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**Presentation on Rural Land Takings in China (and the Broader Context of Farmers' Tenure Security) Made Before the Congressional-Executive Commission on China**

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The Rural Development Institute has worked in China on issues relating to the decollectivization of agricultural land and farmers' security of tenure—including the important tenure-related issue of land takings for non-agricultural uses—since 1987. Over that time I have directly participated in village interviews of more than 1000 farm households in some 20 Chinese provinces and province-level municipalities (my RDI colleagues have participated in several hundred more household interviews), most of which have included questions as to land takings. I have also helped oversee and analyze two sample surveys, each of more than 1600 farm households in 17 provinces, carried out in cooperation with Renmin University (Beijing Peoples' University) in 1999 and 2001.<sup>1</sup> RDI has also carried out comparative fieldwork and policy advisory work on rural land-tenure issues in 39 other countries or settings since 1967, in many cases including land takings as a significant issue.

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<sup>1</sup> The full results of the 1999 survey are described in Roy Prosterman, Brian Schwarzwald & Ye Jianping, Implementation of 30-Year Land Rights Under China's 1998 Land Management Law: An Analysis and Recommendations Based on a 17 Province Survey, 9 University of Washington Pacific Rim Law & Policy Journal 3, 507-567 (2000). The full results of the 2001 survey are described in Brian Schwarzwald, Roy Prosterman, Ye Jianping, Jeffrey Riedinger & Li Ping, An Update on China's Rural Land Tenure System Reforms: Analysis and Recommendations Based on a Seventeen-Province Survey, 16 Columbia Journal of Asian Law 1, 141-225 (2003).

The present testimony is based upon that cumulative work, discussions with Chinese government officials, discussions with other scholars and specialists, and on an ongoing review of the available literature.<sup>2</sup>

#### WHY AGRICULTURAL LAND TAKINGS ARE PROBLEMATIC

Takings of agricultural land in China for non-agricultural purposes have been a major source of concern to the central government.<sup>3</sup> There are a number of reasons why such takings are, and should be, of major concern:

- Loss of agricultural land for production. It is difficult to estimate the amount of land being lost, especially to the extent that many takings may not be disclosed to the central authorities. Since China is attempting to feed approximately 20 percent of the world's population on around 9 percent of its arable land, any significant loss of such land is of concern. Perhaps in anticipation of policy and legislative reform on this issue, reports indicate that a substantial land grab has occurred over the past 12 months, with government reports suggesting a staggering total of 168,000 fraudulent land development cases in 2003, twice as many as reported for 2002.<sup>4</sup> Non-agricultural construction took 1,527,000 hectares of arable land in 2003, stated to be an increase of 17% from 2002.<sup>5</sup> These latter figures suggest a recent annual loss rate of roughly 1%<sup>6</sup> arable land per year

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<sup>2</sup> Also submitted for the record is a longer RDI memorandum, to Files, from Brian Schwarzwald, Roy Prosterman, and Li Ping, on "Land Takings in China: Policy Recommendations", dated June 5, 2003.

<sup>3</sup> See, e.g., Central Committee Document No. 1 of 2004, entitled "Opinions of the Chinese Communist Party Central Committee and State Council on a Number of Policies for Promoting Increase in Peasant Incomes" (one of the policies to be promoted is to reform the land expropriation process to protect farmer rights and provide increased compensation when land is taken for development), reported in "Text of Chinese Policy Document on Raising Farmers' Incomes", Xinhua News Agency, Feb. 18, 2004, available in LEXIS BBC Worldwide Monitoring. This was the first No. 1 Document since 1986 to focus on rural issues.

<sup>4</sup> See, e.g. Ching-Ching Ni, "Land Grabs Sow Pain, Poverty for Chinese Farmers: As the Economy Grows, Development Deals Are Often Corrupt and Victimize the Peasantry," Los Angeles Times, March 7, 2004. See also Elizabeth Rosenthal, "Factories Bump Rural Chinese; Farmers Left Unpaid for their Land," The New York Times, March 24, 2003.

<sup>5</sup> Ministry of Land and Resources Declaration on Chinese Land Resources in 2003, available at [www.mlr.gov.cn/query/gtzygk/2003.htm](http://www.mlr.gov.cn/query/gtzygk/2003.htm)

<sup>6</sup> See FAO Production Yearbook 2002, Table 1

to non-agricultural takings, but again, may be understated due to nondisclosure to the central government.

