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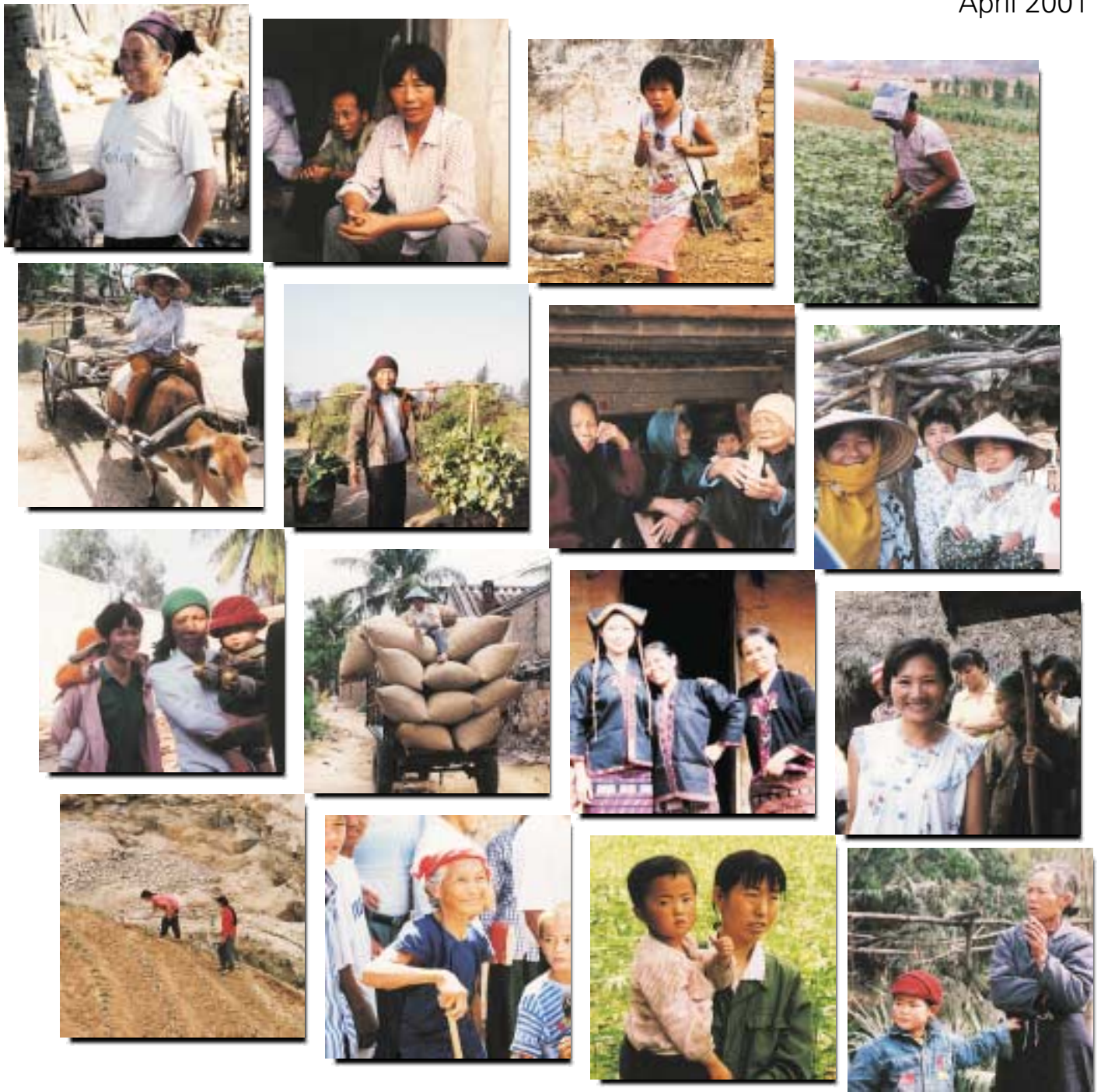
*RDI Reports on Foreign Aid and  
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## **Women and Land Tenure in China:**

### **A Study of Women's Land Rights in Dongfang County, Hainan Province**

Jennifer Duncan and Li Ping

April 2001





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**Jennifer Duncan  
Li Ping**

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## **EXECUTIVE SUMMARY**

This paper discusses women's rights to land in China, based on field research conducted in January 2000 in Dongfang City of Hainan Province. Following an introduction, the authors establish a working definition of land rights, distinguishing complete from incomplete rights. Granting women in China legal rights to land is unlikely to translate into sustained access and control over land resources unless and until these rights are both socially recognized and adequately enforced.

The paper's third section traces women's land rights through five periods of recent Chinese history, beginning with the period preceding establishment of the People's Republic of China, and ending with the period following the adoption of the 1998 Land Management Law. Failed historic attempts to bolster women's land rights through centrally promulgated laws and policies underline the importance that social customs have on determining the effects of laws and policies on rural women in China.

Section four discusses current legislation relating to women's rights to land and property in China. While current laws provide broad guidance in regard to women's land rights, lack specific mechanisms for distinguishing women's land rights within the household. Without these mechanisms, women's legal rights are not easily enforceable, and become especially vulnerable in the context of marriage, divorce, inheritance, or transfer of household land rights.

In the fifth section, the authors describe their findings in Dongfang, analyze these findings in light of current legislation, and recommend ways to incorporate these findings into legislation and policy. Findings are broken down into several categories, including: women's participation in household management and agricultural labor; women's knowledge of land rights; allocation of women's land rights; security of women's land rights both within the household and upon divorce or the husband's death; and women's rights to inherit land.

Recommendations are made throughout section five, and are summarized in section six, which is followed by a brief conclusion.

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## I. INTRODUCTION

Gender-based responses to changes in land tenure regimes in China have to date gone largely unstudied. As author Zongmin Li stated, “Despite the abundant studies on reforms in China and women, researchers have not yet explored gender aspects of the organic link between farmers and the change in the land tenure system.”<sup>1</sup> This gap in research presents a significant obstacle to understanding the intra-household effects of land reforms, including the reforms recently ushered in with passage of the 1998 Land Management Law.<sup>2</sup>

The reasons for paying greater attention to women’s land rights in rural China, as in other agrarian settings, may be characterized in terms of welfare, efficiency and empowerment.<sup>3</sup> Recent studies have pointed to the high vulnerability of women to poverty on a global scale.<sup>4</sup> In areas of the world where land is one of, if not the foremost, means of production for rural households, increasing women’s land rights could provide a direct channel for increasing women’s welfare.<sup>5</sup> In addition, research has found that income generated and controlled by women is generally more likely to reach children’s needs than that controlled by men.<sup>6</sup> When women have secure rights to land, they are likely able to produce more on it and have more control over the production, both factors which could better ensure a steady supply of food and other basic living needs for themselves and their children. Furthermore, formalized, secure land rights may provide indirect benefits to women through the ability to access credit, which may be used to further expand their production capacity on the land or as start-up capital for self-employment in non-agricultural sectors.

Providing women with increased access and rights to land may also result in efficiency gains. This hypothesis is based on evidence that secure land tenure rights provide an important incentive for farmers to invest in long-term improvements to enhance productivity and/or

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<sup>1</sup> Zongmin Li, *Changing Land and Housing Use by Rural Women in Northern China*, in *WOMEN’S RIGHTS TO HOUSE AND LAND: CHINA, LAOS, VIETNAM* 241, 242 (Irene Tinker & Gale Summerfield eds., 1999).

<sup>2</sup> *Zhonghua Renmin Gongheguo Tudi Guanli Fa* (Land Management Law of the People’s Republic of China), article 14 (August 29, 1998) [hereinafter 1998 Land Management Law].

<sup>3</sup> Bina Agarwal, *GENDER AND COMMAND OVER PROPERTY: AN ECONOMIC ANALYSIS OF SOUTH ASIA* 15-23 (1994).

<sup>4</sup> In 1988, 60% of the world’s rural population living below the poverty line were women. Mayra Buvinic, *Women in Poverty: a New Global Underclass*, 108 *FOREIGN POLICY* 38 (1997). That number represented a 47% increase from data collected in 1970. Unfortunately these numbers appear to be rising. A 1996 UNDP Human Development Report indicates that women represent a much larger percentage of the world’s poor than believed, and identified the “feminization of poverty” as a global trend. *Id.*

<sup>5</sup> See, e.g., Bina Agarwal, *A FIELD OF ONE’S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* 30-32 (1994). (“[T]he risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has *direct* access to income and productive assets such as land, and not just access *mediated* through her husband or other male family members.” (Italics in original.) Agarwal goes on to argue that the case for women’s rights to land, as compared to other productive resources, is especially strong due to the importance of land as security against poverty.)

<sup>6</sup> Kathleen M. Kurz & Charlotte Johnson-Welch, *ENHANCING NUTRITION RESULTS: THE CASE OF WOMEN’S RESOURCES APPROACH* 8-9 (International Center for Research on Women/ Opportunities for Micronutrient Interventions (ICRW/OMNI) Research Program, March 2000).



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ensure sustainable growing conditions.<sup>7</sup> Women currently contribute more to agricultural production in China than ever before, and now account for between 60-70% of all farm labor, according to some surveys.<sup>8</sup> Providing greater and more secure land tenure rights to these women could provide them with the ability to make important land-use decisions and the incentive to adopt long-term improvements to their land.<sup>9</sup>

Finally, strengthening women's rights and access to land (relative to men's) may have an important empowerment effect by increasing their authority within their households and their communities at large.<sup>10</sup> Potential links between increasing women's land rights and raising their intra-household bargaining power, their ability to mobilize on a community-level, and their opportunity and incentive to assume local political power, may be viewed as compelling ends in themselves.

This report explores various issues relating to the link between women and rural land rights in one region of southern China. It is based on field research conducted in the year 2000 by a team of researchers from the Seattle-based Rural Development Institute (RDI) and the China (Hainan) Institute for Research and Development (CIRD).<sup>11</sup> Team members included RDI attorneys Jennifer Duncan and Li Ping, and Ouyang Liyan, from CIRD's International Department. The fieldwork was conducted in Dongfang City, Hainan Province.

This report describes the historical setting of women's land rights in China, the current legislative framework for women's land rights, our field research findings in Dongfang, and our analysis and recommendations. Section II contains a working definition of land rights. Section III discusses the historical context of women's land rights in China. Section IV describes the current legislative framework for women's land rights. Section V focuses on issues regarding

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<sup>7</sup> Rekha Mehra, *WOMEN, LAND, AND SUSTAINABLE DEVELOPMENT* 14 (International Center for Research on Women Working Paper No. 1, 1995); see also Steven Hendrix, *Ownership Insecurity in Nicaragua*, in *PROPERTY LAW IN LATIN AMERICA WITH RECOMMENDATIONS* 940 (1993), cited in *Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia: A Comparative Perspective* 4-5 (World Bank Technical Paper No. 436) (Roy Prosterman & Tim Hanstad eds., 1999). (When insecure tenure prevails, people do not make capital and labor investments necessary for improving productivity, due to fears that they will be unable to protect their claims to land.)

<sup>8</sup> Meng Xianfan, *Rural Females in the Labour Force Transition in China's Countryside* 92 (paper delivered at the First International Women's Conference, Beijing), cited in *The Impact of the Economic Reforms on the Situation of Women in China* 5 (paper prepared by the Friedrich Naumann Foundation, December 1994).

