

Congressional-Executive Commission on China Issues Roundtable:

**“Ownership with Chinese Characteristics:
Private Property Rights and Land Reform in the PRC”**

**Statement of Brian Schwarzwald
Staff Attorney
Rural Development Institute**

February 3, 2003

Although it has attracted scarce attention from American media, policymakers, and academics, in recent years China has undertaken a series of policy and legal reforms designed to fundamentally transform the nature of the agricultural land rights held by rural households. Because agriculture remains a primary source of income for most rural households, and land represents their most important asset, the success or failure of these reforms will have dramatic implications for the economic, social and political future of the more than 800 million people that reside in rural China.

A Brief Overview of Rural Land Rights in Modern China

The question of who possesses which rights to rural land has been a central issue in China's development over the past 50 plus years. Peasant support for the Communists and against wealthy landlords was an important factor in Mao's victory over the Nationalists in 1949. An early attempt at land reform, in which previous tenant farmers were given full private ownership, was swept aside by large-scale collectivization beginning in the early 1950's. The 30 million deaths resulting from the Great Leap Forward famines of the late 1950's proved that, without access to their own plot of land and the right to reap the profits from its cultivation, Chinese farmers lacked the incentives necessary to produce enough to feed the country's vast population on its modest arable land base – China has over 20% of the world's population but less than 9% of the world's arable land.

Perhaps because of these challenges, China was the first Communist state to break up its collective farms. A decollectivization program known as the Household Responsibility System, which was implemented throughout China in the late 1970's and early 1980's, clearly demonstrated that giving farmers individualized family holdings resulted in increased productivity, higher incomes, better diets, and a narrowing of the gap between urban and rural incomes. Under the HRS, ownership of the land remained with the village or township, while farm households were granted rights to cultivate the land and retain any production above and beyond a contracted quota. Such “collective ownership,” with use rights allocated to households, remains the dominant form of land tenure throughout rural China.

My organization, the Rural Development Institute of Seattle, Washington, has conducted detailed field research on rural land tenure issues in China since 1987. In the past fifteen years, RDI researchers, all of whom are attorneys, have directly interviewed over 800 farmers in more than 20 Chinese provinces. RDI has also cooperated with Chinese researchers in the design and analysis of two large-scale, random-sample surveys of farm households concerning their land rights. The goal of RDI's research has been to provide the Chinese leadership with detailed, accurate information and recommendations for legal and policy reforms in the system of agricultural land rights.

RDI's initial research in China confirmed that the HRS reforms, by giving farmers individualized parcels from which they would reap the benefits, allowed them to undertake a series of short-term farming improvements – things like more effective weeding than had occurred on the collectives, more attentive application of fertilizer, and more concerted planning with respect to the timing of planting and harvesting. But farmers' use rights, while individual, suffered greatly from the fact that village officials could frequently and unpredictably “readjust” those rights into entirely new patterns, taking away and granting land parcels on the basis of changes in household size. Because of these readjustments, farmers could never be certain of their tenure on any individual piece of land. They were therefore unwilling to make productivity-enhancing investments that required several years to recover, such as irrigation, drainage, or land terracing.

The New Rural Land Contracting Law: Strengthening Farmers' Rights to Land

A series of recent legal and policy reforms has taken positive steps towards providing farmers with the long-term land tenure security they have previously lacked. The most significant of these reforms is the adoption of the Rural Land Contracting Law on August 29, 2002. This new law represents a breakthrough in three major areas:

Basic Land Tenure Security

Although the RLCL stops short of providing rural households with full private ownership of their land, the rights it creates embody many of the characteristics of private property rights. The new law reaffirms in a very detailed way and in formal law what began as a broad policy pronouncement in 1993, that farmers are entitled to 30-year (one generation) land rights. Thirty-year rights are long enough to recover the value of nearly every kind of agricultural investment, and, depending on the discount factor employed, such 30-year rights represent somewhere between 75%-95% of the economic value of full private ownership. The law further requires that rights to rural land must be backed by written contracts and use right certificates that contain certain core provisions reflecting national laws and policies.

Most importantly, under RLCL Article 27, land readjustments are permitted only in extreme cases, such as when contracted land has been seriously damaged as the result of a natural disaster. Moreover, before a land readjustment can be conducted under Article 27, a series of procedural requirements designed to further limit the impact of readjustments rights must be satisfied. Research conducted by RDI and others, including the World Bank, has shown that the majority of farmers would welcome an end to land readjustments, and that farmers in the small minority of Chinese villages that have never employed land readjustments are strongly in favor of a no-readjustment rule.

