to individual households has been essentially universal throughout China since 1983. However, the duration of those rights, the specificity with which the use rights are defined, the prevalence and type of administrative land readjustments<sup>1</sup>

<sup>1</sup> Not all land readjustments are of the same magnitude. "Large" or comprehensive readjustments involve an overall change in the landholdings of all households in the village. In a large readjustment, all farmland in the village is given back to the collective management and reallocated among village households so each household receives entirely new land. A "small" or partial readjustment consists of adding to or taking from a household's existing landholding when that household's size changes. Small readjustments can take place on a continuing basis as household size changes, or every few years to reflect changes occurring in the intervening years. Under small readjustments, households that neither add nor lose members will continue to farm the same landholding.

undertaken, and other important qualitative aspects of the land use rights varied dramatically from region to region and from locality to locality. Fourth, the great majority of Chinese farm households did not possess written land-use contracts that specified the duration of use or other important privileges and obligations associated with their land rights. Fifth, central government or Communist Party policy documents concerning rural land have not, for the most part, been effectively implemented. Although the Party policy supported 15-year use terms for farm households in 1984, and an extension of 30-year rights in 1993, these policies have generally not been implemented at the grass-roots level. Sixth, the majority of China's farmers preferred much longer use rights to land than they possessed (Kung, 1995; Kung and Liu, 1997; Prosterman *et al.*, 1998). Seventh, most villages have attempted to balance two competing objectives in establishing and implementing land system practices: continuing equal-per-capita access to land for welfare or subsistence purposes and stable land-use rights for productivity purposes.

It was this last characteristic – balancing the competing objectives of equal entitlement to land (to meet welfare needs) with stable land-use rights (to meet productivity needs) – that resulted in the most important controversy concerning the design of the land tenure system, and hence led to a policy focus on the central issue of land readjustments.

### Policy and legal reforms

Since the introduction of HRS, central agricultural policy-makers have issued a series of policy documents that have attempted to address these problems. In 1984, the Communist Party Central Committee issued *Rural Work Document No. 1*, which urged local officials to "prolong the time period of the contracted land" to 15 years or more in order to "encourage the peasants to increase their investment to foster the fertility of the soil and practice of intensive farming".

The duration of farmers' land-use rights was addressed again nearly ten years later, when the Chinese Communist Party Central Committee and the State Council issued *Document No. 11* in 1993, stating that "the term for contracting land may be extended" for another 30 years upon the expiration of the 15-year rights mandated by 1984 *Rural Work Document No. 1*.

By this time, land readjustments had emerged as the single greatest threat to Chinese farmers' continuing land tenure security partly as a result of the policy's failure to tackle land readjustments. Fieldwork by RDI and others (Kung and Liu, 1997; Prosterman *et al.*, 1998) indicated that the 30-year policy was widely ignored, and that most Chinese villages continued to contract land to villagers for short-term use subject to readjustment for household population changes. In response, the central government made the first clear expression of its desire to restrict land readjustments in its "Notice Concerning Further Stabilizing and Protecting the Rural Land Contracting Relationship" (1997) No. 16 (*Document 16*) issued on 27 August 1997. *Document 16* reiterated the need to extend farmers' land contracting term for another 30 years. With respect to land readjustments during implementation of 30-year land use rights, *Document 16* explicitly prohibited extensive readjustment and promoted local adoption of a no-readjustment policy. It went further to restrict minor readjustment by requiring that any plan for minor readjustment be approved by two-thirds of the villager assembly or villager representatives and by township and county government.

The revised Land Management Law (LML), adopted by the Standing Committee of the National People's Congress on 28 August 1998, represented a watershed in the rural land tenure reform process. *Article 14* of the law contained breakthrough provisions that addressed three of the major shortcomings related to rural land tenure security in China: the short or uncertain length of the use term; the lack of written land-use contracts; and the practice of frequent land readjustments.

On the length of use term, the law states that "[C]ollectively owned land shall be contracted to the members of the collective economic entity for ... 30 years." On documentation of land rights, *Article 14* further required that "the contract issuing party and the contracting party execute a contract stipulating the rights and obligations of the two parties," and that "farmers' land contracting rights shall be protected by law." Previous policy pronouncements concerning rural land-use rights had not required the issuance of a written land-use contract, and RDI's fieldwork in China has consistently found that the great majority of Chinese households did not possess written contracts specifying the duration of use or other important privileges and obligations associated with their land rights.

