

AN UPDATE ON CHINA'S RURAL LAND TENURE REFORMS: ANALYSIS AND RECOMMENDATIONS BASED ON A SEVENTEEN-PROVINCE SURVEY

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I. INTRODUCTION

The adoption of China's revised Land Management Law in August 1998, combined with the issuance of the Decision of the Third Plenary Session of the 15th Central Committee "On Several Major Issues in Agriculture and Rural Work," which called for implementation of "long-term, secure rural land use rights" and the drafting of additional legislation to protect those rights, marked the beginning of a new stage in China's rural land tenure reforms. At that time, the Household Responsibility System ("HRS") had already served as the foundation of Chinese agricultural and rural land policy for nearly twenty years, contributing to great advances in agricultural productivity and farmer economic welfare. This new stage of reforms reconfirmed collective ownership with contracting of use rights to farm households as the basis of China's rural land tenure system while attempting to address some of the shortcomings identified in existing tenure arrangements throughout China. In contrast to the high degree of local variation and informality that had prevailed during the first two decades of HRS, the central government envisioned that, as part of the new round of reforms, all of China's farmers would receive thirty-year land use rights embodied in written contracts and protected by national laws. In early 1999, the Central Rural Work Group announced the ambitious goal of full implementation of the new rights by the end of that year.

An accurate assessment of the progress to date with respect to the goal of full implementation, and the impact of such progress on China's farmers, can only be derived from systematic monitoring of the implementation process on a national basis. To that end, Renmin University and the Rural Development Institute ("RDI") have cooperated on the design, conduct and analysis of two large-scale sample surveys, one in 1999¹ and a second in 2001, regarding the extent and nature of implementation of thirty-year rural land use rights. This paper discusses the findings of the second of these surveys, conducted with 1,617 rural households in seventeen Chinese provinces in July and August 2001. Analysis of the survey findings indicates that while as many as 85 million rural households may have benefited from the reforms, considerable work remains to achieve the goal of full implementation of long-term, secure land use rights.

¹ For a detailed discussion of the 1999 Renmin University-RDI seventeen-province survey results and related recommendations, see Roy Prosterman et al., *Implementation of 30-Year Land Use Rights for Farmers Under China's 1998 Land Management Law: An Analysis and Recommendations Based on a 17-Province Survey*, 9 PAC. RIM L. & POL'Y J. 507 (2000).

In the context of China's ongoing rural land tenure reforms, systematic monitoring of the progress of each stage of the reforms, such as the Renmin University-RDI surveys, can also play a vital role in helping to define and shape each subsequent stage of the reform process, including the formulation of additional laws and policies governing rural land use rights. As the present article was going to press, the Standing Committee of the National People's Congress of the People's Republic of China ("PRC") took another important step towards securing farmers' land use rights through the adoption of the PRC Rural Land Contracting Law ("RLCL").² The new RLCL is largely consistent with the findings of the 2001 survey with respect both to concerns regarding effective implementation of secure thirty-year land use rights and marketability of those rights, and represents a potentially major breakthrough for the land rights of China's 210 million rural households.

This article includes an analysis of the key findings from the 2001 Renmin University-RDI survey and an assessment, against the background of the survey findings, of this most recent, and we believe extremely important, legislative reform. The methodology employed in designing the survey, and the statistical basis of the results obtained, are described in Section II. Section III presents the national survey results. Section IV examines the national survey findings on the central issue of farmers' confidence in their thirty-year land use rights. Section V presents a series of survey findings on a province-by-province basis. Finally, Section VI discusses several key provisions of the Rural Land Contracting Law in light of the survey findings and offers a series of recommendations designed to achieve full implementation of the new law.

II. SURVEY METHODOLOGY AND STATISTICAL BASIS

As in the 1999 seventeen-province survey noted above, our two basic goals in designing and carrying out the 2001 survey were: (1) to conduct a survey of sufficient size to provide highly accurate data at the national level on implementation of farmers' thirty-year rural land use rights; and (2) to make the survey sample large enough to provide useful data on the relative progress of implementation at the level of individual provinces.

Starting with the need for a sufficiently large sample size to give useful results at the provincial level, we concluded that a sample size of 100 farmers in each province would be desirable. Such a sample provides

² Zhonghua Renmin Gongheguo Nongcun Tudi Chengbao Fa [Rural Land Contracting Law of the People's Republic of China], adopted by the Standing Committee of the National People's Congress of the People's Republic of China, Aug. 29, 2002 [hereinafter RLCL].

results that should be descriptive of the situation in the entire province to an accuracy of $\pm 9.8\%$.³ Because we decided that the survey should include seventeen provinces,⁴ that meant that our nationwide sample would be 1,700 households. In fact, 1,617 valid survey responses were returned by interviewers, a sufficient national sample to give results that should be descriptive of the situation in the seventeen provinces as a whole to an accuracy of $\pm 2.4\%$.⁵

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

The seventeen survey provinces include roughly 90% of China's rural households.⁶ The seventeen survey provinces were: Hebei, Jilin, Heilongjiang, Jiangsu, Anhui, Shandong, Zhejiang, Jiangxi, Fujian, Hunan, Hubei, Henan, Guangxi, Guizhou, Sichuan, Yunnan, and Shaanxi.

Once the seventeen provinces had been selected, Renmin University students from each of the survey provinces were selected as interviewers. Priority was given to students from the Land Management Department with previous training in rural land issues. Students attended a series of training sessions provided by Renmin University Professor Ye

³ That is at the "95% confidence level", i.e., the results should fall within that range in ninety-five out of 100 cases if it were possible to take a complete census of every farm household in the province.

⁴ See *infra* this page and note 6.

⁵ The $\pm 2.4\%$ figure is calculated as follows: $\sum = 1.96 \times \sqrt{.25/n}$. Once again, this should be the range of accuracy in ninety-five cases out of 100. See *supra* note 4. Such a survey, giving results to within a range of $\pm 2.4\%$, is quite large, and met our goal of a high degree of accuracy at the national level.

⁶ According to the 2000 AGRICULTURAL STATISTICAL YEARBOOK (2000), the seventeen survey provinces contained a total of 188 million rural households in 1999. P.R.C. Nat'l Bureau of Stat., 19 China Stat. Y.B. (2000). The First Agricultural Census of China in 1997 found a total of 213 million rural households (with average household population of 4.08 members, for a total rural population at that time of 869 million) for all of China. Adjusting for the long-term gradual decline in rural population, a figure of 210 million total rural households is a good approximation for 1999 (the 1999 FAO Production Yearbook, Table 3, indeed shows a total agricultural population for China of 855.1 million in 1999, which divided by the Census figure of 4.08 per household would yield a total of 209.6 million rural households. U.N. Food and Agric. Org., 53 FAO Production Y.B. (2000). . For China there is little or no distinction between rural and agricultural households, since virtually all rural households are recipients of an agricultural land share). The ratio of 188.4/209.6 equals 89.9%. Rounding those figures, we shall use 210 million households, and 90% as the estimated proportion of these households present in the seventeen survey provinces.

Jianping in May and June 2001 and a one-day training course taught jointly by RDI researchers and Professor Ye prior to the commencement of the survey.

The training emphasized several key elements derived from the 1999 survey design and implementation process as well as experience gained in RDI's direct interviews of over 800 farm households conducted throughout China since 1987. First, students were instructed on how to create a survey atmosphere in which farmers felt comfortable responding to questions freely and honestly by asking farmers for their voluntary participation in the survey and treating them with respect and courtesy. Second, students were taught to use language and concepts that are easily understood by farmers. Third, and most important, the training emphasized that interviews should only be conducted away from local cadres, whose presence could influence farmers' responses to the survey questions. In addition to the training provided prior to the survey, one graduate student from Renmin University's Land Management Department was designated as team leader for each survey province. These team leaders were responsible for coordinating students from that province and for responding to any questions encountered by students in the process of administering the survey.

Each student was asked to complete a minimum of ten survey questionnaires, and some students completed more than ten survey questionnaires. The survey questionnaire employed in this round of surveys was similar to the questionnaire used in 1999, with certain refinements, additions, and subtractions made based on the results of field research directly conducted by the authors during the intervening two-year interval.

Each interview was conducted with a randomly selected household in a separate, randomly selected village. For each set of ten questionnaires completed, survey interviews were conducted in a minimum of five randomly selected townships in two or more counties. A total of 1,617 valid survey questionnaires were returned, encompassing 1,617 villages⁷ in over 350 counties of the seventeen provinces.⁸ The number of valid responses per province is expressed in Table 1, below.

⁷ It should be noted that, since village cadre carry out such tasks on a village-wide basis, the farmer's response to nearly all of the factual questions addressed by the survey should be representative of the situation in that village as a whole. This is so directly in questions such as "Does your village have Flexible Land?" and indirectly in questions such as "Have you signed a 30-year land use contract?" From a statistical standpoint, therefore, it is important that the number of villages in our sample is just as large as the number of households.

⁸ The 1999 and 2001 surveys are not panel surveys—that is, the farm households interviewed as part of the 1999 survey were not re-interviewed in 2001 and a different group of counties and villages was employed between the two surveys. Comparisons between responses to the 1999 and 2001

Table 1: Valid Survey Responses by Province

Province	Valid Surveys
Hunan	92
Hubei	95
Zhejiang	86
Jiangsu	90
Jiangxi	102
Fujian	104
Jilin	76
Heilongjiang	100
Sichuan	75
Guangxi	100
Guizhou	92
Yunnan	100
Shaanxi	100
Hebei	100
Henan	109
Anhui	94
Shandong	102
Total	1,617

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

Thus, in summary, the national survey results discussed in Section III and throughout the paper are expected to be accurate for the combined rural population of the seventeen provinces to within $\pm 2.4\%$ in ninety-five out of 100 cases. The individual province figures discussed in Section V, below, represent the raw, unweighted percentages, and are expected to be accurate for the rural population of that province to within approximately $\pm 9.8\%$ in 95 out of 100 cases. The survey was conducted

surveys do not represent changes in the status or opinions of particular families during the two-year interval. These comparisons are between two different, but nationally representative, groups of respondents.

during the last half of July and the first half of August 2001. The results therefore reflect the situation in the countryside as of that time.

III. NATIONAL SURVEY RESULTS

A. Household Characteristics

The 1,617 survey households reported an average household population of 4.52 members. On average, a household possessed 3.87 land shares⁹ with an average household landholding of 5.42 *mu*.¹⁰ Most survey households reported at least one household member engaged in non-agricultural employment, and non-agricultural income was reported to be prevalent among village households in the survey villages (see Table 2, below).

Table 2: Non-Agricultural Employment	
Are any household members engaged in non-agricultural employment?	
Yes	80.0%
No	20.0%
How many households in your village have some non-agricultural income?	
Few (<20%)	10.6%
A Minority (20-40%)	25.7%
About Half (40-60%)	18.0%
A Majority (60-80%)	20.7%
Almost All (>80%)	25.0%

n=1617

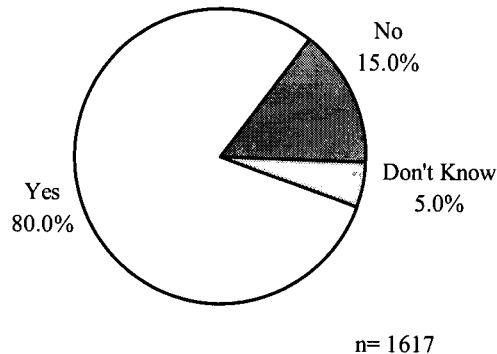
⁹ In most Chinese villages, the size of a land share is determined by dividing the total land area of the village by the number of village residents at the time of contracting, with each village resident entitled to receive one full share. Land is then contracted to households as a unit, with each household possessing shares equivalent to the number of household members.

¹⁰ The *mu* is a traditional Chinese unit of land measurement, equivalent to approximately 667 square meters, or one-fifteenth of a hectare. Thus, the average household landholding was 3613 square meters, equal to 0.36 hectare or 0.89 acre. Experience in China and elsewhere shows that such a holding, intensively used, can produce enough to feed a family very adequately and provide a substantial disposable surplus. Compare the discussion of even smaller holdings in Tim Hanstad et al., LARGER HOMESTEAD PLOTS AS LAND REFORM? INTERNATIONAL EXPERIENCE AND ANALYSIS FROM KARNATAKA (Rural Dev. Institute Rep. on Foreign Aid and Dev. No. 103, 2001).

B. Land Readjustments Under the Household Responsibility System

Four-fifths of the survey villages have conducted at least one land readjustment¹¹ since the first allocation of land to households under the HRS (see Figure 1, below). In the great majority (81.5%) of villages that have conducted at least one land readjustment, the most recent readjustment occurred within the past five years.

**Figure 1:
Has Village Conducted Land
Readjustments Under the Household
Responsibility System (HRS)?**

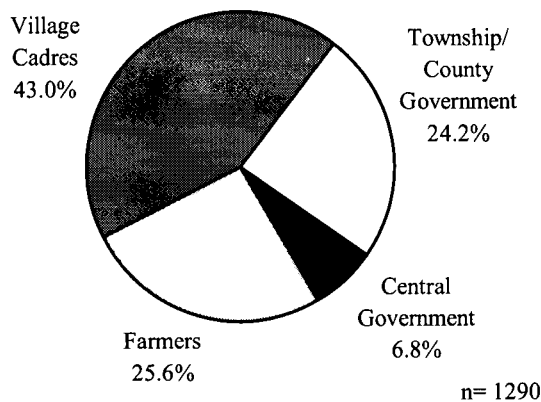


Nearly three-fourths of farmers identified population change within the village as the primary reason for land readjustment. Other reasons cited by farmers include: compensation for land takings (8.6%), consolidation of land parcels (4.2%), changes in the village cadres (3.0%), introduction of Scale Farming (2.5%), and introduction of the Two-Field System (2.2%).

¹¹ Two general types of land readjustments exist in China: “big” or comprehensive readjustments and “small” or partial readjustments. Big readjustments involve an overall change in the landholdings of all households in the village. In a big readjustment, all farmland in the village is given back to the collective landowner and reallocated among village households so each household receives entirely different land. A small readjustment consists of adding to or taking from a household’s existing landholding when that household’s size changes.

The survey also asked farmers who possesses primary decision-making power concerning land readjustments in the village (see Figure 2, below). The most frequent response, given by 43.0% of farmer-interviewees, indicated that decisions concerning land readjustments have been made by the village cadres. Among other responses, about one-quarter of farmers (25.6%) believed that farmers themselves possess primary decision-making power concerning land readjustments. A similar proportion attributed this power to the township or county government (24.6%). Only a small minority of farmers (6.8%) responded that the central government holds decision-making power concerning village land readjustments.

Figure 2:
Primary Decision-Making Power
Concerning Land Readjustments



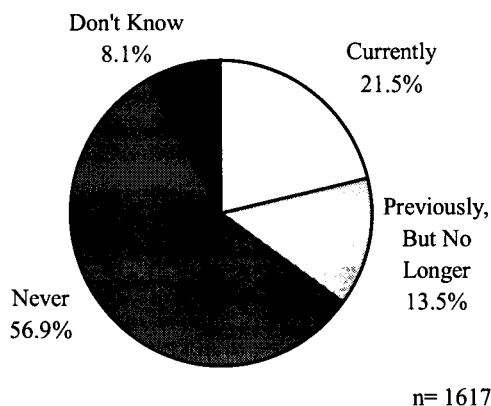
C. The Two-Field System¹²

As shown in Figure 3, below, 56.9% of survey villages have never employed the Two-Field System, while 21.5% currently employ it, and 13.5% previously employed the Two-Field System, but have subsequently abandoned it. Survey respondents in villages that currently employ the Two-Field System were asked to estimate the proportion of their villages' arable land that has been allocated as Responsibility Land. The responses indicate that 45.6% of these villages have designated most of their land (60% or more) as Responsibility Land. The remaining responses were divided among the following groups: 15.3% estimated that only a small amount of their village's arable land (<20%) has been allocated as Responsibility Land, 21.4% estimated that Responsibility Land accounted for less than half (20-40%) of village land, 15.5% said that Responsibility Land occupies about half (40-60%) of village land and 2.2% were unable to make a clear estimate. The fact that nearly half of Two-Field System villages have designated most of their arable land as Responsibility Land could be cause for concern, as it indicates that less than half of the land in these villages is subject to allocation to farm households on an egalitarian basis for a thirty-year use term, as mandated by national laws and policies.

This concern, however, is at least somewhat mitigated by farmers' responses regarding the allocation methods employed for Responsibility Land in their villages. In fact, 23.0% of Two-Field System villages allocate Responsibility Land in the same manner as Consumption land, which is almost universally distributed purely on an egalitarian basis. An additional 34.5% of Two-Field System villages allocate Responsibility Land based on household labor, ensuring that those households with additional laborers receive larger landholdings. Responsibility Land is contracted to any household that is willing to pay associated contracting fees in 20.3% of Two-Field System villages. Collectively, these three relatively egalitarian allocation methods are employed in 77.8% of the survey villages that currently employ the Two-Field System.

¹² The Two-Field System breaks with the typical pattern of distributing all farmland on a per capita basis. Instead, cultivated land is divided into two categories: Consumption Land and Responsibility Land. Consumption Land is divided in each village on a per capita basis to meet each household's basic needs. The remaining land is contracted to farm households as Responsibility Land through a variety of methods, which in many cases results in a non-egalitarian land distribution. Unlike Consumption Land, on which farmers are only responsible for collective contributions, an additional contracting fee is typically charged for Responsibility Land. For an analysis of the Two-Field System and its implementation in China, see Roy Prosterman et al., *LAND REFORM IN CHINA: THE TWO-FIELD SYSTEM IN PINGDU*, (Rural Dev. Institute Rep. on Foreign Aid and Dev. No. 86, 1994).

