

A sketch outline for a research report on land tenures for China's rural sector

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A SKETCH OUTLINE FOR A RESEARCH REPORT ON LAND TENURES FOR CHINA'S RURAL SECTOR

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PREFACE

Even after attending the seminar, we do not know enough about the problems of land tenures and specifically about the situation in China's countryside to feel competent to write either legislation about Chinese land tenures, or as research report justifying a particular selection. What we learned at CIRD's very interesting and informative Symposium, when organized by the theory and methodology we proposed at the Symposium, however, suggests to us a strategy for addressing the problem that others might find of interest.

This sketch outline rests not on hypotheses proven consistent with the available evidence, but only some initial ideas derived from the extensive evidence presented at the symposium. We offer what follows with the suggestion that at best it may serve, not as a proposed solution to the questions posed at the symposium, but only as an illustration of how the use of legislative drafting methodology might help to conceptualize a law designed solve some of the problems posed at the symposium. Of course, we would expect that, working with experts who, unlike us, have some detailed knowledge of the facts, the Chinese drafters of the proposed new law will test and revise these and other possible explanations and solutions.

To demonstrate how the use of legislative methodology might contribute to the formulation of a bill's detailed measures, this rough sketch outline follows the default outline presented in our Manual (see Ch. 4, p. 44, taking into account in particular the issues related to implementation discussed in Ch. 5). It begins with an introduction that locates the problems the bill seeks to address in the larger context of China's unique and rapidly changing circumstances.

I. INTRODUCTION

China stands midway in the widest-embracing land tenure reform program in world history. In the last twenty-odd years, it has moved away from the agricultural land tenure system embodied in the communes to the system embodied in the Household Responsibility System (hereafter, "HRS"). In 1998, it enacted the Land Administration Law ("LAL"). That law provides in part that land contracts entered upon after the law will last for a term of 30 years. Despite the law, the farmers' uninterrupted possession of land under the HRS appears uncertain. How should the NPC amend the law to ensure that land tenure law appropriately addresses the problems that now plague China's agricultural sector? This report and the draft legislative sections that it purports to justify aim to answer that question. It proposes a law that, unless



explicitly authorized by the law, prohibits anyone -- including local cadre -- from interfering with the farmers' uninterrupted possession of the land held under a Household Responsibility Contract ("HRC"). It details the conditions in which local government can readjust a precisely limited portion of the land a farmer holds under an HRC. It also specifies when government can take land by compulsory acquisition, and who receives the proceeds. It permits the holder of an HRC to alienate the land, or leave it to heirs and legatees, but stipulates conditions designed to prevent those procedures from contributing to re-emergence of a landlord class, a class of small money-lenders with control over the land, or of speculators in agricultural land.

As suggested in Part II of this Research Report, as the central social problem facing China's agriculture today under the Household Responsibility System, farmers confront serious difficulties in taking advantage of available new agricultural techniques to increase their productivity. Part -- but only part -- of the explanation for those difficulties rests in uncertainty of tenure. Why farmers do not improve their output rests on many causes: Not only the insecurity of tenure, but also the farmers' inability to borrow funds to cover current production costs, let alone for capital improvement; the inadequacy of existing marketing systems, including farm-to-market transport and processing facilities; and the limited capacity of existing agricultural technology extension services to help farmers acquire improved agricultural inputs. Furthermore, as China moves towards increasing industrialization, new employment opportunities may seem more attractive than agriculture, enticing new generations of farmers to abandon farming altogether. Indeed, as agricultural productivity per person and per mou increases, agricultural production will inevitably employ a declining percentage of China's population. The bill here proposed addresses only one aspect of these explanations which constrain farmers' efforts to increase their agricultural productivity. *To facilitate farmers' increased agricultural productivity requires a whole legislative program including laws to ensure rural micro-credit, improved agricultural technology extension services, better supplies of agricultural inputs, improved marketing, transport and processing facilities, long-term measures to shift an increasing percentage of China's labor force from agriculture to off-farm industries and services in an orderly way that promotes social welfare and stability.*

No single 'silver bullet' exists to solve all the problems of the agricultural sector. Improved tenure constitutes only one part of the needed program for increasing the quantity and quality of the farmers' output. That this report addresses the tenure issue alone does not suggest that resolving it alone will eliminate the other obstacles to improved agricultural productivity. Uniquely, however, ensuring certainty of farmers' tenure constitutes a precondition to solving the other problems.