For the first time in any law or policy related to rural land rights, the RLCL specifically addresses the issue of women's rights to land. Because rural Chinese women typically leave their parents' village upon marriage to establish residence in their husband's village, they will be particularly vulnerable to losing land under a no-readjustment rule. Previously, women could expect to receive an allocation of land in their husband's village in the first readjustment following their arrival. By contrast, under the new rule, women will not be entitled to receive land in their husband's village through the process of land readjustment. They may, however, be able to obtain land in their husband's village in the form of wasteland (uncultivated land) or flexible land (a small proportion of land reserved by the village to compensate for additional population), if such land resources are available. The RLCL's solution to this problem is to provide, in Article 30, that a woman receives a share of land in her husband's village, she retains the right to a proportionate share of her parents' land under the concept of joint share property.

The Legal Framework for Transactions Involving Rural Land Use Rights

In many of China's cities, burgeoning markets for 50 and 70-year use rights to commercial and residential land have already developed. In places like Beijing, Shanghai, Shenzhen, and Guangdong, these rights are also highly valuable. However, the same cannot be true for use rights to rural land.

RLCL Articles 32-43 provide the most comprehensive set of rules to date governing transactions in rural land use rights, creating a legal framework for the development of markets for such rights. Transfers of rural land use rights were theoretically permitted under prior law, but the insecure nature of the rights meant that few farmers were willing to pay to acquire them for more than one season or one year at a time. The RLCL explicitly authorizes "transfer, lease, exchange, and assignment" of rural land use rights (Article 32). Right holders transferring less than the full remaining use term are not required to obtain the approval of the collective landowner; however, such approval is required for assignments of the full remaining term. A written contract must be entered into for any transaction of longer than one year, and basic requirements for the content of such transaction contracts is set forth by the law. In all transactions, members of the collective economic entity in which the land is located possess a priority right, though the law is unclear as to how this right will be exercised.

Functioning markets for long-term rural land use rights will accomplish two important goals. They will allow voluntary, gradual re-allocation of land rights to the most efficient farm households. They will further allow farmers to realize the value of "dead capital" (to use Hernando de Soto's phrase) currently tied up in the land. Markets for agricultural land in comparable Asian settings suggest that the 135 million hectares of rural land in China should eventually attain a total value of \$500 to \$600 billion US dollars – an average of between \$3,500-4,500 per hectare. The combination of higher productivity and new wealth in the hands of farmers holds the potential to significantly accelerate rural economic development, which has lagged in recent years.

Strengthening the Rule of Law in China's Countryside

The RLCL holds the potential to accomplish this through a series of very clear and strong rules prohibiting violations of farmers' land use rights by local officials. It also imposes strict civil penalties on any such violations, including monetary damages and restitution, and equitable remedies to forestall or reverse the illegal action. In the past, farmers had no legal recourse when such violations occurred. It is also important that the new law allows farmers to choose between a variety of dispute resolution options, including consultation, mediation, arbitration by a specialized land contract arbitration body, or directly filing suit in the People's Court.

Implementing the New Law: Challenges and Prospects

As with any major legislative reform in China, adoption of a new law is merely the first step in the process. Implementation of the Rural Land Contracting Law in hundreds of thousands of rural villages represents a formidable challenge. However, very recent statements by new President Hu Jintao, Premier-to-be Wen Jiabao, and NPC Chairman Li Peng appear to indicate an increased emphasis on rural and agricultural issues generally, and a commitment to effective implementation of the Rural Land Contracting Law in particular.^[1] These strong expressions of support by the central government will be an important factor in achieving implementation of the RLCL, but significant obstacles to implementation persist at local levels. Many township and village cadres will be reluctant to loosen their grip on land by providing farmers the new rights created by the law. In some areas, farmers will be reluctant to embrace changes to the rural land system. The experience with implementation of previous rural land policies and laws, both successful and unsuccessful, indicates that the following eight steps can and should be taken in order to increase the prospects of timely and effective implementation of the Rural Land Contracting Law:

1. Formulate and issue implementing regulations

Implementing regulations will be necessary to further interpret several provisions of the RLCL. The most important step will be to unambiguously and narrowly define the "other special circumstances" under which land readjustments can be conducted (Article 27). Clarification of provisions governing inheritance, priority rights to transfer for collective members, and women's rights, will also be necessary. RLCL Article 64 states that "[T]he Standing Committee of the People's Congress of each province, autonomous region and province-level municipality may promulgate implementing regulations in accordance with this law and the practical situation in its administrative jurisdiction." Legislative departments at the province level should act quickly to promulgate such rules.

2. Conduct a comprehensive publicity campaign

It is vital that the law's adoption be followed by a detailed, repetitive publicity campaign targeted at educating both local officials and farmers regarding the new rules. A variety of media should be used, but the two 17-province surveys on the implementation of 30-year land use rights under the LML indicate that television is the most effective medium for communicating to farmers. The subjects covered by the publicity campaign should include rules concerning land readjustments, the newly detailed rights to conduct transaction, the existence of the law's vital provisions on dispute resolution and methods for employing them, and the nature of women's rights.

