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"De la terre à l'aliment, des valeurs aux règles"
Rencontres Lascaux - 28 & 29 juin 2010

WHICH LAND PROPERTY SYSTEM TO ENSURE EFFECTIVE PROTECTION OF HUMAN RIGHTS? THE CHINESE LAND PROPERTY SYSTEM'S EXAMPLE *

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***Abstract:** With the rapid economic growth and massive urbanization movement in China, a number of drawbacks have been revealed since the implementation of the household responsibility system (HRS) of land policy from 1980s. Because of unclear land property rights, non-standard expropriation procedures and lack of clear land transfer mechanism, the land rights of many farmers have been seriously violated. Particularly during the land acquisition process, it is too difficult for the farmers to enjoy the right to be informed, to be heard and to move their home. And it is also too difficulty for the farmers who lost their land to enjoy the rights to obtain welfares and social security. In today's China, no matter what kind of land systems is practiced, a priority should be given to the principle of fairness, followed by efficiency and land conservation. Or fairness and efficiency should be balanced. If impossible, fairness comes first with efficiency sacrificed. And fairness can not be sacrificed with efficiency first.*

Key words: Land system; the household; responsibility system; land rights; China

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This paper is based on a draft of my speak on the 4th Nantes World Forum on Human Rights in 28-30, June, 2010. I would like to thank professor François COLLART DUTILLEUL, due to his invitation I pay more attention to the rights to food and land, the new topics of human rights, in China.



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The current land system in China is somewhat of particularity. All lands are owned by the state and collective ownership while there is no private ownership of land. Ownership of land originally means that the farmer owns the land he cultivates. However, China's current land system has led to numerous violations of human rights. This paper attempts to investigate violation of human rights, including rights for food, under the system of public ownership of land as well as how to promote human rights.

1. Land System in China since 1952

The "Land Reform" movement was completed under the leadership of Chinese Communist Party in 1952 and a land system of collective ownership was implemented, which put to an end the system of mainly state-owned land and partially private ownership for over two thousand years. In the vigorous process of the "Land Reform", farmers without land were exulted while all the lands owned by landlords, Kulaks, the Kuomintang government officials and warlords were confiscated and a considerable number of those land owners were killed.^① Farmers obtained fields and a socialist lofty ideal of "land to the tiller" was achieved. From a perspective of human rights, "Land Reform" is the "tyranny" for the majority, which eliminated the minority by violence and make the majority possibly live a happy life. The equality and fairness were achieved through coercion and violence. It was just because of this kind of dictatorship of the proletariat that the ruling Communist Party has supported by the majority who got hold of land.

However , the collective ownership land system was not successful according to the development in the rural areas from 1953 to 1978. Initially, only mutual assistance groups were made in the rural areas, with 4-5 rural households in each group and then were developed into primary cooperatives and senior cooperatives by 1955. In 1958's "Great Leap Forward", the People's Commune system was imposed by the Government, with an average size of about 5,000 households, 10,000 labours and 10,000 acres of land. The Commune's income was distributed mainly based on the needs of survival and only partially based on the work done by individual farmers. The agricultural products produced in the private plots were banned to trade in rural fair. Implementing People's Commune is a lofty ideal of communism in the Marxist ideology. However, the members of the Communes quickly lost their enthusiasm for work, resulting in an agricultural crisis of three-year severe famine from 1959 to 1961 when about more than 30 million people were died of non-normal. At that time, no wording of rights for food was expressed. After 1962 , the People's Commune system was changed by central leaders to the rural land system of production teams as the basic ownership unit of the land, which had been implemented until 1978.

The current land system in China, named the household responsibility system (HRS), began in 1978. In November 1978, the farmers from Xiaogang Village, Fengli Commune, Fengyang County, Anhui Province were unwilling to tolerate the "iron rice bowl" mode of production and started to carry out an all-round responsibility system, fix farm output

^① It is estimated that death toll of land reform risen from previous 2 million to the current quantity which is between 5 million and 19 million. The involved toll increased from 25 million to 60 million.



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quotas for each household and work contracted to households, which was namely "the household responsibility system (HRS)", under the leadership of the production team leader Yan Junchang. In 1982, the land system of HRS was officially recognized by the Central Document No. 1 and then the People's Commune system terminated officially in China. Article 10 in the "Constitution" in 1982 stipulates that: "Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives." Thus, the land property right system of the HRS is recognized in law and political system.

