

'Half the Sky' but NOT Half the Land

Women's Property Rights & Expropriation in Rural China

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Women in China hold up half the sky – so the saying goes. But do women own half the land? No, they don't and it is uncertain that they will under the new property rights law. But women do more than their fair share in the fields. Is this the reason why they should own half the land? No, this is not the only reason. The main reason is this – land is life, land is food, land is security, land is the future for the children, land is development.

Will the new property law make a difference to women's property rights in rural China? Will their rights be better protected when agricultural land is expropriated or converted to other use? It is better not to generalize. Their circumstances differ from village to village, county to county, province to province. But it is true that the law leaves vital issues unanswered, raises more questions and sometimes muddies the water. Whether judicial interpretations the Supreme Court is making will clarify issues for women remains to be seen. Generally, private property rights, including usufructuary and security rights, will be protected along with state property rights. While land requisition is restricted to those for 'public interest', the term is not defined. Ultimately, certain categories of women will still have to contend with a minefield of deep-seated traditions, outdated policies and modern laws to claim their rights to land, security and livelihood.

What is the overall situation of women in China? Who were the women whose property and other rights were at risk? What were the issues they faced? What did they do? Who helped them? What policies and laws stand in the way of their

claims to property and compensation? What does the Property Rights Law say about these issues? What are some of the strategies that may be helpful to other women in similar situation in the future? The main question is of course – how to help change the circumstances, traditions, policies, laws that exclude, discriminate against and prevent them from claiming their property rights.

Women in China: Mostly rural

The majority of women in China are found in rural areas. 60% of the Chinese population lives in rural China, mostly poor or poverty-stricken. More women are left to till the land with the massive rural-urban migration. An estimated 60% of farmer labourers are women. About one-third of the estimated 150 million rural migrant workers are women, mostly younger women. Overall, women form less than half the total population of 1.3 billion and 46.7% of the workforce. The official gender ratio is 119:100. But recent statistics indicate that gender ratios have widened in Jiangsu (163.5:100 for 0-4 yr old babies), Hainan (136:100), Henan, Guangdong and Anhui Provinces.¹ Other than the traditional preference for sons and sex selection abortions aided by ultrasonic scanning, one local analyst blamed the backward social security scheme in rural areas for the sex imbalance.² Tragically, suicide rate among women is higher than among men in rural areas – 30 per 100,000, among the

Footnotes

- ¹ Xinhua, 'China warned of risks of imbalanced sex ratio', *China Daily*, 24 Aug 2007.
- ² Wang Zhuoqiong, 'Sex imbalance linked to social ills', *China Daily*, 23 Aug 2007.
- ³ Shan Juan, 'Suicide remains shadowy subject', *China Daily*, 24 Aug 2007.

highest in the world.³ Literacy is lower among women and girls in the rural areas. In 2004, there were about 55 million illiterate women.⁴ Gender breakdown of the 83 million disabled people in China is not available. Over 75% or 62.25 million disabled people live in rural areas; but of those living in rural areas, only 4.7 million are employed and 3.19 million receive welfare benefits.⁵ Only 23.1 million people in the rural areas receive an average of 28 yuan per month under a basic living allowance system established by the central government at the beginning of this year.⁶ A basic rural medical insurance scheme begun in 2003 will be extended to cover over 80% of all counties.⁷ Ultimately, land is the primary source of food and livelihood security for most of the estimated 800 - 900 million people in the rural areas.

Food security, social security and landless women

Land and property rights are urgent issues for many women in rural China to protect their right to a decent standard of living. China has about 122 million hectares of arable land and has set the minimum at 120 million hectares in 2020.⁸ Food security experts say the bottomline is unrealistic.⁹ Instead they place their hopes on state farms in irrigated reclaimed land in the North West.¹⁰ While that may ensure food security for the country as a whole and urban areas in particular, the majority of the rural population may not benefit. 40 million farmers have already lost their farmland to land development projects.¹¹ An estimated 3 million will lose their land every year.¹²

