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Rural women's land rights in China

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Introduction

China underwent a profound land reform in rural areas in the 1980s. The use right of rural land was distributed to farmers' households based on the number of family members in the household while the ownership of the land still remained at the rural collective. In the initial phase in the early 1980s, the land was contracted to farmers' households for fifteen years which was then lengthened to thirty years in mid-1990s as the fifteen-year terms were approaching an end. This land reform was significant for the land property rights system in China and marked the beginning of successful economic reforms for rural farmers (Zhu Keliang. 2006). China experienced dramatic increase of agricultural production since 1980s because individual family farms proved to be a more efficient model than collective farming (Roy Prosterman et al. 1998).

While the land reform brought many benefits to Chinese farmers, problems relating to women's land rights have been overlooked. It is widely believed that considering women's land rights as a specific issue is not necessary because women's family is assumed to be a single, indivisible interest system that incorporates women's rights and interest (Yang Li and Xi Yin-Sheng, 2007). In this view, there were no land right issues between men and women within a household. However, there is evidence that with the patriarchal tradition still dominant in rural China, land rights policies have been gender biased in either the local implementation or outcomes, even if government policy may not have been biased by design (Chen Junjie et al.2007). Although women have become the key agricultural laborers and account for more than 60% of the rural labor force in China with the continuing increase of male urban labor migration (Chen, 2010), women are still in a vulnerable position with regard to their land rights in rural China.

Women's land rights in the“Black-letter Law” in China

With respect to gender equality, China has surpassed other countries-in-transition in creating a gender sensitive legal framework for land rights (Zongmin Li et al. 2005). There are a series of laws and policies in China granted equal land rights to women and men. While China's constitution grants broad equal rights to women in all spheres of life, Law on Protecting Women's Rights and Interests ("LPWRI"), the Rural Land Contracting Law (RLCL) and the Marriage Law all provide specific protections for women's contracted land rights.

As China's first comprehensive law specifically enacted to safeguard women's legitimate rights and interest and to promote gender equality, the Law on the Protection of Women's Rights and Interests, enacted in 1992 and amended in 2005, mandates equal rights to property for women (including equal rights to farmland) and protection for women's land rights in cases of marriage or divorce².

In 2002, China passed the Rural Land Contracting Law (RLCL) which governs land use rights for rural land in China. This Law attempts to address the gender issue in landholding by setting the principle of equal treatment for women applies to land contracting³. While reaffirming the government's dedication to encourage women's equal rights to land and attaching civil liability

² Law on the Protection of Women's Rights and Interests (2005), article 30,31,32,33.

³ The Rural Land Contracting Law (2002), article 6.

to any person who deprives women of their land contracting and operation rights⁴, this law tries to remedy women's loss of land by preserving a woman's share of land in her natal village upon marriage or in her marital village upon divorce or widowhood⁵.

Under the Marriage Law of 1981 (amended in 2001), husbands and wives have equal status in the household and unless otherwise arranged, property is held jointly⁶. Moreover, the 2001 amendments specifically deal with the land contracting system and the distribution of property after divorce. It explicitly provide that the rights and interests enjoyed by husband or wife in the operation of land under a contract based on the household shall be protected according to law⁷ and that the court's decision should not only favor wife and children in a property settlement, but also that the wife's household's land use rights should be protected under the law in the event of divorce⁸.

In sum, the legal framework in China not only provides for equal land and property rights for men and women, but also addresses the impact of marriage practices on land rights and attaches penalties to infringement of land rights. Despite this positive legal environment, women are still in a disadvantageous position when it comes to land tenure in rural China.

Women's land rights issues in practice

Gender equality, though being a notion actively promoted in the law, is not well-recognized in rural China with thousands of years of agricultural and patriarchal tradition (Xiaobei Wang, 2009). As the result, the interaction between legal reforms intended to increase tenure security for households, on the one hand, and traditional patriarchal norms in rural society, on the other, has been effectively deprived rural women of secure land rights during marriage, in both the parental village and their husband's village and also been deprived them of access to land as a productive asset during divorce or widowhood (Zongmin Li and John Bruce, 2005). According a survey conducted in 2007, more than a quarter of rural women identified in this survey had no land. Only 33 percent of women had land in their natal village, 41 percent had land in the marital village, and 26 percent of all women identified in the survey had no land (Susan Whiting, 2010).

Women face the risk of losing land in the land allocation

In the initial phase of the rural land reform from early 1980s to mid-1990s, there were regular reallocations of land among the households every three to five years in many villages to address household demographic changes with marriage, birth and death to keep holdings equal (Zongmin Li et al. 2005). Therefore, women following the patrilocal tradition to move their place of residence from one village to another due to the change of marital status could reasonably anticipate that there would be an eventual adjustment of land allocations that would provide them with land in their new place of residence while the land originally allocated to them in the early

⁴ The Rural Land Contracting Law(2002), article 6.