<sup>9</sup> While it is settled that an increased tenure security will stimulate farmers' long-term investment in land and thereby raise farming efficiency, whether and to what extent the "efficiency" argument applies to increasing women's land rights within the household is an important question that has not been sufficiently addressed by research.

<sup>10</sup> Agarwal, *supra* note 3, at 38-42.

<sup>11</sup> The Rural Development Institute, located in Seattle, Washington, is a nonprofit 501-C-3 corporation. RDI is a unique organization of lawyers devoted to problems of land reform and related issues in less developed countries and economies in transition. RDI's goal is to assist in alleviating world poverty and instability through land reform and rural development. RDI staff have conducted fieldwork and advised on land reform issues in 35 countries in Asia, Latin America, Eastern Europe and the Middle East. Since 1987, RDI teams have conducted eleven rounds of field research concerning rural land tenure issues in 15 Chinese provinces: Anhui, Fujian, Guangdong, Guizhou, Hainan, Hebei, Heilongjiang, Henan, Jiangsu, Jilin, Shaanxi, Shanxi, Shandong, Sichuan, and Zhejiang; and four provincial-level municipalities: Beijing Municipality, Chongqing Municipality, Shanghai Municipality, and Tianjin Municipality. For more information about the Rural Development Institute, visit the RDI Web site at <http://www.rdiland.org>.

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women's rights and access to land in Dongfang, Hainan. Section VI summarizes our recommendations for addressing identified concerns, and the final section is a brief conclusion.

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## II. WORKING DEFINITION OF LAND RIGHTS

Land rights may be analyzed according to their relative completeness (or incompleteness) based on whether they are: (1) legally recognizable; (2) socially recognizable; or (3) enforceable by external authorities.<sup>12</sup> Land rights may be defined as complete when all three factors are present. Land rights that lack one of these three elements may be defined as incomplete rights. For example, a land right that is legally recognizable but not socially recognizable or enforceable is an incomplete right.

This definition of land rights includes multiple elements that are important to understanding the significance of gender in a land rights system. Those land rights which have the greatest impact on women in China often relate to intra-household issues. Intra-household land rights determine a woman's access to and control over land based on her status as a daughter, wife, mother, divorcee, or widow. These intra-household rights become particularly important when the family structure changes through divorce, incapacity or abandonment of a spouse, death of a spouse, death of parents, or childbirth. Although women's land rights in these contexts are in some cases legally recognizable, they are often not socially recognizable, and so are incomplete rights. Whether they are "enforceable" depends both on whether consistent, impartial enforcement mechanisms exist, and on whether women have adequate access to these mechanisms. In short: security of women's land rights depends on whether these rights are legally and socially recognizable, and enforceable. While security of household land rights is an important factor in this analysis, secure household rights do not necessarily translate into secure rights for women within the household.

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<sup>12</sup> See Mehra, *supra* note 7, at 4; see generally Agarwal (1994), *supra* note 3.

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### III. HISTORY OF WOMEN AND LAND IN CHINA

Both legal restrictions and deeply-rooted social traditions have affected rural women's rights to land over the past century as legal regimes governing land tenure have changed. These traditions have limited, and continue to limit, the degree to which women realize the benefits from legal reforms aimed at increasing the welfare of rural families. Awareness of the historic dynamic between social customs and legal change in rural China is important to assessing the present-day status of women's land rights in Dongfang and the potential effects of recent land reform legislation on rural women in China. This section briefly summarizes the recent history of women's rights and access to agricultural land in China.

#### A. 1900-1949

Prior to 1949, women's role in agricultural production in most of China appears to have been a fraction of what it is today. In the early 1900's, studies indicate that only 24% of rural women worked in the fields, contributing 13% of the total field labor.<sup>13</sup> During this period, women in many areas of China did not generally have the legal right to own land or to inherit land or other property,<sup>14</sup> although widows could occasionally hold land on behalf of their sons until they reached the age of adulthood. Nor did women have legal rights to land within the household, as wives or daughters.<sup>15</sup>

Two social institutions influencing women's status within their households and communities during this period were the patrilocal marriage system and the association of women with the "inside," or domestic, sphere of activity. According to the patrilocal marriage system, referred to as *cong fu ju*, women lived with their birth parents until they married, at which time they moved to their husband's household in a different, or in rare cases the same, village. This system, which has remained the dominant custom in rural China to the present day, affects women's household and social status, as well as their ability to realize the potential benefits of legal change. Because a daughter leaves her family and village when she marries, her birth

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<sup>13</sup> Tamara Jacka, *Women's Work in Rural China: Change and Continuity in an Era of Reform* 23 (1997).

<sup>14</sup> *The Situation of Chinese Women* ("White Paper" released by the Information Office of the State Council of the People's Republic of China, published by Xinhua news agency in English, June 3, 1994) (hereinafter *White Paper*), at 8; Jacka, *supra* note 13, at 70; Kay Ann Johnson, *Women, the Family and Peasant Revolution in China* 15 (1983). (A study by John L. Buck in the 1930s provides the only comprehensive national data on women's participation in agriculture pre-1949 in China. Buck demonstrated that the amount of agricultural production attributable to women's labor was, on average, 13%, but that this average disguised large regional variations. In the north, where plow agriculture for crops such as wheat predominated, women were nearly excluded from agricultural labor. In the south, where manual labor crops such as wetland rice predominated, women's role was much more significant, if still secondary. Kay Ann Johnson observed that women's participation in agriculture during this period, even when significant, seldom translated into increased independence or leverage within the household, since men controlled both the means of production and fruits of labor. *Id.* at 16.)

<sup>15</sup> Govind Kelkar, *The PRC at Forty: Women and the Land Question in China*, 26 *China Report: A Journal of East Asian Studies* 113, 115 (1990).

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family and village community may view her as a temporary resident.<sup>16</sup> Families have incentives to limit their investment in daughters in terms of inheritance, parental attention, and education, if they perceive that daughters will not make lasting contributions to household welfare and will transfer out any resources transferred to them by their families.<sup>17</sup> A woman's welfare may not improve upon arrival in her husband's village. She seldom has connections with village members outside of her husband's family, and so is more vulnerable to mistreatment by her new in-laws.<sup>18</sup> Her status is typically lower than that of any other family member. Her role in the community is constrained by the fact that she seldom knows anyone prior to her marriage,<sup>19</sup> and is often confined to household duties by her new family.

The patrilocal marriage system is closely related to another widespread custom in rural China: the association of women with the "inside" sphere of activity. According to this custom, a woman's role is within the house, while a man's role is to represent the household in the "outside" community. In the early 1900s, this custom discouraged women from participating in the "outside" sphere of agricultural production. It also discouraged households from allowing women members to participate in community social and political events. (Not all rural households, however, followed this tradition. Economic necessity may have forced women into agricultural production and other "outside" activities in many instances. According to one commentator, prior to 1949 "most poor peasant women in most parts of China probably worked in agriculture and subsidiary occupations fairly regularly."<sup>20</sup>) Today, the customary association of women with the "inside" sphere continues to influence their social and economic status, although the definition of "inside" and "outside" spheres in rural China has evolved.<sup>21</sup>

In the 1930s, the Jiangxi Province Soviet Government (JSG), the predecessor of the communist government that took power in 1949, adopted two pieces of legislation supporting women's rights to land.<sup>22</sup> The first was an agrarian reform law that facilitated the expropriation of land

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<sup>16</sup> Monica Das Gupta & Li Shuzhuo, *Gender Bias in China, South Korea and India 1920-1990: Effects of War, Famine and Fertility Decline*, in 30 DEVELOPMENT AND CHANGE 619, 622 (1999). (In patrilineal and patrilocal kinship systems, "there is no socially acceptable role for a grown woman in her family of birth, except as a visitor."); see also Johnson, *supra* note 14, at 9.

<sup>17</sup> See, e.g., Johnson, *supra* note 14, at 9 (The patriarchal-patrilineal-patrilocal system in China results in women being viewed as "marginal" household members: they are viewed as temporary members of their natal households and stranger-intruders in their husbands' households.); see generally Ann D. Jordan, *Women's Rights in the People's Republic of China: Patriarchal Wine Poured from a Socialist Bottle*, 8 JOURNAL OF CHINESE LAW 47 (1994).

<sup>18</sup> See Johnson, *supra* note 14, at 9-10; Jacka, *supra* note 13, at 61.

<sup>19</sup> Johnson, *supra* note 14, at 9-10.

<sup>20</sup> *Id.* at 162.

<sup>21</sup> According to author Tamara Jacka, male-dominated institutions in China have used the association of women with "inside" or domestic work to suit economic needs, changing the definition of "inside sphere" to accommodate these needs during periods of change in labor supply and demand. When agricultural labor supply is abundant, she argues, the association between women and domestic responsibilities has been used to justify keeping women out of the fields. When agricultural labor supply is scarce and where other higher-paying industrial jobs are available, however, this association has been used to justify keeping women on the land and out of industry. Jacka, *supra* note 13, at 136. (Internal cites to case studies omitted.)

<sup>22</sup> *Id.* at 28 (for following discussion of Jiangxi Soviet Area laws). The JSG was not at this time an authority recognized by the state government.

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from a small group of landlords and distribution of this land among peasant households. The law granted women equal rights to land allotments,<sup>23</sup> which the JSG expected would boost women's economic power. The second legislative act was the 1931 Marriage Regulations,<sup>24</sup> which defined marriage as a legal relationship between two autonomous individuals without interference from other parties, terminable by mutual consent or upon either spouse's insistence. This law also established women's right to retain marital property upon divorce as well as custody of the children.<sup>25</sup> The Marriage Law contrasted dramatically with the traditions of the day, which included arranged marriages and dominance of a husband over the actions of his wife.<sup>26</sup>

Neither the Land Law nor the Marriage Law had a lasting effect on increasing women's access to land. Even before the Communist Army's retreat to the northern part of the country in 1935, the JSG backed off from its push toward increasing women's rights. Implementation of the new laws was inadequate: securing women's rights was not a priority for male soldiers as the Communist Army fought the Nationals for survival.<sup>27</sup> Local culture and tradition also heavily influenced, and discouraged, the implementation of legal rules on women's rights during this time.<sup>28</sup>

The 1945 peasant land reform campaigns of Yan'an, the then-headquarters of the communist government, also granted women equal rights to property.<sup>29</sup> Some Communist Party policy makers and rural women expected the reforms to increase rural women's intra-household bargaining power and geographic mobility, thereby increasing their autonomy from fathers and husbands. Once again, the law failed in implementation when it conflicted with traditional morays of rural society. The majority of rural people continued to consider women's land to belong to the family as a whole, and land reform authorities often gave a woman's land deeds to the male head of her household. Women's difficulty in obtaining a divorce during this period further deflated the value of their independent legal right to own land.

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<sup>23</sup> A DOCUMENTARY HISTORY OF CHINESE COMMUNISM 223 (Conrad Brandt et al. eds., 1996), cited in Johnson, *supra* note 14, at 54.

<sup>24</sup> The 1931 Marriage Regulations were passed by the Central Bureau of the Soviet Areas at the First Congress. Inner-party controversy probably surrounded the passage of these regulations. Johnson, *supra* note 14, at 54. The JSG followed these regulations with a new marriage law in 1934, which retained many of the principles of the earlier regulations but restricted the rights of soldiers' wives to divorce by requiring the husbands' consent). *Id.* at 59.