For the farmers, the loss of agricultural land is aggravated by fraud, corruption, embezzlement and delay in payment of compensation by local authorities and officials. In many cases, farmers were cheated of their rightful compensation. As it is, compensation rates are very low but farmers are said to receive only between 10-22% of compensation meant for them. From 1998 to 2005, there were more than 1 million cases of illegal seizure and occupation of land, involving 330,000 hectares of land. The number of cases soared in the early 2000s. In 2003, there were 168,000 cases.¹³ The numbers dropped to about 80,000 in 2005 but many cases involved inadequate compensation to farmers.¹⁴

What is not known is the gender ratio of those who have lost land and will continue to lose their land. According to a sample survey conducted by the All China Women's Federation ('ACWF') in 202 counties of 30 provinces, 70% of those who were landless were women. Of those women, 26.3% have never had any land at all, 43.8% lost land when they got married and 0.7% lost land after divorce.¹⁵ Social security of women who have lost land in rural areas, especially elderly women, is a grave concern.¹⁶ With lower working capacity and lower income even if they find work, elderly women are dependent on their families and an inadequate medical insurance system in the event of major illness.¹⁷

Footnotes

⁴ Xinhua, 'China has 55 million illiterate women', *China Daily*, 18 Jul 2007. http://www.chinadaily.com.cn/china/2006-07/18/content_643838.htm

⁵ Xinhua, 'Most of China's disabled not financially independent', *China Daily*, 29 May 2007. http://www.chinadaily.com.cn/china/2007-05/29/content_882324.htm

⁶ Xinhua, 'Basic allowance system to cover more rural people', *China Daily*, 22 Aug 2007.

⁷ Xinhua, 'China vows to expand rural medicare system', *China Daily*, 5 Mar 2007.

⁸ Feng Jianhua, 'Feeding the Nation', *Beijing Review*, Vol 50 No 24, 14 June 2007.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Xinhua, 'China warned of risks of imbalanced sex ratio', *China Daily*, 24 Aug 2007.

¹² Ibid.

¹³ Xinhua, 'China cancels 2,720 development zones to save land', *China Daily*, 28 Dec 2003.

¹⁴ Jiang Zhuqing, 'Strict land policy unchanged', *China Daily*, 15 April 2006. See Also Zhu Keliang & Roy Proterman, 'From Land Rights to Economic Boom' *China Business Review*, July-Aug 2006. <http://www.chinabusinessreview.com/public/0607/zhu.html>

¹⁵ Women's Watch-China, '她们讨回的不仅仅是补偿款-广东省惠州 38 位出嫁女土地征用补偿款未' (30 Jun 2007) available at <http://www.womenwatch-china.org/article.asp?id=2042>

¹⁶ Jiangsu Women's Federation, '失地妇女社会保障体系建设' (29 Dec 2006) available at <http://www.women-legalaid.org.cn/read.php?kind=gdhc&file=20070104112953>

¹⁷ Ibid

How women lose land, what some women did

Women lose land, like men, when it is requisitioned. But women also lose land when the village committees or collective economic organizations withdraw land from them. Women may also lose land when readjustment takes place to accommodate demographic changes in the village. Women who marry men from other villages, women who divorce their husbands and

women who are widowed, lose their land. Not only do they lose land, they also do not receive any compensation when the land is taken away. The children of these women also lose land, or were never allocated land. Schooling is also out of the question.

A few stories of some women who lost their land are presented in the box below.

***IN** Anhui Province, 5 women married out of their villages but retained contract land in their village and paid all the taxes and dues. Like many others in their village, they did not farm the land but had jobs in Tongcheng City. Development reached their village, land was acquired, including theirs but they were excluded from the first round of compensation in 2001. A second round of compensation came in 2005. They knocked on every door they could think of - village committee, sub-district office, municipal women's federation, Provincial Rural Works Commission- but in vain.¹⁸*

***THEN** again, in Guangdong Province, 38 women also married men not from their village. These women retained their hukou or household registration in their village, worked diligently on their share of contract land, duly paid all the taxes and promptly performed all duties of the collective. Come 2000, the village committee suddenly withdrew their land but they continued to carry out routine duties in the village and were recognized as members by the village economic cooperative. Nevertheless, the village stopped their living allowance and deprived them of their rights to shares and bonuses of the economic cooperative from 2005. Mediation after mediation with the village committee ended in failure.¹⁹*

