A LESSON IN INGENUITY: CHINESE FARMERS, THE STATE, AND THE RECLAMATION OF FARMLAND FOR MOST ANY USE

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Abstract: Since 1978, China has achieved significant improvements in the rural sector through the adoption of the baogan daohu system, which effectively dismantled the communal farming system and created individual family farms. However, meaningful measures must be taken to ensure that farmers have continued use of their farmland and that illegal land reclamation by local governments is halted. Because farmers' rights are not clearly articulated and cannot be readily enforced, local governments appear to be beyond central government control. Furthermore, due to the state's right to reclaim land under any logic, farmers' rights may ultimately be non-existent. Though developing a meaningful system of dispute resolution and enforcement in rural China will be difficult and require systematic changes in the relationship between the central and local governments, ignoring the rising problems could prove disastrous. The underlying conflict between central and local governments and state and Party policies must be resolved in order for Chinese farming to truly operate "according to the law."

I. INTRODUCTION

Chinese farmers face the daunting task of feeding twenty-two percent of the global population on only nine percent of the world's arable land. Their ability to do so will affect both social stability in the countryside and China's ability to compete internationally in the twenty-first century.

Despite their importance to China's future, Chinese farmers are in a precarious position due to their lack of legal rights and the ineffective control by the central government over local government officials. Farmers in China do not own their land; rather, under the Constitution of the People's Republic of China, the state owns all land. Consequently, the state grants farmers land

1 Historically, farmers in China have been referred to as "peasants," but this Comment adopts the more impartial term "farmer." See generally Kate Xiao Zhou, How the Farmers Changed China 26-27 (1996).
3 See infra notes 94-120, and 157-162 and accompanying text.
4 See infra notes 163-203 and accompanying text.
5 Zhong Hua Ren Min Gong He Guo Xian Fa [The Constitution of the People's Republic of China], Ch. 1 art. 10 (amended 1993), translated in The Laws of the People's Republic of China (Legislative Affairs Commission ed., 1993) [hereinafter P.R.C. Const.]. Although the state owns all land, property is governed under a dual system of rural and urban land, with different rights and governing systems for each. Zhong Hua Ren Min Gong He Guo Tu Ti Fa [Land Administration Law of
use rights, and farmers agree to deliver a quota of specified crops to the state. This grant or contract is the complete source of farmers’ land rights.

Valid land use contracts must be in writing, but few Chinese farmers have written land contracts in their possession. While possession of a written contract permits a farmer to assert rights embodied within the contract, lack of a written contract leaves a farmer with few legal rights, if any. Even with a contract, however, farmers may have to resort to extra-legal remedies in vindicating violations of their contractual rights.

Despite official thirty-year farming grants, local officials cannot be relied upon to ensure farmers of their rights. Instead, local officials are known to reclaim farmland and sell or lease it to investors for illegal purposes such as development of golf courses and high-class apartments. When illegal land reclamation occurs, farmers have few options. First, they can attempt to solve the problem by negotiating with local officials. Unfortunately, this may not be successful because these are generally the same officials who illegally took their land in the first place. Second, aggrieved farmers can file a claim in the People’s Court. But, there is a striking absence of courts in rural China, as well as a scarcity of lawyers, thus making it difficult to file a suit. In addition, were a farmer to receive a favorable judgement, the government entity needed to enforce the judgment would be the very same entity that violated the farmer’s rights.


ZHOU, supra note 1, 57-58.

See infra note 64 and accompanying text.


P.R.C. LAND LAW art. 12.

Id.

See infra notes 204-217 and accompanying text.


Zhong Hua Ren Min Gong He Guo Nung Yeh Fa [Agriculture Law of the People’s Republic of China], Ch.VIII art. 61 (1993), translated in THE LAWS OF THE PEOPLE’S REPUBLIC OF CHINA (Legislative Affairs Commission ed., 1993) [hereinafter AG. LAW]; see infra note 172 and accompanying text.

See infra notes 176-182 and accompanying text.

See infra note 172 and accompanying text.


Id. at 228.
In addition to these problems, farmers face added problems when the land is legally reclaimed.\(^{19}\) If farmland is taken in compliance with the law, then farmers have no right whatsoever to contest either the validity of the taking or the amount of compensation.\(^{20}\) Because compensation is often missing or inadequate, farmers are left without land and without other means of support.\(^{21}\)

This Comment addresses the current problems plaguing China's rural land regime. In particular, this Comment analyzes the eminent domain scheme as it exists in the law as well as how it is implemented in the countryside. The first section details developments in the property regime in the twentieth century. The second section describes the current system, how it developed, and how it works. The third section examines the relationship between the law and its implementation, paying particular attention to problems of coordination between central government policies and local government action. The final section suggests potential changes that could solve these problems, and concludes that successful solutions to these problems can only be reached through consideration of both the social and political context of rural China.

II. BACKGROUND

A. A Brief History of Property Rights and Chinese Farming

Chinese farmers are not unfamiliar with shifting property rights and land reform.\(^{22}\) Their recent history has been one of redistribution, collectivization, and decollectivization, with the state continuously "owning" the land.\(^{23}\)

\(^{19}\) P.R.C. CONST. art 10; P.R.C. LAND LAW arts. 21-36.

\(^{20}\) The relevant statute states in part: "When the state requisitions land for construction, the units whose land is requisitioned should subordinate their wishes to the needs of the state and shall not obstruct the requisition." P.R.C. LAND LAW art. 23.

\(^{21}\) PROSTERMAN ET AL., supra note 8, at 23.

\(^{22}\) Id. at 3.

\(^{23}\) Prior to the Chinese Communist Party ("CCP") coming to power in 1949, rural Chinese farmed independent farms, which they either owned or were owned by wealthy landlords. Shortly after the CCP rose to power in 1949, policies were implemented which effectively tied the farmers to their land and curtailed any mobility. In the late 1950s, all farmland was collectivized into huge farms. Then, starting in the late 1970s, land was decollectivized and returned to individual farming households. ZHOU, supra note 6, at 2-4; KENNETH LIEBERTHAL, GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM 39-56, 147-48 (1995).
Prior to the Communist revolution in 1949, Chinese farmers ran independent farms, or, if poor, cultivated land owned by wealthy landlords.\textsuperscript{24} Shortly after the revolution, the government confiscated land owned by landlords and rich farmers and divided it among all farmers on an egalitarian basis\textsuperscript{25} under the Land Reform Act of 1950.\textsuperscript{26} The state used persuasion, intimidation, and confiscation in implementing the Act, and redistributed the land and imprisoned and killed numerous landlords in the process.\textsuperscript{27}