- Undermine the security of farmers' land rights. As we shall discuss subsequently, China's farmers, under the 1998 Land Management Law and the 2002 Rural Land Contracting Law, are now supposed to be in possession of their land under 30-year use rights, in general not subject to "readjustment" (take-back and reallocation) by local cadres. Yet takings for non-agricultural uses are often accompanied by illegal "readjustments" of all the remaining agricultural land in the village, spreading the pain of land loss (and tenure insecurity) among all the farmers. Underlining the loss sustained by land-losing farmers, farmers themselves typically receive only a tiny fraction of the compensation paid for the portion of land being converted for non-agricultural use. Thus land rights village-wide may be perceived as both worthless and insecure.
- Undermine the value of farmer's land rights. To the extent that farmers' land rights are perceived to be readjustable and short-term rather than genuinely secure for 30 years, agricultural land will develop far less market value, and be far less transactable—undermining major goals of the Rural Land Contracting Law.<sup>7</sup>
- Undermine farmers' ability to invest. An even broader and more immediate consequence of undermining farmers' tenure security is through reducing their ability and motivation to make mid- to long-term investments in the land, which are critical for the increase and diversification of production, the increase of farm incomes (which currently lag behind per-capita urban incomes in a ratio of 1:3.24), and the increase of rural consumption (which would permit enhanced reliance on the development of the internal market).<sup>8</sup>

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<sup>7</sup> Based on the values of agricultural land in comparable Asian settings, we have calculated that secure and marketable 30-year land rights in China should, as markets develop, achieve an average value of between US\$3,750 and US\$4,750 per hectare (roughly Rmb30,750 to 38,950 per hectare), suggesting a total value in the range of US\$500-600bn (roughly RMB4.1-4.9tr) for China's 135m hectares of arable land. This value, realized through market transactions and, eventually, through mortgage of arable land rights (not yet permitted), represents capital that farmers can begin to apply to investments in agriculture, enterprise, education, and consumption. See generally Roy Prosterman and Brian Schwarzwald, From death to life: giving value to China's rural land, China Economic Quarterly, Q1 2004, p. 20. See also, on the importance of bringing, as he calls it, "dead capital" to life, Hernando de Soto, The Mystery of Capital (2000).

<sup>8</sup> Successfully carrying through the implementation of farmers' 30-year land rights in China may be thought of in parallel with the three great post-war land reforms which were supported by the U.S. in Japan, Taiwan, and South Korea, each of which gave land ownership to what had generally been unmotivated tenant farmers with short-term

- “Cheats” farmers, creates instability. Takings of farmland for non-agricultural purposes represents a significant source of rural discontent. Farmers usually receive grossly insufficient compensation for the lost land, and without either adequate rules or effective judicial redress, farmers have typically reacted through demonstrations, as was reported in Jinyun county of Zhejiang Province in November 2003,<sup>9</sup> or by traveling to Beijing to lodge complaints at various ministries.<sup>10</sup>
- Distorts land markets. To the extent that farmers are deprived of fair compensation for their land rights in part (sometimes in large part) to provide land to buyers or end users at a subsidized, less-than-market price, the result is also a corresponding distortion of factor markets in the Chinese economy. Land as a factor of production is then undervalued—in the most extreme cases, considered as virtually a free input—with consequent distortions in investment decisions and the inappropriate allocation of capital, as well as accompanying and frequent underutilization of the land acquired. Indeed, the twin distortions of artificially cheap credit and cheap land have probably contributed greatly to

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land rights. In Taiwan, for example, in the decade following land reform, farmers increased their rice production by 60% and (aided by further investment and diversification) their average per capita income increased by 150%. Rural consumption grew greatly across a wide range of goods and services. See Chen Cheng, Land Reform in Taiwan 84-88 (1961). In interviews conducted with farm households throughout Taiwan in 2000, we found that Taiwan’s small farmers were full participants in the island’s vibrant consumer economy. Virtually all of the farm households we interviewed (most of whom were part-time, rather than full-time, farmers) possessed a wide range of consumer electronic goods—color TVs, VCRs or DVD players, stereos, cellular phones, washing machines, refrigerators—as well as owning automobiles (and often motorcycles). Most families also held private life-insurance policies, had purchased stocks in Taiwan’s stock market, had a computer, and had traveled off-island on at least one occasion. The implications for a Chinese rural economy of more than 800 million potential consumers are clearly enormous.