This paper rests on a problem-solving methodology. It first describes the difficulty -- the persistence of farmers' failure to increase productivity on lands allocated to them by Household Responsibility Contracts. The practice under those contracts tends to undermine their confidence in the land as the source of their future welfare and hinders their efforts to invest in improved agricultural productivity. Because government cannot directly address resource allocations, but only behaviors of those responsible for them, this section identifies farmer-holders of HRCs and

local cadres as the central actors and describes what they do in respect of land use that hinders improved agricultural productivity.

Part II then identifies a number of hypothetical explanations for these actors' problematic behaviors, of which security of tenure and the power of alienation constitute only a part. It identifies farmers' uncertainty of tenure security as a particular important constraint on their decisions to make long-term investments in their land, but warns that unless the government addresses the other factors that influence farming practices, increased tenure security, of itself, seems unlikely greatly to improve their overall output. Examining the causes of the behaviors of local cadres and local government officials that contribute to the farmers' uncertain land tenure, Part II finds those causes in the absence of adequate rules defining local cadre behavior, implementation systems that fail to ensure transparent and accountable cadre behaviors, and the lack of clear rules defining the farmer's power to deal with their own land.

Subject to the caution about the effectiveness of tenure reform as the 'silver bullet' to improve farmers' agricultural productivity, Part III proposes detailed measures for inclusion in a law that addresses the causes of farmers' present uncertainty concerning their continued use of land, and hence of low farmer capital investment.

Following that problem-solving agenda, Part II begins with an examination of the problems relating to the leveling off of the increase in agricultural productivity.

II. THE SOCIAL PROBLEM THIS LEGISLATION ADDRESSES

This Part first describes the nature and scope of the problem of farmer productivity, and then defines whose and what behaviors constitute that problem.

A. THE SOCIAL PROBLEM ADDRESSED

[Here describe in some detail the evidence relating to the leveling off of farm productivity. Describe the different rates of productivity growth for different crops, different parts of the country, and different sized plots, the extent to which farmers seem to abandon contracted land in different areas, and the extent to which farm land has gone into non-agricultural uses, plus any other differentiations that the data may suggest].

B. WHOSE AND WHAT BEHAVIORS CONTRIBUTE TO THE LEVELING-OFF OF AGRICULTURAL PRODUCTIVITY

Many actors' behaviors contribute to the social problem addressed. How the holders of HRCs actually farm -- the extent to which they actually do use their contract land, and what techniques they use -- lies at the core of the problem of productivity, as well as the extent to which their use of the land contributes to their own well-being. Like most social problems, however, these 'behaviors' of the farmers stem from a multiplicity of causes. Lack of

productivity itself requires describing and explaining the behaviors of a large cast of supporting actors: Banks, who do not make micro-loans to farmers; local governments who do not make and keep repaired adequate feeder roads; agricultural extension technology agents who do not visit all; the farmers in the area, and whose instructions on technology prove inappropriate, and many others. Because this Report limits itself to the tenure problem, it addresses only the behaviors of one set of secondary actors, the local cadres, who too often act in ways that undermine the farmers' confidence in their continued access to and control over the land on which they have a contract.

1. The behavior of the holders of HRCs. [Here provide evidence, in as much detail as possible, as to how farmers increased agricultural productivity in the first years of the Reforms; how nothing particularly new has happened since the first enormous increases in productivity; and that some farmers apparently have left their land untilled. At this point those behaviors should only be *described*, not *explained*].

2. The behaviors of local cadres and local governments. [Here describe the behavior of local cadres concerning readjustment of land and the taking of land, again in as much detail as possible, and distinguishing as necessary between cadres in different areas, with respect of different crops, etc.]

Competent legislative solutions must address the *causes of problematic behaviors*. Why in recent years have the holders of HRCs failed to increase yields? Why have cadres and local government behaved in ways that for most holders of HRCs seemed to make security of tenure a mere dream?

III. EXPLANATIONS

In only a narrow and restricted way, this Part explains first the behavior of farmers in not increasing agricultural production and apparently becoming increasingly alienated from local government. Then, drawing on the information presented at the Symposium, it offers explanations for the behavior of local cadre.

The form and substance of the relevant law sets the stage within which its addressees act. In addition to the specific terms of the law, people behave as they do in the face of the relevant rules of law in response to both subjective and objective constraints and resources. Subjective reasons include Incentives and 'Ideology' -- ranging from unarticulated 'values and attitudes' to well-considered Grand Theories. Objective causes of behavior include the actor's Opportunities and Capacities to act in conformity of the law or not; whether the actor knows of the law (whether the authorities have Communicated it to them); the Process by which the actor decides whether or not to obey; and, of course, the content of the Rules themselves.

