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Brief Background and Comments on Rural Land Rights in China

Land is the principal rural asset, and, from a comparative perspective, the nature of the relationship between tillers and the land on which they farm – as embodied in law, policy, and actual practice – has been associated with widely differing agricultural-development and general-development experiences in Asian small-farm settings.

In broad terms (looking at ten prominent Asian agricultural settings where the Rural Development Institute has carried out fieldwork), the outstanding successes have been those where dominant sectors of owner-operated small farms were created in post-war land-tenure reforms: Japan, South Korea, and Taiwan. Intermediate situations have been the more recently decollectivizing agricultures, although with farmers holding rights substantially less than individual ownership: mainland China and Vietnam. (Indonesia is also intermediate, with a mixed system of small owner-operators assisted by paid agricultural laborers.) The least successful have been those agricultures in which the role of agricultural tenancy and hired agricultural labor for actual cultivation remains great, and land-tenure reforms have ranged from modest to non-existent: these include The Philippines, India, Bangladesh, and Pakistan. The differential results marking success are reflected not only in such indicators as increases in grain production per hectare and rural incomes, but in rural consumption patterns and such non-economic measures as infant mortality.

Against this comparative background, we will look at the experience of mainland China with land-tenure reform since the Chinese revolution achieved power in 1949.

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The Chinese revolution led by the Communist Party gained much of its support from the deeply aggrieved rural poor, especially the large population of tenant farmers who typically had neither secure nor equitable access to land and who paid high rents to their landlords.

After coming to power in 1949, the Communist Party's initial land reform gave farmers full, individual private ownership of their small farms through the 1950 Land Reform Law and other accompanying regulations. Under this law, China redistributed over half of its arable land to 50-60 million poor rural households, more than 60% of its rural population, on an equitable basis. Land certificates or titles were issued to farmers as well.

The scope and success of this, China's initial "land to the tiller" program, in improving agricultural production and farm incomes paralleled the successful land to the tiller programs being carried out around the same time in Japan, South Korea and Taiwan province: from 1949 to 1956, China's annual grain production increased altogether by an estimated 70%, and total farm income rose by an estimated 85%.

But, while the land-tenure reforms in Japan, South Korea, and Taiwan were allowed to persist and spread their benefits throughout the rural, and gradually the entire, economy, mainland China reversed its initial reform, disastrously choosing to follow in the footsteps of the former Soviet Union and introduce a sequence of legal and policy measures designed to bring about the “collectivization” of all farming in the mid-1950s.

Agricultural production plummeted, and fifteen to thirty million consequent deaths occurred during the years 1958-1962. After 1962, the central government geared down to smaller, village-based collectives rather than continuing with giant communes, but production recovered only slowly.

From the late 1970s, several regions of China started to experiment with tearing down the collective farms and giving individual farmers some limited freedom to farm. After initial success, this system spread rapidly. Technically, the collectives, remaining as the land owners, contracted out land parcels to individual households to use for private farming for a period of time, usually allocating the land on an equal per capita basis. The contracting farmers, in return, were obligated to fulfill their “responsibilities” of quota or taxes to the collectives every year (in the form of grain or cash), based on the quantity of land they had been allocated. This scheme is called the “Household Responsibility System” or the HRS.

The introduction of the HRS unleashed the energy and resources of tens millions of rural families and jump-started China’s agricultural growth. As a result, between 1979 and 1984, average net income for rural residents increased by 11% annually, compared to an average annual increase of 8.7% for urban residents. The introduction of the HRS resulted in the narrowest income gap (though at much lower absolute levels of income) of the past several decades. The HRS was an enormously successful reform, lifting the living standards of hundreds of millions of rural people, and was the driving force behind the single greatest poverty-reduction achievement worldwide of the past three decades.

However, farmers’ land rights under the HRS were generally insecure and short-term. “Land readjustments” stood out as the top threat to farmers’ land tenure security. Although land use rights were theoretically allocated to farm households for a specific period of years, most villages in China adopted the practice of periodically readjusting or reallocating landholdings in response to changes in individual household makeup, total village population, and loss of land through land takings or expropriations.

Land takings or expropriations by government have also undermined farmers’ land rights. Due to China’s booming economy, more and more agricultural lands have been converted for urban or industrial use. A large majority of land-losing farmers have fared poorly during the process, which is generally non-transparent and affords them grossly inadequate compensation.

Rights to a piece of land subject to periodic and unexpected readjustments or poorly compensated takings cannot be considered either secure or marketable. As RDI interviews of farmers during the last two decades indicated, farmers will not make mid- to long-term investments on a land parcel which they may not possess the next year or year after, and potential market transactions in land rights, from a transferee’s perspective, are likewise very limited because of the unpredictable duration of the possessory right. With land improvements constrained, the initial benefits brought by the HRS tailed off beginning in the mid- 1980s and Chinese farmers’ income gains started to lag far behind those of urban residents, the rural-urban income ratio having steadily worsened to 1:3.22.

Concerned about the rural land-tenure problem, the central government began to seek a solution. In 1993, a policy directive was issued, which sets a seeming policy that the land should be contracted to farmers for a period of thirty years. But this fell far short of a general, mandatory enactment issued by the executive branch. Although often followed by the lower government organs, policy directives do not have binding power of law behind them.

The thirty-year policy was embodied in formal law for the first time as a result of the adoption of the revised Land Management Law (LML) in August 1998, which explicitly mandates that the land be contracted to farm households for a term of thirty years. It further restricts land readjustments in various ways, including requiring a 2/3 approval of village members.