⁵ The Rural Land Contracting Law(2002), article 30.

⁶ The Marriage Law (2001), article 13, 17.

⁷ The Marriage Law (2001), article 39.

⁸ The Marriage Law (2001), article 40.

household would be taken back by the collective to reallocate to other married-in women or new-born children. (Ellen R. Judd. 2007).

In the second phase of the rural land reforms beginning from the mid-1990s, government sought to provide farmers with longer and greater tenure security to enhance farmers' incentives to make long term investment in their contracted land. More specifically, the farmers were provided with: (1) an addition of 30 years to their original 15 years contract period; (2) strict restriction on land reallocation⁹. In this process, a large scale "second round of land reallocation and re-contracting" was conducted in most of the villages in China as the existing 15 year land use contracts expired from mid to late 1990s. Land was then reallocated and re-contracted to households again based on the number of family members at that time.

Women have benefited from these reforms as members of households with more secured rights to land, but in their own individual entitlements to land, women have not enjoyed the same rights with men in this round of rural land allocation (All-China Women's Federation 1999). Efforts to increase land tenure security by the central policy paradoxically have had the opposite effect on many women. That is, as contract periods grow longer and the incidence of land readjustments becomes less frequent, women became increasingly disadvantaged in their land use rights and in their access to land (Brown, 2003, Li, 2002).

Almost all the village rules for land allocation stipulated that if a woman married out to other villages, the land that had been originally allocated to her would be taken back by the collective and redistributed to other members of the village. Those married out women who definitely would lose their land in their natal village, but they were not necessarily be able to acquire a new share of land in the village that they married-in if they missed the time of the new round of land allocation in this village. Consequently, some women would completely lose their right to contract a share of land in both their old and new place of residence. For those divorced or widowed women, they might also be deprived the right to contract land by the collective even if they choose not to change their place of residence. Some villages would force these women to return to their birth villages, and take back their land regardless of whether they would receive any land in their birth villages or new places of residence.

Since regular land reallocation within the 30-year contract term is strictly forbidden by the law¹⁰, for those women who were not allocated a share of land in the second round of land reallocation and re-contracting would mean complete loss of the opportunity to be allocated a share of land again within the new 30-year contracting term. In another word, these rural women would become landless and will keep landless at least in the coming 30 years. Ironically, while providing farmers with long-term more secure land rights, the 'no change for thirty years' policy against land reallocations unintendedly strengthened the results of the discriminatory village rules on land allocation against women which adversely lead to the complete loss of land for some women.

⁹ Article 14 of the Land Management Law of China enacted in 1998 limits adjustments to "isolated cases," makes all readjustments subject to agreement by two-thirds of the villagers' conference or two-thirds of the villagers' representatives, and requires approval by the township government and the county administrative agency responsible for agriculture.

¹⁰ The Land Management Law (1998), article 14.

Women face the risk of virtually losing benefits from the land while retaining land rights in name only

Another apparently inadvertent effect of this ‘no change for thirty years’ policy is the de facto separation of the majority of women who marry or remarry patrilocally from allocated land (Ellen R. Judd. 2007). As aforementioned, women leave their natal families upon marriage and that similar departures occur with divorce or when widowed and remarried. These women usually have no other choice but to leave behind their share of land to the earlier households. According to the Rural Land Contracting Law passed in 2002, within the duration of the 30 year land contracting term, if a woman gets married, divorced or widowed and remarried, but no land is contracted to her in her new place of residence, the collective shall not withdraw the land originally contracted to her¹¹. In other words, during the duration of the contract, the village cannot revoke the land of women who “married out” and moved into their husbands’ village. This law enacted after the completion of large scale second round of land allocation, though cannot provide protection for those women who already lost their land before the effectiveness of this law, tries to prevent more married-out, divorced or widowed women from losing their land.

On the surface, these women did not lose their land contract rights. However, it is the earlier households, instead of these women themselves, who actually control the land. These women cannot exercise land rights in their earlier households or receive any profits from the land. What they only can maintain is the nominal rights to the land. For those divorced and widowed women, they are particularly vulnerable to lose land and the benefits from the land to which they had access through their husbands. Former or late husbands’ families may have priority over use of the land. The divorced or widowed woman’s natal village is also not a likely source of replacement land, even though the woman may have no other choice but to return there (Denise Hare et al. 2006). A quick remarriage often may be the best option for regaining land security. It is ironic that marriage emerges as the solution, although it may explain why the numbers of non-married women found in rural China are so very low (Li ,2002).

Meanwhile, it should be noted that since the land was contracted to the household and land readjustment is forbidden by the law¹², any newly added family members would not change the family’s share of contracting land. Thus, as a new member of her husband’s family, the woman would have no share of the contracted land in her new home village. She could only work on and live on the existing contract land of her husband’s family but had no control of that land which worsened her already subordinate position in her new family.

