

# China: Integrating Land Policy Reforms II

## Strengthening Land Rights for Equitable Growth and Social Harmony

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## **Executive Summary**

Over the last several decades, China has witnessed unprecedented achievements in growth and development, with an astonishing average GDP increase of 9.6% per year between 1979 and 2004. In this ongoing and accelerating economic and social transformation, land has assumed a critical importance. The nature of rights to land, and the extent to which they are perceived as secure and accessible, play key roles in building and sustaining a vibrant market economy and shaping economic options and livelihood strategies across all sectors of society, from sophisticated urban businesses to remote rural communities.

The policy directions and actions of the Chinese government over the past decades have clearly evidenced a deep and consistent appreciation of the centrality of land. Since adoption of the household responsibility system in the late seventies, through passage of the Rural Land Contracting Law and revision of the Land Administration Law and Constitutional recognition of private property rights, there has been a continual and dramatic evolution of China's land policy in the direction of stronger private rights and more rational allocation of land between competing uses. Most recently, on March 16, 2007, the National Peoples' Congress passed a major milestone in the history of modern Chinese legislative reform by adopting a new Law on Property. The new Property Law represents a major step forward for China on numerous fronts, including how property rights are defined, administered and transacted.

Since 2004, the Development Research Center of the State Council (DRC) and the World Bank have been working together with the Government of China in pursuit of a deeper and more comprehensive understanding of land issues in China. A key product of the DRC/World Bank collaboration was a report entitled "***China: Land Policy Reform for Sustainable Economic and Social Development – An Integrated Framework for Action***" (*Synthesis Report #1*). That report focused on the following challenges, and elaborated recommendations for each:

- The need to address the persisting duality of rural and urban land tenure systems, and the State's monopoly of the primary market for urban land.
- The need to improve requisition (compulsory acquisition) processes and compensation practices.
- The need to strengthen farmers' land rights.
- The need to reduce over-reliance by local governments on revenue from land transfers and land-related financing.
- The need to reduce the rate of farmland conversion.

Over the last year and a half, since completion of Synthesis Report #1, the DRC-World Bank partnership has continued to explore in greater depth several issues identified as important in that Report. A decision was made to focus this subsequent work on the unifying theme of ***land rights*** – for different categories of land rights holders and users, spanning the urban-rural interface. The importance of land rights as a key dimension in China's social and economic development is evident:

- Secure tenure is key to increasing agricultural productivity;
- Clear and certain rights are key to improving transparency, accountability and other aspects of governance, as well as reducing the incidence of land related disputes;
- Enhanced rights to transact in land rights are essential for enabling land rights holders to realize the value of their assets and the investments that they make or seek to make;
- Stronger rights are also important for reducing the distortions associated with the current dependence on requisitions for urban expansion.

In undertaking this further research and analysis on land rights, DRC and the World Bank targeted four areas of investigation as essential for beginning to address existing knowledge gaps and for elaborating and refining detailed policy recommendations. These four topics are each addressed by separate Parts of the Report.

**Part II: Strengthening farmers' rights over rural agricultural land.** Over the last few decades, China has made important legislative progress on creating and securing individual rights to farmers. This progress has been an essential and indisputable part of China's economic growth and its advances in agricultural productivity. This progress has continued with the adoption in March 2007 of the Property Law, which among other advances, helps to bolster the legal robustness of farmers' rights.

Despite these advances, a number of challenges remain in order to address ambiguities and loopholes in the legal framework that serve to detract from the overall thrust of reform. The Report therefore elaborates seven recommendations for future action on rural agricultural land rights:

*Recommendation 1: Place clear and unambiguous restrictions on land readjustments.* Land readjustment has remained a serious threat to farmers' tenure security despite the repeated efforts by the central government to tighten up controls. Its continuing existence is facilitated by legal ambiguities. Two options exist. One is to spell out in clear and narrowly-drawn detail the conditions under which "special circumstances" could be asserted as grounds for a readjustment, thereby limiting its use to a minimum and reducing uncertainty. A second and clearer option would be a complete prohibition of all readjustment of farmers' contracted land, without exception.

*Recommendation 2: Allow mortgaging of arable land rights.* Allowing mortgages on arable land will improve the value of rural land and encourage both investments and transactions in land. It is therefore strongly recommended that the prohibition against mortgaging farmers' land rights under the 1995 Guaranty Law be repealed through further legislation.

*Recommendation 3: Provide uniform land document designs.* Currently, land contract and land certificates are designed by each province or even at the county level - or indeed, sometimes even at the township level - resulting in a wide variety of deviations from the law that reduce or nullify the legal force of such documents. A uniform land contract and land certificate should be designed to improve the legal compliance, clarity and strength of these documents.

*Recommendation 4: Draft land registration regulations in light of best international experience and China's own characteristics.* Land rights require a system of registration that ensures their security and that is legally sound, attributes that are currently missing with respect to rural land rights in China. A series of detailed recommendations for rural registration are set forth for accomplishing this.

*Recommendation 5: Effectively protect women's land rights through additional legislative reform.* Efforts need to focus on strengthening the rights of women to partition their rights over jointly held land; requiring that the name of the spouse be included on all land contracts and land certificates; and prohibiting collectives from taking-back married (or divorced) women's contracted land in their original village.

*Recommendation 6: Draft and promulgate rules for land dispute arbitration boards, and begin the process of establishing such boards.* The Rural Land Contracting Law provides farmers with arbitration, a new mechanism for resolving land disputes. However, no rules have yet been promulgated for governing such mechanisms and the Boards themselves need to be constituted.

*Recommendation 7: Resolve ambiguities concerning the nature of collective ownership.* Legal ambiguities surrounding rural land ownership and control negatively impact collective ownership rights as well as individual farmers' use rights to collectively owned land. To address these

ambiguities, collectively owned land should be clearly defined as jointly owned by all members of the collective; and collective land ownership should be established at the villager group, the level closest to and probably most responsive to farmers.

**Part III: Strengthening rights over rural housing land.** Rural land used for housing provides an important example of economic reality in a rapidly transforming China eclipsing existing policy and legal approaches. A vigorous informal market in rural housing land exists at the fringe of most urban areas. Yet there is a growing divergence between the legal constraints that apply to collective construction land, and the actual uses to which such land is being devoted in different parts of the country. Although important experiments with allowing greater transactional freedoms are underway in a number of provinces, these have not been accompanied by the necessary changes to the legal framework, resulting in a situation where much promising activity is taking place in the margins of the law, with uncertain consequences for collectives, farmers and other investors alike.

Chinese laws on foundation plots thus provide an inadequate basis for secure tenure in several ways, and the Report puts forward a number of recommendations for dealing with these weaknesses:

*Recommendation 8: Define farmers' foundation plot rights as perpetual usufruct rights.* Although farmers' land rights to foundation plots are considered as long-term rights in legal practice, no law formally defines the actual legal meaning of these long-term rights. The lack of clear definition on the duration of foundation plot rights tends to give rise to varied interpretations of "long-term". This recommendation would end this ambiguity and would bring law in line with *de facto* practice, which has tended to treat foundation plots as perpetual in practice.

*Recommendation 9: Expand the transferability of farmers' housing plot rights.* One of most valuable assets Chinese farmers own are their houses. Existing restrictions on transferability of housing plots appear unnecessary and counter-productive, making it difficult for farmers to realize the value of their homes, particularly in the context of rural-urban migration.

*Recommendation 10: Explicitly permit mortgaging of housing plots.* Like rights to farmland, foundation plot rights are explicitly not mortgageable under existing laws. On the other hand, the houses built on such foundation plots are permitted to be pledged as collateral for mortgage loans. Such distinctions on mortgageability of the structure and the land on which the structure is erected will inevitably undermine the collateral value of the structure and thus discourage financial institutions to accept rural houses as collateral.

*Recommendation 11: Improve the protection of farmers in the case of taking of their housing plots.* Chinese law does not prescribe any meaningful protection measures with respect to foundation plot rights. A set of rules should be put in place to protect farmers' foundation plot rights against various kinds of violations, especially those under the guise of a public interest as articulated by the collective.

**Part IV. Improving requisition procedures and outcomes.** There has for some time been a high-profile policy debate about how to improve China's experience with requisitions, as reported in Synthesis Report #1. The central government, as well as various provincial governments, have demonstrated their concern and willingness to promote new policies that would result in a more rational application of the requisition tool, along with reduced hardship, fairer procedures, and more direct and adequate compensation for those affected. The debate, however, clearly needs better grounding in empirical evidence concerning the perceptions of farmers.

One insight that has clearly emerged over the course of the DRC/World Bank collaboration is that there is tremendous variety across China in terms of the contexts in which requisition is taking place, the types and severity of effects it has on people and the different policy responses that have been tried at different levels. It was with the objective of capturing and comparing the lessons emerging from diverse locations in China – "local laboratories" – that DRC undertook innovative field work in four

provinces. The goal of this first-of-its-kind survey was to understand the problem of requisitions when viewed through the eyes of farmers who had been through the process: their attitudes, the concrete effects on their lives, the way they saw the process and the compensation they received, and the longer term implications for their livelihoods. DRC's survey involved 1106 households in 39 villages located in four counties in four different provinces – Wuzhong district of Suzhou, Jiangsu; Shuangliu county in the suburbs of Chengdu, Sichuan; Tengzhou City in Zaozhuang, Shandong Province; and Chaoyang District in Beijing.

The survey focused on a number of variables including:

- *Attitudes toward compensation.* The responses demonstrated that the amount of compensation varies with such factors as location, utility and fertility of the land expropriated, the economic strength of expropriator and the timing of requisition. As far as overall satisfaction with compensation is concerned, the survey revealed a wide range of attitudes. Slightly less than half of the total respondents consider the outcome fair, with the rest deeming it unfair or having no comment. It is likely that attitudes were also influenced or distorted by partial or incorrect information. For example, farmers were frequently unclear about the standards for determining compensation, and about the differences between land compensation and relocation subsidies.
- *Perceptions of the requisition process.* There is compelling evidence that affected people themselves find the process non-transparent, with information inaccessible and with few mechanisms for meaningful participation or for redress when problems arise. Access to information about the process was limited, both as a general matter and with respect to specific aspects of the process. Public participation during the process was very limited. Respondents reported that there were few if any public consultation events and consequently little opportunity for affected farmers to make their views known. Avenues for raising complaints during the process were seen either as essentially non-existent in practice or as largely non-responsive.
- *The effects of requisitions on farmers' livelihoods and living standards.* Effects on income and living standards overall were mixed, with poorer localities such as Tengzhou presenting a rather negative picture as compared to more economically developed areas. While wages and incomes have tended overall to go up, in poorer provinces they have witnessed declines. The cost of living has also increased, frequently at rates in excess of improved incomes. In general, the survey reports considerable concern about the availability and stability of jobs after requisition.

The DRC survey was by its nature a pilot, with a limited sample of respondents and geographic coverage. Nevertheless, the *types* of information and insights emerging even from this initial attempt can clearly be of immense value to those committed to finding equitable and socially acceptable ways of resolving the problems associated with requisitions. Conducting similar surveys will be important to ensure that policy initiatives in this sensitive area are truly responsive to reality on the ground and the felt needs of the people.

Reforms are urgently needed to mitigate the undesirable and disruptive effects of current practice, and to limit its use to appropriate circumstances. Nevertheless, the obvious fact remains that China will continue to need the power of compulsory acquisition to pursue development and planning objectives. The challenge for the future will be to find better tools that limit the hardships experienced by affected individuals and communities, while enhancing the efficiency and effectiveness of development interventions in the public interest. With this in mind, the following recommendations are put forward:

***Recommendation 12:*** *Reform the existing legal regime on government expropriations by (a)*

*narrowing the scope of land expropriation by clearly defining “public interests” and (b) making rural construction land marketable.* China should consider a two-step approach to reform the existing legal regime on the scope of government expropriations. First, it should consider repealing the requirement that all non-agricultural constructions, including all commercial utilization of land, must use state-owned land before any definition of “public interests” becomes effective. Second, China should adopt new legislative or regulatory measures that clearly define and limit the scope of “public interests”.

*Recommendation 13:* *Adjust existing approaches for the calculation of compensation, moving towards the introduction of a transparent and market value-based system that provides equivalence and fairness in compensation for all categories of land taken.* There is a strong argument to be made that the formulaic approach to the setting of compensation set forth in the Land Administration Law is outdated and insufficient to meet the needs of affected farmers in a substantial number of cases. At the same time, designing a compensation standard for China that is both socially sensible as well as politically acceptable is challenging. In the not too distant future, it is likely and desirable that the calculation of adequate compensation will more closely track the approach in other mature market economies in which the market value of the land rights serves as the foundation. For the time being, however, though rural land rights markets are growing (often informally), they remain extremely thin and do not yet provide the basis for an acceptable market-based method for calculating compensation. Hence, how to arrive at an appropriate approach could usefully be considered from both short and medium term perspectives:

- In the short term, modifications should be considered to the formulaic approach spelled out in the Land Administration Law and associated regulations. Thought should be given to (a) changing the formula to improve the quantum of compensation; (b) replacing the ceiling with a minimum protection approach; (c) addressing delivery problems that result in farmers not receiving the compensation they deserve; and (d) analysing complaints about compensation more systematically.
- Over the medium term, China needs to move towards a system of compensation more closely aligned with the market. Towards this end, getting some key analytical and planning activities underway would be crucial, including: (a) undertaking detailed assessment of market-based compensation in other economies, with a view to defining new and appropriate approaches for China’s rapidly changing circumstances; (b) undertaking a systematic assessment of existing market information which could progressively form the basis for the assessment of fair compensation for the value of land and buildings taken, with other defined elements of compensation to address losses for other impacts and disturbance; (c) carrying out an inventory of available skills and development of capacity-building strategy; (d) reviewing the apportionment of compensation between farmers and collectives; and (e) moving towards the development of an appropriate legal and judicial framework -- an essential step in ensuring the assessment of “fair” compensation and implementation of modern compulsory acquisition processes.

*Recommendation 14:* *Adopt the replacement value standard for non-land assets.* Compensation standards for non-land assets are typically governed by provincial regulations. Such provincial standards vary from jurisdiction to jurisdiction, but few of them apply the replacement value standard in determining the value of non-land assets.

*Recommendation 15:* *Improve land takings procedures to guarantee farmers’ right to notice, right to participation and right to appeal.* China’s legal regime and its implementation are weak with respect to farmers’ right to notice of the intended expropriation, their right to participation in the takings process and their right to appeal. The recent policy measures taken by the central government in Document No. 28 in addressing the problems of inadequate procedural safeguards are an important achievement. Therefore, either the National People’s Congress or the State Council (through administrative regulations) should consider embodying the new policy measures into law, to make

these measures legally enforceable.

**Part V: Strengthening urban land use rights and administration.** An integrated approach to land policy reform across the urban-rural interface necessarily requires attention to both sides of that interface. The emphasis in the above three topics has been on *rural* rights. Here the question is: what parallel aspects of *urban* land rights require strengthening, both to facilitate a more efficient market in such rights and to help mitigate the hardships currently faced by those most vulnerable? Two topics are given special attention in this Part of the paper – compulsory acquisition and land rights registration – and four recommendations emerge.

*Recommendation 16:* *Ensure compensation for urban land use rights, and improve valuation and arbitration procedures.* With rapid urban development, urban land use rights are becoming increasingly valuable. Conversely, failure to compensate for land use rights depresses the value of the condemned structure, and thus fails to offer full replacement value of the affected people's losses. Specific operational rules should be made requiring the condemner to pay compensation for land use rights in addition to structures and to clarify the legal rights of the claimant with regard to the reversionary interest (the right of renewal and the calculation of additional granting fees payable).

*Recommendation 17:* *Gradually remove the exercise of the expropriating power from private entities and establish an independent appeals authority.* In a number of instances, China delegates to private entities government's eminent domain power in determination, negotiation and making payments of the compensation to owners of condemned urban properties. This has distorting effects in terms of valuation and exacerbates power and information imbalances to the disadvantage of the land user who is being dispossessed. In order to adopt a socially sensible system for urban condemnation, such delegation should be restored to government.

*Recommendation 18:* *Consider compensation for undocumented or unregistered property in appropriate cases.* Categorically declining compensation for undocumented property will disproportionately affect poor and low-income urban dwellers who were forced to self-build and inhabit in these undocumented houses because of government's inability to provide affordable housing.

*Recommendation 19:* *Improve urban property rights registration.* Improving the institutional and legal framework for property rights registration in urban areas is key to strengthening property rights and introducing further efficiencies into the real estate market. The three key issues of system unification, legal effect and public access to information should be given priority in future reforms. Emphasis should be given to (a) establishment of a unified system that incorporates both urban and rural rights, including mortgages, as well as combining rights to buildings and land in a single system administered by a single agency; (b) clarifying the legal effect of registration and (c) improving public access to, and understanding of, information contained in the registers.

## **I. Introduction**

### **A. The central importance of land policy**

Over the last several decades, China has witnessed unprecedented achievements in growth and development, with an astonishing average GDP increase of 9.6% per year between 1979 and 2004. In this ongoing and accelerating economic and social transformation, land has assumed a critical importance. The nature of rights to land, and the extent to which they are perceived as secure and accessible, play key roles in building and sustaining a vibrant market economy and shaping economic options and livelihood strategies across all sectors of society, from sophisticated urban businesses to remote rural communities. Land as a source of revenue is gaining increasing prominence in thinking about public and private finances at all levels. Land use policies and practices influence the rapid expansion of cities, the scope and rate of agricultural land conversion, and the prospects for sustainable management of natural resources and the environment. In short, land – how it is allocated, used, governed and financed – is central to China’s economic and social future.

The policy directions and actions of the Chinese government over the past decades have clearly evidenced a deep and consistent appreciation of the centrality of land. Since adoption of the household responsibility system in the late seventies, through passage of the Rural Land Contracting Law and revision of the Land Administration Law and Constitutional recognition of private property rights, there has been a continual and dramatic evolution of China’s land policy in the direction of stronger private rights and more rational allocation of land between competing uses. Through successive policy documents, regulations and laws, the momentum of reform has accelerated in areas such as urban real estate markets and finance, land use planning, farmland conversion and farmers’ land use rights.

### **B. China’s New Property Law**

Most recently, on March 16, 2007, the National Peoples’ Congress passed a major milestone in the history of modern Chinese legislative reform by adopting a new Law on Property. This landmark law was the result of legislative deliberations spanning more than a dozen years, with multiple drafts produced and debated along the way. The new legislation for the first time clearly articulates as a legal principle that all types of property in China – state, collective and private – are entitled to the same level of protection under the law. It provides a comprehensive framework for the creation, modification, transfer and requisition of rights, with special attention to provisions designed to increase security and efficiency in urban real estate transactions. With respect to rural land, while land ownership remains vested in collectives, the Property Law makes it clear that the land use rights of individual farmers are usufruct rights, hence *in rem*/property rights, as opposed simply to contractual rights, and hence entitled to heightened protection under the law.

