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# IMPLEMENTATION OF 30-YEAR LAND USE RIGHTS FOR FARMERS UNDER CHINA'S 1998 LAND MANAGEMENT LAW: AN ANALYSIS AND RECOMMENDATIONS BASED ON A 17 PROVINCE SURVEY

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Ye Jianping<sup>\*\*\*</sup>

*Abstract:* Recent legal and policy measures demonstrate the commitment of China's central leadership to the development and implementation of a legal framework providing long-term, secure land tenure to its nearly 800 million farmers. The results of a 17 province, 1,621 household survey conducted in August 1999 show that considerable progress has already been made toward this goal. However, a number of key issues related to both the implementation of existing legal rules and the development of additional legislation addressing rural land rights must be addressed for the process to be complete.

## I. INTRODUCTION

Beginning with the adoption of the revised 1998 People's Republic of China ("PRC") Land Management Law<sup>1</sup> ("Land Management Law") by the Standing Committee of the National People's Congress on August 29, 1998, China has embarked on one of the largest and most important land tenure reform programs in history with the goal of providing nearly 200 million farm households with the land tenure security necessary for long-term, productivity-enhancing investments in their land. As other successful land tenure reform programs have demonstrated, the benefits from increased investment resulting from greater land tenure security are tremendous, and

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The authors gratefully acknowledge the assistance of Jeffrey M. Riedinger, Professor of Political Science at Michigan State University, in the development of the survey, analysis of its results, and the presentation of those results in the present paper.

<sup>1</sup> Zhonghua Renmin Gongheguo Tudi Guanlifa (Xiuzheng) [Land Administration Law of the People's Republic of China (Revised)] (adopted June 25, 1986, amended Dec. 29, 1988 and Aug. 29, 1998) [hereinafter Land Management Law] translated in Rural Development Institute ("RDI") document (on file with authors).

include increased agricultural productivity, higher farmer incomes, increased rural consumption, and, particularly important to China, the development of a rural market for goods and services, and an end of current deflation.

However, in order to realize these potential benefits, existing legal and policy provisions concerning land tenure security must be effectively implemented, and new legislation must be adopted that provides additional protection of farmers' land use rights. The core elements of China's ongoing rural land tenure reform program can be found in Article 14 of the Land Management Law. Article 14 of the law requires that collectively-owned arable land be contracted to members of the collective economic unit for a term of 30 years, and that a written contract be executed containing the rights and duties of the collective landowner and the contracting farm household.

In addition to mandating 30-year use rights for collectively owned arable land, Land Management Law Article 14 also attempts to provide greater assurance for those rights by restricting the practice of land readjustments, the single greatest threat to land tenure security since collectively-owned arable land was allocated to farm households under the Household Responsibility System. Article 14 prohibits the conduct of big land readjustments,<sup>2</sup> and limits the conduct of small readjustments to "isolated cases."<sup>3</sup> Following the adoption of the 1998 Land Management Law, the Decision of the Third Plenary Session of the 15<sup>th</sup> Central Committee of the Chinese Communist Party (Third Plenary Session Decision) reiterated the central government's desire to provide additional assurance for farmers' new 30-year land use rights by calling for the implementation of "long-term, protected rural land use rights" and the drafting of additional legislation to protect such rights.<sup>4</sup>

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<sup>2</sup> Two general types of land readjustments exist in China: "big" or comprehensive readjustments, and "small" or partial readjustments. Big 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 landowner and reallocated among village households so each household receives entirely different land. A small readjustment consists of adding to or taking from a household's existing landholding when that household's size changes.

<sup>3</sup> Land Management Law, *supra* note 1, art. 14. Article 14 allows only "appropriate isolated readjustments of land" during the 30-year land use term based on the approval of at least two-thirds of the villager assembly, or two-thirds of the villager representatives, and approval by the administrative agency responsible for agriculture at the township and county levels.

<sup>4</sup> See Zhongguo Gongchandang Di Shiwu Jie Zhongyang Weiyuanhui Di Sanci Quanti Huiyi, Zhonggong Zhongyang Guanyu Nongye he Nongcun Gongzuo Ruogan Zhongda Wenti de Jueding [Decision of the Third Plenary Session of the Chinese Communist Party Central Committee on Several Major Issues in Agriculture and Rural Work] (adopted Oct. 14, 1998) *translated in* RDI document (on file with authors).

Just prior to the January 1, 1999 effective date of the Land Management Law, the Decision of the 1998 Central Rural Work Meeting announced the goal that 30-year rural land use rights should be "fully implemented" throughout China prior to the end of 1999. The Herculean nature of this goal embodies both the importance attached to rural land tenure security by the central government as well as its commitment to seeing it achieved in practice.

Systematic monitoring can make a crucial difference to the success of implementing any legal or policy measure of substantial scope. Given the extent of the task and the short timetable established by the Decision of the 1998 Central Rural Work Meeting, the importance of systematic monitoring is especially relevant to the implementation of 30-year rural land use rights in China. Without such monitoring, it is impossible to ascertain the true nature or extent of implementation and the need for refinements to the implementation process. In the context of China's ongoing rural land tenure system reforms, systematic monitoring of implementation of 30-year rural land use rights, and of the impact of such rights as presently defined in law and policy documents upon farmers' land tenure security,<sup>5</sup> also plays a vital role in informing the development of forthcoming legislation related to rural land use rights.

This paper discusses the results of a 1,621 household random sample survey on the implementation of 30-year rural land use rights and farmers' land tenure security conducted by the Rural Development Institute ("RDI") and Renmin University in 17 Chinese provinces in July and August, 1999. The survey's goal was to assess the extent and nature of implementation of 30-year rural land use rights, and, based on that assessment, develop a set of conclusions and recommendations concerning the ongoing land tenure reform process. Analysis of the survey results indicates both that China has made remarkable progress in the process of implementing 30-year rural land use rights and that crucial issues must still be addressed to ensure that China's 870 million farmers receive long-term land tenure security.

The development and methodology of the survey is described in detail in Part II. Part III presents the national survey results. Part IV presents the survey results on a province-by-province basis. Finally, based on the survey results, Part V contains a series of conclusions and provides specific recommendations concerning the ongoing implementation of 30-year rural

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<sup>5</sup> That is, do the rights as presently defined sufficiently meet the need for farmers to have long-term tenure security, so as to lead to the intended benefits.

land use rights as well as on the development of forthcoming legislation on rural land use rights.

## II. SURVEY DEVELOPMENT AND METHODOLOGY

### A. *Survey Development*

As early as November 1998, less than three months after the adoption of the Land Management Law and prior to its effective date, various media outlets in China publicized claims by high-level officials from several provinces that over 90% of villages within their provinces had already completely implemented 30-year rural land use rights.<sup>6</sup> Although some provinces had begun implementation of 30-year land use rights under the terms of Central Committee Document No. 16 of 1997,<sup>7</sup> "Notice Concerning Further Stabilizing and Protecting the Rural Land Contracting Relationship" ("Document No. 16"), which required that 30-year rural land use rights be introduced upon expiration of farmers' previous 15-year land use rights,<sup>8</sup> it seemed highly unlikely that such a high level of implementation could have been achieved in any individual province by the end of 1998.

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<sup>6</sup> For example, the Vice-Governor of Anhui Province claimed in a front-page China Daily article that 98.2% of villages province-wide had completed implementation of 30-year use rights to rural land. See CHINA DAILY, Dec. 14, 1998, available in LEXIS, Asia Intelligence Wire.

<sup>7</sup> Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting, Guanyu Jinyibu Wending he Wanshan Nongcun Tudi Chengbao Guanxi de Tongzhi [General Office of the CPC Central Committee & the General Office of the State Council, Central Committee Document No. 16, Notice Concerning Further Stabilizing and Protecting the Rural Land Contracting Relationship] (issued Aug. 27, 1997) [hereinafter Central Committee Document No. 16], translated in RDI document (on file with authors). Central Committee Document No. 16, contained the following language concerning the implementation of 30-year rural land use rights: "When the first-round land contracting term expires, the land contracting term shall be extended for another 30 years . . . The extension of the contracting term for another 30 years is implemented based on the first-round land contracting."

<sup>8</sup> In 1984, the Communist Party Central Committee issued Rural Work Document 1 urging local officials to: ". . . prolong the time period of the contracted land, encourage the peasants to increase their investment to foster the fertility of the soil and practice intensive operation. In general, the time period of the contracted land should be more than 15 years. Projects with a long production cycle and of development nature, such as fruit trees, woods and forests, denuded hill, and waste land, should have a larger contract period."

A Chinese Communist Party Central Committee decision published in November 1993 stated that the term for contracting land may be extended another 30 years upon expiration of the original 15-year land use term. Zhonggong Zhongyang, Guowuyuan Guanyu Dangqian Nongye he Nongcun Jingji Fazhan de Ruogan Zhengce Cuoshi [CPC Central Committee & State Council, Document No. 11, Concerning Several Current Policy Measures on Agricultural and Rural Economic Development] (issued November 5, 1993), translated in RDI document (on file with authors).

Despite these repeated policy pronouncement, however, RDI's field research experience indicates that the so-called 15-year use right policy originating in 1984 was never widely implemented.

To assess the actual progress of implementation in one of the provinces claiming a very high level of implementation of 30-year land use rights, and whether such implementation conformed with the new provisions of the Land Management Law, the authors conducted two days of targeted Rapid Rural Appraisal fieldwork in Henan province in December 1998.<sup>9</sup> Our interview questions covered the entire range of issues relating to implementation of farmers' 30-year use rights, from simple knowledge of the policy (via TV or cadre announcements), to village meetings to discuss the policy and to decide on a possible land readjustment during the implementation process (big, small, or no readjustment),<sup>10</sup> to carrying out that readjustment, signing and actually issuing 30-year land use right contracts and land use right certificates, to the consistency of such contracts and certificates with provisions of the new Land Management Law, to the farmers' actual expectations that there would or would not be readjustments during the 30-year use right period. We also asked about farmers' attitudes towards the 30-year no readjustment policy.

The results of our 14 farmer interviews with respect to these key implementation issues in Henan raised serious concerns that full implementation, as measured by the issuance of an appropriate 30-year land use right contract to farmers, had actually only occurred in a small minority of villages.<sup>11</sup> These results further underlined our doubts concerning various provinces' public claims of nearly completed implementation, and appeared

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<sup>9</sup> Against the background of its work on rural land reform in 33 other countries, RDI has conducted research on rural land tenure issues in China since 1987. In that time, RDI attorneys have conducted interviews with over 700 farm households using Rapid Rural Appraisal techniques. In these Rapid Rural Appraisal interviews, farmer interviewees are not 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. In addition to these longer, more detailed surveys, RDI also cooperated with the Ministry of Agriculture's National Rural Experimental Zone Office in the design and conduct of a 1,080 household survey in four counties of Fujian and Shaanxi provinces in December 1996.

Joining in the Henan Province Rapid Rural Appraisal fieldwork, co-author Ye Jianping has served as Professor of Land Management at Renmin University since 1987. His primary research areas include land information systems and land and real estate appraisal. He has acted as the Chinese land consultant to the UNDP Sustainable Development for Small Townships project since March 1998.

<sup>10</sup> For a description of the differences between big and small land readjustments see *supra* note 2. The conduct of big readjustments during the process of implementation of 30-year rural land use rights is a violation of central policies. See *infra* Part III.G.2.

<sup>11</sup> In fact, full implementation could be claimed in only one of the 14 farmer interviews we conducted. For a detailed discussion of our fieldwork findings see Roy Prosterman et al., *Implementation of 30-Year Use Rights for Rural Land in Henan Province: Fieldwork Results* (December 16, 1998) (unpublished Memorandum on file with the authors).

to confirm the need for a more systematic assessment of the actual progress of implementation of this vitally important program.

The need for broader and systematic assessment indicated that preparations should be made to conduct a large, random-sample survey on a nationwide basis. In this way, implementation could be measured in all its major aspects, with quantifiable results that should reliably reflect both the national and provincial situations. Thus, based on the list of questions used in the December 1998 Henan fieldwork described above, in early 1999 the authors jointly developed a more formal survey questionnaire for use in systematic monitoring. Using a draft version of this questionnaire, RDI Staff Attorney Brian Schwarzwald and Renmin University Professor Ye Jianping conducted a second round of fieldwork interviews in April and May 1999. This round of fieldwork served the dual purposes of further preliminary evaluation of implementation of 30-year rural land use rights and testing the draft questionnaire. During six days of fieldwork, the two authors used the draft survey questionnaire to conduct 29 farmer household interviews in 24 villages in 20 counties of Hebei, Shanxi, Shandong, and Jiangsu provinces, as well as Beijing Municipality.

Following this fieldwork, additional revisions were made to the survey questionnaire to incorporate newly discovered issues and to ensure that the range of alternative responses provided in the survey questionnaire was sufficient to encompass the range of responses given by farmers during fieldwork. Using this revised survey questionnaire, RDI Attorneys Roy Prosterman and David Bledsoe, and RDI China Consultant Li Ping, with the cooperation of the Development Research Center of the State Council, conducted a third round of targeted fieldwork in Heilongjiang and Jilin provinces in June 1999.

The three preliminary rounds of fieldwork just described yielded important positive indications as well as underlining several potential concerns. On the positive side, it seemed clear that the central government's publicity campaign as to the new 30-year land use rights to which farmers are entitled, had been highly successful. Nearly all farmers interviewed reported that they had heard of the 30-year land use rights. With considerable variation, depending on the timing of the fieldwork and the province in which it was conducted, half or more of the villages in which we had conducted fieldwork had begun the process of implementing 30-year land use rights.

At the same time, however, the fieldwork also identified a variety of issues related to the process of implementation of 30-year land use rights

that posed a serious threat to farmers' long-term land tenure security. These issues included:

1. Many villages had not yet begun the implementation process, and in many that had, cadres had not involved farmers in the process of implementing the new rights.
2. Even where 30-year land use contracts had been signed, the contracts had sometimes been retained by township or village officials and not physically issued to farmers.
3. Some contracts contained provisions that contemplated, or even required, continuing land readjustments during the 30-year land use term.
4. Some cadres had violated the Land Management Law and related policy documents by withholding substantial amounts of arable land from contracting to members of the village collective, under the guise of Flexible Land, or of responsibility land within the Two-Field System.
5. In violation of central policies, many villages had conducted big readjustments during the process of implementing 30-year land use rights.
6. But by far the most disturbing issue uncovered during this preliminary fieldwork was that most farmers we interviewed were not confident that they would receive the full 30-year land use term to which they are entitled free from land readjustments. If this were widely true, then most farmers would lack the assurance of tenure security that would lead to additional investments on the land, and the primary purpose of the Land Management Law in granting 30-year land use rights would be defeated.

Against the backdrop of this preliminary fieldwork, the survey questionnaire was finalized and the survey was carried out to further assess the extent and nature of these positive and negative trends related to the implementation of 30-year rural land use rights in China, to discover any new issues related to implementation, and to develop a series of targeted



recommendations designed to protect and increase farmers' land tenure security.