2. Land Problems under the Household Responsibility System

The land system of the HRS greatly mobilized the enthusiasm of farmers and food production had been greatly increased. By the mid of 1980s, farmers had basically solved the problem of food and clothing in the grain-production countryside focused on growing rice and wheat. Solving the problem of food and clothing of farmers in fact meant the basic life right and the right to subsistence. Only a few years later, the problems of food and clothing of most farmers in the rural China had been resolved. Therefore, the Chinese Government has always claimed proudly to the world that the greatest achievement in human rights in China is the elimination of poverty. Indeed, solving the problem of food and clothing of nearly 800 million farmers is a monumental achievement of Chinese Government.

But the golden age of the rural areas lasted less than a decade. With Chinese government's more emphasis on the economic development in industry, especially with China joined the World Trade Organization (WTO) in December 2001, the gap between the cities and the countryside has been widened. Industrialization and urbanization requires a lot of land, farmlands close to the cities and towns in coastal areas began to be eroded. As a result, countryside is still the object of being plundered by cities.

After the "Agriculture Feeding Industry", approach of the former Soviet Union, the Chinese government has focused on the development of industry since the founding of the PRC, that is, the government practices monopoly for the purchasing and marketing of agricultural products by means of lowering the buying prices of agricultural products, increasing the selling prices of fertilizers and other industrial products to accumulate funds for the industrial development. The policy of Agriculture Feeding Industry was carried out under the planned economic system, referring to that farmers must "give enough amounts to the state and remain enough amounts to the collectives" faithfully and may keep the rest for themselves after their agricultural products harvesting." In fact, there was not much left for farmers themselves when they were forced to give enough amount to the state and collectives. At the same time, the strict household registration system locks in farmers to the land, the dual system in urban and rural areas which is divided people into two parts: registered permanent rural residence and registered permanent urban residence, under which farmers suffer from various unequal treatments and are discriminated against everywhere.

From the late 1980s to the mid 1990s, unequal treatment suffered by farmers had been



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increased. Farmers had the right to manage their land through the household contract responsibility system and seemed to control their own destiny. Theoretically, farmers could decide what they grew and how they priced and sold their agricultural products, but they had to pay various agricultural taxes that were the basic sources for the daily expenditures spent by the township governments and various rural public service expenses. Though farmers had their rights to control their land, they are still not capable of dealing with the township government's exploitation. Consequently, Three Rural Issues unique in China had been formed. A lot of farmers resisted against the scot negatively or actively and some were imprisoned, tortured and even died. Local scholars such Mr. Li Changpin, Dr. Yu Jianrong and Professor Xu Yong have a deep explored to the Three Rural Issues and more in details see the book *Will the Boat Sink the Water?* written by two local writers in 2004.^①

In 2001, the Three Rural Issues was extremely serious. All the agricultural taxes were cancelled by the Central Government, which finally freed farmers from the heavy taxes. As a result, rural China returned to the situation in form before the year of 1949. Without daily expenditures, township governments did not support farmers. Though farmers got rid of governmental officials, they lost the financial support. Without the governmental financial support, the whole rural China was in an anarchical and abandoned condition. It is generally believed that before 1949 China's countryside were of rural gentry society or acquaintance society in which countryside's daily affairs and public service such as water conservancy, bridge building, weddings and funerals were handled by the elders with a certain prestige. Due to the very lower mobility at that time, the countryside presided over by rural gentries were maintained through the established morality, rules and customs. However, when population movements become easier, more importantly, when the young farmers work in cities with a monthly income of more than a yearly farming income at home, the rural gentries can not control farmers who want to make a fortune any more. Meantime, villager elections that farmers directly elect their own village committees carried out in rural China almost completely deviated from the original intention of villager elections. The elected village heads are persons who served their own interests through trickery and swindling or abused power for personal gains, rather than respected rural gentries. Or even local gangleader were elected as village heads by vote-buying.

3. Land System in China during the Process of Rapid Economic Growth and Urbanization

In the recent 20 years, Chinese economy and society are characterized by rapid economic growth and urbanization that both have a huge demand for land. With a market economy adopted in China since 1992, the Chinese economy has maintained an annual growth rate of over 10%. By 2010, China's GDP ranks the second in the world, a large number of cheap migrant workers sought jobs in cities that supported the rapid economic growth. China's rapid economic growth largely is due to the rapid expansion of city and the central government's policy of developing small cities. Economic development and urbanization have occupied a lot of land and than many issues of human rights are caused by land issues, while incomplete the HRS can not stop these human rights violations from

^① Authors are a couple, Chen Guikang Chun Taozhu. The book also was translated as "Survey of Chinese Peasant" People's literature Publishing House 2004.



