Review and Prospect of China's Rural Land System Reform

Zhang Yunhua, Ph.D, Research Fellow
Development Research Center of the State Council, PRC
E-mail: zhangyunhua@drc.gov.cn
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Introduction

✓ Over the past three decades or so, China has achieved one of the biggest successes in economic development in the world, with an astonishing average GDP growth rate of 9.8% per year between 1979 and 2008.

✓ Among key initiating factors behind this enormous growth, were dramatic reforms in the legal framework governing property rights to land.

✓ Such reforms have given rise to a new rural land system characterized by maintaining collective ownership while, crucially, allowing possession by individual farmer households of use rights to this collectively owned land.

✓ It is well recognized that China’s path to one of the largest economies in the world prominently includes this reforms on China’s system of property rights to land.
1. Review and comment on China's Rural Land System Change

Since the founding of New China, China's rural land system has undergone three major changes:

- First, the early 50s of last century agrarian reform ended the feudal landlords of land ownership, land to the tiller achieved.
- The second is the mid-50's transformation of individual ownership of land to the farmers collective ownership of land.
- Third, the late 70s after the rural reform, implemented the Household Responsibility System (HRS). A mechanism was created, with a feature of separation of use rights to land from ownership of land in which the collective entity would continue to hold ownership but use rights to land would be allocated to members of the collective for individual farming.
The fundamental nature of collective farming brought China’s rural economy to the edge of collapsing. In 1977 per capita grain production in China was lower than that of 1956.

China started to explore the rural reform path in the late 1970's. Landmark significance is that a group of poor farmers in Anhui Province, driven by the need for survival, invented a land contracting system in which collectively owned land was contracted to participating farmers for private farming.

A mechanism HRS was created, with a feature of separation of use rights to land from ownership of land in which the collective entity would continue to hold ownership but use rights to land would be allocated to members of the collective for individual farming.

The initial results were striking, as grain production increased by 8.6 percent per year during the first years of HRS, in 1980-84. Between 1979 and 1984, average net income for rural residents increased by 11 percent annually, compared to an average annual increase of 8.7 percent for urban residents, narrowing the income gap between urban and rural residents from 3.03:1 to 2.49:1.
2. The main features of China's current rural land system

- The land system usually based on "ownership" of the form is divided into three categories: private ownership, state ownership and collective ownership.

- China's "Constitution" stipulates that land in rural and suburban areas, except by a law other than those belonging to the state, are collectively owned. That is to say, in China, no private ownership of land, only the state ownership and collective ownership of these two forms.

- China's rural reform has been gradually formed with Chinese characteristics, suitable for China's national conditions of agricultural land system, rural collective ownership of land ownership, farmers were increasingly stable land use rights.
Firstly, policy and law continue to strengthen the HRS.

- After the Third Plenum of the Eleventh CPC Central Committee, a series of policy documents on this system confirmed, refined, consolidated and improved.

- The first law that governs farmers’ individual land rights is the revised Land Administration Law, adopted in 1998. The law legally ratifies the policy provisions on granting to farmers 30-year rights and states that such 30-year land rights are “protected by law”.

- The Rural Land Contracting Law carries this spirit further. Under the RLCL, farmers’ land rights are categorized as “contracting and operation rights” to all categories of farmland, including arable land, forestland and grassland, and to wasteland.

- The Property Law further strengthened the legal contract system of agricultural land.
Secondly, enhancing land rights for farmers.

- Under the *Rural Land Contract Law* (RLCL), farmers’ land rights include “rights to use, profit from, and transfer land contracting and operation rights, and the right of autonomy over production and operations, and disposition of products” and “the right to receive the corresponding compensation” for the land taken by the state or collective for non-agricultural purposes.

- *Property Law* further defined the peasants’ right to land contractual management is a usufructuary right.

- The RLCL further states that farmers’ land rights “may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law”.
Thirdly, protection of farmers’ land rights against readjustment and provisions on dispute resolution.