### B. *Survey Methodology*

Our two basic goals in conducting the survey were: (1) to conduct a survey of sufficient size to provide highly accurate data at the national level on implementation of farmers' 30-year rural land use rights and (2) to make the survey sample large enough to provide useful data on the relative progress of implementation at the level of individual provinces.

Starting with the need for a sufficiently large sample size to give useful results at the provincial level, we concluded that a sample size of 100 farmers in each province would be desirable. Such a sample provides results that should be descriptive of the situation in the entire province to an accuracy of +/- 9.8%.<sup>12</sup> Because we decided that the survey should include 17 provinces our nationwide sample would be 1,700 households. In fact, 1,621 valid survey responses were returned by interviewers, a sufficient national sample to give results that should be descriptive of the situation in the 17 provinces as a whole to an accuracy of +/- 2.4%.<sup>13</sup>

Two major factors were considered in selecting the actual survey provinces from China's 31 provinces and province-level municipalities. First, the survey provinces should represent all or nearly all of China's major agricultural provinces. Second, the rural population of the survey provinces should represent a large proportion of China's total rural population. Based on these selection criteria, all seven of China's province-level municipalities were eliminated, as were several western provinces with relatively low agricultural population, including Tibet, Qinghai, Xinjiang, and Gansu.

The 17 survey provinces include over 90% of China's approximately 197 million rural households.<sup>14</sup> The 17 survey provinces were: Hebei, Jilin, Heilongjiang, Jiangsu, Anhui, Shandong, Zhejiang, Jiangxi, Fujian, Hunan, Hubei, Henan, Guangxi, Guizhou, Sichuan, Yunnan, and Shaanxi.

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<sup>12</sup> That is at the "95% confidence level," i.e., the results should fall within that range in 95 out of 100 cases, if it were possible to take a complete census of every farm household in the province.

<sup>13</sup> The +/- 2.4% figure is calculated as follows:  $\sum = 1.96 \times \sqrt{25/n}$ . Once again, this should be the range of accuracy in 95 cases out of 100. See *supra* note 12. Such a survey, giving results to within a range of +/- 2.4%, is quite large, and met our goal of a high degree of accuracy at the national level.

<sup>14</sup> Using official estimates of rural population of 870 million in 1998 (see *infra* note 57) and the average figure of 4.42 members per household from the 17-province survey would give a figure of approximately 197 million rural households at that time. Based on official 1997 population figures, the 17 survey provinces contain approximately 186 million rural households, which would represent about 94% of China's rural households.

Once the 17 provinces had been selected, Renmin University students from each of the survey provinces were selected as interviewers. Priority was given to students from the Land Management Department with previous training in rural land issues. Students attended a series of training sessions provided by Renmin University Professor Ye Jianping in May and June 1999, and a two-day training course taught jointly by RDI researchers and Professor Ye prior to the commencement of the survey.

The training emphasized several key elements derived from the survey pre-testing as well as experience gained in RDI's interviews of over 700 farm households conducted throughout China since 1987. First, students were instructed on how to create a survey atmosphere in which farmers felt comfortable responding to questions freely and honestly by asking farmers for their voluntary participation in the survey and treating them with respect and courtesy. Second, students were taught to use language and concepts that are easily understood by farmers. Third, and most importantly, the training emphasized that interviews should only be conducted away from local cadres, whose presence could influence farmers' responses to the survey questions. In addition to the training provided prior to the survey, one graduate student from Renmin University's Land Management Department was designated as team leader for each survey province. These team leaders were responsible for coordinating students from that province and for responding to any questions encountered by students in the process of administering the survey.

Each student was asked to complete a minimum of 10 survey questionnaires. Each interview was conducted with a randomly selected household in a separate, randomly selected village. For each set of 10 questionnaires completed, survey interviews were conducted in a minimum of five randomly selected townships in two or more counties. A total of

**Table 1. Survey Interviews by Province**

Province	Surveys Completed
Hebei	86
Jilin	100
Heilongjiang	95
Jiangsu	102
Anhui	78
Shandong	100
Zhejiang	90
Jiangxi	101
Fujian	103
Hunan	88
Hubei	98
Henan	103
Guangxi	102
Guizhou	91
Sichuan	100
Yunnan	69
Shaanxi	104
<b>Total</b>	<b>1,621</b>

1,621 valid survey questionnaires were returned, encompassing 1,621 villages<sup>15</sup> in over 350 counties of the 17 provinces. The number of valid responses per province is expressed in Table 1.

To ensure that the combined results from all of the provinces, discussed in Part III, are representative on a national level (or strictly speaking, are representative for the 17 survey provinces which contain 90% or more of China's rural population), the survey results from each province have been weighted according to the share of rural population contained in that individual province relative to the total rural population contained in the 17 survey provinces. No weighting is necessary (or possible), however, when we separately present the results for each individual survey province.

Thus, in summary, the national survey results discussed in Part III and throughout the paper are accurate for the combined rural population of the 17 provinces to within +/-2.4% in 95 out of 100 cases. The individual province figures discussed in Part IV, below, represent the raw, unweighted percentages, and are accurate for the rural population of that province to within approximately +/-9.8% in 95 out of 100 cases. The survey was conducted during the last half of July and the first half of August 1999. The results therefore reflect the situation in the countryside as of that time.

### III. NATIONAL SURVEY RESULTS

#### A. *Household Characteristics*

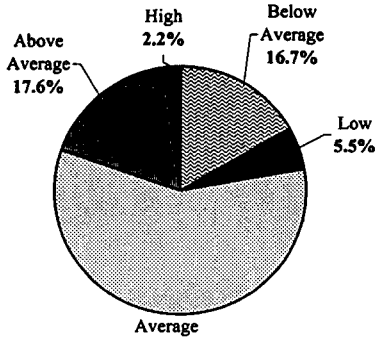
The 1,621 farmers interviewed reported an average household size of 4.42 members and an average annual per capita income of 2,063 RMB Yuan. An average household possessed 3.85 land shares with a per capita land share size of 1.32 mu,<sup>16</sup> for an average household landholding size of 5.68 mu. Nearly two-thirds of the respondents (65.1%) also reported that at least one member of their household was currently engaged in non-agricultural employment. Figure 1 indicates farmers' reported income levels relative to other village households.

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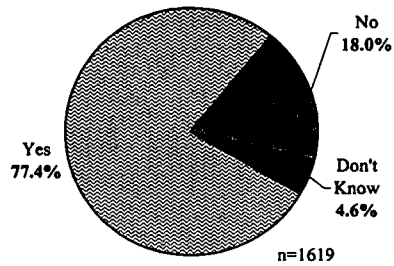
<sup>15</sup> It should be noted that for nearly all of the factual questions addressed by the survey, the farmer's response should be representative of the situation in that village as a whole. This is directly so in questions such as, "Does your village have Flexible Land?," and indirectly so in questions such as, "Have you signed a 30-year land use contract?," because village cadre carry out such tasks on a village-wide basis. From a statistical standpoint, therefore, it is important that the number of villages in our sample is just as large as the number of households.

<sup>16</sup> The mu is a traditional Chinese unit of land measurement, equivalent to approximately 67 square meters, or one-fifteenth of a hectare.

**Figure 1. Respondents' Reported Income Level Relative to Other Village Households**



**Figure 2. Has Village Conducted a Land Readjustments Since Inception of HRS?**



*B. Previous Land Readjustments*

The survey results indicate that over three-quarters of villages have conducted at least one land readjustment since the inception of the Household Responsibility System ("HRS") (see Figure 2).

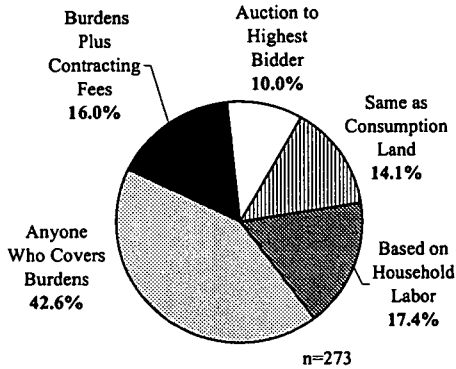
In 62.7% of the villages that had conducted at least one land readjustment, farmers reported that the most recent land readjustment occurred during or after 1996. The survey results further show that the most recent land readjustments were divided almost equally between big readjustments (50.8%) and small readjustments (49.2%).

*C. The Two-Field System*

The survey results indicate that 65.2% of villages have never employed the Two-Field System, while 17.6% currently employ it, and 17.2% previously employed the Two-Field System, but have subsequently ended it. One important aspect of these results is that nearly half of the villages that have ever employed the Two-Field System have subsequently ended the practice. The survey findings further show a substantial decrease in the percentage of villages employing the Two-Field System since 1997, the year that Rural Work Document No. 16 was issued by the Central Committee.<sup>17</sup> From 1997 onward, the Two-Field System was introduced in

<sup>17</sup> Central Committee Document No. 16 prohibited the introduction of the Two-Field System in any villages that had not previously adopted it. See Central Committee Document No. 16, *supra* note 7.

**Figure 3. Responsibility Land Allocation Methods**



only 3.0% of the villages that have ever introduced it, while it was ended in 17.2% of similar villages, for a net decrease of 14.2%. This suggests a high degree of compliance with at least Document No. 16's provision prohibiting the introduction of the Two-Field System.

As Figure 3 indicates, farmers in the villages currently employing the Two-Field System reported that responsibility land<sup>18</sup> is

allocated by a variety of methods.

The survey responses also indicate that in the 17.6% of survey villages in which the Two-Field System continues to exist, many villages continue to designate a high proportion of village arable land as responsibility land.

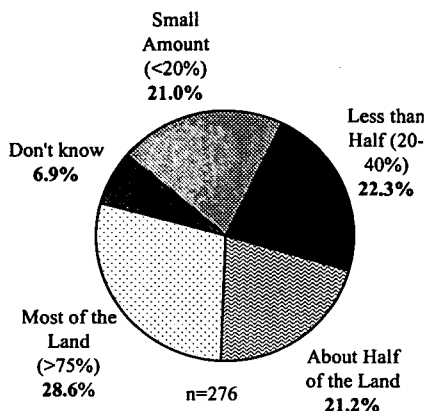
As indicated by Figure 4, 49.8% of villages currently employing the Two-Field System have designated (in respondents' estimates) half or more of village land as responsibility land.

Contracting of responsibility land to non-members of the collective does not appear to be a significant issue. Nearly two-thirds (63.9%) of farmers in villages currently employing the Two-Field System reported that their villages do not contract any responsibility land to outsiders, while 21.8% reported that their village contracts a small amount of responsibility

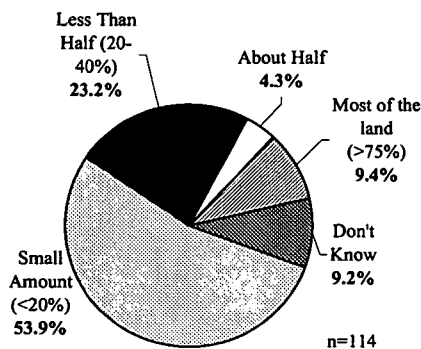
Central Committee Document No. 16 further required that the Two-Field System end in any villages that had adopted it without the voluntary agreement of village farmers. *Id.*

<sup>18</sup> The Two-Field System breaks with the typical pattern of distributing all farmland on a per capita basis. Instead, cultivated land is divided into two categories: consumption land and responsibility land. Consumption land is distributed within each village on a per capita basis to meet each household's basic needs. The remaining responsibility land is contracted to farmers through a variety of methods, which in many cases results in a non-egalitarian land distribution. Unlike consumption land, on which farmers are only responsible for collective contributions, an additional contracting fee is typically charged for responsibility land. For an analysis of the Two-Field System and its implementation in China see Roy Prosterman, Tim Hanstad, and Li Ping, *Land Reform in China: The Two-Field System in Pingdu*, RDI Reports on Foreign Aid and Development #86 (November 1994) (Unpublished report on file with the Rural Development Institute).

**Figure 4. Village Land Contracted as Responsibility Land**



**Figure 5. Village Land Contracted as Scale Farming Land**



land to outsiders, and only 2.0% reported that a large proportion of village responsibility land is contracted to outsiders.<sup>19</sup>

However, a further response to the survey may override to a considerable extent discussion of the Two-Field System. For, of that substantial majority of villages with responsibility land that have decided to readjust prior to allocating land with 30-year land use rights, nearly three-quarters of such villages (73.9%) are including responsibility land in that readjustment, allocating it together with consumption land under 30-year land use rights.

*D. Scale Farming*

The survey results indicate that Scale Farming<sup>20</sup> has only been employed in a small minority of villages. Only 7.2% of farmers report that their village currently employs Scale Farming on village arable land, with an additional 2.7% reporting that their villages previously employed, but

<sup>19</sup> An additional 12.2% of respondents did not know how much responsibility land was contracted to non-members of the collective.

<sup>20</sup> Scale Farming involves the consolidation of small labor-intensive farms into larger, mechanized farms. Scale farming can be accomplished through a variety of approaches, but typically involves the contracting of large areas of arable land to a limited number private farmers or the operation of large-scale farms by the collective landowner. Recollectivization of farmland was the ultimate goal in at least some experiments with Scale Farming that occurred in the early 1990's. For a discussion of Scale Farming and its relevance to China see Roy Prosterman, Tim Hanstad, and Li Ping, *Large-Scale Farming in China: An Appropriate Policy?* JOURNAL OF CONTEMPORARY ASIA, Vol. 28 No. 1 (1998) at 74.

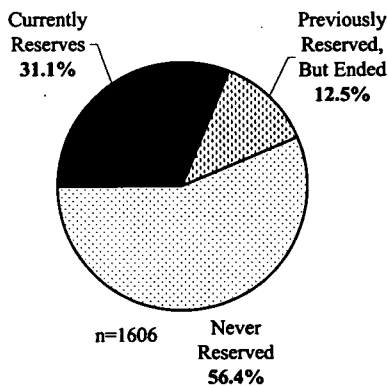
subsequently ended the practice of Scale Farming. The remaining 90.0% of farmers reported that their village has never introduced Scale Farming.

In the villages that continue to employ Scale Farming, less than half of village arable land is typically affected, as exhibited in Figure 5. Where Scale Farming does exist, the survey results show that contracting of Scale Farming land to non-members of the collective is much more common than contracting of responsibility land to outsiders under the Two-Field System.

### E. Flexible Land

Flexible Land<sup>21</sup> is currently found in a much higher proportion of villages than the Two-Field System or Scale Farming (see Figure 6). Almost

**Figure 6. Villages Reserving Flexible Land**



half of the villages that continue to reserve Flexible Land have violated central policy by reserving more than five percent of village arable land as Flexible Land.<sup>22</sup>

As Figure 7 indicates, 46.7% of villages reserving Flexible Land have violated central government policy by reserving more than 5% of arable land as Flexible Land, and 16.4% have reserved more than 10% of village arable land as Flexible Land.