<sup>25</sup> "Upon divorce, the woman retained her full property rights; she kept her land allotment and an equal share of any property gained during marriage." (1934 law as described by Johnson, *supra* note 14, at 55.)

<sup>26</sup> Johnson, *supra* note 14 at 54-55.

<sup>27</sup> At least some male soldiers may have viewed the reforms as a threat to their security over their wives and over their land, further reducing the Party's commitment to implement and enforce the reforms during a time when support from these soldiers was critical to the Party's survival. See, e.g., Johnson, *supra* note 14, at 54-61.

<sup>28</sup> *Id.*

<sup>29</sup> Jacka, *supra* note 13, at 29 (for following discussion of Yan'an reforms).

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## **B. Establishment of the People's Republic of China: Marriage and Land Reform Laws**

In 1950, national law in China granted women legal rights to land for the first time. The first law promulgated by the newly established PRC was the Marriage Law of May 1950. The second was the Agrarian Reform Law of June 1950. The Party probably intended both laws to increase women's rights to land: the Marriage Law would give women rights to land within the household unit; the land reform law would give the household ownership rights to land.<sup>30</sup> The Marriage Law of 1950 resembled the 1934 law in the Jiangxi Soviet Area. It abolished the traditional system of arranged and forced marriages and established individuals' rights to freely marry and divorce.<sup>31</sup> It also gave women equal rights in management of household property.<sup>32</sup> This time, however, the All-China Women's Federation intended to ensure the success of the law through a sustained focus on implementation and education of rural residents on the law's contents (especially on women's freedom to marry and divorce).<sup>33</sup>

The Agrarian Reform Law, coupled with the policies that preceded it, gave women and men equal legal rights to own the land.<sup>34</sup> Through this law, the Party aimed to allocate 75% of China's farmland in ownership to individual rural households.<sup>35</sup> In the final years of the Civil War (1947-48), the Party had increasingly focused on women as the central force for land reforms.<sup>36</sup> During this time period, women's role in agricultural production had become increasingly valuable, as men were often away with the army. The Central Committee issued a decision in 1948 decreeing that land deeds issued to families must state that men and women have equal rights to the land, and that every family member has democratic rights to dispose of the land.<sup>37</sup> The decision also allowed land deeds to be issued separately to women.<sup>38</sup> Although it is not apparent from the text of the law itself, secondary sources claim the 1950 law allowed women to be the official title-holders to land, stating that whoever stepped forward from the household to claim the family's share became the legal landowner.<sup>39</sup> According to secondary

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<sup>30</sup> Johnson, *supra* note 14, at 102.

<sup>31</sup> The Marriage Law of the People's Republic of China (1950), articles 1, 3, as published in MJ Meijer, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC, app. VIII (1971); see also *White Paper*, *supra* note 14, at 9.

<sup>32</sup> The Marriage Law of the People's Republic of China (1950), article 10; see also Jacka, *supra* note 13, at 70.

<sup>33</sup> Jacka, *supra* note 13, at 30.

<sup>34</sup> Li, *supra* note 1, at 247-48.

<sup>35</sup> The land reform succeeded in transferring 700 million *mu* (one *mu* is equivalent to one-fifteenth of a hectare) of arable land, covering approximately 44% of China's total arable land, to peasant families by the early fifties. Kelkar, *supra* note 15, at 113-14.

<sup>36</sup> Er Dong, *Women and Children do Important Work* (August 1947), as cited in Kelkar, *supra* note 15, at 120.

<sup>37</sup> *Decisions of the Central Committee of the Chinese Communist Party on Woman Work at Present in the Countryside of the Liberated Areas (1948)*, cited in Delia Davin, *WOMAN-WORK: WOMEN AND THE PARTY IN REVOLUTIONARY CHINA* 201 (1976).

<sup>38</sup> *Id.*

<sup>39</sup> Li, *supra* note 1, at 247-48.

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sources, the law also permitted a woman to retain her share of household land in the event of divorce.<sup>40</sup>

Mass village meetings were an important channel for implementing the Agrarian Reform Law. At these meetings, villagers discussed and made decisions on issues such as the division of land and how to distribute property confiscated from landlords and rich peasants. The Party adopted policies to encourage women's participation in these meetings. Land reform authorities "constantly reiterated the importance of organizing women to speak up and take part in land reform among the men."<sup>41</sup> In many cases, women did participate actively in land reform meetings and, according to contemporary reports, became unified in supporting their rights to own land.<sup>42</sup>

Once again, prevailing attitudes and social traditions in rural China thwarted hopes for creating real changes in women's intra-household status and access to the land. Reforms promoted through both the Marriage Law and the Agrarian Reform Law met with resistance and conflict in the countryside. Rural men often perceived that the laws threatened their control not only over their wives but also over their land.<sup>43</sup> Because of this, some observers believed that an emphasis on women's rights within the household (e.g., through implementation of the Marriage Law) would undermine land reform efforts by reducing the incentive for male peasants to own their own land. Within three years, the Party dropped its efforts to implement the component of women's land rights in marriage reforms due to reluctance from local cadres and strong resistance from peasants, which occasionally resulted in violence against Women Federation cadres and young peasant women.<sup>44</sup>

The Agrarian Reform Law also failed to accomplish intended changes in women's access to and control over land. The law did improve women's legal rights to land,<sup>45</sup> but the extent to which legal rights transformed into actual gains for women is unclear. According to political scientist Kay Ann Johnson, there were "serious practical, structural and cultural obstacles which blocked the real impact that land ownership and legal equality in property rights might have on women's independence and power for self-determination."<sup>46</sup> These obstacles included the number of women crippled by bound feet, the lack of agricultural skills held by most women,

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<sup>40</sup> Kelkar, *supra* note 15, at 121.

<sup>41</sup> Johnson, *supra* note 14, at 103. Women, however, were not often encouraged to pursue their rights to land vis-à-vis male household members. *Id.* at 106-7.

<sup>42</sup> William Hinton, *Fanshen* 158 MONTHLY REVIEW PRESS (1966), *cited in* Kelkar, *supra* note 15, at 120.

<sup>43</sup> Kelkar, *supra* note 15, at 121.

<sup>44</sup> Jacka, *supra* note 13, at 30.

<sup>45</sup> "Giving women land changed their relationship to the means of production, at least in legal respects." Johnson, *supra* note 14, at 108.

<sup>46</sup> *Id.* at 109.



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the lack of adequate child care, and a traditional cultural framework that constrained women's ability to turn legal rights into increased control over land resources.<sup>47</sup>

In practice, most rural Chinese continued to consider women's land rights to belong to their families (to be managed by the male head of the household).<sup>48</sup> Titles and decrees usually went to the head of the household, who was typically the woman's father, father-in-law, or husband.<sup>49</sup> Rural cadres and peasant households evaded implementation in a number of ways. In some areas, for example, village cadres refused to allocate household land shares for young girls of marriageable age.<sup>50</sup> The fact that women did not realize the rights promised by the marriage reform, such as the right to freely marry and divorce and the right to control household property, further reduced the practical impact of the provisions in the Agrarian Reform Law establishing women's rights to land.<sup>51</sup>

### **C. The Collective Era: 1950s-1979**

The collectivization period in rural China, beginning in the 1950s,<sup>52</sup> brought significant changes for rural households. Collectivization was undertaken gradually,<sup>53</sup> but the pace increased under the Great Leap Forward (1958-1960). By the end of 1958, 99% of all peasant families were members of rural people's communes, consisting of about 4,600 families each.<sup>54</sup>

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<sup>47</sup> "In China, simply superimposing legal equality in land ownership on centuries-old patriarchal ideology and patrilineal residential patterns was unlikely to quickly alter culturally defined social and family relationships and the noneconomic structural and normative bases of men's and families' control over women." This may have been especially true for young women. *Id.* at 110.

The extent to which legal rights transferred into benefits for older, married women is also unclear. On one hand, the location of her land was not at issue. Also, issuing land rights to individuals may have augmented the power of women and their immediate, uterine families relative to their husband's larger kinship family. But traditions allocating management of household property to the husband limited the impact of legal rights to land for married women, as did the failure of the Marriage Law to give women a socially enforceable right to divorce their husbands and retain children and property. *Id.* at 111-13.

<sup>48</sup> Kelkar, *supra* note 15, at 121.

<sup>49</sup> Jacka, *supra* note 13, at 70. One study of a village in Hopeh, for example, found that land reform authorities gave women's land deeds to male heads of households, who were considered the households' "financial managers." Johnson, *supra* note 14, at 110 (internal cite omitted).

<sup>50</sup> Kelkar, *supra* note 15, at 121; see also Johnson, *supra* note 14, at 105.

<sup>51</sup> Jacka, *supra* note 13, at 30.

<sup>52</sup> Zongmin Li, *Changes of Rural Women's Role in Land Tenure Under the Household Responsibility System: A Case Study in Dongyao Village, Hebei Province of North China* 1 (Research Center for Rural Economy of the Ministry of Agriculture, People's Republic of China and the Land Tenure Center, University of Wisconsin-Madison, August 20, 1992).

<sup>53</sup> The collectivization period began in the early 1950s, with labor pooling on the basis of traditional patterns of agricultural production. Many "mutual aid" teams were incorporated into lower-stage cooperatives, consisting of 20 to 40 households with central management, that retained private ownership of land. The cooperatives paid incomes to households based on the households' labor and property contributions. As lower-stage cooperatives merged into higher-stage cooperatives containing 100 to 300 households, they ceased paying households for using their land. In 1958 these cooperatives were replaced by communes, which became the basic economic unit of the countryside. Elizabeth Croll, *Women and Development in China*, WOMEN, WORK AND DEVELOPMENT 11, International Labour Office, Geneva (1985), at 7.

<sup>54</sup> Jacka, *supra* note 13, at 32.

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Some observers expected that collectivization would lead to women having greater autonomy over their work, by transferring control over the means of production from the patriarchal family unit to the collective administrators (cadres).<sup>55</sup> The Party at this time claimed that only increasing women's participation in "social" (versus domestic) labor would bring about true equality for women within the family.<sup>56</sup> While it is true that more women began to work outside of the home,<sup>57</sup> it is not clear whether this new economic role shifted women's social/cultural position either within or outside of the family.

According to some commentators, however, women's new economic roles did not shape their social or political roles but rather that entrenched social and cultural norms constrained women's participation in production and their ability to realize any benefits from their new economic roles. For example, women received lower wages than men for equal work in collectives.<sup>58</sup> Collective tasks were characterized as women's work or men's work and remuneration for women's tasks was categorically set at lower levels, regardless of whether it was more difficult or physically taxing.<sup>59</sup> Women's tasks were often low-skilled and labor-intensive.<sup>60</sup> Social services established by collectives, such as cafeterias and childcare, were often insufficient to provide needed services. In 1956, for example, 60-75% of women participated in agricultural production, but childcare facilities were sufficient for only five percent of the children of working mothers.<sup>61</sup>

#### **D. The Household Responsibility System: Post-1979**

Another shift in women's rights and access to land came with the breakup of collectivized agriculture, starting in 1979, which led to the Household Responsibility System (HRS). Under the HRS, land use rights (and household obligations to pay state agricultural taxes and

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<sup>55</sup> See, e.g., Johnson, *supra* note 14, at 159.

<sup>56</sup> *Id.* at 162.