Figure 3:
Has Village Employed the Two-Field System?



The remaining Two-Field System villages allocate Responsibility Land in ways that are much less likely to ensure equal access to village land resources and much more likely to result in larger landholdings for those households that are relatively wealthy or have better relationships with village cadres. These methods include negotiated agreements between village cadres and household contractors, employed in 8.2% of Two-Field System villages, and auction to the highest bidder, employed in 11.5% of such villages. Though limited to one in five Two-Field System villages and less than 5% of all survey villages, the potential for highly unequal land distribution in these villages should be a cause for concern among central government policy makers.

The survey results further indicate that contracting of Responsibility Land to non-villagers, another potential source of inequity arising from the Two-Field System, does not appear to be a significant problem. Two-thirds (67.6%) of Two-Field System villages do not contract any Responsibility Land to non-villagers, and non-villagers contract less than half of village Responsibility Land in an additional 26.3% of Two-Field System villages. More than half of village Responsibility Land has been contracted to non-villagers in only three villages (0.9% of survey villages employing the Two-Field System). The remaining 5.2% of farmer-respondents did not know whether Responsibility Land has been contracted to non-villagers.

The most encouraging piece of information from the survey related to the Two-Field System is the fact that only ten villages have introduced the Two-Field System since 1997, the year that the Central Committee issued Rural Work Document No. 16¹³ prohibiting its further introduction and encouraging that it be ended in all villages where its implementation was not based on the will of the majority of village farmers. Moreover, during the same time period eighty-six villages abolished the Two-Field System, most likely as part of the implementation of thirty-year rural land use rights.

D. *Scale Farming*¹⁴

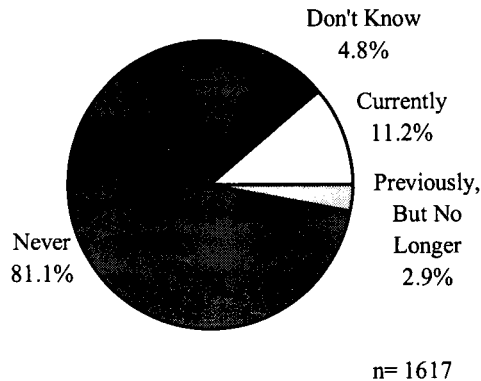
The survey findings with respect to implementation of Scale Farming are presented in Figure 4, below. As in the 1999 survey, the vast majority of survey villages (81.1%) have never employed Scale Farming, while only 11.2% of the survey villages currently employ it. Another 2.9% of survey villages previously employed, but subsequently ended the practice of Scale Farming.¹⁵ Where Scale Farming is currently employed, it typically affects only a small percentage of village land; 56.4% of respondents in Scale Farming villages estimated that less than 20% of their village's land has been contracted out as Scale Farming land, and an additional 31.4% estimated that Scale Farming affects 20-40% of village land. Two-thirds (66.6%) of villages currently employing Scale Farming do not contract any Scale Farming Land to non-villagers, and non-villagers only contract more than half of the Scale Farming Land in 5.9% of Scale Farming villages.

¹³ Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting, Guanyu Jinyibu Wending he Wanshan Nongcun Tudi Chengbao Guanxi de Tongzhi [Office of the CPC Central Committee & the Office of the State Council, Central Committee Document No. 16, Notice Concerning Further Stabilization and Improvement of Rural Land Contracting Relations] (issued Aug. 27, 1997) [hereinafter Central Committee Document No. 16] (translation on file with authors).

¹⁴ Scale Farming involves the consolidation of small, labor-intensive farms into larger, mechanized farms. Scale Farming can be accomplished through a variety of approaches, but typically involves the contracting of large areas of arable land to a limited number of private farmers or the operation of large-scale farms by the collective land owner. Recollectivization of farmland was the ultimate goal of at least some experiments with Scale Farming in the early 1990's. For a discussion of Scale Farming and its relevance to China, see Roy Prosterman et al., *Large-Scale Farming in China: An Appropriate Policy?* 28 J. CONTEMP. ASIA 74 (1998).

¹⁵ The remaining 4.8% of respondents did not know whether Scale Farming had been implemented in their villages.

Figure 4:
Has Village Employed Scale Farming?



One disturbing trend discovered by the authors during fieldwork in 2000 and 2001, and confirmed by the survey, is that although the absolute number of villages employing Scale Farming remains low, it is increasing rather than decreasing. Since 1997, only eighteen villages have ended the practice of Scale Farming, while forty-seven have introduced it. Moreover, the trend towards introduction of Scale Farming appears to be increasing. Between the start of 2001 and August, 2001, fifteen survey villages introduced Scale Farming while only two ended it.

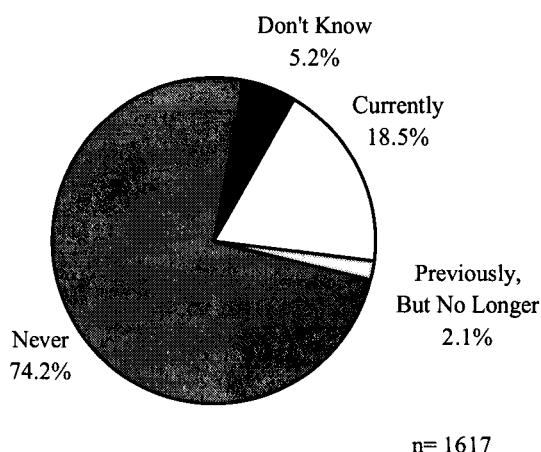
E. Re-Contracting to Non-Villagers

Fieldwork conducted by the authors in Anhui, Shaanxi, Hainan and Sichuan provinces during 2000 and early 2001 discovered numerous cases in which arable land currently under contract to village households was subsequently re-contracted by the village collective to non-villagers for cultivation. The motivation behind re-contracting is profit by collective cadres, who cannot legally impose contracting fees on the land if it is contracted directly to households, but can impose such fees on the third-party contractor. Interviews with farmers whose land had been affected showed that they were typically not involved in the decision to re-contract the land and that they were not provided any compensation for

the lost land. In the most extreme cases, where households were deprived of their entire landholding through re-contracting, they were forced to become agricultural laborers on the land to which they previously held rights or to leave the village altogether to pursue non-agricultural employment. If unchecked, the type of re-contracting practices observed during our direct fieldwork interviews represents a grave threat to farmers' land tenure security, the economic viability of farm households and social stability in the countryside.

The survey results support our fieldwork findings that the practice of re-contracting of arable land to non-villagers presents a serious obstacle to secure land tenure. As shown in Figure 5, below, nearly one in five villages (18.5%) currently re-contracts some of its arable land—which is required by law and policy to be contracted to members of the village collective—to non-villagers. The survey findings also show that the number of cases of re-contracting has increased dramatically since 1998, with 109 villages adopting the practice and only seven ending it during that period.

Figure 5:
Has Village Re-Contracted Arable Land
to Non-Villagers?



Somewhat moderating these concerns is the indication by survey respondents that re-contracting in their villages typically affects only a minority of village land, with 75.0% of farmers in villages that have employed re-contracting estimating that less than 20% of village land was re-contracted. An additional 12.5% estimated that between 20-40% of village land had been re-contracted, meaning that more than 40% of village land was affected in only one of every eight cases of re-contracting. Farmers reported that, in most cases, the land is re-contracted to another farmer from outside the village, although cases of re-contracting to corporate farms or government units were also reported.

The survey asked farmers in villages that have employed re-contracting how the decision to re-contract the land had been reached. Slightly more than two-thirds (68.7%) of these farmers responded that the village had reached an agreement with the party who would receive the land rights and that the farmers had voluntarily provided their land for re-contracting. Another 15.5% said that the cadres had decided unilaterally to re-contract the land, while 5.7% reported that the decision had been reached by a vote of the villager conference and 4.1% said that a vote of the villager representatives had been taken. The remaining 6.1% did not know how the decision to re-contract had been reached. The high percentage of farmers responding that farmers had voluntarily provided their land for re-contracting directly contrasts with our fieldwork results, which overwhelmingly found that re-contracting had been carried out by the village without consulting farmers, or even directly against their will. It is nonetheless striking that the more transparent and democratic methods of re-contracting—vote by the villager conference and vote by the village representatives—were employed in just under 10% of the re-contracting cases observed in the survey.

Farmers' responses to the question of allocation of re-contracting fees provide another reason for concern. Slightly more than half of the farmers (52.2%) reported that re-contracting fees were allocated among those village households whose land was affected. However, in nearly one-third (31.4%) of the villages, re-contracting fees have been retained by the village collective or township government without any distribution to farmers who had lost their rights to land.¹⁶ These responses appear to indicate that, in addition to the 15.5% of villages where cadres have unilaterally re-contracted land rights without contemplation of distributing the fees to farmers who lose land, an additional 15.9% (the remainder of the 31.4% figure above) represent cases where farmers

¹⁶ Re-contracting fees were allocated to all village households in 9.0% of the villages, and 7.4% of farmers did not know how the re-contracting fees obtained by the village had been allocated.

“voluntarily” agree to provide their land rights for re-contracting, but then are not provided the compensation promised by the village collective to secure their voluntary abandonment of rights.

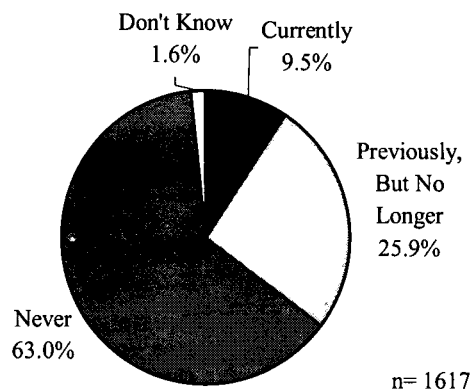
F. Compulsory Planting

In recent years, China’s central government has initiated a campaign to diversify agricultural production in anticipation of the new challenges facing Chinese agriculture upon the PRC’s entry into the World Trade Organization. To be competitive in the international agricultural marketplace, Chinese farmers indeed will need to utilize their comparative advantage in labor-intensive agricultural crops by shifting from cultivation of grains to high value-added products such as fruits and vegetables. Fieldwork by the authors in 2000 and 2001, however, found that the central campaign to encourage diversification was often hijacked by local officials who used the opportunity to impose compulsory planting requirements on farmers for personal economic gain.¹⁷

The survey confirmed that 35.4% of villages have imposed compulsory planting requirements on farmers, with 9.5% currently requiring cultivation of a particular crop and 25.9% having previously, but no longer, having such a requirement (see Figure 6, below). Fruit, vegetables, and tobacco were the crops that were most commonly required to be grown. The amount of land to which compulsory planting requirements applied varied among villages, with 38.5% of farmers in villages currently imposing compulsory planting requirements reporting that less than 20% is affected, 30.7% reporting that between 20-40% of village land is affected, 10.4% estimating that 40-60% of village land has been affected, 16.9% responding that over 60% of village land has been affected and 3.5% reporting that compulsory planting requirements have been imposed on all of their village land.

¹⁷ It is important to note that the authors’ fieldwork also observed a number of cases in which the goal of crop diversification had been achieved without violation of farmers’ land use rights or profiteering by local cadres, most notably in Fuyang County, Anhui Province. In these cases, farmers voluntarily diversified their production based on the existence of a combination of factors including: (1) secure, thirty-year land use rights that were free from land readjustments and backed by land use right contracts to that effect; (2) the provision of marketing and technical extension information to farmers by village or township institutions; and (3) gradual introduction of new crop varieties as a method of minimizing risk, including some cases in which the village cadre himself was the first to cultivate the crop in the village on a trial basis as a means of encouraging production by other farmers.

**Figure 6: Has Village Imposed
Compulsory Planting
Requirements?**



Farmers who fail to follow compulsory planting requirements are subject to a combination of penalties. Most commonly, cultivation of crops other than those required by the village or township resulted in the cutting down of standing crops and imposition of a fine. Some farmers also reported that non-cultivation could result in the loss of their land altogether, illegal imposition of higher agricultural taxes by local officials, or a requirement that they attend group study sessions intended to change their attitudes toward the compulsory planting requirement.

In 45.5% of the villages where compulsory planting requirements are currently imposed on farmers, neither the village nor the township has provided any assistance to farmers whatsoever as a result of the requirement. Subsidies for planting the required crops, technical extension support, marketing assistance, and agreements to purchase the required crop at market prices have only been provided in a minority of the villages where compulsory planting requirements currently exist.

It is important that the central government recognize that compulsory planting programs such as those observed by the authors during fieldwork, and confirmed by the survey findings, are inconsistent with its vision for long-term diversification of crop production. Not only are these programs likely to fail in the short-term, but they are also likely to dissuade farmers whose first experience with diversification comes

through such a program from voluntarily assuming the risk of diversifying production at some point in the future.

G. *Flexible Land*¹⁸

Consistent with the findings of the 1999 Renmin University-RDI survey, the 2001 survey found that slightly more than half of all villages (54.6%) have never reserved Flexible Land, while 28.4% of villages currently reserve Flexible Land and 17.0% previously reserved, but no longer reserve Flexible Land (see Figure 7, below).¹⁹ Recent central government policies have repeatedly emphasized that Flexible Land should be limited to 5% of total village land area and that it should be allocated to village households whose household population has increased or whose land has been lost through expropriation or natural disaster.²⁰

A flaw in the design of the 2001 survey questionnaire renders it impossible for us to estimate how many survey villages have exceeded the limit of 5% of village land imposed by central government policies.²¹ However, the comparison of the results of the 1999 survey with the findings of the more recent survey, presented in Table 3, below, may provide some useful insight on the present situation concerning Flexible Land.

¹⁸ Many villages in China have adopted the practice of reserving a small portion of their arable land from allocation to households on a per capita basis. This land, known as Flexible Land, is used as a source of land for new village households or for existing households that have added new members. In some cases, it may also be allocated as compensation to households that have lost land through compulsory acquisition. Until the land is needed for one of these purposes, it is typically contracted out by collective landowners to households for short-term use in exchange for contracting fees.

¹⁹ The 1999 survey found that 56.4% of villages had never reserved Flexible Land, 31.1% currently reserved Flexible Land and 12.5% had previously reserved Flexible Land, but had ended the practice prior to 1999.

²⁰ Central Committee Document No. 16 of 1997 called for villages to "strictly control and manage Flexible Land." It further required that "in those places where Flexible Land has been reserved, the total area of Flexible Land must be limited to an area of less than 5% of the village's total land area," and that "any Flexible Land must be used to resolve contradictions between limited land areas and large populations." Any Flexible Land reserved in excess of the 5% limit was required to be contracted to households based on the principles of fairness and equality. Central Committee Document No. 16, *supra* note 13.

²¹ The 2001 survey questionnaire asked farmers in villages that currently reserve Flexible Land to estimate the proportion of village land it occupies. Response categories included the following: 1) A Small Amount (<20%); 2) Less Than Half (20-40%); 3) About Half (40-60%); 4) More Than 60%; 5) All of the Land; 6) Don't Know. In order to obtain an accurate assessment of the degree of compliance with central policies, the possible response should instead have included the response categories provided in the 1999 survey, which included: 1) 1-5%; 2) 5-10%; 3) 11-15%; 4) 16-20%; 5) 21-30%; 6) More Than 30%.

Figure 7:
Has Village Reserved Flexible Land?

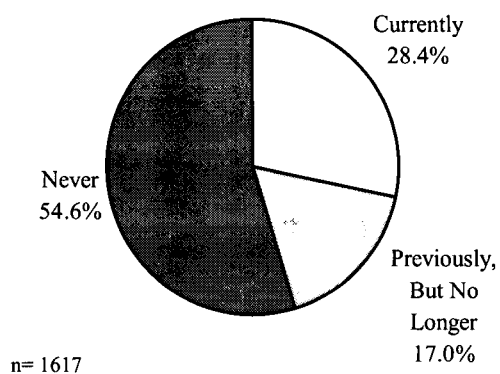


Table 3: Village Flexible Land Area

What proportion of your village's arable land has been reserved as Flexible Land?			
1999 Responses		2001 Responses	
1-5%	53.3%	Less Than 20%	86.6%
6-10%	30.3%		
11-15%	5.7%		
16-20%	5.2%		
21-30%	3.7%	20-40%	10.1%
More Than 30%	1.8%		
		40-60%	0.3%
		More Than 60%	0.0%
		100%	0.0%
		Don't Know	3.0%

The 1999 responses indicate that just over half (53.3%) of the villages that reserved Flexible Land fell within the 5% limit and that Flexible Land comprised less than 20% of village land in 95.5% of villages that reserved Flexible Land. The 2001 responses indicate that, as in 1999, the vast majority of villages (86.6%) with Flexible Land have reserved an area equal to 20% or less of total village land and that nearly all of the remaining cases fall within the 20-40% range. If any conclusion were to be drawn from such a comparison, it would seem to be that a somewhat higher percentage of Flexible Land has been reserved in the villages of the 2001 survey than in the 1999 villages, but that neither the overall amount of Flexible Land reserved nor the number of survey villages that have severely exceeded the 5% limit imposed by central policies has changed dramatically.

Contracting of Flexible Land to non-villagers is uncommon among the survey villages. Nearly three-quarters (73.9%) of villages with Flexible Land do not contract any Flexible Land to non-villagers, while 11.4% contract only a small portion of their Flexible Land to non-villagers. Contracting of more than half of the village's Flexible Land to non-villagers occurs in fewer than 5% of villages that reserve Flexible Land.