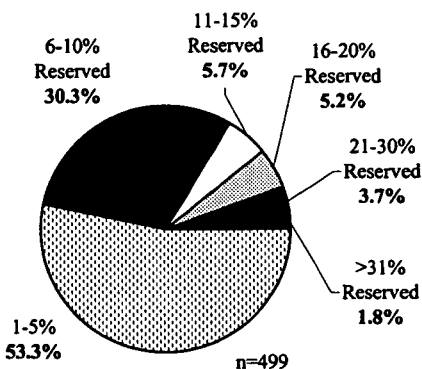
On the other hand, our survey results indicate that the implementation process itself has

<sup>21</sup> Many villages in China have adopted the practice of reserving a small proportion of their arable land from allocation to households on a per capita basis. This land, known as Flexible Land, is used to provide land for new village households or for existing households that have added new members. It may also be allocated as compensation for households who lose land through compulsory acquisition. Flexible land is typically contracted on a compensated basis out for short-term use until needed for one of these purposes.

<sup>22</sup> Central Committee Document No. 16 called for villages to "strictly control and manage the 'Flexible Land.'" See Central Committee Document No. 16, *supra* note 7. It required that "in those places where 'Flexible Land' has been allocated, the total area of Flexible Land must be limited to the area of less than five percent of the total land area, and such 'Flexible Land' must be used to solve the contradiction between the limited land area and the large population. *Id.* Those areas of land in excess of the five percent shall be contracted to households according to the principles of fairness and equality." *Id.*

apparently not been the occasion for widespread or substantial increases in Flexible Land, which would also be a violation of central policy.<sup>23</sup> Of the substantial majority of villages with Flexible Land that have decided to conduct a land readjustment as part of the process of implementing 30-year land use rights, it appears that fewer than one-fifth (18.7%) have used that readjustment to increase the amount of Flexible Land (60.7% of such villages have not increased Flexible Land, and 20.7% of farmer respondents did not know whether their village had increased Flexible Land). Where Flexible Land has been increased in such a readjustment, it remains at 10% of village arable land or less in about half the cases, and only rarely reflects a large increase in the remaining cases.

**Figure 7. Amount of Flexible Land Reserved in Villages Currently Reserving Flexible Land**



Although contracting of Flexible Land to non-members of the collective occurs, it does not appear to be a significant problem. The survey results indicate that 65.6% of villages do not contract any Flexible Land to outsiders, while 21.9% of respondents reported that their villages contract a small amount of Flexible Land to outsiders, and only two percent reported that their village contracts a large amount of Flexible Land to outsiders.<sup>24</sup>

*F. Farmers' Awareness and Support of the 30-Year No Readjustment Policy*

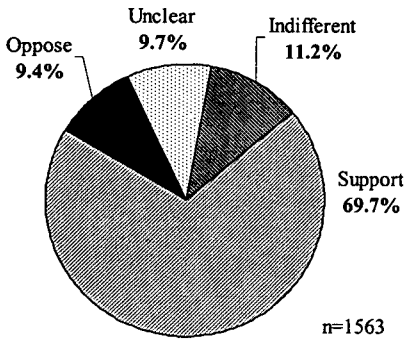
The central government's publicity campaign concerning 30-year rural land use rights has been extremely successful, as 92.4% of farmers reported that they have heard of the 30-year no readjustment policy. More farmers (60.7%) reported that they had heard of the policy from television

<sup>23</sup> Central Committee Document No. 16 further stated that "in the places where no Flexible Land has been retained at present, no Flexible Land should be allocated." *Id.* Combined with the 5% limit on total Flexible Land, Central Committee Document No. 16 clearly prohibits villages from substantially increasing Flexible Land area through the process of implementing 30-year land use rights. *Id.*

<sup>24</sup> An additional 10.9% of farmers did not know whether their village contracts land to non-members of the collective.



**Figure 8. Attitudes Towards 30-Year No Readjustment Policy**



than by any other means. A relatively high proportion of farmers also reported that they had heard of the policy through discussion by other villagers (52.1%) and through formal notification by cadres (51.5%).

As Figure 8 indicates, farmer support for the 30-year no readjustment policy is widespread. The ratio of farmers approving of the policy to farmers disapproving is more than 7:1.

*G. The Implementation Process*

*1. Development and Adoption of Implementation Plans*

As indicated by Table 2, farmers' responses indicate that 68.5% of villages had started the implementation process as of August 1999. However, only 60.3% of farmers reported that their villages had convened at least one meeting at which the 30-year no readjustment policy was discussed, leaving 8.2% of villages that had apparently started implementation without convening such a meeting.

**Table 2. The Process of Implementing 30-Year Land Use Rights**

Has Your Village Reached the Following Stages in the Process of Implementing 30-Year Rural Land Use Rights?				
Stage	Frequency <sup>25</sup>	Yes	No	Don't Know
Started the implementation process	1483	68.5%	31.5%	-
Convened at least one meeting to discuss implementation of 30-year rural land use rights	1485	60.3%	39.7%	-
Adopted a village Implementation Plan	1399	47.8%	52.2%	-
Decided to conduct a land readjustment (big or small) as part of implementation of 30-year rights	1431	53.9%	24.1%	21.9%
Completed a land readjustment	770	63.0%	37.0%	-
Issued 30-year land use right contracts to farmers	1444	38.3%	61.7%	-

<sup>25</sup> Frequency represents the number of valid responses received for each survey question.

In the villages where at least one meeting has been convened, the survey results show that farmer attendance at such meetings is high. Only 11.5% of farmers in those villages responded that neither they nor a family member had attended at least one meeting. In 62.7% of the responses, the farmer respondent himself had attended one or more meetings, divided between 27.3% who had attended one meeting and 35.4% who had attended more than one meeting. In the remaining 25.7% of responses, a family member other than the farmer respondent had attended one or more meetings to discuss the 30-year no readjustment policy, divided between 9.2% where another family member attended one meeting and 16.5% where another family member had attended more than one such meeting.

Nearly half of all respondents (47.8%) reported that a village implementation plan had been adopted at such a meeting, and such plans had been adopted in 74.7% of villages where at least one meeting had been convened to discuss the 30-year no readjustment policy. In just over half (51.1%) of the villages in which implementation plans were adopted, farmers reported that they had been adopted based on a vote, divided between 22.2% who reported that the vote involved all village members, and 28.9% who reported that the vote involved all village representatives. However, in one-third (33.7%) of the villages in which an implementation plan was adopted, farmers reported that the cadres had adopted the plan unilaterally without any vote. In the remaining cases, farmers reported that they were unsure of how the implementation plans had been adopted (10.4%), or that plans were adopted by methods other than those described above (4.8%).

Where implementation plans were adopted based on a vote, the survey results indicate that 29.8% of the time, unanimous approval of the voters was required. Approval of more than two-thirds of all voters was required in 38.0% of the villages that voted, and a simple majority was required in 28.3%.<sup>26</sup>

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<sup>26</sup> An additional 3.0% of farmers reported that some voting requirement other than those described here was used.

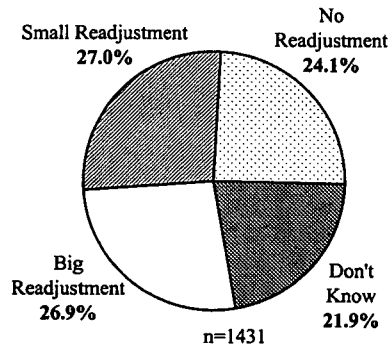
## 2. Land Readjustments During the Process of Implementing 30-Year Land Use Rights

Under Document No. 16, a final small readjustment prior to implementation of 30-year rural land rights may be conducted in villages where population and land contradictions exist, but big readjustments are not permitted as part of the implementation process.<sup>27</sup> Figure 9 shows farmers' responses about whether their village would conduct a land readjustment during the implementation process.

Thus, more than half of farmer respondents indicated that their village had already conducted, or planned to conduct a land readjustment as part of the process of implementing 30-year rural land use rights. It should be noted that, despite Document No. 16, almost the same proportion of villages have conducted or plan to conduct a big readjustment prior to commencement of 30-year rights as have conducted or plan to conduct a small readjustment.

Where their village has already decided to conduct a final readjustment as part of the implementation process, 63.0% of farmers reported that the land readjustment had already occurred, while 37.0% reported that it had not yet occurred.

**Figure 9. Land Readjustments During the Implementation Process**



<sup>27</sup> Central Committee Document No. 16 states: "When actually implementing the 30 years' extension, the original land contracting for the great majority of farmers shall remain stable. The implementation shall not take the approach by taking back all of the originally-contracted land and then re-contract the land to farmers." See Central Committee Document No. 16, *supra* note 7.

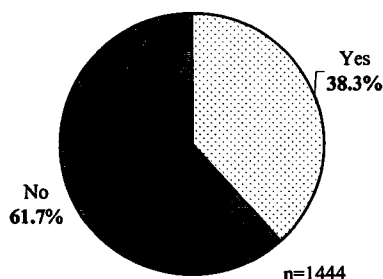
### 3. Issuance of 30-Year Land Use Contracts<sup>28</sup>

Because Article 14 of the 1998 Land Management Law requires the execution of a land use contract between the collective landowner and the farm household, full implementation of 30-year land use rights cannot be claimed until such contracts have physically been issued to farmers. The survey results indicate that 48.5% of farmers have signed a 30-year

land use contract, but that only 38.3% of farmers have been issued a 30-year land use right contract (see Figure 10). This figure is substantially higher than the percentages of farm households reporting issuance of a 30-year land use contract during earlier rounds of fieldwork, and indicates that approximately 75 million<sup>29</sup> 30-year land use contracts had been issued to farm households in China by August 1999. At the same time, however, it also indicates that over three-fifths of the villages in China (61.7%) had not completed implementation of 30-year land use rights as of August 1999.

Where farmers reported that they had been issued a 30-year land use contract and that they physically possessed a copy of the contract, interviewers requested to observe the contract and recorded information concerning the contract's provisions. Basic elements were present in 90% or more of contracts, as shown in Table 3. However, it is nonetheless of

Figure 10. Has the Collective Issued 30-Year Land Use Contracts to Farmers?



<sup>28</sup> In addition to asking farmers whether they had been issued 30-year land use contracts, interviewers also asked whether they had been issued 30-year Land Use Rights Certificates. Where farmers had received such certificates, interviewers further asked farmers to produce them so that interviewers could record key elements of the certificate's content on the survey questionnaire. The survey results show substantial overlap between both contract and certificate content and contract and certificate issuance. Further analysis is ongoing to determine actual issuance of certificates as distinct from contracts and the content of such certificates.

<sup>29</sup> We arrived at the figure of 75 million contracts issued by multiplying the percentage of farmers who have received a contract (38.3%) by the approximate number of rural households in China (197 million; see *supra* note 14). This calculation assumes that results for the 94% of China's rural households covered by the survey also hold for the remaining 6% of rural households not located in the 17 provinces. The results of our 17 province survey should be accurate at the national level within +/- 2.4%. See *supra* note 13 and accompanying text.

concern that 8.1% of issued contracts did not specify the 30-year land use term.

**Table 3. Basic Information in Farmers' 30-Year Land Use Contracts**

<b>Does the Farmer's 30-Year Land Use Right Contract Include the Following Basic Information?</b>			
<b>Type of Information</b>	<b>Frequency</b>	<b>Yes</b>	<b>No</b>
The 30-year land use term	500	91.9%	8.1%
The seal or signature of the issuing agency	505	99.3%	0.7%
The seal or signature of the contracting party	505	93.2%	6.8%
The total area of the contracted land	504	98.8%	1.2%

With respect to crucial provisions related to land readjustments during the 30-year land use term, however, the observed contracts contained important differences.

**Table 4. Contract Provisions on Land Readjustments**

<b>Does the Farmer's 30-Year Land Use Right Contract Contain a Provision Concerning Land Readjustments During the 30-Year Land Use Term?</b>		
<b>Type of Provision</b>	<b>Frequency</b>	<b>Valid %</b>
The contract allows land readjustments during the 30-year land use term	130	25.6%
The contract requires land readjustments during the 30-year land use term	20	3.9%
The contract prohibits land readjustments during the 30-year land use term	69	13.6%
The contract contains no provisions concerning land readjustments	218	42.9%
The contract contains apparently inconsistent provisions concerning land readjustments	71	14.0%
<b>Total</b>	<b>508</b>	<b>100.0%</b>

Table 4 shows that 25.6% of the 30-year land use contracts that had been issued to farmers contained provisions allowing land readjustments during the 30-year land use term (and contained no other provisions concerning land readjustments), and a further 3.9% of issued contracts contained an illegal provision requiring land readjustments during the 30-year land use term (and contained no other provisions concerning land readjustments).

As Table 5 shows, the observed contracts also contained important differences related to farmers' ability to transfer their land use rights during the 30-year land use term.<sup>30</sup>

**Table 5. Contract Provisions on Land Use Right Transfers**

<b>Does the Farmer's 30-Year Land Use Right Contract Contain a Provision Concerning the Transfer of 30-Year Land Use Rights?</b>		
<b>Type of Provision</b>	<b>Frequency</b>	<b>Valid %</b>
The contract allows transfers of 30-year land use rights	286	58.5%
The contract prohibits transfers of 30-year land use rights	20	4.1%
The contract contains no provisions concerning transfers of 30-year land use rights	161	32.9%
The contract contains apparently inconsistent provisions concerning land transfers	22	4.5%
<b>Total</b>	<b>489</b>	<b>100.0%</b>

#### *H. The Breadth of Farmers' Land Use Rights*

With respect to land tenure security, breadth is a measure of the quantity and quality of the land rights held. The survey contained a series of questions related to farmers' perceptions of and attitudes towards the breadth of their land use rights, including: (1) the right to transfer or lease their land use rights to other villagers or non-members of the village collective; (2) the right to pass their land use rights to their children by inheritance; (3) the right to retain their land use rights upon change in household registration; (4) the right to mortgage land use rights as security for credit; and (5) the right

<sup>30</sup> Current Chinese Law allows the transfer of rural land use rights. See Land Management Law, *supra* note 1, art. 2 ("Land use rights may be transferred by law.").

to sell their entire land use rights to others. Tables 6 and 7 summarize farmers' responses to those questions.

**Table 6. The Breadth of Farmers' Land Use Rights**

<b>Do Your Current Land Use Rights Include the Following Rights?</b>				
<b>Type of Rights</b>	<b>Frequency</b>	<b>Yes</b>	<b>No</b>	<b>Don't Know</b>
Transfer to another villager	1473	86.2% <sup>31</sup>	6.1%	7.7%
Transfer to non-member of the village collective	1477	74.1% <sup>32</sup>	15.3%	10.7%
Pass to children through inheritance	1485	58.8%	27.3%	13.9%
Retain despite change in household registration	1480	53.7% <sup>33</sup>	38.8%	7.5%
Mortgage land use rights	1421	12.7%	87.3%	-
Right to transfer entire 30-year land use right	1455	27.5%	52.8%	19.7%

**Table 7. Farmers' Attitudes Towards The Breadth of Their Land Use Rights**

<b>Do You Think That Your Current Land Use Rights Should Include the Following Rights?</b>				
<b>Type of Rights</b>	<b>Frequency</b>	<b>Yes</b>	<b>No</b>	<b>Don't Know</b>
Transfer to another villager	1475	90.8%	4.1%	5.0%
Transfer to non-member of the village collective	1474	80.1%	11.4%	8.5%
Pass to children through inheritance	1483	64.2%	25.1%	10.8%
Retain despite change in household registration	1483	47.0%	41.8%	11.2%
Mortgage land use rights	1485	29.5%	49.5%	21.0%
Right to transfer entire 30-year land use right	1454	47.3%	39.2%	13.5%

<sup>31</sup> This category includes responding farmers who believe that they possess the right to transfer their land use rights to another villager subject to (1) registration of the transfer with the village committee, (2) approval of the transfer with the village committee, or (3) no conditions whatsoever.