<sup>57</sup> One study determined that 60-75% of women of working age and physical capacity participated in collectivized labor in 1956, and in 1958-59 this number increased to 80-90%. Johnson, *supra* note 14, at 162 (citing to Marina Thorberg study based on John Buck data, as described in note 14, *supra*).

<sup>58</sup> "Discrimination in pay was clearly rife throughout the 1950's . . ." *Id.* at 170, 172 (referring to "persistent" wage discrimination in the collective sector).

<sup>59</sup> Li (1999), *supra* note 1, at 250-51.

<sup>60</sup> *Id.*

<sup>61</sup> Johnson, *supra* note 14, at 171. Note, however, that social services may have increased for working women during government campaigns to bring women into the workforce. Marina Thorberg estimated that during the severe labor shortages in the "Great Leap Forward" (1958-59), 50-70% of all children with working mothers attended childcare provided by the collectives. In addition to nurseries, kindergartens and cafeterias, the most advanced collectives had other services, including laundry and sewing. *Id.*, at 172, citing to study by Marina Thorberg. These services were cut back in the early 1960s as economic crisis set in and the demand for employment fell. *Id.* at 173.

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collective dues) are contracted directly to households, which are entitled to retain any surplus production.<sup>62</sup> This is the system that continues to exist today.

The shift to more individualized rights under the HRS brought change to rural women's lives, although the specific and differentiated impacts have not been widely studied.<sup>63</sup> First, the HRS transferred authority over women's labor from the production team back to the head of the household. While the shift to the new system may have bolstered the authority of both rural women and men over their labor, in doing so it may have shifted the balance of power within the household, reducing women's authority relative to that held by their husbands, fathers, and fathers-in-law.<sup>64</sup> Second, women's domestic duties increased as collective social services terminated.<sup>65</sup> Third, the new system motivated households to maximize production on their contracted land, resulting in increased responsibility by the household unit in working on the land. In some cases this meant an increase in women's workload in the field, especially if their husbands and/or adult children worked in factories.<sup>66</sup> Fourth, women's agricultural duties often shifted from a single aspect of production (as laborers on the collective) to a diverse range of tasks necessary for production on an individual household level. While this meant more work for women in many cases, it also may have empowered some women to become self-sufficient managers of their own family's production. Fifth, the HRS allowed families to increase their revenues from agricultural production, resulting in marked rises in average household income.<sup>67</sup> Although it is unclear how evenly distributed these rises in income were within households, it is probable that women realized some of the benefit.<sup>68</sup>

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<sup>62</sup> The break-up of the communes and establishment in their place of roughly 180 million small family farms with individualized land rights was a reform of vast significance, and led to a substantial increase in agricultural production. Private household use rights to land are much stronger now than before 1980. Upon the introduction of the Household Responsibility System, farm households typically received rights to use specified pieces of land for periods of three years or less. In 1984, the Communist Party Central Committee issued Rural Work Document No. 1 urging local officials to prolong the use term to at least 15 years. In September 1994, the People's Daily reported a Central Committee decision that the land use rights to arable land would be extended another 30 years after the original 15 year right expired. Gaige Zai Xi Wang De Tian Ye Shang, People's Daily (overseas edition) (Sept. 21, 1994). RDI's field research experience indicates that the so-called 15-year use right policy originating in 1984 was never widely implemented, however, and that the 30-year use right policy has been implemented in only a small minority of villages. Roy Prosterman et al, Rural Land Reform in China and the 1998 Land Management Law 12 (RDI Reports on Foreign Aid and Development No. 98, December 1998).

<sup>63</sup> Exceptions include: Zongmin (1992), *supra* note 52; Zhu Ling and Jiang Zhongyi, Gender Inequality in Land Tenure System of Rural China (translated from Chinese; part of the report on the research project Impact of Labor Migration on Agricultural Women in Poor Areas, funded by the Beijing Office of the Ford Foundation, 1996); Jacka, *supra* note 13; Johnson, *supra* note 14; Kelkar, *supra* note 15.

<sup>64</sup> See Marjery Wolf, *Revolution Postponed—Women in Contemporary China* (1985), cited in *The Impact of the Economic Reforms on the Situation of Women in China*, *supra* note 8, at 4; Jacka, *supra* note 13, at 152.

<sup>65</sup> Li, *supra* note 1, at 258. Surveys conducted by the Institute of Agricultural Economics, Beijing, and discussions with local officials and grassroots women's federations in Wuxi county demonstrate that women's work burden increased after the adoption of the household contract system. Kelkar, *supra* note 15, at 126.

<sup>66</sup> Li, *supra* note 1, at 261. However, according to interviews of peasant farmers conducted by RDI attorneys in 1987-88, in many cases the increase in responsibility that accompanied household contracting rights to land did not correspond to a greater amount of labor hours per household. Farmers reported they spent less time in the fields, but that the time they spent was much more productive.

<sup>67</sup> China's gross agricultural output value increased, in constant inflation-adjusted terms, by 86% from 1980 to 1990, following the shift to the HRS. These increases occurred despite a sharp decrease in the level of state investment in agriculture following 1978.

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## E. The 1998 Land Management Law: Strengthening Individual Household Rights to Land

The 1998 Land Management Law contains several provisions that could change women's rights and access to land by providing for greater household land tenure security and by altering the way in which land is allocated to households through "readjustments." The law attempts to increase households' land tenure security in three ways: (1) extending the length of use term to 30 years (the previous term was almost always much shorter, and often undefined, as discussed above in note 62);<sup>69</sup> (2) requiring written land use contracts that contain the duration and breadth of household rights to land;<sup>70</sup> and (3) reducing the frequency and scope of land "readjustments," by which village cadres had sought to maintain egalitarian per capita land distribution by periodically taking and redistributing household land within the village to account for population changes within households.<sup>71</sup> Article 14 of the 1998 Land Management Law limits readjustments to "isolated cases," and subjects all readjustments to agreement by two-thirds of the villager conference or two-thirds of the villager representatives, and approval by the township government and the county administrative agency responsible for agriculture. These provisions limiting village readjustments sought to eliminate a significant source of land tenure insecurity in China.<sup>72</sup> Because households rarely knew what tract of their land might be taken in a readjustment, they were often hesitant to invest resources in long-term improvements on any part of their land.<sup>73</sup>

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Prosterman et al., *supra* note 62, at 2; see also W. Hunter Colby et al., *Agricultural Statistics of the People's Republic of China, 1949-1990* 28 (1992).

<sup>68</sup> Between 1987 and 1993, RDI conducted interviews with many peasant farmers in China using Rapid Rural Appraisal techniques. Most interviews ended with the question: "Since the Household Responsibility System began, is life better, worse or about the same?" Only one person in five rounds of field interviews answered "worse." The rest answered "better" and most laughed as they said it, indicating it was a ridiculous question. Approximately 20-30% of the interviews were with women.

<sup>69</sup> 1998 Land Management Law, article 14.

<sup>70</sup> *Id.*

<sup>71</sup> In a land readjustment, for example, a family that lost a member to death or lost a daughter to marriage would lose land, whereas a family who gained a family member through birth or marriage would gain land. Two general types of land readjustments exist in China: "big" or comprehensive readjustments; and "small" or partial readjustments. Big readjustments involve an overall change in the landholdings of all households in the village. In a big readjustment, all farmland in the village is given back to the collective landowner and reallocated among village households so each household receives entirely different land. A small readjustment consists of adding to or taking from a household's existing landholding when that household's size changes.

Readjustment policy has varied by village. According to a 17-province survey of rural households in China (hereinafter *1999 Household Survey*), conducted in 1999, over 75% of villages had conducted at least one land readjustment since the inception of the HRS. Roy L. Prosterman et al., *Implementation of 30-year Land Use Rights for Farmers Under China's 1998 Land Management Law: An Analysis and Recommendations Based on a 17-Province Survey* 9 (RDI Reports on Foreign Aid and Development, No. 105, March 2000).

<sup>72</sup> *Id.* at 13.

<sup>73</sup> According to the *1999 Household Survey* (*supra* note 71) approximately 70% of Chinese farmers supported a policy of 30-year land use rights with no readjustments. *Id.* at 14.

It is important to note, however, that during the Land Management Law implementation phase, many villages in China have been conducting "one final readjustment" before the 30-year period begins. According to farmers' responses to the *1999 Household Survey* (*supra* note 71), 27% of villages planned to conduct a small readjustment during the implementation phase, and 27% of

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For women, the effects of ending or limiting land readjustments may be profound. Families with daughters who marry out of their village, for example, will no longer “lose” their daughters’ portion of the household land entitlement in their village for the entire 30-year term, nor will the new families of such daughters “gain” an entitlement at the next readjustment in the husband’s village. Over the next 30 years (assuming the patrilocal marriage system remains in place), families with sons will have to support new daughters-in-law without additional land. Families with daughters, however, will retain “excess” land per household member when their daughters leave the household or village to marry.

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villages planned to conduct a big readjustment. Twenty-four percent planned no readjustment, and 22% of the respondents did not know whether their village planned to conduct a readjustment. *Id.* at 16.

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## **IV. CURRENT LEGISLATION GOVERNING WOMEN'S LAND RIGHTS AND INTRA-HOUSEHOLD LAND RIGHTS**

Since the founding of the People's Republic of China in 1949, China's jurisprudence had held that real property belonged to the state, and that no individual rights to real property existed within the framework of state ownership.<sup>74</sup> The Chinese Communist Party cracked this policy when it started land reforms in the early 1980s, by granting households individual use rights to farmland for a term of 15 years.<sup>75</sup> A 1988 amendment to the Constitution allowed private transfer of land use rights within the context of public land ownership, thereby constitutionalizing the separation of individually-held use rights to land from the underlying public ownership of these rights.<sup>76</sup>

Following decollectivization, farmers' land rights have been mainly governed by rules promulgated in the form of the Party's policies and directives, which do not take women's land rights into account. In response to the state's perception of a heightened need for rule of law, the Chinese government has in recent years adopted a series of laws addressing farmers' land rights that supplement and sometimes replace existing policies and directives. However, none of these substantive laws specifically defines and regulates women's land rights. In the absence of Chinese laws that provide specifics on women's land rights, current laws on property rights and inheritance provide some background for understanding and defining women's land rights.

### **A. Legislation on Women's Land Rights**

#### **1. *The Constitution grants women equal rights in economic interests and family life.***

Under China's Constitution, women enjoy equal rights with men in all spheres of life, including economic interests and family life.<sup>77</sup> A logical extrapolation is that women and men hold equal rights to the property owned or held by their family. Intra-household rights to household land would likely fall within the rubric of either "economic interests" or "family life," even if these land rights were not technically considered "property" rights.

#### **2. *The General Principles of Civil Law categorizes land contract rights as "property."***

The General Principles of Civil Law (hereinafter GPCL) includes farmers' contracting rights to collectively owned land under the general category of "Civil Rights" and the sub-category of

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<sup>74</sup> Jonas Alsen, *An Introduction of Chinese Property Law*, 20 Maryland Journal of International Law & Trade 1, 37 (1996).

<sup>75</sup> The Central Committee of the Chinese Communist Party of China, Rural Work Document No. 1 of 1984.

<sup>76</sup> China Constitution 1988 Amendment, article 2.

<sup>77</sup> *Id.*, article 48.