***FURTHER** north in Inner Mongolia, 28 women and their husbands from other*

places chose to live in the women's village where they were born. Twice the village committee contracted land to these women and their spouses. But in 1999, not only did the village representatives decide to exclude them from any share of contract land, but they were also denied residential and commercial premises the village collective were building as well as important economic rights and benefits as members of the village. In 2002, government dispute resolution efforts at every level ended with the women and the village committee signing a contract for a second round of contract land. Two years later, the land, 1.7 mu each woman, was again withdrawn for the residential and commercial premises. But the women received neither any compensation for the withdrawal nor any residential or commercial premises.²⁰

***ON** the outskirts of Beijing, a woman divorced her husband in 2000 after ten years of marriage. She suffered severe headaches and dizziness because of the domestic violence during marriage. She returned to live in her parents' home but retained her hukou at the matrimonial village. The matrimonial village land was eventually acquired for development. Compensation was distributed in 2005 but this woman was excluded from both rounds paid. The reason given when she tried to claim her shares was that she had divorced her husband and had not worked in the village.²¹*

Are the cases of these women unique? No, they are but the tip of the iceberg. The circumstances may vary but the deeper issues are the same. In Zhejiang Province, rural women who marry men with urban residency were also denied housing allocation.²² 34 women in Shaanxi, a woman and her two daughters in Hunan, 29 women in Shandong and another 25 women in Guangdong were all considered 'outsiders' by their maiden villages because their husbands were from other places.²³ These snapshots hardly do justice to the courage, persistence and desperation of these women. They were not striving for gender equality for its sake, they were fighting for life.

Who helped them?

In all except one of these cases, the women won. After protracted negotiations, mediation and dispute resolution, these women, in most of the cases, resorted to civil actions. In the past two years, the Beida Women's Law Studies and Legal Services Centre ('the Beida WLC') took on 10 cases on property rights and compensation rights of rural women from all over China. The women from Anhui, Guangdong, Inner Mongolia and Beijing whose stories are recounted above, were among those they helped. Rarely do private

lawyers take on such intractable cases. But from the other cases mentioned above it would seem that some did. In some of the cases, the local women's federations supported the women's claims, lobbied the local authorities on their behalf and coordinated their efforts with the Beida WLC. But it didn't happen in every case and certainly not where the local politics were too complex or the federation was too cautious or afraid. The Yunnan Women's Federation refused to allow the Beida WLC to help 500 women who lost land for fear of instability.²⁴ The experience was often difficult, risky. Beida WLC lawyers and staff often faced aggressive villagers and encountered local protectionism.

Of course neither the Beida WLC nor the private lawyers would have taken on these cases, if these women themselves had not taken that first step. But the question remains how many other women have not been able to claim and defend their rights to land and compensation? Why didn't they? How many more will not be able to? Why?

What traditions, policies & laws?

Were these women really excluded because they were 'outsiders'? Were they 'outsiders' simply because they married men not from their own villages? How common is it for women to marry men from other villages, towns and cities? Why is it a problem and for who?

Although there are not statistics but from the above cases, marrying men from other villages is common enough. It probably reflects the impact of China's controversial family planning policy and the traditional preference for sons especially in rural areas. The irony is that whether the women literally left their maiden villages for their husbands' or remained in their own homes/villages and were joined by their husbands, they were considered 'outsiders' once they 'married out' (出嫁). But it is not clear why this 'outsider' issue surfaced only when they did. In most of the cases, the women who remained in their own villages and were initially or regularly even allocated contract land. It was only subsequently when their land was rudely

Footnotes

¹⁸ Women's Watch-China, '韩某, 朱某等 5 名出嫁女士土地征用补偿款纠纷案' (28 Apr 2007) <http://www.womenwatch-china.org/article.asp?id=1793>

¹⁹ Women's Watch-China, '广东省惠州市 38 位出嫁女士土地征用补偿纠纷案', (11 July 2007) available at <http://www.womenwatch-china.org/article.asp?id=2052>

²⁰ Women's Watch-China, '内蒙古 28 名出嫁女诉本村村委会要求土地补偿款案情介绍' (22 Nov 2006) <http://www.womenwatch-china.org/article.asp?id=1471>

²¹ Women's Watch-China, '传票的压力-一起离婚妇女的土地补偿案的前前后后' (13 Nov 2006) <http://www.womenwatch-china.org/article.asp?id=1422>