<sup>9</sup> South China Morning Post, “Around 1,000 Villagers Clash With Police over Land Seizure,” November 27, 2003. In the Jinyun case, farmers claimed that the local government had illegally requisitioned up to 260 hectares of farmland belonging to 6,000 farmers. Farmers were compensated through a one-time cash payment of RMB 20,000 (approximately US\$2,500) for their land. At least one farmer from Jinyun traveled to Beijing to lodge an official complaint regarding the taking. The clash between villagers and officials in Jinyun was reported to have involved around 1,000 farmers surrounding the industrial park in which the land is located. When local authorities intervened, violence ensued, with dozens of people reportedly injured.

<sup>10</sup> Officials at both the State Council and the Chinese Academy of Social Sciences report that they receive detailed letters of complaint regarding land takings cases from farmers on a daily basis. Many of these letters indicate that farmers have already made extensive efforts to register their complaints with various agencies in Beijing, each of whom push them to other departments. See generally on taking-related rural instability, Thomas Bernstein, Instability in Rural China, in Is China Unstable? Assessing the Factors 96 (David Shambaugh, ed. 2000).

the recent perceived overheating of the Chinese economy, with its accompanying fallout (such as potential inflationary pressures) for the world economy.<sup>11</sup>

- Induces corruption of local officials. Low compensation paid to farmers for land takings in combination with the lack of transparency in the land takings process creates an opportunity for local officials to pocket huge profit for their own, contributing to the widespread expansion of official corruption. Three provincial level officials were convicted in 1998-1999 for taking bribes or embezzling land granting fees in an amount up to \$20 million in offering cheap land to developers,<sup>12</sup> and a large proportion of all corruption cases tried in recent years have involved illegal dealings with land granting fees.

#### THE LAW AND PRACTICE WITH RESPECT TO AGRICULTURAL LAND TAKINGS, INCLUDING PROJECTED REFORMS

Over 800 million of China's 1.3 billion people make their living primarily from agriculture.<sup>13</sup> China was the first Communist state to bring about the break-up of collective farms into individual family holdings (in 1979-83) but it did so under ground rules that left the great majority of individual farmers with very insecure rights as to any particular piece of land. Farmers' security on the land, and their ability to invest both "sweat equity" and financial resources in improving that land and its productivity have, however, been issues of increasing importance to the central leadership since at least 1993. These issues are now seen as being of crucial importance to China's overall economic development during the coming years and are

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<sup>11</sup> See, e.g., Keith Bradsher, "China's Squeeze on Credit Shows Signs of Success as Economy Slows," New York Times, June 12, 2004:

Instead of interest rate changes, China's economic policy makers this spring have relied on a brute-force approach of restricting loans and land-use authorizations for industries that they believe to be overheating, notably real estate, steel, cement, and aluminum. These methods have drawn scorn from many free-market-economists. (Emphasis added.)

<sup>12</sup> Shi Hechang, Investigation on State Land and Resources: Who Protects Our Lifeline? Earth [Dadi], Issue No. 20, 2000.

<sup>13</sup> See FAO Production Yearbook 2002, Table 3.

key goals of the 1998 Land Management Law, the more recent (2002) Rural Land Contracting Law, and accompanying central-government pronouncements.<sup>14</sup>

An extensive sample-survey by RDI and Renmin University in mid-2001 indicated that about 40% of Chinese farm households—85 million out of 210 million households, projecting from a sample of over 1600 households—regarded themselves as having received secure 30 year rights by that time, and subsequent village research by RDI and Chinese counterparts also indicated that this figure had probably neither substantially increased nor substantially eroded by early 2004.<sup>15</sup> Indeed, by that time, perhaps as many as one out of two farm households that had received secure 30-year rights had made long-term investments to improve the land, investments that they would not make under the old regime of insecure land rights.<sup>16</sup>

However, the remaining 60% of farm households had not (and have not) yet received secure land rights, and are subject to what may be regarded as four analytically distinct sources of insecurity on the land:

- (1) “Readjustments” of farmers’ landholdings carried out by local (collective) cadres because of either population change in the village over time or population change within individual households over time.<sup>17</sup>

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<sup>14</sup> The Rural Land Contracting Law became effective on March 1, 2003. The government’s Central Rural Work Conference of January 2003 had identified implementation of the RLCL to be the highest priority for rural work in 2003. See “Chinese Leaders Hu Jintao, Wen Jiabao Address Central Rural Work Conference,” Xinhua News Agency, Jan. 9, 2003. Although there has been some concern that the Central No. 1 Document of 2004 appeared to focus more on short-term “fixes” than underlying tenure security issues, the most recent developments seem to indicate that the latter remain of key importance. See “The State Council Issues an Urgent Notice Requiring Restoration of Production on Idle Land As Soon As Possible”, People’s Daily, March 31 2004 (a notice also dealing with measures for RLCL implementation).

<sup>15</sup> See China Economic Quarterly, *supra* note 5.

<sup>16</sup> See *id.*, at pp.22, 24. See also Klaus Deininger & Songqin Jin, “The Impact of Property Rights on Households’ Investment, Risk Coping, and Policy Preferences: Evidence from China”, World Bank Working Paper No. 2931, 2002.

<sup>17</sup> In a “big” readjustment made for population reasons, all village land is taken back and redistributed in new patterns, to maintain absolute per capita equality of every person’s land holding—this reflects both overall growth in village population since the last such readjustment, and individual changes in each household’s population. In a “small” readjustment, only population gains and losses in individual households are considered, with the former gaining additional land at the expense of the latter.

- (2) Readjustments of farmers' landholdings carried out because some farm households have lost land to a taking, in which all the remaining agricultural land is taken back and redistributed to balance out (equalize) the loss among all village households.
- (3) Readjustments carried out purportedly because of village population change, but actually as an excuse for the cadres to hold back some land from reallocation for future or planned non-agricultural use (disguised taking).
- (4) Takings accompanied by low or no compensation to land-losing households (assuming there will continue to be no readjustments for the 40% of China's households who consider themselves to have secure land rights, this one further potential source of insecurity remains under the existing rules if takings occur that affect their specific land).

What are the present rules with respect to takings of agricultural land for non-agricultural purposes, and what changes may be in prospect or desirable?<sup>18</sup>

Under the existing rules and practices,<sup>19</sup> there are major issues as to low farmer compensation, and also as to the overly broad purposes of land takings and the non-transparent procedures which are followed. Under existing laws, farmers are entitled to compensation that amounts to only a small share of the market value of the land. Under the 1998 Land Management Law, compensation for arable land expropriations includes: (1) compensation for the loss of land; (2) compensation for young crops and fixtures; and (3) a resettlement subsidy.<sup>20</sup>

Standard compensation for the loss of land is set at 6 to 10 times the value of the average annual output of the arable land over the three years prior to expropriation. The collective, whose land has been expropriated, is required to report to its members (but often fails to do so) the compensation received for the expropriated land. Compensation standards for surface fixtures

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<sup>18</sup> The following has been adapted, in part, from Roy Prosterman, "Rural China update", pp. 19-21 (CLSA Asia-Pacific Markets, Special report, May 2004).

<sup>19</sup> Principally embodied in the 1998 Land Management Law and its accompanying Regulations. See generally the RDI memorandum to Files also submitted for the record, *supra* note 2.

<sup>20</sup> 1998 Land Management Law art. 47; People's Republic Of China Land Management Law Regulations art. 26 (1998).

and young crops are stipulated by provinces, autonomous regions, and provincial level municipalities. Resettlement subsidies on average should amount to 4 to 6 times the average annual output value of the land for the three years preceding the expropriation. However, such resettlement subsidies may exceed that average, and are capped at a maximum of 15 times the average annual output value of the land for the previous three years.