<sup>32</sup> This category includes responding farmers who believe that they possess the right to transfer their land use rights to outsiders subject to (1) registration of the transfer with the village committee, subject to (2) approval of the transfer with the village committee, or (3) no conditions whatsoever.

<sup>33</sup> This category includes farmers who believe they retain their land use rights upon change in household registration status without changes in the terms of use, and farmers who believe they possess this right subject to increased land contracting fees upon change in household registration status.

### *1. Transfer or Lease of Land Use Rights to Other Villagers*

The survey results indicate that 86.2% of farmers believe that they possess the right to transfer or lease their land use rights to other villagers, divided among 36.0% who believe they possess the right to transfer or lease their land use rights without condition, 33.2% who believe they possess the right to transfer or lease their land use rights on the condition that the transfer be registered with the village committee, and 17.0% who believe they possess such a right subject to approval by the village committee. Only 6.1% of farmers indicated that they did not have the right to transfer or lease their land use rights under any circumstances. The remaining 7.7% did not know whether they possessed the right to transfer or lease.

The overwhelming majority of farmers (90.8%) also responded that they believed they should have the right to transfer or lease their land use rights to other villagers. Only 4.1% of farmers believed they should not have such a right. The remaining 5.0% did not know whether they should have such a right.

### *2. Transfer or Lease of Land Use Rights to Non-Members of the Village Collective*

Although fewer farmers believe that they possess the right to transfer or lease their land use rights to non-members of the village collective than to other villagers, nearly three-quarters (74.1%) of farmers responded that they currently possess that right. Again, the farmers believing that they currently possess such a right are divided among those who believe they have the right to execute such a transfer or lease without condition (31.3%), those who believe they possess such a right subject to registration with the village committee (27.9%), and those who believe they possess such a right subject to approval by the village committee (14.9%). Only 15.3% of farmers believed that they did not possess the right to transfer or lease their land use rights to outsiders. The remaining 10.7% of farmers did not know whether they possess this right.

The majority of farmers (80.1%) again responded that they felt they should possess the right to transfer or lease their land use rights to non-members of the village collective. Only 11.4% of farmers felt that they should not possess such a right. The remaining 8.5% did not know whether they should have such a right.



### 3. *Inheritability of Rural Land Use Rights*

The survey results indicate that 58.8% of farmers believe that they have the right to pass their land use rights to their children through inheritance, while 27.3% of farmers do not believe that they possess this right and 13.9% don't know whether they possess such a right. A slightly higher percentage of farmers (64.2%) believe that their land use rights should include the right to pass their land to their children by inheritance, while 25.1% believe that rural land use rights should not be inheritable and 10.8% don't know.

### 4. *The Impact of Household Registration Changes on Rural Land Use Rights*

Contrary to previously observed practice in many rural areas of China, over half of farmer respondents (53.7%) indicated that they believe they would retain their rural land use rights even where a family member changes his household registration from rural to urban, divided between those who believe that they would retain their rights without any changes in the conditions of use (42.6%) and those who believed that they would retain the rights subject to increased contracting fees (11.1%). Conversely, 38.8% of farmers reported that the collective would revoke their land use rights upon changes in household registration. The remaining 7.5% did not know what would happen as a result of household registration changes.

When asked whether they believed they should possess the right to retain rural land use rights upon household registration changes, 47.0% indicated that they should possess this right, 41.8% responded that they should not possess this right, and 11.2% did not know whether they should possess this right.

### 5. *Mortgage of Rural Land Use Rights*

Present law prohibits the mortgage of use rights to collectively-owned arable land. Consistent with this prohibition, the vast majority of farmers (87.3%) responded that they do not possess the right to mortgage their rural land use rights, while only 12.3% responded that they possess this right. A slightly higher percentage of farmers, but still a minority (29.5%) believed that they should have this right, with 49.5% responding that they should not possess such a right and 21.0% responding that they did not know whether they should possess the right to mortgage their rural land use rights.

## 6. *Sale of Land Use Rights*

In contrast to the high percentage of farmers believing that they possess the right to transfer or lease their land use rights, only 27.5% of farmers believe that they possess the right to sell the entirety of their land use right. Over half of farmers (52.8%) responded that they did not possess this right, with 19.7% responding that they do not know whether they possess this right. When asked whether they should possess the right to sell the entirety of their land use rights, nearly half of the farmers (47.3%) responded favorably, with 39.2% responding negatively and 13.5% indicating that they did not know whether they should possess such a right.

### I. *Farmers' Confidence in Their 30-Year Rural Land Use Rights*

Farmers will only make long-term, productivity-enhancing investments on their land if they have confidence that they will indeed receive the full 30-year term of use free from readjustment.<sup>34</sup> To determine the extent of farmers' confidence in their ability to receive 30-year land use rights without readjustment, the survey asked if farmers expected readjustments to continue during the newly-introduced 30-year use term. The survey results, as detailed in Table 8, indicate that only a minority of farmers have confidence in their ability to receive 30-year land use rights free from readjustment (hereinafter "farmers' confidence").

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<sup>34</sup> The need for long-term tenure security to make long-term investments in land is an underlying premise of Article 14 of the Land Management Law and related policy documents. See, e.g., Land Management Law, *supra* note 1, art. 14. This premise has been amply demonstrated in RDI's Rapid Rural Appraisal fieldwork over more than a decade, as well as in a 1,080 household survey conducted jointly by RDI and the National Rural Experimental Zone Office of the Ministry of Agriculture in December 1996. See Roy Prosterman et al., *Can China Feed Itself?*, SCIENTIFIC AMERICAN, Nov. 1996, at 90; Roy Prosterman et al., *Prospects for Implementation of a No-Readjustment Policy in China*, (August 1997) (unpublished RDI memorandum on file with RDI). See also 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) (reflecting the fact that Chinese farmers with long-term written contracts to wasteland, free of any fear of readjustment, made substantial improvements and investments, while the same farmers did not make such improvements or investments on their arable land, on which they did not have long-term land use rights and were subject to readjustments).

**Table 8. Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Right Term According to Survey Responses**

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?	
Response	Percentage of Farmers Responding
There will definitely not be any more readjustments	12.7%
Depends on the central government (higher levels of government)	23.3%
Readjustments will continue during the 30-year land use term	35.2%
Depends on the cadres	15.1%
Don't Know	13.8%

n=1449

The survey results indicate that only one out of eight farmers (12.7%) presently expresses the highest degree of confidence, stating that there "definitely will not be any more readjustments" during the 30-year land use term.

For the purpose of further analyzing farmers' confidence, we have also grouped the farmers that chose the four possibilities other than "don't know" into two broader categories. The first category represents farmers with a relatively high degree of confidence that their 30-year land use rights will be free from future readjustment, and includes those farmers who responded that there will definitely not be any future land readjustments and those farmers responding that future land readjustments "depend on the central government (higher levels of government)." The second category represents those farmers with low confidence that their 30-year land use rights will be free from future readjustments, and includes farmers responding that "readjustments will continue during the 30-year land use term" and that future land readjustments "depend on the cadres."

A number of factors support the grouping of four responses given by farmers (other than "don't know") into the two broader categories described above. First, it is clear that farmers responding that "there will definitely not be any more readjustments" have the highest possible degree of confidence, and farmers responding that "readjustments will continue" have the lowest degree of confidence.

Second, during fieldwork prior to the conduct of the 1,621 household survey, many farmers responded to our questions in a manner that indicated a clear distinction between the central government and local cadres with respect to attitudes towards the 30-year no readjustment policy. A number

of farmers told us that “the central government’s 30-year no readjustment policy is good, but when policies get to lower levels, they are not implemented,” or “I support the 30-year no readjustment policy, but if the cadres don’t implement it, it doesn’t mean anything.” Such responses indicate that farmers regard local cadres, and not the central government, as the potential obstacle to receiving 30-year land use rights free from readjustment.

Third, decisions to conduct land readjustments are made at the village level, and not at higher levels of government, including the central government. Farmers are certainly aware that land readjustment decisions are made at the local level, as they can observe that their village’s decisions on whether or not to readjust land are made independently of neighboring villages. Each of these factors supports the proposition that farmers who respond that future readjustments “depend on the central government (higher levels)” are expressing a higher degree of confidence that land readjustments will not occur during the 30-year term than farmers who respond that future readjustments “depend on local cadres.”

Using these two groupings of confidence, with “don’t know” as the third category,<sup>35</sup> farmers’ confidence in their ability to receive 30-year rural land use rights free from readjustments is as shown in Table 9.

**Table 9. Farmers’ Expectations Concerning Land Readjustments During the 30-Year Land Use Right Term According to High and Low Confidence Measures**

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?	
Response	Percentage of Farmers Responding
High Confidence in tenure security <sup>36</sup>	36.0%
Low Confidence in tenure security <sup>37</sup>	50.2%
Don’t Know	13.8%

n=1449

Even with this broader definition of higher-confidence farmers, only 36.0% of all farmers presently exhibit a degree of confidence that is at all likely to lead to the making of long-term investments in the land.

<sup>35</sup> It is important to include this category of farmers who are uncertain, since only the higher-confidence farmers as a proportion of the entire farming population (including the uncertain) can be presently expected to engage in long-term investment behavior.

<sup>36</sup> This category includes those farmers who responded that there will definitely not be any future land readjustments and those farmers responding that future land readjustments “depend on the central government (higher levels of government).”

<sup>37</sup> This category includes those farmers responding that “readjustments will continue during the 30-year land use term” and those farmers responding that future land readjustments “depend on the cadres.”

Examining this figure from a positive standpoint, as with our earlier discussion of issuance of 30-year land use right contracts, this percentage projects nationally to some 71 million farm households who may now have sufficient confidence in their security of tenure to begin making long-term investments on their land.<sup>38</sup>

However, more than in the earlier case (where the remedy for non-issuance of contracts may simply be to be aware of that fact and to bring about the issuance of contracts), the remedy for the 64.0% of households that are not presently in the higher confidence group may be complex. Such a remedy may involve the presence or absence of various factors, some of which may lend themselves to government intervention or alteration more than others.

#### *J. Factors Having a Significant Impact on Farmers' Confidence*

Much of our remaining analysis of the combined 17 province survey results addresses the question of what specific and alterable factors appear to be associated with farmers' confidence. To assess the relationship between farmers' confidence and other factors addressed by the survey, we completed a series of cross-tabulations. In these cross-tabulations, we compared farmers' responses concerning confidence to their responses as to the presence or absence of specific factors (e.g., whether or not a 30-year land use contract had been issued to the respondent), which are covered in the survey. The cross-tabulations indicate that the following eight factors have a statistically significant impact on farmers' confidence.

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<sup>38</sup> The figure of 71 million rural households having a high degree of confidence that their 30-year rural land use rights will not be subject to land readjustments during the 30-year land use term is arrived at by multiplying the percentage of farmers expressing a high degree of confidence (36.0%) by the approximate number of rural households in China (197 million; *see supra* note 14).

1. *Farmers in the 18% of Survey Villages that had not Conducted any Land Readjustments Since the Inception of the Household Responsibility System Reported Much Higher Confidence than Farmers in Villages that had Conducted One or More Land Readjustments Under the HRS*

**Table 10. Farmers' Expectations Concerning Future Land Readjustments in Villages that have not Conducted Land Readjustments Since the Inception of the HRS Compared to Villages that have Conducted One or More Land Readjustments**

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?				
Farmers' Confidence	Has Village Ever Readjusted Land?			Total
	Yes	No	Don't Know	
High Confidence in Tenure Security	33.1%	53.6%	23.4%	36.0%
Low Confidence in Tenure Security	55.1%	25.9%	51.6%	50.1%
Don't Know	11.8%	20.5%	25.0%	13.8%
Count	1145	239	64	1448

	Value	df	Asymp. Sig. (2-sided) <sup>39</sup>
Pearson Chi-Square <sup>40</sup>	76.417	4	.000

Because it relates to a fact of past behavior that is presently unalterable, the correlation between absence of past land readjustments and high farmer confidence does not lend itself directly to specific approaches that could be developed to raise the overall confidence of Chinese farmers during the current implementation process. However, by underlining the link between absence of readjustments and farmers' sense of security on the land they till, it does suggest certain actions that we explore in Part V.

Cross-tabulations further indicated that the factors discussed below also had a statistically significant impact on farmers' confidence in their 30-year land use rights. Unlike the facts as to conduct of past land readjustments, however, each of the remaining factors is presently alterable in the course of the implementation process. In each case, there is either a confidence-increasing factor that can be systematically replicated or

<sup>39</sup> Any result with a significance level of less than or equal to .05 is statistically significant to the 95% confidence level. That is, the results are accurate in 95 out of 100 cases. Results with significance levels of less than .05 are significant at levels even higher than the 95% confidence level. In the present example, the .000 result is statistically significant to the 100% confidence level.

<sup>40</sup> The Pearson-Chi Square measure for cross-tabulations tests the (null) hypothesis that the row and column variables are independent, without indicating the strength or direction of the relationship. By convention, the null hypothesis is rejected for two-sided significance levels of 0.05 or smaller.

reinforced, or a confidence-reducing factor that can be systematically eliminated or discouraged through specific actions designed to increase farmers' land tenure security. The factors, and corresponding measures designed to increase farmers' confidence in their 30-year land use rights, are discussed below:

- 2. *Farmers in Villages that Currently Employ the Two-Field System Reported a Lower Degree of Confidence than Farmers in Villages that Previously Employed, but Subsequently Ended the Two-Field System, as Well as Farmers in Villages that Have Never Employed the Two-Field System*

**Table 11. The Impact of the Two-Field System on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?			
	Currently Employs the Two-Field System	Previously Employed the Two-Field System	Never Employed the Two-Field System
High Confidence in Tenure Security	34.3%	38.7%	36.0%
Low Confidence in Tenure Security	58.1%	48.3%	48.3%
Don't Know	7.5%	13.0%	15.7%
Count	265	261	916

n=1442

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	15.021	4	.005

Nothing can be done, of course, to replicate the past fact of never having employed the Two-Field System in villages that currently employ it. However, it is possible to move villages that currently employ the Two-Field System into the category of villages that previously employed it, but no longer do. Indeed, farmers whose village previously employed but subsequently ended the practice of the Two-Field System have the highest degree of confidence of any of the three groups.

We have already noted in Part III.C that 17.6% of villages still employ the Two-Field System. We also found that nearly three-quarters of Two-Field villages that decided to have a land readjustment during the process of implementing 30-year land use rights have included, or plan to include, responsibility land in that readjustment, allocating it together with consumption land under 30-year rights.