Most notably, the policy restrictions on land readjustment contained in the 1997 *Document No. 16* were embodied into law under *Article 14*, which provides that land readjustment must be (1) "appropriate" and conducted between "isolated farmer households"; (2) "agreed by 2/3 of the villager assembly or 2/3 of villager representatives; and (3) "approved by the township government and the county administrative agency responsible for agriculture." This provision clearly signalled a strengthened commitment by the central government to limit land readjustments and enhance farmers' land tenure security.

#### **The adoption of Rural Land Contracting Law**

After more than 3 years of drafting and deliberation, the Standing Committee of China's National People's Congress adopted the Rural Land Contracting Law (RLCL) – the first modern Chinese law to deal exclusively with the issue of rural land tenure – on 29 August 2002. The effect date of the law was 1 March 2003. This landmark law represents the most important legal breakthrough for securing 30-year land rights for China's 210 million farm households since the adoption of HRS. This

subsection discusses major achievements of the law in securing farmers' land rights.

### **Land readjustment**

The legal framework governing land readjustments under RLCL consists of three basic rules. First, *Article 27* sets up a general principle of prohibiting all types of readjustment during the 30-year term with an exception only for "a natural disaster that seriously damaged the contracted land and other special circumstances", under which a small land readjustment may be conducted. However, the question of what constitutes a level of "other special circumstances" requires further clarification in subsidiary legislation. Second, in order to restrict further these minor readjustments under "special circumstances", RLCL reiterates the important procedural requirements that the consent of two-thirds of the villager assembly or two-thirds of the villager representatives, as well as the approval by the township government and the county agricultural administrative body, must be obtained prior to the commencement of such readjustments. Third, the law validates those contracts that contain prohibition of land readjustment by stating that "the term of any land use rights contracts stipulating that readjustment shall not be conducted must be honored" (*Article 27*). In the meantime, it also explicitly invalidates any provisions of land contracts that violate mandatory legal rules with respect to land readjustment (*Article 55*).

### **Breadth of farmers' land rights**

Breadth is a measurement of the quantity and quality of the land rights held, and may include the rights to possess land, to grow and harvest crops, to pass land on to heirs, to transfer land to others and to pledge land rights as security for credit (Place, Roth and Hazell, 1994). Chinese laws have never previously defined farmers' land rights since the adoption of HRS until RLCL, which states that farmers' land rights include "rights to use, profit from, and transfer land contracting and operation rights, and the right of autonomy over production

operations and disposition of products" and "the right to receive the corresponding compensation" for any land taken by the state or collective for non-agricultural purposes (*Article 16*).

On the issue of right to land transactions, RLCL further states that farmers' land rights "may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law" (*Article 32*). In order to safeguard farmers' interests in land from being violated by local officials through various types of compulsory land transactions, RLCL emphasizes the principle of "equal consultation, voluntariness and with compensation" (*Article 33*), establishes farmers as "the party to any transactions of" rural land use rights (*Article 34*) and explicitly prohibits local officials from acting to "intercept or reduce" the proceeds from such land transactions (*Article 35*). It is important to note that prior legislation, although permitting transactions of rural land-use rights, has not provided any guidance with respect to the scope of this right and the procedures to exercise this right, and RLCL has filled this legal vacuum.

However, RLCL gives no direction on inheritance of farmers' rights to arable land while explicitly permitting inheritance of rights to forested land. The legislative intent as described in its explanations to such an omission did not favour inclusion of the right of inheritance in the breadth of farmers' land rights on the ground that arable land is contracted to a household rather than individual members of the household, and one member's death should not affect the property structure of household landholdings (Gu, 2002). Moreover, RLCL does not authorize mortgage of arable land-use rights, and such mortgages therefore remain explicitly prohibited under *Article 36* of the PRC Guarantee Law.

### **Land documentation requirements**

To provide evidence of farmers' land rights, RLCL reiterates the 1998 Land

Management Law requirement that written contracts be issued to farmer households (*Article 21*). In addition, RLCL mirrors legal requirements for documenting urban land-use rights by requiring that county governments issue land rights certificates to farmers to affirm such rights (*Article 23*). These requirements are extremely important to protect farmers' land rights because these written land documents provide powerful evidence in any dispute resolution process and an effective deterrent to possible violations.