During the 1950s, farming and land rights continued to evolve. In 1955, China implemented the \textit{hukou} system or “resident permits,” which denied farmers the right to purchase grain in cities, in essence requiring them to stay on their farms or starve.\textsuperscript{28} At the same time, China began to collectivize agriculture. In 1956 and 1957, the state consolidated single family farms into agricultural collectives.\textsuperscript{29} Land was forcibly surrendered without compensation, and farmers retained only small plots for private use.\textsuperscript{30} Collectivization culminated in 1958 with the Great Leap Forward,\textsuperscript{31} when the state merged the collectives, including the individual family plots, into larger communes with an average size of approximately 4,000 families.\textsuperscript{32} Under this collective system, farmers worked in socialist cooperatives of 200-300 households and virtually all farm animals and implements became the property of the collective.\textsuperscript{33}

Communal farming’s effect on agricultural production was disastrous. The decline in production was substantial, contributing to one of the worst

\textsuperscript{24} LIEBERTHAL, \textit{supra} note 23, at 15-17.
\textsuperscript{25} CAMBRIDGE ENCYCLOPEDIA OF CHINA 54-55, 105-06 (Brian Hook ed., 1991). Land reform was a high priority under the communist regime for a number of reasons. Disproportionate land ownership was viewed as a source of social injustice. Land reform was also viewed as a way to gain and maintain the vast following of the rural population and strengthen the authority of the new regime. \textit{id.}
\textsuperscript{26} “The land ownership system of feudal exploitation by the landlord class shall be abolished, and the system of peasant land ownership shall be carried into effect in order to set free the rural productive forces, develop agricultural production, and pave the way for the industrialization of the new China.” Zhong Hua Ren Min Gong He Guo Nong Ye Gai Ge Fa [The Agrarian Reform Law of the People’s Republic of China] (1950), \textit{translated in Government and Politics in Revolutionary China: Selected Documents}, 1949-1979, 11 (Harold C. Hinton ed., 1982).
\textsuperscript{27} CAMBRIDGE ENCYCLOPEDIA OF CHINA, \textit{supra} note 25, at 105.
\textsuperscript{28} ZWEIG, \textit{supra} note 17, at 5.
\textsuperscript{30} PROSTERMAN ET AL., \textit{supra} note 8, at 4.
\textsuperscript{31} SELDEN, \textit{supra} note 29, at 13-15. The Great Leap Forward was a series of policy initiatives directed at achieving rapid economic and social progress, but which ultimately resulted in the death of millions of rural Chinese. LIEBERTHAL, \textit{supra} note 23, at 102-08.
\textsuperscript{32} PROSTERMAN ET AL., \textit{supra} note 8, at 4-5.
\textsuperscript{33} CAMBRIDGE ENCYCLOPEDIA OF CHINA, \textit{supra} note 25, at 54.
famines in the twentieth century. The per capita food energy availability decreased from over 2100 calories in the mid 1950s to only 1500 calories at the height of the famine in 1960. And, estimates on the number of deaths due to starvation range from fifteen million to forty million.

After the Great Leap famine, the government made adjustments in property distribution, commune size and administrative structure. The collectives dissolved and the basic unit for production decreased in size to approximately 20-30 households. Individual households were again permitted to farm small plots for personal use in addition to their required labor contributions to the production teams. The administrative structure was decentralized. Administrative obligations previously met by the vast collectives were now delegated to smaller communes.

Although the Cultural Revolution, beginning in 1966, again marked a period of radical policy changes, it did not affect agricultural production in a way reminiscent of the Great Leap. Farming continued through the 1970s under the collective model, albeit on a smaller scale.

B. Farmers and Property Rights Today: "It is very easy to tell green onions from tofu"

The current property regime in rural China represents a significant break from the collectivization schemes of the 1950s through the 1970s.

34 See Lieberthal, supra note 23, at 102-11; Zhou, supra note 1, at 3.
35 In addition, these figures are national averages and do not reflect the disparity between urban and rural grain supply. The famine hit hardest in the rural areas. Basil Ashton et al., Famine in China: 1958-61, 10 POPULATION & DEV. REV. 622-23 (1984).
36 Zhou, supra note 1, at 3.
37 Id. at 48-53.
38 Cambridge Encyclopedia of China, supra note 25, at 54.
39 Zhou, supra note 1, at 48-49.
40 For an excellent discussion of the rise and fall of collectivism in Chinese Agriculture, see Edward Friedman et al., Chinese Village, Socialist State (1991).
41 Zhou, supra note 1, at 46-53.
42 Seldén, supra note 29, at 14. The Cultural Revolution occurred from 1966 through the mid 1970s, and was intended to make political, administrative and social changes both in rural and urban areas of China. It was marked by extreme violence and terror, and resulted in many deaths and ruined lives. Lieberthal, supra note 23, at 111-18.
43 Zhou, supra note 1, at 46-53.
44 Id.
45 This is a common saying in Tongxin village meaning that under the baogan daohu system, the rights, roles and responsibilities of the individual, the collective and the state are distinctly defined. Id. at 58.
Under the *baogan daohu* (household responsibility) system,\(^{46}\) which came into place in the late 1970s, farmers still do not own their farm land, but do have far more control over the land than previous generations.\(^{47}\) In effect, the *baogan daohu* system has broken the collective farms into individual family farms.\(^{48}\)

1. The Baogan Daohu System

The distinguishing feature of the *baogan daohu* system is that the primary unit of accounting and production is the household.\(^{49}\) The enactment of the *baogan daohu* system divided farmland among individual households in exchange for the household’s agreement to fulfill certain obligations previously the responsibility of production teams.\(^{50}\) Under the system, farmers pay taxes, turn over production quotas, and contribute money to their villages to cover administrative expenses.\(^{51}\) After these requirements are met, farmers are free to decide what to do with their remaining produce.\(^{52}\)

The four main elements of the *baogan daohu* system are as follows: (1) individual households receive land grants based upon family size; (2) under the grant, the farming household attains the right to farm the land for a specified period of years; (3) households rather than production teams make land use decisions; and (4) actual ownership of the land remains in the hands of the collectives.\(^{53}\)

Farmers have far greater autonomy under the *baogan daohu* system compared to collective farming, primarily because farmers have control over agricultural production.\(^{54}\) Farmers are permitted to make independent planting and farm management decisions.\(^{55}\) They can plant what they want,
choose their own methods of fertilization, and can sell their products wherever they want. While almost all farmers must deliver a quota of specified crops to the state, this requirement does not intrude into independent management ability because farmers may purchase the required quota crops on the market and then turn them over to the state.

a. Statutory rights

While there is no law specifically governing the baogan daohu system, provisions within the Land Administration Law and the Agricultural Law address different aspects of the system. Farmers contract state owned land. While written contracts provide farmers with legal protection when terms are violated, neither the Land Administration Law nor the Agricultural Law provide remedies for farmers without written contracts.