We do not consider here all the potential hypotheses under these various categories that might help explain the leveling-off of productivity of China's farmers; that would require a major

treatise on the rural sector. Instead, this Report concerns itself only with explanations in which land tenure plays a part. Out of sight, however, ought never to mean out of mind. As the Introduction above emphasizes, solutions designed to overcome the problems caused by the farmers' insecurity of tenure will not alone resolve *all the other* causes of farmers' the relatively low levels of productivity. The converse, however, does seem to hold: Unless government can solve the tenure problem, it will unlikely finds ways significantly to increase farm productivity or to reduce farmer alienation.

Using the ROCIPI checklist,¹ this section first considers the factors relating to land tenure that the Symposium discussions suggest may have influenced the farmers' decisions under existing law not to invest in improving their productivity. It then examines those factors that seem to have influenced the cadres to readjust the lands with insufficient regard for their decisions' impact on individual farmers' investments in increasing productivity.

An important caveat: The logic of the problem-solving methodology underscores the importance of providing facts as to the causes of problematic behaviors. Formulated on the basis of facts and ideas presented at the symposium, the explanatory hypotheses suggested here remain contingent, subject to further verification in the light of new information. If they do prove consistent with available evidence, however, logically they provide a basis in facts – reason informed by experience – on which to ground the new law's proposed solutions.

A. FACTORS INFLUENCING THE FARMERS' BEHAVIORS

1. The 1998 Land Administration Law.

The Land Administration Law (as we understand it from the papers at the Symposium) requires that cadre offer 30-year HRCs to farmers, and that they ensure that farmers have *uninterrupted* enjoyment of the land for that period. That accords with world-wide experience. Ever since the English and low-land Scots agricultural reforms of the late eighteenth and early nineteenth century, agricultural economists have accepted that short term tenures for farmers reduces their capital investment in the land. Why should a farmer make a long term investment in land with little chance of enjoying its fruits for the long term? The LAL's provisions reflect this world-wide consensus on the need for long-term, secure tenures.

[Here discuss in detail LAL's provisions. How precisely worded are its provisions with

¹ Legislative theory's ROCCIPI checklist purports to include all the categories of legal and non-legal factors which, broadly considered, may influence a set of social actors' decisions as to how to behave in the face of existing law. To assist drafters in formulating hypotheses as to the causes of a set of actors' behaviors to remember to consider all these possibilities, 'ROCCIPI' comprises a mnemonic consisting of the first letters of each category's name. It seems helpful to divide the categories of non-legal factors into subjective and objective influences on actors' behaviors. Many researchers consider only the subjective factors -- interest and ideology. To induce the actors to behave in more appropriate ways, it often turns out that the objective factors imbedded in existing institutions prove easier to change through law.

respect to the term of the HRC? What precisely does it say about readjustments? About takings for other public purposes? About alienation? About mortgaging the land? As we understand it, the ambiguities and vagueness of the LAL's language, given the background of other law and of Chinese legal culture, in effect grant local cadre broad discretion in dealing with land readjustments and takings. If Chinese legal culture holds that the holder of an HRC cannot deal with it except in ways expressly authorized by law (in contrast, for example, to other systems that permit a holder of property to deal with its in a way not forbidden by law), and LAL says nothing about the power to alienate or inherit, that would appear to constitute a partial explanation for a farmer's sense of insecurity of tenure.

[Special attention should be paid to LAL's provisions about the distribution of money paid for land taken for public purposes. As we understand it, the ambiguities in the law concerning who 'owns' the land have enabled the cadres to allocate most of these funds to the relevant collectives, rather than paying them as compensation to the individual farmers for their loss of the land and their investments in it.]

2. Subjective factors

a. Incentives

The LAL structures farmers' incentives to make capital investments in the land. So long as farmers lack confidence that they will have secure possession of the land for a long period not only in law but in fact, they will not likely make the long-term capital investments required to expand productivity. Under the LAL and the behavior of local cadre and government in the face of its commands, a majority of farmers apparently lack the confidence necessary to make long-term capital investments. Without that investment, they will not increase their productivity.