This trend towards ending the Two-Field System should be strongly encouraged, since it will significantly impact farmers' confidence in their 30-year land use rights. This can be done in part through the national publicity campaign on 30-year land use rights. It can also be aided by strict enforcement of central government policy concerning the Two-Field System, currently contained in Central Committee Document No. 16. That is, villages that have never employed the Two-Field System should not be allowed to implement it, and villages that implemented the Two-Field System through administrative measures, and not in accordance with the wishes of village farmers, should be required to end the practice.

3. *Farmers in Villages that had Issued 30-Year Land Use Right Contracts Reported a Higher Level of Confidence in Their 30-Year Rights than Farmers in Villages that had not Issued Contracts*

**Table 12. The Impact of Issuance of 30-Year Land Use Right Contracts on Farmers' Expectations Concerning Land Readjustments During the 30-Year Term**

Has Farmer's Village Issued 30-Year Land Use Right Contracts to Farmers?		
	Yes	No
High Confidence in Tenure Security	40.8%	31.7%
Low Confidence in Tenure Security	47.9%	52.7%
Don't Know	11.3%	15.7%
Count	532	875

n=1407

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	13.859	2	.001

This result sends a strong message that the central government should continue to exert pressure on lower levels to implement 30-year land use rights, and that implementation should not be considered complete until all farmers have been physically issued a 30-year land use right contract. An important step towards ensuring that full implementation has occurred, and that all farmers have in fact received a 30-year land use contract, would be for the central government to require every county-level government to conduct very simple targeted monitoring interviews to ascertain how many administrative villages within the county have actually issued such contracts. A detailed description of a proposed monitoring program for contract issuance is provided in Part V.



4. *Where Contracts had been Issued, the Presence of a Contract Provision Allowing Land Readjustments During the 30-Year Land Use Term Nullified the Increased Confidence Resulting from Contract Issuance*

As described above, when a farmer reported that he possessed a 30-year land use right contract, the interviewer requested that the farmer produce a copy of the contract so that the interviewer could record information concerning the contract's key provisions on the survey questionnaire. Table 13 illustrates the dramatic negative impact of a provision allowing land readjustments during the 30-year land use term on farmers' confidence in their 30-year rights, relative to farmers whose contract does not contain such a provision.

**Table 13. The Impact of a Contract Provision Allowing Land Readjustments on Farmers' Expectations Concerning Land Readjustments During the 30-Year Term (Three Response Categories)**

Does Farmer's Land Use Contract Contain a Provision Allowing Land Readjustments During the 30-Year Land Use Term?		
	No	Yes
High Confidence in Tenure Security	48.8%	25.2%
Low Confidence in Tenure Security	39.7%	63.4%
Don't Know	11.5%	11.4%
Count	209	123

n=332<sup>41</sup>

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	19.736	2	.000

One quarter of issued contracts (25.6%) contain such a provision allowing readjustments, so this issue looms as a grave threat to successful implementation of the central government's policy of giving 30-year land use rights to farmers.<sup>42</sup>

As Table 14 shows, the results of this cross-tabulation are even more dramatic when expressed in terms of the five possible responses given by farmers.

<sup>41</sup> "n" in this case differs from that in Table 4 (where 218 + 130 = 348); there are 16 cases of missing values for the variable on confidence in tenure security. Of these 16 cases, 7 cases had land use contracts with a provision allowing land readjustments during the 30-year term and 9 cases had no such provision.

<sup>42</sup> As shown in Table 4, an additional 3.9% of issued contracts contain a provision requiring readjustments. Another 14.0% contain apparently inconsistent provisions concerning readjustments. Altogether then, 43.5% of issued contracts contain some kind of readjustment provision, which is likely to be either unsettling or confusing to the farmer.

**Table 14: The Impact of a Contract Provision Allowing Land Readjustments on Farmers' Expectations Concerning Land Readjustments During the 30-Year Term (Five Response Categories)**

Does Farmer's Land Use Contract Contain a Provision Allowing Land Readjustments During the 30-Year Land Use Term?		
	No	Yes
There will definitely not be any more readjustments	17.2%	7.3%
Depends on the central government (higher levels of government)	31.6%	17.9%
Readjustments will continue during the 30-year land use term	28.7%	55.3%
Depends on the cadres	11.0%	8.1%
Don't Know	11.5%	11.4%

n=332

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	25.915	4	.000

The most striking feature of Table 14 is the dramatic increase in the proportion of farmers (from 28.7% where the contract does not contain a provision allowing readjustment to 55.3% where the contract does contain such a provision) offering the lowest-confidence responses that "readjustments will continue," an indication that they have no confidence in their ability to enjoy 30-year land use rights free from readjustment.

It is further important to note that the confidence level among farmers possessing a contract containing a provision permitting land readjustments during the 30-year land use term was not only lower than farmers who possessed such a contract without a provision concerning land readjustments, *but was also lower even than for farmers who had not been issued a land use contract at all.* This can readily be seen by comparing the "Yes" column of Table 13 (contract issued, but contains a provision allowing land readjustments) with the "No" column of Table 12 (contract not even issued).

There are several possible explanations for the correlation between the existence of a contract provision permitting land readjustments and extremely low confidence among farmers. The most logical explanation is that farmers have read the provisions of their land use contract and, based on the existence of such a provision, reached the conclusion that land readjustments will indeed continue during the 30-year term. Because the existence or absence of specific contract provisions was recorded by the interviewers, and interviewers did not independently ask farmers whether they were aware of the content of their contracts with respect to land readjustments, it is not possible to either affirm or reject this conclusion.

A second possible explanation is that cadres who view readjustments as reinforcing their powers or perquisites make a special point of informing farmers that a provision allowing land readjustments is present in the contract. A third possible explanation that also supports the correlation between the existence of a provision permitting land readjustments during the 30-year use term and low confidence among farmers is that cadres have communicated to farmers that readjustments will be permitted during the 30-year term through other means, such as announcement at a village meeting. Further analysis of the survey results is ongoing to determine if we have sufficient information to determine whether either of these additional possible explanations is indeed the case.

The results of this cross-tabulation indicate that where "implementation" of 30-year land use rights includes the issuance of a contract containing a provision permitting land readjustments during the 30-year land use term, such "implementation" may be doing more to threaten farmers' confidence than to increase it.<sup>43</sup> This finding further supports the need for drafting of a standardized national 30-year land use contract, as well as the need to either eliminate all land readjustments during the 30-year use term, or else to explicitly limit the scope of such readjustments and the land to which they can apply. These issues are discussed in detail in Part V.

5. *The Survey Results Indicate that Farmers' Confidence was Much Lower in Villages that had Adopted the Measure of Conducting Land Readjustments During the 30-Year Term as a Means of Resolving Land and Population Contradictions than in Villages that had not Adopted Such a Measure*

Apart from the contents of any issued contracts, where farmers reported that their village would conduct a land readjustment during the process of implementing 30-year rural land use rights, we asked whether the village had also adopted certain additional measures designed to resolve population and land contradictions during the 30-year land use term. One such measure was the conduct of small readjustments during the 30-year land use term. Table 15 indicates the effect of adopting such a measure on farmers' confidence.

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<sup>43</sup> Further cross-tabulations not included in the present report indicate that issuance of a contract permitting land readjustments during the 30-year land use term is also associated with the loss of most or all of the increased confidence that otherwise comes when farmers believe that their land use rights are inheritable or believe that such rights are retained despite changes in household registration. For the effect of the two latter beliefs on farmers' confidence, see subsections 6 and 7.

**Table 15. The Impact of Village Adoption of a Measure to Conduct Small Land Readjustments During the 30-Year Land Use Term on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

Did Your Village Adopt a Measure to Conduct Small Land Readjustments During the 30-Year Land Use Term?		
	No <sup>44</sup>	Yes
There will definitely not be more readjustments	19.7%	6.0%
Depends on the central government (higher levels of government)	24.%	19.7%
Readjustments will continue during the 30-year land use term	43.9%	54.6%
Depends on the cadres	10.6%	9.6%
Don't Know	1.5%	10.0%
Count	66	249

n=315

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	17.180	4	.002

In addition, we asked whether the measure of big readjustments during the 30-year land use term had been adopted. The results show that the adoption of a measure to conduct big readjustments leads to substantial and progressive further loss of confidence by farmers compared to the situation where a measure for continuing small readjustments has been adopted. This loss of confidence can be seen by comparing the already low confidence levels shown in the "Yes" column in Table 15 to the even lower confidence levels shown in the "Yes" column of Table 16.

<sup>44</sup> This column represents those villages where the village has neither adopted a measure to conduct small land readjustments during the 30-year land use term nor a measure to conduct big readjustments during the 30-year land use term.

**Table 16. The Impact of Village Adoption of a Measure to Conduct Big Land Readjustments During the 30-Year Land Use Term on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

Did Your Village Adopt a Measure to Conduct Big Land Readjustments During the 30-Year Land Use Term?		
	No <sup>45</sup>	Yes <sup>46</sup>
There will definitely not be more readjustments	8.9%	2.3%
Depends on the central government (higher levels of government)	20.9%	6.8%
Readjustments will continue during the 30-year land use term	52.2%	59.1%
Depends on the cadres	9.8%	27.3%
Don't Know	8.2%	4.5%
Count	316	44

n=360

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	16.947	4	.002

Current law and policy statements clearly prohibit the conduct of big readjustments during the 30-year land use term.<sup>47</sup> These survey results are consistent with the goals of existing legal rules, and strongly reinforce the argument that such big readjustments have a serious negative impact on farmers' confidence.

As to adoption of measures for continuing small readjustments during the 30-year land use term, means to prevent the adoption of such measures are discussed in Part V.

<sup>45</sup> This column includes both villages that have neither adopted a measure to conduct small readjustments during the 30-year term nor a measure to conduct big readjustments during that term ("No" column from Table 15) and those villages that have adopted only a measure to conduct small readjustments during the 30-year term ("Yes" column from Table 15). As noted in the text, the progressive further loss of confidence when a measure for conducting big readjustments has been adopted can best be seen by comparing the "Yes" column alone from Table 15 with the "Yes" column in the present Table 16.

<sup>46</sup> Because the adoption of a measure to conduct big readjustments during the 30-year land use term does not necessarily exclude the possibility of the adoption of a measure to conduct small readjustments during the 30-year term, this column contains both those cases where farmers replied that only the measure of big readjustments during the 30-year term had been adopted and those cases where farmers responded that the measure of small readjustments during the 30-year term had been adopted in addition to the measure of big readjustments during the 30-year term.

<sup>47</sup> Central Committee Document No. 16 also prohibits the conduct of big readjustments as part of the process of implementing 30-year rural land use rights. See Central Committee Document No. 16, *supra* note 7. However, the survey results show that approximately half of the villages conducting a land readjustment during the implementation process have conducted or plan to conduct a big readjustment, and that such readjustments, unlike the agreement to conduct big readjustments during the 30-year land use term, have not had a significant negative impact of farmers' confidence.

6. *Farmers Who Believed that Their Current Land Use Rights Include the Right to Pass on Their Land to their Children by Inheritance Reported a Higher Degree of Confidence in Their Ability to Receive the Full 30-Year Land Use Term Free from Readjustment than Farmers Who did not Believe that Their Land Use Rights Included this Inheritance Right*

**Table 17. The Impact of Farmers' Belief in Inheritance Rights on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

Do Your Current Land Use Rights Include the Right to Pass on Your Land Use Rights to Your Children Through Inheritance?			
	Yes	No	Don't Know
High Confidence in Tenure Security	45.2%	22.9%	23.0%
Low Confidence in Tenure Security	41.8%	66.0%	54.4%
Don't Know	13.0%	11.1%	22.5%
<b>Count</b>	849	397	204

n=1450

	Value	df	Asymp. Sig. (2-sided)
<b>Pearson Chi-Square</b>	94.694	4	.000

Current law and policy neither explicitly affirms nor rejects farmers' right to pass their land use rights to children through inheritance. The central government should clearly affirm this right in forthcoming legislation governing rural land use rights, and inform farmers that they possess this right through a national publicity campaign.

7. *Farmers Who Believed that Their Current Land Use Rights Include the Right to Retain Their Land Use Rights Upon Change in Household Registration Also Reported a Higher Degree of Confidence than Farmers Who did not Believe Their Current Land Use Rights Included Such a Right*

**Table 18. The Impact of Farmers' Belief in the Right to Retain Their Land Use Rights Upon Household Registration Status Changes on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

<b>Do Your Current Land Use Rights Include the Right to Retain Your Land Use Rights Upon Changes in Household Registration Status?</b>				
	<b>Yes</b>	<b>Yes, with increased contract fees</b>	<b>No</b>	<b>Don't Know</b>
High Confidence in Tenure Security	48.4%	33.1%	25.1%	27.9%
Low Confidence in Tenure Security	40.6%	59.4%	59.6%	42.3%
Don't Know	11.0%	7.5%	15.2%	29.7%
<b>Count</b>	609	160	565	111

n=1445

	<b>Value</b>	<b>df</b>	<b>Asymp. Sig. (2-sided)</b>
<b>Pearson Chi-Square</b>	101.858	6	.000

Current law and policy are silent on the issue of whether farmers retain their 30-year land use rights upon changes in household registration. The central government should clearly affirm this right in forthcoming legislation governing rural land use rights, and inform farmers that they possess this right through a national publicity campaign (see Table 18).

8. *Farmers Who Believed that Their Current Land Use Rights Included the Right to Transfer or Lease Their Land, Whether to Other Villagers or to Outsiders, Reported Lower Confidence in Their Land Tenure Security than Both Farmers Who did not Believe they had the Right to Transfer Their Land and Farmers that did not Know Whether they had Such a Right.*

**Table 19. The Impact of Farmers' Belief in the Right to Transfer or Lease Their 30-Year Land Use Rights on Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Term**

Do Your Current Land Use Rights Include the Right to Transfer or Lease Your 30-Year Land Use Rights?					
	Yes, no registration or approval	Yes, but must register transfer	Yes, but must obtain approval	No	Don't Know
High Confidence in Tenure Security	32.2%	35.5%	41.6%	38.8%	37.4%
Low Confidence in Tenure Security	53.7%	54.3%	45.8%	47.0%	39.4%
Don't Know	14.1%	10.2%	12.6%	14.2	23.2%
Count	540	480	241	88	111

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	41.109	8	.000

In a setting where land transfers are conducted on a voluntary basis, it is unexpected that the existence of transfer rights would lead to lower perception of land tenure security among farmers. Our previous fieldwork in China indicates that short-term (mostly seasonal or annual) land transfers have begun to occur in parts of China, and that most transfers seem to be accomplished on a voluntary, rather than compulsory, basis. Given the fact that Chinese law currently recognizes farmers' right to transfer their rural land use rights,<sup>48</sup> and over 80% of farmers in the survey reported that their current land use right includes the right to transfer their land with or without condition, the finding that the existence of rights to transfer actually decreases farmers' sense of land tenure security is surprising. Analysis of the survey results is ongoing to determine whether any additional factors can be identified that would contribute to such a correlation.

<sup>48</sup> See Land Management Law, *supra* note 1, art. 2. Article 2 states that "the land use right may be transferred by law."



