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RURAL LAND REFORM IN CHINA AND THE 1998 LAND MANAGEMENT LAW

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Executive Summary

In China, land tenure reforms under the Household Responsibility System contributed to impressive gains in agricultural productivity, particularly during the early 1980s. The Household Responsibility System marked a radical departure in land tenure practices in rural China. Until recently, however, China had adopted few provisions of law to reflect or guide changes in the rural land use contracting system. The new Land Management Law, which was adopted by the National People's Congress in August 1988 and comes into force January 1, 1999, potentially represents a quantum leap forward for China's rural land system. The new Land Management Law contains many positive features which, if effectively implemented, should provide farmers with an increased level of tenure security and provide increased protection of China's limited arable land base. Further improvement of the rural land system is still needed and will require action three categories of actions. First, several important provisions of the new law should be clarified through the law's implementing regulations or related provincial law. Second, the provisions of the new Land Management Law must be effectively and thoroughly implemented. Third, other policy and legal reform measures, outside the scope of the new law, are necessary. These include measures related to transfers of land use rights, land tax, land dispute resolution, mortgage, and further extending land use terms.

This report begins by summarizing the evidence on rural land tenure in China amassed through the authors' extensive rural field research. It identifies the following factors contributing to land tenure insecurity in China:

- the short-term or uncertain duration of land use rights;
- the practice of land readjustments to reflect demographic change;
- the lack of written documentation and certification of land rights;
- the lack of clarity surrounding collective land ownership;
- the widespread and undercompensated takings of land; and
- the inability of farmers to enforce and protect their rights.

The report then analyzes the positive features and shortcomings of the new Land Management Law in addressing land tenure insecurity and other rural land problems. It also provides suggestions for both improving and effectively implementing the law. Finally, the report discusses and offers suggestions concerning other rural land-related policy and legal measures outside the current scope of the new law.

I. Introduction

Land tenure rights and practices are an important component of economic development, and rural development in particular. In China, fundamental rural reforms starting in the late 1970s led to phenomenal progress in agricultural and overall rural production. The most radical and important change was the adoption of the Household Responsibility System in which land and crop production were contracted to individual households.

The results of the rural reforms, particularly the land tenure reforms, are impressive, both in themselves and as considered by world standards. China's gross agricultural output value increased, in constant inflation-adjusted terms, by 86 percent from 1980 to 1990.¹ These increases occurred despite a sharp decrease in the level of state investment in agriculture following 1978.

Most of this growth, however, was in the first half of the decade. For example, from 1980-1984, cereal yields increased by an average of 8.6 percent per year. But between 1985 and 1997, the average annual increase in cereal yields fell to 1.7 percent per year.²

While the Household Responsibility System marked a radical departure in land tenure practices in rural China, few revisions were made in the formal law to reflect these changes for almost twenty years. Policy pronouncements, often phrased in general terms or principles, played a much larger role in setting and communicating land tenure rules than formal and more specific laws. Two important consequences resulted. First, the land tenure rules have not always been clear and have been subject to arbitrary implementation and enforcement by local officials. Second, economic actors subject to the land tenure rules (including farm households and collective units) have few formal legal rights concerning land tenure that they can exercise or enforce. Resulting problems with the rural land system led to low farmer investment, unrealized potential to increase crop yields, and

¹ W. HUNTER COLBY, FREDERICK CROOK, AND SHWU-ENG H. WEBB, AGRICULTURAL STATISTICS OF THE PEOPLE'S REPUBLIC OF CHINA, 1949-1990 28 (1992). Indeed, a longer-term data series indicates that China has been able to increase national grain production per capita much more rapidly with individual farming than with collective farming. Total grain production per capita increased an average of only 1.3 kg per year during some 25 years of collectivized farming. By contrast, during 1949-55, the initial 6-year period of individual farming, nationwide grain production per capita increased an average of 14.6 kg per year; and from 1981 to 1990, during the first 9 years under the Household Responsibility System, nationwide grain production per capita increased an average of more than 7.2 kg per year. *Id.* at 14, 40.

² Based on United Nations Food and Agriculture Organization Production Statistics, 1980-1997. Statistics available on the internet at <http://www.fao.org>.

significant losses of arable land. Section II of this report provides further background on, and summarizes some of the evidence relating to, problems in the rural land system.

China took a substantial step forward in providing a legal framework for rural land relations in August 1998 when it passed a new Land Management Law. The law contains numerous positive features that, if effectively implemented, should provide farmers with more secure land rights and better protect the limited arable land base. The law also has ambiguities and shortcomings, some of which could be addressed by forthcoming implementing regulations to the law or by provincial legislation. Section III of this report discusses the new law, including its positive features and possible shortcomings. This section also offers recommendations for clarifying existing ambiguities in the Land Management Law through implementing regulations or provincial law.

Well-drafted laws cannot be good laws unless they are effectively implemented. Initial observations from December 1998 fieldwork reveal problems and shortcomings with the law's implementation. It is imperative that China focus attention and resources on effective implementation of the new law. Section IV of this report discusses aspects of implementing the new Land Management Law.

Improving and effectively implementing China's new Land Management Law will not solve all rural land problems. China's rural land tenure system is in need of further policy reform measures and parallel changes in law. Section V of this report outlines some of the most important other policy and legal changes needed beyond the law. These cover aspects such as private transfers of land rights, land tax, land dispute resolution, mortgage, and further extending the term of land use rights.

II. Background and Observations

This section outlines five fundamental characteristics of China's rural land system, defines land tenure security, discusses ways to measure land tenure security, and outlines six factors contributing to tenure insecurity in rural China.

A. Characteristics of China's Rural Land System

Five fundamental characteristics of China's current rural land system must be understood before one can adequately assess the extent of rural land tenure insecurity or other land system shortcomings and explore solutions. These characteristics have been

observed by RDI teams³ and other groups that have undertaken extensive rural field research in China, but they are often not understood by more casual observers.

First, the land system rules and practices are not uniform throughout the country. Collective ownership of land and allocation of specific parcels to individual households is essentially universal throughout China. However, the duration of those rights, the specificity with which the use rights are defined, the prevalence and type of administrative land readjustments undertaken, and other important qualitative aspects of the land use rights vary from region to region and from locality to locality.

Second, the great majority of Chinese farm households do not have written land use contracts that specify the duration of use or other important privileges and obligations associated with their land rights. Most farm households do have an annual tax and quota document which specifies the taxes, collective fees, and crop quotas for which they are responsible. Because these quota and tax “contracts” sometimes contain provisions about land use, they are often misidentified by researchers or other observers as land use contracts. However, these quota and tax documents are almost always annual (one-year) documents. They almost never contain any explicit language concerning the term of use for the land. At most, the documents imply that the farmer will be able to stay on the land during a one-year cropping cycle so that he can fulfill his tax and quota obligations.

Third, 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

³ RDI is a nonprofit research and consulting organization specializing in issues of rural land law and policy. RDI has rural fieldwork and government advisory experience in 29 countries of Asia, Eastern Europe, Latin America, and the Middle East. Since 1987, RDI teams have conducted eleven rounds of rural field research concerning rural land tenure issues in thirteen Chinese provinces: Sichuan, Fujian, Zhejiang, Jiangsu, Anhui, Hainan, Hebei, Guizhou, Shanxi, Shandong, Henan, Hubei, and Shaanxi; and three provincial-level municipalities: Beijing Municipality, Tianjin Municipality, and Shanghai Municipality. The RDI field researchers used Rapid Rural Appraisal methods in this fieldwork. Farmer interviewees are not passive respondents to a questionnaire, but active participants in a semi-structured interview. The researchers use a checklist of issues as a basis for questions, not necessarily addressing all questions in each interview and sometimes departing from the basic questions to pursue interesting, unexpected, or new information. The RDI field researchers randomly select interviewees, typically visiting one household at each stop. Researchers take extra measures to avoid the company of local officials in order to maximize the candidness of interviewees. Typical interviews last from one to two hours. Most of the field research was done in collaboration with the State Council's Development Research Center and the Ministry of Agriculture's Research Center for Rural Economy.

RDI, together with the Ministry of Agriculture's National Experimental Zone Office, also designed and conducted a 1,080 sample household survey on rural land issues and a follow-up survey of 504 of those same households. The initial survey was conducted in December 1996 in four counties of Fujian and Shaanxi provinces. The follow-up survey was conducted in two of these counties (one each from Fujian and Shaanxi) in June 1997.

rights in 1993, these policies have generally not been implemented at the grass-roots level. Hence, one must not mistake Party or central government policy for the actual situation at the farm household level.

Fourth, the majority of China's farmers would prefer much longer use rights to land than they currently possess. This observation is supported by RDI's research findings as well as several scientific sample household surveys. In conducting Rapid Rural Appraisal field research in 14 provinces and provincial-level municipalities from 1987 to 1996, 79 percent of Chinese farmers interviewed by RDI favored a policy of perpetual land-use rights. A more formal sample survey of 1,080 farm households in four counties of Shaanxi and Fujian provinces found that 54 percent of respondents favored use rights of 50 years or longer.⁴ A 1993 rural household survey in four counties of Sichuan and Hunan provinces found that 58 percent of the 400-household sample favored perpetual use rights to land.⁵ Finally, a 1994 rural household survey in eight counties of Zhejiang, Henan, Jilin, and Jiangxi provinces found that 56 percent of the 800-household sample favored land use rights granted in perpetuity.⁶

Fifth, most villages have attempted to balance two competing objectives in establishing and implementing land system practices: perpetually equal access to land for subsistence purposes and stable land use rights. In most Chinese villages, this has

⁴ 1996 NEZO/RDI SURVEY. In this survey, farmers were asked to select among six answers: less than 15 years; 30 years; 50 years; 75 years; 100 years; and perpetual use rights. Perpetual use rights was the most popular answer, selected by 43 percent of the respondents.

⁵ James Kung, *Equal Entitlement Versus Tenure Security Under a Regime of Collective Property Rights: Peasants' Preferences for Institutions in Post-reform Chinese Agriculture*, 21 J. COMP. ECON. 82, Table 12 (1995). In this survey, one county in Hunan (Yiyang County) had results greatly differing from the other three counties. In Yiyang County, only 7 percent of respondents favored perpetual use rights. In each of the other three counties, at least 69 percent of respondents favored perpetual use rights. The responses were as follows:

DO YOU THINK USE RIGHTS SHOULD BE GRANTED IN PERPETUITY? (n = 400)				
Attitude	Sichuan		Hunan	
	Mianzu (percent)	Fuzheng (percent)	Hanshou (percent)	Yiyang (percent)
1. Yes	69	80	76	7
2. No	1	19	14	88
3. Do Not Know	30	1	10	5

⁶ James Kai-sing Kung & Shouying Liu, *Farmers' Preferences Regarding Ownership and Land Tenure in Post-Mao China: Unexpected Evidence from Eight Counties*, 38 CHINA JOURNAL 48, Table 6 (1997). One hundred farmers were interviewed in each county. The affirmative responses ranged from 27-84 percent. *Id.*

resulted in a practice of periodically readjusting household land rights to reflect demographic changes in the village. The frequency and extent of those readjustments is not uniform among those villages (consistent with the first fundamental fact discussed above: lack of uniformity).