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occurring. The impact of industrialization and urbanization, the HRS full of loopholes, these loopholes are as follows:

First, the main part of land property is not clear. Although China's Constitution and Land Management Law define that rural land are collectively owned, but the collective is refer to the village government, township government, county or provincial government or the central government, the law has not been clearly defined. In fact, land ownership is generally controlled by the village cadres and the hands of county-level government officials. Since property rights are unclear, therefore, the right of land contract is not stable; there are some problems with the land use rights of farmers, so it is seldom to expand production with additional fixed investment in land. Also, because the using right is not imperfect, farmers are lack of mortgage land use rights to obtain the right to bank loans. It is also the subject of land ownership is not clear and easy to the government officials who seek an opportunity for personal gain.

Second, that property rights are not clear leads to serious deficiencies in the land requisition system. The Central Government to implement industrialization and urban development strategy, the state can rely on their ultimate ownership of agricultural land, by way of expropriation, free land expropriation and violation of the collective ownership of farmers and farmers the right to land contractual management. The government also can rely on their administrative power to intervene the farmers right to use the land. Especially in the 1994 tax system reform and the main indicators to GDP performance evaluation mechanism, the local government through the land to big projects, big industry, and real estate finance to support the urban construction land.

Considerable number of local government collusion with real estate developers, the formation of interest groups to jointly raise the urban housing prices, the majority of farmers in land acquisition process have lost their land, ^①farmers without land, mainly through complaints to the provincial capital, and Beijing, to express themselves. Unfortunate, the data show that the petitioners in the present, there are more than half due to land disputes. At the same time, the land acquisition process of corruption has become a hotbed of corruption, Chinese officials, hundreds of billions of money into the personal pockets.^② Due to land acquisition and the great injustice caused a large number of groups induced events and social contradictions, seriously affecting the stability of Chinese society.

Third, the lack of clear land transfer mechanism. China's very limited arable land, Chinese farmers cultivated area per capita is 1.88 mu, and the United States is 1480 mu, which is 787 times that of farmers in China, 18 million acres is considered to be the final bottom line, any arbitrary act of agricultural land will be occupied Severely punished.

^① According to statistics, half of real estate prices came from refunding land transfer by the government, half of the local finance income came from real estate, the price of real estate in Shanghai, Beijing and Hangzhou, Shenzhen and Guangzhou leap into the front ranks in the world, the capital city of other houses also needed a middle-income decades of income to buy the house.

^② Wang huaizhong,, former vice-governor of Anhui Province, abusing his power for his daughter by 3500 mu with low price, making profits 2800 million by changing hands, being bribed for selling land in illegal ways, there are examples such as Zhang zhiguan, who was the, taking bribery money of 8.6 million Yu zhijun, who was, taking bribery money of 5.39million, and as well as Chang who was the orginal minister from natural resource, dismissed and prosecuted because of land. 80% corrupt officials are related to land.



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However, over the years, a lot of land has been idle, was prepared by the real estate business hoarding excessive profits. Although the government allows rural residents to transfer the right to manage a 30-year land to other individuals or companies by way of a contract, subcontract, lease, exchange, transfer, stock cooperative. But in the coastal economically developed areas, neither are large areas of land circulation nor development, but leave land uncultivated, because in these developed areas, farmers can work rations earned money to buy. To grow food in their mind is a thankless job and do not earn money.

4. Harmfulness of Land System and Land Acquisition to the Human Damage

From about 60 years of China's land system, human rights were violated under any land system. In other words, the land system is not directly associated with the protection of human rights. Protection of human rights in China is achieved mainly through government's administrative means, for the law's role in the protection of human rights is very limited. Even though there already are some land use management laws and regulations, such as Constitution, Property Law, Land Management Law, Rural Land Contract Law, Rural Land Contract Disputes Mediation and Arbitration Law, the government often breaks the law but requires people to abide by the law inversely. Therefore, the public is difficult to use the law to protect their rights. The damages on the rights of farmers caused by the current land system are as following:

First, under the urban-rural dual system the output and input of land resources is still disproportionate, as the government does make the inactive conduct, the rights to survival and food of farmers are not guaranteed. Statistical data show that since the reform and opening up through the land and resources taken away from farmers at least 3 trillion or more, far more than 30 years of reform and opening up by the scissors away from the peasants of the 6 billion dollar. As the Government has not yet been bigger in the land system changes or adjustments, therefore, to account for the restricted mode of production units to improve productivity, agriculture uncompetitive, low value-added agricultural products, and other basic means of production such as seeds, fertilizer prices under the control of manufacturers, together for the farmers on the land only with great access to basic food rations to pay to meet basic survival needs. And when faced with natural disasters time to eat well is a problem of individual farmers. Some scholars believe that the negative action of governments brings about the development of rural areas is difficult; in fact, undermine the right to development of farmers.^①