Many argue that, in addition to the prospect of long-term security, farmers need an assurance that they can sell the land and realize their investment in an increased price for its sale. In farmers', as in everyone else's, lives, major events impose major changes in life circumstances. A farmer whom an accident cripples may have to sell the land covered by the HRC to realize funds required for the family's very survival. A farmer presented with an opportunity to move into other entrepreneurial activity may need to transform the capital tied up in the land into a form that permits investment in the new business. Unless farmers see the *potential* for selling their land for those kinds of purposes, they will less likely invest. Uncertainty about the power to alienate land, and about who will receive the proceeds from land sales may deter farmer from making needed capital investments.

b. Ideology:

This category includes the values and attitudes that may influence farmers' behaviors. The farmers have come to believe that all levels of government should act in ways that ensure their future welfare on an equitable basis. That local cadres have sometimes carried out land

readjustments without regard to individual farmers' and their families' well-being has tended to cause some to become cynical, to abandon their land in search of higher incomes, and to become increasingly alienated from government. Over time, the spread of this attitude may undermine rural social stability. The Poderman-Schwarzwalder-Ye report indicates the way farmer attitudes, apparently stemming from their insecurity of tenure, tends to discourage them from making long term investments.

2. Objective factors: Opportunity and capacity.

This section discusses, first, an often-repeated claim, that the lack of capital investment results, not only from the law's prohibition of mortgages on land, but also from the assumption about banks' reluctance to lend money unless secured by the land; and, second, other constraints on farmers' opportunity and capacity to make capital investments.

a. *The power to mortgage.* In reality, there exists a serious question as to whether the lack of secure tenure constitutes the most important reason for banks' failure to make loans to farmers as small as those holding HRCs. The most recent study of micro-credit (and, with average size plots of an acre or so, any loans to China's farmers will consist of micro-loans) states that "trying to formalize and register [a micro-borrower's movable] collateral as security would almost certainly make the loan prohibitively expensive for the micro-borrower, if not for the lender as well."² What holds for movable collateral probably holds as well for real property as collateral. Other countries have successfully developed rural finance systems depending not on mortgages in land but on crops, secured by government crop insurance, or group loans (as in the case of the Grameen Bank), or other devices. The inability of China's farmers to mortgage their HRC land does not explain their inability to obtain credit for capital investments.

b. *Availability of finance.* [Discuss the availability of sources of finance; if these do not exist in the Chinese countryside, or exist only at prohibitive rates, empowering farmers to mortgage alone seems unlikely solve the problems of rural finance].

c. *Other opportunity and capacity factors.* As earlier mentioned, farmers suffer a number of other constraints on productivity, including those related to technological inputs, transport, processing, and marketing. Increased land tenure security alone seems unlikely to significantly alter those constraints.

3. Communication of the law. Unless farmers know how the law strengthens the security of their tenures, it will not likely influence them to change their behaviors. The research findings reported at the Symposium suggested that a significant proportion of farmers still did not know about the 30-year contracts. The fact that middle-level cadre behave in ways that

² Robert C. Vogel, Arelkis Gomez, and Thomas Fitzgerald, "Regulation and supervision of Microfinance: a Conceptual Framework", (1999)

make the farmers' tenure less than secure seems likely to persuade them that the law does not really protect their security of tenure.

In sum, land tenures affect farmers' capital investment in their land primarily because they may affect the farmers' incentives to invest, and, insofar, as farmers view government as responsible for land use security, government's legitimacy in the country-side. It seems probable that it has little impact on their capacity and opportunity to acquire loans. Lack of knowledge of the law's provisions for long-term HRCs may negatively affect farmers' incentive structures. In addition to these factors, the behaviors of the implementing agency -- here mainly the cadre -- in the allocation and reallocation of land under the law seems to constitute a significant influence on farmers' investment behaviors.

B. WHY DO CADRE BEHAVE IN WAYS THAT IMPAIR LONG-TERM FARMER TENURES?

The same very general categories that seem useful to spark off hypotheses concerning farmers' behaviors seem useful to help explain cadre behavior: The law, incentives and ideology, opportunity and capacity, communication of the law, process, the behavior of the agency that implements the law concerning cadre behavior.