The new Property Law is further affirmation of the centrality of land and property rights to the country’s future economic and social development. It represents a major step forward for China on numerous fronts, including how property rights are defined, administered and transacted. Yet as this paper will illustrate, while the Property Law is unmistakably an advance, it is just as clearly part of an evolutionary process. Indeed, as will be shown, the power of the Property Law lies *not* in that it represents a sudden departure from what has come before, but in the fact that it builds upon and consolidates successive policy instruments



and legal reforms that have taken root over the last three decades. And by the same token, the Property Law is not the end of a journey – as this paper will explore, multiple challenges remain to ensure that land policy and its implementation fully supports China’s development objectives.

### **C. The DRC-World Bank partnership**

Since 2004, the Development Research Center of the State Council (DRC) and the World Bank have been working together with the Government of China in pursuit of a deeper and more comprehensive understanding of land issues in China. Through innovative field work, structured policy dialogue and in-depth assessment of relevant international experience, this partnership has endeavored to enhance strategic thinking on land policy from many angles.

A key product of the DRC/World Bank collaboration was a report entitled “*China: Land Policy Reform for Sustainable Economic and Social Development – An Integrated Framework for Action*” (hereafter referred to as “Synthesis Report #1”). This report presented in a synthesised fashion the main lessons emerging from the collaboration, and put forward a number of concrete proposals for moving forward in the short, medium and long term. At the same time, it notes that the reforms so far, however laudable, have been partial, leaving in place five major challenges:

- *The need to address the persisting duality of rural and urban land tenure systems, and the State’s monopoly of the primary market for urban land.* Chinese land policy features a strict separation in the treatment of urban and rural land. These spheres are subject to different rights regimes and are administered by separate institutions and rules. In addition, the sole mediator of the urban-rural interface is the government, which has exclusive power to acquire rural land and transfer it to urban users. Together, these factors contribute to a number of problematic features of China’s land policy, including a heavy reliance by local governments on land requisition and disposition for urban development, inefficient urban growth and inequities between rural and urban land users.
- *The need to improve requisition processes and compensation practices.* The compulsory acquisition of land rights at the urban fringe by local governments is a very frequent phenomenon in modern China. These are often perceived as unfair to dispossessed rural land rights holders, and have been a source of grievances that the Government is proactively trying to address.
- *The need to strengthen farmers’ land rights.* Strengthening of land rights is key for reducing farmers’ vulnerability to unfair treatment when it comes to compulsory acquisition, and for enhancing the economic value of those rights. It is an essential element in reducing the overall disparity between urban and rural citizens in terms of economic opportunities.
- *The need to reduce over-reliance by local governments on revenue from land transfers and land-related financing.* Local governments have strong incentives at present to pursue aggressively the requisitioning of rural land in a manner that is financially risky, while contributing to unsustainable forms of urban growth.
- *The need to reduce the rate of farmland conversion.* At present, efforts to control the steady loss of farmland through regulatory measures have had limited success in the

face of economic incentive structures that help drive urban expansion at its current pace.

In light of these challenges, nine long-term objectives were identified, and corresponding actions were proposed, summarized in the following box:

**Box 1: Recommendations of Synthesis Report #1**

**Objective 1: Clarify, secure and broaden the rights of landholders, and promote greater equivalence of rights over land within different contexts.** Steps should be taken progressively to clarify, secure, broaden and harmonize the rights of rural and urban landholders, in order to allow greater freedom for landholders in all categories to participate more fully in economic growth through the sustainable use of property. Potential actions to support this objective include: a) evaluate and test the feasibility of making collective construction land marketable; b) evaluate and test the feasibility of allowing direct dealing by collective landholders in the case of conversions for non-“public interest” uses; c) strengthen legal provisions to ensure greater protection of rural contract holders from unfair or improper actions on the part of the collective management; d) introduce the right to mortgage farm land held under a 30-year contract; e) develop an efficient, accurate and usable registration system for all land rights, including farmers’ agricultural land contract rights; f) evaluate and test the feasibility of granting secure and marketable urban land use rights generally to urban real property holders; and g) design and carry out poverty and social impact analyses to guide future policy decisions about increased marketability of rural and urban land.

**Objective 2: Ensure fair treatment and adequate compensation for those affected by compulsory acquisition.** Compulsory acquisition rules and methods require re-examination and revision, to ensure that compensation is adequate, that the process is fair and open, and that government’s decision to requisition land is guided by appropriate standards. Potential actions to support this objective include: a) revise methods for the calculation of compensation to move towards more equitable, predictable and socially-acceptable standards; b) take steps to ensure that compensation reaches the dispossessed farmer; c) experiment with alternative forms of compensation; d) consider limits to the purposes for which land can be taken; e) establish better standards for compensation of urban land; and f) review experiences of other countries with respect to the above issues, to help inform policy decisions.

**Objective 3: Promote more efficient use of farm land and urban land.** More effective measures are needed to reduce the conversion of farm land and to improve the efficiency of use of urban land, through review of current incentives for land use conversion, better coordination of planning mechanisms and more efficient land use strategies. Potential actions to support this objective include: a) review the impact of subsidising land for industrial use by setting artificially low price ceilings; b) explore greater integration of urban and rural planning functions and objectives; and c) review international experience.

**Objective 4: Enhance the role of land as a sustainable foundation for local government finances.** The general level of local government finances’ dependence on profits resulting from trading in land, in large part through land banking operations, is unsustainable and creates undesirable incentives which are resulting in extensive and inefficient use of land. Market value-based property taxes should be explored as a matter of urgency as an alternative source of local government finance. In time, this would provide a long-term sustainable substitute as receipts from land trading are reduced. This should be coupled with a general review and simplification of the overly complex current system of property based fees and taxes. Potential actions to support this objective include: a) design and implement pilots to test the feasibility of introducing property tax; b) re-assess the purpose and function of land banking; and c) undertake a review of

other land-related taxes and fees to assess their continued relevance and to rationalise their use.

**Objective 5: Rationalise the institutional framework for land.** In the long term a natural consequence of harmonising urban and rural land issues will be the extension of this harmonisation to the rationalisation of the institutional framework responsible for administration of some of these matters. Similar comments hold true in relation to the current distinction between land and buildings and how their recording is administered. Potential actions to support this objective include: a) harmonise and unify land and building registration; and b) harmonise and unify rural and urban registration.

**Objective 6: Strengthen the overall legal framework and rule of law.** Land-related laws and regulations need to be improved to ensure coherent legal support for land policy. At the same time, urgent attention is needed to the task of making relevant laws function in practice, especially by giving the intended beneficiaries of land rights the needed understanding and tools to use them. Potential actions to support this objective include: a) undertake a diagnostic review of the overall legal framework for land; b) begin immediate work to address specific identified gaps and weaknesses in the legal framework for land; c) give targeted attention to the legal implications of policy reform decisions; and d) take steps designed to empower farmers to understand and use their rights.

**Objective 7: Build capacities for land administration.** Capacity building in the skills and knowledge necessary for implementing this set of objectives will be essential to ensure that the planned outcomes are achieved. Potential actions to support this objective include: a) capacity building will be required in relation to critical skills and knowledge areas that reflect the movement towards market economy based land administration and management; and b) building capacity in each of these areas will need to follow a fairly standard sequence.

**Objective 8: Ensuring protection of the environment.** The rapidity of urban expansion and the increasing pressures deriving from market based solutions, which do not generally incorporate environmental requirements, will increasingly demand that appropriate planning/regulation and fiscal policies are put into effect to ensure adequate protection of the environment. Potential actions to support this objective include: a) research should be undertaken to identify appropriate legal, institutional and implementation frameworks to ensure the maintenance of appropriate environmental standards; and b) research should be undertaken to identify appropriate fiscal and other market based incentives to ensure the delivery of required environmental goods.

**Objective 9: Create an adequate research basis to make appropriate policy decisions for the future.** Piloting and research, both immediate into specific areas, and longer term monitoring of impacts, will be essential to support sound policy decision-making for the implementation of this set of land policy objectives. Potential actions to support this objective include: a) formulate and execute an integrated programme of pilot activities; and b) undertake research in critical knowledge areas that reflect the movement towards market economy based land administration and management.

Synthesis Report #1 was launched at a major high-level International Seminar on Land Policy Reform in China, held in Beijing in May 2006. Since its release, it has been widely reported in major Chinese media, and explicitly acknowledged by the Government and its international partners as a highly constructive contribution to ongoing reform efforts. Recommendations emerging from the DRC-World Bank collaboration find substantial echoes in recent policy documents and proposals. The provisions on compulsory acquisition in 2006 No.1 Document of the Central Committee and State Council, for example, call for “narrowing down the scope to which compulsory acquisition power could be applied; perfecting compensation

mechanisms; broadening the options of resettlement; standardizing the land taking procedures; conducting different pilots to explore different types of compensation; strengthening off-farm job training; providing more off-farm job opportunities; and providing social security.” There are similar expressions in the Government's 11<sup>th</sup> Five-Year Plan. Throughout the lengthy consideration of the new Property Law, the People’s Congress attached great importance to the recommendations emerging from the DRC-World Bank activities and reported on in the Synthesis Report #1.

**D. Scope and focus of the current report: towards a balanced vision of the importance of land rights.**

Over the last year and a half, the DRC-World Bank partnership has continued to explore in greater depth several issues identified as important in the first Synthesis Report. Although Synthesis Report #1 identified the need for action and analysis on multiple fronts, a decision was made to concentrate primary efforts on the unifying theme of *land rights* – for different categories of land rights holders and users, spanning the urban-rural interface.<sup>1</sup> The importance of land rights as a cross-cutting theme is evident from the fact that they are intimately related to most of the topics addressed in Synthesis Report #1:

- Secure tenure is key to increasing agricultural productivity;
- Clear and certain rights are key to improving transparency, accountability and other aspects of governance, as well as reducing the incidence of land related disputes;
- Enhanced rights to transact in land rights are essential for enabling land rights holders to realize the value of their assets and the investments that they make or seek to make;
- Stronger rights are also important for reducing the distortions associated with the current dependence on requisitions for urban expansion.

Four areas of investigation were therefore targetted as important for beginning to address existing knowledge gaps and for elaborating and refining detailed policy recommendations. These subjects are as follows:

- i. ***The legal framework for rural land rights.*** Major reforms have been accomplished in terms of strengthening the rights of farmers’ over their agricultural lands, culminating in the Rural Land Contracting Law of 2002. What additional steps are needed to carry this reform forward in order to reduce the legal and economic vulnerability of farmers, and to increase their ability to compete in the modern world?
- ii. ***The regulation of rural housing sites.*** Rural land used for housing provides an important example of economic reality eclipsing existing policy and legal approaches. A vigorous informal market in rural housing land exists at the fringe of most urban areas. How can policy and law better reflect and help shape this reality in a way that enhances the economic benefits to rural residents while balancing the need for orderly expansion and rational land use?

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<sup>1</sup> Although land rights constitute the focus of the bulk of the research activities undertaken and reported on in this Report, other activities continued as well under the umbrella of the DRC-World Bank partnership during the same period, and are reported on elsewhere. These include (i) comparative research on international experience in land banking; (ii) the initiation of a rural land registration pilot project, supported by funding and expertise from the Food and Agriculture Organization of the United Nations (FAO); and (iii) two high-level study tours, one of which was headed by Vice Minister Chen Xiwen to review land administration advances in the United States, and the second of which examined land registration systems in Australia and Indonesia.

- iii. The effects of land requisition on farmers who lose land.* There has for some time been a high-profile policy debate about how to improve China's experience with requisitions, as reported in Synthesis Report #1. The debate, however, clearly needs better grounding in empirical evidence concerning the perceptions of farmers. What do those perceptions reveal about how policy interventions and practices could be tailored to address specific needs and more effectively mitigate the negative impacts of requisitions?
- iv. Selected issues affecting urban land rights.* An integrated approach to land policy reform across the urban-rural interface necessarily requires attention to both sides of that interface. The emphasis in the above three topics has been on *rural* rights. Here the question is: what parallel aspects of *urban* land rights require strengthening, both to facilitate a more efficient market in such rights and to help mitigate the hardships currently faced by those most vulnerable?

In pursuit of these topics, several major research efforts were launched under the umbrella of the DRC-World Bank collaboration, the results of which are set forth in a series of detailed research reports.<sup>2</sup> The following chapters are an attempt to present in synthesised form the findings and recommendations of these reports, and to identify key points for future action in China's continuing property rights evolution.

It should be emphasized at the outset that sound analysis of any of these subjects, of course, requires more than a narrow focus on individual rights. The elaboration and strengthening of rights needs to be pursued within a framework that seeks an appropriate balance between individual and public interests. Striking this balance can be exceptionally difficult, yet striving towards this objective is critical, and has been a key guiding principle in the discussion and recommendations that follow.

**Box 2: Some key features of the new Law on Property**

The recently adopted Property Law is a complex and detailed piece of legislation. Some aspects of this Law that are of particular importance to the issues raised in this report are summarized here, with an emphasis both on the advances that have been made as well as the challenges that remain.

- **Urban land use rights are extendable upon expiration.** Art. 149 provides that when the term (currently 70 years) for urban construction land expires, it automatically renews. This lifts any residual doubt about what will happen when the term expires, and hence strengthens urban tenure security and the confidence of investors.
- **There are improved prospects for extended duration of land rights for farmers.** Art. 126 provides that when the present 30-year contract term expires, "contracting farmers should

<sup>2</sup> The reports on which the following chapters are based are: Rural Development Institute (RDI), China's Regulatory Framework on Rural Land: A Review and Recommendations (2006); Development Research Center (DRC), General Report on the Survey on Land-lost Farmers (2006); DRC, A Study on Legal System Development of House Sites in China (2006); DRC, Studies on the Legal System of Urban Land in China (2006); RDI, Expropriation of Urban Assets (2007). In addition, insights from field visits by a joint team of DRC-World Bank experts in April 2006 have been drawn upon, as well as discussions that took place during the International Seminar on Land Policy Reform in China, May 11, 2006 in Beijing.

continue extending the contract according to relevant law.” Although not as strongly expressed as the renewal of urban land use rights, this is the first time Chinese law has expressed a presumption concerning the future of the 30-year term, with a move towards greater tenure security for farmers.

- **Farmers’ land use rights have been elevated to property rights.** Chapter 11 of the Law characterizes farmers’ rural land use rights as property rights/rights *in rem* (as opposed to contractual rights as defined by previous laws). This means farmers’ rights should enjoy heightened protection from readjustment and, ultimately, better compensation in the context of requisitions by the State.
- **The RLCL restrictions on readjustments are reinforced.** Art. 130 cross-refers to the Rural Land Contracting Law (RLCL) on readjustments, thus highlighting and reinforcing that law’s important restrictions on the use of readjustments by collectives. Readjustments have been a principle source of insecurity in farmers’ land rights.
- **The calculation of compensation in land takings remains largely unchanged, though more attention is paid to restoring livelihoods.** Art. 42 is the critical clause on compensation for land takings. It says “In all takings the compensation for land, standing crops and fixture and relocation assistance must be fully paid according to law, and there should be social security benefits be arranged for affected farmers so that their livelihood be protected and right protected.” It thus reiterates in its first part the three types of compensation provided in the Land Administration Law. The final sentence goes further, echoing the language contained in Central Documents No. 28 and No. 31 and thus adds a fourth category of compensation. The introduction of livelihood restoration as a criteria for the calculation of compensation is a positive development, but further treatment and modification of compensation standards and processes continue to be needed, as explored later in this paper.
- **The Law is silent on whether rural land use rights can be used as collateral for loans.** Earlier drafts had provided that rural land use rights may be used as collateral for mortgages. This was not included in the final version, creating legal ambiguity around this potentially important source of financing for farmers.
- **Improvements have been made concerning registration, but further work is required.** Art. 11 states that property rights become effective only when registered, while providing a sensible exception (and following the rule of the RLCL) that rural land rights are effective regardless of registration. Art. 10 calls for a unified real property registration system. This is an important step forward in terms of principle, but it leaves for the future important questions about institutional mandates, how to bring about the appropriate degree of merger between rural and urban land registration, and how urban land registration and urban building registration should be merged. Other clarifications will be needed on a number of issues concerning corrections of the registry, the process of changing registry records, the liability of registry officials, public access to information and related matters.
- **The Property Law does not directly address the marketability of rural construction land, including housing plots.** Earlier drafts had included unnecessarily strict restrictions on transfers of foundation (housing) plots. The final version states only that transfers of foundation plots will be governed by other laws. As such laws are virtually non-existent at present, this maintains the current legal ambiguity concerning this increasingly important category of land and the emerging *de facto* market in rural housing. Similar legal ambiguity remains concerning other types of collective construction land, for which demand is constantly increasing.

## **II. Strengthening farmers' rights over rural agricultural land**

### **A. The land rights of farmers and collectives in historical perspective**

To understand the current state of agricultural land rights in China, it is extremely useful to place this topic in historical perspective. China's gradual transition over the last three decades towards stronger, individualized rights over farmland is often portrayed as a reaction against the country's experience with collectivisation. While this is certainly accurate, a longer historical view also reveals that much of present day policy has antecedents in the pragmatic approach to land rights that prevailed in the early decades of the Chinese Communist Party.

*Land rights in the pre-collectivisation era.* Indeed, the evolution of the Communists Party's position on land-law reform from 1928 to 1955 was clearly in the direction of strong, individual, and marketable land rights for peasants. During this period, a steady and pragmatic accommodation to grassroots preferences prevailed, that finds parallels in recent reforms. Key milestones in this progression include:

- *The Land Law of the Soviet Republic of China of 1931.* This law called for confiscated land to be "distributed among poor and middle peasants" and "all temple land and other public land shall be granted to peasants without condition." It allowed lease and sale of land among peasants, although landlords were still prohibited from purchasing land back and rich peasants were prohibited from engaging in land speculation.
- *The Platform of Chinese Land Law of 1947* adopted at CPC' national land conference on September 13, 1947, which adopted a policy of "land to tillers". The Platform provides that with some exceptions, all land confiscated from landlords and the land traditionally owned by communities shall be distributed among all rural residents and owned by individuals. All rural residents, regardless of age and gender, are entitled to a same share of land. It requires that land ownership certificates be issued to all landowners. It also provides that landowners "have right to freely manage and sell the land, and lease the land under certain circumstances."
- *The Land Reform Law of the PRC of 1950* carried forward into law the major provisions of the 1947 Platform, providing for adoption of a "peasant land ownership system." The land confiscated from landlords, except for several specified categories of state-owned land, was to be allocated to poor peasants "fairly, rationally and uniformly for them to own." The law also provided that all landowners would be allowed to freely manage, sell and lease their land. To evidence land ownership, the law required that a land ownership certificate be issued by people's government to landowners.

The land-reform program distributed 46.7 million hectares of land to about 300 million peasants, thus covering about one-half of the total arable land and more than 60 percent of the total rural population.<sup>3</sup> The "land to tiller" program proved a huge success in increasing agricultural

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<sup>3</sup> Roy Prosterman and Tim Hanstad, *Land Reform in China: A Fieldwork-Based Appraisal*, RDI Monograph on Foreign Aid and Development #12 (1993).

productivity; the annual grain production went up from 113.2 million tons in 1949 to 166.8 million tons in 1953, and further to 192.7 million tons in 1956.<sup>4</sup>

*Land rights under collectivisation.* Despite these impressive gains, the policy pendulum soon swung away from private ownership and individual farming on rural land. Soon after the completion of rural land reforms, the Chinese government introduced the concept of collective farming following the Soviet Union's example. In the initial stages of this process, ownership of land, draft animals, and large farm equipment was transferred to the collectives, although individual households were allowed to keep ownership of the small private plots. By the end of 1958, the agricultural collectives were abruptly merged into Rural Peoples' Communes. Approximately 90 percent of the rural population became commune members within half a year. From an ownership perspective, the fundamental characteristic of the commune was the abolition of the last vestiges of private property. The commune took sole ownership of all property, including the private plots (which were absorbed into the commonly worked land), private dwellings, livestock and certain consumer durables.