In response to the problem of the existence of a wide variation in farmers' land-use contracts in the country, RLCL establishes a set of minimum core requirements for all such contracts, and a parallel set of necessary elements for contracts of transactions involving rural land-use rights. This is unprecedented in laws and policies governing rural land-use rights, and is a further indication of the government's determination to regulate rural land rights in a uniform manner.

### **Women's land rights**

Although women's rights to land in China have, in theory, always been equal to those possessed by men, the combination of household contracting and patrilocal practices throughout most rural areas has meant that women have been disproportionately disadvantaged by the practice of land readjustment. RDI and many researchers found that a substantial number of rural women had lost their land rights in the process of land readjustment as a result of moving from their original residential villages to the new village after marriage, divorce or widowhood (Zhu, 2000; Duncan and Li, 2001; Li, 2002). In addressing this problem, RLCL not only reiterates the principle of equality between men and women with respect to allocation of land rights, but also provides explicit protection of rural women from losing their land rights through land readjustment. *Article 30* states that the contract-issuing party (the collective entity) of a woman's original residence may not take back her

land share when she marries, divorces or widows and moves to a new residence unless she receives an allocation in that new residence. This provision greatly enhances tenure security for women.

However, to put this rule in to operation in the best interests of women farmers, subsidiary legislation is required. For example, in order effectively to exercise their rights to the contracted land located in the original residence, women must be able to partition their land shares from their household landholdings. The existing law is not clear with respect to the ability to partition joint property such as household land rights.

### **Dispute resolution**

Unlike the dispute resolution provisions in the 1998 Land Management Law and Administrative Review Law, which require that administrative reviews have been exhausted before a complaint can be filed with the people's court, RLCL explicitly gives farmers a choice between consultation, mediation, arbitration and suing in people's court (*Articles 51 and 52*). Because collective cadres and local government officials are themselves a party to many land disputes, requiring administrative review would make little sense especially when such officials have much greater access to the mechanism than do farmers. Enabling farmers with a grievance directly to seek judicial redress would substantially improve farmers' ability to resolve such disputes satisfactorily.

Notably, RLCL contains a series of well-articulated remedial and penalty provisions with respect to protection of farmers' land rights. It sets up very clear and strong rules prohibiting violations of farmers' land-use rights by local officials, including illegal land readjustments, re-taking farmer-contracted land and re-contracting it to others, and forcing farmers to plant crops against their will. Civil penalties, including monetary damages and restitution, and equitable remedies to forestall or reverse the illegal action, now apply to any such violations (*Article 54*).

## KEY LAND ISSUES THAT REMAIN TO BE RESOLVED

Although China has made great strides towards strengthening farmers' tenure security under HRS, and in particular with the recent adoption of RLCL, the adoption of good law simply provides a powerful institutional framework for solving the problems more systematically than it would be without such a law. This section discusses these key problems in light of extensive field research conducted by RDI<sup>2</sup> and other researchers in China. It should be noted that some of the problems identified are adequately covered by RLCL, but the ultimate resolution depends on an accurate assessment of these issues and a full implementation of the law designed to solve them.

### Land readjustments

The practice of readjusting village landholdings to reflect household population changes, a feature of the rural land system in approximately 80 percent of Chinese villages (Nyberg and Rozell, 1999), has represented the greatest obstacle to farmers' long-term tenure security under HRS and has substantially affected farmers' willingness to make long-term investment in land to increase productivity and income (World Bank, 2001; Jacoby, Li and Rozell, 2002). However, in addressing this problem, a key question remains: do farmers oppose a complete prohibition of land readjustment, and if so, whether such opposition would be intensified with more restrictions on land readjustment?

Recently the results of a 17-province, 1 617-household survey conducted in August 2001 revealed that the farmers who support, or at least would not oppose, a complete prohibition on land readjustments outnumber the farmers who oppose

such prohibition by a margin of 57.5 to 42.5 percent. In addition, in villages where land readjustment has never been implemented under HRS, farmers who would support or not oppose such a rule outnumber farmers who would oppose such a rule by a margin of 2:1 (Schwarzwalder *et al.*, 2002).