1. The 1998 Land Administration Law:

[LAL's vagueness promotes relatively uncontrolled cadre discretion. This needs a detailed study of that law]

2. Subjective factors

a. Interest:

Cadres have diverse incentives to interfere with farmer's land rights. Some arise out of cadre responsibilities. As leaders of the collectives and village governments, their power rests in the control and allocation of lands and the funds that may arise from their sale. They confront pressures from the majority of farmers to decide on the allocation of land or funds to advantage the majority at the expense of wealthy individual farmers. If they readjust land use in ways that seem to improve the majority's well-being (either directly by giving its members access to a little more land, or indirectly by bringing in outside investors who provide additional funds to meet the villagers' needs), they seem more likely to receive the villagers' approbation than if they permit a few farmers to become more wealthy by leaving their land holdings intact. A few may even benefit from hidden payments that may accompany allocation decisions made in secret to favor interests other than the individual farmers whose land they 'readjust'.

b. Ideology

The widely-accepted values of equality and mutual benefit tend to contradict the notion of individual farmers' profit-making through family investments, in the land or elsewhere. Cadres often confront pressures to ensure continued equality among collective members, without adequate concern for the interests of individual farmers who may lose their investments through readjustments – and its possible effect in discouraging them from making future investments.

Perhaps as a legacy of an earlier era and poor communication about law and the nature of contracts, cadre may believe that, purportedly acting in the public interest, they have an inherent power to interfere with individual contract and property rights.

2. Objective factors that may influence cadres

a. Opportunity and capacity:

Cadres may not have the qualifications to make wise decisions concerning allocation of land, taking into consideration all the conflicting factors likely to affect farmers' productivity and social stability. They may have little knowledge about the importance of farmers' investments, or what might motivate them to invest.

The cadres also have the capacity to readjust the land as they want because what they say goes: they are the local authority, virtually unchecked, and individual farmers, if they disagree, can do little to make sure they act in accountable, transparent ways. If, as indicated, farmers must register their complaint within a very limited time period (15 days?), it seems almost impossible for them to enforce their rights.

b. Communication:

The facts indicate that the cadres do know about the 1998 LAL, but its vague terms leave them unclear about what criteria or procedures they should use in deciding whether and when to readjust lands.

c. Process:

Perhaps most important, the 1998 law leaves to the cadres great discretion about the criteria and processes they should use in deciding whether and how to readjust the farmers' land holdings. They may receive inputs into their decision-making from wealthy outside investors, and perhaps from villagers who insist on decisions that may benefit the majority at the expense of individual farmers who might otherwise make long-term investments. They may simply decide to ignore the objections of individual farmers that proposed readjustments will result in the loss of their investments of labor or funds. They may make their decisions behind closed doors, or reveal to the villagers only some of the factors that influence their conclusions (especially concealing any possible financial or other benefits that they themselves might receive). They may decide whom to involve in the process of monitoring and evaluating the

social consequences of their decisions, including the criteria used – and simply ignore the individual farmers’ complaints about the readjustments on their particular investments in the land.

3. Summary:

In short, while other factors may influence their decisions, individual farmers do seem significantly influenced by the extent to which -- under the existing law -- they seem unsure about the security of their future use of the land allocated to them to limit their investments of their labor and capital to improve productivity.

A significant factor reducing the farmers’ confidence in land security seems to lie in the middle-level cadres’ behaviors. Analysis suggests that a number of factors influence the behaviors of cadres in deciding whether or not, under the existing law, to readjust land allocations. That analysis suggests a number of points at which the new law could channel their decision-making to foster individual farmers’ investments of land and labor to increase their productivity.

IV. SOLUTIONS

This Research report and the bill that it justifies concern themselves primarily with explanations and solutions for the problems of farmer alienation and leveled-off productivity that stem from inadequately implemented land tenure decisions. This section (A) inventories alternative possible solutions, (B) describes the preferred solution, (C) justifies that solution on the basis of social costs and benefits, (D) describes means of implementing that solution, and (E) proposes methods of monitoring and evaluation of the solution.

A. POSSIBLE SOLUTIONS

[Here list possible elements of all alternative solutions. We consider only the following:

1. Leave things as they are.?
2. Provide farmers with unlimited powers to alienate land; prohibit readjustments or seizures of land to farmers; permit full inheritance and power to mortgage (i.e., give farmers all the powers they have in an ideal-type, fully 'free' market)
3. Amend the 1998 LAL to provide a set of rules for local authorities to provide individual farmers with long term land tenure (as a substitute for the family responsibility 'contracts' that constitute the hallmark of the present system), supervised by an adequately resourced agency with well-defined powers to make regulations governing the cadres’ land allocation behaviors in accord with precise criteria and procedures.

4. Accompany the change in land tenures to a completely 'free' market in land with rural social security measures financed by the state.