H. Rural Land Use Right Transfers

Both China's Constitution and Land Management Law confirm that "the right to use land may be transferred in accordance with law."²² In the absence of additional rules or requirements concerning such transfers, markets for rural land use rights have developed largely according to local rules and customs. A series of survey questions related to rural land use right transfers provides a detailed picture of the current state of such markets.

The picture emerging from the farmer responses, consistent for both transfers out and transfers in of land use rights, indicates that the current market for rural land use rights involves nearly 20% of farm households and that most transfers share the following characteristics: limited to part of the transferor's landholding; intra-village; short-term or at-will; uncompensated, with the transferee assuming obligations for taxes and fees associated with the land; informal; and not requiring approval of the collective landowner. However, it is also important to note that not all transfers conform to these general characteristics and

²² ZHONGHUA RENMIN GONGHEGUO XIANFA [CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA], art. 10. and Zhonghua Renmin Gongheguo Tudi Guanlifa [Land Management Law of the People's Republic of China] art. 2 (1998) [hereinafter Land Management Law].

particularly that longer-term, compensated transfers do occur in some instances.

The detailed findings with respect to land use right transfers are presented in Table 4, below.

Table 4: Characteristics of Land Use Right Transfers		
	Transfers Out	Transfers In
Has farmer transferred?		
Yes	18.3%	16.8%
No	81.7%	83.2%
Did transfer involve all or part of transferor's land? ²³		
Part of transferor's land	71.1%	75.3%
All of transferor's land	28.9%	24.7%
To/from whom was transfer made?		
Transfer was to/from another villager	85.4%	91.9%
Transfer was to/from a non-villager	12.5%	8.1%
Duration of Transfer		
At Will	46.4%	49.0%
One Season	2.6%	2.6%
One Year	17.1%	16.6%
Two Years	4.9%	8.7%
Three Years	6.9%	6.4%
Longer Than Three Years	6.6%	16.7%
Unspecified	15.5%	0.0%
Payment of Compensation		
No compensation paid	51.4%	59.2%
Compensation was paid to transferor in exchange for rights	44.1%	39.8%
Transferor paid compensation to transferee to take the land	4.5%	1.0%
Form of Compensation		
Cash	54.4%	71.2%
Grain	45.6%	28.8%
Payment Period		
Annual	73.8%	83.3%
Seasonal	19.0%	10.8%
Lump Sum	7.1%	5.8%

²³ Where the farmer had engaged in more than one transfer of land use rights, the interviewer was instructed to limit subsequent questions to the farmer's most recent transfer.

Responsibility for Taxes and Fees Associated with the Transferred Land		
Transferor remained liable	40.5%	34.4%
Transferee became liable	59.5%	65.6%
Transfer Contract		
Written contract executed	18.5%	16.3%
No written contract executed	81.5%	83.7%
Collective Approval		
Collective approval required	18.9%	14.6%
Collective approval obtained*	90.5%	84.2%
Payment of fee required for approval*	29.7%	40.0%

*Expressed as a percentage of cases where collective approval was required

I. Farmers' Awareness and Support of the "Thirty-Year Without Change" Policy

Almost all farmers (94.1%) told us that they are aware of the central government's "thirty-year without change" policy. We asked farmers whether or not they supported the policy, and, as in 1999, farmers expressed a strong degree of support for the policy (see Table 5, below).

Table 5: Farmer Attitudes Towards the "30-Year Without Change" Policy		
Do You Support the "30-Year Without Change" Policy?	1999 Responses	2001 Responses
Yes	69.7%	65.4%
No	9.4%	11.8%
Unclear	9.7%	12.7%
Indifferent	11.2%	10.1%
	n=1563	n=1511

The results of the more recent survey confirm the high degree of support that was evident in the 1999 responses, indicating that supporters of the policy outnumber opponents by a margin of greater than 5:1.

However, both the 1999 survey results and the results of subsequent fieldwork by the authors suggested that farmers' interpretations of the meaning of the "thirty-year without change policy" vary considerably depending on how the policy has been explained or implemented by local cadres. Some farmers interpret the policy to mean that the basic system of household contracting will be extended for a

period of thirty years without being changed, essentially amounting to an extension of the status quo in the farmer's village, while others interpret the policy to mean that they will receive a thirty-year land use right and that the land to which they possess rights will not be subject to readjustment for population changes or any other reasons during the thirty-year term.

Given these differing interpretations, it is possible to conclude that strong support exists among farmers for contracting of land use rights for thirty-years, but it may not be possible to reach definitive conclusions regarding the more important policy question of whether farmers would support a complete prohibition on all forms of land readjustment. Therefore, the 2001 survey questionnaire specifically asked farmers that question. Their responses are presented in Table 6, below.

Table 6: Farmer Attitudes Towards a Complete Prohibition on Land Readjustments	
Do you support a complete prohibition on land readjustments?	
Strongly Support	22.6%
Support	15.7%
Strongly Oppose	17.9%
Oppose	21.3%
Unclear	7.7%
Indifferent	14.8%

n=1511

The responses indicate that support for and opposition to a complete prohibition on readjustment are roughly balanced, with farmers who oppose or strongly oppose such a rule outnumbering farmers who support or strongly support such a rule by a margin of 39.2% to 38.3%, but with strong supporters outnumbering those who strongly oppose by a margin of 22.6 to 17.9%.

If China were to adopt a strict prohibition on land readjustments and implement it nationwide, how much opposition would it face? To assess the absolute degree of opposition towards a complete prohibition on land readjustments, we grouped farmers' responses into two more narrow categories: (1) Support or Not Oppose, comprised of those who expressed strong support, support or indifference towards a prohibition on readjustments; and (2) Oppose, comprised of those who expressed strong opposition or opposition to such a prohibition. Those who responded that they were unclear with regard to such a prohibition were not included in

the analysis. The results of these groupings are presented in Table 7, below.

Table 7: Farmer Attitudes Towards a Complete Prohibition on Land Readjustments	
Do you support a complete prohibition on land readjustments?	
Support or Not Oppose	57.5%
Oppose	42.5%

It is important to further note that the level of acceptance of a rule prohibiting land readjustments is even higher in the 15.0% of villages that have not conducted land readjustments under HRS, where farmers who would support or not oppose such a rule outnumber farmers who would oppose such a rule by a margin of 2:1. In these villages, a prolonged period of time without land readjustments has not resulted in increased pressure for readjustment, but rather has resulted in increased support for a prohibition on land readjustments. The policy relevance of these findings to the forthcoming laws and policies concerning land readjustments will be discussed in greater detail in Section VI.

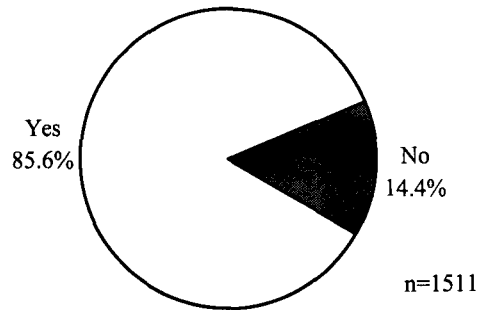
J. Progress Towards Implementation of Thirty-Year Rights

As shown in Figure 8, below, 85.6% of farmers reported that their village has begun the second round of rural land contracting,²⁴ under which farmers are required to receive thirty-year land use rights embodied in a written land use contract.²⁵ The proportion of villages that have begun second-round contracting has increased from 68.5% in August 1999, but the present 85.6% proportion nonetheless indicates that the implementation process remains far short of the goal of full implementation.

²⁴ Implementation of 30-year rural land use rights is considered to be the second round of household contracting under the HRS. Under Document No. 1 of 1984, HRS was adopted as the central government's rural land policy, and the first round of contracting, with a term of 15 years, was begun. Although most Chinese farmers interviewed by the authors between 1987 and 1999 were unaware of the duration of their land use rights and did not have those rights embodied in any written form, and the practice of frequent land readjustment in many Chinese villages meant that land use rights were essentially at-will (or until the next readjustment), in theory the first round contract expired in 1999, meaning that a second round of contracting needed to begin.

²⁵ The requirement of issuance of a written 30-year land use right contract is embodied in Article 14 of the 1998 Land Management Law, *supra* note 22.

**Figure 8: Has Village Begun
Implementation of 30-Year
Land Use Rights?**



Central government policies, embodied in Document No. 16²⁶ of 1997 allowed villages to conduct a small readjustment as part of implementation, but prohibited the conduct of big readjustments. Approximately three-fifths (60.9%) of the survey villages in which implementation has begun did in fact conduct a land readjustment as part of the implementation process, with slightly more than half (53.0%) of those villages conducting a big readjustment. Although these big readjustments represent a violation of Document No. 16, the survey findings suggest that conducting a big readjustment during the implementation process may have been preferable to conducting a small readjustment. These findings are discussed in further detail in Section VI, below.

In addition to land readjustments during the process of second-round contracting, some villages also decided that they would continue conducting land readjustments during the thirty-year land use term. Fieldwork interviews with farmers have indicated that measures concerning readjustments are often unilaterally imposed on farmers by village cadres, although in some cases they may be adopted through agreement between farmers and cadres. Such measures, whether adopted unilaterally or by agreement, are not contemplated in any current law or policy governing land use rights and clearly fall outside the strict limitations imposed on land readjustments by Article 14 of the 1998 Land Management Law.²⁷ The survey results indicate that a staggering 52.1%

²⁶ Central Committee Document No. 16, *supra* note 13.

²⁷ Article 14 of the 1998 Land Management Law, *supra* note 22, prohibits all big readjustments, and permits small readjustments only where the decision to conduct the land readjustment has been

of the villages that have begun implementation have included a measure to continue small readjustments during the thirty-year term. In addition, 8.1% of the villages that have begun implementation have adopted a measure to conduct big readjustments during the thirty-year term. These measures are overlapping, so that altogether 56.0% of the villages that have begun implementation have adopted a measure to conduct either small or big readjustments, or a measure to conduct both small and big readjustments.

We further asked farmers in villages that have begun the implementation process whether their village has in fact conducted a land readjustment *since* the completion of implementation. Nearly one in five farmers (17.9%) reported that their village has indeed conducted a land readjustment since implementation of thirty-year rights (see Figure 9, below). The dramatic negative impact of both measures to continue land readjustments during the thirty-year land use term, and the actual fact of land readjustment *since* implementation of thirty-year rights, on farmers' confidence in their thirty-year land use rights is discussed in Section IV, below.

Slightly more than half of farmer-respondents (54.6%) reported that they have signed a thirty-year land use right contract (see Figure 10, below).

However, not all of the contracts that have been signed by farmers have been physically issued to them by the collective landowners. In fact, as illustrated by Figure 11, only 46.7% of farmers reported that thirty-year land use right contracts have been issued to farmers in their villages, meaning that one-sixth of signed contracts have not been issued to farmers (see Figure 11, below).

Land use right certificates have also been issued to farmers in 44.9% of survey villages (see Figure 12, below).

Where farmers possessed a thirty-year land use right contract or thirty-year land use right certificate, student enumerators were instructed to review it and record information concerning its content on the survey questionnaire. The results indicate that the content of land use right contracts and certificates varies widely among localities with respect to certain provisions. The most important variation in contract and certificate provisions pertains to land readjustments. The degree of variation observed as part of the survey is presented in Table 8, below.

approved by 2/3 of the villager conference or 2/3 of the village representatives, as well as agricultural departments at both the township and county levels.

Figure 9:
Has Village Conducted a Land
Readjustment Since the Completion of
the Second Round of Contracting?

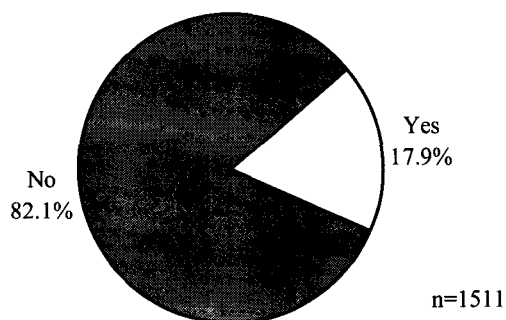


Figure 10:
Has Farmer Signed a 30-Year
Land Use Right Contract?

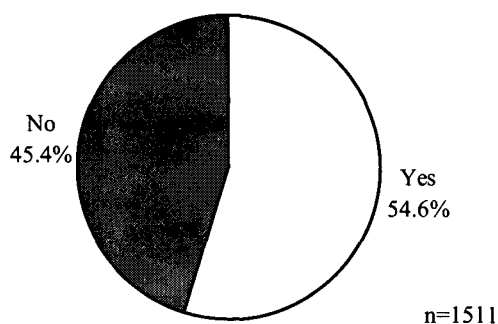


Figure 11:
Have 30-Year Land Use Right
Contracts Been Issued to Village
Farmers?

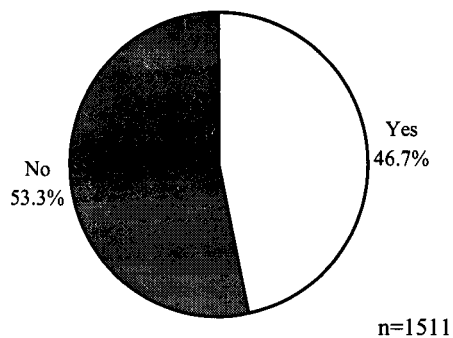


Figure 12:
Have 30-Year Land Use Right
Certificates Been Issued to
Village Farmers?

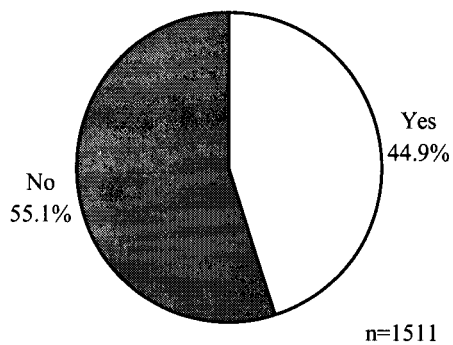


Table 8: Contract Provisions Concerning Land Readjustments

Type of Provision	% of Issued Contracts Containing	% of Issued Certificates Containing
Provision Allowing Land Readjustments During 30-Year Term	38.9%	45.4%
Provision Requiring Land Readjustments During 30-Year term	6.6%	5.6%
Provision Prohibiting Land Readjustments During 30-Year Term	8.8%	7.0%

n=645

n=629

The impact of these provisions on farmers' confidence is discussed in detail in Section IV, below.

K. The Breadth of Farmers' Land Use Rights²⁸

Although Article 14 of the 1998 Land Management Law clearly states that farmers shall receive thirty-year land use rights, and policy pronouncements have called for the implementation of "long-term, secure land use rights," a series of important questions related to the breadth of farmers' land use rights remain unanswered in current laws and policies. To understand farmers' perceptions and preferences with regard to the breadth of their land use rights, the survey asked whether farmers' existing land use rights include the following individual rights: (1) the right to transfer or lease their land use rights to another villager; (2) the right to transfer or lease their land use rights to a non-villager; (3) the right to pass their land use rights to their children through inheritance; (4) the right to retain their land use rights upon changes in household

²⁸ Regardless of the land system, land tenure security can be measured based on three important criteria: (1) breadth; (2) duration; and (3) assurance. Breadth is a measurement of the quantity and quality of the land rights held, and may include the rights to possess land; to grow or harvest crops; to pass on to heirs; to sell land or to lease it to others; to pledge land rights as security for credit; to prevent trespass; to graze cattle; to harvest wildlife; to gather firewood; to build structures on land; to extract mineral resources; and to use surface water. See Frank Place et al., *Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology*, in *SEARCHING FOR LAND TENURE SECURITY IN AFRICA* (John W. Bruce & Shem E. Mighot-Adholla, eds., 1994) (land tenure rights are not a single entitlement in any land system, but are multiple and varied; breadth measures the quantity and quality of the rights possessed by the landholder).

registration status;²⁹ (5) the right to mortgage their land use rights; and (6) the right to assign the entirety of their land use rights. Farmers' responses to these questions as part of the August 2001 survey are compared to responses to identical questions from the August 1999 survey in Table 9, below.

Table 9 leads to at least two general conclusions with respect to farmers' perceptions of their existing land use rights. First, farmers perceive their land rights to encompass a variety of rights. The vast majority of farmers believes that they possess the right to transfer or lease their land, both to residents of their village and to non-villagers. A clear majority believes that they already possess the right to pass their land use rights to their children through inheritance as well as the right to retain their land upon changes in household registration. About half of farmers believe that they have the right to assign their entire land use right. The only right that a majority of farmers believe they do not possess is mortgage, which is in fact explicitly prohibited by law.³⁰ Comparison of farmers' responses in 1999 and 2001 further shows that farmers' perceptions of the breadth of their land use rights have increased in the past two years. With the exception of mortgage, a proportion of farmers substantially higher than the corresponding proportion in the 1999 survey—a statistically significant increase—believes that they possess each of the individual rights.

We also asked farmers whether they believed that their land use rights should include each of the foregoing rights. Farmers' responses, with a comparison to their responses in August 1999, are shown in Table 10, below.

Again, several important general conclusions can be drawn from Table 10. First, at least a clear majority, and in several cases the vast majority, of farmers interviewed in 2001 believe that their land use rights should include each individual right except the right to mortgage. Second, a comparison of responses from 1999 and 2001 shows that the proportion of farmers who believe that their land use right should include specific rights has increased for each individual right, and in some cases that increase has been dramatic.

²⁹ All of China's 1.2 billion people are registered as members of rural or urban households. Only those with rural household registration are entitled to receive a share of collectively-owned arable land. In some cases, those with rural household registration status may change their household registration status to urban, for example upon assuming long-term employment and residence in urban areas.