²² Cao Li, 'Court ruling a win for equal rights', *China Daily*, 27 Mar 2007 http://www.chinadaily.com.cn/china/2007-03/27/content_836880.htm

²³ Women's Watch-China, '村规民约大过法律? 延安 34 户"女客" 艰难维权' (17 Jan 2007) <http://www.womenwatch-china.org/article.asp?id=1598>

²⁴ Women's Watch-China, '一场引发颠覆"乡土规则"的农村妇女土地权益官司' 23 Nov 2005 <http://www.womenwatch-china.org/article.asp?id=912>

withdrawn or acquired and compensation became available, that their status became an issue. In the above cases, this excuse eventually withered away when the women showed how they have pulled their weight like everyone else in the village. They were not taking a free ride on the basis of their *hukou*.

In some of the cases, rumours were spread that the women had 'shell *hukou*' (空挂户口). China's *hukou* or household registration policies are as controversial as its family planning policies. But these policies are better known for excluding rural migrant workers from enjoying welfare and other benefits in urban areas. The effect of the *hukou* on rural women has largely been ignored, generally collapsed within the consequences on rural men. Although the *hukou* featured in all the above cases, not much attention has been paid to its role and impact on rural women. Yet it is clear that without *hukou* in their maiden village, the women would not have been allocated contract land. Since the women had *hukou*, the only way to deny them their rights to land and compensation was to claim that their *hukou* was hollow. In one case, the women were incensed as other villagers who had moved out quickly reregistered their *hukou* in the village before village land was acquired, so that they would qualify for compensation. To add insult to injury, those villagers were given compensation but the women were denied their fair share.

Did the women contract land in their own right or as members of their parents' household in their own villages? How could the village economic cooperatives or the village committees withdraw the land contracted to the women? What about land contracted in the husbands' villages – how do husbands and wives share property rights in the contract land?

The nature of ownership bears on the proportion of compensation the women will receive after the land has been acquired. It may also make a difference should they divorce. It is not clear from the above cases whether the women contracted land in their own right. Nor do we know whether the women had joint, or several and equal shares with their husbands. The problem is that both

the 1998 Land Administration Law and its 2004 amendment (which has retrospective effect) do not articulate or protect women's property rights at all. Both laws are also silent on withdrawal of land during the contract period.

The women's rights would have been better protected under the 2002 Rural Contract Law which came into effect on 1 March 2003. It is possible that few people are aware of its provisions. The 2002 Rural Land Contract Law states that women have equal rights with men to contract rural land (art 6). Women who marry during the 30-year contract period retain the land originally contracted to her if no land is allocated to her in her new home (art 30). A divorced or widowed woman is equally protected if she continues to live in the original place. Even if she were to move to a new place, her right to the contract land is protected if no land has been allocated to her. Inheritance rights to the contract land are protected (art 31). Withdrawal of land during the contract period except under certain circumstances is prohibited (art 26). Readjustment of land during the contract period which is usually made to accommodate changes in the local area from births, deaths, marriages and other events is also banned (art 27). Civil liabilities attach to exploitation or encroachment of women's right to contract land (art 57).

Why were the village assemblies/village committees/collective economic organizations able to withdraw land from the women and deny them compensation? Is this grassroots democracy at work?

The short answer is that before the 2002 Rural Land Contract Law, the 1998 Land Administration Law and the 1987 Village Committee Law both allow the majority to make important decisions. Two-thirds majority is needed in the former (e.g art 14) and the latter states that the minority is subordinate to the majority (art 12). What sort of representation do women have on the village committees etc? Generally, there is only one woman on the village committee which complies with the 1987 Law (art 8). Apparently, they are in charge of family planning policies at the grassroots. Even though the sex imbalance

is weighted against women, the representation is nevertheless extremely disproportionate. Some researchers have suggested that more and more active women village committee members can help to protect women's property rights in rural land disputes.²⁵

In the background are the complex power relations between central and provincial governments. In theory, China is a unitary state but many have argued that it is a *de facto* federation. The land issues reflect this reality. Provinces and local authorities defy central government policies, laws and regulations and local officials abuse their powers to acquire and sanction illegal land use and land transfers. Centralizing control over land use, reducing the share of provincial authorities of fees from land requisition and curbing the powers of local authorities for approval of land transfers and compensation are slow and tricky tasks. Pushing through legal, judicial and enforcement reforms, including punishing corrupt officials and recompensing farmers are equally complex issues.