Recent research conducted by the World Bank in Guizhou, Yunnan and Hunan provinces reached the same conclusion. Households that had previously experienced a policy of no-readjustment reported higher degrees of support for such a policy, suggesting that much of the opposition to implementation of a no-readjustment rule will disappear as farmers' familiarity with such rights increases (World Bank, 2001).

These results have two important implications. First, a majority of farmers would actively support, or at least would accept, a complete prohibition on land readjustments. The second is that if such a prohibition on land readjustments were introduced, it is likely that over time farmers would increasingly favour a continuation of the prohibition on land readjustments rather than a return to the previous policy of land readjustments.

Although RLCL adopts much stricter rules on land readjustment, it is premature to assess how significantly these rules would impact on local practices in land readjustment. Previous experience indicates that despite the central rules intended to provide strict limits on readjustments, and farmers' support for a no-readjustment rule, readjustments continue to take place in rural China (Schwarzwalder *et al.*, 2002).

### Compulsory recontracting of farmers' rights to non-villagers or corporations

In response to China's accession into the World Trade Organization (WTO), the Chinese Government has in recent years introduced programmes to encourage crop diversification and agricultural restructuring as strategies to increase the competitiveness of Chinese agriculture. These well-intentioned strategies, however, often led to the development of local

<sup>2</sup> RDI researchers have conducted over 800 field interviews with farmers in more than 20 provinces and province-level municipalities throughout China. In addition, RDI has cooperated with Chinese partners in designing and conducting three large-scale questionnaire surveys on rural land tenure issues.

schemes based on short-term personal gains by local officials. Fieldwork conducted by RDI and other researchers in 2000 and 2001 discovered a growing trend in which arable land under contract to village households was subsequently recontracted by the village collective to non-villagers for crop diversification (Zhejiang Agricultural Department Investigation Group, 2001; DRC and RDI, 2002). The motivation behind recontracting is profit by collective cadres, who cannot legally impose contracting fees on the land if it is contracted directly to households, but can impose such fees on the third-party contractor. Interviews with farmers whose land had been affected showed that they were typically not involved in the decision to recontract the land, nor were they informed on the deals made between collectives, township governments and non-villager recontractors. In addition, little or no compensation was paid to farmers who lost their land rights in the recontracting process. In the most extreme cases, in which households were deprived of their entire landholding through recontracting, they were forced to become agricultural labourers on the land to which they previously held rights, or to leave the village to pursue non-agricultural employment.

In addressing the pervasiveness and potential dangers of recontracting practices, the Communist Party Central Committee issued its *Document No. 18* in December 2001, which was published in full in November 2002. The document clearly lists compulsory recontracting as one of the current principal threats to farmers' tenure security and social stability of the countryside. It states that "the entity involved in land-use right transfers is the household, not the village collective"; the central government "does not encourage long-term contracting of large areas of land by industrial concerns, and local areas should not mobilize urban residents to lease in agricultural land use rights." RLCL embodies these principles into law in its provisions on land transactions.

However, this policy has been largely

ignored by local officials. My fieldwork findings in two provinces in 2002 indicate that local governments are expanding or planning to expand administratively orchestrated recontracting.

### **Impediments to land transfer markets**

The newly adopted RLCL has substantially improved the legal framework governing transactions of land-use rights, and is expected to facilitate the development of the land-use rights market. However, substantial impediments to the development of efficient rural land transfer markets on a broad scale remain to be resolved through implementation of RLCL.

- *Continuing land readjustments.* Land readjustments serve as a substantial obstacle to the development of markets for rural land-use rights in China because transferees cannot be certain that the land they obtain through transfer will not be subject to readjustment during the transfer term. Marketability of land-use rights is entirely dependent on their security and predictable duration. Uncertainties with tenure would render farmers' land-use rights of little or no market value.<sup>3</sup>

- *Prevalence of informal practices.*

Currently, land transfers are largely conducted based on mutual understanding between individuals who know each other, and they are limited to part of the transferor's landholding; intravillage; short-term or at-will; uncompensated, with the transferee assuming obligations for taxes and fees associated with the land; informal; and not requiring approval of the collective landowner. This is partly because farmers do not know how to protect their interests if a dispute arises within the transfer term.