Women face the risk of being deprived the rights to compensations for land expropriation

China’s unprecedented economic growth and rapid urbanization have created a massive demand for arable land to be converted to real estate or industrial development (Diana Fletschner, 2011). According to a survey conducted in 17 provinces of China, 43 percent of the villages have experienced compulsory government land taking since the late 1990s (Landesa, 2012). The Chinese Ministry of Agriculture estimates that with rapid industrialization and urbanization, more than one million farmers each year lose their farmland due to land expropriation (Yin

¹¹ The Rural Land Contracting Law of China (2002), article 30.

¹² The Land Management Law of China (1998), article 14.

Chengjie, 2006). Rural collective economic organizations as the owner of the collective land gained compensation for requisitioned land. However, women and men do not fare equally in practice when it comes to allocation of compensation for land takings.

An investigation conducted by National People's Congress (NPC) found that women receive less compensation than men for rural land takings, or, in some cases, women are deprived of compensation entirely (NPC, 2010). According to the investigation, village rules or villager assembly decisions are used to deprive or limit women's allocation of compensation for land takings (NPC, 2010). The absence of clear, standardized rules and guidelines for making decisions on allocation of compensation leaves a gap that is filled by the discretion of the village committee. When it comes to women's rights, this gap is filled with traditional notions of women's rights within their family and their community. Faced with significant economic benefits and perhaps to serve their own interests, most villagers choose to define the right to be allocated compensation in ways that benefit themselves, often at the expense of the socially disadvantaged, including many women (Xiaobei Wang, 2008).

Considering Chinese farmers' vulnerable position in land expropriation in China, those women who not only lost their land in land taking, but also were deprived the rights to land compensation by the collective, would inevitably fall into an even worse situation than men in rural China (XiaoWen and Tang Xiangping, 2005). Most of these women lack of enough education and non-agricultural skills. They are at a more disadvantageous position than men to find a job in the competitive labor market to support the family. Most of them are unemployed or underemployed after losing their land (Tang Yuehua, 2007).

Key Factors that Impact Rural Women's Land Rights in China

From the above analysis we can see that while the laws have granted women with equal rights on land, field realities are far from being encouraging. Women are still in a vulnerable position and do not enjoy equal rights over land with men in rural China. The discretion of village committees, traditional marriage and inheritance practices, and social norms about the proper role of women and strict limitations on the periodic redistribution of land by the law all heavily influence women's rights to land. To ensure women's equal rights with men to land, the following key issues need to be addressed.

A clear gender-sensitive definition of collective membership

Under current Chinese laws, the collectives determine the allocation of land rights and benefits therefrom, including the distribution of the compensation for land taking, based on membership in the collective. However, the definition of membership is not included in national policy, legislation, or regulations, and is therefore left to the discretion of the collective leadership. In the absence of legal guidance, the collective decides based on the patriarchy norms and beliefs that treat women and men differently which may lead to some women not being a member of any collective even though they are contributing labor and sweat equity to the land. In other words, men's land rights are secured as soon as they are received while women's rights may be lost or changed depending on their marital status and the rules determining membership of a

particular collective. Therefore, it is important to promote legislative progress towards a clear gender-sensitive definition of collective membership to protect women's rights.

Village committee decisions on land rights should be subject to review

The Organic Law of the Villagers' Committees permits broad self-governance of villages in China¹³. Village committees have authority to make rules on key matters in the village, including the discretion to allocate land and related benefits to households based on their own definitions of collective membership with a majority vote in the villagers' assembly.¹⁴ Although some aspects of village rules may discriminate against women, currently there is no institution or mechanism to review or appeal the legitimacy of village rules. Establishing a review and appeals mechanism of village committee decisions could play a key role in avoiding inadvertent infringement of women's land rights.

Legally define and document the land rights of each member of a household

The current legal framework does not currently define the land rights of each family member within a household. Since women move between households with changing marital status, it is almost impossible for a woman to claim and partition her share of land from either her birth family upon marriage or her ex-husband's family upon divorce without a legal definition of land rights of each member of a household. Moreover, the government issues certificates to each household that do not normally include women's names, thereby making it even harder for women to claim and partition their shares and make compensation claims for expropriations.

Increase women's participation in village-level decision-making

Women's participation in the village-level decision-making process is very low. In rural China, men are expected to represent the interests of the whole family in public forums, but at the same time out-migrate for labor. Women lack awareness of, and enthusiasm for, participating in village governance. With only one or two women representatives at the villagers' representative meeting, women's interests are not likely to be considered. Consequently, women's land rights are deprived in the name of village democracy. It is therefore important to build women's awareness, encourage them to participate in decision-making processes, and provide them with the skills necessary to do so in a meaningful way.