B. Measures of Land Tenure Security

Land tenure security (or security of land rights) has been defined and measured in a variety of ways. Although differing notions of land tenure or land rights make it difficult to develop a simple, objective means of determining land tenure security, the following definition identifies several key concepts.

Land tenure security exists when an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labor and capital invested in the land, whether in use or upon transfer to another holder.⁷

Regardless of the land system, land tenure security can be measured based on three important criteria: (1) breadth; (2) duration; and (3) assurance.⁸ Breadth is a measurement of the quantity and quality of the land rights held,⁹ and may include the rights to possess land; to grow or harvest crops; to pass on to heirs; to sell land or to lease it to others; to pledge land rights as security for credit; to prevent trespass; to graze cattle; to harvest wildlife; to gather firewood; to build structures on land; to extract mineral resources; and to use surface water.¹⁰ Land tenure rights are not a single entitlement in any land system, but are multiple and varied and can be analogized to a “bundle of sticks.” Breadth measures the quantity and quality of the sticks which make up the bundle.¹¹

⁷ Frank Place, Michael Roth & Peter Hazell, *Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology*, in SEARCHING FOR LAND TENURE SECURITY IN AFRICA 15, 19 (John W. Bruce & Shem E. Mighot-Adholla, eds., 1994).

⁸ *Id.* at 20.

⁹ *Id.*

¹⁰ Jack L. Knetsch, *Land Use: Values, Controls, and Compensation*, in LAW AND ECONOMIC DEVELOPMENT: CASES AND MATERIALS FROM SOUTHEAST ASIA, 302 (1993).

¹¹ Not every conceivable “stick” is necessarily present even in land systems based on private ownership of land. For example, private land owners do not have the right to extract mineral resources from their land in many countries because those sub-surface rights are held by the state.

Duration measures the length of time for which these rights are valid. Typically the same duration applies to every stick in the bundle of rights, but this is not necessarily so.

Assurance, the third criterion, is a measurement of the certainty of the breadth and duration of the rights that are held.¹² If an individual is said to possess land rights of a specific breadth and duration, but cannot exert or enforce those rights, they have no assurance. A land “right” which cannot be exerted or enforced is not a right at all.

Tenure security exists where an individual with rights to land possesses key rights (including at least the right to possess land, enjoy the benefits of the land, and pass land to heirs) for a duration sufficiently long to recoup the full value of investments made on the land, with enough certainty to prevent outside imposition or interference. Conversely, tenure insecurity exists where an individual possesses an inadequate breadth of meaningful rights, or the duration of those rights held is insufficient to recoup investments made, or the ability to exert or enforce rights is lacking.¹³

¹² Place et al., *supra* note 7, at 20. Some studies which look at the land tenure security issue in rural China do not appear to place importance on the “duration” criterion, but instead focus on the “assurance” criterion. For example, one study appears to measure tenure security based on farmers’ responses to whether they believe their contract will be terminated prematurely. See James Kung, *Equal Entitlement versus Tenure Security under a Regime of Collective Property Rights: Peasants’ Preferences for Institutions in Post-reform Chinese Agriculture*, 21 J. COMP. ECON. 82 (1995). This is problematic for at least two reasons. First, the question posed to farmers assumes that those farmers possess written land use contracts or at least have a clear understanding of the length of their use term. Neither would appear to be true. Few farmers possess written land contracts and most farmers do not know the length of their use term. Second, and perhaps more importantly, the definition of land tenure security which is implicit in the question does not take into account duration. Using the study’s implicit definition of tenure security, a farmer with a land use contract specifying a term of very short duration (for example, one year), would be defined as having “secure” land tenure rights if that farmer does not expect the contract to be terminated before the one year passes.

Another study takes a different, improved approach which decomposes tenure security into two components: present security and future security. The definition of “present” security is essentially the same as the definition of tenure security in the previously mentioned study. It is proxied by the question of whether the farmer perceives any likelihood that the village authority will unilaterally terminate the contractual agreement between them before it is due to expire. “Future security” is defined as confidence that the farmer will obtain in the next contract the same land plots they have currently been assigned. See James Kung & Shouying Liu, *Property Rights and Land Tenure Organizations in Rural China: An Empirical Study of Institutions and Institutional Change in Transitional Economies* (Oct. 1996 draft report). While “future” security gets closer to the issues relevant to a measurement of security which will induce farmers to make long-term investment, this two-pronged approach still has important shortcomings. First, although “future” security gets closer to measuring duration than “present” security, it does not attempt to directly measure duration. Second, it assumes all farmers have a contract and understand its terms. Third, one very short or uncertain use term plus a second very short or uncertain use term still equals a very short or uncertain use term.

¹³ Place et al., *supra* note 7, at 21.

C. Importance of Tenure Security

International experience shows that secure land rights are an essential component of economic development. Compared to weak or insecure rights, secure land rights facilitate economic development in a variety of ways, including:

1. Raising productivity through increased agricultural investment;¹⁴
2. Increasing land transactions and facilitating the transfer of land from less efficient to more efficient uses by increasing the certainty of contracts and lowering enforcement costs;
3. Reducing the incidence of land disputes through clearer definition and enforcement of rights;
4. Increasing credit use by creating greater incentives for investment, improved creditworthiness of projects, and enhanced collateral value of land;
5. Reducing soil erosion and other environmental degradation to land; and
6. Creating political stability by providing farmers a more significant stake in society.¹⁵

Secure land tenure provides the conditions necessary for land owners and land users to put their land to its highest and best use without fear of losing the land or the

¹⁴ Increased productivity results not only from increased incentives to invest, but also from distinct sources of efficiency gains related to other points of the list. For example, another source of increased efficiency arises when land rights become marketable. Land tenure security increases the marketability of land rights which leads to efficiency gains because land can be efficiently allocated to more productive users. Rural land markets do not generally develop if land rights are insecure. The ability to use land as collateral for loans also increases efficiency. In this case, part of the risk of land loss is borne by the lender, and thus security of land rights will increase farmers' access to capital. Finally, increased land tenure security will naturally facilitate more efficient use of capital inputs because insecure land rights depress the price of capital much less (if at all) than the price of rural land, and the increase in the relative capital-land price ratio from insecure land rights will, through the usual substitution effect, reduce the capital intensity of farming.

Increased agricultural productivity from these efficiency gains has other important downstream effects. These include: improved nutrition; improved farm incomes; the ability of farmers, because of those improved incomes, to satisfy their desires for a wider range of consumer goods and services; and the creation of more off-farm jobs (or utilization of what would otherwise be excess production capacity) because of that increased farmer demand for goods and services.

¹⁵ See Feder et al., *Land Policies and Agricultural Productivity in Thailand* (1988), cited in JOHN W. BRUCE & SHEM E. MIGOT-ADHOLLA, *SEARCHING FOR LAND TENURE SECURITY IN AFRICA*, 15 (1994); see also Roy Prosterman et al., *Reforming China's Rural Land System: A Field Report*, RDI Report #85, 2 (1994). This increased stake and increased farmers' income also reduces the pressure for farmers to migrate prematurely to urban areas.

benefits reaped from it. Secure land tenure also contributes to sustainable management of agricultural and forest land by encouraging landholders to make the long term investments necessary to preserve the natural resource base.¹⁶ When insecure tenure prevails, people do not make capital and labor investments necessary for improving productivity due to fears that they will be unable to protect their claims to the land.¹⁷

International, macro-level data illustrates that greater tenure security is associated with higher agricultural productivity. One study, for example, compared the relative agricultural productivity of 82 countries with the relative level of tenure security enjoyed by the majority of the country's farmers (using land ownership versus tenancy as a proxy for tenure security).¹⁸ Among the forty countries with the greatest agricultural productivity, not one was dominantly characterized by a tenant-farming or plantation labor system, typically associated with lower tenure security.¹⁹

Several studies and surveys in China have indicated that Chinese farmers with secure land tenure will make much greater long-term investments in land. One study in Hebei Province compared the investment and production behavior of farmers on their private plots (plots held by households for subsistence production even before the Household Responsibility System) with investment and production behavior on their responsibility plots (plots assigned to households under the Household Responsibility System).²⁰ Farmers in the sample had greater tenure security on the private plots than on the responsibility plots; the private plots had been held for longer terms and were not subject to village reallocation.²¹ The study found that enhanced tenure security had an important and statistically significant effect on farmers' production and investment behavior. Specifically, the study found that enhanced tenure security encouraged the use of land-saving investments in soil quality.²²

¹⁶ William Thiesenhusen, Erman Rajagukguk, Tim Hanstad & Robert Mitchell, *Land Tenure Issues in Indonesia*, 2 (March 1997) (report prepared for USAID).

¹⁷ Steven Hendrix, *Ownership Insecurity in Nicaragua*, in *PROPERTY LAW IN LATIN AMERICA WITH RECOMMENDATIONS*, 940 (1993).

¹⁸ See ROY PROSTERMAN & JEFF RIEDINGER, *LAND REFORM AND DEMOCRATIC DEVELOPMENT* (1987) (chapter 2).

¹⁹ *Id.* at 50, tables 3 and 4.

²⁰ Scott Rozelle et al., *Land Tenure, Property Rights, and Productivity in China's Agricultural Sector* (date unknown) (unpublished report on file with RDI).

²¹ On average, the farmers in the sample had held the private plots for 21 years and the responsibility plots for 9 years. *Id.*, Table 6. Moreover, unlike the responsibility plots, the private plots were not subject to reallocation, could always be transferred by lease, would be retained even if a family member migrated, were not subject to the procurement quota or agricultural tax, and could be converted to other uses. *Id.*, Table 1.

²² These inputs were phosphates and organic fertilizers. The study did not attempt to measure other long-term improvements such as on-farm irrigation, drainage, land leveling, or terracing.

RDI's independent field research findings in China indicate that farmers made numerous annual improvements in their farming practices (assiduous weeding, careful and timely application of water and fertilizer, higher quality seeds and other inputs, etc.) after land was allocated to individual households in the early 1980s, leading to substantial and immediate crop yield increases. These farmers are generally unwilling, however, to make long-term improvements to land (irrigation improvements, drainage improvements, terracing, land leveling, etc.) because of insecure land tenure. RDI found that 84 percent of farmers would make long-term improvements to their land if they had perpetual use rights.²³ These findings are supported by the results of a four-county, 1,080 household survey conducted during December 1996 in Ningde Prefecture, Fujian Province and Yanan Prefecture, Shaanxi Province. The results of this survey indicate that farmers are much more likely to make long-term improvements (slow-maturing investments) with enhanced tenure security.²⁴ The survey results also revealed that with existing short-term use rights: only 6.8 percent of farmers had built irrigation works on their land; 4.9 percent had built drainage works on their land; 2.7 percent had built and repaired terraced fields; 14.7 percent had leveled their land; and 28.3 percent had not made any long-term investments on their land.²⁵ When the same farmers were asked what type of long-term investments they would make if they received 50-year use rights to their land, responses changed dramatically. Specifically, 48.9 percent of the farmers said they would build irrigation works on their land, 32.1 percent would build drainage works on their land, 29.4 percent would build or repair terraced fields, 57.6 percent would level their land, and only 7 percent said they would not make any long-term investments on their land.