- China has over the last decade taken decisive legislative steps in attempting to curtail land readjustments. The first law containing provisions on land readjustment is the *Land Administration Law* (LAL). It prohibits village-wide big readjustments while allowing small readjustments.

- RLCL introduced additional important restrictions on land readjustments. It establishes a basic principle of no readjustment within the 30-year contract period and allows limited readjustments only under “special circumstances.”

- A very important advance in the RLCL is its well-crafted provisions on dispute resolution channels and remedies available for farmers when their land rights are violated.
Fourthly, conducting documentation and registration of rural rights.

- International comparative experience has demonstrated that documentation of farmers’ land rights tends to strengthens farmers’ confidence about their property, and enhances transparency and predictability, thus stimulating investment and facilitating land market development.

- The benefits of documentation and registration of collective ownership appear to have been recognized by the Chinese legislature. The LAL provides that the collective land owner may apply for registering its ownership with people’s government at county level for affirmation of its ownership.
3. Challenges and Prospects of China's Rural Land System Reform

- First, Resolve ambiguities concerning the nature of collective ownership.
  
  - The law does not answer the fundamental question of who should actually control the land within a geographic area. In addition, ambiguities exist even as to the specific entity responsible for collective ownership of land.

  - Collectively owned land should be clearly defined as jointly owned by all members of the collective. Collective land ownership should be established at the villager group, the level closest to and probably most responsive to farmers.
Second, the duration of agricultural land use rights was not sufficiently clear, the farmers should be given the integrity of the land of permanent property.

- Based on *Property Law*, when the 30-year contract period after the expiry of the right to land contractual management can continue to contract in accordance with relevant state regulations. But the country has not yet introduced in the future on how to continue contracting policy.

- It should be clearly announced as soon as possible of the land contracted by farmers the right to permanent use. Meanwhile, farmers land tenure, use rights, usufruct and disposal of the powers and functions such as the right to perfect in order to overcome the current shortcomings of the farmers land ownership incomplete.
Third, place clear and unambiguous restrictions on land readjustments.

- Land readjustment has remained a serious threat to farmers’ tenure security despite the repeated efforts by the central government to tighten up controls. Its continuing existence is facilitated by legal ambiguities.

- Two options exist. One is to spell out in clear and narrowly-drawn detail the conditions under which “special circumstances” could be asserted as grounds for a readjustment. A second option, and the clearest, strongest, and most readily communicable and monitorable approach would be to a complete prohibition of all readjustment of farmers’ contracted land, without exception.
Forth, Allow mortgaging of arable land rights.

- Because of the prohibition of mortgage of arable land rights under Chinese laws – reinforced by the new *Property Law* – none of this property with tremendous potential value can as yet be used to improve farmers’ access to credit.

- *Allowing mortgages on arable land will greatly improve the value of rural land and encourage both investments and transactions in land. It is therefore strongly recommended that the prohibition of mortgage of farmers’ land rights under the 1995 Guaranty Law be repealed through further legislation.*
Fifth, design a uniform land contract and certificate.

Currently, land contract and land certificates are designed by each province or even at the county level, or indeed, sometimes even at the township level - resulting in a wide variety of deviations from the law that reduce or nullify the legal force of such documents.

We recommend that a uniform land contract and land certificate be designed in a way that the core provisions of RLCL be included, such as the 30-year term, the general principle of no readjustment, the breadth of farmers’ land rights, penalties for violation of farmers’ land rights, etc.
Sixth, Reform the unreasonable land requisition system.

- The challenge for the future will be to find better tools that limit the hardships experienced by affected individuals and communities, while enhancing the efficiency and effectiveness of development interventions in the public interest.

- Reform the existing legal regime on government expropriations by (a) narrowing the scope of land expropriation by clearly defining “public interests” and (b) making rural construction land marketable. Adjust existing approaches for the calculation of compensation, moving towards the introduction of a transparent and market value-based system that provides equivalence and fairness in compensation for all categories of land taken. Improve land takings procedures to guarantee farmers’ right to notice, right to participation and right to appeal.
Many thanks!

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