³⁰ Article 37 of the PRC Guaranty Law prohibits the mortgage of use rights to arable land. DANBAO FA art. 37 (1995).

Table 9: Farmers' Perceptions of Their Current Land Use Rights**1999/2001 Comparison**

Does Your Current Land Use Right Include the Following Rights?	1999 Responses	2001 Responses
Transfer or Lease to Another Villager		
Yes ³¹	86.2%	94.0%
No	6.1%	4.2%
Don't Know	7.7%	1.8%
Transfer or Lease to a Non-Villager		
Yes ³²	74.1%	84.3%
No	15.3%	9.9%
Don't Know	10.7%	5.8%
Pass to Children Through Inheritance		
Yes	58.8%	67.5%
No	27.3%	23.0%
Don't Know	13.9%	9.5%
Right to Retain Upon Household Registration Changes		
Yes	53.7%	59.3%
No	38.8%	36.9%
Don't Know	7.5%	3.9%
Mortgage		
Yes	12.7%	12.9%
No	87.3%	73.2%
Don't Know	0.0%	14.0%
Assign Entire Thirty-Year Right		
Yes	27.5%	48.0%
No	52.8%	34.1%
Don't Know	19.7%	17.9%

³¹ This category includes farmers who responded that they possess the right to transfer or lease their land use rights to another villager subject to: (1) registration of the transfer with the village committee; (2) approval of the transfer with the village committee; and (3) no conditions whatsoever.

³² This category includes farmers who responded that they possess the right to transfer or lease their land use rights to a non-villager subject to: (1) registration of the transfer with the village committee; (2) approval of the transfer with the village committee; and (3) no conditions whatsoever.

Table 10: Farmers' Preferences Concerning Their Land Use Rights		
1999/2001 Comparison		
Should Your Land Use Rights Include the Following Rights?	1999 Responses	2001 Responses
Transfer or Lease to Another Villager		
Yes	90.8%	93.4%
No	4.1%	2.9%
Don't Know	5.0%	3.7%
Transfer or Lease to a Non-Villager		
Yes	80.1%	87.9%
No	11.4%	7.1%
Don't Know	8.5%	5.0%
Pass to Children Through Inheritance		
Yes	64.2%	71.1%
No	25.1%	21.8%
Don't Know	10.8%	6.5%
Right to Retain Upon Household Registration Changes		
Yes	47.0%	56.5%
No	41.8%	38.4%
Don't Know	11.2%	5.1%
Mortgage		
Yes	29.5%	32.3%
No	49.5%	52.9%
Don't Know	21.0%	14.8%
Assign Entire Thirty-Year Right		
Yes	47.3%	62.0%
No	39.2%	27.6%
Don't Know	13.5%	10.4%

In addition to the general conclusions that can be drawn from Tables 9 and 10, above, more detailed analysis of farmers' responses concerning the breadth of their land use rights, and their important implications for legal and policy reforms, are presented in Section VI, below.

IV. FARMERS' CONFIDENCE IN THEIR THIRTY-YEAR LAND USE RIGHTS

A. *The Concept of Confidence*

It is of paramount importance to emphasize that the underlying goal of China's ongoing rural land tenure reforms, stated explicitly in the Decision of the Third Plenary Session of the 15th Central Committee, is to provide farmers with "long-term *secure* land use rights." Tenure security exists only where a land right holder possesses key rights for a duration sufficiently long to recoup the full value of investments³³ made on the land, with enough certainty to prevent outside imposition or interference. Even land rights of adequate duration and breadth cannot be considered secure unless the holder possesses those rights on a continuous basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labor and capital invested in the land, whether through his or her use or through transfer to another holder.³⁴

Land readjustments have posed the single greatest threat to Chinese farmers' land tenure security under the HRS, and the survey findings clearly indicated that this threat persists, with many villages planning to continue land readjustments during the thirty-year land use term, and nearly one in five villages already having conducted a land readjustment following their implementation of thirty-year rights. As long as farmers continue to expect land readjustments to occur, they will be reluctant to make long-term, productivity-enhancing investments in their land, since they will be uncertain as to whether they will be able to recoup the values of those investments.³⁵ Such investments, particularly

³³ The survey included a series of questions related to long-term, productivity investments in land, including investments that have previously been made by farmers, investments that could be made to increase productivity on farmers' land, and farmers' plans for making such investments. The responses to these questions are currently being analyzed, and are therefore not presented in the present paper.

³⁴ Place et al., *supra* note 28, at 15, 19.

³⁵ The need for long-term tenure security to make long-term investments in land is an underlying premise of Land Management Law Article 14 and related policy documents. This premise has been amply demonstrated in RDI's Rapid Rural Appraisal fieldwork over more than a decade, as well as in a 1,080 household survey conducted jointly by RDI and the National Rural Experimental Zone Office of the Ministry of Agriculture in December 1996. See Roy Prosterman et al., *Can China Feed Itself?*, SCIENTIFIC AMERICAN, Nov. 1996, at 90; Roy Prosterman et al., *Prospects for Implementation of a No-Readjustment Policy in China*, (Aug. 1997) (unpublished memorandum on file with RDI). See also Tim Hanstad & Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to Wasteland*, 19 LOYOLA L.A. INT. & COMP. L. J. 545 (1997) (reflecting the fact that Chinese farmers with long-term written contracts to wasteland, free of any fear of readjustment, made substantial improvements and investments, while the same farmers did not make such improvements or investments on their arable land, on which they did not have long-term land use rights and were subject to readjustments).

investments related to the introduction of high value-added crops such as fruits and vegetables, will be a crucial factor in the ability of Chinese agriculture to compete in the post-accession WTO marketplace. In addition, land readjustments also impede the development of land use right transfer markets, the most effective mechanism of transferring land into the hands of the most efficient producers, because transferees cannot be certain that the land will not be subject to readjustment before the expiration of the transfer term.

For these reasons, it is crucial to measure implementation of China's rural land tenure reforms not only according to the number of farmers who possess a land use right contract or land use right certificate granting them thirty-year use rights to their land, but also in terms of farmers' confidence that their thirty-year use rights are secure. To determine the extent of farmers' confidence, the survey asked if farmers expected readjustments to continue during the thirty-year use term established by national policies and laws.³⁶ As in 1999, the survey results indicate that only a minority of farmers expects that they will enjoy thirty-year land use rights free from readjustment (see Table 11, below).

Table 11: Farmers' Expectations Concerning Land Readjustments During the 30-Year Land Use Right Term According to Survey Responses

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?	
Response	Percentage of Farmers Responding
Yes, readjustments will continue	45.8%
No, there will definitely not be land readjustments	12.2%
Depends on the Central Government (or Higher Levels)	28.1%
Depends on the cadres	9.6%
Don't Know	4.3%

n=1511

³⁶ The question was asked of all farmers who reported awareness of the 30-year land use right policy, comprising 1,511 valid responses.

The survey results indicate that only one out of eight farmers (12.2%) presently expresses the highest degree of confidence, stating that there "definitely will not be any more readjustments" during the thirty-year land use term.

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

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

Second, during numerous rounds of direct fieldwork conducted prior to the most recent round of surveys, many farmers responded to our questions in a manner that indicated a clear distinction between the central government (or higher levels of government, incorporating the province level government and the central government) on the one hand, and local cadres on the other hand, with respect to attitudes towards the thirty-year land use rights policy. A number of farmers told us that "the central government's thirty-year land use rights policy is good, but when policies get to lower levels, they are not implemented", or "I support the thirty-year land use rights policy, but if the cadres don't implement it, it doesn't mean anything." Such responses indicate that farmers regard local cadres, and not the central government, as the potential obstacle to receiving thirty-year land use rights free from readjustment.

Third, decisions to conduct land readjustments are made at the village level, and not at higher levels of government, including the central government. Farmers are certainly aware that land readjustment decisions have thus far been made at the local level, as evidenced in Section III.B, above, where 68.6% of farmers identified either the village

cadres or farmers themselves as the primary decision making power concerning land readjustments, while only 6.8% identified the central government as the primary holder of this authority. Each of these factors supports the proposition that farmers who respond that future readjustments “depend on the central government (higher levels)” are expressing a higher degree of confidence that land readjustments will not occur during the thirty-year term than farmers who respond that future readjustments “depend on local cadres”.

Using these two groupings of confidence, with “don’t know” as the third category,³⁷ farmers’ confidence in their ability to receive thirty-year rural land use rights free from readjustments is as follows:

Table 12: Farmers’ Expectations Concerning Land Readjustments During the 30-Year Land Use Right Term According to High and Low Confidence Measures

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?	
Response	Percentage of Farmers Responding
High Confidence in tenure security ³⁸	40.3%
Low Confidence in tenure security ³⁹	55.4%
Don’t Know	4.3%

n=1511

Thus, even with this broader definition of higher-confidence farmers, only 40.3% of all farmers currently exhibit a degree of confidence that is at all likely to facilitate long-term investments in land and land use right transactions. Examining this figure from a positive standpoint, this percentage projects nationally to some 85 million farm

³⁷ It is important to include this category of farmers who are uncertain, since only the higher-confidence farmers as a proportion of the entire farming population (including the uncertain) can be presently expected to engage in long-term investment behavior.

³⁸ This category includes those farmers who responded that there will definitely not be any future land readjustments and those farmers responding that future land readjustments “depend on the central government (higher levels of government).”

³⁹ This category includes those farmers responding that “readjustments will continue during the 30-year land use term” and those farmers responding that future land readjustments “depend on the cadres.”

households who may now have sufficient confidence in their security of tenure to begin making long-term investments on their land.⁴⁰

However, several significant causes for concern exist in relation to the finding that only 40.3% of farmers in the seventeen survey provinces possess a high degree of confidence. The first point is that, as shown in Table 13, confidence among farmers has not increased significantly since 1999, and by some measures may have actually declined during the period.

**Table 13: Farmers' Confidence Levels
(Comparison of 1999 and 2001 Survey Findings)**

Does Farmer Expect Land Readjustments to Continue During the 30-Year Land Use Term?					
High and Low Confidence Categories			Five Possible Survey Responses		
	1999⁴¹	2001⁴²		1999	2001
			Yes, readjustments will continue	35.2%	45.8%
High Confidence	36.0%	40.3%	No, there will definitely not be land readjustments	12.7%	12.2%
Low Confidence	50.2%	55.4%	Depends on the Central Government (or Higher Levels)	23.3%	28.1%
Don't Know	13.7%	4.3%	Depends on the Cadres	15.1%	9.6%
			Don't Know	13.8%	4.3%

Grouping farmer responses into the High and Low Confidence Categories, as presented to the left of Table 13, shows that both the percentage of farmers with high confidence and the percentage of farmers with low confidence have increased (by 4.3% and 5.2%, respectively), with a corresponding decrease in the percentage of farmers in the Don't Know category. An analysis of farmers' confidence based on the five

⁴⁰ The figure of 85 million rural households having a high degree of confidence that their 30-year rural land use rights will not be subject to land readjustments during the 30-year land use term is arrived at by multiplying the percentage of farmers expressing a high degree of confidence (40.3%) by the approximate number of rural households in China (210 million).

⁴¹ The 1999 survey results presented in this table include 1,449 valid responses.

⁴² The 2001 survey results presented in this table include 1,511 valid responses.

possible survey responses, as presented to the right of Table 3.3, provides greater insight on the shift in confidence that has occurred during the two-year period between the two surveys.

The most striking aspect of this analysis is that while the percentage of farmers with the highest degree of confidence in their land use rights, those responding that there will definitely not be land readjustments, has remained constant, the percentage of farmers who expressed the lowest degree of confidence in their land tenure security by responding that “readjustments will continue” has increased dramatically, and now constitutes nearly half (45.8%) of all farmers. Given that nearly one in five villages has conducted a land readjustment since implementation of thirty-year rights (see Section III.J, above), it is logical that more and more farmers would believe that readjustments will occur during the thirty-year term. Moreover, the high number of villages that have adopted measures related to land readjustments during the thirty-year term (also see Section III.J) strongly suggests that, unless appropriate legal and policy interventions are undertaken, farmers’ confidence will continue to erode as increasing numbers of villages begin to conduct the post-implementation land readjustments anticipated in these measures.

The second important related point is that any effort to increase confidence among the 59.7% of households that are not presently in the higher confidence group (“Low Confidence” plus “Don’t Know”) may involve the presence or absence of various factors, some of which may lend themselves to government intervention or alteration more than others. To assess the relationship between farmers’ confidence and a variety of elements of land tenure security, we completed a series of cross-tabulations comparing farmers’ responses concerning confidence to their responses as to the presence or absence of specific factors (e.g., whether or not a thirty-year land use contract had been issued to the respondent) that are covered in the survey. The cross-tabulations indicate that at least 13 separate factors have a statistically significant impact on the level of farmers’ confidence. These 13 factors are discussed in subsection B, below, with those factors that increase farmers’ confidence discussed separately from those that decrease farmers’ confidence.

B. Factors That Increase Farmers' Confidence

1. The Absence of Previous Readjustments in the Village

As in the 1999 survey, farmers reporting that their village has not conducted land readjustments under HRS expressed much higher confidence in their land use rights than farmers in villages that have conducted at least one land readjustment under HRS (see Table 14, below).

Table 14: The Impact of Previous Land Readjustments under HRS on Farmer Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?			
Farmers' Confidence	Has Village Readjusted Land Under HRS?		
	Yes	No	Don't Know
High Confidence in Tenure Security	34.8%	67.4%	50.0%
Low Confidence in Tenure Security	61.2%	27.6%	41.9%
Don't Know	4.0%	5.0%	8.1%
Total Count	1210	221	62
%	100.0%	100.0%	100.0%

n=1493

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	93.460	4	.000

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

2. The Issuance of Thirty-Year Land Use Right Contracts and Certificates

The proportion of farmers expressing a high degree of confidence in their land use rights was nearly 10% higher among those farmers who have been issued a thirty-year land use right contract than among those who have not been issued a contract. Approximately the same holds true for farmers who have been issued a thirty-year land use right certificate (see Table 15, below).

Table 15: The Impact of Issuance of 30-Year Land Use Right Contracts and Certificates on Farmers' Confidence

Farmers' Confidence	Have 30-Year Land Use Right Contracts Been Issued to Village Farmers?	
	Yes	No
High Confidence in Tenure Security	45.7%	36.3%
Low Confidence in Tenure Security	48.7%	60.6%
Don't Know	5.6%	3.1%
Total Count	674	769
%	100.0%	100.0%
n=1443		
Farmers' Confidence	Have 30-Year Land Use Right Certificates Been Issued to Village Farmers?	
	Yes	No
High Confidence in Tenure Security	44.4%	37.0%
Low Confidence in Tenure Security	51.9%	59.2%
Don't Know	3.7%	3.8%
Total Count	649	792
%	100.0%	100.0%
n=1441		

Contract Issuance	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	22.422	2	.000

Certificate Issuance	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	8.218	2	.016

This result sends a strong message that the requirement of issuance of thirty-year land use right contracts, presently embodied in Article 14 of the 1998 Land Management Law, should be strictly enforced, and that implementation of thirty-year land use rights should not be considered to be complete until written land use right contracts have been issued to farmers. It further indicates that issuance of thirty-year land use right certificates should also be a legal requirement. Systematic monitoring efforts under the supervision of the central government will be necessary to independently confirm contract issuance. In addition, central and provincial officials must ensure that the contracts issued to farmers do not contain provisions that undercut farmers' confidence in their land use rights (see discussion under Section IV.C.5).

3. Farmers' Belief That Their Land Use Rights Include the Right to Transfer Without Condition

Farmers who believe that they currently possess the right to transfer their land use rights without restriction expressed higher degrees of confidence than both farmers who believe they do not possess transfers rights and farmers who believe they possess such rights subject to registration or approval requirements. This held true both with respect to transfers to villagers and transfers to non-villagers (see Table 16, below).

Current legislation governing rural land use rights confirms that such rights may be transferred "in accordance with law," but provides no additional guidance concerning the scope of such rights or any restrictions attached. Forthcoming legislation should explicitly state that rural land use rights may be transferred both to villagers and non-villagers, and that neither registration of the transfer nor the approval of the collective landowner is required for the transfer to be valid.⁴³

⁴³ The registration of land use right transfers exceeding a specified length (e.g. three years) may eventually be desirable. However, the survey results indicate that such long-term transfers remain relatively rare, and, more importantly, our direct fieldwork has consistently shown that land registration institutions at local levels currently lack the administrative capacity to register such transfers. Land registration offices visited by the authors during fieldwork in China tend to serve as historical archives of the contracts between the collective and the farmers rather than true land right registries. Until the time that local land right registration institutions can adequately handle such transactions, imposing a requirement of registration will only impede transfers and provide opportunities for rent-seeking behavior by local officials without providing significant additional benefits to transferors and transferees. As to the separate issue of approval, collective approval should not be required for a transfer of land use rights to be valid, as it accomplishes virtually nothing while providing an opportunity for rent-seeking behavior by local cadres.