A comparison of investment levels on wasteland versus arable land also clearly illustrates the correlation between duration of use rights and farmers' willingness to make long-term investments. RDI's fieldwork in China has shown that farmers who possess use rights to both arable land and wasteland are much more likely to make long-term investments on their wasteland (typically contracted for 50 to 100 years with a written contract), than on arable land (typically farmed for use terms of a short or unknown length and without a written contract).²⁶

²³ Roy Prosterman, Tim Hanstad & Li Ping, *Can China Feed Itself?*, SCIENTIFIC AMERICAN, Nov. 1996, at 90.

²⁴ National Experimental Zone Office & Rural Development Institute, December 1996 Rural Survey (copy on file with RDI) [hereinafter 1996 NEZO/RDI SURVEY].

²⁵ In this survey, long-term improvements were defined as including "measures to increase land fertility such as organic fertilizer or green fertilizer."

²⁶ See generally, Tim Hanstad & Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to Wasteland*, 19 LOYOLA L.A. INT. & COMP. L. J. 545 (1997).

D. Land Tenure Insecurity in Rural China

Since the beginning of rural reforms in 1979, China's rural land tenure system has undergone fundamental changes. The breakup of collectivized agriculture led to the Household Responsibility System. Under the Household Responsibility System land use rights and agricultural output requirements are contracted directly to households, which are entitled to retain any surplus production.

The break-up of the communes and the establishment in their place of roughly 180 million small family farms with individualized land rights was a reform of vast significance, and led to a substantial increase in agricultural production. Private household use rights to land are much stronger now than before 1980. Chinese farm households have undoubtedly benefited from the greater individualization of land rights associated with the Household Responsibility System.

However, two fundamental points must be emphasized. First, *these household land tenure rights are still insecure*. Second, *addressing that insecurity will result in significantly increased private agricultural investment and higher agricultural productivity*.

As discussed above, land tenure security can be measured by three criteria: breadth, duration, and assurance. In China, farmers' insecure land tenure rights stem primarily from shortcomings in duration and assurance, and secondarily from shortcomings in breadth. At least six interrelated factors contribute to land tenure insecurity in rural China:

- (1) the short-term or uncertain duration of the rights;
- (2) the practice of land readjustments to reflect demographic change;
- (3) the lack of written documentation and certification of land rights;
- (4) the lack of clarity surrounding collective land ownership
- (5) the widespread and undercompensated takings of land; and
- (6) the inability of farmers to enforce and protect their rights.

1. Length of Use Term

Upon the introduction of the Household Responsibility System, farm households typically received rights to use specified pieces of land for periods of three years or less. In 1984, the Communist Party Central Committee issued Rural Work Document #1 urging local officials to prolong the use term to at least 15 years. In September 1994, the

Peoples' Daily reported a Central Committee decision that the land use rights to arable land will be extended another 30 years after the original 15 year right expires.²⁷

RDI's field research experience indicates that the so-called 15-year use right policy originating in 1984 was never widely implemented. Moreover, RDI's field research experience and the results of more comprehensive surveys indicate that the 30-year use right policy has been implemented in only a small minority of villages. According to various Chinese sources, as of early 1998, fewer than 10 percent of all villages nationwide had extended use rights for another 30 years.²⁸

RDI's field research indicates that a large majority of China's farmers are uncertain of the length of their use rights. Of the minority who did know the term length, about half reported use terms of ten years or less.²⁹

Short-term use rights provide farmers with little incentive to make improvements that will increase the future productivity of the land, since any benefits beyond the contract term will accrue to the collective owner or subsequent landuser.³⁰ RDI's Rapid Rural Appraisal field research in 14 provinces and provincial-level municipalities from 1987 to 1996 found that only 39 percent of the farmers interviewed had made any land improvements they considered "long-term", even though most could name specific long-term improvements which could increase the productivity of their land. When asked whether they would make long-term improvements to the land if the use term were extended perpetually, 84 percent of the farmers responded affirmatively.

²⁷ *Gaige Zai Xi Wang De Tian Ye Shang*, PEOPLES' DAILY (overseas edition), Sept. 21, 1994. An earlier Central Committee decision published in November 1993 stated that "the term for contracting land may be extended" even beyond the 15-year period. Decision of the CCP Central Committee on Some Issues Concerning the Establishment of a Socialist Market Economic Structure, art. 31, adopted by the 14th Central Committee of the CCP, 3d plenary session (Nov. 14 1993) available in LEXIS, News Library, BBCSWB File. While the 30-year period is to apply to most cultivated land, longer use rights are allowed for other types of agricultural land. Some regions have recently launched an effort to auction land rights of up to 100 years for "wasteland" (mountains, gullies, hills, beaches, and rivers).

²⁸ Authors' conversations with PRC Ministry of Agriculture officials.

²⁹ In RDI's rural field research spanning 10 years and 14 provinces or provincial-level municipalities, 63 percent of the farmers interviewed did not know the length of their land use rights, 10 percent said 3 to 5 years, 8 percent said 6 to 10 years, and 19 percent said more than 10 years. The figures may overstate the actual length of use terms due to the practice of land readjustments for demographic changes. Many farmers do not make the connection between the length of the use term and readjustments. For example, some farmers will insist that they have 10-year use rights which started 8 years ago, even though the village undertook a readjustment 5 years ago and they are now farming entirely different land than they were at the commencement of the 10-year "term".

³⁰ Knetsch, *supra* note 10, at 303.

2. Land Readjustments

In rural China, the practice of readjusting land rights to reflect demographic change is perhaps the greatest source of tenure insecurity.³¹ These land readjustments gravely violate the assurance principle of tenure security. Readjustments also violate the duration principle of tenure security and are closely related to, but analytically separate from, the issue of use term length.

Most villages in rural China undertake periodic readjustments of land in response to demographic changes in the village.³² The land readjustment practice is rooted in the egalitarian concept that collectively-owned land should be equally distributed among members of the collective community. This concept has been referred to as the equal entitlement rule. While most localities have apparently adopted an equal entitlement rule either explicitly or, more likely, implicitly, China's centrally-issued laws and policies do not contain or require an equal entitlement rule for collectively-owned land.

The practice of frequent land readjustments based on household demographic changes creates uncertain and short-term rights on land that discourage investment. Both RDI's extensive field research in China and the results of other surveys clearly indicate that most Chinese farmers favor a policy of long-term and even perpetual use rights to land.³³

³¹ Not all readjustments of land for population change in China are of the same magnitude. Various studies have categorized two general types of readjustments: "big" or comprehensive readjustments and "small" or partial readjustments. "Big" or comprehensive readjustments involve an overall change in the landholdings of all households in the village. In a big readjustment, all farmland in the village is given back to the collective management and reallocated among village households so each household receives entirely different land. A "small" or partial readjustment consists of adding to or taking from a household's existing landholding when that household's size changes. The 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 which neither add nor lose members will continue to farm the same landholding. The State Council directive on 30-year use rights, while promoting a no-readjustment policy singled out big readjustments as particularly damaging to tenure security.

³² Various surveys indicate that approximately two-thirds of China's villages have undertaken land readjustments since the commencement of the Household Responsibility System. A comprehensive survey of 280 villages found that 65 percent of the villages had conducted some type of land readjustment to reflect demographic changes. He Daofeng, *Changes in Rural Land System at Village Level: Initial Report on 280 Village Survey in China*, 16 (Sept. 1992) (unpublished report prepared for Proceedings of International Symposium on Rural Land Issues in China). A 30-village survey in four provinces from 1994 found that 69 percent of the villages had undertaken some type of land readjustment. See Kung & Liu, *supra* note 6, table 5). A 1996 survey of 1080 households in four counties of Shaanxi and Fujian provinces found that 68 percent of the households had experienced land readjustments, and that the mean number of readjustments had been 2.6 of which 1.8 were "big" or comprehensive readjustments. 1996 NEZO/RDI SURVEY (on file with RDI).

³³ See *supra* page 5.

Research results also clearly indicate that farmers would be willing to make long-term investments in their land if they were given long-term, secure use rights. In the 1,080-household sample survey conducted in Fujian and Shaanxi in 1996, 93 percent of the farmers interviewed responded that they would be willing to make long-term investments in their land if they were given use rights of 50 years or more. The practice of frequent land readjustments is, of course, inconsistent with the granting of such long-term use rights, whether for 30 years, 50 years, or longer.

a. Do Farmers Want Frequent Land Readjustments?

China's rural land policies have focused on the issue of readjustments since at least 1994, when the Central Committee issued the policy directive extending use rights for farmers for another 30 years. That policy directive also promoted rather than required an end to land readjustments during the new contract period. As discussed above, few local collective cadre have comprehensively implemented the directive's policies.

For the overwhelming majority of Chinese farm households, agricultural land is the predominant or sole source of income. Some farmers oppose a no readjustment policy based on concerns that under such a policy, land amounts will remain fixed as household population increases, making it more difficult for farmers with growing families to support those families. The results of the 1,080 household survey in Fujian and Shaanxi indicate that ending land readjustments without addressing farmers' underlying concerns for equal entitlement to land is not always a popular policy. The results from this household survey concerning farmers' attitudes toward land readjustments are mixed. The 1,080 households split almost evenly, with 45 percent of those interviewed in favor of a policy to end readjustments and 49 percent against such a policy.

If overwhelming numbers of Chinese farmers indicate that they would prefer long-term, stable use rights on land, and that they would make investments in their land if such rights were granted, why do only about half of those farmers support a no-readjustment policy? The answer to this question lies in the contradiction between long term tenure security and equal entitlement created by the practice of frequent land readjustments. Chinese farmers desire long-term stable land rights. Chinese farmers also recognize their interest in preserving a landholding that is large enough to support a growing household. *Frequent land readjustments have been the primary mechanism employed to protect this latter interest.* Given the choice between two general policy alternatives, frequent land readjustment or no land readjustment, farmers face a difficult decision, especially if they are expecting an increase in household size or existing members of the household have not yet received an additional allocation of land. Under these circumstances, it is not surprising that concerns over equal entitlement to land can sometimes override concerns for tenure security. One way to resolve this tension would be to design a no-readjustment

policy that balances farmers' concerns over equal entitlement to land and their concerns over long-term, secure land rights.

