



March 26, 2007

To: File

From: Roy Prosterman

Re: Some Preliminary Suggestions for Follow-Ups to the New Property Law relating to Farmers' Land Rights

The just-adopted Property Law appears to offer a crucial occasion for new actions by the central government relating to farmers' land rights:

1. Publicity for Farmers' Land Rights

Building upon the adoption of the Property Law and its reiteration, in the most authoritative possible way, of the RLCL's provisions on farmers' land rights, the time seems ripe for an intensive publicity campaign as to those rights. It will be recalled that the July-August survey of 1,962 households in 17 provinces (expected to be accurate to within +/- 2.2% for the entire rural population of those provinces) carried out by RDI in partnership with Renmin University and Michigan State University, found that only 20% of farmers had heard of the RLCL. Moreover, on two crucial points relating to farmers' knowledge, large numbers of farmers did not know that they should no longer lose land shares to administrative readjustment in the following cases:

- Only 51% knew that death of a household member should no longer lead to loss of that member's land share.
- Only 35% knew that a household member moving to the city should no longer lead to loss of that member's land share.

It is essential that farmers should know the legal rules that protect them, and there is unlikely to be a better occasion for such publicity than the adoption of the Property Law.

2. Two-Way Information Gathering.

The adoption of the Property Law with its authoritative reaffirmation of the rules of the RLCL also provides an occasion to introduce and publicize systematic monitoring by the center of grassroots implementation of farmers' land rights, and the creation of a toll-free central government hotline for

farmers' complaints of violations of their rights (with an associated computerized data base, including a "virtual map" of where complaints are coming from). This will provide two-way, top-down plus bottom-up information gathering.

During the recent Politburo collective study of the new Property Law, press reports state that President Hu Jintao emphasized resolute protection of people's land contracting and operation rights, rights to foundation plots, ownership of houses and other property rights in accordance with the Property Law. He also required all cadres to resolutely stop any behavior that violates farmers' lawful rights and interests. The further points in this memorandum relate to assurance of these vital requirements.

3. Carry Out Farmers' Rights to Receive Contracts and Certificates in Proper Form

The 17-province survey showed that 63% of farmers' had received a contract or certificate, and only 38% had received both, as required by the RLCL (that law now having been reaffirmed by the Property Law). Moreover, most issued contracts and certificates lack important provisions, such as an adequate sketch or description of the farmers' land rights. These documents need to be issued to farmers lacking them, and inadequate documents need to be appropriately supplemented. (The immediate importance of this is reflected in two of the survey's other findings: (i) farmers with documentation were much more likely to make substantial investments in the land, and those with adequately prepared documents were still more likely to make such investments; and (ii) farmers with documentation were more likely to have received satisfactory compensation in case of a land taking for non-agricultural purpose, and farmers with adequately prepared documents were even more likely to have received satisfactory compensation, though still only a minority even of the latter were satisfied with compensation.)

4. Ensure Farmers' Rights not to Have their Land Administratively Readjusted Because of Population Change or Land Takings.

The no-readjustment principle has been strongly reaffirmed in the new Property Law. Yet the 17-province survey found that 30% of villages that had purportedly carried out the second round of contracting had conducted a subsequent administrative readjustment; nearly all of these were illegal readjustments carried out due to population change or land takings. Two critical responses to this continuing illegal activity should be (i) inclusion of these as violations in the publicity under point 1 above, and (ii) issuance of a State Council document or a Regulation that iterates that the Property Law confirms in the most authoritative possible way the principle of no

readjustment, and points out that taking any of farmers' land away for readjustment because of population change or due to land takings for non-agricultural purposes is illegal, and is, moreover, subject to specific reversal at the farmers' request under both the Property Law and the RLCL, as well as other penalties.

5. Ensure Farmers' Right to their Foundation Plot Land and Ownership of their Homes

Partly due to increasingly strict restrictions on conversion of farmland for non-agricultural development, local governments together with collective entities are beginning to look to rural foundation plots for satisfying their desires of land for development because such land is already categorized as construction land under the Land Management Law and taking of such land does not trigger the procedures required for farmland conversion. So called "three concentrations" -- under the guise of new socialist countryside -- construction which is currently spreading out in China very rapidly is an example of such local schemes, that could lead to vast social disturbances in rural areas. It is important to note, however, that the rapid expansion of such local violations is taking advantage of the legal vacuum on collective construction land.