<sup>3</sup> Recent fieldwork interviews conducted by RDI with farmers in other Asian countries with similar population pressure on land resources indicate that the market value of 30-year rights to arable land in China should be roughly within the range of US\$3 500-4 500 per hectare (Schwarzwalder *et al.*, 2002).

• *Lack of a land registration system.*

Although RLCL states a demand for registering rural land-use rights, there is virtually no administrative organization assigned with such responsibility, nor competent personnel trained with skills for registration of rural land-use rights. International comparative experience indicates that land transaction is more expeditious and less expensive because it is easier to establish the participants' rights to deal (Simpson, 1976; Carter and Mesbah, 1990; Hanstad, 1998). Without such a registration system, any potential transferee must limit their market search to the persons they know and to the parcels on which they know that encumbrances do not exist.

• *Inability to access credit through mortgage.* RLCL does not reverse the Guarantee Law's explicit prohibition of mortgage of arable land-use rights, and thus such legal prohibition remains in force; this effectively provides a barrier to the purchase-money mortgage. Purchase-money mortgages allow potential buyers of land who lack sufficient cash and other collateral to buy the land. This impediment is expected to remain awaiting future legislation.

**Ineffective land dispute resolution mechanisms**

Prior to RLCL, the general legal framework governing rural land dispute resolution was as follows: consultation between the two parties, followed by administrative review by a government unit of higher administrative level than the parties, followed by the right to bring the matter before the People's Court for judicial review. The preference for consultation and administrative review prior to judicial review is consistent with both the Chinese legal system's preference for non-judicial resolution of disputes and the lack of judicial resources in rural areas.

In practice, this approach has been ineffective in resolving land disputes between individual households and organizations, such as between collective

entity and local government agencies, for several reasons. First is the extreme imbalance of power between the two parties. Informal resolution of disputes through consultation is ineffective where such power imbalances exist. A second reason is farmers' lack of information and understanding concerning their land-use rights. As a result, farmers' most common response to disputes with organizations has been to do nothing.

Even if farmers do lodge a complaint with an administrative body, their grievances are not effectively addressed because of the absence of a single defined entity responsible for resolving rural land disputes. Such complaints are more likely to be passed from one government department to another without meaningful action. Some farmers interviewed by RDI had gone as far as attempting to hand-deliver their written complaints to the relevant agencies in Beijing. The response from a township, county or provincial department where farmers' complaints had been sent was often a letter indicating that another complaint must be submitted to a different department before anything could be done to address the issue. After being rebuffed several times, farmers simply dropped their complaint.

Rights formally granted to farmers through central policies and laws are meaningless if they cannot be effectively enforced at local levels. Although RLCL has established a new legal framework for resolution of rural land disputes, especially those involving farmers and government organizations or collective entities, a competent institutional capacity remains to be developed.

**Compulsory acquisition of rural land**

Compulsory acquisition of rural land in China can be divided into two categories: state expropriation and collective withdrawal of farmers' land rights for non-agricultural development. The 1998 Land Management Law authorizes the state to expropriate collectively owned land "for public interests" (Article 2) and allows



collective entities to withdraw farmers' land rights "for constructing township or village public utilities or public welfare undertakings" upon the approval by the government that approves such land use (*Article 65*). Any compulsory taking of land for commercial purposes should be prohibited. However, because the law does not specifically spell out such "public interests", the state has virtually unrestricted power to expropriate land.

Compensation is required by law for both state takings and collective withdrawal. RLCL also includes the right to compensation with regard to the overall land rights that farmers hold. Compensation for state takings consists of land compensation, resettlement subsidies and compensation for standing crops and fixtures. Although the takings law explicitly requires compensation for standing crops and fixtures (which is very limited) to be paid directly to farmers whose land is affected, it authorizes the collective entity to decide how to apportion land compensation. Resettlement subsidies go to whoever is responsible for resettlement. A general compensation standard for state takings is provided, but the standard is based on the annual yield of the land, not the market value of the land. This standard applies not only to land takings for public purposes such as building roads and schools, but also to land takings for commercial purposes. For collective withdrawal, the law only requires an ambiguous "appropriate compensation".