Chinese farmers will overwhelmingly support a no-readjustment policy that also addresses their concerns about equal entitlement to land. The results of a July 1997 follow-up to the 1,080 household survey strongly support this conclusion. In order to identify the reasons for some households' opposition to a no-readjustment policy and to explore alternative policy options which could make a no-readjustment policy more acceptable to farmers, RDI and the National Experimental Zone Office conducted a follow-up survey of the same 501 households in Fuxian County, Shaanxi Province and Ningde City, Fujian Province that had also participated in the December 1996 household survey.³⁴ In the initial 1,080-household survey, 49.1 percent of the households in Fuxian and Ningde opposed a no-readjustment policy, 45.5 percent supported the policy, and 5.4 percent responded that they were undecided. During the follow-up survey, however, only 30.1 percent of households in the two counties opposed the no-readjustment policy, while 65.7 percent supported a no-readjustment policy and 4.2 percent remained undecided.³⁵

As part of the follow-up survey, we asked additional questions to households that opposed a no-readjustment policy. We asked if they would support such a policy if it were introduced together with one or more of the following policy options: (1) one final readjustment conducted prior to the implementation of the no-readjustment policy; (2) adjustment of taxes and fees to reflect changes in household population; (3) allocation of

³⁴ Prior to the 501 household follow-up survey, in June 1997 RDI conducted follow-up questioning of 22 randomly selected farmers in five of the villages in Fuxian County that participated in the December 1996 survey. These farmers' initial attitudes toward adopting a no-readjustment policy closely mirrored the results of the December 1996 survey, in which 57 percent of the households in Fuxian opposed a no-readjustment policy. Twelve of the 22 randomly selected farmers (55 percent) also opposed a no-readjustment policy. Deeper investigation, however, showed that 7 of the 12 opponents would support a no-readjustment policy if the village conducted one final big readjustment before its implementation. Ten of the 12 opponents indicated that they would support a no-readjustment policy if the village could allocate additional land for population increases from flexible land but could not take back land based on population decreases. Nine of the 12 supported a no-readjustment policy where burdens would be adjusted to lessen the impact of household population changes, but flexible land would not be allocated. Only *one* of the 22 farmers interviewed continued to oppose a no-readjustment policy after all of the possible policy variables had been presented.

³⁵ Two explanations are offered for the significant change in responses to the same question by the same sample. First, the close proximity of the attitude questions about length of use rights and readjustment policy in the second survey may have made interviewees recognize the inconsistency of favoring both long-term use rights and periodic land readjustments. These two questions were asked in different parts of the questionnaire in the first survey, but were in immediate sequence in the second survey. Second, the second survey may reflect a more considered response. Apparently, this survey question ignited subsequent, extensive, informal discussions about land readjustment policies in the villages where the survey was conducted. Such discussions and further reflection about land readjustment policy may have caused many in the sample to change their mind.

“flexible” land for household population increases; (4) allocation of non-arable land such as wasteland or wetland for household population increases; and (5) a combination of the policies described above. The responses indicate that the vast majority of farm households will support a no-readjustment policy introduced together with other policy options. For example, 77.4 percent of the households supported a no-readjustment policy where the village conducts one final big readjustment prior to implementing the policy; 83.4 percent of the households supported a no-readjustment policy in combination with burden readjustments; 89.8 percent of the households supported a no-readjustment policy where the village could allocate flexible land for population increases; 82.4 percent of the households supported a no-readjustment policy where the village could allocate wasteland or wetland for household population increases; and finally, 93.6 percent of the households supported a no-readjustment policy that combined all of the policy options described above.

3. Written Land Contracts

Written land contracts can enhance land tenure security in at least three important ways. First, they inform farmers of the breadth of their land rights. Second, they inform farmers of the duration of their land rights. Finally, written land contracts provide greater assurance of those rights. RDI’s field research indicates that collective and government officials are less likely to violate farmers’ land rights if those rights are reflected in a written contract. Moreover, when officials (or others) do violate those rights, farmers are more likely to both seek and receive redress for the violation. Unfortunately, as discussed above, most farmers in China do not have written land use contracts.

In RDI’s recent household survey in Fujian and Shaanxi, only 13 percent of the farmers in the sample possessed written land contracts to their arable land. Less than 1 percent of the farmers had land certificates. These results are consistent with those obtained in RDI’s China field research in 12 other provinces and provincial-level municipalities over the past eleven years.

In the authors’ field research in China, we have observed that many of the written land contracts which do exist are inadequate. Several farmers have shown us land contracts in which the expiration date or the duration is left blank. Some farmers possess contracts in which the signature lines are left blank. Other farmers have shown us contracts which do not address important aspects of their rights or which are worded in such a general manner or so ambiguously as to be unhelpful. Virtually all written contracts appear to use locally drafted forms, originating at the county or lower level.

4. Collective Land Ownership: Lack of Clarity

Although China's Constitution specifies that agricultural land is collectively owned, what "collective" ownership presently means is not entirely clear. This lack of clarity relates to both the identity and the rights and responsibilities of the collective landowner. The lack of clarity surrounding land ownership contributes to the tenure insecurity of farm households.

Ambiguities exist as to the specific entity responsible for collective ownership of land. This vagueness has created a power vacuum in which various entities often exercise ownership rights. The authors, in extensive fieldwork in the Chinese countryside, have found that very few at the farm level seem to know who, specifically, owns the land.

The results of the 1,080 household survey conducted in rural China in December 1996 confirm the confusion over land ownership in the countryside. When asked who owned the land to which they held use rights, most farmers (57 percent) said the national government owned the rural land. Other answers included: the village (16 percent); the villager team (13 percent); the individual farmer (9 percent); and the township (2 percent).

The present legal structure does not clarify the ambiguity surrounding ownership of agricultural land. The 1982 Constitution establishes the basic principle of collective ownership of agricultural land. The law, however, does not provide a clear picture of what specific representative group of the collective or even what level of the collective should operate and manage as the collective owners.

5. Takings of Agricultural Land.

Takings (or compulsory acquisition) of agricultural land by both state and collective entities are ubiquitous, generally under- or uncompensated, and do not involve the direct participation of land users. Such "takings" can take the form of a compulsory acquisition of collectively-owned land by the state for state purposes or a premature termination of a farm household's use rights by the collective owner so the collective can use the land for other purposes. The result is typically the same for the farm household using the land. Such takings both threaten China's limited arable land base and are a significant factor contributing to farmers' tenure insecurity.

RDI's fieldwork in China indicates most farmers report that at least some arable land in their village has been recently expropriated for non-agricultural purposes. In the majority of such cases we have studied, farmers who lose use rights to expropriated land receive inadequate compensation. Furthermore, such farmers typically are excluded from participation in the processes and procedures leading to expropriation.

Moreover, when land is taken by the state or a non-owning collective unit, farmers are generally unaware of the amount of compensation fees and resettlement subsidies provided to the unit from which the land has been expropriated and have little recourse in assuring that the revenues are applied according to law. RDI's fieldwork indicates that villages from which land is expropriated will typically spread the burden of the loss among all village farmers by conducting a general readjustment, giving the farmers who initially lose all or much of their land an allocation of land (albeit smaller than the original plot) at the expense of somewhat smaller allocations to everybody else. Expropriations thus serve as a further occasion for village-wide land readjustments, undercutting not only the tenure security of those farmers who were using the expropriated land, but the tenure security of all farmers in the village.

6. *Enforcing Rights of Land Users*

Providing additional or longer land rights to farmers will be ineffective if farmers do not have the means for protecting and asserting those rights. Thus, land dispute resolution issues loom large in providing tenure security to China's farmers.

RDI's fieldwork has consistently found that farmers perceive little possibility for redress in land disputes involving village leaders. Because of power imbalances between farmers and local cadres, disputes between farmers and state or collective units do not lend themselves to the type of informal dispute resolution employed to resolve inter-farmer disputes. Farmers may take disputes with state or collective units to court, but are often dissuaded by their lack of understanding of the law, the time and costs involved in pursuing legal action, or social pressure. The most common response RDI has found to farmers' disputes with state or collective units has simply been to do nothing.

Another alternative is to lodge a complaint to a higher level of government (*shangfang gaozhuang*). Such complaints consist of a written and signed document containing detailed charges of malfeasance by local cadres and enumerating specific demands.³⁶ The purpose of such complaints is not to protest central policies, but rather to compel local cadres to follow or enforce existing state law and regulations that are to the peasants' benefit.³⁷ Although no nationwide figures exist, the frequency of such complaints

³⁶ Kevin O'Brien and Linjiang Li, *The Politics of Lodging Complaints in Rural China*, CHINA QUARTERLY 756, 778 (1995).

³⁷ *Id.* at 759.

is rising,³⁸ with governmental departments in Zhejiang Province alone receiving 200,000 complaints in 1996.³⁹

Although such complaints have emerged as Chinese farmers' most common means of seeking redress against cadres who are corrupt or ignoring the law, several inherent flaws make this an ineffective means of resolving disputes, land-related or otherwise. First, farmers must be aware of their rights in order to lodge complaints. The flow of information on central policies, laws and regulations, however, remains limited, and is largely controlled by local cadres, the party against whom such complaints will be directed.⁴⁰

Second, most areas of the country have not established substantive requirements for valid complaints or specific procedures for handling complaints once they have been received by government organizations. As a result, little action is taken to resolve the underlying dispute.

Unfortunately, in the absence of adequate dispute resolution mechanisms, the final alternative for farmers whose land rights have been violated is violent protest. In recent years, violations of land rights have resulted in numerous incidents of rural unrest. In one example from Shandong Province, village cadres received 10,000 RMB yuan from farmers in payments for contracts on experimental land and other plots. When villagers demanded that some of the money be used for irrigation projects or the purchase of machinery, the leaders informed them that the money had already been spent to entertain higher level officials. When complaints to township officials fell on deaf ears, peasants threw bricks at the village cadres.⁴¹ In an example from a neighboring village, when a cadre used his influence to contract orchard land to himself at very favorable terms, angry villagers ruined the orchard before the fruits could be picked.⁴² According to the New China News Agency, nine outbreaks of violence over land injured more than 100 people in Guangdong Province in 1993.⁴³

³⁸ *Id.* at 760-761.

³⁹ Xinhua News Agency, *Regulation Helps People Lodge Complaints in East China*, Jan. 7, 1997, available in LEXIS, World Library, Xinhua File.

⁴⁰ Kevin J. O'Brien, *Rightful Resistance*, WORLD POLITICS, Oct. 1996, at 36.

⁴¹ DALI L. YANG, CALAMITY AND REFORM IN CHINA: STATE, RURAL SOCIETY, AND INSTITUTIONAL CHANGE SINCE THE GREAT LEAP FAMINE 196 (1996).

⁴² *Id.* at 196.

⁴³ Sheila Tefft, *China's Deepening Rural Unrest Tests Beijing's Control*, CHRISTIAN SCIENCE MONITOR, May 17, 1994.

III. The 1998 Land Management Law

The new Land Management Law, which becomes effective on January 1, 1999, could represent a quantum leap in China's system of land tenure security. The law has the potential to provide Chinese farmers with the increased level of tenure security required to facilitate long-term productivity enhancing investments in their land, thereby increasing agricultural productivity and rural living standards. The new law also has the potential to provide increased protection of arable land, ensuring that China's agricultural land base will be sufficient to meet the needs of increasing population and improving diets into the 21st century.

Adoption of the law was a momentous step, but two further steps are necessary to ensure that the law's full potential is met. First, several ambiguous aspects of the new Land Management Law require further definition and clarification. Second, the law must be effectively implemented throughout China's vast and diverse countryside.

The second step, effective implementation of the new Land Management Law, is addressed in section IV of this report. This section (section III) addresses the first of those two steps. This section first provides an analysis of the positive features of the new Land Management Law related to land tenure security, arable land protection, and enforcement and penalty provisions. Second, it discusses remaining shortcomings of the new law and suggests methods of clarifying and strengthening the law through the law's implementing regulations⁴⁴ or through corresponding provincial laws.