¹³ Article 2 of the Organic Law of the Villagers' Committees states that "A villagers' committee is a mass organization of self-government at the grassroots level, in which villagers administer their own affairs, educate themselves and serve their own needs and in which election is conducted, decision adopted, administration maintained and supervision exercised by democratic means."

¹⁴ Article 24 of the Rural Land Contracting Law states that the following matters that involve the interests of the villagers shall be dealt with only upon the villagers' assembly's decision through discussion which include land contracting plans and a villagers' assembly may authorize the villagers' representatives' assembly to decide on the above-mentioned matters through discussion. Article 26 of RLCL states that every decision made by the villagers' assembly shall be adopted by a majority vote of the persons present at the assembly.

Good practices to address women's land rights issues in China

The existing gender inequality in access to and control over land is an obstacle to achieve the goals of Chinese government to build a harmonious society and to ensure sustainable development in China. Addressing the problem of rural women's land rights have been a focus of both the government and civil society to promote gender equality in China. Some actions have been taken both from the central and local level in the domain of women's land rights.

Law enforcement inspection by NPC

The National People's Congress (NPC), the legislative body of China, conducted a nationwide law enforcement inspection into the implementation of the Law on the Protection of Women's Rights and Interests in 2010 after the 5-year issuance of this law. The status of rural women's land rights is one of the key issues that were inspected. After one month research in 31 provinces or districts in China, this inspection identified the prominent problems that affect rural women's land rights. Policy recommendations are put forward in this report to the legislative, judicial and administrative sectors to strengthen the protection of women's equal rights to land. These recommendations targeted on the legal definition of the collective membership, the supervision mechanism on the village autonomy, effective legal remedy for women on their land rights, the responsibility of agricultural and civil affairs sectors of all levels of the government on identifying and solving the problems related to women's property rights.

The State Guideline for the Development of Chinese Women

The Guideline for the Development of Chinese Women (2012-2020), a 10-year development blueprint for women, was issued in 2011 by the State Council of Chinese government. Premier Wen Jiabao pointed out on the issuance of the Guideline that "We must clearly realize that, under the influence of various economic, social and cultural factors, the development of women and children in China and the protection of their rights still face many problems and challenges." (Wen Jiabao, 2011). This is the second 10-year guideline for the development of women in China which sets goals and strategies for all levels of government for protecting women's rights and promoting women's status in the coming 10 years. It covers the areas of health, education, economy, social environment and legal protection. Women's land rights constitute an important part in the Guideline as one of the main goals for women's equal economic rights. To ensure that women enjoy equal rights with men on land, the Guideline requires the government at all levels take effective measurements to improve and implement relevant policies to protect rural women's land rights, correct the village rules that conflict with laws and regulations and regulate the internal distribution and use of land compensation within the collectives (the State Council, 2011). Most importantly, this Guideline establishes the leading position and strengthens the responsibilities of the Chinese government, both central and local, to implement the Law on the Protection of Women's Rights and Interests and the national policy of gender equality (Li Mingshun, 2012). Local government are required by the central government to map out their own development programs for women and set up tight-knit working mechanisms to ensure the implementation of the Guideline (Wen Jiabao, 2011). It is believed that the active involvement of all levels of government will be significantly improve the implementation of laws regarding women's land rights.

All China Women's Federation plays a key role in enhance women's land rights

All-China Women's Federation (ACWF), the largest women's organization in China, plays a key role to promote gender equality and safeguard the rights and interests of women in China. One of their initiatives is a nationwide survey conducted every ten years in cooperation with National Bureau of Statistics (NBS) on the social status of women in China. The survey was conducted in 1990, 2000 and 2010 respectively. These surveys provided important information to legislators, government and other organizations on the progress and the key issues related to gender equality aiming at laying solid basis for facilitating policy and legal changes and promoting gender equality in China (Project Group of the 3rd Survey on the Status of Chinese Women. 2011). Rural women's land rights issues are identified in the 2010 survey as one of the four key issues faced by rural women in the past ten years (Project Group of the 3rd Survey on the Status of Chinese Women. 2011). ACWF as one of the main advocators in China for women's rights and interests had continuously made policy recommendations to the NPC regarding rural women's land rights issues since 2004. In this year's policy recommendation, ACWF proposed that it is important to address rural women's land rights issues through (1) legally defining the land rights of each household member and including women's names in the land documents; (2) legally defining the collective membership; (3) strengthening the review of the village rules by the civil affairs sector of the local government and (4) increasing women's participation in the village-level decision-making process.

Till now, all these great efforts of the NPC, the government sectors and women's organizations in China has helped to reach a consensus among these key stakeholders on the key legal and social factors that negatively impact rural women's land rights and the measurements that can be taken to address these issues. Now the challenges are to put these measurements into action to remove those social and legal barriers and make women's equal land rights real.

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