If land compensation and resettlement subsidies set according to these standards are still insufficient to help the displaced farmers maintain their original living standard, the resettlement subsidy can be increased upon approval by the people's governments of the provinces, autonomous regions and municipalities. The total amount of land and resettlement compensation is capped at 30 times the average annual output value for the three prior years. However, use rights for the land that is taken may be auctioned or sold by the State for a value that is many times higher than this figure. In fact, by most estimates, the compensation paid to farmers represents only 5-10 % of the ultimate sale price of the land; 25-30 % of the land value is kept by the village level collective, with the remaining 60-70 % of the sale price captured by the county and township governments.<sup>21</sup>

While the compensation formula is already extremely unfair and well below the market price of the land to be taken, especially where the land is to be used for industrial, commercial, or residential developments, farmers who lose land to state takings cannot even get a large part of the compensation calculated based on these standards. The existing takings regulations explicitly require that the portion of compensation which is for loss of land be retained with the collective entity.<sup>22</sup> Farmers are entitled only to compensation for standing crops and fixtures, and resettlement subsidies if neither the collective entity nor the state take responsibility for resettlement.<sup>23</sup>

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<sup>21</sup> Xiaolin Guo, *Land Expropriation and Rural Conflicts in China*, *The China Quarterly* (2001) at 422. See also RDI memorandum to Files, *supra* note 2, 11-12.

<sup>22</sup> *Implementing Regulations of the Land Management Law* (1998), art. 26.

<sup>23</sup> *Id.*



Central government efforts to curtail rampant land development and speculation through bureaucratic and administrative changes had, at least as of early 2004, proven ineffective. In late 2003, the central government announced that officials at the county and township levels of the Ministry of State Land and Natural Resources would be brought under the direct supervision of province-level ministerial offices. There have been repeated calls for strengthening land use planning efforts in order to make China's system for protecting arable land the world's strictest. Anecdotal evidence—such as driving around any peri-urban area in China—inevitably leads to the conclusion that land continues to be developed at a brisk pace.

Policy makers and legislators in Beijing recognize that action must be taken, and initial steps are underway. Constitutional amendments adopted by the NPC in March, 2004, added new language regarding compensation when property is taken.<sup>24</sup> Although this change is unlikely to have an immediate or direct impact on land takings cases, it sets the broad direction for future reforms.

Importantly, amendment of the 1998 Land Management Law, which has enabled local governments to acquire agricultural land at very low prices relative to its ultimate price, and retain the lion's share of resulting profits, has been added to the legislative agenda. Prior to amending the LML, however, the central government plans to issue a policy document related to land takings. Initial drafts of this policy have contemplated several fundamental changes to the current system of land development, including:

- Limitation of the state expropriation of land solely to public purpose takings, which will be defined in legislation (roads, public schools, etc.);
- For other, profit-making commercial, industrial, or residential development projects, allowing the collective landowner and farmer-users to directly negotiate land use right leasing transactions with prospective

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<sup>24</sup> Article 10 of the Constitution reads in part, "the State may, for the necessity of public interest, requisition [zhengshou] or expropriate [zhengyong] land in accordance with law and pay compensation."

- developers, without (in contrast to present practice) invoking the state's expropriatory power or involving the state in the development process;
- Increasing the compensation standard that is paid to farmers to more closely reflect the value of the land that is lost as a result of conversion to non-agricultural use;<sup>25</sup>
  - Providing key procedural protections to farmers whose land will be developed, including prior notice, an opportunity to be heard, and a right to appeal.

In dealing with seemingly uncontrollable conversion nationwide of agricultural land for non-agricultural use, the central government recently took several drastic measures to administratively halt such conversion. On April 29, the State Council issued an urgent notice putting a moratorium on land conversions for the rest of the year.<sup>26</sup> It requires government at all levels with authority of approving land conversions suspend their review of applications for land conversions during the moratorium period except for the conversions for projects with "urgent needs". In clarifying such "urgent needs", the Ministry of Land and Resources and the State Commission on Development and Reforms issued an Implementing Measures of the State Council's Urgent Notice on Carrying Out Land Market Correction and Tightening Land Management on June 8, 2004. The Implementing Measures explicitly list seven categories of uses that fall within the definition of "urgent needs" and may be approved within the moratorium: (1) energy projects; (2) transportation projects; (3) water conservancy and agricultural projects; (4) major urban utilities; (5) healthcare facilities; (6) education facilities;

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<sup>25</sup> Depending on the discount factor used for future streams of income, secure 30-year land use rights should, at the beginning of the period, have an economic value equivalent to about 75-95% of the value of full private ownership, underscoring the argument that the farmer-user should get the lion's share of all compensation paid. Moreover, strong arguments can be made that compensation should be based on the full 30-year term, not treating the term as a depreciating asset. This can be supported both on the likelihood that the rights will be extended for a further 30-years upon expiration of the present term, as has been indicated by former President Jiang Zemin, and by the practice in Hong Kong when farmers' 50-year rights are acquired for non-agricultural purposes.