A. Positive Aspects of the New Land Management Law

1. *Land Tenure Security*

Article 14 of the new Land Management Law addresses three of the major shortcomings related to rural land tenure security previously identified by RDI during its fieldwork in China:⁴⁵ the short or uncertain length of the use term; the lack of written land

⁴⁴ The State Council plans to issue the implementing regulations for the 1998 Land Management Law by January 1, 1999.

⁴⁵ Since 1987, RDI attorneys and research personnel have conducted 12 rounds of fieldwork in eleven provinces and three provincial-level municipalities throughout China. For a discussion of the results of RDI's fieldwork in China and a series of corresponding policy recommendations, see Roy Prosterman, Tim Hanstad, and Li Ping, *Can China Feed Itself?*, SCIENTIFIC AMERICAN, Nov. 1996, at 90 [Zhongguo Kending Neng Yanghuo Ziji, CANKAO XIAOXI November 19-23, 1996]; Tim Hanstad and Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to a Wasteland*, 19 LOYOLA OF LOS ANGELES INTL. & COMP. L. JNL., 545-83 (1997)[*Zhongguo Nongcun Tudi Zhidu Gaige: Huangdi Shiyongquan Paimai*, 4 ZHONGGUO NONGCUN JINGJI 60-67 (1996)]; Roy Prosterman, Tim Hanstad, and Li Ping, *Large Scale Farming in China*,

use contracts; and the practice of frequently readjusting landholdings based on changes in household population.

(1) *Length of Use Term*

In the early 1990s, the Chinese Communist Party Central Committee established a policy that use rights to arable land should be extended for 30 years after the original 15 years expires. Up until the new Land Management Law was passed, only a small minority of China's villages had implemented the 30-year policy. Article 14 of the new Land Management Law represents the first time that central government policies concerning the use term for rural land have been explicitly stated in law. Article 14 states that "[C]ollectively owned land shall be contracted to the members of the collective economic entity for agricultural, forestry, animal husbandry or fishery operations. The contracting period shall be 30 years."⁴⁶ We are hopeful that this provision will provide the impetus for collective economic entities throughout China to fully implement 30 year use rights to arable land as well as provide higher level government entities with the ability to enforce this newly created legal requirement.

(2) *Written Land Use Contracts*

Also unprecedented in Chinese legislation, Article 14 further requires that "the contractor and the contractee execute a contract stipulating the rights and obligations of the two parties," and that "farmers' land contracting rights shall be protected by law."⁴⁷ RDI's fieldwork in China has consistently found that, under the previous Land Management Law and related land management policies, 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. The legal requirement of a written land use contract will inform farmers of the duration and breadth of their rights and provide greater assurance of those rights.

It is important to recognize, however, that the extent to which the requirement of a written contract will contribute to land tenure security depends on the form and content of the contract document.

(3) *Frequent Land Readjustments*

An Appropriate Policy?, 28 JOURNAL OF CONTEMPORARY ASIA 74-102 (1998) [*Zhongguo Nongye de Guimo Jingying: Zhengce Shidang Ma?*, 6 ZHONGGUO NONGYE GUANCHA, 17-29 (1996)].

⁴⁶ *Zhonghua Renmin Gongheguo Tudi Guanli Fa* (Land Management Law of the People's Republic of China), Art. 14 (August 29, 1998) [hereinafter 1998 Land Management Law].

⁴⁷ 1998 Land Management Law Art. 14.

Article 14 of the 1998 Land Management Law also contains the first legal language addressing the greatest source of land tenure insecurity: the practice of frequently readjusting landholdings based on changes in household population. Article 14 states:

Subject to agreement by two thirds of the members of the village conference or two thirds of villager representatives and approval by the township government and the county administrative agency responsible for agriculture, in isolated cases, an appropriate readjustment of contracted landholdings may be made among contractors within their contract term.⁴⁸

This provision contains several important elements. First, readjustments are limited to “isolated cases.” This provision should be interpreted to exclude readjustments in all but extreme circumstances. Second, all land readjustments, including small readjustments,⁴⁹ are subject to agreement by two thirds of the village committee or two thirds of the villager representatives and must be approved by both the township government and the county administrative agency responsible for agriculture.

The intent of Article 14 to limit readjustment of landholdings to extraordinary circumstances is clear, and its potential to increase land tenure security is dramatic. At the same time, however, the language of Article 14 and other provisions leave several important questions regarding land tenure security under the new law. These questions, and our suggestions for addressing them, are discussed in detail in Section II of this memorandum.

⁴⁸ *Id.* at Art. 14.

⁴⁹ Two general types of readjustments have been identified: “big” or comprehensive readjustments and “small” or partial readjustments. “Big” or comprehensive readjustments involve an overall change in the landholdings of all the households of the village. In a big readjustment, all farmland in the village is given back to the collective management and reallocated among village households so each household receives entirely different land. A “small” or partial readjustment consists of adding to or taking from a household’s existing landholding when that household’s size changes.

2. *Arable Land Protection*⁵⁰

The 1998 Land Management Law creates a system of land use planning as the central element of a new strategy to restrict conversion of agricultural land to non-agricultural uses and ensure that the total area of arable land within the provincial level administrative district does not decrease. Under the new system, all land is classified into three categories: agricultural land,⁵¹ construction land,⁵² and unused land.⁵³

Each level of the People's Government is required to formulate an Overall Land Use Plan in accordance with plans from upper level governmental units⁵⁴ according to a timeframe determined by the State Council.⁵⁵ The Overall Land Use Plans are subject to approval by higher level governments, and once approved, are to be strictly enforced.⁵⁶

The primary purpose of the Overall Land Use Plan is to assist the state in protecting arable land and strictly controlling the conversion of arable land to non-agricultural uses. This is accomplished through three important measures. First, at least 80 percent of the arable land within the provincial level administrative district must be designated as Basic Arable Land Protection Zones.⁵⁷ Any expropriation of Basic Arable Land, no matter how small, requires approval by the State Council.⁵⁸ This designation subjects a large proportion of China's total arable land base to a high degree of administrative oversight, making it less attractive to potential developers.

⁵⁰ It should be noted that freedom from arbitrary land expropriation and taking, and assurances that compensation for the value of expropriated land will be received, are also essential elements of land tenure security. Because the new Land Management Law addresses these elements of tenure security within the framework of its new system for protecting arable land, however, our analysis of the positive features of the new law addresses arable land protection issues separately from land tenure security issues.

⁵¹ "Agricultural land" is defined as "land directly used for agricultural production, including arable land, forest land, grassland, land for agricultural irrigation facilities, and aquacultural areas." 1998 Land Management Law Art. 4.

⁵² "Construction land" is defined as "land for constructing buildings and fixtures, including land for urban and rural residential sites and public facilities, land for factories and mines, land for transportation and irrigation facilities, land for tourism, and land for military use." *Id.* at Art. 4.

⁵³ "Unused land" is defined as "land other than agricultural land and construction land." *Id.*

⁵⁴ *Id.* at Art. 18

⁵⁵ *Id.* at Art. 17.

⁵⁶ *Id.* at Art. 21.

⁵⁷ *Id.* at Art. 34.

⁵⁸ *Id.* at Art. 45.

Second, the new Land Management Law requires land takers to develop other non-arable land into arable land of similar quantity and quality to replace the arable land that has been taken.⁵⁹ If there is no possibility to develop new arable land, special fees must be paid to develop the arable land. The law also requires the People's Governments at the provincial, autonomous region, and municipal levels to strictly enforce the plan and adopt measures to ensure that the total area of arable land within their boundaries does not decrease.⁶⁰

Third, new rules governing the conversion and expropriation or taking of other agricultural land are detailed in Chapter V of the law (Articles 43-65). These rules contain several significant improvements to China's previous legal framework for land expropriation:

1. The law explicitly states a preference for using state owned land rather than collectively owned land for construction purposes.⁶¹
2. The law implies a strong preference against using agricultural land under current production for construction purposes.⁶²
3. Most conversions of land from agricultural use to construction use, and all expropriations of land, require the approval of the provincial level government or higher.⁶³
4. The level of compensation for state expropriations of arable land has been raised, and is adjustable by the State Council based on the current level of social and economic development.⁶⁴

⁵⁹ *Id.* at Art. 31.

⁶⁰ *Id.* at Art. 33.

⁶¹ *Id.* at Art. 43.

⁶² *Id.* at Art. 36 & 44.

⁶³ *Id.* at Arts. 44 & 45.

⁶⁴ According to Article 47, compensation for arable land expropriations include basic land compensation, compensation for young crops and fixtures, and resettlement subsidies. The basic land compensation amount has been raised to 6-10 times the value of the average annual output of the arable land over the three years prior to expropriation (from 36 times in the 1986 Land Management Law). The maximum resettlement subsidy for each hectare of expropriated land has been capped at 15 times the average annual output value over the prior three years (up from 10 times in the 1986 Land Management Law). The standards for surface fixtures and young crops will be stipulated by provinces, autonomous regions, and provincial level municipalities. The total amount of land and resettlement compensation for expropriation of arable land has been capped at 30 times the average annual output value for the three prior years (up from 20 times in the 1986 law). Increasing the cost of taking arable land for non-agricultural uses will further inhibit arable land takers and thus help to protect against arable land loss. Based on RDI's fieldwork in

5. When land is withdrawn by the collective landowner for public welfare purposes, land use right holders are entitled to “appropriate compensation” under Article 65.⁶⁵ Although the meaning of “appropriate compensation” is unclear, this provision nonetheless represents an improvement over the 1986 Land Management Law, under which no compensation was required when arable land was withdrawn by the collective for public welfare purposes.⁶⁶

3. *Enforcement and Penalty Provisions*

Chapters VI and VII (Articles 66-84) of the 1998 Land Management Law contain a set of provisions governing enforcement of the new law and prescribing administrative or criminal penalties for units or individuals who violate the law. Compared to parallel provisions in the 1986 Land Management Law, these welcome provisions contain significantly more detail regarding the rights and responsibilities of administrative agencies and governmental units involved in land management. They also expand the scope of both administrative discipline and criminal liability for violations of the law. These provisions hold enormous potential in ensuring that the new Land Management Law is effectively enforced throughout China.

B. Remaining Shortcomings and Potential Solutions

The 1998 Land Management Law is a momentous step forward. To ensure that the potentials for greater land tenure security for farmers and protection against state expropriation and collective takings of agricultural land are reached, however, several ambiguous aspects of the new Land Management Law require further definition and clarification, either through the law’s forthcoming implementing regulations or through related provincial laws. The most essential of the aspects requiring clarification include: (1) the necessary limitations on the collective land owner’s right to contract land to non-members of the collective economic entity; (2) the form and content of land use contracts

China, a maximum of 30 times the average annual output value more closely approaches the potential market value of arable land in rural China. Requiring market value or nearly market value for arable land takings is the most common approach taken in other countries.

⁶⁵ The same compensation standard applies to withdrawal of land which is already state owned for public purposes under Article 58. However, very little arable land will already be state owned and subject to this provision (only arable land in urban locations).