The plain language of the Agricultural Law requires parties to "conclude an agricultural contract to define the rights and duties of both parties." Furthermore, while the Land Administration Law provides for a property recording system, only collectives record rural land holdings, not individual households. This practice indicates that the only record of a farmer’s rights exists within the contract.

b. Contractual rights

Because the provisions contained in both the Land Administration Law and the Agricultural Law lack specificity, parties use contracts to clarify both rights and obligations. The Agricultural Law not only provides and protects contract rights but it also requires that "[t]he party awarding the contract and the contractor shall conclude an agricultural contract to define the rights and

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56 Id.
57 Id. For example, if a farmer is required to provide the state with a specific quantity of grain, but a different crop would be more lucrative, that farmer may grow the more lucrative crop and use the proceeds to purchase sufficient grain to satisfy his quota requirement.
58 P.R.C. LAND LAW; AG. LAW. See infra notes 59-70 and accompanying text.
59 The Land Law provides in part: "Land owned by collectives and state owned land used by units under ownership by the whole people or under collective ownership may be operated under a contract by collectives or individuals for agricultural, forestry, livestock and fishery production." P.R.C. LAND LAW art. 12.
60 The Land Law further provides: "Collectives or individuals that contract to operate land shall have the obligation to protect such land and make rational use of it according to the uses provided for by the contract. The right to operate land under contract shall be protected by law." Id.
61 AG. LAW art. 12.
62 P.R.C. LAND LAW art. 9.
63 See infra note 94, for an example of an actual contract used by a farm household.
duties of both parties. \(^{64}\) Under these contracts, farmers can decide matters relating to production and operation. \(^{65}\) Farmers must still satisfy the state crop quota, but once they do so, they can sell their remaining produce on the market. \(^{66}\) They also must fulfill additional duties agreed to in the contracts. \(^{67}\)

The Agricultural Law also provides that contractors may subcontract the land or transfer the rights and duties of the contract to a third party. \(^{68}\) These contractors have renewal priority, and may transfer contract rights at death. \(^{69}\) In addition, farmers can contract outside of these provisions to include greater or lesser rights or duties. \(^{70}\)

2. Development of the Baogan Daohu System

The development of the baogan daohu system began the decollectivization of the Chinese countryside. \(^{71}\) While the official government policy prior to 1983 clearly favored the preservation of the collective production system, \(^{72}\) independent farmers initiated the baogan daohu system in various regions of the country. \(^{73}\) Farmers secretly contracted

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\(^{64}\) "Lands, mountains, grasslands, unreclaimed lands, beaches and water surfaces owned by collectives or the State and exploited by agricultural economic collectives, may be contracted to individuals or collectives for agricultural production ... [t]he right of individuals or collectives to undertake operation by contract shall be protected by law." AG. LAW art. 12.

\(^{65}\) Id. art. 13.

\(^{66}\) Id.

\(^{67}\) Id.

\(^{68}\) Id.

\(^{69}\) Id.

\(^{70}\) Id. art. 12.

\(^{71}\) ZWEIG, supra note 17, at 12.


\(^{73}\) The most well known incident where the baogan daohu system was secretly adopted took place in the spring of 1978 in Fengyang County of Anhui Province. In Fengyang County, Party leadership fully supported small-group farming, but not individual family farming. Eighteen households were permitted by local cadres to farm independent of the collective under the baogan daohu system, and those households agreed to take care of all dependents of the cadres in the event that the arrangement were found out and the cadres were arrested. The oath is as follows:

The contracting of production to individual households is to be kept strictly secret and not divulged to any outsider.

When the grain is harvested, the amount to be rendered to the state will be rendered to the state, and the amount to be rendered to the collective will be rendered to the collective. Should there be a large amount of grain, more should be contributed to the state, with no one shirking.
with local officials in order to farm individual plots of land. Though such actions were forbidden by the central government, the benefits of independent compared to collective farming were so attractive that farmers were willing to disobey the government. In fact, so many farmers were willing to disobey authorities that the aggregate effect went beyond the expectation and control of the central government.

Although baogan daohu was initially discouraged, the government eventually accepted and took credit for the reforms. This policy change was due in part to China’s inability to feed itself under the communal system. Recognizing that agricultural outputs increased significantly in regions where the baogan daohu system was in use, a 1980 meeting of governors formally adopted the system for use in poor and mountainous areas. By 1983, ninety-three percent of production teams had adopted the baogan daohu system. Unable to ignore both the increases in production and the improvements in living conditions for farmers working under the system, the central government formally acknowledged the system in 1983.

3. Baogan Daohu’s Effect on Property Rights

The manner in which the baogan daohu system developed has major implications for China’s future stability in agricultural production. First, because the policy started at a grassroots level, no law existed ensuring adequate

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Should they [the cadres] come to grief because we are contracting production to individual households, we are willing to raise the children of village cadres until they are eighteen years of age.


74 ZHOU, supra note 1, at 53-60.
75 Id.
76 Yuk-Shing & Shu-Ki, supra note 72, at 47; ZHOU, supra note 1, at 53-71. Zhou, who conducted a great deal of field research in rural China, notes an Anhui farmers’ saying: “Baocchan daohu is like a chicken pest. When one family’s chicken catches the disease, the whole village catches it. When one village has it, the whole country will be infected.” Id. at 56.
77 Yuk-Shing & Shu-Ki, supra note 72, at 47.
79 ZHOU, supra note 1, at 67.
80 PROSTERMAN ET AL., supra note 8, at 7.
81 ZHOU, supra note 1, at 69.
protection of farmers' rights. Farmers were secretly contracting with local officials, while the central government was issuing policy that made these actions illegal. Farmers acted at their peril, and suffered the risks of their actions. Although actual contracts may have been used prior to the central government’s formal adoption of baogan daohu, these contracts were not enforceable because they were illegal.

When the central government did finally permit farmers to contract, formal guidelines indicating what rights and obligations the contracts could create were absent. In addition, no comprehensive plan existed to provide redress when a breach occurred. This problem of poorly defined rights and methods of redress has continued to plague the baogan daohu system.

Whether China can adequately address farmers’ problems may have dire consequences for the stability of the rural sector. Farmers defied central government policy by secretly adopting the baogan daohu system in an attempt to escape the extreme poverty and poor living conditions associated with communal farming. Because the baogan daohu system effectively ended the communal farming system, farmers are completely dependent upon their ability to farm their household’s plot of land for their livelihood. Since farmers are willing to defy central policy if their needs are unmet, it is imperative that central and local governments work together to adequately meet farmers’ needs. Failure to do so may result in social and political instability in the country-side.