Under these policy and legal reforms, China started the second round of contracting that extended farmers' land use rights to thirty year in the mid- to late-1990s (the first round of contracting being the initial HRS), starting slowly and accelerating with the public discussion and then adoption of the LML in 1998. Provinces adopted various implementation regulations pursuant to the LML. Written contracts or certificates spelling out farmers' thirty-year rights were issued as well as a part of the second round of contracting, especially with the advent of the LML.

Then, in 2002, China passed a Rural Land Contracting Law (RLCL), representing a major breakthrough in the process of strengthening the legal regime for farmers' thirty-year rights and the first piece of modern Chinese legislation to exclusively address farmer' rights to their most important asset. Going beyond the LML, the RLCL requires an end to the practice of land readjustments in China in all but extreme cases.

The RLCL further requires that collectives and farmers execute written contracts and certificates to confirm the contracting relationship. In addition, the RLCL spells out in detail the right to lease, assign, exchange, and carry out other transactions of contracted land (except mortgage and, since farmers aren't owners, formal sale), greatly improving the legal framework for marketability of rural land.

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The latest findings on the impact of tenure security in China come from a 17-province survey of 1,962 households, conducted in mid-2005 by RDI in cooperation with Renmin University (Beijing) and Michigan State University. Broadly, the findings indicate that there were important positive impacts, including farmer investments in the land, associated with Chinese farmers' possession of documentation for their land rights. We summarize here the chief tenure-related findings of the survey.

Positive findings include:

- Where farmers have received documentation of their land rights (contract, certificate, or both), their mid- to long-term investment in their land has substantially increased.
- This holds true even more strongly where the documents received comply with law and are in proper form, and more strongly still where document issuance has been accompanied by reiterated publicity for farmers' land rights.

- Publicity has successfully conveyed to large majorities of Chinese farmers certain basic facts as to their land rights, such as that their arable land should be contracted to them for 30 years without readjustment.
- In villages where farmers possess documents, and especially documents complying with law, farmers – although still only a minority – are much more likely to be satisfied with the compensation package received in cases of land takings.
- There are some indications that a land market may be emerging, including an increasing number of longer-term transfers, and meaningful levels of payment in light of comparative Asian land-market data.
- The survey indicates that the central government also appears to have successfully brought about a substantial degree of local implementation of the laws and policies it has promulgated in four other land-related areas, as reflected in the decline in prevalence of the two-field system, scale farming, and re-contracting, and the effective reduction of taxes and fees paid by farmers. Thus, where the central government focuses, and makes its will clear, *it appears that it can succeed in making pro-farmer laws and policies effective*, even on matters where the collective cadres have largely contrary interests.

Nevertheless, negative findings are multiple:

- 17 percent of villages have not yet conducted the second round of contracting or given farmers the thirty-year rights in even the most nominal way.
- 63 percent of rural households have received some documentation (contract, certificate, or both) for their land rights, and only 38 percent of households have received both documents, as required by law.
- Only one out of every 10 farmers possesses at least one of these documents in a form substantially compliant with law (and it is for this minority group that the rate of land investment has been greatest).
- 30 percent of the villages that have purportedly given farmers 30-year land rights have subsequently “readjusted” (almost all of them illegally) farmers’ contracted land.
- Only 20 percent of farmers have actually heard of the RLCL, and their knowledge of their specific rights varies greatly from subject to subject.
- During the last 10 years, the frequency of takings of farmers’ land has grown more than 15 times over, and in only 22 percent of takings were farmers actually consulted about the amount of compensation.
- Processes for redress available to farmers for their complaints about compensation for takings have been highly inadequate, and rarely produce a result favorable to the farmers.

In recent months, another serious property-takings problem has emerged in several provinces – and threatens to spread – which involves the taking of farmers’ foundation plot and house, heretofore considered sacrosanct in terms of security of tenure, “replacing” it with rights to an apartment in a high-rise building (often kilometers away and – apart from the destruction of community – raising grave problems for farmers’ use of their contracted arable land: hence sometimes followed by the surrender of that as well).

Some, but not all, of the outstanding issues with respect to farmers' land rights have been addressed in the new Property Law, promulgated by the National Peoples' Congress on March 16, 2007, and to become effective on October 1, 2007.

Among the positive features of this new law:

- It reiterates and reaffirms the major provisions of the RLCL on securing farmers' land rights, now embodying them in what is considered a more fundamental law.
- It further strengthens the conceptual underpinnings for farmers' land rights by defining them as usufructuary property rights (*in rem* rights), something which had been only implicit in the RLCL.
- It allows the holder to continue contracting his or her contracted land upon expiration of the present 30-year term.
- It creates the basis for much greater compensation (including compensation for the land itself) for the land-losing farmers where land takings occur.
- It contains provisions on partitioning common property which may help protect women's land rights.

But there are still many shortcomings and gaps in the new law: it still falls far short of the comprehensive reform of legal rules as to land takings that is needed; it lacks specific rules both empowering and protecting farmers with respect to their foundation (housing) plots; it fails to lift the existing prohibition against mortgage of farmers' rights to arable land (though this was lifted in some early drafts); it lacks specific and functional rules for registration of rural land rights (which probably should be enacted in a separate law); and it would benefit from further clarifications, even as to some of its positive provisions.

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To give a sense of what we regard as the key "next steps" with respect to farmer' land rights, I attach a "To Files" version of a memorandum which we wrote on this subject in late March.