The collectivization campaign leading to giant communes proved to be a huge disaster to China's agriculture and people. Grain production declined substantially for three years in a row starting in 1959, leading to perhaps the planet's worst famine of the twentieth century. In partial recognition that the commune system was strangling the incentives of individual farmers, there was a very mild reform introduced in 1962 to reduce the size of the collective known as the Sixty-Article regulation. While confirming the level of collective closest to farmers, namely, the production team, as the basic accounting unit responsible for all operational activities within its geographical boundaries, the regulation explicitly designated the production team as the owner of farmland located within its geographical areas. It also established that use rights to some of such team-owned land may be allocated to collective members as "private plots" for individual household farming. The regulation functioned as the basic framework regulating collective farming and land ownership till the decollectivization campaign in the late 1970s and early 1980s.

**iii. *The pendulum swings back: the re-emergence of individual rights in the 1980's and beyond.*** Although Chinese farmers thus got some breathing space under the collective farming system, the fundamental nature of collective farming remained unchanged and brought China's rural economy to the edge of collapsing. In 1977 per capita grain production in China was lower than that of 1956.<sup>5</sup> The sluggish growth in the farm sector was accompanied by extremely slow growth in peasant incomes.

In response, a compromise was reached among decision makers as to introducing throughout the country a new land system later called the household responsibility system, or HRS. This land contracting system immediately demonstrated its significant advantages over collective farming, and received strong support from central leaders. By 1983, virtually all arable land had been allocated to individual households, usually on a per capita (though sometimes on a per worker) basis.

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<sup>4</sup> Zhang Gensheng, *Rural Reform in China* (Haitian Publishing House), at 3-4 (2001).

<sup>5</sup> C. Carter & Fu-Ning Zhong, *China's Grain Production and Trades* 5 (1988); see also N. Lardy, *Agricultural Reforms in China*, 39(2) *J. Int'l Affairs* 91 (1986).



Such newly created individual rights to collectively owned land were governed initially by a regulatory framework that exclusively consisted of government policy announcements, as opposed to legislative enactments. These policy documents include:

- *No. 1 Document of 1984.* The landmark Document No. 1 lays down the foundation of the present Chinese rural land rights system. It formally ratifies the separation of land use rights from ownership by requiring that collectively owned land be contracted to farmer households for a term of 15 years. It further states that such individual land rights may be transferred voluntarily among farmers. However, it does not provide any meaningful guidance on land readjustments, a prevailing form of land allocation at that time.<sup>6</sup>
- *No. 11 Document of 1993.* The document reinforces the new HRS system as a “fundamental system for [China’s] rural economic development”. In order to stabilize the contracting relationship, the document requires that farmers’ land rights be extended for another term of 30 years upon the expiration of the initial 15-year rights mandated by No. 1 Document. Equally importantly, it announces for the first time that the central government “promotes no readjustment in response to population changes within the contract period.” It endorses transfers of land rights for value, but requires collective consent prior to such transfers.
- *No. 16 Document of 1996.* The document contains a series of operational requirements for local implementation of the central government’s 30-year policy. To achieve these goals, the document explicitly prohibits big readjustment and promotes local adoption of a no-readjustment policy. It goes further to restrict small readjustments by requiring that any plan for such small readjustment be approved by two-thirds of the villager assembly or villager representatives and by township and county government. The document categorically and unambiguously prohibits all forms of scale farming that are compulsorily implemented through administrative power.
- *No. 18 Document of 2001.* The document was issued primarily in response to another form of violation of farmers’ 30-year rights: recontracting farmers’ land rights to non-villager bosses. In addition to prohibiting compulsory taking-back of farmers’ land rights by collectives and recontracting them to non-villagers for value, the document provides the following rules on land use rights transfers which were later embodied into law. First, all land transactions must follow the principle of “voluntariness, with compensation and in accordance with law.” Second, farmer holders of land rights are the party to any transaction contract and have the right to decide whether and in what form their land rights are transacted. Third, farmer transferors are entitled to all proceeds from such transactions; collective entities or township government should not intercept or subtract any portion of the transfer income for their own use. Fourth, the document lists several specific collective acts as violations of farmers’ land rights:

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<sup>6</sup> Land readjustment as household and village population numbers change is designed to ensure absolute equality of per capita (or sometimes per worker) landholdings in a given community. Not all land readjustments are of the same magnitude. “Big” or comprehensive readjustments involve an overall change in the landholdings of all farm households in the village. In a big readjustment, all farmland in the village is given back to the collective entity and reallocated among village households so that each household receives entirely new land. A “small” or partial readjustment consists of adding to or taking from a household’s existing landholdings when that household’s size changes. Under small readjustments, households that neither add nor lose members will continue to farm the same landholding.

(1) unilaterally terminating land contract; (2) compelling farmers to surrender their land rights through the scheme of minority following majority; (3) taking back farmers' contracted land and auctioning it out; and (4) taking back farmers' contracted land for offsetting outstanding balance of farmers' debt.

## **B. The legal framework for agricultural land rights: recent advances and continuing challenges**

As outlined above, since the late 1970's, China has conducted one of the most significant land reforms in the world by separating rural land use rights from collective ownership, thus creating a *de facto* private use right to land. But for much of this period, the progressive strengthening of rural land use rights was regulated only by policy measures such as those described above, without being anchored in legislation. As a result, the land tenure rules as provided in policies have not always been clear and have been subject to arbitrary implementation and enforcement by local officials. More importantly, the reliance on policy documents instead of legislation meant that important aspects of the reforms could not be judicially enforced.

The almost exclusive reliance on policy documents to strengthen farmers' land rights was to change with adoption of the revised Land Administration Law of 1998 (effective January 1, 1999) and the Rural Land Contracting Law of 2002. This section evaluates these two laws and related measures comprising the current legal framework for rural land rights, including relevant provisions of the new Property Law of 2007. It first considers how these laws contribute to establishing and protecting security of tenure for individual farmers over their land, in terms of the nature, scope and protection of the rights they establish. It then looks at how a variety of related issues are treated, including documentation and registration, the property rights of women and the evolving property rights of collectives. Where weaknesses in the current framework are identified, these are elaborated in section C, below, and recommendations are put forward for addressing them.

### ***1. The nature of farmers' land rights.***

The first law that governs farmers' individual land rights is the revised Land Administration Law, adopted in 1998. The law legally ratifies the policy provisions on granting to farmers 30-year rights and states that such 30-year land rights are "protected by law". The Rural Land Contracting Law, adopted in 2002 and becoming effective on March 1, 2003, carries this spirit further. Under the RLCL, farmers' land rights are categorized as "contracting and operation rights" to all categories of farmland, including arable land, forestland and grassland, and to wasteland. Contracting and operation rights to farmland are allocated to individual rural households in the village through a contracting process for a term of 30 years in case of arable land, for a term of 30-50 years in case of grassland and for a term of 30 years or longer in case of forestland. For wasteland that is not suitable for household contracting, non-household contracting may be adopted in granting use rights to wasteland to any individual or entity for a term determined through auction, bidding or negotiation.

The nature of such land rights, especially rights to farmland subject to household contracting, is not entirely clear. Are they *contract* rights created by the contracting process, or are they *property* rights created by law? The distinction is more than an academic one, and relates to the robustness and enforceability of the rights. Among other things, property rights can be

asserted against all persons, whereas contractual rights more narrowly relate to the relationship between the contracting parties only. There are strong indications that rights under the RLCL are intended to be property rights, as created by law<sup>7</sup>, rather than contract rights as a result of a contracting process. Moreover, the Property Law explicitly defines rural land rights as usufruct rights,<sup>8</sup> thus indicating a strong legislative intent that farmers' land rights should be treated as property rights.

## **2. *The scope of farmers' land rights.***

The General Principles of Civil Law defines property ownership as the right to possess, use, benefit from and dispose of the property.<sup>9</sup> With respect to the scope of land use rights, both China's Constitution and the 1998 LAL permit transfers of land use rights.<sup>10</sup> Under the RLCL, farmers' land rights include "rights to use, profit from, and transfer land contracting and operation rights, and the right of autonomy over production and operations, and disposition of products" and "the right to receive the corresponding compensation" for the land taken by the state or collective for non-agricultural purposes.<sup>11</sup>

On the right to land transactions, the RLCL further states that farmers' land rights "may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law". In order to safeguard farmers' interests in land from being violated by local officials through various kinds of compulsory land transactions, the RLCL emphasizes the principle of "equal consultation, voluntariness and with compensation", and prescribes farmers as "the party to any transactions of" rural land use rights. To further reinforce farmers' rights to land transactions, the law clearly prohibits any compulsory transactions under the pretext of "the minority submitting to the majority". Because farmers are parties to any transaction, the law explicitly prohibits local officials to "intercept or reduce" the proceeds from such land transactions.<sup>12</sup>

Despite the very significant advances that have been made in expanding the scope of agricultural land rights, one important limitation that remains is the prohibition against the mortgaging of arable land rights for loans.<sup>13</sup> Access to credit is an important factor in boosting farmers' ability to make long-term, productivity-enhancing and income-generating investments on land. A conservative estimate based on fieldwork in three international settings on rural land markets suggest that the potential market value of China's farmland

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<sup>7</sup> First, land rights obtained through household contracting are a legal entitlement created under the law; the contract issuing party, namely, collective entity, is mandated to allocate such rights to individual households even if it is not willing to do so. Second, the term, scope, rights and obligations of such land rights are regulated by law, rather than by contract provisions mutually agreed by relevant parties. Third, remedies for violation of such land rights include not only damages, but equitable remedies as well, such as returning the original thing and restoring to original state. Lastly, the General Principles of Civil Law include farmers' land contracting and operation rights under the category of "property ownership rights and other property rights related to property ownership rights",<sup>7</sup> thus creating an implication that farmers' land rights are property rights.

<sup>8</sup> Property Law, art. 266. It is important to note that under China's Civil law system, usufruct rights are property rights created under law rather than derived from contracts.

<sup>9</sup> GPCL, art 71.

<sup>10</sup> China Constitution., art. 10; LAL, art 2.

<sup>11</sup> RLCL, art 16.

<sup>12</sup> *Id.*, arts 32 to 35.

<sup>13</sup> The 1995 Guaranty Law, art. 37. However, the law permits mortgage of wasteland rights obtained through non-household contracting upon approval of the collective entity. *Id.*, art. 34.

rights, for agricultural use only, would be around 4 trillion yuan.<sup>14</sup> Because of the prohibition of mortgage of arable land rights under Chinese laws – reinforced by the new Property Law – none of this property with tremendous potential value can as yet be used to improve farmers’ access to credit.

### **3. *Protection of farmers’ land rights against readjustment.***

In China, one of the biggest threats to farmers’ confidence in their land rights comes from land readjustment at the discretion of collective cadres. While land readjustment was initially instituted in an attempt to provide a social safety net for farmers, it has demonstrated from the very beginning huge negative impacts on farmers’ willingness to make long-term investments to increase their production and incomes. Such land readjustment also impedes development of rural land rights market because few would be willing to acquire land rights that are subject to unpredictable readjustment. With rapid economic development and increasing demand for farmland, the land readjustment mechanism has been used on occasion by collectives to take back farmers’ contracted land and as a way of withholding or intercepting compensation from state land expropriations.

China has over the last decade taken decisive legislative steps in attempting to curtail land readjustments. The first law containing provisions on land readjustment is the 1998 LAL. Article 14 of the LAL embodied into law the land readjustment rules as contained in Document No. 16 of 1997. It prohibits village-wide big readjustments while allowing small readjustments to be conducted among “isolated households” upon “consent by two-thirds of villagers or villager representatives and approval by township government and county government agencies in charge of agriculture.”<sup>15</sup>

Four years later, the RLCL introduced additional important restrictions on land readjustments. It establishes a basic principle of no readjustment within the 30-year contract period and allows limited readjustments only under “special circumstances.” While the nature of “special circumstances” is not spelled out, the language of the RLCL suggests that “newly added population” would not be considered to be among such circumstances. No “big” readjustment is permitted. Even under “special circumstances,” the allowed readjustments should be limited to “isolated households” only. Nevertheless, the continued existence of an exception for ill-defined “special circumstances” is a potential source of insecurity for farmers, and one that should be addressed as proposed in Recommendation 1, below.

In addition to its substantive (if incomplete) restrictions on readjustments, a very important advance in the RLCL is its well-crafted provisions on dispute resolution channels and remedies available for farmers when their land rights are violated. The RLCL provides farmers with four options for resolving disputes: consultation, mediation, arbitration and direct filing of a lawsuit with people’s court.<sup>16</sup> It also provides very clear remedial measures to aggrieved farmers when their land rights are violated, including monetary damages and restitution, and equitable remedies to forestall or reverse the illegal action.<sup>17</sup>

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<sup>14</sup> Roy Prosterman and Brian Schwarzwald, From Death to Life: Giving Value to China’s Rural Land, 8 *China Econ. Quarterly* 19 (2004).

<sup>15</sup> LAL, art. 14.

<sup>16</sup> RLCL, art. 52.

<sup>17</sup> RLCL, art. 54.

#### **4. Documentation and registration of rural rights.**

International comparative experience has demonstrated that documentation of farmers' land rights tends to strengthen farmers' confidence about their property, and enhances transparency and predictability, thus stimulating investment and facilitating land market development. The benefits of documentation and registration of collective ownership appear to have been recognized by the Chinese legislature. The 1998 LAL provides that the collective land owner may apply for registering its ownership with people's government at county level for affirmation of its ownership; the evidence of such ownership is the county-issued ownership certificate. The law further states that once registered in accordance with law, ownership is protected by law from infringement by any unit or individual. With respect to farmers' land rights, LAL requires the collective entity in the capacity of the contract issuing party to issue land contracts to farmer households. However, the LAL does not provide any legal requirements or guidance on the specific content or formalities of land contracts. Moreover, it is simply silent on registration of farmers' land rights.<sup>18</sup>

The RLCL fills some of the gaps that had been left by the LAL. To avoid a wide variation in farmers' land contracts, the RLCL establishes a set of minimum core requirements for all such contracts, and a parallel set of necessary elements for contracts of transactions involving rural land use rights.<sup>19</sup> In addition, the RLCL mirrors legal requirements for documenting collective land ownership by requiring that county government issue land rights certificates to farmers, and maintain a register of such rights.<sup>20</sup> To reinforce the validity of the land rights contract, RLCL provides that the land contract becomes effective on the date the contract is created, and farmers obtain land rights on the date the contract takes effect.<sup>21</sup>

Despite these advances, a number of uncertainties remain. First, there are apparent conflicts between the RLCL and Chinese registration rules concerning the legal effect of registration. While the general registration rules establish the principle that property rights do not come into existence until they are registered, the RLCL clearly stipulates that the farmer's land rights are created at the time of contracting rather than registration. Second, there is a lack of uniform operational standards for land documentation issued under the RLCL, with the result that contract forms vary widely from place to place, at times failing to reflect correctly the substantive content of the RLCL. Finally, although the law requires registration at county level, in fact such registries do not yet exist. There are a number of unanswered questions regarding what form those registries should take.

#### **5. Women's land rights.**

Chinese law, at least on its face, ensures rural women's equal access to land and protects their land rights. The Women's Rights Protection Law establishes the general principle of "ensuring women to enjoy equal rights to property as men."<sup>22</sup> It further states that rural women shall have equal rights as men with respect to contracting rural land and distribution of compensation for land expropriated by the state.<sup>23</sup> In anticipation of the implications of

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<sup>18</sup> LAL, arts. 11, 13, 14.

<sup>19</sup> RLCL, art 37.

<sup>20</sup> RLCL, art 23.

<sup>21</sup> RLCL, art 22.

<sup>22</sup> The Women's Rights Protection Law (revised in 2005), art 30.

<sup>23</sup> *Id.*, art 32.

patrilocal inhabitation patterns on rural women's economic rights, the law prohibits any form of infringement on women's rights on the basis of women's "unmarriage, marriage, divorce or widowhood."<sup>24</sup>

The RLCL affirms the general principle of "equal rights" in contracting rural land.<sup>25</sup> In view of its restrictions on land readjustments and their potential implications for women's land rights in the patrilocal context, the law provides:

**Article 30** During the contract term, when a married woman has not received contracted land in her new village of residence, the contract issuing party may not take back her originally contracted land; when a woman is divorced or widowed, the contract issuing party may not take back her contracted land if she resides in her original village of residence, or resides in her new village of residence but has not received contracted land in that village.

The RLCL specifies a series of remedies available for women when their land rights are "deprived or violated", including ceasing the violation, returning the original thing, restoring the original situation, eliminating the harm, removing the danger, compensating for damages, and other civil liabilities.<sup>26</sup>

Article 30 contains three concepts. First, it explicitly prohibits the collective of the original village to take back a married (or divorced) woman's land share unless she receives a land share in the new village. This represents a legislative intent to ensure women's land rights at the "source" village. Under this provision, any two-third approval of or customary arrangement for taking back the married woman's contracted land in the maiden village will constitute a deprivation or violation of women's land rights subject to a range of civil penalties under Article 54. Second, it does not require an unconditional allocation of a land share to the married (or divorced) woman in the new village. That is to say, her claim for a land share in the new village will be subject to the legislative scheme of Articles 27 and 28, and that land share must come from village's flexible land, reclaimed land or the land that has been voluntarily surrendered.<sup>27</sup> This conforms to the legislative objective of providing to farmers long-term and secure land rights through severely restricting land readjustments. The recurring fact of marriage can hardly be considered "other special circumstances" akin to "a natural disaster". Third, to "compensate" for married (or divorced) women's inability to unconditionally claim a land share in the new village, Article 27 appears to have given them a *de facto* right, which male farmers apparently do not have, to choose between the land in the original village or the land in the new village. The law does not require them to give up their land share in the original village and claim a land share in the new village, thus enabling them to make such a selection. If their contracted land in the original village is of better quality or located in peri-urban areas, they may choose not to request for a land share in the new village at all.

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<sup>24</sup> *Id.*, art 33.

<sup>25</sup> RLCL, art 6.

<sup>26</sup> *Id.*, art 54.

<sup>27</sup> *Id.*, art 28.

## **6. *Collective land rights.***

The previous items in this section have been concerned with the law's treatment of individual rights over farmland. Despite the progressive strengthening of such rights, China's Constitution provides that land located in rural and suburban areas, except for that stipulated as state owned in accordance with law, is owned by rural collectives.<sup>28</sup> Based on this constitutional provision, rural collective land ownership is further defined under the 1998 Land Administration Law (LAL), in article 10:

Peasant-collectively-owned land that is collectively owned by village peasants in accordance with law shall be operated and managed by village collective economic entity or villager assembly; where peasant-collectively-owned land is owned by two or more rural economic entities within the village, such land shall be operated and managed by each of such rural collective economic entities or villager groups; where the land is already collectively owned by peasants of township, such land is operated and managed by township collective economic entity.