5. Research reported at the Symposium related to schemes permitting the reallocation of land to alternative development projects in which farmers own shares, but the evidence seemed unclear as to whether or how those schemes would affect farmers' productivity.

[We apologize for the aridity of these alternatives. That is the sign of our own lack of detailed information about the problems and the causes of insecure land tenures. No doubt better qualified land tenure experts will invent a more robust menu of alternatives among which to choose].

B. THE SOLUTION ADOPTED IN THE BILL

[In outline only]:

1. Protection of farmer's quiet enjoyment of the land covered by an HRC.

- a. Nobody -- including cadre -- may interfere with a farmer's quiet possession of land covered by an HRC without *explicit* authorization in the law. (That is, neither cadre nor government may claim an *inherent* power to readjust or take land).
- b. Require cadre to proceed forthwith to conclude a 30-year contracts with every farmer.
- c. Provide a minimum prescribed set of clauses for that contract, including provisions for land readjustment, alienation, and inheritance. Additional clauses inserted by cadre to meet local circumstances may not contradict those minimum provisions

2. Land readjustment.

- a. Following the Prosterman et al. paper, and the suggestions in it, make 1/8 of a farmer's land available for readjustment, including the proviso that, at the time of readjustment, a farmer may chose the piece of land readjusted.
- b. Following that paper, define the criteria and processes by which the cadre decide whether and how to readjust land holdings. The criteria the cadre use should specifically include protection of individual farmers' investments in their land. The cadres' decision-making processes should be transparent, accountable, and participatory, ensuring adequate consideration of the inputs of individual farmers, as well as the majority of villagers; and provisions should ensure that the majority can not overrule the desires of a farmer whose land is at issue.

3. The alienation of land covered by an HRC:

- a. The original holder of an HRC may freely grant an interest in the HRC.
- b. For two of the first three years after receiving the land, by him- or herself or by members of the nuclear family, the grantee must work the land.
- c. For the first three years after receiving land by grant, the grantee may not alienate the land to another.
- d. A grantee who violates these rules suffers the loss of the land to the 'natural village' as a collective, to be exercised by an action at law. [The law should specify excusing circumstances (e.g. a disabling accident shortly after receiving the land)].
- e. Grantee of land by alienation to register the land. To avoid a disguised mortgage, the registrar may register land only if accompanied by an affidavit by the grantee that the grantee does not take the land to secure a debt owed by the grantor. That affidavit is subject to penalties for perjury and, if false, the supposed recipient of the land loses the land to the collective, and also forfeits the underlying debt. (This should be written to permit a purchase money mortgage, and include criteria as to the kinds of evidence required to prove that the land was taken to secure a debt.)

4. The inheritance of land covered by an HRC:

- a. The holder of an HRC may pass the HRC by will or intestacy.
- b. For two of the first three years after inheriting the land, in person or by members of the nuclear family, the inheritor must work the land (or if the child has not completed school at that time, the child's representative shall decide who may use the land).
- c. An inheritor may alienate the land at any time.
- d. An inheritor who violates these rules suffers the loss of the land to the 'natural village' as a collective, to be exercised by an action at law; excusing circumstances (e.g. a disabling accident shortly after receiving the land) to be developed.

5. Criteria for readjustment of the land reserved* for readjustment:

- a. Readjustment not more frequent than once in five years.

- b. Readjustments to follow proposals in Posterman et al. paper.

6. Government rights to take land for a public use:

[Write a law of eminent domain, stating --

- a. What government entities may take land subject* to an HRC;
- b. for what purposes;
- c. by what procedures;
- d. at what price.
- e. The holder of the HRC to receive the value of buildings and other improvements made on the land, plus the market value of the land if used exclusively for agricultural purposes, plus the value of growing crops. The collective to receive the remainder (essentially the unearned increment in the value of the land).

6. Implementation.

- a. A specified government agency (probably Ministry of Agriculture) should inform farmers and local cadres of the law's detailed prescriptions, and establish a monitoring and evaluation mechanism.
- b. Require quarterly reports of the percentage of farmers' land covered by new 30-year contracts, and their terms.
- c. Internal appeal by farmers (a Hotline telephone to call? An appeal to an official of a national agency against a decision by cadre affecting farmer's land, with power in the agency to attempt a negotiated solution between cadre and the farmer?)
- d. After exhausting rights of mediation, a farmer to have a right to bring a lawsuit with respect to land tenure to protect themselves against illegal activity by anyone -- including local cadre. The period during which farmers must act before making a complaint, and especially before lodging an appeal in the courts, seems to require lengthening.
- e. Build capacity in local courts to deal with land matters.
- f.. Build rural Legal Aid centers.