Table 16: The Impact of Farmers' Belief in Transferability of Land Use Rights Without Restriction on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?					
Farmers' Confidence	Do Your Current Land Use Rights Include the Right to Transfer or Lease Your Land to Other Villagers?				
	Yes, but registration is required	Yes, but collective approval is required	Yes, and no registration or approval is required	No	Don't Know
High Confidence in Tenure Security	39.1%	33.9%	42.1%	39.1%	29.6%
Low Confidence in Tenure Security	57.5%	62.5%	53.8%	46.9%	63.0%
Don't Know	3.4%	3.6%	4.0%	14.1%	7.4%
<i>Total Count</i>	207	192	992	64	27
%	100.0%	100.0%	100.0%	100.0%	100%
n=1482					
Farmers' Confidence	Do Your Current Land Use Rights Include the Right to Transfer or Lease Your Land to Non-Villagers?				
	Yes, but registration is required	Yes, but collective approval is required	Yes, and no registration or approval is required	No	Don't Know
High Confidence in Tenure Security	39.2%	27.1%	45.9%	35.4%	29.1%
Low Confidence in Tenure Security	58.3%	70.5%	50.2%	55.8%	61.6%
Don't Know	2.5%	2.4%	3.9%	8.8%	9.3%
<i>Total Count</i>	199	210	837	147	86
%	100.0%	100.0%	100.0%	100.0%	100.0%

n=1479

Transfer to Villager	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	22.365	8	.004

Transfer to Non-Villager	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	48.254	8	.000

4. Farmers' Belief That Their Land Use Rights Include the Right to Pass to Their Children by Inheritance

Farmers who believe that they possess the right to pass their land use rights to their children by inheritance possess substantially higher confidence in their land use rights than farmers who do not believe they possess this right (see Table 17, below).

Table 17: The Impact of a Belief in Inheritability of Land Use Rights on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?			
Farmers' Confidence	Do Your Current Land Use Rights Include the Right to Pass Your Land to Your Children by Inheritance?		
	Yes	No	Don't Know
High Confidence in Tenure Security	45.7%	23.2%	44.3%
Low Confidence in Tenure Security	49.8%	73.5%	50.0%
Don't Know	4.4%	3.2%	5.7%
Total Count	995	340	140
%	100.0%	100.0%	100.0%

n=1475

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	60.374	4	.000

Current legislation governing rural land use rights neither explicitly affirms nor rejects farmers' right to pass their land use rights to children through inheritance, and the dominant practice in the 77.5% of survey villages that have conducted land readjustments under HRS is to reallocate the land of deceased collective members through land readjustment. Forthcoming legislation should explicitly affirm the existence of inheritance rights, and inform farmers of this right through a national publicity campaign.⁴⁴

5. Farmers' Belief That Their Land Use Rights
Include the Right to Retain Their Land Upon
Household Registration Changes

Confidence levels among farmers who believe they possess this right are 21% higher than those for farmers who believe their land will be reclaimed by the collective upon change in household registration status, and 12% higher than farmers who expressed uncertainty regarding the status of land use rights upon household registration status (see Table 18, below).

Forthcoming legislation should confirm that farmers whose household registration status changes from rural to urban have the right to retain their rural land use rights, subject to local land use and cultivation regulations.

6. Farmers' Belief That Their Land Use Rights
Include the Right to Assign the Entire Remaining
Land Use Right Term

Farmers who believe they possess the right to assign the entire remaining land use term also possess higher degrees of confidence in their land use rights than farmers who believe they do not possess this right or are uncertain as to whether they possess it (see Table 19, below).

Forthcoming legislation should explicitly confirm farmers' right to transfer the entire remaining land use term.

⁴⁴ Farmers who are uncertain whether they possess this right have about the same degree of confidence as farmers who believe they possess the right. However, there is no way of drafting a legislative measure that would move those who don't believe they possess the right into the "Don't Know" category, and it would be pointless to try to do so.

Table 18: The Impact on Farmer Confidence of a Belief That Rural Land Use Rights Will be Retained Upon Change in Registration

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?			
Farmers' Confidence	Do Your Current Land Rights Include the Right to Retain Your Land Use Rights Upon Household Registration Changes?		
	Yes	No	Don't Know
High Confidence in Tenure Security	48.5%	27.5%	36.8%
Low Confidence in Tenure Security	46.6%	69.4%	56.1%
Don't Know	4.9%	3.1%	7.0%
Total Count	877	545	57
%	100.0%	100.0%	100.0%

n=1479

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	71.548	4	.000

Table 19: The Impact of a Belief in the Right to Assign Land Use Rights on Farmer Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?			
Farmers' Confidence	Do Your Current Land Use Rights Include the Right to Assign the Entire Remaining Land Use Term?		
	Yes	No	Don't Know
High Confidence in Tenure Security	44.5%	34.6%	40.2%
Low Confidence in Tenure Security	50.8%	62.0%	54.9%
Don't Know	4.7%	3.4%	4.9%
Total Count	708	503	264
%	100.0%	100.0%	100.0%

n=1475

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	15.247	4	.004

C. *Factors That Decrease Farmers' Confidence*

1. Implementation of The Two-Field System

Confidence among farmers in villages that have never employed the Two-Field System is 15% higher than that of farmers in villages that currently employ the Two-Field System. Farmers in villages that previously employed the Two-Field System, but subsequently ended it, also demonstrated significantly higher confidence than those in villages that currently employ it, but did not reach the level of confidence found in those villages that have never employed it.

Table 20: Impact of the Two-Field System on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?				
Farmers' Confidence	Does Your Village Currently, or Has It Ever, Employed the Two-Field System?			
	Currently Employs	Previously Employed	Never Employed	Don't Know
High Confidence in Tenure Security	29.1%	39.4%	44.2%	44.4%
Low Confidence in Tenure Security	66.6%	57.4%	51.6%	50.0%
Don't Know	4.4%	3.2%	4.2%	5.6%
Total Count	320	188	856	108
%	100.0%	100.0%	100.0%	100.0%

n=1472

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	24.721	6	.000

Slightly more than one in five survey villages (21.5%) currently employ the Two-Field System. The findings presented in Table 20, above, strongly support the central government's existing policy, embodied in Central Committee Document No. 16 of 1997, prohibiting further implementation of the Two-Field System and encouraging its abolition in villages that implemented it without consent of the majority of village farmers. Effective implementation of this policy will not only prevent further erosions in confidence caused by implementation of the

Two-Field System, but will boost confidence in those villages that end it. Our survey data indicate that substantially higher numbers of villages have ended the Two-Field System during the period from 1998 to 2001 than have introduced it during the same time period. The central government should work with provincial governments where the Two-Field System is widespread (identified in Section V) to actively promote the abolition of the Two-Field System.

2. Implementation of Scale Farming

Paralleling the findings related to the Two-Field System, the highest degree of confidence was found among farmers in villages that have never implemented Scale Farming, while the lowest confidence levels were expressed by farmers in the 11.2% of survey villages that currently employ Scale Farming. Farmers in villages that previously employed, but subsequently ended Scale Farming fell between the two other groups.

Table 21: Impact of Scale Farming on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?				
Farmers' Confidence	Has Your Village Employed Scale Farming?			
	Currently Employs	Previously Employed	Never Employed	Don't Know
High Confidence in Tenure Security	29.0%	35.6%	41.4%	53.3%
Low Confidence in Tenure Security	63.6%	62.2%	54.7%	40.0%
Don't Know	7.4%	2.2%	3.9%	6.7%
<i>Total Count</i>	162	45	1203	60
%	100.0%	100.0%	100.0%	100.0%

n=1470

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	18.497	6	.005

Again, the survey findings strongly support implementation of central policies articulated by Central Committee Document No. 16 with respect to Scale Farming. Namely, no additional implementation of Scale Farming should be permitted, and abolition of Scale Farming should be

actively promoted. Despite the relatively low proportion of survey villages currently employing Scale Farming, strong leadership by the central government on this issue remains important for several reasons. First, in contrast to the Two-Field System, the survey findings reveal that the number of villages that have introduced Scale Farming since 1997 is much greater than the number that have ended it over the same period. Second, central government policies encouraging crop diversification and increases in productive efficiency that will be necessary for China to compete in the post-accession WTO environment may be wrongly construed as encouragement of Scale Farming, by local cadres who are eager to contract out village arable land for so-called Scale Farming for personal gain.⁴⁵

3. Village Adoption of Measures to Conduct Readjustments During the Thirty-Year Land Use Term

As discussed in Section III.J, the survey found that over half (52.1%) of the villages that have begun implementation of thirty-year rights have adopted a measure to conduct small readjustments during the thirty-year land use term, and a partially overlapping 8.1% of those villages adopted a measure to conduct big readjustments during the thirty-year term. These measures not only directly violate existing central government laws and policies, but they also have a disastrous effect on farmers' confidence. The results of our cross-tabulations are presented in Tables 22 and 23, below, with respect to both 3-way and 5-way measurements of farmer confidence.

Village adoption of a measure to conduct small readjustments during the thirty-year land use term results in a decrease of greater than thirty% of farmers expressing high confidence, with a corresponding increase in the number of farmers expressing low confidence. This dramatic decrease in confidence is even more pronounced when analyzed in terms of the five possible confidence responses; where a measure to conduct small readjustments has been adopted, farmers are over ten times more likely to express the lowest degree of confidence (60.8% responding that readjustments will continue) than the highest degree of confidence

⁴⁵ Both extensive international experience and research on the relationship between farm size and productivity, including research on previous experiments with Scale Farming in China, overwhelmingly conclude that, when measured in terms of Total Factor Productivity (the ratio of aggregate output to the aggregate of all land, labor and capital inputs), smaller farms are more productive and efficient than larger farms. See Roy Prosterman et al., *The Risks of Scale Farming in China* (May 2001) (unpublished memorandum on file with RDI).

(only 4.4% responding that there will definitely not be land readjustments).

Table 22: The Impact of a Village Measure to Conduct Small Readjustments During the 30-Year Term on Farmer Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?		
High and Low Confidence Measures	Has Village Adopted a Measure to Conduct Small Readjustments During the 30-Year Term ?	
	Yes	No
High Confidence in Tenure Security	27.7%	59.0%
Low Confidence in Tenure Security	68.7%	35.5%
Don't Know	3.6%	5.4%
<i>Total Count</i>	661	608
<i>%</i>	100.0%	100.0%
Five Possible Responses	Has Village Adopted a Measure to Conduct Small Readjustments During the 30-Year Term ?	
	Yes	No
Yes, land readjustments will continue	60.8%	26.4%
No, there will definitely not be land readjustments	4.4%	22.4%
Depends on the Central Government	23.3%	36.7%
Depends on Cadres	7.9%	9.1%
Don't Know	3.6%	5.4%
<i>Total Count</i>	661	607
<i>%</i>	100.0%	100.0%

n=1268

High and Low Confidence	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	141.148	2	.000

Five Possible Responses	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	185.765	4	.000

Far fewer villages have adopted measures to conduct big readjustments during the thirty-year land use term than have adopted similar measures to conduct small readjustments. However, as shown in Table 23, confidence levels in these villages are even lower.

Table 23: The Impact of a Village Measure to Conduct Big Readjustments During the 30-Year Term on Farmer Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?		
Farmers' Confidence	Has Village Adopted a Measure to Conduct Big Readjustments During the 30-Year Term ?	
	Yes	No
High Confidence in Tenure Security	14.4%	45.2%
Low Confidence in Tenure Security	78.8%	50.5%
Don't Know	6.7%	4.3%
<i>Total Count</i>	104	1164
%	100.0%	100.0%
Five Possible Responses	Has Village Adopted a Measure to Conduct Big Readjustments During the 30-Year Term ?	
	Yes	No
Yes, land readjustments will continue	67.6%	42.2%
No, there will definitely not be land readjustments	3.8%	13.8%
Depends on the Central Government	11.4%	31.4%
Depends on Cadres	10.5%	8.3%
Don't Know	6.7%	4.3%
<i>Total Count</i>	105	1163
%	100.0%	100.0%

n=1268

High and Low Confidence	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	36.942	2	.000

Five Possible Responses	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	36.134	4	.000

Nearly four of every five farmers (78.8%) in villages that have adopted a measure to conduct big readjustments during the thirty-year term express low confidence, while only 14.4% express high confidence. Moreover, the vast majority of farmers in the low confidence grouping expressed the lowest degree of confidence, while only a small proportion of farmers in the high confidence grouping expressed the highest degree of confidence.

4. Land Readjustments Following Implementation of Thirty-Year Land Use Rights

The survey results indicate that seventeen.9% of the villages that have at least begun the process of implementing thirty-year rights have subsequently conducted a land readjustment *following* implementation (again, note that this does not refer to land readjustments carried out as part of the implementation process itself). Not surprisingly, confidence among farmers in these villages is extremely low, with only 28.6% expressing a high degree of confidence while 67.4% fall into the low confidence group (see Table 24, below). By contrast, farmers in villages that have at least begun implementation of thirty-year land use rights, and have not conducted a land readjustment following implementation, expressed a higher degree of confidence (46.0% falling into the high confidence group).

Table 24: The Impact of Readjustments Since the Implementation of 30-Year Land Use Rights on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?		
Farmers' Confidence	Has Your Village Readjusted Its Land Since Implementing 30-Year Land Use Rights?	
	Yes	No
High Confidence in Tenure Security	28.6%	46.0%
Low Confidence in Tenure Security	67.4%	49.5%
Don't Know	4.0%	4.6%
Total Count	224	1025
%	100.0%	100.0%

n=1249

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	24.335	2	.000

5. The Inclusion of Provisions Allowing or
Requiring Land Readjustments in the Thirty-Year
Land Use Right Contract or Certificate

As noted in subsection B.2, above, the signing and issuance of thirty-year land use right contracts or land use certificates increases farmers' confidence in their thirty-year land use rights. However, as shown in Table 25, below, the inclusion of provisions that allow or require land readjustments during the thirty-year term negatively impact confidence relative to those contracts and certificates that do not include such provisions.

A provision allowing land readjustments during the thirty-year term, which is currently included in 38.9% of all issued thirty-year land use right contracts, results in a decrease of approximately 10% in the proportion of farmers reporting high confidence, with a corresponding increase in the proportion of farmers in the low confidence group. Although many fewer contracts contain a provision requiring land readjustments, the impact of such a provision is great, with 84.0% of farmers that possess such a contract expressing low confidence in their rights. The figures with respect to land use right certificate provisions are equally dramatic. The important message to the central government is that the provisions of documents that are issued to farmers as part of implementation of thirty-year rights do matter.

The issuance of thirty-year land use right contracts is required by law. However, many of the currently issued contracts, which may be designed at the county or even the township level, contain deficiencies that threaten to undercut farmers' confidence. Therefore, forthcoming legislation should include detailed requirements concerning the content of thirty-year land use right contracts, which will override inconsistent provisions of existing contracts, and a standardized model contract should be developed and issued by the central government as part of any future campaigns to further implement thirty-year rural land use rights.

Table 25: The Impact of Contract Provisions Allowing or Requiring Land Readjustments on Farmers' Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?				
Farmers' Confidence	Does Contract Contain Provision Allowing Land Readjustments?		Does Contract Contain Provision Requiring Land Readjustments?	
	Yes	No	Yes	No
High Confidence in Tenure Security	41.0%	51.8%	8.0%	51.8%
Low Confidence in Tenure Security	51.7%	42.6%	84.0%	42.6%
Don't Know	7.3%	5.5%	8.0%	5.5%
<i>Total Count</i>	234	326	25	326
<i>%</i>	100.0%	100.0%	100.0%	100.0%
n= 560 n=351				
Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?				
Farmers' Confidence	Does Certificate Contain Provision Allowing Land Readjustments?		Does Certificate Contain Provision Requiring Land Readjustments?	
	Yes	No	Yes	No
High Confidence in Tenure Security	41.5%	52.5%	10.0%	52.5%
Low Confidence in Tenure Security	55.8%	43.6%	80.0%	43.6%
Don't Know	2.7%	3.9%	10.0%	3.9%
<i>Total Count</i>	258	305	20	305
<i>%</i>	100.0%	100.0%	100.0%	100.0%
n= 563 n=325				
Contract Allows Readjustments	Value	Df	Asymp. Sig. (2-Sided)	
Pearson Chi-Square	6.444	2	.040	
Contract Requires Readjustments	Value	Df	Asymp. Sig. (2-Sided)	
Pearson Chi-Square	18.125	2	.000	
Certificate Allows Readjustments	Value	Df	Asymp. Sig. (2-Sided)	
Pearson Chi-Square	8.408	2	.015	
Certificate Requires Readjustments	Value	Df	Asymp. Sig. (2-Sided)	
Pearson Chi-Square	13.814	2	.001	

6. The Failure to Begin Implementation

The survey results show that 14.4% of villages have yet to begin the process of implementing thirty-year land use rights (see Section III.J, above). Confidence levels among farmers in these villages are drastically lower than those of farmers in villages that have at least begun implementation.

Table 26: The Impact of the Failure to Begin Implementation of 30-Year Land Use Rights Upon Farmer Confidence

Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?		
Farmers' Confidence	Has Village Begun implementation of 30-Year Land Use Rights?	
	Yes	No
High Confidence in Tenure Security	42.7%	25.3%
Low Confidence in Tenure Security	52.8%	71.1%
Don't Know	4.5%	3.6%
<i>Total Count</i>	1269	194
<i>%</i>	100.0%	100.0%

n=1463

	Value	Df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	23.233	2	.000

Based on these findings, the central government should continue to exert pressure on provinces to ensure that implementation occurs, and, if necessary, impose sanctions on those provinces or localities that continue to lag.

7. Readjustments Conducted Upon Changes in Village Cadres

All land readjustments undercut farmers' confidence in their thirty-year land use rights. However, the survey results suggest that some reasons for land readjustments have a more dramatic negative impact on farmers' confidence than others. A total of 32 farmers reported that the primary reason for previous land readjustments in their village was a change in village cadres. Among these 32 farmers, thirty (93.8%)

expressed a low degree of confidence in their land use rights, while only 2 (6.3%) expressed a high degree of confidence in their rights. Despite the relatively small sample, this result strongly suggests that forthcoming laws, in addition to explicitly prohibiting land readjustments, should impose harsh penalties, including administrative and perhaps criminal sanctions, on village cadres who take advantage of their assumption of power to arbitrarily conduct a land readjustment.