⁶⁶ Requiring compensation for the farmer-user when the land is withdrawn for public purposes is not only equitable, but also makes economic sense because it will improve farmers’ confidence that they will be compensated for long-term land improvements even if land is withdrawn and thus motivate them to make such improvements.

required by the law; (3) the specific requirements to ensure strict limitation of land readjustments; (4) the essential restrictions of the collective economic entity's right to use land for development of Township and Village Enterprises, and the minimum payment required when the collective wishes to acquire agricultural land for such purposes; (5) the specific amount of compensation required when the collective economic entity withdraws land for public purposes; (6) the allocation of compensation between the collective owner and farmer users for state expropriations of agricultural land; and (7) farmer involvement in the expropriation and takings processes.

The following sub-section further discusses these necessary clarifications and categorizes them into aspects concerning land tenure security, arable land protection, and enforcement and penalty provisions.

1. Land Tenure Security

Although the new Land Management Law has the potential to significantly increase land tenure security for Chinese farmers, it also contains several important shortcomings, including: (1) the lack of any area or percentage limitations on the collective's right to contract collectively owned arable land to non-members of the collective economic entity; (2) the lack of a standardized land use contract for collectively owned arable land; and (3) the need for further definition of the circumstances under which landholdings may be readjusted by the collective.

(1) Limitations on Contracting Arable Land to Non-Members of the Collective Economic Entity

Article 15 contains the most potentially dangerous shortcoming of the new Land Management Law's provisions addressing land tenure security. Article 15 states that:

Collectively-owned land may be contracted to units or individuals other than those of their own collective economic entities for agricultural, forestry, animal husbandry, or fishery operations. The contractor and the contractee shall execute a written contract specifying their rights and obligations. The term of the contract shall be specified in the contract. The units and individuals contracting the land have the obligation to protect the land and use the land according to the contract. Where collectively owned land is contracted to units or individuals other than members of the collective economic entity, such contracting must be approved by two thirds of the

village committee or two thirds of the villager representatives, followed by approval by the township government.”⁶⁷

We agree that the collective landowner should retain the right to contract some of its land to non-members of the collective economic entity, including both arable land and wasteland. Due to the small size of landholdings in most of China, however, the law should be carefully constructed to require that the vast majority of collectively owned land be contracted to members of the collective in order to protect their basic living standard. RDI’s fieldwork in China indicates that China’s existing experience with the contracting of arable land to non-members of the collective includes many instances of misuse of power by local cadres. We recommend that a clause be included in the law’s implementing regulations or in provincial law limiting the amount of arable land that may be contracted to non-members of the collective economic entity to five percent of the total arable land area of the collective landowner. Alternatively, the implementing regulations or provincial law could require county-level approval whenever the total amount of arable land of the collective landowner to be contracted to non-members exceeds five percent, and set an absolute limit at ten percent of the arable land.

The clause specifying that contracting of land to non-members of the collective must be “approved by two thirds of the members of the villager conference or two thirds of the villager representatives”⁶⁸ also requires clarification in either implementing regulations or provincial law. Such clarifying provisions should clearly define the meaning of “villager representatives”⁶⁹ and specify procedural standards for the collective in obtaining legally valid approval.⁷⁰

⁶⁷ *Id.* at Art. 15.

⁶⁸ *Id.*

⁶⁹ We recommend that “villager representatives” be defined as the group consisting of the head of household or other single designated member from each of the households within the village. Such a definition is consistent with practices observed by RDI during fieldwork in China, and will ensure that all of the households in the village are represented.

⁷⁰ We recommend that the implementing regulations or provincial law establish stringent procedural requirements to ensure that approval has been obtained fairly and without due influence. The requirements should include the following:

- (1) require the collective to make all proceedings transparent and public;
- (2) stipulate that legally valid approval of a collective proposal to contract arable land to non-members of the collective requires the approval of at least two thirds of the entire village conference or two thirds of all villager representatives rather than two thirds of a quorum of either group; and
- (3) require that officials of the county-level administrative agency responsible for land be present at any meeting at which the village conference or villager representatives will vote to approve or reject such a proposal.

(2) *Standardized Land Use Contracts*

As noted above, the requirement of Article 14 that the collective land owner and the land contractor execute a written land use contract is a welcome addition to the new law. It is essential, however, that such contracts meaningfully express the rights and obligations of both parties, and do not merely state the land user's obligations with respect to land-related taxes, fees, and quotas. We urge that those responsible for development and issuance of the implementing regulations within the Ministry of Land and Natural Resources and the State Council should strongly consider the drafting of a standardized land use contract to be attached to and issued as a part of the Implementing Regulations. Certain provisions of the contract could be adjusted based on local conditions, but fundamental elements such as the 30 year use right term, extremely strict requirements for any land readjustments, and procedures and compensation for land expropriation or collective taking should be mandated. RDI, in conjunction with local and central officials, developed a land use contract for collectively owned arable land consistent with the provisions of the 1986 Land Management Law for experimental use. We have attached a draft copy of the contract as Annex 1 to this memorandum for use as a possible starting point for development of a new, standardized land use contract consistent with the provisions of the 1998 Land Management Law.

(3) *Requirements for Land Readjustments*

The language of Article 14 clearly indicates an intent to give legal force to a no-readjustment policy. The law's implementing regulations, however, should clarify the language of Article 14 to indicate the specific conditions under which a readjustment may occur.

Article 14 states that readjustments must be approved by the township government and the county administrative agency responsible for land, and that they may only occur in "isolated cases." What criteria will be used by approval authorities to determine when such isolated cases may properly be considered to exist? Will the possibility of a lucrative land development project that requires land expropriation be sufficient to qualify as such an isolated case? One of the techniques used by local cadre in the past to gain farmers' reluctant acquiescence to expropriations or takings of arable land (with virtually no compensation payment to farmers) has been to combine the expropriation or taking with a big readjustment that would "spread the pain" among all farmers in the village: such a procedure not only undermines the tenure security of all farmers whenever the land of any farmer in the village is expropriated or taken, but serves to undermine restrictions on takings of arable land.⁷¹

⁷¹ Since each farmer loses only a small amount of land, because the taking is accompanied by a big readjustment, no single farmer is motivated to object vehemently. Indeed, the entire procedure can be disguised as a big readjustment with the fact or extent of the taking -- which was the real reason for the

To achieve the clear intent of Article 14 to severely limit land readjustments, we suggest that the law's implementing regulations or related provincial laws contain a clause or section defining the cases under which land readjustments may occur, and at a minimum explicitly rejecting state land expropriations of the ordinary kind (any expropriations of less than one-third of the arable land of the village, for example) and rejecting all takings of land use rights by collectives as cases which justify land readjustment, even where two thirds of the collective members are in agreement. The type of extreme circumstances that justify land readjustments might include: (1) where a very substantial amount of the arable land within a village (for example one-third or more) has been expropriated by the state⁷² in a lawful manner without the possibility of reclamation of nearby land (it is important to emphasize that under such circumstances the readjustment of land must be in addition to, and not in lieu of, compensation for the land expropriation); or (2) where a significant amount of the arable land within a village has been rendered permanently unusable by a rockslide, erosion of riverbanks via flooding or other natural disaster, the remaining land could be redistributed to maintain the basic living standards of the affected households.

The recommendations outlined in the previous subsection concerning definition of "villager representatives" and procedural requirements for collective approval are also relevant for approving land readjustments pursuant to article 14. Moreover, implementing regulations or provincial law should also apply the two-thirds vote and higher level approval, as well as the kinds of procedural safeguards described above, to decisions concerning a final land readjustment before the 30-year use rights commence.⁷³

2. *Arable Land Protection*

Our analysis of the new Land Management Law identifies several important shortcomings related to arable land protection, including: (1) the lack of clear procedural and compensation requirements governing the use of agricultural land for Township and Village Enterprise development; (2) the lack of defined compensation levels for collective takings for public purposes; (3) lack of direction regarding the allocation of compensation for state land expropriation between collective landowners and land users; and (4) lack of farmer involvement in the land expropriation or taking processes.

readjustment -- not fully understood by the farmers. Also, since the cadre can claim that anyone whose specific piece of land was taken away is being "compensated" with land (though less land than he had before, his holding is still equal with everyone else's on a per capita basis), it is easier for the cadre to divert any cash payment for the land away from the farmers.

⁷² We would reject any purported collective taking, no matter its size, as meeting the prerequisites for readjustment for fear (amply based on our village fieldwork over an 12 year period) of possible coercion and corruption on the part of local cadre.

⁷³ RDI has observed in the field that in those limited situations where 30-year rights have been implemented, there has often (although not always) been a final small or big readjustment before the 30 years begins.

(1) *Procedural and Compensation Requirements Governing the Use of Agricultural Land for Township and Village Enterprise Development*

As noted earlier, the new Land Management Law institutes a planning and approval system to strictly control losses of arable land for commercial uses. In addition, it increases the level of compensation required when agricultural land is expropriated by the state, and for the first time, requires the collective to pay compensation to land users when their land is taken back for public purposes. Given the prevalence of collective takings of agricultural land for the development of Township and Village Enterprises under the 1986 Land Management Law and related land management policies, however, the most important new protection of arable land is the prohibition on collective takings of agricultural land for commercial purposes implied by Article 65.⁷⁴ The plain language of this article clearly negates the collective land owner's ability to compel farmers to give up their use rights to agricultural land for the purpose of developing Township and Village Enterprises.⁷⁵ Deprived of any compulsory acquisition power under the law, the collective must now enter into negotiation with all affected land users in order to acquire agricultural land for development of Township and Village Enterprises.

The prohibition against collective takings of agricultural land for Township and Village Enterprise development represents one of the strongest endorsements of Chinese farmers' right to use agricultural land without arbitrary government interference. To ensure that the intent of the provision is met, however, we recommend that several provisions related to the procedural and compensation requirements governing the use of agricultural land for Township and Village Enterprise development should be included in the national law's implementing regulations or in provincial law. First, we recommend that the prohibition against collective takings of agricultural land, and the requirement that any such use of land must be based on the principles of negotiated acquisition, be explicitly stated in the implementing regulations or provincial law.

⁷⁴ Article 65 states:

Upon the approval by the People's Government who approved land use under (i), (ii) and (iii) of this Article, the rural collective economic organization may withdraw land use rights:

- (i) where the land is needed for developing township and village public facilities and public welfare courses;
- (ii) where the land use is consistent with the approved land use;
- (iii) where the land is not used due to the termination or relocation of the user.

Where the collectively owned land is withdrawn under (i) of the preceding clause, the proper compensation shall be made to the person entitled to use rights to the land.

⁷⁵ The law carefully includes Township and Village Enterprise's when the intention is to do so. See 1998 Land Management Law, Article 59.

Second, we recommend that the implementing regulations or provincial law include detailed provisions concerning the process of negotiation including requiring public disclosure of the purposes for which the collective wants to acquire land, the specific quantity and parcels of land for which the collective is negotiating, and the amount of compensation offered to all affected land users.

Third, we recommend that, as a minimum, the land user be entitled to the same amount of compensation he would be entitled to receive in cases of state expropriation of the same arable land.