- g. Require that township and Provincial governments supervise local cadre with respect of land tenure affairs -- e.g. by requiring reports of all readjustments or of taking for a public purpose, visitation to the village to hear farmers' views, etc/

7. **Farmers' associations.**

- a. In accompanying legislation, provide means to develop the capacity of farmers' associations (we suppose mainly farmer marketing and consumer cooperatives) to represent farmers' interests generally.

C. A COST/BENEFIT ANALYSIS OF THE PREFERRED SOLUTION AND THE ALTERNATIVES

[In summary form]

1. **Leaving things as they are:** This solution would seem appropriate only if the costs of change appear larger than the costs of accepting the present level of agricultural productivity. We assume that that does not appear to be the case.

2. **The right to mortgage the land.** Granting a right to mortgage land has severe social costs. If the farmer defaults and ultimately loses the land, the farmer has nothing to fall back upon. Mortgaging the land, as argued above, in any event likely does little to increase the availability of rural micro-financing. We reject the notion that at this time the new law should include a right to mortgage the land. That decision should be revisited when China drafts a rural micro-financing law.

3. **A 'free' market in rural land.** Professor Posner has argued that a developing country needs only a well-defined property law, and the Invisible Hand will resolve all other problems. We reject that argument. Whatever its advantages, a completely 'free' market in land carries with it a high potential for severe dislocations: Markets match dollar-backed demand with supply. They do not purport to address equity questions. By all accounts, maintaining relatively small gaps between rich and poor in China's countryside remains essential to maintaining social stability. If for no other reason, decisions affecting land tenure law should honor the principle of equity.

- a. Farm land has a welfare function. Unless provided by other means, a free market can result in significant landlessness in the countryside and resulting farmer alienation and social instability, not to speak of increased farmer immiseration. Nothing we have heard suggests that China now can afford or contemplates a rural social welfare system beyond the system of HRCs. Until China substitutes other rural social welfare system for the HRCs, it ought

to protect the HRC's social* welfare function.

b. Free markets everywhere result in increased social stratification. In land, that means landlordism and/or village moneylenders controlling land on which farmers become in effect sharecroppers. Again, the development of either landlordism or village money-lending either will likely result in increased alienation and social instability, and increased immiseration by those who under the market system do not succeed.

4. Substitute land tenure rules for HRCs. The HRCs constitute contracts of adhesion. Farmers cannot bargain about their terms. A contract of adhesion whose terms Government dictates does not really count as a contract. It constitutes regulations governing the terms of land use. In place of the HRC, the new law could readily substitute regulations for land use. That would make drafting much simpler. A certain symbolism, however, seems to cluster around the concept of the HRC. Changing from a notional 'contract' to land regulations may not sit well with the farmers, and cause further uneasiness about their tenures. Rather than upsetting farmers by changing the form, it may seem desirable to retain the HRC form. We do call attention, however, that the legal effect of an HRC whose terms government dictates does not differ significantly from set of regulations governing land use.

5. Introduce a rural social welfare system. This does not seem within Government's present fiscal reach.

6. Protecting a farmer's quiet enjoyment of land held under an HRC. This provides rules for preventing invasions of the farmer's quiet enjoyment of the land save in cases explicitly authorized by law. That makes it clear that cadre have no inherent power to interfere with a farmer's possession under an HRC. The law should also require the cadre to issue 30 year contracts pursuant to the law, containing the maximum feasible protections for the farmer's tenure.

7. Alienation and inheritance. Farmers will not make long-term investments in land if that ties up their capital beyond hope of recovery or transmission to descendants. On the other hand, foreign experience suggests that unrestricted powers of inheritance and alienation hold the potential for a renewal of landlord control of land, a development of village moneylenders who by contracts resembling mortgages hold families for generations in their grip, and speculation in land. *This the proposed law avoids by requiring the grantee or inheritor of land to work the land for two of the first three years after acquisition* (the law should also specify excusing circumstances -- for example, a disabling accident shortly after acquisition) The frequently-invoked land reform slogans, 'use it or lose it' and 'land to the tillers' express the policy purposes of these limits on alienation and inheritance. Given China's reported land shortage, these restraints on the potential market for buyers does not seem so severe as to change farmers' expectations of ability to sell land if occasion arises. The restraint on inheritance in effect only requires the legatee to use it or sell it, for if the legatee chooses not to use it, the legatee can sell and realize its agricultural market price.