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“Property Ownership and other Property Rights Related to Property Ownership.”<sup>78</sup> Although the GPCL falls short of explicitly defining farmers’ land rights as private property rights, such categorization indicates the legislature intended to legally recognize farmers’ land rights as privately held property rights.<sup>79</sup>

**3. *The Law on Protecting Women includes rural land rights as rights to property, and states that women’s rights to rural land are equal to men’s and should be protected upon marriage or divorce.***

In parallel to the categorization made in the GPCL, the Law on Protecting Women’s Rights and Interests of the People’s Republic of China (hereinafter the Law on Protecting Women) includes rural land rights as “rights to property.”<sup>80</sup> The Law on Protecting Women provides that “[t]he state ensures women to have equal rights to property with men.”<sup>81</sup> With respect to rural women’s land rights, it further states that women and men have equal rights to farmland and to foundation plots for housing construction, and that women’s land rights should be protected upon marriage or divorce.<sup>82</sup>

**4. *The Marriage Law states that women and men hold joint ownership rights to property earned during marriage, and legislation may give the wife some rights to her share upon dissolution of the marriage.***

The Marriage Law of 1980 states that the property earned during the marriage is jointly owned by husband and wife unless otherwise provided in an agreement.<sup>83</sup> Because rural land rights are categorically treated as rights to property in the GPCL and in the Law on Protecting Women (see points 2 and 3 of this section), it would logically follow that such land rights, if earned during marriage, are jointly owned by both spouses, and so are subject to property settlement upon divorce. The Law further provides that courts should adjudicate disputes over property settlement based on the principle of favoring rights of women and interests of children.<sup>84</sup> The

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<sup>78</sup> The 1986 General Principles of Civil Law (hereinafter GPCL), article 80.

<sup>79</sup> The GPLC also permits private individuals to own lawfully obtained production means as “citizens’ individual property.” *Id.*, article 75. Arguably, land use rights are such production means.

<sup>80</sup> The Law on Protecting Women’s Rights and Interests of the People’s Republic of China (approved on April 3, 1992, by the fifth annual session of the Seventh National People’s Congress) (hereinafter Law on Protecting Women), article 28.

<sup>81</sup> *Id.*, article 28.

<sup>82</sup> *Id.*, article 30.

<sup>83</sup> The Marriage Law of the People’s Republic of China (adopted on September 10, 1980, by the third annual session of the Fifth National People’s Congress) (hereinafter Marriage Law of 1980), article 13.

<sup>84</sup> Marriage Law of 1980, article 31.

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Marriage Law, however, does not give any specific guidelines for property settlement concerning land rights upon the dissolution of marriage.<sup>85</sup>

**5. *Legislation allows inheritance of rural land rights, and establishes rights for women to inherit property through intestacy.***

The Inheritance Law of 1985 provides that heirs may inherit rights to the subject matter that was contracted to the legator, if law permits.<sup>86</sup> Because the Agrarian Law of 1993 allows inheritance of rural land rights (up to the term of the HRS land use contract),<sup>87</sup> the estate of the deceased should include the land rights he or she obtained during his or her lifetime. The Inheritance Law grants equal rights to women and men to distribute the estate.<sup>88</sup> When a person dies intestate (without a will), his or her separate property goes first, in equal amounts, to spouse, children and parents. It goes second, in equal amounts, to siblings and grandparents. Second priority heirs only inherit if no first priority heirs are alive.<sup>89</sup> If an heir provided major support to or lived with the legator during his or her lifetime, the court may award the heir more than his or her equal share.<sup>90</sup> According to the Law on Protecting Women, a widowed woman who was the primary caretaker of her parents-in-law shall be regarded as the first priority heir of the parents-in-law, and her right of inheritance may not be superceded by her children's right of inheritance.<sup>91</sup>

**6. *Legislation entitles the survivor spouse to one-half of the jointly-owned property.***

In dividing the estate of a deceased spouse, the survivor spouse is entitled to one-half of the jointly owned property both spouses earned during the marriage, unless otherwise agreed by both spouses.<sup>92</sup> Indivisible property may be distributed through sales, appropriate compensation or be held as jointly owned property among heirs on the same tier.<sup>93</sup>

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<sup>85</sup> The Law on Protecting Women contains a somewhat ambiguous provision on distributing fixed assets, such as houses, upon divorce. This provision states that, in adjudicating disputes over a house jointly owned by husband and wife, courts may decree a settlement in favor of the wife and children based on particular circumstances. Law on Protecting Women, article 44.

<sup>86</sup> The Inheritance Law of the People's Republic of China (adopted on April 10, 1985, by the third annual session of the Sixth National People's Congress) (hereinafter Inheritance Law), article 4.

<sup>87</sup> The Agricultural Law of the People's Republic of China (adopted on July 2, 1993, by the second annual session of the Eighth National People's Congress Standing Committee) (hereinafter Agrarian Law of 1993), article 13.

<sup>88</sup> Inheritance Law, article 9.

<sup>89</sup> *Id.*, articles 10, 13.

<sup>90</sup> *Id.*, article 13.

<sup>91</sup> Law on Protecting Women, article 32.

<sup>92</sup> Inheritance Law, article 26.

<sup>93</sup> *Id.*, article 29.



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**7. *Current legislation fails to address the status of rights to land acquired prior to marriage.***

Laws governing property distribution upon marriage, divorce and inheritance are unsettled on one important area: land rights acquired prior to the marriage. Proposed new legislation attempts to solve this problem. The draft Rural Land Contracting Law appears to address this problem by categorically includes rural land rights as jointly owned property of husband and wife regardless of the time such land use rights are acquired.

**B. *Legislation on Intra-Household Rights in Land Transactions***

**1. *Legislation does not adequately address rural land market transactions, or women's rights in regard to such transactions.***

Legislation regulating markets for rural land use rights is only partially developed. Only since 1988 has the Constitution explicitly allowed for transfers of land use rights in accordance with law.<sup>94</sup> Although Chinese land laws promulgated after 1988 reiterate constitutional permission of land use rights transfers, they provide few enforceable rules applicable to transfers of rural land use rights,<sup>95</sup> let alone transfers of women's rural land use rights. Some relevant principles can be found, however, through reviewing laws that regulate transfer of private property in general.

**2. *Legislation gives equal rights to dispose of jointly-held property to both husband and wife.***

Pursuant to the constitutional principle of equal rights, the Law on Protecting Women ensures that women have equal rights to property with respect to men.<sup>96</sup> Based on such equal rights to property, the law states that wives and husbands have equal rights to possess, use, benefit from and disposal of the lawful, jointly-owned property, regardless of their respective income levels.<sup>97</sup> The Marriage Law also gives husband and wife equal rights to dispose of jointly owned property.<sup>98</sup>

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<sup>94</sup> China Constitutional Amendment (1988), article 2.

<sup>95</sup> Although the 1998 Land Management Law allows transfers of land use rights, it does not provide any specific legal requirements for such transfers. China has developed relatively detailed rules on transfer of use rights to state owned land in urban areas (most notably in the 1990 Provisional Regulations on Granting and Transferring Use Rights to Urban State Owned Land), but these rules are not applicable to rural land use rights; at most, they may have some instructive value for rural land rights.

<sup>96</sup> Law on Protecting Women, article 28.

<sup>97</sup> *Id.*, article 43.

<sup>98</sup> Marriage Law of 1980, article 13.

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**3. Legislation gives the wife of a deceased husband plenary authority to dispose of her inherited property.**

According to the Inheritance Law, the wife has the right to dispose of the property inherited from her deceased husband even if she remarries, without interference.<sup>99</sup>

**4. Whether ownership of household land rights is characterized as share joint ownership or mutual joint ownership may determine whether a woman within the household has the right to transfer her share.**

Joint ownership of private property may be defined as either share joint ownership or mutual joint ownership.<sup>100</sup> The former, similar to tenancy in common in U.S. law,<sup>101</sup> is defined as an ownership in which each joint owner has an interest in the property and is subject to claims of the creditors in proportion to his or her share in the jointly-owned property. The latter, similar to joint tenancy in U.S. law,<sup>102</sup> is defined as an ownership in which all joint owners have joint rights to the property and are jointly liable to the creditors.<sup>103</sup> The GPCL further provides that a share joint owner may transfer his or her share of the interest in the property, but other joint owners have the first right of refusal. The GPCL is silent on transferability under mutual joint ownership, while explicitly allowing a share joint owner to transfer his or her share of the jointly owned property. This implies that the individual interest under mutual joint ownership is not transferable.

However, Chinese laws do not state which type of joint ownership applies to the property jointly owned by husband and wife, or to the property jointly owned by all household members. If land rights are defined as property subject to share joint ownership, a woman should be entitled to dispose of her share of land rights in the household land rights pool when she gets married. However, if land rights are categorized as property under mutual joint ownership, a woman may not be able to partition and dispose of her share of the land rights jointly owned by all household members.<sup>104</sup>

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<sup>99</sup> Inheritance Law, article 30.

<sup>100</sup> GPCL, article 78.

<sup>101</sup> In U.S. law, tenancy in common is a type of common ownership where all co-owners have equal rights to possess and enjoy the entire property; each co-owner's interest is alienable; and co-owners have no right of survivorship. Roger A. Cunningham et al., *THE LAW OF PROPERTY* 196-207 (1984).

<sup>102</sup> In U.S. law, joint tenancy is a type of common ownership where co-owners must possess the four "unities" of time, title, interest, and possession. This requires that they: acquired their interests at the same time; acquired their interests by the same transfer instrument; and hold undivided interests identical as to the fractional, shares, quality, quantity, and rights of enjoyment. Each co-owner has the right of survivorship. *Id.*

<sup>103</sup> GPCL, article 78. Survivorship is not explicitly included in the definition of mutual joint ownership. However, by distinguishing it from share joint ownership, the Code seems to categorize common joint ownership as indivisible, which implies survivorship.

<sup>104</sup> The GPCL is silent on transferability under mutual joint ownership, while explicitly allowing a share joint owner to transfer his or her share of the jointly owned property. Such legislative silence strongly implies the non-transferability of the individual interest under mutual joint ownership.

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## **V. ISSUES RELATING TO GENDER AND LAND TENURE IN DONGFANG, HAINAN**

### **A. Dongfang City: Background Description**

Dongfang City, located in southwestern Hainan Province, has a total population of 345,000 and an agricultural population of 260,000. Dongfang City oversees 17 townships, 186 village committees, and 219 villages. Its total land area is 2,256 square kilometers, of which mountainous region comprise 28%, hilly land 14%, plateau land 27%, and plain land 28%.<sup>105</sup> The existing area of arable land is 25,445 hectares, of which paddy field and dryland comprise 11,208 hectares. Cash tree crops cover more than 4,700 hectares and there are approximately 13,000 hectares of “wasteland” that could be developed into agricultural land (“wasteland” refers to uncultivated, but potentially cultivable, land). Dongfang City has a tropical monsoon climate with a year-round growing season. Typical crops include rice, a wide variety of vegetables, tropical fruits, and eucalyptus for pulp. The total GDP in Dongfang in 2000 reached Rmb 2.57 billion (USD 310 million),<sup>106</sup> of which agricultural production accounted for Rmb 1.06 billion (USD 128 million). The average income per capita for farmers was Rmb 2,601 (USD 314).

Like other areas throughout China, Dongfang began to implement the Household Responsibility System shortly after 1980. Typical land holdings (for both arable and wasteland) in Dongfang are under 10 *mu* (or two-thirds of a hectare)<sup>107</sup> per household, and are not infrequently one or two *mu*. The households of the women we interviewed held between 0.5 *mu* and 8.0 *mu*. Readjustments to household land holdings in Dongfang have been infrequent and small. Allocations during readjustments were equal for females and males.