(2) *Compensation for Collective Takings for Public Purposes*

Article 65 of the 1998 law states that the rural collective economic entity must pay “appropriate compensation” to the land user who has suffered losses due to the withdrawal of land use rights for public facility and public welfare undertakings. The problem is that “appropriate compensation” is a vague standard subject to a wide range of interpretation unless there is further clarification from the law’s implementing regulations or from provincial law. Based upon our observations during extensive rural fieldwork in China, we fear that most collective entities will interpret “appropriate compensation” as a very minimal amount.⁷⁶

We recommend that when land use rights are withdrawn by the rural collective economic entity for public purposes, the collective entity be held to the same compensation standards concerning the land user as for state takings (in article 47 of the law) or, if the user agrees, other “appropriate compensation.” This would allow for the possibility, if the user agrees, that the collective could compensate the user by providing other land to the user. It would also help prevent the now-common phenomenon of collective entities under-compensating land users in such situations.

(3) *Allocation of Compensation for Land Expropriations*

Although the new law’s provisions are fairly detailed regarding the types and levels of compensation for land expropriations, they are not explicit as to who receives the compensation. We recommend that the law’s implementing regulations or provincial law explicitly state how the compensation is to be allocated.

⁷⁶ This is likely because (1) the collective entity is in the position of both paying the compensation and interpreting the meaning of “appropriate”, and (2) the collective entity was under no duty to pay compensation for withdrawal of use rights for public purposes under the 1986 law and is accustomed to these confiscatory practices.

We recommend that the compensation be allocated between the collective owner and the land user and that a substantial part of the compensation be paid directly to the land user. First, we recommend that all of the compensation for young crops and fixtures on the land should be paid directly to the farmer land user.

Second, we recommend that the portion of compensation allocated to the land user for basic land compensation and resettlement fees should be proportionate to the years remaining in the use term. Under this approach, the implementing regulations or provincial law could provide that, for both of these categories of compensation fees, the land user is entitled to a portion of the compensation equaling three percent multiplied by the number of years remaining on the land use contract, but never to exceed 90 percent of the total compensation. The remaining portion of the compensation would go to the collective owner.

(4) *Farmer Involvement in the Takings Process*

The new Land Management Law, like previous legislation, fails to provide a significant opportunity for land users to participate in any part of the expropriation process. Farmers holding contracted use rights to the land, especially long-term use rights, should be given proper notice and an opportunity to participate in the expropriation or withdrawal process. Requiring such notice will help to ensure their important interests are protected, will help prevent additional losses of arable land, and will strengthen farmers' tenure security leading to increased land improvements and crop yields.

We recommend that the law's implementing regulations or provincial law require that users of land that is to be expropriated or withdrawn by the state or by collective units be given notice of the decision to take the land, notice of the time and place of any discussions concerning compensation and relocation plans, and an opportunity to attend and speak at such discussions.

Article 49 of the 1998 law does require the rural collective economic entity whose land has been expropriated to report the revenue and outlays of the compensation received for expropriation. In addition to this positive development, the law's implementing regulations or provincial law should also require a written time schedule for the land expropriation or withdrawal, as well as a written compensation and resettlement plan that all parties, including the land user, must sign. Any party that does not agree with any part of the written plan should be given an opportunity to attach a written dissent for review by the approval agency. The law's implementing regulations or provincial law could also require that all these writings be presented as part of the expropriation or withdrawal process to the government agency required to authorize the land taking.

3. *Enforcement and Penalty Provisions*

As discussed above, the new Land Management Law contains improved enforcement and penalty provisions governing illegal sale, purchase or transfer of agricultural land (article 73) and illegal expropriation or occupation of land (article 78). These two articles, however, fail to explicitly require that the land that has been illegally sold, purchased, transferred, expropriated, or occupied be returned to the land user who held lawful rights to the land before its illegal acquisition or transfer. We recommend that the law's implementing regulations or provincial law explicitly grant the original land user the right to resume his use of the land under the terms and conditions of the original 30 year land use contract on any land on which he has been deprived of his use right by a sale, purchase, transfer, expropriation or occupation which is illegal under the new Land Management Law. Such a right, in addition to making explicit what is at least implied in articles 73 and 78, is also consistent with the provisions governing civil liability under the General Principles of Civil Law of the PRC.

IV. Implementing the New Land Management law

A law that is not or cannot be implemented is not a good law. Lack of or poor implementation of many previous rural land system policies and laws in China has doomed them to failure. Observations from the field of early implementation of the law indicate that provincial and local claims of comprehensive implementation should be treated with skepticism. At least some localities that claim comprehensive implementation continue to plan for frequent land readjustments, in violation of the law. China must devote substantial resources and attention to implementing the new Land Management Law if its positive potential is to be realized. This will require action from central, provincial, and local governments.

This section discusses important steps necessary for effective implementation. These include publicity, training, determination of existing land rights, meetings with farmers, conducting final readjustments, issuing contracts, and monitoring. The discussion is based on RDI's field experience in China, including experience with land system reform implementation experiments in several counties.

A. Public Information Campaign

The adoption of the 1998 Land Management Law represents a major step in the development of China's system for rural land tenure. RDI's previous fieldwork in China has often indicated that, under the old law and policy regime, many farmers were unaware of the specific rights they held with respect to land. Under such circumstances, farmers' rights could be easily violated by unscrupulous cadres. To avoid these pitfalls and ensure that the new Land Management Law's potential for increasing land tenure security and strictly controlling arable land losses is fully met, it is vital that farmers are informed of their rights.

We recommend that the State Council call for and oversee the conduct of a massive public information campaign to inform farmers of their new rights under the Land Management Law. This campaign should continue throughout 1999 or until at least 90 percent of the villages throughout China have fully complied with the new law. The campaign should include publication and broadcasting of information through national and local media, distribution of written materials by land management administrative units at all levels of the People's Government, and periodic visits to rural areas to convene meetings at which farmers are informed of their rights. RDI's December 1998 fieldwork indicate that the government's recent efforts to publicize the new law have been effective. Most farmers interviewed were at least generally familiar with the law.

B. Training

RDI teams have observed 30(or more)-year implementation experiments in several provinces. The successful implementation plans all included a significant training component for local officials. Effective implementation will involve not only mobilizing a large quantity of local cadres to conduct the implementation work, but multi-day training sessions informing the cadres of the implementation plan, the terms of the new land use contracts, and the exact steps needed to implement the law (including those outlined below: determination of land rights, meetings with farmers, conducting final readjustments, issuing contracts, and monitoring). The training should include the issuance of written training materials to all trainees that will assist them in conducting the implementation steps. We recommend that the training emphasize article 14's strict limitations on land readjustments including that readjustments are limited to "isolated cases," and that all readjustments are subject to agreement by two-thirds of the villager representatives or village committee and must be approved by both the township government and the country agricultural agency.

C. Determination of Land Rights

Before new 30-year contracts can be issued, local cadre must determine the existing land resources owned by the collective and the use rights to that land. This may involve determining boundaries between adjacent collective units, determining boundaries between collective and state-owned land, identifying what body will represent the collective owner, and an inventory of current use rights to collective land held by each farm household.

Conducting an inventory of the current use rights will involve some field examination and verification of current land records and, in some cases, could require remeasuring of some land parcels.

D. Meetings with Farmers

The trained local cadre should meet with farmers to (1) explain the new law and its implementation, and (2) facilitate a decision-making process by the farmers concerning a final readjustment of land before the 30-year term begins. These farmer meetings should be with a small enough group to allow for active discussion. In most cases these meetings should be held at the production team level or lower.

The local cadre should first explain the terms of the new law and how it will be implemented. One important variable in the law's implementation is whether and what kind of final readjustment should be conducted before the 30-year rights are implemented. The Land Management Law is silent on whether such a final readjustment is required (or prohibited) and on how such a final readjustment can be conducted. The most successful implementation observed by RDI teams involved farmer choice on the issue of a final readjustment of land. Some farmers desire a final readjustment of land before the new 30-year terms begin so that existing inequities in land allocation can be addressed. Others favor no readjustment, either because no significant inequities exist or because farmers have made some investment on existing parcels. In the most successful implementation models, farmers at the team or village level are allowed to vote on whether the team will conduct a final readjustment, and if so, whether the readjustment will be a "big" readjustment (all farmland redistributed along different patterns) or a "small" readjustment (adding or taking land only from families that have increased or decreased in size). It is crucial that the determination of the final readjustment plan involve a democratic vote after a broad discussion of opinions and that all proceedings be transparent and public. The final decision within each collective unit should be subject to approval by a super-majority. RDI teams have observed localities with a approval requirements ranging from 51 percent to 80 percent. The new law requires a two-thirds approval from villagers for any readjustments after the 30-year term commences (such readjustments are to be only in "isolated" cases and are subject to approval by the township government and county

agricultural agency). This requirement should also apply to decisions concerning a final readjustment.

Other policy alternatives to ameliorate the effects of a no-readjustment policy might also be discussed in the farmer meetings and decided upon either by farmers themselves or by the village committee. These include: prediction methods of land allocation (allocating land based on a formula designed to predict a household's future land needs); designating land as flexible land (designating up to five percent of the land for future allocation to households that add members); preferential allocation of wasteland or wetland to households that add members; and readjusting collective fees based on family size (so that larger families pay lower per capita taxes).

E. Conducting a Final Readjustment

If the farmers decide to undertake a final readjustment, its implementation will require significant time and resources. As an initial matter, the final readjustment will have to be scheduled for the winter season so as to minimize interference with crop cycles. The process of allocation should be transparent and public.

F. Issuing Written Land Use Contracts and Certificates

Immediately after a final readjustment has been conducted or after the decision not to conduct a final readjustment has been approved, the collective owner should fill out and issue the written land use contracts to all households and the local land office should fill out and issue written land use certificates to all households for their signature. Multiple copies of the contracts and certificates should also be prepared and kept by the collective owner, local land office, and other collective or governmental entities as specified by the relevant rules.

G. Monitoring

Officials at the center and provincial level should use the extensive information-gathering powers under Article 67⁷⁷ of the new Land Management Law to monitor

⁷⁷ Article 67 of the 1998 Land Management Law empowers administrative agencies within the People's Government at the county level and higher to: (1) require units or individuals under examination to present documents and materials related to land rights for consultation and duplication; (2) require units or individuals under examination to respond to questions related to land rights; (3) enter the site of land that has been illegally occupied by the unit or individual under examination for the purposes of conducting a

progress in issuance of the new 30 year use contracts, and on other vital aspects of the law. Monitoring teams from the center and provincial level should also conduct random checks at village level of the accuracy of information supplied, including interviews of farmers outside the presence of local cadre,⁷⁸ with penalties under Articles 69 and 70⁷⁹ of the law applied to officials who have misstated results or supplied false information. The public information campaign should also, from the beginning, emphasize that such independent checks will be conducted and that any misstatement of results will be dealt with stringently. Such measures will help to ensure that benchmarks that may be set have actually been met. Monitoring can also provide feedback for further improving the law or the implementation process.

V. Other Needed Policy and Legal Reforms

Improving and effectively implementing the new Land Management Law will not address all necessary aspects of rural land system reform in China. China's rural land tenure system is in need of further policy reform measures (and parallel changes in law). This section briefly outlines some of the most important other policy and legal changes needed beyond those addressed in the 1998 Land Management Law, including private transfers of land rights, land tax, land dispute resolution, mortgage, and further extending the term of land use rights.