V. PROVINCE LEVEL FINDINGS

Analysis of the survey results at the individual province level indicates the existence of wide disparities among the seventeen survey provinces with respect to implementation of thirty-year land use rights. A few provinces, notably Guizhou, have made impressive progress towards full implementation of thirty-year land use rights, evidenced by the high proportion of farmers reporting that they have received a thirty-year land contract, high degrees of confidence among farmers, and very few land readjustments following implementation of thirty-year use rights. Guangxi also does well by most, but not all, of these measurements. At the opposite end of the spectrum, several provinces seem to have largely "opted out" of central legal and policy pronouncements concerning rural land, with extremely low rates of issuance of thirty-year land use contracts, widespread adoption of measures to continue land readjustments, low confidence levels among farmers, and ongoing land readjustments. Provinces that fit this profile include Hunan and Jiangxi.

The majority of survey provinces, however, fall into a middle category in which some progress towards implementation has been made, but considerable work remains to be done to approach any measure of "full implementation." Moreover, the unsystematic manner in which implementation efforts have been carried out to date in some provinces, and their impact on farmers' confidence in the reforms, may provide additional obstacles to their eventual completion. This section provides an overview of the province level survey findings related to thirteen important questions.⁴⁶ Related legal and policy implications and recommendations are discussed in Section VI, below.

⁴⁶ Our goal was to receive a total of 100 valid surveys from each of the 17 provinces. In practice, the number of valid survey responses ranged from 75 to 109. A sample size of 100 farmers per province should yield results that are accurate to within +/- 9.8%. For the purpose of comparison with the province level results of the 1999 17-Province Survey, for which the degree of accuracy was also +/- 9.8%, results that fall within a range of +/- 19.6% are expected. Where a comparison of 1999 and 2001 results indicates a range of greater than +/- 19.6%, it is noted in text or footnote.

A. *Previous Readjustments*

As in the 1999 survey, a high proportion of villages have conducted at least one land readjustment under HRS in nearly every survey province.⁴⁷ The two notable exceptions to the rule are Guizhou, in which only 4.3% of survey villages have conducted a land readjustment under HRS, and Guangxi, where the figure is 37.8%. In Yunnan, the province with the third-lowest percentage, the percentage jumps to 66.0% of survey villages having conducted at least one land readjustment. The percentage of survey villages having conducted at least one land readjustment exceeds 70% in all 14 remaining provinces, with five provinces – Hunan (92.4%), Jiangxi (94.1%), Heilongjiang (93.9%), Hebei (94.0%), and Henan (95.4%) – reporting at least one readjustment in more than 90% of villages.

Table 27: Previous Land Readjustments by Province

Province	Has Village Readjusted Land Since Inception of HRS?		
	Yes	No	Don't Know
Hunan	92.4%	3.3%	4.3%
Hubei	70.2%	25.5%	4.3%
Zhejiang	88.4%	7.0%	4.7%
Jiangsu	85.4%	12.4%	2.2%
Jiangxi	94.1%	4.9%	1.0%
Fujian	80.8%	9.6%	9.6%
Jilin	78.9%	17.1%	3.9%
Heilongjiang	93.9%	6.1%	0.0%
Sichuan	76.0%	13.3%	10.7%
Guangxi	37.8%	58.2%	4.1%
Guizhou	4.3%	80.4%	15.2%
Yunnan	66.0%	34.0%	0.0%
Shaanxi	85.0%	11.0%	4.0%
Hebei	94.0%	5.0%	1.0%
Henan	95.4%	2.8%	1.8%
Anhui	87.2%	12.8%	0.0%
Shandong	83.3%	4.9%	11.8%

⁴⁷ A comparison of the 1999 and 2001 survey results indicates that the responses from two provinces fall outside the expected range of error of +/- 19.6%. These two provinces were Guizhou, where 28.6% of farmers reported at least one land readjustment in their village under HRS in 1999, but only 4.3% reported at least one land readjustment in the 2001 survey, a difference of 24.3%, and Yunnan, where the difference was 22.5% (the percentage of farmers reporting at least one land readjustment under HRS increased from 43.5% in 1999 to 66.0% in 2001).

B. The Two-Field System⁴⁸

The 2001 survey results show that wide disparities exist among provinces with respect to implementation of the Two-Field System. Furthermore, a comparison of the 1999 and 2001 survey findings indicates that, with respect to the Two-Field System, the seventeen survey provinces can be divided into three distinct categories: (1) provinces where the Two-Field System is widespread; (2) provinces where the Two-Field System is rare, and (3) provinces where the picture concerning implementation remains somewhat unclear.

Several provinces showed the Two-Field System to be present in more than 15% of survey villages, in both the 1999 and 2001 surveys. These results suggest that the Two-Field System remains widespread in those provinces. These provinces include: Jiangsu (33.7% of survey villages in 1999, 37.5% in 2001), Jilin (thirty.0% in 1999, 22.4% in 2001), Jiangxi (16.8% in 1999, 34.3% in 2001), Shaanxi (45.2% in 1999, seventeen.0% in 2001), Zhejiang (seventeen.8% in 1999, 55.3% in 2001), and Shandong (31.3% in 1999, 65.0% in 2001)

Other provinces reported in both surveys 15% or fewer villages employing the Two-Field System, including: Hubei (10.2% in 1999, 9.7% in 2001), Hunan (0.0% in 1999, 4.4% in 2001), Fujian (1.0% in 1999, 8.7% in 2001), Sichuan (5.1% in 1999, 2.7% in 2001), Guizhou (7.7% in 1999, 13.2% in 2001), Yunnan (4.3% in 1999, 10.2% in 2001), and Anhui (7.7% in 1999, 1.1% in 2001).

The remaining four provinces reported results that were inconsistent in terms of the province's placement in one of the two categories defined above. These provinces included: Heilongjiang (9.5% in 1999, 47.0% in 2001), Guangxi (31.4% in 1999, 1.0% in 2001), Hebei (40.7% in 1999, 5.0% in 2001), and Henan (7.8% in 1999, 22.0% in 2001). There are several possible explanations for these disparities. One possible explanation for this observation is that province policies regarding the Two-Field System have changed in the two years between the surveys. Given that the overall trend with respect to the Two-Field System is for ending, rather than introducing it, this explanation seems more likely to apply to the cases of Guangxi and Hebei, where substantial declines in the percentage of villages employing the Two-Field System are observed.

⁴⁸ On a national basis, the responses to questions regarding implementation of the Two-Field System were consistent with the results of the 1999 survey. However, a comparison of the responses at the province level indicates that, unlike other survey questions, a number of province level responses (namely those from Shaanxi, Zhejiang, Heilongjiang, Guangxi, Hebei, and Shandong), fall outside the expected range of error of $\pm 19.6\%$.

C. *Scale Farming*

Consistent with the overall trend of increases in Scale Farming described in Section III.D, the number of provinces with 10% or more villages reporting current implementation of Scale Farming has increased from four in 1999 to eight in 2001. Zhejiang remains the province with the highest proportion of villages currently employing Scale Farming (34.9%).⁴⁹ The remaining provinces with more than 10% of villages reporting current implementation of Scale Farming are: Jiangxi (33.3%), Heilongjiang (24.0%), Shandong (15.7%), Hubei (14.9%), Fujian (13.9%), Hebei (13.0%), and Guizhou (10.9%).

D. *Re-Contracting to Non-Villagers*

Approximately 20%⁵⁰ of villages in the seventeen provinces currently employ re-contracting of arable land to non-villagers, and an examination of the province level results shows a great degree of uniformity among provinces on this question. In fact, the percentage of villages currently employing re-contracting falls within +/- 10% of the approximate 20% average (for a range of 10.0% to thirty.0%) in 12 of the seventeen provinces. Two provinces – Heilongjiang (38.0%) and Jiangxi (35.6%) – exhibit high degrees of current re-contracting, while three provinces – Hebei (6.1%) Guangxi (2.0%) and Anhui (1.1%) – exhibit low degrees of current re-contracting.

E. *Current Compulsory Planting Requirements*

On a survey-wide basis, current imposition of compulsory planting programs is significantly less common than re-contracting to non-villagers. Nine provinces (Hunan, Zhejiang, Fujian, Jilin, Sichuan, Guangxi, Shaanxi, Hebei, Anhui) had fewer than 6% of villages currently imposing such requirements, and two of these provinces (Fujian and Jilin) did not have a single village currently imposing compulsory planting requirements on farmers. Henan was slightly higher, with 9.2% of farmers reporting that their village currently imposes such a requirement. Compulsory planting does not seem to currently represent a significant problem in these provinces.

⁴⁹ In 1999, 31.1% of villages in Zhejiang reported current implementation of Scale Farming.

⁵⁰ The weighted national figures show that 18.5% of villages in the 17 provinces currently re-contract a portion of their arable land to non-villagers. The unweighted province level figures show that 19.9% of survey villages currently employ re-contracting.

Six provinces (Hubei, Jiangsu, Jiangxi, Heilongjiang, Guizhou, and Shandong) fell within the range of 10-20% of villages currently imposing compulsory planting requirements.

Yunnan has substantially more villages (33.0%) reporting current compulsory planting requirements than the second highest province (Jiangsu, with 19.3%). The survey results indicate that in most cases of compulsory planting in Yunnan, the required crop is tobacco, an important crop for the province's economy. The extremely high proportion of responses in this case, relative to other provinces, indicates that the provincial and central government may need to investigate existing arrangements governing tobacco cultivation in Yunnan to ensure that farmers' rights are not being violated.

F. Land Use Right Transfers

As shown in Table 28, below, land use right transfer markets have developed to varying degrees in all seventeen of the survey provinces. Both the percentage of farmers reporting at least one transfer out and the percentage of farmers reporting at least one transfer in exceeds 15% in nine provinces: Hunan, Hubei, Zhejiang, Jiangxi, Jilin, Heilongjiang, Sichuan, Guizhou, and Shandong.

Table 28: Land Use Right Transfers by Province

Province	Have You Ever Transferred Land Rights?	
	Yes, Transfer Out	Yes, Transfer In
Hunan	18.5%	25.9%
Hubei	24.5%	28.7%
Zhejiang	18.6%	16.3%
Jiangsu	13.6%	15.1%
Jiangxi	40.6%	37.0%
Fujian	28.7%	13.3%
Jilin	19.7%	15.8%
Heilongjiang	15.0%	33.3%
Sichuan	26.0%	15.3%
Guangxi	13.0%	10.0%
Guizhou	43.5%	15.2%
Yunnan	11.1%	9.7%
Shaanxi	14.1%	6.1%
Hebei	7.0%	9.3%
Henan	8.4%	12.0%
Anhui	12.8%	10.6%
Shandong	18.6%	21.4%

G. Implementation of Thirty-Year Land Use Rights

As noted above, the seventeen survey provinces can be divided into three broad categories with respect to progress on implementation of thirty-year land use rights: those that have made impressive progress towards the goal of “full implementation,” those that have largely opted out of central policies concerning rural land use rights by failing to carry out implementation altogether or by implementing the rights in a manner that is inconsistent with central policies, and those that have made some progress towards implementation, but where substantial work remains to be done to meet the goal of “full implementation.” The data presented below in subsections 1-5 and Tables 29-32, present a detailed picture of the nature and extent of implementation of thirty-year land use rights in the seventeen survey provinces to date.

1. Beginning Implementation

With respect to having begun the implementation process, three provinces stand out as notable “laggards” – Hunan and Hebei, where only two-thirds (67.0%) of villages province-wide have begun implementation, and Shandong, where the percentage is slightly higher (69.4%), but remains well below the average for the seventeen survey provinces.

2. Signing and Issuance of Thirty-Year Land Use Right Contracts

Guizhou, where 94.3% of farmers reported signing a land use right contract and all of those who signed a contract had also been physically issued a copy of the contract, has far exceeded all other provinces in terms of both signing and issuance of land use right contracts.⁵¹ Extremely low levels of signed contracts were observed in Henan (27.5%) and Hubei (32.8%).

Failure to issue contracts to farmers upon signing continues to represent a considerable problem, with fewer than seven out of ten signed contracts subsequently issued to farmers in five provinces. Fujian stands out as a problem on this point, with only 37.9% of farmers who have signed a thirty-year land use right contract having been issued a copy of the contract.

⁵¹ And, in fact, due to a provincial policy encouraging implementation of 50-year land use rights in Guizhou, 58.6% of the land use right contracts observed by interviewers in Guizhou were for a term of 50 years.

Table 29: Contract Signing and Issuance by Province

Province	Percentage of Farmers Reporting 30-year Contract Signed	Percentage of Farmers Reporting 30-year Contract Issued	Contracts Issued as a Proportion of Contracts Signed
Hunan	40.2%	27.8%	62.9%
Hubei	32.8%	26.6%	81.0%
Zhejiang	65.9%	45.9%	69.6%
Jiangsu	69.3%	73.3%	103.2%
Jiangxi	41.1%	36.7%	89.2%
Fujian	64.7%	24.8%	37.9%
Jilin	68.0%	46.7%	68.6%
Heilongjiang	54.1%	41.3%	62.3%
Sichuan	70.1%	56.1%	78.7%
Guangxi	44.6%	35.9%	80.5%
Guizhou	94.3%	94.3%	100.0%
Yunnan	87.2%	80.9%	92.7%
Shaanxi	44.2%	32.6%	73.8%
Hebei	42.3%	39.6%	92.7%
Henan	27.5%	23.5%	85.7%
Anhui	56.0%	56.0%	100.0%
Shandong	52.6%	50.0%	95.0%

3. Issuance of Thirty-Year Land Use Right Certificates

Fewer than 50% of farmers have received a thirty-year land use right certificate in eleven of the seventeen survey provinces. As with land use right contracts, the highest percentage of farmers reporting issuance of a thirty-year land use right certificate is found in Guizhou, where 85.1% of farmers have been issued a certificate. One-third or fewer farmers reported certificate issuance in six provinces: Hunan, Jilin, Guangxi, Yunnan, Henan, and Shandong.

Table 30: Issuance of 30-Year Land Use Right Certificates by Province

Province	Have 30-year Land Use Right Certificates Been Issued to Farmers?	
	Yes	No
Hunan	33.3%	66.7%
Hubei	47.7%	52.3%
Zhejiang	69.5%	30.5%
Jiangsu	68.2%	31.8%
Jiangxi	50.6%	49.4%
Fujian	38.6%	61.4%
Jilin	32.4%	67.6%
Heilongjiang	49.5%	50.5%
Sichuan	51.6%	48.4%
Guangxi	23.3%	76.7%
Guizhou	85.1%	14.9%
Yunnan	32.6%	67.4%
Shaanxi	43.2%	56.8%
Hebei	46.3%	53.7%
Henan	24.3%	75.7%
Anhui	50.5%	49.5%
Shandong	29.3%	70.7%

4. Measures Concerning Land Readjustments

Low percentages of villages adopting a measure to continue small land readjustments during the thirty-year term were found in only two provinces, Guizhou (6.8%) and Guangxi (10.8%), suggesting that the implementation programs in these two provinces actively discouraged or prohibited such measures. By contrast, 40% or more villages adopted such a measure in the vast majority of the remaining 15 survey provinces, suggesting that provincial implementation efforts did not seriously attempt to limit small readjustments. The highest incidences of village adoption of a measure to conduct small readjustments during the thirty-year term were found in Sichuan (75.0%), Jiangxi (73.9%), and Hunan (71.6%).

The incidence of a measure to conduct big land readjustments during the thirty-year term was universally lower than a corresponding measure concerning small readjustments, with 10% or more of villages adopting such a measure in only six provinces. However, it must be emphasized that all such measures directly violate Central Committee

Document No. 16 of 1997 and Article 14 of the Land Management Law, both of which expressly prohibit big readjustments. The proportion of villages adopting a measure to conduct big readjustments is particularly troubling in Jiangxi and Shandong, both of which exceed 20%.

Table 31: Village Measures Concerning Readjustments by Province

Province	Does Your Village Implementation Plan Include a Measure to Conduct Land Readjustments During the 30-year Land Use Term?	
	Yes, Small Readjustments	Yes, Big Readjustments
Hunan	71.6%	11.4%
Hubei	62.0%	8.5%
Zhejiang	41.2%	7.1%
Jiangsu	60.2%	5.7%
Jiangxi	73.9%	34.8%
Fujian	57.3%	5.8%
Jilin	37.3%	1.3%
Heilongjiang	39.4%	4.0%
Sichuan	75.0%	10.3%
Guangxi	10.8%	0.0%
Guizhou	6.8%	0.0%
Yunnan	43.4%	5.1%
Shaanxi	48.4%	16.8%
Hebei	53.6%	18.6%
Henan	44.8%	8.6%
Anhui	45.7%	2.2%
Shandong	45.9%	21.2%

5. Readjustments Since 2nd Round Contracting

The percentage of villages reporting at least one land readjustment since implementation of thirty-year land use rights exceeds 20% in seven provinces (Hunan, Jiangsu, Jiangxi, Sichuan, Shaanxi, Anhui, and Shandong), and is highest in Jiangxi (40.9%). It should be noted that a comparison with Table 31, above, confirms that the first four of these seven provinces were among those reporting the highest percentages of adoption of measure to conduct readjustments during the thirty-year term, while the remaining three all are in the still-high range for adoption of such measures.