There are, however, several historical factors not directly addressed by our survey that may cause concern among farmers with respect to land transfer rights. First, many farmers retain feelings that collectively-owned land should be allocated at least somewhat equally among village households. It is possible that farmers correlate the right to transfer land use rights with the consolidation of large landholdings in the hands of a small number of village households, or at least with the development of less egalitarian landholdings within the village. It is also possible that the strong historical bias against absentee landlords on rural land causes rural residents to worry that farmers, if given the right to transfer their land to non-members of the collective economic unit, will transfer their rights to richer urban dwellers, thereby losing their access to the land.

These potential concerns, or other factors yet to be discovered from analysis of the survey results, that point to a negative correlation between the existence of land transfer rights and lower land tenure security among farmers should not be ignored. However, a number of important points bearing on this issue strongly suggest that the best method of addressing such a correlation lies not in restricting or taking away farmers' right to transfer their rural land use rights, but rather in protecting and further defining that right. First, China's current distribution of rural land rights is the most egalitarian distribution of any country in the world. The only method of maintaining such an egalitarian land distribution is frequent land readjustments, which exact an enormous cost in terms of farmers' land tenure security and agricultural productivity. It is an inevitable fact, widely accepted among Chinese agricultural scholars and policymakers, that the development of China's agricultural sector will result in increased rural to urban migration, and consolidation of land use rights in the hands of a smaller number of farmers cultivating larger, and unequal landholdings. The most efficient means of facilitating this development is through voluntary transfers of rural land use rights. This is a process that has occurred, over a period of time, in all developed market economies.

Second, current law, embodied in Article 2 of the Land Management Law, has already established farmers' rights to transfer their land use rights. Third, the vast majority of farmers in the survey expressed a belief that their current land use rights include the right to transfer their land use rights, whether on condition of approval or registration or free from any conditions. This includes 74.1% of farmers who responded that they believe they currently have the right to transfer their land use rights to outsiders, whether subject to condition of approval or registration or free from any conditions.

Fourth, and perhaps most importantly, most farmers believe that they should possess such transfer rights. In fact, 90.8% of farmers believe they should have the right to transfer their land use rights to other villagers, and 80.1% believe that they should have the right to transfer their land use rights to outsiders. These percentages are actually higher than the percentages of farmers responding that they currently possess such rights (86.2% and 74.1%, respectively).

Clearly, whatever factors are leading farmers to correlate transfer rights with lower land tenure security, this correlation is not caused by any lack of desire for such rights. More likely, it is due to the fact that they are uncertain as to the scope of such rights. Indeed, current law concerning transfers of rural land use rights does nothing more than mention that such rights exist. Therefore, the most effective means of addressing farmers' concerns with respect to land use transfer rights and increase farmers' land tenure security will be for the central government to clearly define the scope of the rights in forthcoming legislation.<sup>49</sup>

#### IV. PROVINCE LEVEL SURVEY RESULTS

This part contains an analysis of the survey results on an individual province basis from the approximately 100 households in each of 17 provinces as part of the national survey comprising 1,621 interviews. The results indicate that wide variations exist among the 17 provinces in which the survey was conducted, with respect to major elements of implementation of 30-year rural land use rights and farmers' land tenure security.<sup>50</sup>

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<sup>49</sup> Definitional issues include such matters as transferability within or outside the village, with or without approval. Additional issues as to protection might be considered in such legislation, such as possible interim limits on maximum sizes of landholdings.

<sup>50</sup> The 17 survey provinces chosen contain approximately 94% of China's total rural population. See discussion *supra*, Part II. The goal was to carry out 100 random interviews of farmers in 100 villages in each of these provinces. In practice, the number of valid survey responses ranged from 69 to 103. A sample size of 100 farmers should yield results that are accurate within +/- 9.8% in 95 cases out of 100.

### A. *Previous Land Readjustments*

As Table 20 shows, there were only three provinces out of the 17 in which only a minority of farmer respondents reported that their village had

**Table 20. Previous Land Readjustments by Province**

Province	Has Village Conducted Land Readjustments Since the Inception of the Household Responsibility System?		
	Yes	No	Don't Know
Hebei	91.9%	8.1%	0.0%
Jilin	90.0%	7.0%	3.0%
Heilongjiang	82.1%	16.8%	1.1%
Jiangsu	77.5%	21.6%	1.0%
Anhui	89.7%	3.8%	6.4%
Shandong	86.0%	11.0%	3.0%
Zhejiang	72.2%	27.8%	0.0%
Jiangxi	92.1%	6.9%	1.0%
Fujian	76.7%	22.3%	1.0%
Hunan	80.8%	13.1%	6.1%
Hubei	62.2%	30.6%	7.1%
Henan	88.3%	1.0%	10.7%
Guangxi	28.4%	58.8%	12.7%
Guizhou	28.6%	64.8%	6.6%
Sichuan	88.9%	9.1%	2.0%
Yunnan	43.5%	46.4%	10.1%
Shaanxi	86.5%	8.7%	4.8%

respondents in Hebei (91.9%), Jilin (90.0%), and Jiangxi (92.1%), reported that their village had conducted at least one readjustment since the inception of the Household Responsibility System.

conducted one or more land readjustments since the inception of HRS. The lowest percentages of farmers reporting at least one previous readjustment were found in Guangxi and Guizhou, where only 28.4% and 28.6%, respectively, of farmer respondents reported at least one previous readjustment. In the third such province, Yunnan, 43.5% of farmer respondents reported at least one previous land readjustment. By contrast, at least 90% of farmer

### B. *The Two-Field System*

Table 21 shows that the percentage of villages currently employing the Two-Field System varies widely among the 17 provinces in our survey. In eight provinces (Heilongjiang, Anhui, Fujian, Hunan, Henan, Guizhou, Sichuan, and Yunnan), fewer than 10% of farmers reported that the Two-Field System is currently employed in their villages. The highest incidence of current employment of the Two-Field System was found in Shaanxi, with 45.2% of farmers reporting that the Two-Field System is currently employed. Other provinces in which a relatively high percentage of villages currently employ the Two-Field System include Hebei (40.7%), Jiangsu (33.7%), Guangxi (31.4%), Shandong (31.3%), and Jilin (30.0%).

**Table 21. Employment of the Two-Field System by Province**

Province	Has Village Employed the Two-Field System?		
	Currently Employs	Employed But Ended	Never Employed
Hebei	40.7%	20.9%	38.4%
Jilin	30.0%	36.0%	34.0%
Heilongjiang	9.5%	18.9%	71.6%
Jiangsu	33.7%	22.8%	43.6%
Anhui	7.7%	15.4%	76.9%
Shandong	31.3%	29.3%	39.4%
Zhejiang	17.8%	6.7%	75.6%
Jiangxi	16.8%	33.7%	49.5%
Fujian	1.0%	30.1%	68.9%
Hunan	0.0%	1.0%	99.0%
Hubei	10.2%	5.1%	84.7%
Henan	7.8%	18.6%	73.5%
Guangxi	31.4%	3.9%	64.7%
Guizhou	7.7%	0.0%	92.3%
Sichuan	5.1%	22.2%	72.7%
Yunnan	4.3%	7.2%	88.4%
Shaanxi	45.2%	22.1%	32.7%

### C. *Scale Farming*

The province level results indicate that the incidence of Scale Farming is uniformly low, with only four provinces having over 10% of farmer respondents report that their villages currently employs Scale Farming—Zhejiang, Jiangsu, Heilongjiang, and Hebei. Of these four provinces, the percentage of farmers reporting that their village currently employs Scale Farming was nearly twice as high in Zhejiang (31.1%) as in the next highest province, Jiangsu (15.7%).

#### D. Flexible Land

The percentage of farmers reporting that their village currently reserves some arable land as Flexible Land varies greatly by province. The highest percentage was found in Heilongjiang, where 83.0% of farmers reported that their village reserves some arable land as Flexible Land. Other provinces in which at least 50% of farmers reported that their village currently reserves Flexible Land include Jilin (69.0%), Shandong (66.0%), and Shaanxi (51.0%). By contrast, a low percentage of farmers reported that their village currently reserves Flexible Land in Guangxi (11.1%), Sichuan (10.1%), and Fujian (8.9%).

**Table 22. Flexible Land by Province**

Province	Has Village Reserved Flexible Land?		
	Currently Reserves	Previously Reserved	Never Reserved
Hebei	44.2%	10.5%	45.3%
Jilin	69.0%	15.0%	16.0%
Heilongjiang	83.0%	8.5%	8.5%
Jiangsu	25.7%	15.8%	58.4%
Anhui	17.9%	15.4%	66.7%
Shandong	66.0%	4.0%	30.0%
Zhejiang	42.2%	6.7%	51.1%
Jiangxi	20.8%	28.7%	50.5%
Fujian	8.9%	10.9%	80.2%
Hunan	18.4%	5.1%	76.5%
Hubei	16.3%	1.1%	82.6%
Henan	33.0%	17.5%	49.5%
Guangxi	11.1%	12.1%	76.8%
Guizhou	14.4%	8.9%	76.7%
Sichuan	10.1%	18.2%	71.7%
Yunnan	23.2%	23.2%	53.6%
Shaanxi	51.0%	15.7%	33.3%

#### E. Farmers' Awareness and Support of the 30-Year No Readjustment Policy

The percentage of farmers reporting that they have heard of the 30-year no readjustment policy was universally high. The proportion of farmers who report that they had heard of the 30-year no readjustment policy fell below 90% in only two provinces, Henan (72.4%) and Yunnan (79.4%).

Support for the policy was also strong across provinces. In 13 of the 17 provinces, at least 64.1% of farmers responded that they support the 30-year no readjustment policy. Support for the policy was especially strong in Shandong (87.8%), Jilin (86.6%), and Heilongjiang (85.4%). At the same time, direct opposition to the policy was low, with over 15% of farmers opposing in only Fujian (20.6%) and Guangxi (17.0%). In nine provinces, under 10% of farmers expressed opposition. The ratio of support to opposition fell below 3:1 in only one province, and was 5:1 or higher in 14 of the 17 provinces.

### *F. Implementation of 30-Year Rural Land Use Rights*

With respect to whether they have started the process of implementing 30-year rural land use rights, the 17 provinces can be divided into two categories. In 10 provinces, at least two-thirds of farmer respondents reported that their village has started the implementation process. Of these provinces, the highest percentages of farmers reporting that implementation had begun in their villages by August 1999 were found in Guizhou (97.6%) and Heilongjiang (92.6%).

In the remaining seven provinces, fewer than two-thirds of farmers reported that implementation has begun. In four of these provinces, implementation was particularly slow, with 50% or fewer of farmers reporting that their villages had started. These provinces are Hunan (47.9%), Shandong (44.6%), Hebei (43.2%), and Zhejiang (41.4%).

### *G. 30-Year Rural Land Use Right Contracts*

#### *1. Signing of 30-Year Contracts*

Over 50% of farmers reported having signed a 30-year rural land use right contract in eight of the 17 survey provinces, while 50% or fewer of farmers reported signing a 30-year land use right contract in the remaining nine provinces. The provinces with the highest proportion of farmers reporting that they had signed a contract included Yunnan (75.6%), Guizhou (75.0%), and Heilongjiang (70.5%). The provinces with the lowest proportion of farmers reporting that they had signed a contract were Zhejiang (17.2%) and Hunan (15.5%), which were also two of the four lowest provinces in terms of farmers reporting that implementation had even begun.

#### *2. Issuance of 30-Year Contracts*

In contrast to the findings related to signing of 30-year rural land use contracts, the survey results indicate that over 50% of farmers reported that they had been issued a 30-year rural land use contract in only four of the 17 provinces (Yunnan, Guizhou, Jiangxi, and Jilin), while 50% or fewer of farmers reported that they had been issued such a contract in 13 of the 17 provinces. The provinces in which the lowest percentages of farmers reported that they had been issued a 30-year contract were again Zhejiang (12.2%) and Hunan (9.9%).

### 3. *Contracts Issued as a Proportion of Contracts Signed*

By dividing the number of contracts that farmers reported as issued in each province by the number of contracts that farmers reported signed, it is possible to determine the percentage of contracts issued as a proportion of contracts signed in each of the 17 survey provinces. Such an analysis indicates that, as of August 1999, six provinces (Zhejiang, Jiangsu, Anhui, Hunan, Heilongjiang, and Guangxi), had only issued contracts to farmers in two-thirds or fewer of the cases in which the farmer reported signing a contract. Most notable of these provinces was Guangxi, in which contracts were only issued in 47.8% of the cases in which farmers reported signing a contract.

By contrast, in eight provinces, contracts had been issued in at least 80% of the cases in which farmers reported having signed a contract. The provinces with the highest proportion of contracts issued relative to contracts signed were Jiangxi (98.3%), Shaanxi (95.7%), and Yunnan (91.2%).

**Table 23. Signing and Issuance of 30-Year Land Use Contracts by Province**

Province	Percentage of Farmers Reporting that 30-Year Contract Signed	Percentage of Farmers Reporting that 30-Year Contract Issued	Contracts Issued as a Proportion of Contracts Signed
Hebei	43.6%	32.4%	70.6%
Jilin	66.0%	57.7%	87.5%
Heilongjiang	70.5%	44.1%	61.1%
Jiangsu	66.7%	44.1%	66.1%
Anhui	61.0%	43.7%	66.0%
Shandong	46.7%	37.4%	79.0%
Zhejiang	17.2%	12.2%	66.7%
Jiangxi	59.2%	58.2%	98.3%
Fujian	40.6%	43.4%	104.8%*
Hunan	15.5%	9.9%	63.6%
Hubei	43.5%	36.4%	80.0%
Henan	39.6%	34.7%	85.0%
Guangxi	49.5%	23.7%	47.8%
Guizhou	75.0%	60.7%	80.9%
Sichuan	52.8%	42.7%	80.8%
Yunnan	75.6%	68.9%	91.2%
Shaanxi	47.0%	45.9%	95.7%

\* It is both a legal and logical requirement that 30-year land use contracts be signed by farmers before they are issued. The survey results from Fujian Province, however, indicate that farmers reported a higher number of contracts having been issued than had been signed. Additional analysis of these results is ongoing to determine the reason for this seemingly contradictory result.

Table 23 shows the percentage of villages in each province in which farmers reported signing a 30-year contract, the percentage of villages in each province in which farmers reported that contracts had been physically issued to farmers, and the contracts issued as a proportion of contracts signed in each province.

#### H. Farmers' Confidence in Their 30-Year Rural Land Use Rights

**Table 24. Farmers' Confidence in Their 30-Year Rural Land Use Rights by Province**

Province	Do You Expect Land Readjustments to Continue During the 30-Year Term?		
	High Degree of Confidence	Low Degree of Confidence	Don't Know
Hebei	39.0%	51.4%	9.5%
Jilin	40.0%	40.0%	20.0%
Heilongjiang	38.9%	52.8%	8.3%
Jiangsu	33.3%	62.3%	4.2%
Anhui	53.7%	29.2%	16.9%
Shandong	18.3%	75.3%	6.3%
Zhejiang	47.7%	38.6%	13.6%
Jiangxi	31.7%	51.7%	16.7%
Fujian	51.0%	27.7%	21.3%
Hunan	24.1%	64.4%	11.4%
Hubei	32.5%	50.0%	17.5%
Henan	22.5%	63.8%	13.5%
Guangxi	59.7%	17.9%	22.4%
Guizhou	70.2%	15.8%	14.0%
Sichuan	26.8%	50.9%	22.2%
Yunnan	48.8%	30.2%	20.9%
Shaanxi	33.3%	61.4%	5.2%

As Table 24 indicates, the percentage of farmers reporting that they had a high degree of confidence in their 30-year land use rights<sup>51</sup> varied widely by province, from only 18.3% of farmers in Shandong to 70.2% of farmers in Guizhou. The percentage of farmers reporting a low degree of confidence in their 30-year land use rights<sup>52</sup> also varied substantially, with

<sup>51</sup> This category includes those farmers who responded that there will definitely not be any future land readjustments and those farmers responding that future land readjustments "depend on the central government (higher levels of government)."