RDI's fieldwork in rural China indicates that most collective landowners retain control over the distribution of the compensation. Although the amount of compensation paid to collective owners has increased substantially over time, farmers continue to receive extremely low levels of compensation, and in many cases no cash compensation whatsoever, in return for their land rights. Often, the collective retains all of the cash compensation under the pretext of expanding the collective economy, and simply spreads the burden of the land loss among all village farmers

by conducting a large readjustment. Thus, those farmers who initially lose all or much of their land receive a somewhat smaller allocation at the expense of somewhat smaller allocations for everybody else. This process has increasingly led to complaints by farmers, who do not perceive any benefit resulting from the collective's retention of the cash compensation, and end up with a smaller land holding. In some areas, serious unrest has resulted.

### **Ineffective protection of women's land rights**

RLCL has provided a substantial step forward in protecting rural women's land rights. However, legal rules remain to be translated into effective enforcement. Rural women's land-use rights may be analysed according to their relative completeness (or incompleteness) based on whether these rights are: (1) legally recognizable, (2) socially recognizable or (3) enforceable by external authorities (Mehra, 1995). Land-use rights may be defined as "complete" when all three factors are present.

Researches on women's land rights in China indicate that the protection of women's arable land-use rights currently faces several imposing obstacles (ACWF, 1999; Li, 1999, 2002). These obstacles arise from a combination of customary practice in conducting land readjustment and the existence of traditional patrilocal patterns in most rural areas (Duncan and Li, 2001). First, land-use rights allocated on a per-capita basis are not identifiable to individuals; rather, they are treated as property jointly held by all household members. When a woman marries and resides in her husband's village, which is usually not her maiden village, her land entitlement is at jeopardy (Li, 1992). If her maiden village decides to adopt land readjustment, her land share will be taken back by the collective because she is "lost" from her maiden household. Assuming that her husband's village adopts the no-readjustment policy, she will not be granted a land share in her husband's village. As a result, the woman loses all her legal entitlement to land in the process.

Second, even if her maiden village adopts the no-readjustment policy and does not take back her land share, the woman's allocation cannot be partitioned in-kind from the household's rights in their entirety, and therefore she is unable to transfer out her land entitlement. The proceeds of such a transfer, if possible, could enable her to transfer in land-use rights in her husband's village.

Third, if for any reason she divorces her husband and remains in her ex-husband's village, customary practices may result in her being treated as an "outsider" discriminately. If she chooses to return to her maiden village upon divorce, she may find that the land-use rights initially allocated to her have been either taken away by the village through readjustment or in effect assigned to her parents or brothers through an informal intrahousehold transaction.

Fourth, because land-use rights are treated as household property and the daughter who is married out of the native village is regarded as a non-member of the household, she is effectively deprived of the right to inheritance of land-use rights left by the deceased parents.

RLCL requires the village of the original residence not to take back a woman's land share when she moves to a new residence unless and until she receives a land allocation in the new village. However, the law does not state whether she can partition her land share from the pool of her original household landholdings. This omission needs to be addressed in subsidiary legislation.

### **RECOMMENDED ACTION**

Land remains both the most important asset and the primary means of social security for most Chinese farmers.

The adoption of RLCL provides a great opportunity for China fully to realize the potential of "long and secured land-use rights for farmers" to increase agricultural productivity, farmers' income and economic growth as a whole. Implementation of RLCL and institutional reforms outlined below

would maximize the chances of reaching these goals.

### **Implementation of RLCL**

The passage of RLCL represents the central government's determination to develop China's agriculture through strengthening land tenure security for 800 million farmers. Such determination cannot be translated into reality without full implementation of the law in the following key areas.

#### ***Formulate and circulate a model implementing regulations***

Implementing regulations will be necessary to interpret and clarify further several provisions of RLCL. *Article 64* of the law authorizes each of 31 provincial jurisdictions to promulgate implementing regulations in accordance with the law and taking into account the practical situation in its jurisdiction. However, the wide variations among provinces with respect to prior implementation of 30-year rights strongly suggest that simply delegating the task of drafting implementing regulations to the individual provinces will lead to similarly disparate interpretation of RLCL. The central government should forestall this possibility by drafting and then circulating a set of model implementing regulations that should include at least the following:

- *Defining "other special circumstances"*. *Article 27* makes an exception to the general rule of no readjustment by allowing small readjustment under other special circumstances without any further specification. The model implementing regulations should interpret this term qualitatively and quantitatively in line with the legislative intent of encouraging no readjustment of any kind.
- *Protection of the transferee's interests in the transferor's forfeiture of land-use rights*. RLCL permits the collective landowner to take back household land-use rights when all members of the household die or move to cities and change their household registration from rural to urban status. It also

allows a household to surrender voluntarily its land rights during the contract term. However, the law does not specify how to treat such land-use rights that have been transferred to a third party prior to the occurrence of these events, creating an unnecessary risk for the potential transferee that is at odds with the law's objective to facilitate development of the land market. The model implementing regulations should explicitly require collective taking-back of household-contracted land under these circumstances subject to the use rights already transferred.

- *Making legal protection of women's land rights effective.* RLCL treats rural land-use rights as household joint property, but it does not state whether such rights are a partitionable share joint property or a non-partitionable mutual joint property, within the use of the existing property laws. *Article 30*, which prohibits collective taking-back of a woman's land share in the original residence when she moves to a new residence as a result of marriage, would be meaningless to women if rural land-use rights are non-partitionable. The model implementing regulations should explicitly define household land-use rights as share joint rights subject to partition by individual household members. Moreover, joint titling should also be included as a necessary element in land contracts, land transaction contracts and land-use rights certificates.

#### **Formulate additional rules on land takings<sup>4</sup>**

Existing takings law fails to protect farmers' interests in land in the process of state takings and collective withdrawals for non-agricultural purposes. Although RLCL includes in farmers' overall land rights the right to corresponding compensation for such takings, it is unlikely to provide the appropriate forum for addressing the problem. In the process of RLCL

implementation, the central government should, either through policy directives or further legislation, formulate additional rules governing land takings, including:

- Specifically listing those "public purposes" for which over-riding concerns can be exercised and raising the standards of compensation for such takings.
- Requiring all lawful "commercial takings" to negotiate compensation directly with the affected households and collectives based on market value, rather than average yield, of the land to be taken.
- In parallel with the RLCL, rules on land transactions, requiring collectives not to "intercept or reduce" land compensations to which the affected households are entitled.

#### **Conduct a comprehensive publicity campaign**

It is vital that the law's adoption be followed by a detailed, repetitive publicity campaign targeted to educate both local officials and farmers with respect to the new land laws. A variety of media should be used, but television is the most effective medium for communicating to farmers. Importantly, the subjects covered by the publicity campaign should at least include:

- specific land rights enjoyed by farmers under RLCL;
- specific restrictions on land readjustments under RLCL and its implementing regulations;

<sup>4</sup> As of the date this paper was submitted early in 2003, no action had been taken by the Chinese Government to tackle the problems in land takings as outlined in the previous section. Since the new leadership was inaugurated in March 2003, however, a new round of rural land reforms with a focus on China's land takings system has been launched, with an objective of restricting farmland loss to urban development and raising the level of compensation to farmers for land they have lost. Revising the 1998 Land Management Law and promulgating the Land Expropriation Regulations have been formally put on the legislative agenda. See "Earnestly conduct the work of revising two laws", *China State Land and Resources News*, June 12, 2003. Many of the recommendations made in this section are expected to be included in the forthcoming takings laws.

- rules on land transactions, especially those that protect farmers from illegal compulsory recontracting;
- remedies and penalties for various types of violation of farmers' land rights together with information regarding the appropriate channels for dispute resolution; and
- important improvements in law with respect to women's land rights and effective rules designed to put these improvements into effect under the implementing regulations.

It is important to note that an education campaign specifically targeting women farmers should be designed and conducted in order to raise awareness of their new rights under the law.

### ***Build local capacity to implement the law***

Local officials are important implementers of the law. Prior experience (DRC and RDI, 2002) indicates that local officials remain the greatest obstacle to full implementation of central initiatives on land tenure. This is true both as a result of self-interest and power-seeking and because of the lack of a clear and comprehensive understanding of the laws and policies issued by the central government. Well-designed training classes should be offered to "front-line" officials engaged in implementation both in the collective entity and above the collective, and for specialized officials who may play a particular role in implementation, including those who will be responsible for adjudicating rural land disputes, offering legal aid and registering land-use rights.