It appears that such legal construction of collective land ownership is intended to confirm the pertinent rules under the 1962 Sixty-Article Regulation that determined rural land ownership as three-level ownership (commune, production brigade and production team) with production team as the basic owner.<sup>29</sup> However, such provisions, at best, just reinforce the notion that the land located within a specific geographical area is owned collectively by the community living within such geographical boundaries; serious ambiguities exist as to the definition of such collective land ownership structure.

First, the law does not answer the fundamental question of who should actually control the land within a geographic area. Both the Constitution and the LAL convey the notion that land is collectively owned by the community where land is geographically located. However, it is not made clear who in such community controls the land. In light of such legal ambiguities, collective land could be interpreted as controlled either by all members of the community, or by all households of community,<sup>30</sup> or even by a group of administrative elite of the community.

Failure to legally identify the control rights to collective property tends to facilitate abuse by collective cadres. It is not uncommon for cadres to exercise power as if they were the owners of the village's land, aided by a lack of knowledge on the part of farmers. In addition, ambiguities exist even as to the specific entity responsible for collective ownership of land. This vagueness has created a power vacuum in which various entities (production team or villager group; production brigade or administrative village; or commune, now township) often exercise ownership rights to the same subject property. Existing Chinese law on rural land ownership permits coexistence of all three levels of collective assumption of ownership rights, but it fails (at least on its face) to identify any collective level as the primary owner of rural land. In this regard, modern Chinese laws are not even as functional as the 1962 Sixty-

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<sup>28</sup> China's CONST, art. 10.

<sup>29</sup> After the decollectivization in late 1970s and early 1980s, the old collective structure – commune, production brigade and production team – has been abolished, and its administrative functions have been assumed by township, villager assembly in administrative village and villager group, respectively.

<sup>30</sup> The Property Law defines rural collective land ownership as collectively owned by members of the collective.

Article regulation which clearly specifies the lowest level of collective (production team, the predecessor of the present-day villager group) as the owner of the land located within its geographical boundaries.<sup>31</sup>

This prevailing ambiguity invites violation of a villager group's property interest in land. Of all three levels of collective, the villager group is most powerless and most vulnerable to arbitrary decisions by upper levels of collective and government agencies. Because the village group is not explicitly empowered to exercise its ownership rights over the land, it cannot legally contest and challenge the attempted assumption of ownership or actual conduct of violations of its property rights by upper levels of the collective or even by government agencies.

### C. Recommendations for further reform

Over the last decade, China has made important legislative progress on creating and securing individual rights to farmers. This process has continued with the adoption in March 2007 of the Property Law, which among other advances, makes it clear that farmers' land use rights are *in rem* usufruct rights and, hence, property rights rather than rights derived from contract. This, in theory, should increase the legal robustness of farmers' rights, providing greater protection against improper readjustments and clearer entitlement to compensation in the context of requisitions.

Nevertheless, as we have seen, a number of challenges remain in order to address ambiguities and loopholes in the legal framework that serve to detract from the overall thrust of reform. The following recommendations, focusing both on legislative revision and on increasing the capacity of farmers to understand and use their rights, could contribute significantly to maintaining the momentum of reform:

**Recommendation 1: Place clear and unambiguous restrictions on land readjustments.**

Land readjustment has remained a serious threat to farmers' tenure security despite the repeated efforts by the central government to tighten up controls. Its continuing existence is facilitated by legal ambiguities. As discussed in B.3, above, the RLCL, the controlling law on rural land rights, introduces the condition of "special circumstances" under which small land readjustment is permitted, but fails to define the condition. Further legislative reforms should address this legal ambiguity.

Two options exist. One is to spell out in clear and narrowly-drawn detail the conditions under which "special circumstances" could be asserted as grounds for a readjustment. If narrowly defined, the elaboration of such conditions could go a long way towards reducing the current uncertainty introduced by this exception. Some provincial RLCL implementation regulations may shed light on how to clarify "special circumstances." However, these rational definitions of "special circumstances" in the spirit of the RLCL will have a binding force only in the jurisdictions where they were promulgated. It would be more effective for the central government to provide guiding rules to clarify ambiguities surrounding land readjustment, in order to effectively guarantee farmers' tenure security. We recommend that the central

<sup>31</sup> The 1962 Sixty-Article Regulation, art. 21.



government provide national regulations or equivalent policy directives or even consider an amendment to the RLCL setting forth clear rules on land readjustment.

A second option, and the clearest, strongest, and most readily communicable and monitorable approach would be to a complete prohibition of all readjustment of farmers' contracted land, without exception.

**Recommendation 2: Allow mortgaging of arable land rights.**

Allowing mortgages on arable land will greatly improve the value of rural land and encourage both investments and transactions in land. It is therefore strongly recommended that the prohibition of mortgage of farmers' land rights under the 1995 Guaranty Law be repealed through further legislation. Unfortunately, the new Property Law fails to lift the strict

**Box 3: Mortgage safeguards**

Many countries, while recognizing the benefits associated with an active mortgage market, are sensitive to the need to protect borrowers against losing their land due to inexperience or economic shocks. Safeguards are particularly important when the intent is to facilitate borrowing among economically vulnerable groups, for whom the consequences of default would be particularly severe. A range of techniques have been tried internationally that could be considered if China were to introduce mortgaging for arable land, including:

- Systematic public awareness campaigns to inform potential borrowers of their responsibilities under a mortgage and the consequences of default.
- Requiring banks to provide specific information in an effective manner before entering into a mortgage.
- Authorizing only state banks, at least initially, to engage in mortgage lending, or to obtain foreclosure.
- Improving bank practices through requiring appropriate credit and risk assessments.
- Establishing "homestead"-type exemptions to foreclosure on certain arable land to guarantee farmers' needs for survival and maintenance.
- Stipulating that upon the default of a mortgage loan, the bank must give an advance, written notice to the defaulting mortgagor informing of its possible consequences. The mortgagor should have a reasonable period of time (for example, no less than 90 days) to cure the default before any foreclosure proceedings can begin. The mortgagee should be obliged to meet with the borrower to try to work out a repayment strategy.
- If the lender ultimately takes the land after failure to cure the default, limits may be placed on its ability to transact the land for a certain period, say two years, during which period it may only rent the land.

prohibition on mortgage of rural land rights, apparently due to concerns about the possible

loss of land by farmers to foreclosure when the majority of Chinese farmers rely on land for living. Such concerns are understandable, but can be adequately addressed without banning mortgages on arable land altogether.

It is true that with mortgages, there is always the possibility of foreclosure if the debtor is in default on the loan for which the land rights are pledged as collateral. Such concerns, however, are addressable, based on international experience with mortgage of rural land, through legal measures as well as improved banking practices. See Box 3.

**Recommendation 3: Provide uniform land document designs.**

As noted above, the Property Law appears to confirm that farmers land rights are property rights. Since such rights are created by law rather than through a contracting process, the content of land documents evidencing them should be regulated under the law. Currently, land contract and land certificates are designed by each province or even at the county level, - or indeed, sometimes even at the township level - resulting in a wide variety of deviations from the law that reduce or nullify the legal force of such documents. We recommend that a uniform land contract and land certificate be designed in a way that the core provisions of RLCL be included, such as the 30-year term, the general principle of no readjustment, the breadth of farmers' land rights, penalties for violation of farmers' land rights, etc. China's urban land use rights certificate is designed by the central government agency with a uniform format and content. There is no reason that design of rural land use rights certificate should be treated differently.

**Recommendation 4: Draft land registration regulations in light of best international experience and China's own characteristics.**

Regulations governing rural land rights registration should be drafted with the following general recommendations in mind:

- Create a hybrid system that balances the advantages of uniformity with the peculiar status of rural land rights. Such a hybrid system should provide conclusive evidence concerning the holding of land rights, but land rights should be clearly classified as being created at the time of contracting rather than at the time of registration. Under such a system, failure to register would not alter the nature of land contracting relationship – an important protection for farmers and collective owners unaccustomed to the need for registration, especially when the registration infrastructure is itself in the process of being created and not yet fully operational.
- Land documents subject to registration must conform to existing laws and regulations governing rural land rights. If existing land documents contain substantive inconsistencies with laws, they should be corrected or replaced.
- Initial registration should be systematic and free. Subsequent registration should be subject to fees that can help ensure the sustainability of the system without acting as disincentives to using the system on the part of landholders..
- Land information held by the registration system should be open to the general public, and any person interested in such information should have access to it.
- Above all, the framing of appropriate regulations, forms and procedures should be informed by experience and testing on the ground. In this regard, the lessons being generated by the ongoing pilot project conducted in collaboration with FAO will be very valuable.

***Recommendation 5: Effectively protect women's land rights through additional legislative reform.***

Because land readjustments seriously impede secure tenure for all Chinese farmers, including women, RLCL takes a tough stand on land readjustments. However, the RLCL provisions on restricting land readjustments may disproportionately affect women's land rights without a functional mechanism to help rural women to have effective equal access to land under RLCL.

- *Strengthen the rights of women to partition their rights over jointly held land.* Currently, rural land is contracted to households, with rights jointly held by all household members. Chinese law, including the RLCL, is silent on whether such jointly held rights are identifiable to individual members and thus partitionable by individual members. Because of this legal ambiguity, the ability of any individual to partition household arable land use rights is dependent on intra-household arrangements. Allowing a married or divorced woman the right to partition and transfer her share of her original household's land contracting rights would allow her to retain control over her portion of her household's land even though she has married away or divorced. Neither current law nor the new Property Law provide strong support for this outcome, leaving women in a potentially disadvantaged position. To better protect women's land rights and effectively help them to realize their land rights under Article 30 of RLCL in the no-readjustment context, existing or proposed laws should be amended through an additional provision explicitly defining women's land rights as partitionable property.
- *Require that the name of the spouse be included on all land contracts and land certificates.* With the implementation of RLCL and development of rural economy, land rights transactions, even long-term transactions, are likely to increase. However, land documents, either land contract or land certificate, are issued almost exclusively in the name of the male head of household. Women, with the exception of widows, rarely have their names listed on these documents. Women's lack of documented land use rights can harm their interests in land, especially when all or part of the household land rights are transferred. In addition, women, including women who marry into a household after a land contract and/or land certificate have already been issued, should be protected from improvident transfers through an additional requirement that the approval of the spouse be obtained as evidenced by her signature in any contract of assignment, lease, or other transfer.
- *Prohibit collectives from taking-back married (or divorced) women's contracted land in their original village* regardless whether they receive a new land share in the new village. As discussed above, Article 30 is silent on whether collective may take back a married (or divorced) woman's land share in the original village when she receives a new share in the new village, but its language is so phrased as to plausibly lead to an interpretation of permitting the collective to do so. This should be remedied by clear amendments to the RLCL and other relevant laws. To avoid any unjust enrichment through marriage or divorce, the law should also explicitly state that receiving a new land share in the new village automatically disqualifies the woman to claim her land rights in the original village through partition.

**Recommendation 6: Draft and promulgate rules for land dispute arbitration boards, and begin the process of establishing such boards.**

The RLCL provides farmers with arbitration, a new mechanism for resolving land disputes. However, no rules have yet been promulgated for governing such device. Since arbitration might be widely used because of its accessibility as compared with courts, the Chinese government should consider as a priority drafting and promulgation of relevant rules governing arbitration of land disputes. We offer several principles in drafting such rules.

- *Rules to ensure impartiality should be in place to provide guidance on the performance of arbitrators.* For example, there should be rules on conflict of interest, on farmers' selection of arbitrator from arbitrator pool, on arbitrator's qualifications, etc. Impartiality will be the key to success of operation of arbitration board.
- *Procedures should be simplified.* To ensure its accessibility, the arbitration board should be run by a set of procedural rules much simpler than those that govern the operation of traditional courts. Procedural rules should include simplified formalities with respect to filing for arbitration and simplified requirements for production of evidence.
- *Some legal aid functions may be desirable.* When farmers seek arbitration to resolve land disputes, most (if not all) of them may not have any knowledge about arbitration. The rules should impose an affirmative duty on arbitrators to assist the parties (meaning, in particular, farmers, as the likely less-knowledgeable party) in understanding relevant laws and regulations concerning their land rights, interpreting arbitration rules, filing requests for arbitration, informing them of advantages and disadvantages of seeking arbitration and additional channels for resolving the dispute if they are not satisfied with the arbitration decision.

Of course, even well-drafted rules will be ineffective if concrete steps are not taken towards their implementation. The highest priority now is to move forward with the creation, funding and training of arbitration boards so that the promise inherent in this alternative to courts can be realized in practice.

**Recommendation 7: Resolve ambiguities concerning the nature of collective ownership.**

It is clear, for reasons spelled out in B.6, above, that legal ambiguities surrounding rural land ownership and control negatively impact collective ownership rights as well as individual farmers' use rights to collectively owned land. We offer a two-pronged recommendation concerning collective ownership:

- *Collectively owned land should be clearly defined as jointly owned by all members of the collective.* The collective entity itself does not have property interest in land (nor, *a fortiori*, do the cadres); it is merely a management body created to better protect property interests of all joint owners of the land.

- *Collective land ownership should be established at the villager group, the level closest to and probably most responsive to farmers.* Villager groups are more likely to understand the interests and land conditions of their constituent farmers than either the administrative village or township. Households within the villager group are also more likely to share common interests concerning land use and maintenance. Although many villager groups may not have administrative capacity to exercise ownership duties, it should not be an excuse for failing to vest ownership in them. Instead, emphasis should be given to practical steps that could be taken to address the problem of weak capacity at the villager group level, including defining clear and narrowly drawn procedures by which villager groups could delegate some functions to the administrative village.

### III. Strengthening rights over rural housing land

#### A. The emerging informal market in rural housing land

Rural housing land is a sub-category of collective construction land; hence, from a legal and policy point of view, many of the same issues arise with respect to housing foundation plots as with respect to collective land devoted to other types of uses. As discussed in detail in Synthesis Report #1, formal restrictions on the marketability of collective construction land contribute to the various problems associated with the continued government monopoly of the primary market for urban land, including heavy reliance on compulsory acquisition and wide disparities between the values of rural and urban land. Yet there is a growing divergence between the legal constraints that apply to collective construction land, and the actual uses to which such land is being devoted in different parts of the country. In a growing number of provinces, as illustrated by the example of Guangdong in Synthesis Report #1, the formal limitations on collective construction land are being challenged through a variety of local experiments, with greater transactional freedoms leading to some impressive initial economic benefits. But such innovations have not been accompanied by the necessary changes to the legal framework, resulting in a situation where much promising activity is taking place in the margins of the law, with uncertain consequences for collectives, farmers and other investors alike.

#### **Box 4: Collective construction land and the divergence between reality and law.**

Synthesis Report #1 highlighted some of the drawbacks associated with the restrictions on the marketability of collective construction land. It also pointed to some of the potential benefits – as well as some risks that would need to be addressed – associated with various local experiments with loosening such restrictions. Subsequent research has deepened our understanding of these benefits and risks, including a new DRC study of experiences in Jiangsu, Guangdong, Zhejiang and Henan. According to this study, changes to the Land Administration Law in 1998 actually resulted in a *tightening* of the restrictions on the use of collective construction land from what had prevailed before, exacerbating the strict legal division between urban and rural land tenure regimes. Nonetheless, an “invisible” market in collectively-owned construction land has emerged and is growing. “Many places are exploring increased access of collectively owned construction land to the market; however, due to conflict with state laws, local policies and regulations cannot protect the rights of owners and users of collectively-owned construction land.” The study calls for a four-pronged approach to reform, including:

- Reducing the dualism between collectively owned and state owned land, so as to realize the principle of “same prices and same rights for same land.”
- Loosening prohibitions on the lease and transfer of collectively-owned construction land.
- Allowing gradual commercialization of foundation plots.
- Transforming collective ownership so as to ensure farmers are the primary beneficiaries of proceeds from land transactions.

Source: *Access of Collectively-Owned Construction Land to Market: The Dilemma between Reality and Law* (2007).

Though rights over rural housing land share some of the attributes of rights over agricultural land, there are some significant differences both in terms of the contents of those rights, and the actual practice that has emerged around the use and transfer of housing land. In fact, the case of rural housing land helps highlight the tensions and distortions that have grown up around the strict separation of urban and rural land rights regimes. In many parts of the country, especially areas in close proximity to China's rapidly expanding cities, a very active market in housing sites has emerged, as a natural response to urbanization, industrialization and economic development.

However, this vibrant and growing market is largely informal, taking place within a legal framework that discourages its existence, and fails to regulate it adequately. Since laws on the rural housing site market are largely non-existent, there are few legal guidelines governing the conditions, procedures and distribution of benefits for rural house site transfers and the status of the property right after the conclusion of the transaction. The underground market in rural house sites has given rise to numerous disputes that, due to their extra-legal nature, state land administration institutions are ill-equipped to handle. According to statistics from the Land and House Administration Bureau of Daxing District of Beijing Municipality, between January and August in 2004, 80% of the total land-related administrative litigation cases were rural house site disputes. Figures from the People's Court in Daxing shows that rural house site disputes accounted for 48% of all the cases it handled in the first ten months of 2004. Statistics from the Letters and Visits Department in Tangshan, Hebei province shows that since October, 2002, over 60% of grievance cases it received were related to rural house site disputes.

## **B. The legal and policy framework for rural housing land**

China's Constitution states rural land, including the land used as foundation (housing) plots for rural farmers, is collectively owned.<sup>32</sup> Based on this constitutional provision, China has developed a series of rules on rural foundation plots. First, a foundation plot is defined as rural construction land under the 1998 LAL.<sup>33</sup> Second, while all rural land is collectively owned, farmer households have unspecified long-term use rights to such land. Third, because use rights to foundation plots are allocated with little or no charge, the law stipulates that one household may only have one foundation plot in the community.<sup>34</sup> Fourth, farmers may sell or lease their residential houses and thus transfer the associated land use rights, but may not be allocated with another foundation plot after the transaction.<sup>35</sup> Fifth, application for use rights to foundation plot is subject to approval by county government.<sup>36</sup> Sixth, if the use rights to foundation plot are taken by the collective for construction of infrastructure or public welfare facilities, the right holder is entitled to "appropriate compensation."<sup>37</sup>

A number of regulations have progressively limited the transferability of rural housing sites. The 1993 "Notice On Strengthening Land Transfer Administration and Prohibiting Land Speculation" released by General Office of the State Council provided that "farmers' houses

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<sup>32</sup> China's CONST, art 10.

<sup>33</sup> LAL, art 43.

<sup>34</sup> LAL, art. 62.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*, art 65 (1). Compensation for state takings of foundation plot is governed by other laws, which will be discussed in Section D, below.

shall not be sold to urban residents, and rural collectively owned land shall not be approved for house building purposes by urban residents. Relevant departments shall not issue land certificate and property right certificate to illegally built or purchased houses.” Another regulation issued in October, 2004, by the State Council on strengthening land administration highlighted prohibition of urban residents from buying rural house site. “*Opinions On Strengthening Rural House Site Administration*”, released in November, 2004, from the Ministry of Land and Resources provided that “urban residents are strictly prohibited from buying rural house site, and houses built on such land shall not be granted land use certificate.”.