To sum up the discussion here, the women suffered violation of their property and compensation rights mainly because the 1998 Land Administration Law and the 1987 Village Committee Law failed them. There were no specific provisions on women's equal rights to contract land, no prohibition on withdrawal of land during contract period and no restrictions on the powers of village committees/village assemblies/collective economic organizations to prevent oppression of the minority. This vacuum allowed so-called traditions and policies to surface and to be manipulated to exclude the women and deny them their property rights to contract land. One wonders whether the spate of withdrawal of land in the late 1990s and

early 2000s were attempts to avoid the 2002 Rural Land Contract Law prohibitions and restrictions. The 2002 Rural Land Contract Law may be more effective if there is greater awareness, appropriate implementation and stricter enforcement of its provisions.

2007 Property Rights Law –NOT better protection for rural women

It is strange that the 2007 Property Rights Law makes no direct reference to women's property rights, equal rights or protection for their rights in urban or rural areas. It is disappointing because the Law painstakingly restates or repeats provisions on state ownership (arts 45-57), expropriation and compensation (arts 42, 44, 121) and other critical issues found in the 1982 Constitution and other laws. It runs counter to gender mainstreaming efforts of the 2002 Rural Land Contract Law. While that does not mean that women's property rights in contract land are not protected, the omission is bad news for rural women. Rural women trying to claim their property rights will have to inch their way through the minefield of traditions, policies and laws only to find a swamp in their path.

Are there provisions in the 2007 Property Rights Law that touch indirectly on rural women's property rights issues under discussion? Yes, there are. Property rights include usufructuary and security rights in addition to ownership (art 2). So, contracts by women to use farmland are no longer just contractual rights but are land use (usufructuary) rights, that is, property rights. Theoretically, property rights are stronger than contract rights but practically, the difference is uncertain and has yet to be tested. Next, the Property Rights Law which comes into effect on 1 October 2007 preserves the application of other laws on property rights (art 8). That includes the 2002 Rural Land Contract Law, the 1998 Land Administration Law as amended in 2004 and the 1987 Village Committee Law which have been discussed on as well the 1980 Marriage Law, the 1992 Protection of Women's Rights and Interests Law and the 1985 Inheritance Law which have not been touched on. One positive for women in the situations similar to those in the cases

Footnotes

²⁵ Lin Zhibin & Zhang Lixin, 'Gender, Land & Local Heterogeneity', (2006) 15 *Journal of Contemporary China* 637

discussed, is the prohibition on withdrawal of land during the contract period unless otherwise provided by the 2002 Rural Land Contract Law (art 126). If that were to happen, the aggrieved women may sue the collective economic organization or village committee that withdrew their land (art 60 read with art 62).

Are there provisions that touch on women's property rights issues not discussed above? Yes, there are. The 2007 Property Rights Law clarifies that there are two forms of joint ownership – ownership in common and ownership by proportion or shares (art 93). In the absence of an agreement, express or implied, joint ownership is deemed to be proportional or in shares (art 103). Presumably such shares are separate, several and equal but again this has to be tested. But family members are owners in common (art 103). This applies to land use rights (art 105). Whether this is good news or bad for rural women who are divorced really depends on other laws on division of property when a marriage is over. For widowed rural women, the laws of inheritance apply. In other words, the 2007 Property Rights Law does not adequately protect rural women's property rights when they divorce or are widowed. Rural land use contracts are no longer restricted to fixed terms of 30 (farmland), 50 (grassland) and 70 years (forest) previously fixed by the 1998 Land Administration Law but may be extended when they expire (art 126).

What happens if the rural collective or village committee bypasses acquisition procedures and converts agricultural land to construction land? How will this affect rural women's property rights? As the 120 million hectare bottom limit of agricultural land approaches, some rural collectives may rush to convert agricultural land to construction land. It is not clear whether the 2007 Property Rights Law provision on allowing collectively owned construction land to be managed according to the 1998 Land Administration Law (art 151) is a loophole. In principle, the 2002 Rural Land Contract Law protects rural women whose contract lands are used for non-agricultural construction even if it were not done by way of requisition (art 16(2)).