C. Cracks in the Current System

Although the baogan daohu system has been effective in increasing agricultural production and is popular among farmers, flaws exist in the

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82 The extra-legal nature of baogan daohu’s development meant implicitly that no laws existed governing its use. See notes 71-76 and accompanying text.
83 ZHOU, supra note 1, at 53-71.
84 Id.
85 The Land Law was enacted in 1987, and the Agricultural Law was enacted in 1993. See supra notes 5, 14.
86 Id.
87 While the Land Law and the Agricultural Law do address aspects of the baogan daohu system, these laws are neither comprehensive in scope nor uniformly observed. See supra notes 58-70 and accompanying text; infra notes 94-120 and accompanying text.
88 ZHOU, supra note 1, 53-60.
89 ZWEIG, supra note 17, at 12.
system. The first shortcoming entails the sporadic written documentation of land use agreements between farmers and the local government. The second weakness involves security of tenure issues related to readjustment of contract land. The third problem relates to the practice of redistribution of land based on changes in family size.

1. **Lack of Written Contracts**

Recent fieldwork conducted in six regions of China revealed that only two out of 54 households have written land contracts. The majority of

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91 See infra notes 94-97 and accompanying text.
92 See infra notes 99-107 and accompanying text.
93 See infra notes 109-120 and accompanying text.
94 Prosterman et al., supra note 8, at 17. The first land contract the authors viewed was the following contract which came from a document called the “Agricultural Contract Book.” Party A was the production team and Party B was the head of the farm household. Article One enumerated the rights and obligations of the production team. (“mu” is a unit measure of land)

| Party A contracts _mu [a number] to Party B. Party A has ownership of the land. |
| Party A has the right to monitor Party B’s operation, the right to collect collective contributions, and the right to request voluntary labor. |
| On behalf of the state, Party A will sign a purchasing grain and cotton contract with Party B. |
| Party A must promote the Communist Party’s policies, provide services to Party B, and mediate disputes over land and irrigation. Party A allows Party B to transfer the use rights of arable land within state policy and related regulations. |
| Party A must protect Party B’s right to farming and other legitimate revenue practices. Party A cannot collect money from Party B without legitimate reason, and the total of collections cannot exceed five percent of net income. |

Article Two contained the rights and obligations of Party B (the farmer):

| Party B has the right to freely manage contracted land according to state regulations, policies, and laws and according to market needs. Party B has the right to a preferable price policy. |
| Party B has the right to refuse collective contributions and voluntary work which are beyond regulations. |
| Party B must complete all of the quota and agricultural tax. |
| Party B cannot leave land wasted, build a tomb, remove soil, or build a house or brickyard on the contracted land. Party B must protect the irrigation system and other public facilities within the contracted land. |

Id. at 18-19. Article Three stated that the contract was effective upon the signatures of both parties, but the contract was unsigned. Article Three also contained dispute resolution methods. Article Four
farmers claimed to have never received a contract. Other farmers believed they had a contract but were unable to locate it. Additionally, two farmers claimed to have destroyed their contracts after local officials violated the contract terms. This lack of documentation has important ramifications for farmers who seek redress for alleged violations of their perceived rights.

2. Short-Term Use Rights

Even farmers with contracts have uncertain duration terms. Initially, during the early years of the baogan daohu system, the state granted land to households for a period of three years or less. In 1984, the Communist Party Central Committee urged local officials to adopt longer terms:

[Officials should] prolong the time period of the contracted land, encourage the peasants to increase their investment, to foster the fertility of the soil, and practice intensive operation. Projects with a long production cycle such as fruit trees, or of a development nature, such as woods and forests, denuded hill, and waste land, should have a longer contract period.

Long term use rights are especially important for tree crops or where private investment in irrigation is required. In order for farmers to make long term investments in crops such as rubber or litchi, land rights must be secure.

In 1993, the central government further promoted extension of land use rights to terms of thirty years. Longer land use rights were not promulgated as law but suggested as practice, and thus are entirely unenforceable. In 1994, the Governor of Anhui declared that farmers contained more signature lines and those were blank. The contract did not contain a description of the land nor was there any provision to record the length of tenure. Id. at 18-19.

Id. at 17.

Id. at 18. Although farmers were unable to produce writings representing their rights in the land, most were able to produce documents containing information about taxes and production quotas. Id. at 18, n. 33.

Id. at 18.

See supra notes 63-70 and accompanying text, and infra notes 171-217 and accompanying text.

Id. at 8.

Id.

Under Chinese growing conditions, Hevea rubber is tappable after the fifth year of growth, and Litchi nuts (Nephelium litchi) show best results seven to ten years after planting. Hill, supra note 78, at 11.


Prosterman et al., supra note 8, at 21.

Id.
should receive an extension of use rights to thirty years upon the expiration of fifteen year contracts. Although this may be the official policy of the region, over half of the residents of Anhui surveyed were not aware of the length of time of their use rights. And, one Ministry of Agriculture official, speaking on behalf of the central government, worried that most new land contracts are being signed for periods of ten, five, or even fewer years, instead of the desired thirty year contract.

3. Redistribution or Readjustments

Often, local governments redistribute land holdings among local farmers to reflect changes in household size. Because villages control land allocation, and initially ensured egalitarian distribution among households based upon family size and land quality, the villages have continued to adjust land holdings when family size or composition changes due to births, deaths, marriages, and other such events.

Land adjustments occur on two scales, small and large adjustments. Small adjustments are made to retain the egalitarian allocation of land when family sizes change. Where family size increases or decreases, farm size will increase or decrease respectively, and if household size remains constant, so too will farm size. On the other hand, big adjustments alter all land holdings of every individual household within a village, whether there have been changes within the household or not. The village management takes back all farmland, and farming households receive completely different land.