The authors conducted field research interviews in Dongfang using the Rapid Rural Appraisal method. In Rapid Rural Appraisal interviews, interviewees are active participants in a semi-structured interview, rather than passive respondents to a questionnaire. The interviewers use a checklist of issues as a basis for questions, not necessarily addressing all questions in each interview and sometimes departing from the basic questions to pursue interesting, unexpected, or new information. Interview villages and individual farmer interviewees were randomly selected, except for gender considerations. All of the interviews were conducted outside the presence of local officials in order to maximize the candor of farmer interviewees. The authors conducted interviews in over 35 villages in Dongfang.

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<sup>105</sup> Data on land distribution in Dongfang is from 1997. Authors were unable to obtain more recent data.

<sup>106</sup> 8.27 Rmb are equal to 1 USD. Economic data on Dongfang is from 2000.

<sup>107</sup> One *mu* is equal to 1/15 hectare.

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## **B. Women's Participation in Household Management and Agricultural Labor**

### **1. Daily Activities**

Women in Dongfang villages divide their time during a day between managing their homes, caring for their children, and working in the fields. One woman with three children, aged four to eleven years,<sup>108</sup> recounted a typical day as follows.

*In the morning I clean the house, cook, and go to the field with my husband. If we are working in the farthest fields, we eat there and return to work in the afternoon. If we are closer, we come home and I cook and we eat and rest, then go back to the field. In the evening I cook and clean while my husband cares for the children.*

*This woman's story was unique in that her spouse assisted with childcare. Most women reported they were the sole caretaker of their children. Older women who do not have their own children to care for often cook for others in the fields and take care of grandchildren. The one household job considered a distinctly male task by some interviewees was gathering and chopping firewood.*

*Women in villages assisted each other with their labor in a number of informal ways. For example, women often helped each other during planting and at harvest. When a woman's mother or father died, other women from the village helped with the funeral and burial.*

### **2. Women's Labor in the Fields**

Women generally worked full days in the fields (in January this meant six to seven hours; in harvest times the days were longer), although some worked half-days. Women reported that they worked equal hours as men did in the fields (both arable and wasteland).

Although women and men did many of the same tasks in the field, some tasks were differentiated by gender. For example, women were generally responsible for planting, weeding, and nurturing young plants and trees, while men were generally responsible for plowing the land using a water buffalo. Plowing was described by both men and women as "heavy" work, which some interviewees said (or implied) justified a lesser amount of work hours in the field by the husband.<sup>109</sup> Division of tasks by gender was not always clearly defined. Some women assisted with plowing, and women generally assumed greater responsibility for the household land if their husband took a job with a large-scale agricultural contractor. One

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<sup>108</sup> China has adopted a family planning policy that allows only one child per urban couple and two children per rural couple if the first child is a daughter. However, this national policy is not enforced in minority nationality areas. Dongfang is one of these minority nationality areas.

<sup>109</sup> For example, one male farmer responded that he worked less hours in the fields than his wife, but that he did the "heavy" labor. A female farmer responded that she was responsible for all tasks on the land except for the "heavy" work (referring to the plowing), which was her husband's job.

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male farmer reported that he worked for four months a year for a large-scale contractor in a different county, during which time his wife cared for the household land.

### **3. Off-farm Employment for Women**

Women in Dongfang villages appeared to have greater opportunities than men to work in the service industry in township centers, the county seat, or in Haikou City, the capital of Hainan Province. Women from some villages, for example, worked as “tricycle” cab drivers in the nearest township, earning about 10 Rmb (approximately \$1.25) per day. They used the money to buy “living goods” for their families. Several cab drivers interviewed had young children, who stayed with relatives or attended school during the day. Most cab drivers were members of families that possessed household land rights. They earned more money as cab drivers, they said, than from the field. Nonetheless, they prioritized working in the fields and only worked as cab drivers when they could afford to leave the fields. With the exception of the cab drivers, women taking service positions in the cities (such as restaurant or hotel workers) were generally young and not married. Pay is low, they said, but “better than farming.” Some continued to work part-time in the fields while maintaining their service jobs.

Women also had opportunities for paid labor with large-scale agricultural contractors. Women responded again, however, that their first responsibility was to work on their household land, limiting their availability for these jobs. The possibility for employment with an agricultural contractor varied from village to village. While in some villages no opportunities existed, in other villages women reported that this sort of work was “easy” to find for both men and women. The pay for both men and women was 10 Rmb (approximately \$1.25) per day, according to most accounts. Women uniformly reported that the only off-farm jobs available for men were in agricultural labor.

## **C. Women’s Knowledge of Land Rights**

### **1. Findings**

*The women we interviewed possessed less knowledge about household land rights than did the men we interviewed in Dongfang. In particular, women were not as aware as men about expected changes under the 1998 Land Management Law. For example, fewer than one-third (8 out of 30) knew that the Land Management Law called for the household land contract period to increase to 30 years.<sup>110</sup> Even fewer (2-3*

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<sup>110</sup> Male farmers in Dongfang were generally more knowledgeable about intra-household consequences of the 30-year, no readjustment policy. An older farmer with a 20 year old daughter, for example, understood that for 30 years there would be no loss of land in his household when she moved away, and that her new household would not gain land for her or her children for 30 years.

The low proportion of women interviewed who expressed awareness of the “30-year/ no readjustment” policy in the 1998 Land Management Law is also striking in comparison to the higher levels of awareness expressed by farmers in a 17-province household survey conducted in 1999 (see note 73, *supra*). According to this survey, 92.4% of farmers reported that they had heard of the “30-year/ no readjustment” policy ushered in by the new Land Management Law. Prosterman et al., *supra* note 71, at 14.

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*total) were aware that the law significantly limited readjustment practices over this 30-year period. Many women did not know whether or not their family had a written contract or certificate for their land, although most women did know how much land their household possessed.*

## **2. Analysis and recommendations**

Women's low level of knowledge about land rights, relative to men's, may be related to a lower level of education and adult literacy among women.<sup>111</sup> It could also be related to methods of circulating information within a village that do not take into account women's needs. For example, women may be less able than men to attend community meetings, due to their responsibility for childcare.

Another explanation for why women may not be informed of important new household rights under the 1998 Land Management Law may lie in the specific procedures used to implement the law at the village-level. In many villages throughout rural China, it is customary for only heads of household (most often men) to participate in village conferences that are convened to announce and discuss new policies. These village conferences have been an important avenue for implementing the 1998 Land Management Law. Also, the 1998 Land Management Law allows villager representatives to make decisions about important issues concerning land rights, such as policies for readjustment and contracting land rights to non-villagers.<sup>112</sup> It is doubtful that an equal number of village representatives are women; in most villages we visited in Dongfang, only one out of five of these representatives (at most) was a woman.

Developing effective ways of communicating information about land rights to rural women is essential to the success of any legal measures taken to improve these rights. This will require: (1) field research on the methods of communication that would most effectively include rural women in China; and (2) application of these methods as a primary component of implementing current and future land reform legislation.

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<sup>111</sup> Education and political participation may be two of the societal factors most likely to affect women's rights and access to land in Dongfang County. High levels of illiteracy among adult women (who account for 70% of the illiterate adults in China),<sup>111</sup> and lower levels of attendance in school by female children, directly affect women's ability to access information about their land rights (including reading their land use right contracts, reading any agreement for transfer, and reading any written information in the village regarding changes in land use rights, such as those brought about through implementation of the 1998 Land Management Law).

In a broader sense, lower education levels and higher illiteracy among women contribute to perceptions by many rural people that women are not as capable as men to serve in political positions within the village or take greater decision-making roles over productive resources and income within the household. Low levels of female representation on villager committees and among party cadres result in women having a diminished role in village policy-making regarding land and other issues, which in turn results in policies that frequently fail to take into consideration women's rights and needs.

<sup>112</sup> The 1998 Land Management Law, articles 14 & 15.

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## **D. Women's Rights to Land: Allocation**

### **1. Allocation of arable land rights**

#### **a. Findings: village readjustment policy**

*Most women interviewed came from and lived in villages that had held periodic readjustments in the past, to compensate for changes in household size. In most villages, household land holdings were adjusted for addition of a daughter-in-law or loss of a daughter to marriage outside the village. Readjustment policies that included new land for each new child were slightly less common. In some cases villages allocated land only for the first two or three children, while others allocated land for each child, regardless of the number of children in a family, and others did not allocate land to households with new children at all. Where villages did allocate land to new children, the entitlement was the same for girls and boys.*

*Most women in Dongfang married outside their village. Whether a woman married within the village or outside the village, the patrilocal marriage custom was observed, whereby the woman moved to her husband's home. A woman's birth family usually lost household land at the next readjustment after the woman left her household to marry. Most often, a woman's new household in her husband's village received additional land in the next readjustment after the woman moved in. Allotments for newly married women in a village were the same size as those held by their husbands.*

*The strong majority of women we interviewed were not aware that, under the 1998 Land Management Law, a woman's land entitlement was likely to remain in her maiden village for at least a 30-year period (see explanation in Section III.E, supra). When women were asked whether they would prefer to have their land entitlement in their maiden village or in their husband's village, they responded that they would rather have the entitlement in their husband's village. Because land is the primary means of livelihood for a rural woman and her household, she relies on it being accessible. As one woman farmer responded, "It would be better for a woman to have her land entitlement in the village she lives in. If a woman has no land, she has no means of livelihood. Farmers' lives depend on the land." Another woman raised a similar concern that a household's land would become too fragmented if the wife's entitlement remained in her maiden village, requiring time-consuming transportation between the two villages.*

#### **b. Analysis and recommendations: potential effects of the 1998 Land Management Law (30 year rights with no or limited readjustments) on allocation of land rights to women**

*Whether and how implementation of the 1998 Land Management Law will affect women will depend on several factors, including: (1) how widespread the practice of readjustment has been in the past;<sup>113</sup> (2) to what extent implementation of the 30 year land use rights involves a policy of no readjustments or allows for a limited level of readjustments; and (3) to what extent policies are adopted to mitigate potentially harmful effects of the Land Management Law on women. A policy of no readjustments or limited readjustments will not affect all women equally. The following chart sets forth some of the potential effects*

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<sup>113</sup> See note 71, supra, for further discussion.

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*on different categories of women, based in part on responses from our field research. Note that women's perceptions of what will or won't happen may be equally as important as what actually will or won't happen, in terms of realizing the benefits of land rights security discussed in the introduction to this report. In the interest of simplicity, these projections assume a policy of "no readjustments" rather than a policy of "limited readjustments" (readjustments in isolated cases are allowed by the 1998 Land Management Law upon approval by two-thirds of the villagers).*



**Table 1: Possible intra-household gains and losses from implementation of 30-year use rights with or without readjustments<sup>114</sup>**

Line No.	Social/family status	With readjustments over a 30 year period <sup>115</sup>	With no readjustments over a 30 year period <sup>116</sup>
1	Households with newborn girls	Receive extra land for each extra child. Entitlements equal for girls and boys.	Receive no new land for new children. Land per capita in household decreases unless/until other household members die or otherwise depart (e.g., through marriage of a daughter).
2	Households with newborn boys	Receive extra land for each extra child. Entitlements equal for girls and boys.	Same as above, except sons, unlike daughters, are not likely to leave the household, making the decrease in land per capita more permanent. In fact, the arrival of a boy means the family must plan on adding a daughter-in-law and possibly a grandchild or grandchildren two decades later, which could further decrease the household's land per capita.
3	Households upon daughter's marriage	Lose land entitlement pertaining to daughter at next readjustment after the marriage.	Do not lose land, but lose family members (so net gain in land per capita unless daughter returns upon divorce). <sup>117</sup>
4	Households upon son's marriage	Gain land for new family members (daughters-in-law and grandchildren).	Gain at least one, and probably more, family members with no gains in additional land, so net loss in land per capita. <sup>118</sup>

<sup>114</sup> This table is meant to raise questions and issues for further research, rather than to provide a definitive list of gains and losses. It reflects what we found in Dongfang. The situations in other regions of China may vary.