Table 32: Land Readjustments Since 2nd Round Contracting by Province

Province	Has Your Village Conducted a Land Readjustment Since Completing 2 nd Round Contracting?	
	Yes	No
Hunan	30.1%	69.9%
Hubei	12.5%	87.5%
Zhejiang	16.5%	83.5%
Jiangsu	20.7%	79.3%
Jiangxi	40.9%	59.1%
Fujian	11.1%	88.9%
Jilin	8.1%	91.9%
Heilongjiang	15.2%	84.8%
Sichuan	28.8%	71.2%
Guangxi	2.2%	97.8%
Guizhou	0.0%	100.0%
Yunnan	10.4%	89.6%
Shaanxi	22.3%	77.7%
Hebei	14.7%	85.3%
Henan	16.2%	83.8%
Anhui	20.9%	79.1%
Shandong	29.7%	70.3%

H. Farmer Confidence

With respect to farmer confidence, the findings presented in Table 33 suggest that the seventeen survey provinces can be divided into three distinct categories: (1) five High Confidence Provinces (Jilin, Heilongjiang, Guangxi, Guizhou, and Anhui), where more than 50% of farmers fell into the high confidence grouping; (2) six Low Confidence Provinces (Hunan, Hubei, Jiangxi, Sichuan, Hebei, Henan, and Shandong), where more than 60% of farmers fell into the low confidence grouping; and (3) the five remaining provinces (Zhejiang, Jiangsu, Fujian, Yunnan, and Shaanxi), where confidence levels fall into a middle range.

Table 33: Farmer Confidence by Province

Province	Do You Expect Land Readjustments to Continue During the 30-Year Land Use Term?		
	High Confidence	Low Confidence	Don't Know
Hunan	33.3%	65.5%	1.1%
Hubei	27.3%	68.2%	4.5%
Zhejiang	48.8%	44.0%	7.1%
Jiangsu	43.2%	50.0%	6.8%
Jiangxi	27.2%	70.7%	2.2%
Fujian	39.2%	53.9%	6.9%
Jilin	50.7%	48.0%	1.3%
Heilongjiang	54.5%	45.5%	0.0%
Sichuan	28.8%	62.1%	9.1%
Guangxi	63.4%	30.1%	6.5%
Guizhou	82.8%	12.6%	4.6%
Yunnan	37.8%	54.1%	8.2%
Shaanxi	36.8%	57.9%	5.3%
Hebei	29.5%	70.5%	0.0%
Henan	32.0%	66.0%	1.9%
Anhui	69.6%	28.3%	2.2%
Shandong	23.1%	73.1%	3.8%

The extent of differences between provinces on this basic measure is great, with 82.8% of farmers in Guizhou expressing high confidence, but only 23.1% of farmers in Shandong expressing high confidence. Low confidence was expressed by 12.6% and 73.1% of farmers in these two provinces, respectively.

I. Support for Prohibition of Land Readjustments

When analyzed in terms of the Support or Not Oppose versus Oppose groupings defined in Section III.I, above, the province level data show that a majority of farmers opposes a rule strictly prohibiting land readjustments in only four of the seventeen survey provinces (one of these four, Hubei, is almost evenly divided). Furthermore, a clear majority of 60% or higher falls into the "Support or Not Oppose" grouping in eight of the seventeen provinces.

**Table 34: Attitudes Toward Policy
Prohibiting Land Readjustments by Province**

Province	Would You Support a Rule Strictly Prohibiting Land Readjustments?	
	Support or Not Oppose	Oppose
Hunan	66.7%	33.3%
Hubei	49.2%	50.8%
Zhejiang	65.8%	34.2%
Jiangsu	31.8%	68.2%
Jiangxi	57.0%	43.0%
Fujian	62.9%	37.1%
Jilin	59.5%	40.5%
Heilongjiang	43.8%	56.3%
Sichuan	75.0%	25.0%
Guangxi	56.5%	43.5%
Guizhou	71.6%	28.4%
Yunnan	62.6%	37.4%
Shaanxi	74.7%	25.3%
Hebei	56.7%	43.3%
Henan	57.0%	43.0%
Anhui	35.4%	64.6%
Shandong	60.0%	40.0%

VI. THE 2002 PRC RURAL LAND CONTRACTING LAW – KEY PROVISIONS AND RECOMMENDATIONS FOR IMPLEMENTATION

This section analyzes China's newly adopted Rural Land Contracting Law in light of the survey findings presented in Sections III-V, above. Our analysis addresses three central questions concerning China's ongoing land-tenure reform process: (1) What progress has been made towards implementation of thirty-year land use rights originally embodied in Article 14 of the 1998 Land Management Law?; (2) What advancements have been made by the new RLCL with respect to the key impediments to land tenure security identified by the survey, and what legal and policy issues remain to be resolved through additional reforms?; and (3) What specific steps will be required to achieve effective implementation of the new RLCL?

A. What progress has been made towards implementation of thirty-year land use rights originally embodied in Article 14 of the 1998 Land Management Law?

In terms of the 210 million rural households that comprise the universe of intended beneficiaries, China's ongoing rural land tenure reforms represent the largest such reform program ever undertaken, and the central government's goal of "full implementation" of thirty-year land use rights by the end of 1999 was an ambitious one. Analyzing the detailed picture of implementation presented by the survey from a positive standpoint, the survey results indicate that about 98 million of those farm households have been issued a written land use right contract, and that approximately 85 million farm households currently possess a high level of confidence in their land use rights.

However, by any measurement, substantial work remains to be done before the goal of full implementation of thirty-year land use rights for China's 210 million farm households can be approached. Nearly 15% of villages have yet to even begin the process of providing thirty-year land use rights to farmers, and overall progress towards implementation appears to have slowed considerably since the summer of 1999, when our first survey on implementation was carried out. Over half of all farm households have not yet received a written land use right contract, the issuance of which is explicitly required under the 1998 Land Management Law. Most importantly, most farmers' confidence that they will receive the entire thirty-year land use right term provided for by law free from land readjustments remains low. A majority of farmers continues to express a low degree of confidence in their land tenure security, and nearly half of all farmers (45.8%), believe that land readjustments are inevitable during the thirty-year term. The obverse side of the positive statements made in the preceding paragraph is thus that about 112 million farm households have not been issued a written land use right contract, and that approximately 125 million households do not yet possess a high degree of confidence in their land use rights.

B. What advancements have been made by the new RLCL with respect to the key impediments to land tenure security identified by the survey, and what legal and policy issues remain to be resolved through additional reforms?

The Decision of the Third Plenary Session of the 15th Central Committee, issued in October 1998, called for the drafting of additional

legislation related to rural land use rights. Such legislation has been urgently required, as existing legislative provisions governing rural land tenure had been limited to a few provisions of the 1998 Land Management Law. The process of drafting a comprehensive law on rural land tenure, the RLCL, began as early as January 1999. In June, 2001, the People's Daily reported that the RLCL had been submitted for a first reading by the National People's Congress; the second reading occurred in June 2002; and the third reading and final passage on August 29, 2002. The effective date of the law is March 1, 2003. This section comments on a series of fundamental legal issues that had not been adequately resolved by prior laws and policies.

1. The Rural Land Contracting Law now expressly prohibits land readjustments during the thirty-year land use term, although with certain exceptions that still need further specification through national implementing regulations or policy pronouncements

As long as land readjustments continue, Chinese farmers' land use rights will remain insecure, and the fundamental goals of the land tenure reform process will remain unmet. The survey results confirm that the previously existing legal rules and policy statements intended to strictly limit small land readjustments and explicitly prohibit big land readjustments have proven ineffective. Over half (52.1%) of all villages that have begun the process of implementing thirty-year land use rights have adopted a measure to continue small readjustments during the thirty-year term, and nearly one in twelve villages (8.1%) that has begun implementation has adopted a measure to conduct big readjustments during the thirty-year term. One in 15 contracts that have been issued (6.6%) contains a provision requiring land readjustments during the thirty-year term. Moreover, nearly one in five villages (seventeen.9%) has already conducted a land readjustment since implementation of thirty-year land use rights. These findings constituted a clear signal to the central government that merely restricting land readjustments resulted in a continuation of the status quo.

There had been considerable debate among policy makers as to whether farmers would accept a rule strictly prohibiting land readjustments. The survey results indicated that a majority of farmers would in fact welcome, or would at least accept, such a rule. When asked if they would support a strict prohibition on land readjustments, 57.5% of those farmers who had formed a clear opinion responded in a manner

indicating that they would support or not oppose such a rule, while only 42.5% responded in a manner indicating some degree of opposition to the rule. An important related point is that the level of acceptance of a rule prohibiting land readjustments is even higher in the 15.0% of villages that have not conducted land readjustments under HRS, where farmers who would support or not oppose such a rule outnumber farmers who would oppose such a rule by a margin of 2:1. In these villages, a prolonged period of time without land readjustments has not resulted in increased pressure for readjustment, but rather has resulted in increased support for a prohibition on land readjustments.

Moreover, China's accession to the WTO now provides the challenge of increased competition with the world's developed agricultures, such as the United States, Europe, and Australia-New Zealand. At the same time, it also provides an increased opportunity to export many agricultural products for which China should have a "comparative advantage" in production, to all of the other WTO members. It had become increasingly clear that, to both meet the challenges and maximize the opportunities presented by WTO accession, Chinese farmers must enhance their productivity and efficiency. Land readjustments, and the extremely high degree of land tenure insecurity associated with them, by inhibiting investments in the land and associated improvements in efficiency, currently represent the greatest obstacle to Chinese farmers' ability to compete in the international agricultural marketplace. Ending land readjustments should, by contrast, allow China's farmers to quickly join the ranks of the world's most productive and successful agricultures.

The vector resultant of these and other considerations is a set of provisions in the RLCL that moves substantially beyond previous laws and policies to restrict any further land readjustments. The basic rules governing land readjustments can be found in RLCL Articles 27 and 28. With respect to the circumstances under which land readjustments may be conducted, Article 27 states that "[D]uring the contract term, the contract issuing party *shall not readjust* contracted land"(emphasis added). It provides exceptions to this general prohibition on land readjustments during the contract term ". . . only in cases where a natural disaster has seriously damaged contracted land or other special circumstances." The combined intent of these two articles to strictly limit land readjustments is clear. However, the question of which specific circumstances rise to the level of "other special circumstances" under Article 27 requires further clarification in implementing regulations in order for this intent to be realized.

Even in cases that meet these very limited exceptions, only small readjustments (“ . . . appropriate readjustments between isolated households . . .”) are permitted. Moreover, prior to conducting any such readjustment, the approval of 2/3 of the members of the Village Assembly or 2/3 of the Villager Representatives, as well as the approval of the township government and the county government administrative unit responsible for agriculture must be obtained. Importantly, Article 27 also requires that any land use right contracts stipulating that readjustments shall not be conducted during the contract term must be honored.⁵² To further protect the land tenure security of households in villages where readjustments will be conducted in accordance with the strict exceptions created by Article 27, Article 28 requires that any available flexible land, reclaimed land, or land that has been voluntarily returned by contracting parties in accordance with law must first be utilized before any land that is under contract to households can be readjusted.

Closely related to Article 27’s validation of contracts containing prohibitions on land readjustment, Article 55 explicitly invalidates any provisions of land use right contracts that violate mandatory rules in law or administrative regulations with respect to land readjustment. Our survey research found that 6.6% of previously issued land use right contracts contain a clause requiring land readjustments during the contract term.⁵³ Such a contract clause is clearly invalidated by this provision of the law, meaning that approximately 6.5 million households previously subject to mandatory land readjustments will instead hold their land use rights subject to the strict limitations on land readjustments provided for under RLCL Articles 27 and 28.

Besides including provisions in written contracts requiring or permitting land readjustments, some villages also adopted measures, as part of the implementation process, to conduct future land readjustments (see discussion in Section IV, above). Since these decisions to conduct future land readjustments were neither made in light of the new RLCL rules governing land readjustments, nor take into account the law’s

⁵² The results of our 17-province survey conducted in August 2001 indicate that 46.7% of farm households possess a written land use right contract. Of these, 8.8% contain a prohibition on land readjustments during the contract term. Projected to the 98 million out of China’s total of 210 million rural households, this provision alone serves to guarantee the land use rights of nearly 8.5 million households against any future land readjustments. A proportion of the written contracts expected to be issued to the remaining farm households are likely to contain a similar provision.

⁵³ An additional 38.9% of land use contracts contain clauses that allow, but do not require land readjustments during the contract term. Fieldwork conducted by the authors indicates that a large proportion of these clauses may also have been in violation even of the previous, ore permissive rules governing land readjustments as embodied in Land Management Law Article 14. And far more of them are likely to be inconsistent with RLCL Articles 27 and 28, and therefore deemed invalid under RLCL Article 55.

procedural requirements, all such measures are clearly in violation of RLCL Articles 27 and 28. Because of their illegality, any such readjustments are subject to injunction or reversal under RLCL Article 54.2. The full series of impressively detailed provisions addressing remedial measures and penalties for violations of farmers' land use rights, including illegal land readjustments, are discussed in subsection 4, below.

2. The Rural Land Contracting Law now contains a series of provisions that confirms contracting households' ability to engage in transactions involving their rights, and defines the breadth of farmers' land use rights

- a. *Land Use Right Transactions*

Prior to the RLCL's adoption, transactions involving rural land use rights were permitted "in accordance with law." However, no specific provision of any law, including both the PRC Constitution and the Land Management Law, provided any guidance with respect to the scope of this right. The survey results found that nearly all farmers (94.0%) believe that they possess the right to transfer their land use rights to another villager, and the vast majority (84.3%) believes that they possess the right to transfer their rights to a non-villager. Similarly high percentages of farmers believe that they should possess these rights (93.4% and 87.9%, respectively). The highest degree of confidence in land use rights is found among those farmers who believe that they may transfer their land, either to other villagers or to non-villagers, without obtaining the approval of the collective landowner or registering the transfer.

Separate from the issue of transfers, the question of assignment of the entire remaining term of rural land use rights had not been previously addressed in any national laws or policies. On this issue, the survey found that approximately half (48.0%) of farmers believe that they currently possess assignment rights,⁵⁴ and 62.0% believe that they should possess such a right. And, as with transfer rights, farmers who believe they possess the right to assign the entire remaining land use term have a higher degree of confidence in their land use rights than those who do not believe they possess such a right

In recognition of the legal vacuum that previously existed with respect to land use right transactions, and farmers' strong preferences for

⁵⁴ Compared to only 27.5% who believed that they possessed such a right as part of the 1999 survey.

transaction rights expressed in the survey findings, the RLCL now provides a detailed framework for transactions in rural land use rights. A broad range of transactions is permitted under Article 32, which states: “[R]ural land contracting and operating rights obtained through household contracting may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law.” Article 37 requires that a written land transfer contract between the parties be executed, and sets forth basic content requirements for all such contracts. It further requires that the approval of the contract-issuing party must be obtained in cases of assignment, while only notification of the contract-issuing party is required for all other transactions. Article 39 exempts transfers of less than one year in duration from the requirement that a written contract be executed.

The survey results indicate that a fledgling market for rural land use rights already exists in China, with 18.3% of farmer respondents having transferred out land use rights on at least one occasion, and 16.8% of farmer respondents having transferred in land use rights on at least one occasion. The great majority of these past transfers, however, were short-term and not embodied in a written contract. The RLCL’s provisions on land right transactions, combined with the greater security of tenure enjoyed by farmers as a result of the new law’s restrictions on land readjustment, should facilitate the development and standardization of markets for long-term transfers of land use rights.

The existence of such markets should greatly increase land values and create substantial wealth for China’s farm households. Recent fieldwork interviews conducted by RDI with farmers in other Asian developing countries with similar population pressure on land resources indicates that the market value of thirty-year rights to arable land in China should end up, as the market develops, to be roughly within the range of RMB 30,000 to 38,000 (US\$3,500 - 4,500) per hectare.⁵⁵ The 135

⁵⁵ This value is for agricultural uses only, and is calculated based on the following considerations: First, the comparison is made only with countries whose overall level of economic development, as roughly measured by GNP per capita, is not higher than China. That is, it would not be useful to compare the market value of cropland in Japan or South Korea with that of China. Second, the specific examples used for comparison are (1) Karnataka State of India, where the average value of non-irrigated cropland was reported as equal to roughly 20,600 RMB (roughly US \$2,500) per hectare, in a survey of 400 households conducted in 2001; (2) West Bengal State of India, where the average value of non-irrigated cropland was reported as roughly 41,200 RMB (roughly US \$ 5,000) per hectare, in a survey of 500 households conducted in 2001; and (3) East and Central Java, in Indonesia, where the average value of rain-fed rice land was found to be equivalent to roughly RMB 82,700 (roughly US \$ 10,000) per hectare, based on field interviews conducted in 2000 and estimates made by the National Land Agency of Indonesia in 2002. Third, the middle valuation figures of these three comparable settings (West Bengal, at RMB 41,200 per hectare) was used to

million hectares of arable land, nearly all of it “dead capital” up until now,⁵⁶ should thus attain a total realizable value in farm households' hands of somewhere between RMB 4 and 5 trillion (US\$ 500 to 600 billion). A functioning land transfer market will not only result in gradual and voluntary re-allocation of land resources to the most efficient users, but should also allow those households who want to transition out of agriculture to realize the value of their land rights and invest that value in a variety of non-agricultural pursuits.

*b. Other Issues Impacting the Breadth of
Farmers' Land Use Rights*

Beyond the transactability of rights, the survey also asked farmers what would happen to their land use rights upon changes in household registration and whether their rights could be passed to their children through inheritance.