Earlier drafts of the new Property Law would have given legislative force to restrictions on transfers of use rights to foundation plot. The third draft, for example, would have explicitly limited such transfers to members of the village where the land is located, and reiterated the current legal provision that once such land use rights are transferred, the transferor household may not apply for another foundation plot.<sup>38</sup> In the final version, these provisions were deleted, leaving only the stipulation that transactions concerning foundation plots would be dealt with according to other legislation. This leaves the issue surrounded by considerable legal ambiguity as the “other legislation” on the subject is essentially non-existent at present, with the exception of some conditions set forth in the LAL,<sup>39</sup> although as noted above, lesser regulatory instruments do exist.

Chinese laws on foundation plots thus provide an inadequate basis for secure tenure in several ways:

- *Unclear duration of rights.* Although farmers’ land rights to foundation plots are considered as long-term rights in legal practice, no law formally defines the actual legal meaning of these long-term rights. The lack of clear definition on the duration of foundation plot rights tends to give rise to varied interpretations of “long-term”. For example, farmers’ 30-year rights to farmland and 70-year rights to forest land under the RLCL are both considered “long term”, but actual duration of these two types of land rights is significantly different.
- *Excessive practical restrictions on transfer.* Although largely silent on the question of transfer, existing laws adopt a requirement of “one household, one plot” and permit each household to obtain one foundation plot almost for free. There will not be any market demand for foundation plots in the village, because it is illegal for a villager household that already has a foundation plot to acquire such rights to an additional plot. While the draft Property Law provision limiting transfers to within a village was dropped from the final version, regulations against sale to urban residents remain in force.
- *Restrictions on mortgage.* Like rights to farmland, foundation plot rights are explicitly not mortgageable under existing laws.<sup>40</sup> On the other hand, the houses built on such

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<sup>38</sup> The draft Property Law (third draft), art. 162.

<sup>39</sup> The 1998 LAL appears to permit transfers of rural residential houses on foundation plots on the condition that the transferor cannot apply for another plot once the transaction is done, the law does not explicitly state whether the foundation plot rights should be transferred simultaneously. See LAL, art. 62.

<sup>40</sup> The Guaranty Law (1995), art. 37



foundation plots are permitted to be pledged as collateral for mortgage loans.<sup>41</sup> Such distinctions on mortgageability of the structure and the land on which the structure is erected will inevitably undermine the collateral value of the structure and thus discourage financial institutions to accept rural houses as collateral.

- *Vulnerability to collective taking-back under the disguise of public purpose.* Unlike their farmland rights, which are protected through multiple dispute resolution devices and a set of well-crafted remedies and penalties for violations, no Chinese laws prescribe any meaningful protection measures with respect to foundation plot rights – in other words, there is no RLCL equivalent for rural foundation plots.<sup>42</sup>
- *Unclear compensation provisions.* Under existing laws, the collective may withdraw foundation plot rights for public purposes, but only need to pay an unspecified “appropriate” compensation.<sup>43</sup> Such undefined compensation standard is likely to give collectives substantial discretion over determination of the plot’s value.

### C. Recommendations for further reform.

To address the above drawbacks with the current legal framework for rural housing plots, the following recommendations should be considered:

***Recommendation 8: Define farmers’ foundation plot rights as perpetual usufruct rights.***

Unlike farmland rights, which have been legally held by private individuals since the 1980s, legal (or policy) permission of long-term individual possession and use of foundation plots can be dated back to 1960s when collectivization was a norm. Although the “long term” has never been legally defined, the actual practice on foundation plot has created a *de facto* perpetual right. In addition no Chinese policy or law has ever considered stepping back from the 1962 decision to provide farmers with long term use of foundation plots. It appears natural as well as less politically debatable to classify foundation plot rights as perpetual rights.

***Recommendation 9: Expand the transferability of farmers’ housing plot rights.***

This recommendation is perhaps more controversial than #9, partly because such rights are a legal entitlement rather than a commodity obtained through market transaction. However, although farmers’ farmland rights are also a legal entitlement, transferability is allowed (except for mortgage). It appears totally unnecessary to restrict transactions of foundation plot rights and therefore rural houses. As discussed above, although such restrictions do not

<sup>41</sup> The Guaranty Law (1995), art. 34.

<sup>42</sup> Except, perhaps, for a general statement that “citizen’s lawful property shall be protected by law” under Article 75 of the GPCL; “land use rights registered in accordance with law shall be protected by law” under Article 13 of the 1998 LAL.

<sup>43</sup> LAL, art 65(1). However, the Property Law makes an important improvement by requiring collective to allocate a replacement foundation plot in case of collective withdrawal and natural disasters that damage the foundation plot. See Property Law art. 163 and art. 164.

institute a complete ban on transfers of rural houses and foundation plots, they will almost certainly render rural houses and foundation plots much less marketable. One of the biggest items of Chinese farmers' assets is their houses. If they decide to move to cities as encouraged by Chinese government,<sup>44</sup> they would face a virtual total-loss of their house assets because they cannot continue using their house nor can they effectively transfer their houses together with their foundation plot rights.

***Recommendation 10: Explicitly permit mortgaging of housing plots.***

Making foundation plot rights unmortgageable is tantamount to prohibition of house mortgages, because banks are unlikely to be willing to accept pledging houses without land as collateral. This is certainly undesirable for development of a rural housing market. Moreover, building a house is perhaps the largest investment by ordinary farmers, and the practical impossibility to obtain loans would undermine farmers' ability to improve their housing conditions. The new Property Law is silent on the mortgaging of housing plots. Unfortunately, it therefore does not explicitly provide a legal basis for the practice. It does, however, appear to leave open the possibility of future legal reform in this direction.

***Recommendation 11: Improve the protection of farmers in the case of taking of their housing plots.***

A set of rules parallel to the RLCL should be in place to protect farmers' foundation plot rights against various kinds of violations, especially those under the guise of a public interest as articulated by the collective. There should be a default rule on compensating plot-losing farmers with a replacement plot as contemplated under the new Property Law. Moreover, there should also be rule on monetary compensation standards where no replacement plot is available. That is, the current legal requirement for "appropriate compensation" should be explicitly defined to reflect the replacement value of the foundation plots, or their equivalents, together with the structures, improvements, and plantations on them.

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<sup>44</sup> As of November 1, 2005, more than 562 million Chinese people, including more than 140 million rural Chinese, reside in urban areas. See China State Statistics Bureau, Bulletin on the Sample Census of 2005.

## **IV. Improving requisition procedures and outcomes**

### **A. The continuing search for better approaches to requisition.**

As Synthesis Report #1 discussed in detail, problems associated with land requisitions are both deeply entrenched in the existing legal and economic structure and complex in their ramifications – both for farmers facing the loss of their lands, and for governments struggling to keep up with the astonishing pace of China’s urban expansion. Synthesis Report #1 identified five aspects of current policy and practice that warrant attention. First, there are few explicit limitations under Chinese law on the *purposes* for which government can use its powers of compulsory acquisition. By contrast, land acquisition laws in most mature market economies seek to limit the exercise of government’s taking power to a range of circumstances. Second, frequent complaints of unfairness concerning the amount of compensation that is paid for requisitioned land underscore a need for re-examining the current *standards of compensation*. A third and closely related concern relates to the *distribution of compensation between collectives and farmers*, with the latter often complaining that compensation payments frequently do not reach them, and they rarely get the jobs or see the other benefits projected. Fourth, in practice there are not infrequent *variations in compensation depending on the purpose of the taking or the type of land*. And fifth, there are concerns about the *processes* by which requisition is conducted. To ensure that compulsory acquisition is fair and is perceived as such, attention is needed to developing better procedures that allow those who are affected a more meaningful opportunity to participate, easier access to relevant information and a realistic way of pursuing remedies if they are treated unfairly.

The central government, as well as various provincial governments, have demonstrated their concern and willingness to promote new policies that would result in a more rational application of the requisition tool, along with reduced hardship, fairer procedures, and more direct and adequate compensation for those affected. The central government, for example, has urged local governments to focus efforts on improving compensation, to refocus land compensation on the farmers who lose land, to maintain or improve existing living standards by resettling farmers on alternative land, elsewhere if necessary, or given urban status with social security and jobs. But it is clear, given the complexity of the problem, that defining the best way forward continues to require new data, new insights and more detailed analysis.

### **B. Requisition through the eyes of farmers: results of a survey from four provinces**

One insight that has clearly emerged over the course of the DRC/World Bank collaboration is that there is tremendous variety across China in terms of the contexts in which requisition is taking place, the types and severity of effects it has on people and the different policy responses that have been tried at different levels. Examining this variety helps to isolate key variables that need special and differential attention in different places. While getting the broad policy framework right is clearly essential, it needs better grounding in facts and attitudes emerging from the field, and a clearer understanding of how to tailor policy prescriptions to specific local conditions.

It was with the objective of capturing and comparing the lessons emerging from diverse locations in China – “local laboratories” – that DRC undertook innovative field work in four provinces. The goal of the study was to understand the problem of requisitions when viewed

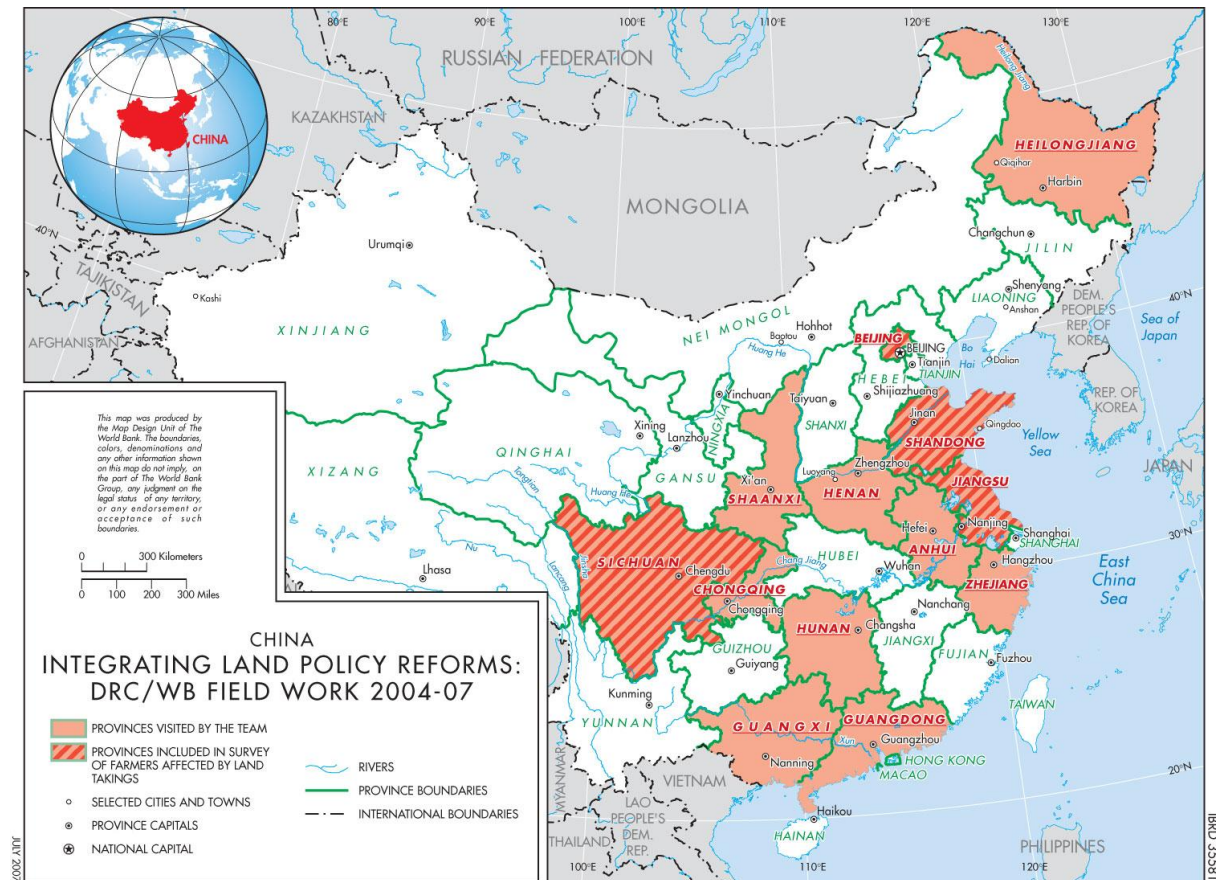
through the eyes of farmers who had been through the process: their attitudes, the concrete effects on their lives, the way they saw the process and the compensation they received, and the longer term implications for their livelihoods.

### **1. Survey locations and extent of requisitions.**

DRC's survey involved 1106 households in 39 villages located in four counties in four different provinces (see Figure 1). Although the selected locations share certain key features – they have all undergone dramatic urban and industrial growth and have been the scene of frequent requisitions – they were chosen in part for the variety they offered in terms of their economic and social characteristics, and the style and extent of requisitions. The four areas were:

- *Wuzhong district of Suzhou, Jiangsu.* Wuzhong is an area in which industrialization is in full swing, and land requisitions are frequent. In earlier phases, local government used requisition to acquire land for specific enterprises proposing to build factories. Later, this approach changed to one of local government acquiring land, building infrastructure, constructing factory premises and making land utilization plans before starting to attract investment. Land requisition in Wuzhong peaked between 2002 to 2004 and 98.52% of the surveyed households there have become totally landless.
- *Shuangliu county in the suburbs of Chengdu, Sichuan.* Though less economically advanced than Wuzhong, Shuangliu has witnessed a significant acceleration in industrialization and urbanization since 2000. Among the 10 surveyed villages, 9 had their lands taken after the year 2000 with 72% of households becoming landless. Only 28% retain a limited amount of farming land.
- *Tengzhou City in Zaozhuang, Shandong Province.* In recent years, Tengzhou city has also witnessed industrial growth and urbanization. Requisition began in earnest in 1999 in the surveyed villages, and peaked between 2003 and 2005 period. 49% of the surveyed households have gone through the land requisition twice, but the total number of completely landless households is less than in the previous two sites. At the time of the survey, 7% of the households had totally lost their land while 46% still own farming land of more than 1 Mu. Tengzhou still applies the traditional requisition mode featuring one piece of land for one project.
- *Chaoyang district in Beijing.* Chaoyang is in many ways the least typical of all the sites, due to its proximity to Beijing City and the nature of the landholding system that prevails. In most villages in Chaoyang district, land use rights have not been contracted to farmers; instead, it is the collective, on behalf of all villagers, that is managing the land and organizing productions. So the individual households have not been involved in the requisition after which the change in farming land per capita is only in nominal terms. The villages, as the collective owner of land, have offered a certain amount of rent, or hefty welfare in return. In the cases where the per capita farming land area dropped below a certain level, the rural residents have become urban residents in the sense of Hukou system, (household registration) and have been covered by the urban endowment insurance system.

Of total participating farming households, 81% were engaged before requisition in farming individual contracted landholdings. Only in Chaoyang district were farm lands pooled and



**Figure 1:** Locations of DRC/WB Field Work from 2004 to 2007

managed by the collective. Excluding Chaoyang, nearly 70% of the participating households were rendered landless by the requisitions, and the average farming land per surveyed household has diminished from 3.12 mu to 0.82 mu. Table 1 summarizes major economic indicators of the four sites covered by the land taking survey.

## 2. Attitudes towards compensation.

The first aspect of requisitions evaluated by the survey was compensation: the standards used for calculating compensation, the distribution of compensation, and perceptions by affected farmers of its adequacy.

To appreciate the variety of standards applied by the four localities to the calculation of compensation, it is useful to recall the standards set by national law. China adopts an approach of compensating farmers based on the original use of the land to be taken and determining such compensation based on statutory standards. The current legal requirement for compensation for expropriating agricultural land consists of three components: (a) compensation for loss of land set at six to ten times the average annual output value of the land for the three years prior to the requisition; (b) a resettlement subsidy set at four to six times the average annual output value; and (c) compensation for structures and standing crops

to be determined by provincial governments.<sup>45</sup> The compensation law further caps the sum of compensation for loss of land and resettlement subsidy at 30 times the average annual output value for the preceding three years if the statutory standards are not sufficient to maintain farmers' original living standards.<sup>46</sup>

	Unit	Beijing Chaoyang	Shandong Tengzhou	Sichuan Shuangliu	Jiangsu Suzhou Wuzhong
<b>Total geographic area</b>	Km <sup>2</sup>	471	1485	1072	770
<b>Total Population</b>	Million	2.8	1.6	0.9	0.6
<b>Degree of urbanization</b>	%	79	42	40	59
<b>Per capita income of urban residents</b>	Yuan	17506	9881	11500	18220
<b>Per capita income of rural residents</b>	Yuan	11085	4590	4723	8760
<b>Economic growth rate</b>	%	10	21.5	14.5	23.2
<b>GDP</b>	Billion Yuan	123	27.6	20.0	26.5
<b>Per capita GDP</b>	Yuan	43911	17441	22010	47817
<b>Economic Structure</b>	%				
First industry		0.1	10.5	9.1	3.0
Second industry		20.7	60.6	45.6	63.4
Third industry		79.2	28.9	45.3	33.6
<b>Total local government revenue</b>	Billion Yuan	8.5	0.9	1.1	2.1
<b>Per capita local government revenue</b>	Yuan	3044	582	1203	3838

**Table 1:** Major Economic Indicators in 2005 of the Four Survey Sites

Compensation for rural non-land assets, including standing crops, housing structures and businesses, is governed by provincial regulations. While a variety of approaches are adopted in the 31 provincial jurisdictions, there are some common features. For annual crops, compensation standards range from the land's crop season yield<sup>47</sup> to average annual yield of the preceding three years,<sup>48</sup> with most provinces adopting the crop season yield standard. For perennial crops, compensation is determined based on the crops' annual output,<sup>49</sup> or actual value.<sup>50</sup> Most provinces do not have specific rules on compensation for expropriation of

<sup>45</sup> *Id.* art. 47.

<sup>46</sup> *Id.*

<sup>47</sup> The Compensation and Resettlement Measures for Land Expropriation of Beijing Municipality (2004), art. 16.

<sup>48</sup> The Ningxia Autonomous Region Land Management Regulations, art 29.

<sup>49</sup> The Compensation and Resettlement Measures for Land Expropriation of Beijing Municipality (2004), art. 16; Anhui Provincial Regulations for Implementing Land Administration Law (2002), art 37.

<sup>50</sup> Jiangxi Provincial Regulations for Implementing Land Administration Law (2000), art. 29.

housing structures. The most common practice is issuance of ad hoc standards which are highly discretionary. In many provinces, these ad hoc standards made before the 1998 Land Management are still applied in current expropriations. Similarly, most provinces have not promulgated any rules on compensating for structures for business use, with Beijing and Shanghai as exceptions.

The standards used in the four surveyed localities give a taste of the variety that exists in different parts of China.