<sup>115</sup> This scenario reflects the customary readjustment policy in many villages prior to the 1998 Land Management Law.

<sup>116</sup> This scenario could apply in many villages over the next 30 years if the Land Management Law is widely implemented. Effects could be mitigated in some cases, however, through the Land Management Law provisions allowing limited readjustments with two-thirds village vote.

<sup>117</sup> The value placed on the daughter's labor contribution in her birth household is an important determinant in whether her departure from the household upon marriage is considered a net economic gain (e.g. in land per capita) or loss (e.g., gain in land per capita does not outweigh loss of labor contribution). Of course, this economic analysis is limited by its failure to take humanistic and emotional factors into account.

<sup>118</sup> For example, one male farmer said that a policy of no readjustments will definitely create hardship for families with more sons than daughters when the children marry. (His family had two sons and no daughters. When the sons marry and have children, the family will have to make do with the same 6 *mu* of land they currently possess.)

Line No.	Social/family status	With readjustments over a 30 year period <sup>119</sup>	With no readjustments over a 30 year period <sup>120</sup>
5	Newly married wives/ new daughters-in-law	Lose their (theoretical) share of household land entitlement in maiden village, gain (theoretical) share in household land entitlement in husband's village. Possible gain to intra-household status, as new wife/ daughter-in-law "brings" a valuable asset to her new home. <sup>121</sup> Possible gain to wife in access to and control over land, as an entitlement located in her place of residence is easier for her to use.	New wife's maiden household retains land share initially allocated for their daughter. Daughter may retain theoretical right, at least, to this entitlement. Possible loss in intra-household status for new wife, as she does not "bring" an additional land entitlement to her new household. Possible loss to wife in access to and control over land; an entitlement located away from her place of residence is more difficult for her to use. Potential loss of all land rights to wife, as result of transition to 30-year use rights with no readjustments. This could happen because many villages are conducting "one last readjustment" prior to implementing the Land Management Law. <sup>122</sup> If this last readjustment occurs in a woman's maiden village after she leaves to marry her husband, and if it has already taken place in the husband's village before she arrives, she has no guaranteed right to land in either village. <sup>123</sup>
6	Newly married husbands	Family (including husband and possibly his parents) gains land with addition of wife to his household.	Family gains new member without addition of new land, so loses land per capita.

<sup>119</sup> This scenario reflects the customary readjustment policy in many villages prior to the 1998 Land Management Law.

<sup>120</sup> This scenario could apply in many villages over the next 30 years if the Land Management Law is widely implemented. Effects could be mitigated in some cases, however, through the Land Management Law provisions allowing limited readjustments with two-thirds village vote.

<sup>121</sup> The value placed on the wife's labor contribution to the new household is an important determinant in whether her additional presence, without any land asset, is considered a net gain or net loss (see note 117, *supra*).

<sup>122</sup> See note 73, *supra*.

<sup>123</sup> One woman we interviewed in Dongfang was, in fact, in this situation. She had lost her land entitlement in her maiden village through a "last readjustment" after she left to be married, and arrived in her husband's village after it had already conducted a final readjustment. She did not think she would be receiving any land in the future (at least for the next 30 years) from her husband's village.

Line No.	Social/ family status	With readjustments over a 30 year period <sup>124</sup>	With no readjustments over a 30 year period <sup>125</sup>
7	Divorced woman	In majority of cases, woman unable to retain rights to land in her husband's village. <sup>126</sup> A woman may not have rights to land in maiden village, unless no readjustment has taken place between the time she was married and the time she is divorced. Under the readjustment system, a divorced woman, like a newborn child or a newly wed bride, should be able to get a land share at the next readjustment after she moves her residential registration back to her maiden village. The extent to which this actually happens, however, is unclear. <sup>127</sup> Divorced women not granted land entitlements in their maiden village depend on their brothers and father to provide for their basic needs. To gain more secure access to land, these women must remarry.	Potential for woman to retain rights to land in her maiden village upon divorce, but would require that a woman's right to this land is clearly established in legislation, and is both socially sanctioned and implemented.
8	Widows (without adult sons)	Widow becomes "head of household" in husband's village, so gains authority over land rights until next village readjustment, at which time village also withdrew deceased husband's land share.	Depends whether marriage occurs before or after 30-year period. If the marriage occurs before, then widow has no right to land in her maiden village, but keeps both her share and her husband's share, or at least the portion of her husband's share received through inheritance, in husband's village. If the marriage occurs after the 30-year period begins, then widow retains her household land entitlement in her maiden village and could also inherit rights to husband's share in husband's village. Possible gains to widow who inherits husband's land rights, as these are now good for 30 years and not subject to readjustment.
9	Families who lose members to death	Loses land at next readjustment after death of family member.	No loss of land through readjustment. Increase in land per capita.

<sup>124</sup> This scenario reflects the customary readjustment policy in many villages prior to the 1998 Land Management Law.

<sup>125</sup> This scenario could apply in many villages over the next 30 years if the Land Management Law is widely implemented. Effects could be mitigated in some cases, however, through the Land Management Law provisions allowing limited readjustments with two-thirds village vote.

<sup>126</sup> This is the case according to the vast majority of responses in our fieldwork, despite the fact that article 30 of the 1992 Law on Protecting Women establishes women's rights to retain their land entitlement upon divorce. This response may have reflected social pressure on the woman to move out of the husband's village more than a policy of village officials to actually withdraw her share of household land through readjustment following divorce. The issue of whether, and where, divorced women have access and rights to land deserves further research.

<sup>127</sup> According to women interviewees in Dongfang, a divorced woman's ability to regain rights to land in her maiden village upon return there is far from certain. One study on gender in China found that Chinese villages face pressure to strike daughters off their fathers' land records as soon as they marry, to make room for incoming brides. The authors of this research site one incident where a woman was abducted from her maiden village and sold into marriage in another province. Although the woman was able to escape and return home within several months, the village officials insisted on taking her land from her parents' household at the end of the accounting year, since she had already been married off. Zhong Guo Fu Nu, August 1995 (in Chinese), as cited in Das Gupta & Shuzhuo, *supra* note 16, at 639-40).

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As Table 1 demonstrates, implementation of the Land Management Law will probably have gender-differentiated effects in Dongfang City, and in the rest of rural China as well. The law will affect women differently depending on their roles as daughters, wives, single heads-of-households, or mothers. More extensive research is necessary to determine the extent to which each group of women will, in fact, realize the potential effects discussed in Table 3. One situation that should be addressed immediately, however, is the possibility (raised in Line 5 of Table 1) that some women will lose all rights to land during implementation of the 1998 Land Management Law.

It is also important to note that many of the potential effects of the Land Management Law on women will depend on the development of a market in long-term use rights.<sup>128</sup> If a rural land market develops on the basis of clearly defined individual legal rights to land that are partitionable and alienable, a woman could, for example, transfer-out her land entitlement right in her maiden village upon marriage, then use the income generated to transfer-in the right to land adjacent to or nearby her husband's land in her new village. A widow might decide to lease out the rights to one-half of her land to a household with sufficient labor to farm it, giving her a supplemental income source and the family who transfers it in a valuable productive resource. Households losing members to death might lease out their rights to household with new children.

Several steps could be taken to minimize detriments and maximize benefits to women of implementing the 1998 Land Management Law. First, the central government could adopt a policy prioritizing allocation of village "flexible land" to women who lose their entitlement to land during the transition to 30-year use rights with no readjustments (see Line 5 in Table 1, *supra*). Second, it will be important to conduct further research and monitoring on the Land Management Law's potential effects on women, including maximum input from women farmers. All efforts to monitor implementation of the 1998 Law should include a gender component. Third, the central government could use findings from research and monitoring to encourage counties to adopt provisions in their Land Management Law implementation regulations that support women's rights. It could also draft and circulate model township and village implementing regulations with provisions protecting women's rights, and encourage adoption of these regulations, subject to input from village women.

Understanding whether and how the 1998 Land Management Law will affect women requires further research and monitoring. Outstanding questions include:

- 1) How broad will the effects from ending or limiting future readjustments be?<sup>129</sup>
- 2) Will the 1998 law (30-year use rights with no or limited readjustments) affect inheritance patterns? If so, will these effects be gender-specific? Will parents be more likely to

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<sup>128</sup> Chinese law generally allows transfers of rural land use rights. See e.g., the 1988 Amendment to the Constitution of the PRC, article 2; the 1998 Land Management Law, article 2. However, there are no detailed rules to guide the process of land transfers. Moreover, the current practice of continuing readjustments in many places and the lack of mechanisms for registration of rural land rights have made such rights less marketable.

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bequeath land rights to daughters, since these rights would no longer be taken from the household (through readjustment) when a daughter married? Or will parents continue to bequeath land rights to sons only, as long as daughters are expected to leave their homes and villages in accordance with patrilocal marriage customs?<sup>130</sup>

- 3) If a woman's land entitlement remains with her parents' household in her maiden village, will this impose hardship on her when she moves to her husband's village? Will the leaving of her maiden village upon marriage or other factors result in her turning over at least *de facto* ownership/ control of her land entitlement to her father and/or brothers? If so, would it be feasible for her to reclaim her own entitlement upon moving back to her maiden village in the event of divorce?
- 4) How widespread is the extreme case noted in Table 1 (Line 5), where a woman loses entitlement to any land in the process of implementing 30-year use rights with no readjustments? How many villages have provided for this possibility by prioritizing allocation of village "flexible land"<sup>131</sup> to women in such cases, or in some other way? (Note that flexible land will not be able to provide relief in all cases, as not all villages hold flexible land.)
- 5) Do women in Dongfang have access to enforcement of their land rights, either through informal means within the village or through more formal avenues at the village or township levels? (Of course, enforcement of land rights would not be possible unless the rights are adequately defined in legal terms. Also, assessments of women's access to enforcement mechanisms should take into account cultural factors that may limit this access.)

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<sup>129</sup> As discussed in note 71, *supra*, the 1999 Household Survey demonstrated that approximately 75% of the villages in rural China had conducted readjustments prior to 1999. This survey also revealed that approximately 56% of farmers believed that readjustments of some type would continue during the 30-year land use term under the Land Management Law. Prosterman et al., *supra* note 71, at 31. The extent to which the Land Management Law will alter village readjustment policies in the future is not yet clear.

<sup>130</sup> Our recommendations in this report are limited to improving women's legal rights to land in China; we do not purport to advocate changes in social customs or traditions. While we acknowledge that social customs play an integral role in shaping the effects realized from legal rules, we also think that legal rights, if implemented and enforced, can affect social customs. Following the relationship dynamic between gender-based inheritance practices and the 1998 Land Management Law (where it is implemented) could provide useful instruction on the relationships between legal and social change in China.