Although central government policy, announced in 1993, would have “frozen” all agricultural land holdings for thirty years regardless of household

105 Anhui is the province where the baogan daohu system originated. ZHOU, supra note 1, at 55.
106 PROSTERMAN ET AL., supra note 8, at 21.
107 Id.
108 Id.
109 Id.
110 Id.
111 Id.
112 Id.
113 Id.
114 Id.
115 Id.
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demographic change,\textsuperscript{116} this policy has not been realized in practice.\textsuperscript{117} Instead, farmers have insecure land rights based on contracts lasting for ten, five or even fewer years, and land holdings continue to be adjusted when household demographics change.\textsuperscript{118} This insecurity results in a lack of incentive to invest in farm capital.\textsuperscript{119} Instead of investing in land improvements, farmers primarily invest savings in housing, non-farm enterprises, bank deposits and grain stocks.\textsuperscript{120}

III. TAKINGS: FARMERS IN A PRECARIOUS POSITION

Although poorly defined contract rights, insecurity of tenure, and redistribution issues all contribute to a farmer's sense of insecurity, the problem of both legal and illegal reclamation of farmland in rural China is the most important problem with the \textit{baogan daohu} system. The state has the ultimate right to reclaim land for its own use, and the land holder has no right to contest either the validity of the use or the level or absence of compensation paid.\textsuperscript{121}

A. Why a Standard for Takings is Important

The doctrine of eminent domain in Western jurisprudence dictates that the state has the right to take privately held land for legitimate public purposes.\textsuperscript{122} The notable difference between Chinese and Western notions of eminent domain is that under the Western perspective, persons deprived of their property have a right to contest both the validity of the state purpose, as well as the justness of the compensation paid.\textsuperscript{123} Both of these features, as well as the right to contest them, are important to the legitimacy of government action. Because Chinese farmers do not have the right to contest either the public use or the level of compensation for confiscated land, the oversight present in Western eminent domain schemes is absent in China. Where the government is not required to account to the people, it is then in a status above the law.

\textsuperscript{116} See supra note 12 and accompanying text.  
\textsuperscript{117} Kung & Liu, supra note 109, at 54.  
\textsuperscript{118} Id.  
\textsuperscript{119} JOHNSON, supra note 102, at 11.  
\textsuperscript{120} Id.  
\textsuperscript{121} See infra notes 159-162 and accompanying text.  
\textsuperscript{123} Compare id. with supra notes 127-212 and accompanying text.
B. Western Standard

A Western standard of eminent domain provides a property holder with the right to contest both the "justness" of the compensation and the use to which their land is being put. Although most claims alleging non-public use may meet with little success, litigants can successfully claim that the level of compensation they have received is not just. The right to contest both the validity of the public purpose and the level of compensation paid serves a valuable purpose. It provides legitimacy to state action, as well as a measurable limit as to how far that action can go.

C. Chinese Standard

Farmers in China experience takings or reclamation by the state both according to the law and in violation of the law. Importantly, farmers cannot contest a legitimate reclamation of their land. By comparison, when state or local officials illegally reclaim land, or unlawfully withhold compensation, farmers can contest state action, yet this right is limited by both the lack of legal resources and the legal system itself. Illegally reclaimed land results in the conversion of sizable amounts of farmland to non-agricultural use. The loss of farmland in China raises alarm with the central government, and around the world.

124 See generally Stoebuck, supra note 122.
125 The United States Supreme Court has curtailed litigants' ability to contest public use: "[W]here the exercise of the eminent domain power isrationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 241 (1984).
126 The right to just compensation is fundamental, and the right to contest is implicit to this concept: "The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness, as it does from technical concepts of property law." Almota Farmers Elevator & Warehouse v. United States, 409 U.S. 470, 478 (1972), citing United States v. Commodities Trading Corp., 339 U.S. 121 (1950), United States v. Fuller, 409 U.S. 488 (1973).
127 Villagers were relocated for the construction of the Three Gorges Dam project, losing their farms and forced to live on a government stipend of $7 per month. "It came as an order from the leaders. We had to obey. I didn't really want to move; most of the people didn't want to move. But we had no choice." Dele Olojede, The Dam is Cast on the Yangtze, NEWSDAY, Nov. 9, 1997, available in LEXIS, News Library, Asiapc File. Compare legal land reclamation with illegal reclamations by local government officials for sale to wealthy investors for illegal development, Tyler, supra note 13.
128 P.R.C. LAND LAW art. 23.
129 Id. arts. 43-53; infra notes 171-203 and accompanying text.
1. Legal Takings

The valid purposes for which the state can requisition land are limited to economic and cultural reasons, national defense and public works. Farmers are rarely consulted when requisition occurs, and they generally feel powerless to prevent the occurrence. Although parties reclaiming land must adequately compensate farmers under the Land Administration Law, farmers rarely receive adequate compensation for either the loss of their use rights or for any improvements they may have made.

a. What the Land Administration Law requires

The Land Administration Law specifies procedures for legitimate reclamation and "adequate" compensation. Allowable use of confiscated land by the state is limited to "economic, cultural or national defense construction projects, and for initiating public works." The formal procedure for reclamation of land for such purposes is general and sparse: the "construction unit" applies to the land administration department at the county level, and upon approval, the land administration department reassigns the land. The procedure neither requires nor permits involvement of the landholding party.

Units acquiring requisitioned land must pay land compensation and resettlement subsidies to the collective unit. When cultivated land is requisitioned, compensation is supposed to be "three to six times the average annual output value of the requisitioned land for the three years preceding such requisition." The law also requires compensation for "attachments and young crops," which the land administration department at the provincial level calculates.

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132 Prosterman et al., supra note 2.
133 P.R.C. LAND LAW art. 21.
134 Prosterman et al., supra note 2, at 94.
135 P.R.C. LAND LAW arts. 27-31.
136 Prosterman et al., supra note 2, at 94.
137 P.R.C. LAND LAW arts. 23, 27-31.
138 Id. arts. 21, 23.
139 Id. arts. 21, 23.
140 Id. art. 23.
141 Id. arts. 27, 28.
142 Id. art. 27.
143 Id.
In addition to requiring land compensation payments, the Land Administration Law also requires the payment of resettlement subsidies. These subsidies are based on the average amount of land requisitioned per person, with a minimum amount of two to three times the average annual output value of each unit of land for the three years preceding the requisition.

Although the Land Administration Law appears to provide generous compensation and resettlement subsidies to farmers losing their land, in fact, this is not true. Compensation and resettlement subsidies are to be paid directly to the collective unit. The funds are to benefit the collective unit as a whole, and individual farm households should only receive direct compensation for attachments and young crops.

The Land Administration Law also addresses issues of non-compliance by local governments, but these regulations likewise go unheeded. When local officials reclaim land with fraudulent approval or no approval at all, those involved will be subject to liability. Liability will be charged when the state oversteps the Land Administration Law guidelines, when bribery occurs, or when compensation or resettlement subsidies do not reach the intended beneficiary.

The land administration department at or above the county level enforces these provisions, or an injured party may file a suit directly in People's Court. However, these legislated solutions are ineffective in dealing with takings incidents in rural China. Fifty-four percent of farmers surveyed in villages throughout China were aware of specific takings of agricultural land in their

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144 Id. art. 28.
145 Id.
146 The Land Administration Law provides in pertinent part:

All kinds of compensation and resettlement subsidies paid for requisitioned land on account of state construction, except for the compensation for individually owned attachments or young crops on the requisitioned land which shall be paid to such individuals, shall be used by the units being requisitioned to develop production, to provide employment for the extra labour force due to requisition of the land and as living subsidies for people who cannot be employed; such funds shall not be used for other purposes and shall not be appropriated by any unit or individual.