3. Monitor implementation

A comprehensive program should be established to monitor implementation of the new rules, including both direct field interviews with farm households (using Rapid Rural Appraisal methods) and an updated random sample questionnaire survey to be conducted using methodology that provides a highly detailed and accurate picture of implementation nationwide. The results should be quickly conveyed to policymakers at both the provincial and national levels, to provide them with information concerning the extent and nature of implementation of the new law, and to help them in developing targeted solutions to problems relating to implementation that are discovered as a result of monitoring efforts.

4. Establish telephone hotlines to receive and process farmer complaints

Closely related to the monitoring function, the central government should establish a system for receiving and processing farmers complaints related to illegal land readjustments and other violations of farmers' land-use rights. The establishment of telephone hotlines at the province level would be a simple, low-cost, yet effective way to meet this objective. Such hotlines have been widely employed in urban areas of China, and effective models could easily be adapted for use in the countryside.

5. Improve dispute resolution mechanisms

The RLCL provides an extensive set of tools to ensure that farmers in fact will enjoy long-term and secure land-use rights, and that the rule of law with respect to rural land issues will be effectively implemented in the countryside. Initially, the content of these provisions should be widely publicized to farmers. Then, as experience is gathered in the early months of actual implementation, TV programs may be used to publicize the most common kinds of violations found, and actual cases where the law's provisions concerning penalties and remedies have been enforced. The establishment of new dispute resolution mechanisms, such as the specialized land contract arbitration body envisioned in RLCL Article 51, and the improvement of existing judicial and administrative dispute resolution mechanisms can only

be viewed as a long-term objective, but will be crucial to the success of these reforms and the development of the rule of law in rural China.

6. Provide legal aid services to farmers

At least pilot projects should be developed to provide legal-aid services to farmers in order to protect and vindicate their land-use rights under the RLCL. The functions of legal-aid personnel should include representing farmers before the Peoples' Court or before an arbitration body, as well as in consultation or mediation efforts that may precede litigation or arbitration where the farmer so desires (see Article 51). Legal-aid personnel can also serve as a source of publicity and information as to farmers' rights which may be more detailed than that provided through TV or other general media.

7. Improve registration of land-use rights and transfers

Another subject on which at least pilot projects should probably be undertaken is the registration of land-use right certificates and of the transfers of such land use rights for periods of one year or more. Currently, land use right contracts issued to farm households are only registered at the time of their issuance (if at all), with no subsequent updating of records upon transfer, death of household members, land readjustment, or other changes. Both significant financial outlays and extensive training of personnel will be required to meet the long-term goal of developing an effective rural land right registration system. Initial pilot projects related to registration should be focused in locations where there has been strong implementation of farmers' land-use rights, and the preconditions for reliable longer-term transfers of such use rights from one farm household to another farm household have therefore been established.

8. Train Local Officials

Many of the measures and activities described above involve the need to train personnel and local officials with respect to the provisions of the RLCL and their implementation. Such training will be needed for "front line" officials engaged in implementation both in the collective entity and at levels above the collective, and for specialized officials who may play a particular role in implementation, including hotline operators, Peoples' Court judges, arbitrators, legal-aid providers, and registration officials.

Implications for U.S. Policy

Land reforms that provided secure, individual tenure rights for small family farmers were part of the U.S. policy agenda in post-war Asia. In Japan, Taiwan, and South Korea, these land reforms played a crucial role in achieving grass-roots development and the stabilization or evolution of democratic institutions. They were also a vital part of the economic transformations that made these three societies strong and reliable economic and political partners of the U.S.

The adoption of the Rural Land Contracting Law presents a new opportunity for U.S. policy to engage with China to promote the importance of the respect for private property and the rule of law in China's development process. Among other initiatives, the U.S. government should provide continuing and increased support for rule of law programs in China that may not necessarily be directly linked to rural land reforms, but will help to ensure their long-term success. These programs include exchanges between U.S. and Chinese legislators and legal scholars, training for Chinese judicial and administrative personnel, and funding for the establishment of legal aid services in China.

[\[1\]](#) Both Hu Jintao and Wen Jiabao delivered speeches at the Central Rural Work Conference, held in Beijing on January 7-8, 2003, in which they emphasized the importance of increasing farmer incomes, expanding demand and consumption by farmers, and coordinating urban and rural development. Four priority areas for rural work were identified at the conference, the first of which was the need to “respect the status of farmer households as the main players on the market; implement the land policy and the Rural Land Contracting Law; and give farmers long-term and guaranteed rights to use land.” See “Chinese Leaders Address Central Rural Work Conference,” (Jan. 9, 2003), Xinhua News Agency, *available in LEXIS-NEXIS online database, BBC Worldwide Monitoring Library.*