<sup>52</sup> This category includes those farmers responding that "readjustments will continue during the 30-year land use term" and those farmers responding that future land readjustments "depend on the cadres."



Shandong (75.3%) and Guizhou (15.8%) again representing the two extremes.

### *I. Farmers' Right to Transfer or Lease Their Land Use Rights*

As possible responses to the question "Do your current land use rights contain the right to transfer or lease your land to another villager?," farmers were given the following five options: (1) Yes, but I must register the transfer or lease with the village committee; (2) Yes, but I must obtain approval of the transfer or lease by the village committee; (3) I do not have the right to transfer or lease my land use rights to another villager; (4) Don't know; and (5) I have the right to transfer or lease my land use rights to another villager without condition. Adding together the farmers that chose responses (1), (2), and (5) creates a sample of farmers that believe they possess the right to transfer or lease their land use rights to another villager, whether subject to registration, approval, or no conditions. From such a sample, it is clear that the strong majority of farmers in all 17 provinces believe that they have the right to transfer or lease their land use rights to another villager, with a range within the 17 provinces from Guangxi (72.3%) to Zhejiang (98.8%).

### *J. Inheritance of Land Use Rights*

At the province level, farmers' belief in their right to pass land use rights to their children by inheritance deviated substantially from the mean in only five provinces. High percentages of farmers believing that they possess such rights were found in Guizhou (92.9% of farmers reporting that their rights could be passed on to children by inheritance), Anhui (85.7%) and Fujian (82.2%). Low percentages of farmers possessing this belief were found in Shandong (29.3%) and Henan (35.6%).

## V. CONCLUSIONS AND RECOMMENDATIONS

Based on the process of conducting and analyzing the results of the 17 province survey, we have developed the following 13 conclusions and recommendations. Our recommendations focus only on issues on which we have concluded that ameliorative actions would have a substantial positive impact upon farmers' confidence in 30-year land use rights:

A. *Continue Systematic Assessment and Monitoring of Implementation of 30-Year Land Use Rights*

We recommend that the central government undertake a continuing round of nationwide surveys to monitor implementation of the law until full implementation has been achieved in at least 80% of villages nationwide.<sup>53</sup> For the purpose of the central government's monitoring program, we propose that "full implementation" should be considered achieved only where farmers have actually received a 30-year land use contract, and that contract either does not contain provisions permitting land readjustments during the 30-year land use term, or legal rules have been adopted (as suggested in subsection D, *infra* this Part) that substantially limit and clarify the meaning of such contractual language.

In addition to measuring the extent of "full implementation," this monitoring should also investigate the extent of "full confidence." Since farmers, even those who possess a 30-year land use contract, will not make long-term investments in their land unless they feel confident they will be able to reap the benefits of those investments, it is essential that the central government continue to assess the extent of "full confidence," defined in terms of the two categories used to represent high confidence in the present analysis.<sup>54</sup> We recommend that the central government continue its monitoring effort until at least 75% of the farmers who report full implementation of 30-year land use rights also indicate "full confidence," as thus defined, in their land tenure security.

Assessments of the progress towards both "full implementation" and "full confidence" should be carried out at least twice a year until at least the "80%" and "75%" goals described above have been reached. Such random-sample surveys should include at least the same 17 provinces as our survey, and preferably should include all provinces and province-level municipalities. Although the 100 household sample size used in the present survey provides highly accurate data at the national level and useful data at the provincial level, a sample size of 150 or 200 households per province

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<sup>53</sup> The survey questionnaire we used could be used as a model (with perhaps some minor changes to the language of the questionnaire and appropriate training of survey personnel) for such a monitoring program.

<sup>54</sup> High confidence includes those farmers who responded that there will definitely not be any future land readjustments and those farmers responding that future land readjustments "depend on the central government (higher levels of government)." We offer a further refinement of this concept in the case that measures strictly limiting future small readjustments. See *infra* note 59.

would be desirable, to give province-level results statistically accurate to within a smaller range of error.<sup>55</sup>

*B. The Central Government Should Inform the Provinces of its Intent to Continue Independent Monitoring the Implementation of 30-Year Land Use Rights, and Should Actively Discourage Inflated Claims Concerning Implementation*

As noted in Part II, above, several provinces began making claims concerning "full implementation" of 30-year rural land use rights in over 90% of villages province-wide as early as November 1998. Our preliminary fieldwork results, and the results of the survey show that only 3 of the 17 provinces had achieved implementation, even as judged by the low threshold of contract issuance without regard to contract content, in as many as 50% of villages province-wide by August 1999. Judging by this level of progress, it is extremely unlikely that most provinces could have achieved "full implementation" of 30-year rural land use rights by the end of 1999.

As of the December 31, 1999 deadline for "full implementation" declared at the 1998 Central Rural Work Conference, all of China's provinces began reporting their progress on implementation, judged in terms of the percentage of villages province-wide that have achieved "full implementation." The central government should inform province governments that it plans to continue monitoring of implementation throughout the year 2000, and discourage the provinces from making inflated claims concerning implementation.

It is important to note that reaching a level of implementation that is less than "full implementation" of 30-year land use rights in 100% of villages nationwide by the end of 1999 should not be viewed as a policy failure. Indeed, given the scale of the effort required, actually achieving "full implementation" of 30-year land use rights in China by the end of 1999 would have been nothing short of miraculous. The important thing is for the central government to continue to assess the realistic progress of implementation throughout the country and to exert its full influence to ensure that "full implementation" is achieved in the most timely manner possible.

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<sup>55</sup> Our sample of 100 is considered accurate to within  $\pm 9.8\%$  in 95 cases out of 100. For a sample of 150, the percentage is  $\pm 8.0\%$ , and for a sample of 200, it is  $\pm 6.9\%$ .

*C. Continue and Expand the Public Information Campaign*

The national campaign to publicize the existence of the 30-year rural land use right policy has been highly successful, with 92% of farmers reporting awareness of the 30-year no-readjustment policy, and the ratio of farmers approving of the policy versus those disapproving greater than 7:1. The existing campaign should be continued, and should be most heavily targeted at those areas of China where implementation has proceeded at a slower pace.

We further recommend that the scope of the ongoing public information campaign should be expanded to provide farmers with additional information related to the process of implementing 30-year land use rights, including what constitutes full implementation, and what recourse they have if their rights are violated during the implementation process. At the same time, higher-level authorities should inform local cadres that if they violate the letter or spirit of the Land Management Law or related policy directives, they will be subject to strict penalties pursuant to the Land Management Law.

Because farmers themselves identified television as the most effective medium in publicizing the existence of the 30-year land use right policy, we recommend that this "second generation" public information campaign also adopt television as its primary medium. The campaign should also gain special intensity in those provinces that have been slow to implement 30-year rights, or have done so in a manner that involves frequent violations of central laws and policies.

*D. Forthcoming Legislation on Rural Land Use Rights Should Prohibit or, at a Minimum, Provide Detailed Guidelines that Strictly Limit, Land Readjustments During the 30-Year Land Use Term*

The present lack of clarity in central laws and policies impacts the extent to which land readjustments are permitted during the 30-year land use term and thus impedes farmers' confidence in their 30-year land use rights. Although Article 14 of the Land Management Law unambiguously prohibits any further big readjustments during the 30-year use term, existing legal and policy provisions fail to clearly resolve the question of whether, and if so, under what circumstances, small readjustments may continue during the 30-year land use term. The results of the 17 province survey indicate that this lack of clarity in central laws and policies often leads to the inclusion of provisions permitting land readjustments in farmers' land use contracts and

the adoption of small readjustments as a measure to resolve land and population contradictions. This lack of clarity thus threatens to undermine the basic objective of implementing 30-year land use rights: providing farmers with the level of land tenure security required to make long-term productivity enhancing investments on their land.

To address the threat to land tenure security created by unclear rules concerning small readjustments, forthcoming legislation governing rural land use rights should either prohibit readjustments entirely during the 30-year term or strictly define and limit the land that may be readjusted during the 30-year term. If any specific parcel of land is potentially redistributable as part of a future readjustment, that parcel of land cannot give its present cultivator security. As a result, it is extremely unlikely that any such parcel would be the subject of significant investments by the cultivator, or of significant increases in production. Use rights to that parcel also cannot be transferred by the cultivators to another person for a period extending beyond the earliest date at which a readjustment might occur.

Given the negative impact of readjustment on land tenure security and agricultural productivity, it is not surprising that the concept of land readjustment does not exist in any of the world's modern agricultural systems. Prohibiting land readjustments during the 30-year land use term, in any form and under any circumstances, would therefore be most consistent with the practice of the world's most advanced and productive agricultural systems. It is a practice that has been in place since the beginning of the Household Responsibility System in at least 18% of the survey villages (a finding that should be valid to  $\pm 2.4\%$  for the 17 provinces as a whole),<sup>56</sup> and in these villages it is correlated with much higher farmer confidence that their 30-year land use rights will not be subject to readjustment during the 30-year land use term. Because of the present wording of Article 14 of the Land Management Law, which allows "appropriate isolated readjustments of land" during the 30-year period (upon a two-thirds vote by the villagers or villager representatives and both township and county-level approval), ending readjustments would require an amendment to the law or the issuance of legislation that supercedes the Land Management Law on this particular point.

However, if an absolute prohibition on readjustments during the 30-year term is impossible, forthcoming legislation should strictly define and

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<sup>56</sup> A survey of 1,621 households gives results that should be valid for the entire population  $\pm 2.4\%$ , in 95 cases out of 100. The 17 surveyed provinces, as previously noted, contain over 90% of China's entire rural population.

limit the circumstances under which small readjustments may continue to occur. Since average village population growth in China is unlikely to be more than 10 percent during the 30 years 1999-2029, and is more likely to be five percent or less,<sup>57</sup> small readjustments should be limited in a manner that only a corresponding amount of land remains subject to the possibility of redistribution to meet the needs of new population. The current lack of clear limits on small readjustments, which effectively leaves 100 percent of the arable land at risk of cumulative periodic readjustments to meet the potential needs of an increase in village population of 10 percent or less, exacts a huge and wholly unnecessary cost in terms of lost land security, lost land investment, and lost land production.

If any small readjustments are permitted to continue, we recommend that three important principles be adopted into law in order to limit the amount of village arable land that is subject to readjustment while simultaneously preserving the ability to meet the needs of potential future population increases. The first of these principles would limit the maximum amount of land subject to readjustment during the 30-year land use term to one-half of one land share per village household. No household could lose more than one-half of one land share to readjustment during the 30-year land use term. With an average of around four land shares per household,<sup>58</sup> this

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<sup>57</sup> The highest projection for growth of China's rural population that seems remotely realistic is the "medium" projection from a study on China's rural population. ZHONGGUO NONGCUN RENKOU YANJIU [STUDY ON CHINA'S RURAL POPULATION] 259 (Chunyuan Zhang ed., China Population Publishing House, 1994). Interpolating for projected growth of rural population from 2000 until 2030 (projections made are for 2000 and 2035), the expectation would be for growth of 10-11% during that 30-year period. However, Zhang's study was published in 1994, and even by 1998 the actual figures appear to show a significantly slower growth in rural population than interpolation from Zhang's projections. For 1998 figures, see Mr. Yang Kuifu, Representative of China & Vice Minister State Family Planning Commission, Statement at the Thirty Second Session United Nations Commission on Population & Development (New York, Mar. 22, 1999) available in <<http://www.sfpc.gov.cn/yang.html>> (rural population estimate of 870 million, a data series that is slightly higher for all years than FAO agricultural population figures, described in the following paragraph).

For a more current estimate, see UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION, 1998 PRODUCTION YEARBOOK, tbl.3 (figures for China's 1990 and 1998 agricultural population). If one simply makes a straight-line projection from the FAO's 1990 agriculture population figure of 834.6 million and its 1998 figure of 854.5 million, the eight-year growth was around 2.4% and the average annual growth around 0.3%, so the growth over the next 30 years would be between 9 and 10 percent. This would be very close to the projection just described. However, if one includes the figure for agricultural population in the intermediate year of 1995, which the FAO also shows (850.3 million), it becomes evident that growth has been slowing. The increase over 1990-95 was 1.87%, or 0.38% per year, while that for 1995-98 was 0.5%, or 0.17% per year. If we project from the most recent three-year actual figures, the growth over 30 years would be about 5%, even if we assume that there will be no further decline in rate of growth of agricultural population. Indeed, one massive demographic study published in 1994, projects very substantial reductions in China's rural population over the next 30 years 2000-2030. See KUA SHUI DE ZHONGGUO RENKOU [THE CHINESE POPULATION TOWARD THE 21<sup>ST</sup> CENTURY] (Sun et al. eds., 1994).

<sup>58</sup> Our survey found a present average of about 4.42 members and 3.85 land shares per household.

would make approximately one-eighth of arable land shares, or 12.5% of arable land in an average village, available for readjustment during the 30-year term. Such an amount of available arable land, when combined with the five percent of village land that can be reserved as Flexible Land to meet population increase, should more than adequately meet the changing population needs of most Chinese villages during the period from 1999 to 2029.

Second, households that have lost a family member during the 30-year term through death or marriage, and therefore will be losing land through a small readjustment, would be allowed to select which land (equivalent in area to one-half of one land share) would be redistributed through the readjustment. In this way, the present cultivator will be able to make investment decisions on all of his land while knowing that only a small part of the land, which he will have the right to identify when the time comes, is subject to readjustment.

Third, each additional member of the village collective arriving after the initiation of the 30-year term, and falling within the scope of the family planning policy, would be entitled to receive a land share equal to one-half of one original land share. By accommodating two new village members with land equivalent in area to one original land share, a balance can be maintained between providing for new members and protecting the land tenure security of the original cultivators.<sup>59</sup>

The legislation should also clearly provide that the farmers may decide to have no readjustment at all during the 30 year, extending a practice already followed in some 18% of Chinese villages.

*E. Require that All 30-Year Land Use Contracts Containing Provisions Permitting Land Readjustments must be Applied According to the Proposed New Legal Rules Concerning Readjustments*

The survey results indicate that about one quarter of issued contracts (25.6%) contain a provision allowing small readjustments during the 30-year term, and the presence of such a provision is correlated with a dramatic decline in farmers' confidence.<sup>60</sup> Addressing this issue is, indeed, even more

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<sup>59</sup> If principles such as those suggested are embodied in law, strictly defining limits of future small readjustments, the definition of "full confidence" used in monitoring farmers' 30-year land use rights and the corresponding questions in the survey questionnaire, should be refined to include all cases where the farmer is aware of the new limitation and believes it will be applied.