A. Transfers of Land Use Rights

RDI's fieldwork in China indicates that markets for rural land use rights remain largely undeveloped. Although some transfers of rural land use rights do occur, most such transfers are not long-term, but are made on a seasonal or annual basis while the transferor is away from the village engaging in non-agricultural work.

survey; (4) instruct units or individuals who have illegally occupied land to cease activities in violation of the Land Management Law and its regulations.

⁷⁸ In December 1996, in cooperation with officials from the National Experimental Zone Office of the Ministry of Agriculture, RDI conducted a sample survey on land right issues in 1,080 households in 4 counties in Shaanxi and Fujian provinces. Nearly all of the surveys were conducted outside the presence of local cadres. Such surveys could provide an accurate and reliable picture of the status of implementation of the new Land Management Law within a given administrative district.

⁷⁹ Article 69 of the 1998 Land Management Law requires relevant units and individuals to support and cooperate with relevant land management agencies from the county level People's Government or higher in their supervision and examination of illegal activities. Article 70 of the law imposes administrative discipline and criminal liability on illegal activities under the law.

Chinese law has generally allowed transfers of rural land use rights for several years, but no detailed regulations or standardized forms have been issued to guide the process. The 1998 Land Management Law contains only one brief provision addressing the important issue of transfers of use rights to arable land. Article 2 of the law states that “[T]he land use right may be transferred.”

Facilitating voluntary transfers of land use rights is important to China’s agricultural and economic development for at least four reasons. First, land use transfers facilitate allocation of land into the hands of the most efficient user. Second, a land user with the power to transfer will adopt a longer planning horizon and be even more likely to make improvements to the land, since he will be able to “cash out” on improvements even if he wishes to retire and his child or children do not wish to farm, or live in another village. Third, the introduction of a land market will give land a value and create the conditions for an equitable and efficient land tax.⁸⁰ Fourth, the right to transfer is a prerequisite for the ability to mortgage, even though such a right does not yet exist for arable land.⁸¹

Effective facilitation of land transfers requires at least two important steps: (1) the existence of secure and long-term use rights; and (2) rules, procedures, and standardized forms to govern the land transfer process. Effective implementation of the new Land Management Law should increase the length and tenure security of existing land rights, helping to address the first step. To address the second step, we recommend that the Ministry of Land and Natural Resources and the State Council develop and issue (perhaps as annexes to the 1998 Land Management Law Implementing Regulations): (1) detailed legal rules to govern rural land use transfers; and (2) an accompanying standard land use transfer contract to guide parties who wish to transfer use rights.⁸²

⁸⁰ The World Bank estimates that the market value of arable land in China totals about US \$2.4 trillion. See WORLD BANK, EXPANDING THE MEASURE OF WEALTH, 34 (1994) (World Bank Environmentally Sustainable Development Studies and Monographs No. 17). This potential market value cannot be realized unless rights to land are secure and transferable.

⁸¹ Article 37(2) of the Guaranty Law prohibits mortgage of land use rights to collectively-owned arable land. *Zhonghua Renmin Gongheguo Danbao Fa* [Guaranty Law of the People’s Republic of China], Art. 37(2) June 30, 1995. It is important to note, however, that the Guaranty Law does allow mortgage of land use rights to wasteland which the mortgagor has contracted in accordance with law, with the approval of the party issuing the contract. *Id.* at Art. 34(5).

⁸² RDI, in cooperation with central and local officials, has developed a set of “Rules regarding Issues on Transfer of Use Rights to Collectively-Owned Agricultural Land” (Land Transfer Rules) as well as a “Standard Contract for the Transfer of Use Rights to Collectively-Owned Rural Land” (Land Transfer Contract) for experimental use. These documents are available in both Chinese and English from the Rural Development Institute <rdi@u.washington.edu>.

B. Rural Land Tax

China currently lacks a uniform, consistent system for taxation of agricultural land. Instead, the State Agricultural Tax, implicit taxation of land through obligatory quota purchases, and, in some cases, land-based collective fees and land contracting fees all function as land-based taxes. Both the rate and forms of these taxes vary considerably from village to village.

Although the State Council has limited taxes and fees to five percent of farmers' net income, RDI's fieldwork indicates that many local cadres continue to impose taxes and fees in excess of this amount. In some cases, taxes and fees have been imposed under the pretext of providing public services when in reality the money was used to issue bonuses, buy cars, build houses, and improve cadre welfare. Auctioning or contracting out of large amounts of the village's arable land (as often done where there is a "two-field system" or "scale farming") is also used by local cadres as a way of grossly exceeding the five percent limit. These types of taxation or fee collection seriously undermine farmers' confidence in the local government and may lead to social unrest.

To ensure a stable revenue source for local governments, improve collection and oversight procedures, and prevent excessive taxation of farmers, China should consider the adoption of a unified Agricultural Land Tax. This unified tax could be clearly defined in provisions of the Agricultural Law or a newly drafted Agricultural Land Tax Law. Such provisions could specify the tax base, allowable tax preferences, land valuation methods, tax rates, tax collection procedures, revenue distribution guidelines, and information sources. Such provisions could also ensure that exactions from farmers by local cadres relating to arable land could not escape the limitations set in the law by being renamed "use fees," "contract payments," "auction payments" or otherwise. To prevent excessive taxation, these provisions could provide the right to notice and appeal, and explicitly grant farmers the right to refuse to pay taxes in excess of those required by law.

C. Land Dispute Resolution Mechanisms

Rights that cannot be enforced are meaningless. RDI's fieldwork indicates that China's use of informal dispute resolution to resolve land disputes between farmers, such as boundary disputes, is generally effective. We have found, however, that farmers currently lack an effective means of seeking redress in land disputes that involve state or collective units. RDI recommends several steps to improve the accessibility, efficiency, and fairness of mechanisms for the resolution of this second type of land disputes. First, farmer legal aid centers should be established at the county level to inform and educate farmers concerning their legal rights. Second, the Ministry of Land and Natural Resources should establish a relatively basic, low-cost system for receiving, processing, and

investigating written complaints by farmers detailing violations of their land rights. Third, China should consider the establishment of a specialized court at the township or county level to handle land disputes.

D. Mortgages in Land

China's farmers generally lack adequate access to credit to maintain and expand their production. RDI's field research indicates that most Chinese farmers would like to have the ability to mortgage their land use rights to obtain credit. Unfortunately both practice and law do not allow for mortgage of arable land use rights. Neither of the two primary formal sources of rural credit in China, the Agricultural Bank of China (ABC) and rural credit cooperatives (RCC), allow farmers to use their land rights as collateral to secure loans. The PRC Guaranty Law, which went into effect October 1995, prohibits the use of land-use rights for collectively-owned farmlands as collateral for loans.⁸³ As an exception, the Guaranty Law does allow land-use rights to collectively-owned wasteland to be mortgaged,⁸⁴ but only if the ownership and operating rights are clear and indisputable⁸⁵ and the party issuing the wasteland contract (typically the landowner) consents.⁸⁶

In the future, China should be able to increase credit access for rural households and thus improve agricultural investment and productivity through the mortgaging of farmers' land use rights. We recommend that China take steps toward this goal, while realizing that the current situation may not be ripe for widespread mortgaging of use rights to collectively-owned land. We note that collective ownership of land does not necessarily present a constraint to mortgaging land use rights. Many countries or territories allow and promote the mortgaging of land use rights to publicly owned land. In fact, China currently allows such a practice for use rights to state-owned land and to collectively-owned wasteland. China, however, faces several constraints before it can hope to use the internationally common practice of using land rights as collateral to increase access to credit. The threshold constraints include: providing secure, documented use rights to farmers; clarifying the identity, rights, and responsibilities of the collective landowner; and developing a market for use rights to rural land. The following recommendations are aimed at addressing additional constraints.

⁸³ PRC Guaranty Law, 14th Session of the Eighth National People's Congress Standing Committee, June 30, 1995, art. 37(2). The Guaranty Law does allow for mortgage of state-owned land-use rights. *Id.*, at art. 34(3).

⁸⁴ *Id.*, at art. 34(5).

⁸⁵ *Id.*, at art. 37(4).

⁸⁶ *Id.*, at art. 37(5).

First, farmers must be willing to offer their land use rights as collateral. While our field research in China indicates that farmers wish to have the right to mortgage land rights, their willingness to offer the land rights as collateral (with the inherent risk of losing the rights) may decrease as those rights are made more secure and valuable. The government should monitor farmers' willingness to offer land rights as collateral to better understand and address farmers' concerns regarding mortgage. The government could also disseminate to farmers information about how mortgages work, the risks involved, the potential benefits, the necessary procedural steps for obtaining a mortgage loan, and which local lenders offer such loans.

Second, existing rural credit institutions must be developed to increase their lending to rural households and their ability to use collateral, including land use rights, to secure those loans. As in Vietnam and some other countries, the government may decide to allow only certain designated institutions to offer loans using land rights as collateral.

Third, the Guaranty Law must be amended at some point in the future to allow for the mortgagability of use rights to collectively-owned arable land. This does not appear, however, to be an immediate need at a nation-wide level, given the other constraints to making land mortgagable (local exceptions might be desirable for pilot projects or experiments). The Guaranty Law currently allows for the mortgage of use rights to wasteland. Wasteland rights in several regions of China tend to be much longer, better documented, and therefore more secure than use rights to arable land. Households with rights to such wasteland are also likely to be in greater need of long-term credit because of the development requirements on the wasteland. China should initially concentrate on facilitating and developing the practice of using long-term rights to wasteland as collateral. Ministry of Agriculture officials might also consider the possibility of local experiments with the mortgage of use rights to arable land where other constraints are being simultaneously addressed.

E. Longer Use Rights

The new Land Management Law provides for 30-year ("one-generation") use rights to arable land. RDI's fieldwork findings show that most farmers in China would strongly support land use rights of 50 years or more. While full implementation of the 30-year rights is the most important current need, China's leaders should consider lengthening the term in the future. Fully implemented use rights of 50 years, and even 100 years to wasteland in rural China have proven very effective at inducing farmers to invest in the land.⁸⁷ Further lengthening the use term on arable land to "two-generations" or longer is likely to have a

⁸⁷ See generally, Tim Hanstad & Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to Wasteland*, 19 LOYOLA OF LOS ANGELES INTERNATIONAL & COMPARATIVE LAW JOURNAL 545 (April 1997).

similar effect. China could take such steps now by adopting a law guaranteeing farmers the right to renew the 30-year use terms when they expire.

VI. Conclusion

The Household Responsibility System marked a radical departure in land tenure practices in rural China. Until recently, however, China had adopted few provisions of law to reflect or guide changes in the rural land use contracting system to address shortcomings of the Household Responsibility System, including the fundamental shortcoming of land tenure insecurity. The new Land Management Law potentially represents a quantum leap forward for China's rural land system. The new law contains many positive features which, if effectively implemented, should provide farmers with an increased level of tenure security and provide increased protection of China's limited arable land base. Further improvement of the rural land system is still needed and will require action three categories of actions. First, several important provisions of the new Land Management Law should be clarified through the law's implementing regulations or related provincial law. Second, The provisions of the new law must be effectively and thoroughly implemented. Third, other policy and legal reform measures, outside the scope of the new law, are necessary. These include measures related to transfers of land use rights, land tax, land dispute resolution, mortgage, and further extending land use terms.