A three-step approach appears to be desirable and practical in stopping this dangerous trend. First, in a quick and immediate response to this illegal and dangerous activity, the central government should issue a central document that resolutely prohibits any efforts to compel farmers to abandon their foundation plots and houses against their will. Second, since a central document lacks legal enforceability, the State Council should draft and promulgate regulations pursuant to the specific provisions of the Property Law in regulating the rural construction land market. Third, the 1998 LML should be revised in a way paralleling the RLCL protective provisions with respect to collective farmland, to protect farmers' rights to foundation plots and their ownership of houses.

Three things must be done whether they will be stipulated in a policy directive, a regulation governing rural residential land or revision of LML: (i) state that any physical acquisition of a farmer's foundation plot or house, or ouster of the farmer from the foundation plot or house by the collective entity or others, constitutes an illegal transfer of the foundation plot under the Property Law, with only one exception; (ii) that the only exception is a collective taking for the purpose of building public facility or public welfare as construed under the 1998 LML, which shall be considered to exclude all money-making or commercial purposes; and (iii) clarify that, under the Property Law and LML, the ownership of the farmer's house can be

transferred voluntarily and in accordance with law to another individual or individuals in full or for a period of time as stipulated in the transfer contract, and carries with it the right to occupy and use the associated foundation plot as long as the farmer's right to it endures (in case of the transfer of ownership of the house) or for the period of the term, if shorter (in case of the lease of the right to the house).

These matters should further be a prominent subject of the publicity campaign under point 1.

6. Confirm the Farmers' Enlarged Right to Compensation When their Land is Taken for Non-Agricultural Purposes

The Property Law appears to enlarge farmers' right to compensation in three important ways, "trumping" the LML and its implementing regulations in a way that Document No 28 and Document No. 31 could not accomplish (because unlike the document directives, the Property Law is an enactment considered superior to LML and its regulations): (i) it appears to explicitly allow affected farmers compensation for loss of land (the LML Implementing Regulations, by contrast, requires that land compensation, the largest component of the compensation package, go to the collective entity for "development of collective economy"); (ii) it adds a compensation standard in form of guaranteeing livelihood of land-losing farmers (as in Document No. 28, but not in LML); and (iii) it adds compensation element in form of social security costs for land-losing families (for the first time, but not in LML).

On this crucial matter of farmers' right to compensation, it would be desirable to make and publicize the following points in a State Council Regulation pursuant to the Property Law:

- Explicitly confirm that farmers are to receive compensation for loss of land (and note that 30-year rights, even eight or nine years into the term -- with only 21 or 22 years still left -- would still represent a substantial majority of the value of the land; while with the new Property Law providing for extension at the end of the 30-year term, farmers' land rights can now reasonably be considered to represent very close to 100% of the value of the land).
- Clearly define social security costs for land-losing farmers as a supplement to the compensation package that had existed under the LML rather than as a partial replacement of the package. Premier Wen Jiabao announced in his government work report to the most recent NPC conference that a minimum livelihood guaranty system shall be established for rural China this year, implying that a basic social security safety net will cover all rural citizens regardless of whether their land has

been or will be taken. Therefore, there appears to be no reason to siphon off all or part of the compensation package to finance the provision of social security benefits that affected farmers would be entitled to even before their land is taken.

- Procedurally, provide that all compensation going to the farmers must be paid to them through an independent intermediary such as a trust or escrow account maintained in a bank in the farmers' name, and must not be paid to local cadres or officials for supposed transmission to (or use allegedly on behalf of) the farmers -- money for farmers' compensation not paid into such a farmers' account should be considered not paid at all.

7. Clarify that Women's Marriage, Divorce and Widowhood are All Events Justifying Partition of Common Property Upon her Request.

Common property can now, under the Property Law, be partitioned under either of two situations: substantial cause for partition or loss of the basis for holding the property at issue as common property. A State Council regulation under the Property Law should make clear that marriage, divorce and widowhood are all events that meet one or both of these standards. As with each of the regulatory provisions suggested in the present memorandum, the rights affirmed should be widely publicized.