<sup>26</sup> "The General Office of the State Council Issues an Urgent Notice: Carry Out Land Market Correction and Tighten Land management", People's Daily, April, 30, 2004.

and (7) national defense facilities.<sup>27</sup> These new developments clearly indicate the central government's grave concerns over rampant land takings, and appear to show its inclination in defining the scope of future land takings by listing public purposes in unambiguous terms.

Issuance of a longer term policy document, however, has been delayed, primarily because of objections raised by local governments, who consider the ability to offer low cost land to developers to be an important component of attracting investment and maintaining economic growth. Beijing still appears to be reconciling the potential negative impact of making land development transactions more expensive and time-consuming on a permanent basis, against the increasing social and political costs of the current system, which severely disadvantages farmers, badly distorts land markets and, quite likely, contributes to unhealthy overheating in various sectors of the economy. The central government also seems determined to increase farmers' compensation for land as an early step in the reform process – but when and by how much remains to be seen.<sup>28</sup>

#### WHAT MORE NEEDS TO BE DONE?

A longer-term central directive on the aggravated issue of land takings does seem likely in the near future, and should be followed by a package of amendments to the 1998 Land Management Law. These should include measures to specifically define and limit, following the current moratorium, the “public purposes” for which the power of compulsory taking can be used; moving towards a regime where any proposed taking of agricultural land for a commercial or private use should be on a non-compulsory basis, at a price which is voluntarily agreed to through negotiation both by the collective owner of the land and by the farmers who are the long-term users (that is, a market price); with a much higher compensation standard for

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<sup>27</sup> The Ministry of Land and Resources and the State Commission on Development and Reforms' Implementing Measures of the State Council's Urgent Notice on Carrying Out Land Market Correction and Tightening Land Management, Sec. 2, available at [www.mlr.gov.cn/project/querysta/multidocview](http://www.mlr.gov.cn/project/querysta/multidocview).

<sup>28</sup> See “China Will Increase Land Takings Compensation Standard (*Woguo Jiang Tigao Zhengdi Buchang Biaozhun*),” Law-Star.com, citing the Ministry of State Land and Natural Resources, January 18, 2004.

compulsory takings than at present; with the farmers to receive the bulk of the compensation paid in both compulsory takings and negotiated acquisitions (versus the 5-10% of compensation they are estimated to receive now); and with highly transparent and public procedures being used, instead of the opaque and non-participatory process that has been used until now.

Beyond issuance of a new policy document and amendment of the LML, there will be key measures of implementation required to bring any new restrictions on rural land takings into full effect. Three in particular should stand out:

- Publicize the new rules. This was vital to reaching 85 million farm households with 30-year land rights by 2001, and relied heavily on the repeated use of television (the great majority of farm households do have a television).
- Set up a hot-line for complaints. This has successfully been done for the province-wide implementation of tax-end-fee reform in Anhui.<sup>29</sup>
- Include takings-reform in monitoring. A national sample survey of farmers should be done within the next 12-18 months on the state of implementation of farmers' 30 year rights, and this should include specific questions on recent land takings in the village and farmers' knowledge of new rules (by then, hopefully, clearly in place) on takings reform.

A broader benefit is that, as the central government begins such implementation steps on land takings, it will be setting patterns that are generally relevant, and necessary, in effectively extending other important normative regimes, and the rule of law generally, in the Chinese countryside.

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<sup>29</sup> In parallel to the idea of hotline, the Ministry of Land and Resources recently issued a notice calling on all provincial level land administrations to establish an internet hotline for accepting complaints about and report on illegal land takings. See the Ministry of Land and Resources Notice on Effectively Strengthening Transparency of Government Information on Land Resources Through Internet, sec. 2, available at [www.mlr.gov.cn/project/querysta/multidocview](http://www.mlr.gov.cn/project/querysta/multidocview).