Second, the property rights of landless peasants have been violated, their right to life, which also could be express rights for food, can not be guaranteed. Landless farmers is currently a specific title in China, which refers that in the process of city development, the famers live here have to give their field due to the needed land for the construction of the industrial base, factories and urban residential zones and public facilities, and these no land migrant workers have become Three-No-Farmers who have no land, no post and no basic cost of living allowances. According to expert estimates, now there are about 50 million landless peasants. These diverted land generally increase in value twofoldness ranging from several times to dozens of times, if the owners of agricultural land have bargaining

^① Liu Zhaojun, Peasants Right Protection in the idea of Human Right, *China Land Science*, July, 2010, p20.



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power, then the land property owners will enjoy the benefits of the land, but in fact most farmers do not have bargaining power. Current land management law only provides for the total of land compensation fees and resettlement fees shall not exceed the toplimit of thirtyfold average annual output value before three years of land requisition, but there is no lower limit must be met, therefore, local governments in the actual implementation often arrive lower demand not higher so that the compensation many farmers actually receive falls far short of 30 times.

Third, the current land expropriation compensation is the basis of agricultural income. But due to the different purpose of land, land profit is vary huge. As is engaged in the industrial development land benefits, which is can reach hundreds times of agricultural land. According to Jiusan Society calculation, the levied land income distribution pattern roughly is local government 20% to 30%, enterprise 40% to 50%, village organization 25% to 30%, farmers only 5% to 10%.The huge price is from difference between the granting land cost and the land grant fee, which mostly were grabbed by middlemen and local government.^① Only the remaining 5% of the land grant fee was get by partly farmers who put money in the bank to provide for the aged. But currency devaluation, is not almostly predict whether the money can be used to pension. The money is used to work at risk investment by partially farmers. Also the money is squandered by some farmers in a few years. The farmers who are no land will lose basic production and living material, their endowment becomes a big problem. The rule of Item of Clause 25 in the Universal Declaration of Human Rightsis, "everyone has the right to enjoy living standards, which is maintain themselves and their families for the health and welfare" become empty talk.^②

Fourth, the farmers' rights to know, the right to freedom of expression and rights of relief are violated. Seen from the large number of cases, most of the land agreements are completed in the black-box operation, the villagers know a little of their transactions between the government and businessmen, even in full unknowable of the completion of land transactions; also have some land is local forces land through illegal means transactions. Land acquisition process as a great injustice, and the higher level government officials, village leaders and local forces in the native land of great benefit gained in the process, the farmers here can not be reconciled punish the corrupt officials insist, when the local villagers have complaint not satisfied, they go to the provincial capital, or Beijing to petition that will become the only way to solve the problem. In China, maintaining social stability is the government's top priority, th the Central Government compel that leapfrog petition must be zero, the expression of those who dare to exercise their right to petition leapfrog the "trouble-making" is not in custody, sent to a mental hospital, is subjected to torture, beatings sometimes. Today's China is not particularly landless peasants remedies, the survival of landless peasants in Chinese society will be a major social problem.

Fifth, the migration rights of farmers will be hurt. In the process of demolition and

^① An outline of reformation of the land property system reference by China's Reformation Forum,

http://www.chinareform.org.cn/Economy/Agriculture/Forward/201010/t20101014_46761.htm , 2011-5-6

^② Article 25 of Universal Declaration of the Human Rights states that Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.



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land expropriation, a considerable number of "city-village", the so-called "city –village" is that when urban expansion, the original rural changed into the villages which is in city, they scattered in the town, because their cheap rent fee, they often become the preferred residence of the migrant workers in Rio DE janeiro, Brazil, are called slum in Mumbai, India. City-Villages from the start of urban construction became the "nails", the leadership often will lie in municipal construction as his achievements, therefore, tear down villages for governments and real estate valued.

After demolition, how to compensate and whether to move back on time, the government and the villagers are in game. If the two sides fail to reach an agreement, the Urban Guard or the employment of the underworld thugs chased the villagers to fight the "nail house", who refused to move out.^① Those nail house often been held against the demolition of violence, and some died by way of self-burning to protest the government's demolition of acts of violence.^② China's Constitution provides citizens with the right to freedom of movement and malignant in a case of forced migration has been repeatedly trampled.