Id. art. 30 (italics added).
147 Id.
148 And, by implication, the limited right to contest level of compensation and subsidy payment is vested in the collective unit, not the individual household. Id. art. 29.
149 Id. arts. 43-53.
150 Id.
151 Id.
152 Id. art. 53.
153 See infra notes 164-207 and accompanying text.
villages. Of those takings, significant compensation was granted for only six farm households. Farmers generally had no say in the takings process.

b. Farmers' rights under the Land Administration Law

Simply put, farmers have limited rights under the Land Administration Law. When the state reclaims land, farmers have no right to contest the state’s justification. This absence of recourse is particularly problematic given the high level of corruption at the local level. Additionally, Chinese farmers cannot contest the level of compensation they receive. Farmers are unable to directly contest the adequacy of their compensation, and when it is illegally diverted or withheld, they do not have a direct cause of action. Instead, the collective unit must bring a claim on the farmers’ behalf. Because local governments are plagued by corruption, lack of a direct cause of action is a serious problem for farmers.

Without an enforceable right to contest the takings or the level of compensation paid, farmers may perceive even legal state reclamation of farm land as illegitimate.

2. Illegal Takings and the Rule of Law

The ability of central government policies to prevent conversion of farmland to non-farm purposes is further frustrated by the combination of widespread corruption and ineffective control over local governments. Local officials often receive large sums of money for permitting land to be used for non-agricultural purposes. In addition, the central government has

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154 PROSTERMAN ET AL., supra note 8, at 23.
155 Id.
156 Id.
157 P.R.C. LAND LAW art. 23.
159 P.R.C. LAND LAW art. 23.
160 See supra note 148.
161 P.R.C. LAND LAW art. 49.
163 Putterman, supra note 158.
164 See Tyler, supra note 13. [H]uge profits from land sales tend to overwhelm any fear of the central Government. With the prospect of millions of dollars in profits on even a small plot of land, developers and corrupt officials are often willing to take the risk of ignoring instructions from Beijing."
been unable to assert sufficient control over local governments: "The greatest obstacle to the present decentralization in China lies in the ambiguity on the part of the government about the definition of authority."\(^\text{165}\) The nature of power and authority, and by implication, legitimacy, is not defined by law.\(^\text{166}\) Instead, Chinese law is an instrument of Party politics to be interpreted by the National People’s Congress.\(^\text{167}\) Laws can be rendered ineffective by Party directives, and local government legitimacy is not a result of adherence to law but rather compliance with Communist Party policy.\(^\text{168}\)

Lack of central control over local governments is magnified by corruption at the local level.\(^\text{169}\) Local governments take advantage of the opportunities that decentralization brings, loosely interpreting existing law, or in the extreme, manipulating power for their own advantage and personal gain.\(^\text{170}\)

\(\text{a. Solving problems without the courts}\)

Most Chinese legislation provides a mechanism for attempting to resolve disputes with the local level of government prior to initiating


\(^{166}\) Wang Xi, Comment, The Problem of Decentralization in China, in ECONOMIC REFORM IN CHINA: PROBLEMS AND PROSPECTS 239, at 242 (James A. Dorn & Wang Xi eds., 1990)

\(^{167}\) Id. China’s decentralization is plagued by problems due to the structure of the political system.

\(^{168}\) Id. at 242. State policy and Party policy co-exist: boundaries are often blurred and courts are not always clear whether they are relying on state or Party policy in making decisions. Chang, supra note 51, at 107 n. 18.

\(^{169}\) Carol A. G. Jones, Capitalism, Globalization and the Rule of Law: An Alternative Trajectory of Legal Change in China, SOC. & LEGAL STUD., June 1994, at 208. A professor at Beijing University, Zhou Wangsheng, commented on recent improvements in this area: “There is a common saying that the NPC (National People’s Congress) is a rubber stamp. But this image has been undergoing some change. It has changed from a low quality rubber stamp to a good quality rubber stamp.” James Kynge, In Congress: Perhaps Some Surprises: China’s Rubber-Stamp Body May Have Bounce, SEATTLE POST-INTELLIGENCER, Mar. 4, 1998, at A2.

\(^{170}\) Jones, supra note 167.
litigation. While this may be good in theory, it is not so effective in practice. Under Article 13 of the Land Administration Law, the basic tenet requires parties to first negotiate disputes prior to any court action. The Land Administration Law provides that “[o]wnership of land and right to the use of land shall be protected by law. No unit or individual shall infringe upon such ownership and right.” When disputes arise, they “shall be solved through consultation between the parties. If no agreement can be reached through consultation, they shall be decided by the people’s government.” Importantly, the people’s government at or above the county level decides disputes arising between units of government, whereas disputes in which one of the parties is an individual are to be decided at the township or county level.

Negotiating with the local government, however, is often not very useful to the farmer because the party at the local level of government with whom the farmer must meet is also generally the party that violated the farmer’s rights under the contract. One occurrence of informal politics undermining control of the central government took place in Tangquan Township, Wujiang County between 1985 and 1987. In that instance, officials responsible for administering the Land Law yielded to pressures of friends, family, and colleagues, by permitting farmland to be appropriated for housing construction under the pretext of “town development.” Farmers were furious, yet the only recourse available was to send letters and photographs to provincial, city and county governments. County government officials unsuccessfully requested town officials to investigate, so the matter was effectively dropped. This incident illustrates the fact that while the county is able to control

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171 ZWEIG, supra note 17, at 158-60.
172 P.R.C. LAND LAW art. 13.
173 Id. art. 11.
174 Id. art. 13.
175 Id.
176 ZWEIG, supra note 17, at 228.
177 Id.
178 Id.
179 Id.
180 Id.
181 Id.
very large scale developments, activity at the local level is often beyond the reach of the law.\textsuperscript{182}

\textit{b. The Chinese legal system}

Once a farmer has exhausted his remedies achievable through negotiations with local government officials, his next step is to file a claim in the People’s Court.\textsuperscript{183} But this solution is not realistic either. The legal system in rural China is not very effective, as there are few courts, few lawyers, and essentially limited accessibility to either.\textsuperscript{184}

Farmers have little access to the court system, and even so, access is no guarantee of adjudication on the merits or a fair trial.\textsuperscript{185} Under the Constitution, courts are independent,\textsuperscript{186} but in reality, they are “weak institutions under heavy influence from Party and regional interests.”\textsuperscript{187} The Vice President of the People’s Supreme Court recently noted that taking local authorities to court has always been difficult for farmers.\textsuperscript{188} Applications to file writs are routinely turned down, and lower courts often make excuses in order to reject or delay farmers’ lawsuits.\textsuperscript{189} When a dispute does reach the court, the rights and obligations enumerated within the contract are not the major issues.\textsuperscript{190} Instead, determinations are made according to Party policy, which by implication means that the rights under the contract are not controlling.\textsuperscript{191}

Moreover, there are very few lawyers in rural China.\textsuperscript{192} After the development of the People’s Republic of China in 1949, many lawyers were killed, imprisoned, removed from office, or chose not to practice

\textsuperscript{182} Id. Cadres can also take a farmer’s land for personal use, and similarly, the farmer has little recourse. But, wealthier rural residents often have significant resources with which to confront cadre authority. \textit{Id.} at 242.