- In Chaoyao district, Beijing, requisitioned farming land is compensated by several times the annual output value of grain or vegetable on a 3 year average. Before 2003, the maximum compensation for land and resettlement reached 30,000 yuan/mu. After 2003, the figure rose to 50,000/mu. The compensation for young crops and attachment is calculated by output value.
- In Wuzhong district, Jiangsu province, the applicable standards stipulate that land loss compensation is 10 times the annual output value of no lower than 1800 yuan/mu. For those under 16 (16 excluded) years old, the compensation for resettlement should not be lower than 6000/person; for those above 16 year old, the standard is no less than 20,000 yuan.
- In Shuangliu county, Sichuan province, the Implementation Methods of Land Requisition divide lands into 3 categories: Class A area where the compensation for land and resettlement is 25,000 to 40,000 yuan/mu, Class B area 20,000 to 35,000 yuan/mu, Class C area 15,000 to 30,000 yuan/mu. In general, the compensation standard in Shuanliu county is a little higher than its surrounding counties.
- In Tengzhou city, Shangdong province, the policy provides that the compensation for land loss is 10 times the 3-year averaged annual output value with the price of 1,300 yuan per mu. Compensation for resettlement is 15 times the 3-year averaged annual output value. Young crops are compensated by half the annual output value while the attachments are compensated according to their real value.

Superimposed on the variations between the standards that prevail in each location are the variations in how these standards are applied in practice. The survey explores this issue in more detail than can be presented here, but what emerges is considerable variation between the four areas and amongst the villages within each area, and some confusion among affected persons as to the rules that apply. Several general conclusions stand out:

- The amount of compensation varies with such factors as location, utility and fertility of the land expropriated, economic strength of expropriator and the timing of requisition. Terms of payment differed sharply among the four survey locations and between villages.
- Farmers were frequently unclear about the standards for determining compensation, but clear about certain features, such as the fact (in Wuzhong) that compensation is layered according to different age groups.

- Farmers were also unclear about the differences between land compensation and relocation subsidies. Moreover, they were largely unconcerned about the distinction – what mattered most to them was the size of the total package.
- In some cases, the provision of compensation has in essence merged with growing attention to meeting the social security needs of dispossessed farmers. Thus, in the case of Wuzhong District, Jiangsu, monthly living allowances are provided to farmers affected by requisition. The extent to which this is intended to serve as a proxy for or a supplement to the compensation and subsidies as calculated in accordance with the LAL is unclear. (See further discussion below).

Because of the existence of collective landowners, the LAL allocates the three types of compensation between collective landowners and the dispossessed farmers. Under the law, compensation for loss of land, the biggest component of the compensation/resettlement package, is explicitly allocated to the collective entity for “development of collective economy”.<sup>51</sup> Compensation for young crops and fixtures is paid to the households whose land has been affected by the takings. Resettlement subsidies are paid to the collective or to another entity responsible for the resettlement, or to those to be resettled directly, if no resettlement arrangements are necessary.<sup>52</sup>

The DRC survey does not purport to answer the question of how compensation has actually been distributed between collective and farmers, as this is beyond the knowledge of survey respondents. It does, however, provide information on how distribution is *perceived* by farmers. In contrast to well-publicized instances around the country where individual farmers have complained about improprieties on the part of collective leadership with respect to the distribution of funds, there was apparently not widespread concern in the survey areas that compensation is being unfairly siphoned off by collectives before reaching the farmers. However, a cautionary note is raised in several of the areas, where a significant percentage of respondents indicate that they are unclear as to how the distribution of funds has been handled. As noted below, one of the primary concerns of respondents with the process overall is its non-transparent nature, a feature that would appear to apply in some settings to the issue of compensation distribution as well – the process by which proceeds are shared and allocated is simply not known by many participants.

Land readjustment often continues to be integrated into the compensation package in a number of locations. As discussed in II.B, above, the continued use of land readjustment in this fashion violates the spirit and arguably the letter of the RLCL. The use of land readjustment, and its acceptability to participating farmers is, according to the survey, highly site specific. In Wuzhong, virtually all land has been taken, and among remaining farmers there is apparently a desire to have their land requisitioned as well given the marginal role that agriculture has come to play in local livelihoods. In Tengzhou, by contrast, enterprises established on requisitioned land are not sufficient to provide alternative employment to displaced farmers, so the demand for agricultural land among affected farmers remains high.

As far as overall satisfaction with compensation (combined with readjustment in some locations), the survey finds that slightly less than half consider the outcome fair, with the rest deeming it unfair or having no comment.

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<sup>51</sup> LAL Implementing Regulations, art. 26.

<sup>52</sup> LAL, art. 47 and LAL Implementing Regulations, art. 26.



### **3. *Perceptions of the requisition process.***

As Synthesis Report #1 discusses, “to ensure that compulsory acquisition is fair and is *perceived* as such, it needs to be conducted in accordance with transparent procedures that allow those who are affected a meaningful opportunity to participate and to have access to relevant information.” Efforts have been made at the central level through the issuance of successive policy documents and regulations, to improve procedural aspects of requisition. These improvements are partial, as discussed below, and the extent to which they have been implemented in specific local settings is unclear.

The survey results therefore provide a much needed glimpse into how affected people themselves perceive or understand the process. Again, perceptions vary from location to location, roughly corresponding to the relative wealth of the areas involved, the extent to which urbanization and industrialization were well advanced and the availability of viable alternatives to agricultural livelihoods. Nevertheless, what emerges is compelling evidence that affected people themselves find the process non-transparent, with information inaccessible and with few mechanisms for meaningful participation or for redress when problems arise. For example:

- Access to information about the process was limited, both as a general matter and with respect to specific aspects of the process. Only a little more than one third of respondents (38%), for instance, indicated that they had been informed ahead of time of plans to expropriate their land. Similarly, there was little information available concerning the collective share of compensation and what is done with it (only 37% of the respondents indicated that they had seen the public notification of compensation).
- Public participation during the process was very limited. Respondents reported that there were few if any public consultation events and consequently little opportunity for affected farmers to make their views known. The determination of the compensation package, for example, was generally perceived to have taken place without farmer input.
- Avenues for raising complaints during the process were seen either as essentially non-existent in practice or as largely non-responsive. 18% of the respondents for all four areas stated that they had made efforts to complain about compensation issues; of these, a substantial majority (about 83%) reported that their complaints had gone nowhere – either they were rejected or, more often, no response was received. Those who did complain indicated that they frequently were subject to pressure of one sort or another as a result of their complaint; there were scattered but not insignificant reports of intimidation. In about 36% of the villages there were reports of violence associated with the land requisition process. One can hypothesize that these factors may have played a role in keeping the overall rate of formal complaints relatively low. There are indications that a substantial number of people chose not to sign onto petitions criticizing aspects of requisition because they felt such a step would be futile and would carry potentially high personal costs.

### **4. *The effects of requisitions on farmers’ livelihoods and living standards.***

The survey results provide some fascinating and important, though initial, glimpses into the changes that farmers' lives may undergo as a result of requisition. Again, not surprisingly, requisition may have different outcomes depending not only on the compensation package made available to those affected, but on site specific variables such as the employment market, and personal variables such as age and education.

Overall, indications are that where requisition has effectively eliminated agriculture as the potential mainstay of respondents' livelihoods, the transition to new vocations has been a particularly difficult aspect of the requisition process. Unemployment among the elderly and the unskilled – those least well equipped to adapt to the demands of a new economic setting – has risen. The emphasis that some localities have given to vocational training is viewed as welcome by survey respondents, but insufficient to meet all needs, particularly among older farmers. In general, the survey reports considerable concern about the availability and stability of jobs after requisition.

Effects on income and living standards overall are mixed, with poorer localities such as Tengzhou presenting a rather negative picture as compared to more economically developed areas. While wages and incomes have tended overall to go up, in poorer provinces they have witnessed declines. The cost of living has also increased, frequently at rates in excess of improved incomes. Overall, nearly 70% of the responding households indicated that their living standards have improved; this figure declines to 52% in Tengzhou, Shandong, where industrialization has lagged.

An important variable affecting the post-requisition condition of farmers is access to social security. According to the survey, more than 66% of farmers see the primary function of their land as having provided "security" in the pursuit of their livelihoods. One-off monetary compensation is, in this context, often viewed as not sufficient to compensate for the foregone employment, income and food security value of the lost land. One recurring problem associated with requisitions in China has been the phenomenon of farmers losing land without having been formally integrated into the urban citizenary for whom a variety of social security schemes are available.

The survey reveals that the four localities have in recent years made strides in responding to this problem, in keeping with a growing trend throughout China. All of the local governments have instituted pilot schemes to address social security needs of landless farmers, and there are notable increases in the participation of landless farmers in pension and medical insurance schemes. Again, the differential between areas in this respect is noteworthy. Wuzhong District in Jiangsu is reported to have realized virtually full coverage and is committed to integrating rural and urban insurance systems. Shuangliu County, Sichuan, has made progress in providing endowment insurance, but the overall coverage so far is only 27%. Access to social security in Shandong province for dispossessed farmers is the lowest among the four localities.

##### **5. *Key lessons derived from the survey.***

A number of key lessons and guides to action emerge from DRC's pioneering survey on farmers' perceptions of the process and outcome of requisition:

- *The importance of linking policy reform to empirical research.* The first lesson concerns the tremendous usefulness of this type of survey and the importance of replicating it widely throughout China. The DRC survey was by its nature a pilot, with a limited sample of respondents and geographic coverage. Nevertheless, the *types* of information and insights emerging even from this initial attempt can clearly be of immense value to those committed to finding equitable and socially acceptable ways of resolving the problems associated with requisitions. Conducting similar surveys will be important to ensure that policy initiatives in this sensitive area are truly responsive to reality on the ground and the felt needs of the people.
- *The importance of addressing disparities in the treatment of land-losing farmers in different places.* The overriding impression from the survey is one of immense variety between locations, in terms of the ways requisition is conducted and the effects it has. On one level, this is not surprising, given the tremendous size and diversity of China. Viewed positively, such a variagated picture confirms the need to tailor approaches better to meet diverse local needs. But from another angle, the differences between places is more problematic. Consistently, the survey has brought to light the fact that the effects of requisition are highly dependent upon the economic well-being and level and pace of industrial and commercial in a particular locality. In less well-off regions, compensation is less generous, job opportunities are more constrained and post-requisition livelihoods are more vulnerable. Discontent with both the process and the outcome of requisition tends to be significantly higher. Resolving the differential treatment of people in well-endowed and poorly-endowed areas needs urgent attention.
- *The critical importance of improving procedures.* A key area of concern is process. In many places, affected people have little access to information, receive little advance notice of what is being planned, have few opportunities to provide input into decisions and have few reliable or accessible routes for complaining when they feel their rights have been violated. More concerted attention to building a transparent and participatory process, with informed participants, is crucial to ensuring outcomes that are fair and perceived as fair.
- *Do not forget the underlying problem while addressing its symptoms.* It is important that the search for better approaches to requisition not distract attention from the importance of reducing the need to use requisition, as discussed in Synthesis Report #1. By international standards, the widespread use of requisition in China is extraordinary. The heavy dependence on requisition is an artefact of the policy and legal framework that operates at the urban-rural interface, and of the artificial separation between urban and rural property rights regimes. Hence, while improvements to the conduct and outcome of requisition are crucially important, an even more profound challenge is to find ways to reduce the incidence of requisition overall, and to gradually diminish the centrality of its role in the growth of China's cities.

### **C. Recommendations for further reform**

Possible options for reforming the policy and legal framework for land expropriation were detailed in Synthesis Report #1. The survey presented in this report both confirms the

overarching importance of those recommendations, and signals the need for attention to local social and economic data and trends in fine-tuning them. Based on the survey and other analysis conducted during the intervening period, it is possible to reinforce and elaborate further on selected recommendations from Synthesis Report #1, as set forth below.

In addressing this topic, it is useful to recall the point made in the Introduction to this paper, that in any policy reform process, an appropriate balance must be sought between individual and public interests. A great deal of concern has been raised, including by the Government of China itself, about the negative effects of requisition practices on individual and households. There is clearly a need to address such effects through attention to policy and legal reform and better implementation. At the same time, however, one must not lose sight of the fact that eminent domain is a critical development tool for China, as it is for any modern state. While reforms are urgently needed to mitigate the undesirable and disruptive effects of current practice, and to limit its use to appropriate circumstances, the obvious fact remains that China will continue to need the power of compulsory acquisition to pursue development and planning objectives. The challenge for the future will be to find better tools that limit the hardships experienced by affected individuals and communities, while enhancing the efficiency and effectiveness of development interventions in the public interest.

***Recommendation 12: Reform the existing legal regime on government expropriations by (a) narrowing the scope of land expropriation by clearly defining “public interests” and (b) making rural construction land marketable.***

One of the primary legal factors that has facilitated widespread land expropriations in recent years is the lack of a clear and precise legal definition of “public interests.” This lack of clarity is further exacerbated by the fact that the state exerts legally sanctioned compulsory acquisition power in almost all cases, regardless of the nature of the end use. Further, the delegation of the state’s eminent domain power to the county government gives local governments substantial incentive to expropriate land for commercial purposes because it generates revenue by paying farmers little under the cloak of “public interests” and selling to private, commercial developers for substantial amounts of money. China should consider a two-step approach to reform the existing legal regime on the scope of government expropriations.

First, China should consider repealing the requirement that all non-agricultural constructions, including all commercial utilization of land, must use state-owned land before any definition of “public interests” becomes effective. In particular, the LAL and its accompanying regulation should be revised so that a commercial end user may obtain use rights to collectively owned rural land, as long as the size of the land and the use conform with applicable land utilization plans. The commercial user would then be permitted to negotiate directly with collectives and affected farmers on issues such as compensation and resettlement benefits. This will not only significantly narrow the application of state’s expropriation power, but also reduce transaction costs and promote market efficiency. At this transitional stage, a commercial user may choose either to use collectively owned land or state owned land.

Second, China should adopt new legislative or regulatory measures that clearly define and limit the scope of “public interests”. One effective option, based on international experience, is to adopt an inclusive list of specific permissible public purposes. This list could include

universally recognized public uses, such as those currently obtaining use rights to state owned land through government allocation free of charge,<sup>53</sup> plus important economic projects with significant value to development of national economy. At this stage, the state may be permitted to expropriate land only for the listed purposes. For all other purposes, the end user must obtain use rights to collectively owned land if the land is collectively owned and is permitted to convert into non-agricultural use under the state's land utilization plan.

It should be re-emphasized, as stated in Synthesis Report #1, that changing the scope of "public interest" can only be effective if attention is paid simultaneously to other ways of reducing the government's monopoly over the primary market of land entering into urban uses. So long as government is the sole supplier of new urban land and the sole mediator of the barrier that separates urban and rural land markets, it is to a certain extent inevitable that the acceptable purposes of compulsory acquisition are broadly defined. Tighter constraints on the use of this power – while ultimately desirable as China's land markets mature – will need to go hand-in-hand with allowing the emergence of market mechanisms that span the urban-rural divide.

***Recommendation 13: Adjust existing approaches for the calculation of compensation, moving towards the introduction of a transparent and market value-based system that provides equivalence and fairness in compensation for all categories of land taken.***

The principle for determining compensation for state expropriation for public purposes is that the costs of such expropriation benefiting the public as a whole should not be borne by private individuals, especially those who are socially or economically disadvantaged. As discussed in this report and in Synthesis Report #1, there have been frequent complaints from various parts of China that the amount of compensation received for requisitioned land is too low. The four province survey reported in this Part also revealed significant, though not universal, dissatisfaction with the amount of compensation.

Considerably more still needs to be understood about the nature and sources of this dissatisfaction. It is, of course, sometimes difficult to disentangle concerns about the standard of compensation from other factors that may contribute to unfair application of that standard or, in other cases, to perceptions of unfairness, whether well-founded or not. Implementation failures, for example, may affect the extent to which the deal is seen as fair – factors such as the government not paying the full amount, the collective retaining an excessively large share, misapplication of the formula by which compensation is calculated for specific parcels, etc. A sense that compensation is inadequate may also be exacerbated by the perceived contrast between the amount received and the apparent "richness" of the new urban uses to which the land is being put, and frustration on the part of the farmer at not participating in that value differential. Conversely, dissatisfaction may be under-reported in some settings or may be reduced in some cases by a recipient's lack of knowledge or sophistication.

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<sup>53</sup> The detailed list promulgated by the Ministry of Land and Resources in 2001 includes uses for government office; military purposes; urban infrastructure facilities; non-profit postal services; non-profit educational facilities; scientific research facilities for public benefits; non-profit sports facilities; non-profit social welfare facilities; non-profit healthcare facilities; and major energy, transportation and water conservancy facilities supported by the state. See Ministry of Land and Resources Decree 9 of 2001, the List of Allocated Land Use Rights.

Nevertheless, despite these complicating factors, there is a strong argument to be made that the formulaic approach to the setting of compensation set forth in the Land Administration Law is outdated and insufficient to meet the needs of affected farmers in a substantial number of cases.

At the same time, designing a compensation standard for China that is both socially sensible as well as politically acceptable is challenging. In the not too distant future, it is likely and desirable that the calculation of adequate compensation will more closely track the approach in other mature market economies in which the market value of the land rights serves as the foundation. In the short-term, though rural land rights markets are growing (often informally), they remain extremely thin and do not yet provide the basis for an acceptable market-based method for calculating compensation – thus, an alternative formula is required to deal with social justice issues.

Hence, how to arrive at an appropriate approach could usefully be considered from both short and medium term perspectives:

Proposals for the short-term:

In the short term, modifications should be considered to the formulaic approach spelled out in the Land Administration Law and associated regulations. Thought should be given to the following steps:

- *Change the formula to improve the quantum of compensation.* Efforts should be made to define a method of calculation that more adequately meets the imperative of restoring to a farmer the full package of benefits associated with the lost land – hence, moving beyond a formula that is necessarily tied to the average productivity of land if it does not succeed in meeting this objective. The spirit of the new Property Law and of earlier policy pronouncements like Document #28 point in this direction already, with their emphasis on restoring livelihoods.
- *Replace the ceiling with a minimum protection approach.* It should be considered to replace the current approach of setting a ceiling on multipliers of annual agricultural yields with one that puts in place a “minimum protection approach” (as in the case of Beijing Municipal government)
- *Address delivery problems.* Efforts should continue to address the well-known procedural and distributional defects that often prevent the full amount of compensation from reaching the affected farmers, as more fully elaborated in Synthesis Report #1.
- *Analyse complaints systematically.* It would be extremely useful to undertake a more systematic and geographically comprehensive analysis of complaints associated with current compensation practices. As is clear from the survey results reported here, there is significant diversity in the approaches used and how they are viewed in different contexts. Not only would a clearer understanding of the nature of current dissatisfaction assist in formulating short-term remedies; it will be important for the medium term as well. (See B.5, “Key lessons derived from the survey,” first bullet., for further discussion).