In order to equip these local officials with the necessary, ready-to-use materials, the central government should draft, publish and distribute among all local officials a compilation of the central policies and laws on tenure security, including penalties for violation and inaction.

### ***Monitor implementation***

A comprehensive programme should be established to monitor implementation of the new rules at grass-roots level,

including both direct interviews with farm households (by using Rapid Rural Appraisal methods)<sup>5</sup> and an updated random sample questionnaire survey to be conducted using methodology that provides a highly detailed and accurate picture of implementation nationwide. Such a survey might best be carried out both in mid-2003, to assess the early effects of the publicity and the early stages of implementation by local officials, and again in mid-2004. The results should be quickly conveyed to policy makers at both the provincial and the national level, to provide them with information concerning the extent and nature of the implementation of the new law. This will also help them in developing targeted solutions to problems relating to implementation that are discovered as a result of monitoring.

### ***Recommended institutional reforms***

A full implementation will not be achieved without a series of supporting institutional reforms. Importantly, development of these supporting institutions should include the following.

#### ***Establish telephone hotlines to receive and process farmers' complaints***

Closely related to the monitoring function, the central government should establish a system for receiving and processing farmers' complaints related to violations of farmers' land rights. The establishment of telephone hotlines at the province level would be a simple, low-cost, yet effective way to meet this objective.

Calls placed by farmers to these hotlines should be free of charge, and hotline personnel should be given intensive training on the new legal rules. Any complaints that pass the initial screening should be reported to the administrative unit responsible for agriculture at the province

<sup>5</sup> In a Rapid Rural Appraisal interview, a farmer interviewee is not a passive respondent to a questionnaire, but an active participant in a semistructured interview. The interviewer uses a checklist of issues as a basis for questions. Interview villages and individual farmer interviewees are randomly selected. For a discussion of Rapid Rural Appraisal, see Chambers (1991, 1992).

level, who should immediately follow up such complaints. Hotline personnel should also keep an ongoing record of each call received, the village to which it relates and the nature of the complaint, and a monthly compilation of these data should be transmitted to relevant central authorities. "Hot spots" shown in the hotline reports should also receive special attention, including flagging for field investigations and possible application of preventive or penalty measures under RLCL.

### **Improve the dispute resolution mechanism**

RLCL provides an extensive set of tools to ensure that farmers will be able to resolve land disputes through the channel they choose. However, some of these channels provided under RLCL, such as an arbitration board, have yet to be established. To resolve disputes timely and effectively through judicial means, it is necessary to create a "circuit ride" function within the existing court system. Initially, the content of the RLCL provisions on dispute resolution and the information on access to these channels should be widely publicized to farmers. Then, with the progress of implementation, TV programmes may be used to publicize the most common kinds of violations found, and actual cases of penalties and remedies.

Procedural rules and evidence rules should be developed taking into consideration easy access by farmers, expediting the dispute resolution process, and prevention of conflict of interests.

### **Provide legal aid services to farmers**

At a minimum, pilot projects should be developed to provide legal-aid services to farmers in order to protect and vindicate their land rights under RLCL. The function of legal-aid personnel should include representing farmers prior to appearing in court or before an arbitration body, as well as in consultation or mediation efforts that may precede litigation or arbitration when the farmer so desires. Legal-aid personnel can also serve as a more informative source

as to farmers' rights than can be provided through general media.

Initially, legal-aid pilot projects should probably be focused in locations where there has been relatively poor implementation of farmers' land rights, as reflected by monitoring results and hotline complaints.

### **Improve registration of rural land-use rights and transfers**

As noted above, China lacks a comprehensive and effective system for registering rights to rural land. Although RLCL requires county governments to register farmers' land-use rights, it does not specify which county agency should bear the responsibility. RDI's fieldwork experience also indicates that there is no functioning land registrar in rural China; some so-called land registration offices are in fact functioning as archives of initial land contracts rather than dynamic registers of changes in land-use rights. As a first step, the model implementing regulation should assign land registration responsibility to a specific county agency, which should then widely publicize its existence.

A pilot project on land registration should be undertaken for registering land-use rights certificates and the transfers of such rights for periods of one year or more. In contrast to legal aid, such pilot projects should be focused in locations where there has been strong implementation of farmers' land rights, and the preconditions for reliable long-term transfers of such rights from one farm household to another have therefore been established.

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