Sixth, the farmer rights to education, social welfare rights are injured. China's reform starts from the countryside, but the countryside is left behind by far very long than the city after more than ten years late, the city of Guangdong Zhejiang river delta as a huge gluttonous most young sucked by the vampire in several provinces such as around Guangdong, Guangxi, Hunan and Jiangxi, and western Yun-Gui-Chuan of rural areas. Formerly once thought that these people are exiling home do not leave the earth, but certain years later, many people did not hope, because in that native land and the city compared is really the too backward: education quality low rural primary school, the potable water not health, the facility crude medical service in small clinic, evening and slack farming season time, the villagers besides playing mahjong, did not have any entertainment facility nearby, kept in the village only then old person and the child, the countryside is faded from the memory gradually. Exits not to hope, old being unable to get away, after small grows up, must exit. The ruined countryside and the city on the wane the exquisite comfortable environment formed "the power which so-called the farmer entered a city namely to come from agricultural the thrust force, also came from urban the pulling force."^③

5. What Land System Can Better Protect Human Rights

Human history and current public and private land system is nothing less than two, the implementation of the low number of public ownership of land, mainly socialist countries and some developing countries, private ownership of land is found in most of the

^① Such examples could be multiple indefinitely. Eight villages in the Haerbin City of Heilongjiang Province thought the illegal compensation of demolition. All of them are arrested. See Haerbin's policy office issue the case of illegal resist demolition by violence in March 28, China Daily May of 5th, 2011.

^② For instance, Ms. Tang Fu-zhen, a entrepreneur of 47 years of age, prevent a demolition team with force on November 13, 2009, she self-immolated on the roof. The local government regarded as "oppose violence with violence." The example of "insult by insult" is nothing new now. See Tang Fu-zhen: Prevent Demolition by Self-Burning, http://news.ifeng.com/mainland/special/2010fazhilianpishu/renwupian/detail_2010_12/27/3713359_0.shtml , 2011-5-6

^③ He Xuefeng : Going Back to the Land is the Basic Human Right, *Journal of Huazhong University of Science and Technology*, (Social Science Edition), January of 2009, p.15.



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world countries, such as Civil Law in France, Italy, Germany and Switzerland, and the Common Law of the United States, Canada, India, UK, private land accounts for the vast majority of all land assets, a small state-owned land. In these countries, mainly by the market allocation of private land, sometimes by the government to regulate, another state-owned, public and private land is always the dynamic changes. China's land should be public or private, there are three opinions in China, one that should be maintained and improve the existing the HRS, and second, advocates of land owned by the state and the third is land privatization initiatives.

Clearly, the implementation of which the land system is bound up with a country's social system, political and economic systems, legal systems, traditions and customs, history, heritage and way of thinking about. Typically, a country's land system is relatively fixed, incremental innovation, and whether to change their country's land system depend up the situation of a country and the international community. In the contemporary community, human rights as an important factor has impacted a national land system. Particularly, in the basic human rights concepts and standards, personal interests, the interests of the weak are placed in front of the nation, when the tillers of the soil are no fields, or their land was occupied, even if the tillers are fewer, the land system is flawed. Because "the right to property is sacred and inviolable, except when the legitimate needs of clearly identified public when necessary, and compensation in a fair condition in advance, no person shall be deprived of property." ^①Today, "We live in an age rights era, the era of human rights is widely accepted that the only political and moral values."^②

Regardless of what the implementation of the land system, a fair priority, followed by efficiency and land conservation. Or balancing fairness and efficiency, when the two can not take into account, the expense of fairness can not be efficient, on the contrary, to be fair to sacrifice efficiency. Under the Universal Declaration of Human Rights and Civil and Political Rights International Conventions and Economic, Social and Cultural International Conventions, survival, which means rights to food and land, is the most important rights. How to food and land as the entitlement, property rights are basic. Later the land property extended out on the basis of civil rights and other social rights. Unfortunately, in reality, there is fairness and efficiency are often contradictory, on the one hand, the lack of equitable land system is often inefficient, on the other hand, high efficiency, the back of the land system is often a lack of fairness. From this point, only to land rights and food to rights as human rights, the end of the land as farmers and the survival of the most fundamental habitat,^③ to the fairness as the land policy formulation and implementation of the basic principles, such a policy is "good" the land policy, the only way to truly achieve the highest moral ideal of contemporary society - fairness and justice.

^① Déclaration des Droits de l'Homme et du Citoyen, clause 17.

^② Louis Henkin: "Toward an Age of Right", Beijing, Intellectual Property Press, 1997, p89.

^③ Her Xuefeng, the expert on rural problem, stated that peasants returning to countryside and the well-off life are the basic rights. However, a lot of farmers were still the second class citizens because of the urban and rural disparities. See He Xuefeng : Going Back to the Land is the Basic Human Right, *Journal of Huazhong University of Science and Technology*, (Social Science Edition), January of 2009, p.16.