8. Readjustment. The Posterman et al. paper suggests rules on readjustment that make a reasonable* balance between the farmers' needs for stability in land tenures, and demographic and welfare concerns*. These should be adopted.

9. Eminent domain.

a. Every government needs the power to take land for public purposes. The law should grant the power to specified governmental units, for specified purposes, and by specified procedures with ample participation by the farmer, transparency and accountability*. The law should prohibit resale of condemned land to a private party or for private purposes.

b. The price of the land paid to the farmer should be its fair market value for agricultural purposes. If condemned by an authority higher than the natural village, the difference between the land's agricultural price and its price for other uses ought to go to the natural village. The proceeds of the sale should reimburse the farmer for improvements that the farmer has made to the land, and for the agricultural value of the land. The surplus value of the land constitutes what Henry George called the unearned increment in land-- that is, the increase in land not owing to the efforts of the landowner. Their existence played no part in providing an incentive for the farmer to work harder and more productively. (In economic terms, they constitute rents). Those sums ought to revert to the relevant collective owner-- we would assume the 'natural' village, but lack sufficient knowledge of the situation to assert that with any confidence.

10. Implementation. We conceive of the following elements in implementation:

a. *In the Ministry of Agriculture (we guess), establish an HRC Authority.** Some national authority seems required to oversee the new land laws. If none now exists, the law ought to establish it, and give it powers to implement the law as suggested below.

b. *Ensuring the execution of 30-year contracts.* Require the local cadre to make periodic reports to the HRC Authority of the percentage of farmers in the village who have received 30-year contracts. Require explanations for any deficiency.

c. *Farmers' complaints against cadre.* An invasion of a farmer's rights has a victim -- the farmer. A reactive implementation system seems indicated. The problem lies in ensuring the farmer opportunity and capacity to complain.

(1) *The role of the Agricultural Extension Agent.* The law or regulations should require the agent to keep the farmer informed about the farmer's rights, and to elicit from the farmer complaints about land tenures.

(2) *Hotline or other complaint to HRC Authority.* Farmers should have available means to complain of a claimed violation of their rights to the HRC authority.

(3) *Mediation.* The HRC Authority should have the means to mediate between cadre and farmer -- perhaps through the Extension Agent (as the Ministry official most likely to be on the ground) or some other relevant authority.

(4) *Appeal to a court.* A stated time after submitting the matter to mediation, the farmer to have a right to appeal to a local court.

(5) *Build rural legal aid centers.* The right to judicial protection against illegal interference with land rights has little meaning without legal assistance. To effectuate that right requires rural legal aid centers, a system of 'farmers' advocates', local-level Ombuds with powers to litigate on behalf of aggrieved framers, or the like..

(6) *Increasing capacity of local courts to deal with land cases.* The new law should include provisions for training local judges in land cases.

(7) *Build the capacity of farmers' associations to represent the interests of farmers in various ways.* This probably requires a Law of Farmers' Associations (we assume, mainly marketing and consumer cooperatives).

11. Government's out-of-pocket expenditures.

The additional costs for government would seem to include the following:

- (1) Costs for training Extension Agents in land law issues.
- (2) Costs to establish and support the HRC Authority and its following functions:
 - (a) Monitoring the progress of signing 30-year cointacts;
 - (b) receiving complaints from farmers, including costs of the Hotline;
 - (c) mediating conflicts about land between farmers and cadre;
- (3) costs for establishing and maintaining rural legal aid centers;
- (4) costs for training judges; and
- (5) costs to provincial authorities of visitations to villages to monitor land use matters.

D. MONITORING AND EVALUATION

The suggested implementation system has built-in a monitoring and evaluation functions.

CONCLUSION

The levelling of the growth of China's agricultural productivity constitutes a significant constraint on future economic growth and prosperity. That results from the activity of many actors, with many explanations and as many necessary changes in existing law. Focusing only on changes in land tenure and land tenure administration, this sketch for a research report suggests some details that may prove of use in developing the proposed new Rural Land Tenures Law. It adopts the proposals of the Posterman et al. paper, and adds some details to prevent the development of adverse, latent consequences to the proposed changes -- particularly, by *requiring* the grantee or legatee of the holder of an HRC personally or by the family to work the land for the period immediately following acquisition. It also provides for various institutions to implement the proposed new land laws.