(i) Household Registration Changes

Until as recently as several years ago, most villages in China took back the land use rights of any villager whose household registration status changed from rural to urban. This land was then added to the pool of land that could be distributed to newly added village members as part of the next land readjustment. According to the survey results, however, well over half (59.3%) of farmers now report that they have the right to retain their land use rights upon changes in household registration status. A clear majority of farmers (56.5%) believe that rural land use rights should incorporate this right. As with the other rights described above, farmers who believe they possess this right also express a much higher degree of confidence in their land use rights than farmers who believe that their land will be taken back upon changes in household registration status: 48.5% of farmers who believe they possess this right express high

produce a relatively conservative estimate of the value of China's land at RMB 40,000 per hectare. Fourth, the RMB 40,000 per hectare figure was multiplied by China's 135 million hectares of arable land for an overall value of RMB 5.4 trillion. Fifth, the overall total was discounted to reflect the fact that rights held in China are 30-years in duration, in comparison to the full private ownership rights held by farmers in the other three settings. Depending on the discount rate employed, 30-year rights should have, as of the beginning of the term, approximately 75-95% of the economic value of full private ownership rights. Therefore, the range of value per hectare falls between RMB 30,000-38,000 per hectare, or roughly US\$3,500-4,500 per hectare.

⁵⁶ The phrase “dead capital” was introduced by Hernando de Soto in his book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, referring to real estate for which there is no legal-system definition of clear and transactable individual private rights, and therefore little or no market value.

confidence in their land tenure security, compared to 27.5% of farmers expressing high confidence where they believe they do not possess this right.

RLCL Article 26 provides important protections to farmers' rights in cases where household registration changes from rural to urban, but also leaves one important question for further interpretation in implementing regulations. Article 26 first states the general principle that "[D]uring the contract term, the contract issuing party may not take back the contracted land." A narrow exception to this principle is created, however, where the "entire household of the contracting party moves to the city and changes household registration to non-agricultural registration," in which "the contracting party shall surrender his contracted . . . land . . . to the contracting party." Here, the problem is that this exception must be explicitly clarified so that any potential transferee who wishes to acquire a multi-year interest can be assured that the rights obtained through transfer would be protected even where the entire household of the transferor thereafter moves to the city and changes to non-agricultural registration. This assurance is of critical importance if the basic policy of the RLCL to facilitate transactions in land-use rights is not to be severely undermined. We recommend that implementing regulations explicitly state that, in cases where the original contracting party has transferred out its rights to its land, and subsequently changes registration from rural to urban, those transferred use rights will continue to be enjoyed by the transferee, for the remaining term of the transfer.

Such a resolution of this issue would conform with the general civil law principle, applicable in Chinese Law, that "sale does not damage lease". For the purpose of applying this principle, the voluntary action of the original contracting party in moving the entire household to the city and changing to non-agricultural registration, leading to surrender of the contracted land to the contract issuing party, is a relinquishment of its use rights to the land functionally equivalent to a sale. But if there has been a prior transfer of a portion of those use rights by the original contracting party through lease (or through one of the other transactions described in RLCL Article 32, other than assignment⁵⁷), then the contract issuing party receives back the contracted land subject to the use rights already transferred by such a lease (or other transaction). Thus the surrender of

⁵⁷ RLCL Article 32 provides: "[R]ural land contracting and operation rights obtained through household contracting may be transferred, leased, exchanged, assigned, or transacted by other means in accordance with law." The term "transfer," as employed by Article 32 refers to a transaction between two households within the same collective economic entity involving less than the full remaining term of rights. The term "lease," as employed by Article 32, refers to a transactions between members of different collective economic units involving less than the full remaining term of rights.

contracted land by the original contracting party to the contracting issuing party cannot damage the use rights already transferred to another party by a lease or other transaction.

This result, moreover, is consistent with that required by the RLCL for assignees. RLCL Article 41 clearly protects the land use rights of assignees in cases where the entire household of the assignor subsequently moves to the city and changes to non-agricultural household registration. This is true because, under Article 41, a new contracting relationship is formed between the assignee household and the contract issuing party, and a termination of the contracting relationship between the contract issuing party and the original contracting party takes place. Thus the household that originally received the land use rights entirely ceases to be a “contracting party”, and its subsequent move to the city is irrelevant under Article 26.

(ii) Inheritance Rights

Slightly more than two-thirds of survey farmers (67.5%) believed they currently possess the right to pass their land right to their children by inheritance, and 71.1% expressed that they should possess this right. Most importantly, as described in Section IV, above, farmers who believed that their land use rights may be passed by inheritance expressed a much higher degree of confidence in their land use rights than farmers who do not believe their land rights are inheritable; 45.7% of farmers who believed that their land is inheritable express high confidence in their land use rights compared to a high confidence level of only 23.2% among farmers who did not believe their land use rights include inheritance rights.

The RLCL's adoption provided an opportunity to explicitly state that farmers' land use rights could be passed through inheritance. Under RLCL Article 31, “[T]he interests deserved by the contracting party may be inherited in accordance with the Inheritance Law.” However, the meaning of the phrase “the interests deserved by the contracting party” remains unclear, specifically with respect to whether these interests mean the remaining contract term or merely compensation for any investments made on the land by the contracting party. If the former, then protection of farmers' inheritance rights will be achieved under this provision. If the latter, however, the RLCL would fall far short of farmers' expectations and preferences concerning inheritance. A definitive interpretation of this language will be required in implementing regulations.

(iii) Mortgage Rights

The survey found that only about one in eight farmers (12.3%) believed that they had the right to mortgage their contracted land, and roughly one-third (32.3%) believed that they should possess such a right. The RLCL does not authorize mortgage of contracted arable land use rights, and such mortgages therefore remain explicitly prohibited under Article 36 of the PRC Guaranty Law.

3. The Rural Land Contracting Law now contains basic content requirements for land use right contracts embodying the initial thirty-year right and contracts entered into as part of a transaction involving thirty-year land use rights

Both the 1999 and 2001 seventeen-Province surveys, as well as fieldwork conducted by the authors in 14 provinces since implementation of thirty-year rights began, have revealed a great deal of variation in the content of thirty-year land use right contracts. The most significant issue on which a considerable degree of variation has existed is that of land readjustments during the thirty-year term. As noted in subsection 1, above, RLCL Article 27 requires that contract provisions prohibiting all land readjustments must be honored; and Article 55 invalidates all contract provisions concerning land readjustments that do not conform with RLCL Articles 27 and 28. The Article 55 provision clearly strikes down all contract provisions mandating readjustments, and probably invalidates most contract provisions that explicitly permit readjustments.

However, a number of other features of thirty-year land use contracts also exhibited substantial variation in the surveys. To address this issue, RLCL Article 21 has established a set of minimum core requirements for all thirty-year land use right contracts, including the following:

1. The names of the contracting issuing party and the contracting household, and the names and addresses of the person responsible for contract issuance and the representative of the contracting household;
2. The name, location, area, and quality of the contracted land;
3. The contract term, including the starting and ending dates;

4. The use of the contracted land;
5. The rights and obligations of the parties to the contract; and
6. Liabilities for breach.

As discussed in subsection 2, above, the new RLCL further requires the parties to any transaction involving land use rights of one year or longer to execute a written contract. Article 37 sets forth basic content requirements—which parallel those for the thirty-year use right contract, with appropriate modifications—for any such contract: the term is that of the particular transaction, and the transaction price and method of payment are to be stated.

The survey findings have shown that written land use right transfer contracts were not previously executed in the vast majority of transfers. Many farmers will lack the ability to draft contracts that meet even the basic requirements stipulated by Article 37. Therefore, we recommend that a standardized land use right transfer contract be developed at the national level and made available to all farm households wishing to enter into a transaction involving their land use rights.

4. The RLCL contains detailed rules prohibiting schemes that have been utilized by local officials to deprive farmers of their land use rights, as well as a series of well-articulated remedial and penalty provisions

In anticipation of WTO accession, several central government policy pronouncements encouraged crop diversification and agricultural restructuring as strategies to increase the productivity and competitiveness of Chinese agriculture. These well-intentioned strategies, however, often led to the development of local schemes based not on long-term national economic development objectives, but rather on short-term personal financial gains by local officials. The ability of local cadres to successfully carry out these schemes, most notably through the practices of re-contracting land to non-villagers as well as implementation of various forms of Scale Farming, is usually dependent on the cadres' ability to deprive farmers of their land use rights without having to provide compensation and free from the threat of punishment.

The RLCL contains a series of provisions (including Articles 34, 35, 36, 53, 54, 57, and 58) that specifically prohibit these types of

violations of farmers' land contracting rights by local officials and impose harsh civil penalties:

- Article 34 states clearly that “[T]he contracting party shall be the unit for transactions involving land contracting and operation rights. The contracting party possesses the legal right to decide for one’s own as to whether or not to transact land contracting and operation rights, and as to the form of the transaction.”

- This is reinforced by Article 35: “During the contract term, the contract issuing party shall not unilaterally terminate the contract, or make use of the minority submitting to the majority to compel the contracting party to relinquish or alter its contracting and operation rights, or under the guise of delineating ‘consumption land’ and ‘responsibility land’ take back contracted land for contracting through auction, or take back contracted land to offset the money that the contracting party owes.”

- Article 36 prohibits local officials from intercepting or demanding any of the proceeds from transfers from the transferor.

- Article 53 subjects any unit or individual who violates the contracting and operation rights of contracting parties to civil liabilities.

- Importantly, Article 54 specifies the types of violations that are subject to penalties, including “. . .interfering with the legally protected production autonomy of contracting parties. . .violating the rules concerning the taking back or readjustment of land as provided for by this law. . .compelling or preventing contracting parties from engaging in transactions of land contracting and operation rights. . .compelling contracting parties to surrender or alter their contracting rights for transfers of such under the guise of the minority obeying the majority. . .and other behavior that violates the contracting and operation rights of contracting parties.”

- Under the same provision, any such violations are subject to injunction, restitution, restoring the situation to its original condition, compensation in the form of monetary damages, and other civil liabilities.

- Article 57 invalidates any transfers of land contracting rights that were compelled by local officials.

- Article 58 requires that any proceeds from transactions involving land contracting rights that are intercepted by local officials must be returned to the contracting parties.

- Importantly, in any cases where farmers believe their rights have been violated, they may directly file suit in the People's Court under Article 51.

5. The RLCL contains provisions designed to protect women's land rights

Although women's rights to land in China have, in theory, always been equal to those possessed by men, the combination of household-based contracting and patrilocal practices throughout most of rural China have meant that women have been disproportionately impacted by the practice of land readjustments. RLCL Articles 6 and 30 take a number of important steps towards protecting women's rights. First, Article 6 explicitly states that "[M]en and women shall enjoy equal rights with respect to the contracting of rural land. The legal rights of women shall be protected in the contracting process, and women's rights to contracting land shall not be deprived or illegally restricted by any unit or individual."

Second, Article 30 protects women's rights to land under the new no-readjustment rule embodied in RLCL Article 27 by stating that "[D]uring the contract term, when a married woman has not received contracted land in her new village of residence, the contracting issuing party may not take back her originally contracted land. . ." Third, Article 30 further provides rules that ensures that women who are divorced or widowed will maintain their right to a share of 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." Under past practices, divorced or widowed women were not guaranteed to retain land in their husband's village, and often returned to their original village to find that their share of land had been taken away as part of a land readjustment.

- C. *Given the adoption of the RLCL, what specific steps will be required to achieve “full implementation” of farmers’ newly-defined land use rights?*

The survey findings indicate two important points that should be emphasized with respect to “full implementation” of thirty-year land use rights. The first is that, in consideration of the massive scale and significant complexity of the task, provision of thirty-year land use rights to fully 100% of China's 210 million households can only be realistically viewed as a long-term policy objective. The second is that “full implementation” should not be measured in terms of simple compliance with the legal requirement of contract issuance. Rather, it should be evaluated on the basis of whether the underlying goals of the thirty-year land use right policy – long-term tenure security for farmers – have been met. Therefore, implementation should not be considered complete unless farmers express high degrees of confidence in their land use rights.

Significant progress on the issues of both contract issuance and farmer confidence has already been made, with nearly half of all farmers possessing a written land use right contract and four in ten farmers expressing a high degree of confidence in their land use rights. Given the adoption of the new RLCL, we propose that the central government establish the short-term goal of issuing a thirty-year land use right contract (in conformity with the requirements outlined in the new law) to at least 80% of farmers nationwide, and ensuring that at least 75% of farmers nationwide express a high degree of confidence in the rights embodied in those contracts. The eight steps outlined below would assist in realizing this ambitious, but attainable goal.

1. Formulate and issue national implementing regulations

Implementing regulations will be necessary to further interpret several provisions of the RLCL. The most important of these is the meaning of “other special circumstances” under Article 27. However, clarification of the rights of transferees in cases where the original contracting household changes its registration from rural to urban, and of provisions governing inheritance, will also be necessary. RLCL Article 64 states that “[T]he Standing Committee of the People’s Congress of each province, autonomous region and province-level municipality may promulgate implementing regulations in accordance with this law and the practical situation in its administrative jurisdiction.” However, the wide variations among provinces with respect to prior implementation of

thirty-year land use rights strongly suggests that simply delegating the task of drafting implementing regulations to the individual provinces will lead to similarly disparate interpretations of the RLCL, many of which are likely to undercut the law's central objective of providing secure land tenure to farmers. The central government should forestall this possibility by issuing national implementing regulations prior to the RLCL's March 1, 2003 effective date.

2. Conduct a comprehensive publicity campaign

It is vital that the law's adoption be followed by a detailed, repetitive publicity campaign targeted at educating both local officials and farmers regarding the new rules. A variety of media should be used, but the two seventeen-province surveys on the implementation of thirty-year land use rights under the LML indicate that television is the most effective medium for communicating to farmers. Importantly, the subjects covered by the publicity campaign should include both information as to the transferability of farmers' land-use rights, as detailed in the law, and information as to the existence and means of using the RLCL's vital provisions on dispute resolution.

3. Monitor implementation

A comprehensive program should be established to monitor implementation of the new rules, including both direct field interviews with farm households (using Rapid Rural Appraisal methods) and an updated random sample questionnaire survey to be conducted using methodology that provides a highly detailed and accurate picture of implementation nationwide. Such a survey might best be carried out both in mid-2003, to assess the early effects of the publicity and the early stages of implementation by local officials, and again in mid-2004. The results should be quickly conveyed to policymakers at both the provincial and national levels, to provide them with information concerning the extent and nature of implementation of the new law, and to help them in developing targeted solutions to problems relating to implementation that are discovered as a result of monitoring efforts.

4. Establish telephone hotlines to receive and process farmer complaints

Closely related to the monitoring function, the central government should establish a system for receiving and processing farmers complaints

related to illegal land readjustments and other violations of farmers' land-use rights. The establishment of telephone hotlines at the province level would be a simple, low-cost, yet effective way to meet this objective.

Calls placed by farmers to these hotlines should be toll-free, and hotline personnel should be utilized who have been given intensive training on the legal rules governing land readjustments. Any complaints that pass initial screening should be passed along to the administrative unit responsible for agriculture at the province level (perhaps a special office set up in that unit to investigate such complaints), who should immediately follow up such complaints. Hotline personnel should also keep a running documentary record of each call received, the village to which it relates, and the nature of the complaint, and a monthly compilation should be transmitted to authorities at the center. "Hot spots" shown in the hotline reports should also receive special attention, including flagging for Rapid Rural Appraisal field interviews and possible application of preventative or penalty measures under Chapter 4 of the RLCL.

5. Improve dispute resolution mechanisms

Chapter 4 of the RLCL, on Dispute Resolution and Legal Liabilities (Articles 51 through 61), provides an extensive set of tools to ensure that farmers in fact will enjoy long-term and secure land-use rights, and that the rule of law on these issues will be effectively implemented in the countryside. Initially, the content of these provisions should be widely publicized to farmers. Then, as experience is gathered in the early months of actual implementation, TV programs may be used to publicize the most common kinds of violations found, and actual cases of penalizations and remedies.

Procedures should be developed to take full advantage of the fact that illegal readjustments of farmers' land can not only be reversed, under Chapter 4, but can also be prevented, if advance information is obtained and acted on in a timely way.

6. Provide legal aid services to farmers

At least pilot projects should be developed to provide legal-aid services to farmers in order to protect and vindicate their land-use rights under the RLCL. The functions of legal-aid personnel should include representing farmers before the Peoples' Court or before an arbitration body, as well as in consultation or mediation efforts that may precede litigation or arbitration where the farmer so desires (see Article 51).

Legal-aid personnel can also serve as a more detailed source of publicity and information as to farmers' rights than that provided through TV or other general media.

Initially, legal-aid pilot projects probably should be focused in locations where there has been relatively poor implementation of farmers' land-use rights, as reflected by monitoring results and hotline complaints. Existing information from field interviews and survey research (see Section V) already allow preliminary identification of a number of such locations.

7. Improve registration of land-use rights and transfers

Another subject on which at least pilot projects should probably be undertaken is the registration of land-use right certificates and of the transfers of such land use rights for periods of one year or more.

In contrast to legal aid, such pilot projects should be focused in locations where there has been strong implementation of farmers' land-use rights, and the preconditions for reliable longer-term transfers of such use rights from one farm household to another farm household have therefore been established.

8. Train local officials

Many of the measures and activities described above involve the need to train personnel and local officials with respect to the provisions of the RLCL and their implementation. Such training will be needed for "front line" officials engaged in implementation both in the collective entity and at levels above the collective, and for specialized officials who may play a particular role in implementation, including hotline operators, Peoples' Court judges, arbitrators, legal-aid providers, and registration officials.

It is our strong impression from extensive work in China that the central government wants the RLCL to be effective. With a workable set of implementation measures, as just outlined, the 80% contract issuance and 75% high confidence goals we suggest above should be well within reach.