\textsuperscript{183} \textit{P.R.C. LAND LAW} art. 13.

\textsuperscript{184} Interview with Steve Dickinson, Affiliate Assistant Professor, University of Washington; Director of Corporate Operations for Michiels International, Inc., in Seattle, Wash. (Dec. 5, 1997) [hereinafter Dickinson Interview].

\textsuperscript{185} \textit{ZWEIG, supra} note 17, at 177.

\textsuperscript{186} \textit{P.R.C. CONST.} art 126.


\textsuperscript{189} \textit{Id.}

\textsuperscript{190} \textit{ZWEIG, supra} note 17, at 177.

\textsuperscript{191} \textit{Id.}

\textsuperscript{192} Dickinson Interview, \textit{supra} note 184.
law.\textsuperscript{193} Between 1957 and 1958, the state shut down all law schools, and in 1959, closed the Justice Ministry.\textsuperscript{194} During the Cultural Revolution, legal workers were among the first people to be sent to the countryside for "re-education," and the law schools were again closed in 1966 and did not reopen until 1977.\textsuperscript{195} These events resulted in an extreme shortage of trained lawyers, which is especially acute in rural areas.\textsuperscript{196}

c. Enforcement of judgments in rural China

If a farmer is fortunate enough to receive a judgment in his favor, he then must bear the burden of attempting to enforce that judgment.\textsuperscript{197} Generally, local police or branches of the military are unwilling to assist with enforcement, thus the farmer must attempt to assert his judgment without outside assistance.\textsuperscript{198} Without means to enforce a judgment, the judgment is without great value.

The largest obstacle to providing a means for enforcement of judgments is the organization of the system itself.\textsuperscript{199} Courts and judges depend upon local governments for their jobs and their finances.\textsuperscript{200} For example, when executing a judgment against a local enterprise, a judge in Fujian found his daughter transferred to a remote rural outpost by her employer (the county).\textsuperscript{201} Without the necessary separation of powers and influence between local government and local courts, the task of enforcing judgments will be formidable at best.

Although the central government is aware of this problem and is reputedly working to strengthen the legal branch of the government, this charge is no easy task. The size and diversity of the regions are daunting, and the strength of the regions is growing rapidly:\textsuperscript{202} "[I]t has become harder to enforce the will of the central government than at any other time since the revolution, [and] it will take a long time before the courts, especially outside

\textsuperscript{193} Alsen, supra note 187, at 16.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Id.; Zweig, supra note 17, at 155.
\textsuperscript{197} Donald C. Clarke, The Execution of Civil Judgments in China, 141 CHINA Q. 65 (1995).
\textsuperscript{198} Id. at 71-72. Even in instances of local officials using "force" to settle lawsuits, courts are still unable to provide assistance, as local officials far out-power the courts in resources. Alsen, supra note 187, at 18.
\textsuperscript{199} See generally Clarke, supra note 197.
\textsuperscript{200} Id. at 71.
\textsuperscript{201} Id.
\textsuperscript{202} Alsen, supra note 187, at 19.
the biggest metropolitan areas, can be relied on as competent, powerful and impartial decision makers.\footnote{Id.}{203}

d. Extra-legal resolution methods: guanxi, bribery, clans, secret societies, gangsters, violence and revolution

Because farmers lack adequate resources for solving their legal problems, they may resort to age-old social mechanisms for solving problems within the village.\footnote{Zhou, supra note 1, at 12-17. A motto of rural "purchasing agents" who were especially adept at procuring scarce raw materials is as follows: "endure numerous hardships; cross one thousand mountains and ten thousand streams; speak one thousand dialects and ten thousand words; and use one thousand means and ten thousand schemes." Id. at 113.}{204} Rural China has long been governed by a system of control based upon ritual, tradition, and family relationships as opposed to control based upon the law and the legal system.\footnote{Fei Xiaotong, From the Soil: The Foundations of Chinese Society 101-107 (Gary G. Hamilton & Wang Zheng trans., 1992).}{205} This system of control is also referred to as guanxi, or "rule of relationships," as opposed to "rule of law."\footnote{Jones, supra note 167 at 197.}{206}

Where legal methods of dispute resolution are not successful, peasants have been willing to resort to more drastic measures. The following story serves as an illustration of the extent to which farmers will go when their demands are unmet.\footnote{Selden, supra note 29, at 200.}{207} In the 1970s, a language school purchased land to build a back road.\footnote{Id.}{208} After some years had passed, the nearby commune presented the school with a bill, on the grounds that the purchase price was too low, too much land was taken, and that both water run-off and excess shade resulted from the construction of the school, diminishing farm production.\footnote{Id.}{209} The school refused to pay, and the farmers dumped garbage at the back entrance.\footnote{Id.}{210} The school continued to stall, so the farmers blocked the sewers.\footnote{Id.}{211} After this move, the school then began to negotiate.\footnote{Id.}{212}

While the above example may appear as a relic of bygone days, in fact, the number of disputes in rural areas is growing.\footnote{Id.}{213} The growth in disputes has been attributed to the social, political and moral complexity resulting from

\begin{itemize}
\item \footnote{Id.}{203} Id.
\item \footnote{Zhou, supra note 1, at 12-17. A motto of rural "purchasing agents" who were especially adept at procuring scarce raw materials is as follows: "endure numerous hardships; cross one thousand mountains and ten thousand streams; speak one thousand dialects and ten thousand words; and use one thousand means and ten thousand schemes." Id. at 113.}{204} Id.
\item \footnote{Jones, supra note 167 at 197.}{206} Jones, supra note 167 at 197.
\item \footnote{Selden, supra note 29, at 200.}{207} Selden, supra note 29, at 200.
\item \footnote{Id.}{208} Id.
\item \footnote{Id.}{209} Id.
\item \footnote{Id.}{210} Id.
\item \footnote{Id.}{211} Id.
\item \footnote{Id.}{212} Id.
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recent reforms, as well as ignorance or aversion to use of the legal system to resolve disputes. In addition, the inability of the central government to coordinate local action has permitted a breakdown in social order and enabled the growth of criminal activity. Because disputes often affect major interests and rights of the parties involved, the disputes have led to “armed clashes, which again end up in such criminal acts as bodily injury, murder, arson, sabotage of production, and serious disruption of public order.”