What about expropriation and compensation of rural women's property rights? Expropriation and compensation of land use rights for all are provided in the 2007 Property Rights Law (art 121 read with arts 42 and 44). The main difference between these provisions and the substantive details in the 1998 Land Administration Law provisions (arts 45 and 47) is the additional provision of social security premiums (art 42). The 2007 Property Rights Law leaves untouched current compensation standards, the centerpiece of the 1998 Land Administration Law. Not only are these standards generally regarded as far too low but there are problems with inadequate payment, methods of payment and even failure to pay compensation to farmers linked with corruption and embezzlement of local officials. Farmers' protests on all these issues are well-documented in the news and other reports by Human Rights Watch, Amnesty International, the US Congressional Executive Committee on China and other organizations. Little is known of how women are particularly affected by these issues. Compensation for land requisition in some areas, including Pudong, Shanghai, successfully experimented with the addition of social security premiums.²⁶ The possibility that compensation earmarked for social security premiums may be channelled into seed funding for the rural social security system should not be ignored. This may be critical for elderly rural women no longer able to work and/or are entitled to the basic rural living allowance. However, the possibility that social security payments become a substitute for compensation, as is possible under the Property Rights Law, is of serious concern – the remedy for the violation of one right should not be simply access to another right.

Has the impact of the 2007 Property Rights Law on women's property rights been exhausted? No, the discussion has deliberately been confined

Footnotes

²⁶ Lou Peimin, 'A Case Study on the Settlement of Rural Women affected by Land Requisitioning in China', (2007) 16 *Journal of Contemporary China* 133.

to property rights of rural women. Property rights extend to security rights under the 2007 Property Rights Law (art 2). At the moment, mortgage of land use rights for farmland and house sites are forbidden (art 184). But whether increasing household, medical and other debts will pressure rural women and men to enter into illegal mortgage and other security transactions in future needs to be monitored.

To round up, women's property rights remain in the shadows of the 2007 Property Rights Law. It is especially disturbing for rural women because such a major piece of legislation should expressly spell out women's equal rights with men to property. The law should also have provided definitions and standards to effectively protect their rights vis-à-vis their spouses and siblings in relation to land contracting, expropriation, compensation and security transactions.

What to do? How to help?

A focus on the issue of rural women's property rights and expropriation in China is recommended. Expropriation of rural land for development, corruption and local protectionism are huge issues in themselves, often related and more than likely to continue. Repercussions and consequences, not only for women but also children, elderly and people with disabilities, are grave. Apart from problems of education for children and social security for elderly women, disabled people as well as children have been exploited as slave labour in mines and brick kilns.

As the above shows, legal provisions obviously need to be added, amended or deleted, standards and benchmarks improved for land requisition, withdrawal and compensation. Gender mainstreaming is critical within the China-based work of local and international organizations, government departments and UN bodies.

Gender and law awareness issues require particular attention. The cases show that there is low awareness of women's rights, including the:

- 2002 Rural Land Contract Law,
- Inadequate provisions in the 1998 Land Administration Law,
- Gaps and shortcomings in the 2007 Property Rights Law,
- 1980 Marriage Law,
- 1992 Protection of Women's Rights and Interests,
- 1987 Village Committee Law.

There is little awareness of international laws, for example rights under the International Covenant on Economic, Social & Cultural Rights and the Convention on the Elimination of Discrimination Against Women, among rural women, village committees, collectives and local women's federations, government authorities and departments. Rural women's property rights issues may surface during awareness-raising and training activities, and it is more than possible that rural women will be more conscious, alert and ready to respond to such issues when they arise.

There is equally a need to support women to speak for themselves, share their experiences, listen and learn from one another about land, security, community, family, marriage; to highlight women's property rights and issues of gender equality in rural areas which are often ignored. Many Chinese groups and are already working on these issues as well as handling cases, pursuing legal reform and using the media. They need support. Many have experience of navigating the network of local authorities and local officials particularly when local politics, local protectionism and local thuggery are a daily challenge; expropriation and compensation and corruption are sensitive issues.