<sup>60</sup> A further 3.9% of issued contracts contain a clearly illegal provision requiring small readjustments during the 30-year term. Still another 14.0% contain internally inconsistent provisions on land readjustments during the 30-year term.

crucial than insisting on the issuance of contracts, since farmers who had not been issued a land use contract at all reported greater confidence in their 30-year use rights than farmers who had been issued a contract that purports to be for 30 years, but allows readjustments during the 30-year period.

If forthcoming legislation prohibits or strictly limits land readjustments during the 30-year land use term, the central government should require that any existing contract provision allowing small readjustments must be read and applied under the new rules and any new contracts issued must incorporate the specifications of the new rules. The central government should further publicize that any contract provision allowing big readjustments during the 30-year term is illegal and invalid, and can lead to strict penalties pursuant to the Land Management Law for any person involved in drafting or issuing such a contract.

*F. Prohibit Villages from Adopting the Measure of Readjustments During the 30-Year Land Use Term Outside the Contract Framework*

Some farmers reported that, as part of the implementation process, their village had adopted the measure of conducting land readjustments during the 30-year term outside the framework of land use contracts. In a small minority of cases, this has involved adopting the measure of big readjustments during the 30-year period, which is a violation of the Land Management Law, and should be both publicized and redressed through the penalty provisions of the law. In a higher proportion of instances, farmers reported that their village had adopted the measure of small readjustments during the 30-year land use term.

The adoption of such a measure as to future small readjustments outside the framework of the contract resulted in a significant decrease in farmers' land tenure security. It should follow that this important element must not be left to actions outside the framework of the actual contract and of the texts of the legal rules. If forthcoming legislation prohibits or strictly limits small readjustments during the 30-year use term, this should be intensively publicized, together with the fact that no measure that departs from such rules can be adopted or enforced, whether outside the framework of the actual contract or as part of it.



G. *Adopt and Issue a Standardized National 30-Year Land Use Right Contract*

Both the need for clear guidance on land readjustments during the 30-year term and the extensive local variations in contract terms<sup>61</sup> (including the frequent inclusion of readjustment provisions) strongly support the need for the central government to adopt and issue a standardized national 30-year land use contract. Thus, we recommend that the central government issue and widely publicize, in the form of forthcoming legislation on rural land use rights, both a model contract and a set of core requirements for compliant contracts. The minimum core requirements for such standardized contracts should include the following:

- (1) Identification of the parties to the contract;
- (2) A description of the contracted land;
- (3) The contracted land use purposes;
- (4) The duration of the contract;
- (5) The rights and responsibilities of the parties to the contract;
- (6) Rules concerning land transfers during the 30-year term;
- (7) Rules concerning the extent, if any, to which land readjustments can occur during the 30-year use term;
- (8) Rules concerning state takings and collective withdrawals of land use rights during the 30-year land use term;
- (9) Liabilities for breach of contract;
- (10) Provisions concerning resolution of any disputes related to the contract; and
- (11) The signature or seal of both parties to the contract.

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<sup>61</sup> We are pursuing analysis of the survey results as to variation in the terms of issued contracts. It is already clear, however, both from initial review of the survey data on this subject and from our Rapid Rural Appraisal fieldwork that there is wide, confusing, and unnecessary variation in the contents of issued contracts. Presently, contract documents are often separately prepared even at the township level, so that even at the county level there may be an absence of uniformity or predictability.

#### *H. Introduce Systematic Village-By-Village Confirmation of Contract Issuance*

The issuance of land use contracts that do not provide for the possibility of ongoing land readjustments is associated with a very substantial increase in farmer confidence.

As of August 1999, three-fifths of villages in the 17 survey provinces had not issued contracts. Issuance of contracts, however, is a specific and verifiable fact that can be readily monitored. An important step towards ensuring that full implementation has occurred and towards preventing inflated claims by provincial and local officials, would thus be for the central government to require every county-level government to ascertain, through targeted monitoring interviews, how many administrative villages in the county have actually issued 30-year use contracts to farmers. This would require designated county officials to personally visit each village and interview one randomly selected farmer. The official would first ask the farmer whether he or another household member had signed and received a copy of a 30-year land use rights contract from the collective landowner. If the farmer or another household member had indeed received such a contract, the county official would request that the farmer produce the contract so that he could verify that it is a contract for 30-year land use rights.<sup>62</sup> Unlike the longer and more detailed interviews on the nature and extent of implementation, the presence of local cadre is unimportant to ascertain contract issuance, since the farmer either produces a copy of a 30-year contract or doesn't. It is important, however, to ensure that the county official sees the farmer's own copy of the land use right contract, and not a copy that the village cadre produces from his own house or office.

These brief and low-cost surveys, if conducted in every village within a given county, would provide the county government with a detailed understanding of whether the vital steps up to and including actual contract issuance had been taken by the villages within its jurisdiction. Based on these results, the county government should be required to submit a written report to the provincial government listing the villages that have not yet issued 30-year land use right contracts and detailing the steps that the county

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<sup>62</sup> If the first farmer cannot find his contract, a second and third randomly chosen farmer should be asked. If one contract is found in the hands of a randomly chosen farmer, it is almost certain that such contracts have been issued throughout the village. If no farmer asked can produce a contract (asking up to three), it is highly likely that no contracts have been issued.

government will take to ensure full implementation in all such villages in a manner consistent with the Land Management Law.<sup>63</sup>

Once the province has collected the results from each county, it should submit them to the central government. These province-wide figures can then be compared with the results of the more detailed sample surveys, which will provide qualitative data as to the contents of the issued contracts as well as comparison data on the percent of contracts issued.

### *I. Enforce Limits on Flexible Land*

Under existing rules, no more than five percent of village arable land is allowed to be Flexible Land, it must be used to solve contradictions between village population and land, and it is not to be introduced or increased in the process of implementing 30-year land use rights.<sup>64</sup> The results of the 17-province survey show that many villages have exceeded the five percent limit for Flexible Land, and suggest that Flexible Land may often be used for purposes other than those envisioned by current policies. Our analysis of the survey results to date, however, does not show systematic linkages between farmer confidence and the local regime of Flexible Land. While violations of the five percent limit on Flexible Land may not affect farmers' confidence with respect to their use rights on arable land allocated with 30-year land use rights land, it is clear that any land designated as "Flexible Land" has not, by definition, itself been allocated to farmers under 30-year land use rights.

Thus, the most important issue under this point is withholding of excessive land as Flexible Land, and thereby not making it available for long-term allocation that will motivate farmer investment in that land. Here, the survey findings do not indicate widespread substantial increases in the amount of Flexible Land during implementation of 30-year rights; what the survey results do indicate, however, is that approximately one of six of the

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<sup>63</sup> Village leaders of such villages should be told that they have a specified number of days (the number will depend on whether a small readjustment may still need to be carried out, and whether crops are in the ground, but the time period should not exceed 180 days at most) to issue the contracts to farmers. At the end of that time, county officials should again visit all of the previous non-complying villages, and ask another randomly selected farmer (and if necessary a second and a third farmer) the questions as to possession of a 30-year use contract. Leaders of villages that are still not in compliance should be invited to a meeting in the county seat with senior county officials, asked to explain the reasons for their non-compliance, and required to sign a statement confirming that they will issue contracts within 30 days (extensions of time should be given only for extraordinary reasons, such as natural disasters). Any further non-compliance, confirmed by still another visit by county officials to any such remaining villages, should be met with fines, dismissal from office, and other penalties.

<sup>64</sup> See Central Committee Document No. 16, *supra* note 7.

villages that currently reserve Flexible Land have reserved more than 10% of village arable land as Flexible Land. Since 31.1% of farmers reported that their village currently reserves Flexible Land, this means that about five percent of villages nationwide have reserved excess amounts of Flexible Land.<sup>65</sup>

We recommend two approaches with respect to Flexible Land. First, the existing central government policy on Flexible Land should be codified in forthcoming legislation governing rural land use rights. Second, in cases where villages continue to reserve amounts of land greatly in excess of five percent of village arable land, higher levels of government should require that the excess land be allocated equally among village farmers with 30-year land use rights.

#### *J. Strongly Encourage Ending the Two-Field System*

Nearly three-quarters of Two-Field villages that have conducted a readjustment as part of the process of implementing 30-year land use rights, have included responsibility land in that readjustment, effectively ending the Two-Field System. The survey results show that ending the Two-Field System results in a substantial increase in farmers' land tenure security. This trend towards ending the Two-Field System can be further encouraged in the approximately one-sixth of villages that, as the survey shows, continue to employ the Two-Field System by: (1) widely publicizing that most villages are in fact ending the Two-Field System as part of implementing 30-year land rights; (2) reiterating the central government policy greatly restricting the Two-Field System contained in Central Committee Document No. 16 (under which the Two-Field System cannot be introduced where it does not presently exist, and must be ended wherever introduced without farmers' agreement); and (3) clarifying that, in any case, any existing responsibility land must, pursuant to Article 14 of the Land Management Law and related policy documents, be allocated on an egalitarian basis (per capita or per laborer), without any special fees or charges, and for a 30-year period.

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<sup>65</sup> There is a related, highly important issue as to whether cadres regard this excess Flexible Land as readily available for transfer to non-agricultural uses: we are continuing our analysis of the survey results that may possibly bear upon this question.

K. *Further Reinforce Farmers' Right to Pass Land Use Rights by Inheritance*

Farmers who believe that their land use rights include the right to pass on those rights to their children by inheritance reported much greater confidence in their tenure security during the 30-year term than either farmers who did not believe that their land use rights include such a right or farmers who did not know whether their land use rights include such a right. The survey results show that nearly three out of five farmers (58.8%) believe that their land use rights include such a right to pass by inheritance. The existing relevant legal rules concerning inheritance neither explicitly confirm nor deny farmers' right to pass their land use rights by inheritance.<sup>66</sup> However, the practice of withdrawal of land use rights by the collective owner upon the death of a collective member is widespread. The inheritance right should consist of the right to pass any remaining unexpired term of the land-use right to the farmers' children. For example, a farmer whose land-use contract runs from 1999 to 2029 and who dies in 2015, for example, should be able to pass the remaining 14 years of his land-use term (2015 to 2029) on to his children. Both husbands and wives would possess this right to pass their land rights on to their children.

We recommend that the central government take at least three specific steps to increase farmers' assurance that they have such a right: (1) confirm the existence of the right to pass land use rights through inheritance in the forthcoming legislation governing rural land use rights; (2) include the existence of such a right in the "second generation" publicity campaign; and (3) specifically affirm such rights in the land-use contract, including a standard contract if one is adopted.<sup>67</sup>

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<sup>66</sup> Neither the 1985 Inheritance Law of the PRC nor the Land Management Law contain specific provisions either allowing or prohibiting the inheritance of rural land use rights. *See generally* (Zhonghua Renmin Gongheguo Jicheng Fa) [Inheritance Law of the People's Republic of China] (adopted April 10, 1985) available in LEXIS-NEXIS online database, BBCSWB library; Land Management Law, *supra* note 1. However, the 1993 PRC Agriculture Law does contain the following language with respect to agricultural work contracts: "in the event of a passing away during the contract, the contract may be continued by [the contractor's] heirs." *See* Agricultural Law of the People's Republic of China (adopted 1993). This provision, at least arguably, suggests an intent that rural land use rights should be inheritable.

<sup>67</sup> The fact that contract provisions allowing readjustments are associated with a loss in confidence further underlines the importance of the steps recommended in Parts V.D and V.E. *See also supra* note 43.

*L. Include a Provision in Forthcoming Legislation Governing Rural Land Use Rights that Gives Farmers the Legal Right to Retain Their Land Use Rights if Their Household Registration Changes*

As in the case of inheritability, farmers who believe that they will retain their land use rights if their household registration changes from rural to urban indicated much higher confidence in their land tenure security than either farmers who believed that they did not have this right or farmers who did not know whether they had this right. Here 53.7% of farmers believe their land use rights will be retained upon change of registration. Confidence was highest when farmers believed that land use rights would be retained without imposition of any increased contract fees (see Table 19). Current laws governing rural land use rights are silent on the question of whether land use rights can be retained upon changes in household registration.<sup>68</sup> Discussions with local cadres in the course of our Rapid Rural Appraisal work over a number of years, however, have indicated that many such cadres take the view that farmers' land use rights are lost if household registration changes.

Here again, three steps would be important to increase farmers' assurance that they have the right to retain their land use rights if their household registration changes: (1) specify this right (and that the retention of land use rights is not subject to imposition of increased burdens or fees) in the forthcoming legislation governing rural land use rights; (2) at least after such a clarification has been made, specifically affirm such rights in the land-use contract, including a standard contract if one is adopted, and (3) at least after a clarification has been made, include the existence of such a right in the "second generation" publicity campaign.<sup>69</sup>

*M. Forthcoming Legislation Governing Rural Land Use Rights Should Include a Clearer and More Comprehensive Definition of the Specific Rights Incorporated by the Term "Rural Land Use Rights"*

The two preceding recommendations clearly illustrate that the presence or absence of a certain right within the bundle of rights that

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<sup>68</sup> Neither the Land Management Law nor any other legislation of which we are aware addresses the question of farmers' right to retain their rural land use rights upon changes in household registration.

<sup>69</sup> Once again, it should be emphasized that the presence of a provision in the land use right contract that allows readjustments during the 30-year term is associated with the loss of most or all of the increased confidence that otherwise comes when farmers believe that rights are retained despite change in household registration.

constitutes a "rural land use right" will fundamentally alter Chinese farmers' perceptions of land tenure security. The current body of Chinese law governing rural land use rights, drawn from a variety of sources, leaves important questions regarding the composition of rural land use rights unanswered. On some issues, such as land use right transfers, current law provides for the existence of such a right, but fails to provide any guidance concerning the scope of the right. On other issues, such as the right to retain land use rights upon changes in household registration, the current body of law remains silent.

We recommend that a clear and comprehensive definition of each of the elements of rural land use rights addressed by the survey be included in forthcoming legislation governing rural land use rights. These elements include: (1) the right to transfer land use rights to other villagers; (2) the right to transfer land use rights to non-members of the rural collective; (3) the right to pass along land use rights to children through inheritance; (4) the right to retain land use rights upon changes in household registration status; (5) the right to mortgage rural land use rights; and (6) the right to transfer the entirety of one's land use right term. It is important to note that defining "rural land use rights" as a form of property right rather than a contract right will facilitate the process of devising a uniform definition of each of these rights, and will help to prevent the development of varying local approaches to such rights.<sup>70</sup>

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<sup>70</sup> For additional discussion of the importance of defining Chinese rural land use rights as property, rather than contract rights, see Tim Hanstad & Guiping Lu, *Rural Land Use Rights: Property or Contract Rights?*, in CHINA'S RURAL LAND SYSTEM: LEGAL REFORM AND THE RULE OF LAW (Hanstad & Schwarzwald ed., 1999) (unpublished report prepared as part of a policy research project conducted by the China Institute for Reform and Development and funded by the United Nations Development Program (CPR/96/509)).