Many attribute the development of the baogan daohu system to farmers’ willingness to engage in illegal methods of solving problems. This willingness should serve as a reminder that unless the government will provide necessary solutions, farmers may decide to adjust the system once again.

D. What China Needs

A potential solution to the problems affecting Chinese farmers is to create an objective means of dispute resolution and a connected system of enforcement. This solution takes into account the legal implications for farmers’ rights because it provides an avenue of redress that makes those rights meaningful. This solution is also mindful of the context in which the law operates in rural China, because the objective means of dispute resolution and subsequent enforcement of these decisions would be sufficiently removed from the influence of local officials.

Critical to the success of this proposal are two requirements. First, farmers’ rights under their contracts must be clearly articulated and made systematic. This objective would require not only developing a comprehensive document to be used in land transactions, but also mandating its use. Second, and most importantly, the state’s eminent domain powers should be restricted to takings for the limited purpose of “public use,” and a party suffering from an illegal or under-compensated land reclamation should have the opportunity to challenge directly that state action. The ability to bring individual claims rather than to rely on the collective unit to protect

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214 Id.
215 Id. “Crimes that have rarely been seen in the past ... all have now also become occasional occurrences, and all those popularly referred to as 'train robbers and highway bandits,' 'cross-river dragons,' 'local snakes,' and 'crafty old rats' are going about their misdeeds with extreme insolence.” Id.
216 Id.
217 See supra notes 71-90 and accompanying text.
farmers’ rights will help ensure that the state and its local representatives abide by the same law they use to assert their power.

1. A Right to Contest, Both Legal and Illegal Takings

When farmland is reclaimed by the state, either legally or illegally, farmers should have the right to contest whether the state’s justification meets the “purpose” requirement under the Land Administration Law, and whether the amount of compensation paid for the land is sufficient. Farmers should have an individual right of action under the compensation provisions, and not have to rely on the collective unit to assert their rights. In addition, the Land Administration Law should provide farmers with a right to directly contest any illegal withholding or diverting of compensation by local government officials.

Chinese farmers should also be granted the right to contest the purpose of the takings. Although the permitted purposes within the Land Administration Law are very broad, the addition of a right to contest would be meaningful. It would help ensure the government’s legitimacy and authority.

2. An Impartial and Meaningful Way to Contest Illegal Reclamation

In order to create a meaningful dispute resolution mechanism in the countryside, China must do two things. First, farmers must receive access to neutral and fair adjudication. To accomplish this, either the existing judicial system can be altered or independent tribunals can be created to specifically hear agricultural contract disputes. If the existing system is to be effectively altered, issues of access to legal resources, and corrupt local officials, must be addressed.

Second, in order for dispute resolution to function effectively, farmers must be aware of their legal rights, and be able to assert them. This awareness can be accomplished through a combination of education and access to legal resources. The land administration department can take an active role in education, focusing on the purpose and value of land contracts. The land administration should draft a standard-form contract to be used for

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218 See supra note 138 and accompanying text.
219 See supra notes 157-162 and accompanying text.
220 See supra note 138 and accompanying text.
221 The specific details of how to reform a corrupt judicial system are beyond the scope of this Comment.
all land use agreements throughout China. The department should also design
a procedure for local officials to follow when entering contracts with farmers
which identifies and clarifies rights and responsibilities. Ideally, farmers
should have access to lawyers, but given the extreme shortage of lawyers in
China, this is not realistic. Although the central government is hopeful that
the number of lawyers will grow, this increase will probably not be felt in the
countryside.

Instead, the government must take a proactive role in ensuring that
legal access is available to all Chinese farmers. Both the creation of neutral
and fair dispute resolution mechanisms and the education of farmers
regarding their legal rights will increase farmers' willingness to seek out
"legal" solutions to their contractual problems.

3. *A Means of Enforcing Judgments*

In order to encourage farmers to seek out "legal" solutions to their
contractual problems, judgments must be enforceable. Without means to
enforce a judgment, the judgment is without great value. This is a serious and
difficult problem because implicit in its solution is a significant change in
China's system of governance. The problem results from the absence of
separation of powers between local officials and local courts, and the
significant influence local officials have in the administration of government
in rural China. This obstacle is complicated by the problems of
decentralization that China has been unable to effectively solve. The central
government cannot control local government action, and the Party controls
the state, which precludes true adherence to a rule of law.

While specific recommendations could be made regarding enforcement
options, these would not be realistic until the countryside can adhere to the

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222 See supra notes 192-196 and accompanying text.
223 Report Says Citizens' Legal Protection Increasing, available in World News Connection (visited
Feb. 6, 1998) <http://wnc.fedworld.gov>; China Needs a Large Number of Legal Professionals, available
224 In fact, the increasing reliance or acceptability of "legal" dispute resolution is on the rise in
China, and this can be attributed to a growing awareness of the law. Report Says Citizens' Legal
Protection Increasing, available in World News Connection (visited Feb. 6, 1998)
<http://wnc.fedworld.gov>. One of the most popular new TV shows, Court Fax, offers live transmissions
of cases being tried in intermediate courts, and hundreds of Chinese news sources offer legal affairs
columns. "Awareness of the law has increased remarkably and the notion that "one can protect his or her
rights and interests by resorting to the law" is becoming widely accepted." PRC: Law Courts Must
Protect Legal Rights of Farmers, available in World News Connection (visited Feb. 6, 1998)
225 See supra notes 197-203 and accompanying text.
"rule of law." However, hope remains. In fact, recent attempts at establishing local elections may have significant success in establishing order in rural China. Although the central government may be unable to control local officials, that doesn’t preclude farmers from asserting a legitimate, organized front. The threat of losing office may be significant impetus for local officials to follow the central government policies requiring increased protection of farmers’ rights.

IV. CONCLUSION

Resolving issues of tenure security for farmers in rural China has major implications for agricultural production and social stability in rural China and the rest of the world. The central government must take meaningful measures to ensure tenure security for farmers and end illegal government land reclamation, in order to sustain the significant improvements in the rural sector achieved through the adoption of the baogan daohu system. As previously suggested, farmers’ rights must be clearly articulated and made enforceable. This will involve coordinating local and central government action. Though developing a meaningful system of dispute resolution and enforcement in rural China will be difficult and require systematic changes in the relationship between the central and local governments, ignoring the rising problems could prove disastrous. The underlying conflict between central and local governments and state and Party policies must be resolved in order for Chinese farming to truly operate “according to the law.”