### Proposals for the medium-term

Over the medium term, China needs to move towards a system of compensation more closely aligned with the market. Labelling this a “medium term” consideration should not obscure the fact that immediate attention is required – although this transition will take some time to play out, urgent attention is needed now, as the momentum in this direction has already begun and will certainly accelerate. Towards this end, getting some key analytical and planning activities underway would be crucial:

- *Detailed assessment of market-based compensation in other economies.* There needs to be concerted attention directed towards reviewing how compensation is addressed and assessed in developed market economies, with a view to defining new and appropriate approaches for China’s rapidly changing circumstances.
- *More systematic assessment of existing market information.* Much greater information and analysis is required of the extent to which land markets are already operating or are emerging in China and whether reliable data exists in both urban and rural contexts, together with identifying and building the appropriate skills for their analysis and implementation. Despite the difficulties of applying a market-based value to rural takings at present, there is increasing evidence of market values and transactions of land and buildings, both urban and rural, and this could progressively form the basis for the assessment of fair compensation for the value of land and buildings taken, with other defined elements of compensation to address losses for other impacts and disturbance.
- *Inventory of available skills and development of capacity-building strategy.* The types and availability of skills that will be needed under a market-oriented system of assessing value for compensation will have to be identified. This task should benefit from work being undertaken with the State Tax Administration's pilot and implementation activities on real property taxation. Where capacity weaknesses are identified, sustained efforts to address those weaknesses have to be designed and implemented.
- *Reviewing the apportionment of compensation between farmers and collectives.* The current approach to the apportionment of compensation money between farmers and collectives needs to be reviewed, to assess whether this appropriately reflects the current legal interests enjoyed by each party. There is a disconnect between the nature of the respective legal interests and how compensation is currently administratively apportioned (whether it is effectively so in practice is another matter). There is a need to assess carefully the current status of the legal interests and their implications for compensation of the parties affected by compulsory acquisitions of land and buildings. Their respective interests were originally defined for reasons of public policy; and the nature and quality of those defined interests have implications for their value for compensation purposes. If “fair” compensation is to be achieved, the nature and quality of the respective interests is likely to need to be reconsidered. It follows from the above that the claimants should be able to pursue their claims in the appropriate forum independently, and that settlement of compensation claims should be direct to the parties.

- *Moving towards the development of an appropriate legal and judicial framework.* This will be an essential step in ensuring the assessment of “fair” compensation. It will be important to learn about the types of specialist tribunal that are used in other jurisdictions to address appeals on the assessment of compulsory purchase compensation claims, and consider their application in China. A key characteristic of valuation practice in developed market economies, is that valuations are matters of professional opinion supported by evidence, rather than absolute and incontestable statements of fact. One result of this is that it is reasonable for there to be more than one opinion as to the value of a specific land parcel and any associated buildings or improvements. Thus it is standard practice for claimants to have a right of appeal to a court, often most effectively to a specialist tribunal which either has, or can call on technical skills and experience in this kind of valuation practice.

***Recommendation 14: Adopt the replacement value standard for non-land assets.***

Compensation standards for non-land assets are typically governed by provincial regulations. Such provincial standards vary from jurisdiction to jurisdiction, but few of them apply the replacement value standard in determining the value of non-land assets. The following approaches should be considered for adoption:

- **Structures.** It is important to note that adopting a uniform standard province-wide may not reflect the true replacement value of a structure within the province. For example, location has much greater impact on the value of houses in suburban areas than those in non-suburban areas. Fortunately, recent measures on valuation of structures in Beijing and Shanghai offer useful guidance for further reforms. In valuation of the structures, a two-layer compensation scheme should be adopted subject to dispossessed farmers’ election.
  - Replacement home or cash compensation subject to farmers’ election;
  - In case of cash compensation, full replacement value along with moving expenses and transitional costs should be included. For structures used for business purposes, compensation should also include loss of reasonable and foreseeable profits as supported by appropriate evidence.
- **Crops.** For annual crops, the current standard (the value of the crop’s seasonal yield) adopted in most provinces is acceptable. However, none of the provincial standards for perennial crops reflects replacement value of the crop. It is recommended that the valuation of perennial crops should be based on the crop’s income generating capacity for its remaining economic life, discounted to its present value.

***Recommendation 15: Improve land takings procedures to guarantee farmers’ right to notice, right to participation and right to appeal.***

China’s legal regime and its implementation are weak with respect to farmers’ right to notice of the intended expropriation, their right to participation in the takings process and their right



to appeal. The recent policy measures taken by the central government in Document No. 28 in addressing the problems of inadequate procedural safeguards are an important achievement. Therefore, either the National People's Congress or the State Council (through administrative regulations) should consider embodying the new policy measures into law, to make these measures legally enforceable. Although promulgating new policies will help decrease violations by local government officials and collective cadres of farmers' right to procedural fairness, such policy measures do not have strong binding force as laws. For example, violation of policies at most results in administrative sanctions, which are usually milder than legal penalties. Moreover, policy guidelines typically cannot be applied in court when the affected farmers bring their case for a judicial hearing. Without improved legal rules, the judges have to review the case based on existing legislation that has proven inadequate in addressing affected farmers' complaints about violations of their procedural rights.

Document No. 28 has significantly heightened farmers' right to notice and participation in an explicit and concrete manner, but its general call for "speeding up the process of establishing and improving mechanisms to mediate and adjudicate disputes concerning compensation and resettlement" looks pale as compared with strong and effective measures on notification of and participation by dispossessed farmers in, land expropriations. Farmers' right to appeal is crucial because this would be the last, and perhaps more important, line of defense of farmers' interest in land. The Chinese government should consider taking concrete steps in developing specialized institutions to address farmers' grievances concerning land expropriations. (See Recommendation 5 and Recommendation 13 for related proposals.)

## **V. Strengthening urban land use rights and administration**

The focus of this report thus far has been primarily on rural land rights. As noted in the Introduction, strengthening those rights is important for a number of reasons. First, clear, secure and marketable rights can have important direct benefits for those that hold them, for the communities of which they are a part and the economic spheres in which they participate. At the same time, strengthening land rights can be viewed as part of a wider reform agenda, aimed at reducing the strict division between urban and rural land systems on many levels – tenure, administration, planning, finance – a theme elaborated at length in Synthesis Report #1.

A reform agenda that seeks to promote integration of land policy across the rural-urban interface necessarily requires attention to both sides of the interface. One major component of the DRC/World Bank collaboration over the past year has therefore focused on enhancing understanding of *urban* land issues. The results of that research are too diverse and extensive to replicate in their entirety here. Instead, two topics are given special attention in the discussion that follows – compulsory acquisition and land rights registration.

A discussion of these two topics is important for the purposes of this paper in several ways. First, both relate to the overarching theme of enhancing security of tenure for China's land users in different contexts. As in rural areas, rules and procedures governing the compulsory acquisition of property in urban areas can be a source of insecurity and hardship for those affected. Similarly, the present system for registering urban property rights, though long established in China's cities, has certain attributes that weaken its ability to contribute to the security of property rights and the efficiency and transparency of the property market.

Second, both these topics have counterparts in the discussion of rural property rights above (see II.B.4 and IV, above). The juxtaposition of the rural and urban treatment of these issues is valuable, both for the similarities and contrasts it reveals, and for the insights it provides on the challenges that lie ahead for achieving a more harmonized and integrated approach to land policy across the urban-rural interface.

### **A. A brief overview of the legal framework for urban land**

Following the successful decollectivization of rural land, the Chinese government initiated a series of urban land tenure reforms. Two major pieces of legislation were promulgated: the Interim Regulations on Allocation and Granting of Urban State-Owned Land Use Rights (1990) [hereinafter the Granting Regulations] and the Urban Real Estate Management Law of the People's Republic of China (1994) [hereinafter the UML], establishing the legal basis for individuals and public entities to acquire use rights to urban land through allocation and granting.

Allocated land use rights have four major features. First, they are allocated without consideration. Second, they are perpetual without term limits. Third, they are allocated to public entities for specified purposes, including: state agency office sites or military bases; urban infrastructure or non-profit public purposes; key state energy, transportation and water conservancy projects. Private individuals or businesses are not entitled to allocated rights. Fourth, they are not transferable unless they are transformed into granted land rights prior to transfer.

Urban land use rights may also be granted to entities and private individuals, domestic or foreign. Unlike allocated rights, granted use rights must be obtained for value by the grantee's entering into a land granting contract with the government grantor and by paying a granting fee. Granted use rights have specific terms. Upon expiration, land use rights together with structures and other fixtures on the land are acquired by the state without compensation. However, the holder of granted rights may renew his use rights by filing an application for renewal with the government at least one year prior to the expiration date and, upon approval, signing a new land granting contract with, and paying an additional granting fee to, the grantor.

Granted rights may be acquired by auction, tender or negotiation. In recent years, the Ministry of Land and Resources promulgated a series of rules, further narrowing the scope of negotiated sales. At present, granting of state owned land use rights for all uses of a commercial nature including uses for commercial, tourism, recreational and commodity housing purposes, must go through the process of auction, tender or open sales. These three ways of land granting must also be used where there are more than one intended users for the same parcel even if the uses are not of a commercial nature.

Once granting is completed, the grantee acquires a series of land rights. Within the term, he may possess and use the land for economic gains. He may also transfer, lease, or mortgage his remaining use rights. If the grantee is an individual, the granted use rights may also be inherited.

However, urban land use rights obtained through land granting are also subject to certain restrictions. The land use rights may not be transferred for uses other than the uses identified in the original granting contract unless the change in use is approved by government and the transferor pays the difference between the paid granting fee and the granting fee that applies to the new use. Where the transfer price is "clearly lower than market price," the government retains the first priority to purchase the rights back. In order to prevent land speculation, the Granting Regulations forbid transfer or lease of granted rights when the land is not developed and used pursuant to the provisions of the granting contract.

Granted land use rights may be taken by the government for social and public interest with compensation corresponding to the number of remaining years on the granting contract and the extent to which land has been developed. However, in accordance with internationally accepted valuation principles and the concept of 'reasonableness' for all types of compulsory acquisitions in a market economy, the compensation should be based upon the market value of the unexpired term, plus any value attached to the reversionary rights as discussed above. There are two valuation issues which arise from this; a) it would not be correct to calculate the compensation by merely apportioning the original price paid over the remaining number of years - the market value of the granted land use right is determined by market forces as at the date of valuation and this may be higher or lower than the apportioned original purchase price; and b) The market value of the land use right will also be dependent upon the degree of certainty of the right of renewal, the length of the renewed term, and the likely amount of the additional granting fee to be charged.

## **B. Expropriation of urban property**

Because urban land is state owned, compulsory acquisition of land only involves “withdrawal” of land use rights.<sup>54</sup> However, Chinese laws on withdrawal of urban land use rights are quite limited. The 1998 Land Administration Law provides five situations under which the government may withdraw urban land use rights from the right holders: (1) public interests; (2) renovation of old towns; (3) expiration of land use terms without renewal or denial of the renewal application; (4) dissolution or relocation of the holder of administratively allocated land rights; and (5) termination of use of public infrastructures.<sup>55</sup> However, the right holder is entitled to a vaguely phrased “appropriate compensation” only in the first two situations.<sup>56</sup> In case of land use rights initially acquired through contract granting, the right holder is entitled to a compensation corresponding to the number of remaining years on the granting contract and the extent to which land has been developed.<sup>57</sup>

Although Chinese laws require compensation to the holder of urban land use rights when such rights are withdrawn in certain situations, the requirement has apparently seldom been honored in practice. Despite the clear recognition that land use rights have value, there have been no reported examples of compensating the holders for the loss of their urban land use rights.<sup>58</sup>

Compensation for expropriation of private properties in urban areas in the Chinese context, therefore, only involves structures, including residential houses and structures for business purposes. Compensation may be paid in cash or in kind, and the owner of the property to be demolished may select between monetary compensation and a replacement structure.<sup>59</sup> The amount of cash compensation is determined by a market appraisal of the condemned structure based on location, use and floor space of the structure.<sup>60</sup> The method of appraisal should be the comparable sales approach except in areas where housing markets are not developed.<sup>61</sup>

At present it is not clear how the valuation methodology for assessing compensation is carried out in practice. This has the following significance; firstly, it raises the question of the extent to which the comparable sales approach is widely and accurately adopted in assessing market value – in transitional economies, the depreciated replacement cost approach is often preferred, and the reference to ‘the number of remaining years’ may be indicative that this approach is locally adopted. Secondly, sales of property interests are inclusive of structures, fixtures, and land. Therefore, if the sales comparison approach is undertaken when valuing a structure, then the land right is automatically included. This seems to be at odds with the statement that there are ‘no reported examples of compensating the holders for the loss of their urban land use rights’ and also Article 24 of the UML (Footnote 77) which states that ‘a

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<sup>54</sup> Chinese laws use different terms with respect to compulsory acquisition of urban land and rural land. Government taking of urban land is “withdrawal” of urban use rights while rural taking is phrased as “expropriation” and involves transfer of land ownership together with farmers’ land use rights.

<sup>55</sup> LAL, art. 58.

<sup>56</sup> *Id.*

<sup>57</sup> The UML, art. 19.

<sup>58</sup> Further, in its reply to the Ministry of Construction concerning whether to compensate land use rights in condemnation of urban private houses, the State Council’s Legislative Office implicitly ruled out compensation for land use rights. See China Rule of Law Publishing House, NEW COMPILATION OF LAWS ON DEMOLITION, COMPENSTION AND RESETTLEMENT FOR HOUSES [XINBIAN FANGWU CHAIQIAN BUCHANG ANZHI FALU SHOUCHE] 129-130, 2004.

<sup>59</sup> 2001 Urban Structure Demolition Regulations, art. 23.

<sup>60</sup> *Id.*, art. 24. It should be noted that a market appraisal of the house taking into account the factor of location may reflect at least part of the value of the land on which the structure is erected.

<sup>61</sup> The Ministry of Construction Guiding Comments on Urban Structure Demolition, art. 16.

market appraisal of the house taking into account the factor of location may reflect at least part of the value of the land on which the structure is erected'. The rationale behind the statement 'at least part of the value of the land', is unclear and such an approach would be inconsistent with accepted definitions of market value.

As to in-kind compensation, the property owner is entitled to a replacement structure plus or minus any difference between the value of the replacement structure and the assessed market value of the condemned structure.<sup>62</sup>

In addition, the property owner is entitled to moving expenses and transitional resettlement subsidy.<sup>63</sup> Resettlement subsidy can be in the form of either cash subsidy or provision of a transitional home.<sup>64</sup> In the case of non-residential structures, an "appropriate compensation" should be made for losses sustained by the property owner if such condemnation causes termination of production or business.<sup>65</sup> However, if the structure was initially used as a residential unit but later changed into a business structure, the owner is not entitled to compensation for termination of business unless he or she can produce evidence that such change of use was approved by and registered with relevant government agencies.

One of the distinctive features of Chinese urban condemnation laws is that the government itself is not allowed to conduct condemnation and compensate for the condemned property;<sup>66</sup> instead, the end user of the land (either a private developer or a public entity) on which the condemned property stands is authorized to demolish the property and negotiate and make compensation to the property owners upon its receipt of use rights to the land and approval of condemnation.<sup>67</sup> Under this legal framework, the government delegates its eminent domain power and shifts its duty of compensating property owners to developers or contractors of public facility construction once such developers or contractors obtain land use rights.

As a result, urban condemnation is essentially an act conducted by one private entity on another private entity. The law requires that both parties enter into an agreement on all relevant arrangements, including amount of cash compensation, size, and location of resettlement home, moving date, and transitional arrangements.<sup>68</sup>

As to procedural safeguards for property owners, the law prescribes a three-step process. First, if the negotiation on compensation between developers and property owners fails to reach an agreement, any party can apply to the government's urban condemnation administration for an administrative review.<sup>69</sup> Second, if not satisfied with the review decision, the appellant may file a lawsuit with the local court within three months of receiving the decision.<sup>70</sup> Third, if the property owner refuses to move out of the property before the demolishing date, the end user may bring the case to the arbitration board or directly file a

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<sup>62</sup> 2001 Urban Structure Demolition Regulations, art 25.

<sup>63</sup> *Id.*, art 31.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*, art 32.

<sup>66</sup> 2001 Urban Structure Demolition Regulations, art.10.

<sup>67</sup> *Id.*, art 13.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*, art 16.

<sup>70</sup> *Id.*

lawsuit with the local court for enforcement.<sup>71</sup> However, in either case, the pending lawsuit does not enjoin the developer from conducting condemnation.<sup>72</sup>

In general, China's urban expropriation laws contain the following flaws:

- Non-compliance by government with respect to compensation for urban land use rights.<sup>73</sup> Although existing urban land laws require compensation to land users for the urban land use rights withdrawn for urban development, governments at all levels have failed to abide by such legal mandate in urban expropriation practice. This is particularly dangerous to China's objective of establishing rule of law in the country. Non-compensation for land rights also introduces an incentive structure where the value of land is not an issue in urban expropriation, resulting in apparently irrational as well as unsustainable urban redevelopment.<sup>74</sup>
- Compensating for the house alone in urban expropriations is equivalent to depriving house owners of their legitimate rights to land. In an urban setting, land use rights may be much higher in value than structures erected on the land. As of 2002, the total market value of China's urban land use rights was estimated at the level of more than \$3.1 trillion.<sup>75</sup> If even 10% of this value came from the land uncompensated, it would be equivalent of more than \$300 billion of loss suffered by urban property owners.
- Delegation of eminent domain power to the commercial condemner. In China, the compulsory power is often delegated to developers who are expected to maximize profit margins by depressing property values and lowering compensation. Partly as a result of this institutional arrangement, the number of complaints over unfair compensation has increased dramatically in recent years. In 2003, the central government received more than 10,000 complaints over compensation for urban condemnation, and most of these complaints were related to unfair compensation and coercive practice by condemners.<sup>76</sup> The power of eminent domain is one of the most powerful tools available to governments in influencing urban development. The delegation of such powers must clearly result in a loss of control, transparency, conformity, and equity. It also lays the system open to abuse. Experience from other countries suggests that this power should remain within government, under the control of an agency bound by clear and transparent rules of operation and skilled in its implementation. Procedural safeguards may then be provided through an independent appeals body.
- Denial of the right to compensation for undocumented properties. Chinese urban condemnation laws decline to compensate for the condemned properties that are

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<sup>71</sup> *Id.*, art 15.

<sup>72</sup> *Id.*, art 15 and art. 16.

<sup>73</sup> As discussed above, urban land use rights may be obtained either through allocation at no cost or through granting by paying to the state a land use fee. However, China's urban land expropriation laws require paying an appropriate compensation to land users regardless of how land use rights are obtained. See LAL, art. 58.

<sup>74</sup> According to the statistics compiled by the Ministry of Construction, the amount of urban condemnation measured in floor space of structures being demolished was nearly doubled between 1996 and 2000 as compared with that between 1991 and 1995. The scale of such urban condemnation dramatically increased in the new century. In many provinces, especially those coastal provinces, the amount of urban condemnation for the first six months of 2003 exceeded the total amount in 2002.

<sup>75</sup> <http://www.southcn.com/finance/financenews/guoneicaijing/20020624794.htm>.

<sup>76</sup> Policy Research Center of the Construction Ministry, THE LATEST GUIDE TO URBAN STRUCTURE DEMOLITION, 2004.

unlawful because they were not built with a building permit and therefore are not documented. In most urban areas, the sole evidence of property ownership adopted by the developer-condemner is the house certificate registered with the urban real estate registration office. Because a certificate will not be issued to the owner of the property without a building permit, these property owners are not entitled to any compensation no matter how long they have built and possessed the property or how dependent they are on the property for their livelihood.

- The basis of valuation of the property interest may not be transparent nor fully explored when assessing the amount of compensation. As discussed above, the adoption of a fair sales comparison approach, the inclusion of the value of the land rights, and the value of the legally supportable reversionary interest, are all issues that will affect the assessment of the market value of the interest being acquired.
- The process of acquisition, including the timeframe for the issuance of notice, and the process for negotiating a settlement, is in favor of the condemner. There is often no effective participation by affected people in determining compensation. Although the law requires negotiation on compensation, such negotiations are seldom arms length negotiations in practice because of the substantial power imbalance between the condemner and the condemnee. Property owners, especially those living in blighted areas under condemnation, are usually powerless, without adequate sources of information and access to fair representation, in particular, unbiased and affordable appraisal organizations. Most often, upon approval of the condemnation, the developer hires the appraisal company to assess the value of the structure under condemnation, and come up with a written agreement for the condemnee to sign. When the condemnee has objections or disagreement, the condemner often threatens the condemnee for obstructing urban development for “public interests”.<sup>77</sup>

### **C. Urban Property Registration**

The urban property registration system in China suffers a number of deficiencies related to structural and institutional reasons. Discussed in this section are a number of problem areas: the absence of a unified system; a lack of clarity concerning the legal effects of registration; and constraints on access to information. Addressing these defects is key both to ensuring a more efficient and transparent urban real estate market, and to ensuring that the registration system in fact plays its intended role in protecting property rights.

#### **1. The need for a unified registration system.**

There are two ways in which property registration in China is currently lacking unification. The first has already been referred to, and concerns the separation of rural land from urban land. Registration of rural and urban land is handled by different agencies under separate and often contradictory rules. Although for reasons explored in II.B, it may be sensible to maintain some differences in the rules governing registration of urban and rural land, there are still compelling reasons to consider combining both into a single overall system. Such a system could consist of separate registration offices for urban and rural areas but administered by a single registration agency. A primary consideration is the enormous scale of the conversion of rural land to urban land. Without adequate, unified registration records, it is

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<sup>77</sup> *Id.*, at 113-115.

more difficult to plan meaningfully for land use and city development. Further, when farm land is converted to urban use, it is a significant problem to identify parties who are entitled to compensation and reconciling rural land contracts (if any) with the urban land registry.

There is also a lack of unity within urban registration systems. The registration of land and buildings is handled separately in cities, with land and buildings registered at Ministry of Land & Resources (MLR) and Ministry of Construction (MOC), respectively.

MOC is responsible for the registration of interests in buildings, including ownership, leasehold interests, mortgages, and other security interests. The MOC offices at or above the county level are in charge of registration and certificate issuance for ownership of buildings and interests in buildings. A title risk exists if an owner registers ownership of a building, but fails to register simultaneously an interest in the land use right to the land under and around the building. The 1998 Building Registration Measures provide that the applicant for the registration of building ownership must also be the holder of the land use right to the land the building occupies. In some cities, such as Shanghai, Shenzhen, Beijing, and other business centers, the registration records for buildings and land use rights are maintained together. In other locations, however, they are maintained in separate offices, creating additional inefficiency and difficulty in determining whether a purchaser, lender, or investor may acquire a right to the building.

Meanwhile, MLR offices "at or above the county level" are in charge of the registration of land rights. However, 1996 revisions to the Land Registration Rules confer upon MLR the responsibility for registering lands titles "at the county level *and above*." This prescription likely means only that if no land registry office exists at the county level in a particular locale, then land rights for that locale will be registered by the next, higher level of government. Moreover, this could cause confusion to average people who attempt to search for records pertaining to a piece of land and the buildings on it if different levels of MLR/MOC offices are involved.

MOC and MLR issue their own set of rules regarding registration and have not collaborated effectively to improve consistency and efficiency. This generates significant transaction costs and uncertainties in today's booming real estate market in cities. Disputes arising from incomplete or inconsistent land and building registration records are not uncommon and constitute a significant segment of the civil litigation handled by the court system. For instance, in the case of transfers involving apartment units, the parties need to register the sale or lease with the MOC office depending on the terms of the transfer. However, because the MOC registry is not connected to the MLR record pertaining to the land below, the changes of the right-holders reflected in the MOC registry are often not shown in the MLR record, if the parties neglected to register the transaction in MLR as well.

China's land registry system could be more efficient, accessible, inexpensive, and reliable if all rights, restrictions and responsibilities with regard to land were registered in one place. Currently, transfers of land use rights require two separate registrations. Also, potential transferees need to check with two places, increasing transaction costs. The 1994 Law on Urban Real Estate Administration authorized provincial governments to consolidate the registration and certificate issuance system within their own jurisdictions. In some areas, such as Shanghai and Shenzhen, one government agency, the Municipal Building and Land Bureau, now issues a uniform certificate for both interests. This type of reform, maybe with



appropriate modifications, should be introduced throughout the country to reduce the risk that a transferee will err and fail to make the second required registration and to save time and expense in registration. Other offices that handle matters that can result in claims against land also should work systematically with the MLR, so that transfers or successions by inheritance handled by courts or local authorities and tax liens entered against land by taxing authorities are all entered in the land registry.

The new Property Law calls for a unified system, but remains silent on which ministry will be in charge of the unified system.

## **2. Legal effects of registration**

This goes to the heart of the usefulness of a registration system. Viewed as a whole, the laws and regulations currently in effect fail to describe the exact legal effect of a registration. This has created much confusion around registration, further undermining the credibility of the system.

For instance, 1990 State-owned Land Use Right Grant Regulation requires that the grant fee must be paid in full within sixty days of the execution of the relevant grant contract. Yet the 1995 Land Registration Rule provides that periodic payments may be made in connection with tract development projects on state-owned land, permitting the grantee to apply within thirty days of paying each installment for registration of additional land use rights. As a result, a land user who executed a grant contract with respect to five parcels of land, but paid a land grant fee within the sixty-day limit only with respect to parcels one and two, faces uncertainty as to whether he will be deemed to hold real rights or only contract rights to parcels three, four, and five. According to the Grant Regulation, such person has no *in rem* right to parcels three, four, and five and no right to a Land Use Rights Certificate for those parcels. The Registration Rule, on the other hand, appears to recognize a kind of option over the remaining tracts, subject only to subsequent payments and registration.

The new Property Law takes a step in the right direction in establishing that the registration record is (almost) conclusive evidence and registration is the act that creates a transferee's land use right. However, the general principles proposed there probably need further clarification and explanation so that it can be meaningfully implemented. For example, what is the scope of the reviewing power of a registration office? Based on existing rules and the new Property Law, the registration office is seemingly empowered to examine the content of supporting materials for a registration application; however, the depth/extent of the examination is far from clear. In reality, registration offices seldom take pains to scrutinize the papers presented as long as the *prima facie* evidence does not look exceptionally irregular. As a result, many disputes have arisen precisely because the registration offices issued inaccurate and sometimes self-contradictory registration certificates. This could present a problem regarding the validity of the registry and the liability for mistakes in registration.

The law provides that mortgages of land use rights, buildings, and certain other property rights must be registered. The mortgage contract takes full effect only upon registration. If the registry office fails to register the mortgage, the mortgage contract will be valid only between the mortgagor and mortgagee, but the mortgage will not prevail over the interests of good faith purchasers for value. The extent to which investors can rely on the land register in determining the existence of a mortgage and details of the mortgage, such as term, amount,

and a description of the mortgaged property is an issue. Current Chinese law does not require that the register supply such information and the registration system is not yet sufficiently staffed or equipped to be reliable in all areas. The registry of mortgages for land and buildings is maintained separately by local offices of MOC and MLR, resulting in frequent mistakes and great inefficiency. If the note secured by the mortgage specifies interest or the interest rate, but those details are not registered with the mortgage, the interest will not be given priority. There is clearly a strong case for a single comprehensive registration system that would include mortgages.

A Notice issued by Supreme Court regarding the interpretation of Guaranty Law (2000) seeks to make the register more conclusive. It provides that (1) if the land description or rights of the parties described in the mortgage vary from that shown in the registry, the registry's details shall be conclusive; and (2) if registered rights are mistakenly canceled, those rights will be deemed to not exist. If the application of these provisions results in a subsequent transferee obtaining unencumbered ownership or a mortgage with a higher priority, the "party at fault" would be liable to compensate for the mortgagee's loss. The "party at fault" may include the registry office. Nevertheless, mortgagees are not assured of compensation when they sustain a loss due to reliance on an erroneous registry.

### **3. Access to registry information**

Restricting public access to the registration records of real property or land undermines the essential purpose and credibility of the registration system. Registration is intended to provide society with public, transparent and reliable information concerning legal and physical attributes of land. A publicly accessible registration system greatly facilitates and expedites market transfers of real properties or land by rendering extensive searches unnecessary. It also facilitates greater access to credit, because banks are more willing to lend to landholders where the landholders' rights can be easily ascertained and the mortgage risk is reduced where mortgages for real properties or land are permitted. Further, an open registration promotes social stability and reduces the incidence of land disputes by clearly defining rights and boundaries.

Under current practice, effective and efficient access to registration records may not be a practical reality in some areas. Difficulties may include poor organization of the records and access fees. Such obstacles discourage registration of land use rights, building rights, and other interests. If registration is hindered and records are incomplete, investors may face claims by unknown parties of unknown interests. Furthermore, while the registry theoretically should be conclusive, it is uncertain whether that rule will be enforced if registration is in fact unavailable to large numbers of people.

Because of the lack of access, some transferees of real property may choose to rely on seeing a transferor's copy of the certificate of registration rather than verifying the status of title on the card at the land registry office. This would be a risk, since it is the card that establishes the legal title and not the certificate according to the 1995 Registration Rule. Persons who no longer have an interest in the land may still possess obsolete land use rights or building certificates.

Due to the difficulty in obtaining access to valid registration records, some mortgagees have taken possession of land certificates, rather than checking the land registration card in the

registry office as evidence of ownership. Unfortunately, as explained above, it is not safe for the mortgagee simply to hold the land use right certificate. An unregistered mortgage transaction does not create even a credit right. Thus, mortgagees must find ways to check the actual registry before giving a loan and then must register their mortgages.

China needs to find ways to ensure easy access to well-organized registration records. The records' being open to public inspection will permit transferees to see that the registry's official card matches the transferor's representation of the status of title. The risk of proceeding with planning, financing, and purchase is great if the transferee cannot know that the title is what the transferor purports until after the transferee completes the transaction and has its own application for land use rights registration accepted or declined.

Further, public access to registration records should not be limited to the contracting parties and their advisers, or those with a direct interest in the status of the title (for example potential mortgagees). There are advantages to allowing full public access to registration records as this promotes transparency, which in turn leads to a more efficient property market. Such general public access could be encouraged by providing public relations exercises to advise the general public on the operations of the registries and the type of information they contain.

#### **D. Recommendations for further reform**

***Recommendation 16: Ensure compensation for urban land use rights, and improve valuation and arbitration procedures.***

With rapid urban development, urban land use rights are becoming increasingly valuable. Conversely, failure to compensate for land use rights will certainly depress the value of the condemned structure, and thus fails to offer full replacement value of the affected people's losses. Specific operational rules should be made requiring the condemner to pay compensation for land use rights in addition to structures and to clarify the legal rights of the claimant with regard to the reversionary interest (the right of renewal and the calculation of additional granting fees payable). Such rules should include (but not be limited to) the adoption of the fair market value standard, the application of the comparable sales approach in valuation of urban land use rights (since there is already an active land market in urban areas), and a mechanism to enforce such compensation.

***Recommendation 17: Gradually remove the exercise of the expropriating power from private entities and establish an independent appeals authority.***

As noted above, China delegates to private entities government's eminent domain power in determination, negotiation and making payments of the compensation to owners of condemned urban properties. Such delegation was initially intended to create a forum for condemned property owners to negotiate with the condemner-developer at arms length for a compensation that best reflects the market value of the property because of the absence of government's involvement. However, because of their goal of maximizing profit, these condemners-developers tend to minimize the compensation costs of property development in negotiations. Moreover, these condemners-developers have full access to market information

and financial resources for determination of the property value while individual property owners do not. Such a power imbalance is used to distort the valuation process to their favor. Lastly, these condemners-developers usually possess closer ties with government agency in charge than average property owners.<sup>78</sup> They tend to label their condemnation as a government-sanctioned action and force individual property owners to accept the deal on the table. In order to adopt a socially sensible system for urban condemnation, such delegation must be restored to government.

***Recommendation 18: Consider compensation for undocumented or unregistered property in appropriate cases.***

Categorically declining compensation for undocumented property will disproportionately affect poor and low-income urban dwellers who were forced to self-build and inhabit in these undocumented houses because of government's inability to provide affordable housing. Moreover, many of these undocumented houses have existed openly without government's objections for many years. Since China does not have an adverse possession law, government should for public policy considerations take into account the fact that condemnation of these properties without reasonable compensation will inevitably lead to tremendous hardships and typically social instability. Whilst it is recognized that registration policy should not encourage illegal building, there is a need to strike a balance between this and the principle of the equitable treatment of such urban residents. Prevailing international development policy holds that the lack of title alone should not be a bar to compensation, (though it may affect the nature of compensation.) Urban condemnation laws should be improved to allow compensation for undocumented properties where appropriate. Mechanisms can be put in place to prevent speculators or "wealthy squatters" from taking advantage of such a provision.

***Recommendation 19: Improve urban property rights registration through (a) establishment of a unified system that incorporates both urban and rural rights, including mortgages, as well as combining rights to buildings and land in a single system administered by a single agency; (b) clarifying the legal effect of registration and (c) improving public access to, and understanding of, information contained in the registers.***

Improving the institutional and legal framework for property rights registration in urban areas is key to strengthening property rights and introducing further efficiencies into the real estate market. While a detailed account of all changes that would be desirable is beyond the scope this paper, the three key issues of system unification, legal effect and public access to information should be given priority in future reforms.

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<sup>78</sup> Policy Research Center of the Construction Ministry, THE LATEST GUIDE TO URBAN STRUCTURE DEMOLITION 46, 2004.

## VI. Conclusions

As this report was being completed, the National People's Congress took the historic step of adopting a new Property Law for China. This law represents a major step forward on numerous fronts concerning property rights, including how those rights are defined, administered and transacted. But as noted in the Introduction to this report, the Property Law is not an ending, but a point on a continuum. The process of which it is a part will and should continue to move forward. As both this report and its predecessor report have tried to illustrate, further work by policy makers, legislators and analysts is required on a wide range of fronts to ensure that land policy and its implementation supports China's development objectives.

The focus of this report has been on how to enhance property rights in a number of different contexts. Its chapters have dealt with rights to rural agricultural land, rural housing land and urban land; and the protection and compensation of rights in the context of converting land from rural to urban uses. For each topic, detailed recommendations are made for moving forward towards more robust rights, to stimulate sustainable investment in land-based activities, to improve the efficiency of markets and to ensure a more equitable sharing of the fruits of development. While these recommendations will not be repeated again in detail, Box 5 lists all the recommendations in summary form.

### **Box 5: Summary of Recommendations**

#### **For rural agricultural land:**

*Recommendation 1: Place clear and unambiguous restrictions on land readjustments.*

*Recommendation 2: Allow mortgaging of arable land rights.*

*Recommendation 3: Provide uniform land document designs.*

*Recommendation 4: Draft land registration regulations in light of best international experience and China's own characteristics.*

*Recommendation 5: Effectively protect women's land rights through additional legislative reform.*

*Recommendation 6: Draft and promulgate rules for land dispute arbitration boards, and begin the process of establishing such boards.*

*Recommendation 7: Resolve ambiguities concerning the nature of collective ownership.*

#### **For rural housing land:**

*Recommendation 8: Define farmers' foundation plot rights as perpetual usufruct rights.*

*Recommendation 9: Expand the transferability of farmers' housing plot rights.*

*Recommendation 10: Explicitly permit mortgaging of housing plots.*

*Recommendation 11: Improve the protection of farmers in the case of taking of their housing plots.*

**For protecting rights in the context of requisitions:**

*Recommendation 12: Reform the existing legal regime on government expropriations by (a) narrowing the scope of land expropriation by clearly defining "public interests" and (b) making rural construction land marketable.*

*Recommendation 13: Adjust existing approaches for the calculation of compensation, moving towards the introduction of a transparent and market value-based system that provides equivalence and fairness in compensation for all categories of land taken.*

*Recommendation 14: Adopt the replacement value standard for non-land assets.*

*Recommendation 15: Improve land takings procedures to guarantee farmers' right to notice, right to participation and right to appeal.*

**For urban land rights:**

*Recommendation 16: Ensure compensation for urban land use rights, and improve valuation and arbitration procedures.*

*Recommendation 17: Gradually remove the exercise of the expropriating power from private entities and establish an independent appeals authority.*

*Recommendation 18: Consider compensation for undocumented or unregistered property in appropriate cases.*

*Recommendation 19: Improve urban property rights registration through (a) establishment of a unified system that incorporates both urban and rural rights, including mortgages, as well as combining rights to buildings and land in a single system administered by a single agency; (b) clarifying the legal effect of registration and (c) improving public access to, and understanding of, information contained in the registers.*

Aside, however, from the specific recommendations concerning each of the separate topics covered by this Report, it is useful in conclusion to draw attention to themes that cut across all of these subjects, and that underscore the need to pursue specific reforms within a comprehensive approach.

In this regard, it is important to emphasize the overarching message of Synthesis Report #1. Meeting the myriad challenges identified in that report as well as this one "will require

*coordinated* action to address how land is administered and managed in the economy, involving numerous agencies and different levels of government. It will also require an integrated approach [because] the problem areas that need to be addressed are intricately bound together in terms of causes, ramifications and potential solutions, and cannot be effectively resolved in isolation one from another.” Thus, attention to strengthening land rights in any single sphere also requires attention to land rights across the board, with an eye to improving parity between rural and urban tenure regimes, and facilitating the breaking down of artificial barriers between them. By the same token, there is tremendous scope for reducing the current institutional fragmentation that characterizes key aspects of land administration, such as registration – fragmentation that puts rights at risk because it creates confusion and uncertainty.

Finally, a lesson that emerges from all sectors of Chinese society is that the effective strengthening of property rights requires more than drafting well-designed and innovative laws. Such an observation would appear to be so obvious as to not warrant discussion, but the fact is that in all countries of the world, this key principle is often neglected in practice. As experience with the Rural Land Contracting Law has shown, to name just one example, implementation on the ground often fails to live up to the promise offered by the written provisions of the law. Where farmers remain unaware of their rights, where officials have not been sensitized to the importance of the law or not given the tools or incentives to implement it properly, and where mechanisms for addressing grievances are missing, the law remains largely an abstraction in the lives of the people it is intended to help. Where, by contrast, concerted efforts have been made to improve the legal literacy of farmers and officials, to open better channels for negotiating and resolving disputes, and to put in place the financial and institutional capacities needed, the impact of legal reform on the ground can be measurably improved.

Hence, across all the spheres of action identified in this Report, a key imperative will be to ensure that all parties interested in the implementation of reforms have the tools, the capacity, the resources and the incentives to make rights a reality.