<sup>131</sup> "Flexible land" is a portion of the land in a village reserved at the time of general land distribution by the village collective for future allocation to households with special needs for additional land during the 30-year period. Flexible land may not exceed 5% of all arable land in the village. See, e.g., The General Office of the Chinese Communist Party Central Committee, The General Office of the State Council, Document No. 16 (August 27, 1997), article 4 (RDI translation).

## E. Security of Women's Rights to Land

Security of women's land rights in Dongfang depends both on the security of household land rights and the nature and security of a woman's land rights within the household. Factors determining the security of women's land rights include: whether the household possesses a land use contract; the length of the use-right; whether the village conducted readjustments in the past; whether it plans to continue to conduct readjustments in the future; and whether the contract includes the wife's name. Another important consideration is whether a woman's approval is required for any transfer of household land rights (e.g., a sale of household land to a non-village contractor/ land developer).

### 1. Security of household rights

**Table 2: Factors that influence security of women's rights to household land**

Factors that influence security of women's rights to household land		Current Legal Status	Interview responses in Dongfang <sup>132</sup>
<b>1. Factors that influence household land tenure security</b>			
<b>a.</b>	Household possesses copy of a written contract, signed by household member(s).	Prior to the 1998 Land Management Law, central laws and policies did not require contracts for HRS land rights. Article 14 of Land Management Law requires that parties execute a contract, and establishes protection for contract rights. <sup>133</sup>	Household possessed written contract: 11/ household did not possess written contract: 11
<b>b.</b>	Terms of household contract	Under the 1998 Land Management Law, term is 30 years.	Women's responses reflected perceptions that contract terms were between 10 years and perpetual.
<b>c.</b>	Readjustments occurred in village prior to 1998	Centrally-issued laws and policies did not contain or require an equal entitlement rule for collectively-owned land, nor did they prevent villages from adopting their own rules on readjustment. However, they "promoted" adoption of no-readjustment where it was possible.	Readjustment(s) occurred prior to 1998: 13/ readjustment did not occur prior to 1998: 5
<b>d.</b>	Perception that readjustments will occur in village in future	The 1998 Land Management Law limits the conduct of small readjustments to "isolated cases," and prohibits the conduct of big readjustments. <sup>134</sup>	Believe readjustments will continue in the future: 7/ believe readjustments will not continue in the future: 4 <sup>135</sup>

<sup>132</sup> We provide numbers here to give a general idea of women's responses in Dongfang. Consistent with the Rapid Rural Appraisal methodology, we did not ask all questions of all interviewees.

<sup>133</sup> Article 14 of the 1998 Land Management Law requires that "the contractor and the contract issuer execute a contract stipulating the rights and obligations of the two parties," and the "farmers' land contracting rights shall be protected by law."

<b>2. Factors that influence women's land tenure security within the household</b>			
a	Woman's name on contract	Laws and policies do not include this requirement.	No cases found.
b	Household responsibility contract names household (as opposed to "head of household," or "contracting member") as contracting party	Laws and policies are ambiguous on this point.	Contracts often internally inconsistent regarding the identity of the contracting party. <sup>136</sup>
c	Women's written approval required for transaction of household land rights	Laws and policies do not include this requirement.	No cases found where women's written approval was required, or where interviewees thought that it would be required.

### a. Findings

Of the women interviewees who knew whether or not their family held a household land contract, 50% (11 out of 22) responded that they did have written contracts.<sup>137</sup> Four were unsure whether or not they had contracts. Women believed their household's use right terms ranged from one year to "perpetual." (Two women believed their use rights were from 10-12 years, eight believed the term was 30 years, and six believed their households held perpetual use rights to the land.) About half answered that they were uncertain about use right terms. As discussed above, most women came from villages that had conducted readjustments in the past

<sup>134</sup> Article 14 of the 1998 Land Management Law allows only "appropriate isolated readjustments of land" during the 30-year land use term based on the approval of at least two-thirds of the villager assembly or two-thirds of the villager representatives, and approval by the administrative agency responsible for agriculture at the township and county levels.

<sup>135</sup> This response rate is generally consistent with responses from the *1999 Household Survey* (*supra* note 71, at 23). Thirteen percent of households in this survey predicted their village would have no further readjustments over the next 30 years, compared to 35% who said readjustments would continue. Thirty-eight percent said it would depend on either the central government or the village cadres, and 14% stated they did not know.

<sup>136</sup> Contracts collected by RDI between 1988-1991 contain internally inconsistent information regarding identification of the contracting party. For example, one contract states at the beginning that "the contractor (hereinafter referred to as Party B) is co-op member Tang Zhongun." This language suggests that the contracting party is an individual rather than a household. At the end, the contract called for the signature and seal of the "representative of Party B," suggesting the contracting party is the household, and the individual is the representative. The contract contains one appendix, which calls only for the seal of the "co-op member" (again suggesting the contracting party is an individual rather than a household). Each of the six contracts analyzed contains similarly conflicting or ambiguous text.

If the contracting party is defined as a representative of the household, it then becomes important to identify what scope of duties and authorities this representative possesses. Only one of the contracts defines the rights of the representative of the contracting household. It does so by stating that "The head of a contracting household is the representative of the contractor party with full powers."

<sup>137</sup> The actual number of these contracts procured during the interview was lower than 50%.

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for additions and losses of family members. Where readjustments had occurred in the past, women expected them to continue in the future.

We did not find any instances where a woman's name appeared on a contract. Some interviewees told us that women signed the contract when they were the heads of household (e.g., a woman without an adult son, whose husband had died), but we did not see any such contracts first-hand. Each of the contracts we observed listed, and was signed by, the male head of household only.

Some contracts failed to clearly state whether the contracting party is the household or an individual. Of six household land contracts collected and analyzed by RDI between 1988-1991, all contain conflicting and ambiguous language about whether the contracting party is the household, an individual within the household (e.g., the head of household), or a representative of the household (also the head of household). See note 136 for details. Because the law does not clearly state whether the household as a whole or an individual within the household has rights as the contracting party, language in each household land contract is especially important. If the contracting party is the household, women within the household may hold greater security (at least legal, contractual security) than if the contracting party is the individual head of household. If the contracting party is defined as the household "representative," then the important question becomes what this representative's powers and duties are vis-à-vis the rest of the other household members.

Responses by most women indicated that, although their approval for a sale of household land was not formally required, they would have significant intra-household authority in the decision.<sup>138</sup> Responses by men concurred. One male farmer said the collective (village) had no rule requiring a wife's approval for transfer of household land, but within his household he would "of course" have to consult with his wife. As discussed in Section IV.F.2 above, the law does not directly address the issue of women's rights in the transfer of household land.

#### **b. Analysis and recommendations**

Based on these findings, several factors could contribute to insecurity of women's rights to household contracted land in Dongfang. These include the significant number of households lacking written contracts for their household land rights, the frequency of past readjustments, and the expectation of future readjustments. The above findings also reveal that women often lack land rights security within the household due to the fact that few household land contracts clearly indicate that the contracting party is the household, rather than an individual within the household (presumably the head of household).<sup>139</sup> The failure in law and practice to require

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<sup>138</sup> Women have a strong voice within the household on a number of issues regarding allocation and disposal of household income and farm resources, according to the majority of interviewees. Wives and husbands generally make decisions together about inter-generational transfers of property, levels of production and crop choices, and purchase of inputs. Both spouses are equally as likely to purchase inputs, depending on "who has the most time."

<sup>139</sup> It is important to clarify that increased security of household land rights will not necessarily translate into increased security of rights for individuals within the household. As Bina Agarwal argues in the South Asia context, "[G]iven the noted biases in the intra-family distribution of benefits from household resources, exclusively *male*



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women's formal, written approval for transfer of household contract land rights further reduces their tenure security.

Given the significant role women in Dongfang County play in agriculture production, tenure insecurity (both on a household and intra-household level) may carry important negative implications. Negative results may include disincentives for women to make long-term investments in land productivity, barriers to women's ability to contribute effectively to household management decisions regarding land, and reductions in the social welfare of women and their children. The latter result may become increasingly important in the face of a rising demand for agricultural land within Dongfang by non-village contractors. Without clarification in law and on contracts that a household, rather than an individual, is the contracting party to HRS land rights, a wife's legal right to the land is tenuous. Without any clear legal requirement for both spouses to approve a transfer of the household land rights, the wife has little legal protection against a sale of these rights by the husband that may jeopardize the primary source of feeding the family.

We offer several recommendations to improve women's security to household land rights. One approach would be to strengthen the security of household land rights through continued implementation of the Land Management Law. Central to this approach would be the further disbursement of written household land use rights contracts which include a description of the land, a detailed list of the rights and obligations of both parties, and, importantly, the length of the use right term. (See recommendations in Section V.D.1.b, above, addressing ways to mitigate the impact on women of implementing a limited readjustment policy, as well as research questions that remain to be addressed.) A focus on women's intra-household rights to land should accompany measures taken to increase the security of household rights. This could be done through new laws and/or regulations specifying that the contractor to household land rights is the household, rather than an individual within the household. Legislation could explicitly require that land contracts be signed by both husband and wife, not just by the head of the household. Women's intra-household land rights could also be strengthened through a policy requiring the formal approval (e.g., written signature) of both spouses for transfer of household land rights.

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rights in land, which would render the *household* less susceptible to poverty by some average measure, will not automatically provide this protection to all its members, and especially not to its female members." Agarwal, *supra* note 5, at 32.

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## 2. Security of women's rights and access to land upon divorce

### a. Findings

A rising divorce rate in Dongfang County, and in China as a whole, underscores the importance of women's rights to land and other productive assets upon divorce.<sup>140</sup> A woman's options for earning a living in Dongfang after a divorce are limited. She may return to her maiden village but will not have land rights there, according to 14 out of 21 women interviewees.<sup>141</sup> A majority of women interviewees (9 out of 12) responded that a divorced woman would not have rights to land in her husband's village, and even if she did, it would be socially difficult for her to remain there.<sup>142</sup> Most divorced women in Dongfang try to re-marry as soon as possible, in part to regain access to land.

### b. Analysis and recommendations

The apparent loss of women's land rights as a result of divorce could be considered one of the greatest shortcomings of the land rights system in China. Although Article 30 of the 1992 Law Protecting Women ensures that rural women's rights to land are not lost upon divorce, our fieldwork results suggests that these rights are not currently recognized or practiced in Dongfang. Our findings also underline the difference between complete and incomplete rights. A divorced woman's right to land in either her husband's village or her maiden village (should she decide to return home) may be recognizable under legal principles, but these legal principles lack specific mechanisms for defining and partitioning a woman's right to household land (see following paragraph). Furthermore, even if a woman's right to land upon divorce could be considered legally recognizable, it is not socially recognized, at least in Dongfang. The unclear legal status of these rights, coupled with lack of social recognition, make it highly unlikely that external authorities could or would enforce these rights.

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<sup>140</sup> The official divorce rate in China, although still low (approximately 2 divorces per 1,000 marriages), has been rising. Elaine Y. Wan, *China's Divorce Problem*, THE TECH 5 (November 10, 1998); see also Jacka, *supra* note 13, at 58. Most interviewees believed divorce rates to be rising in Dongfang.

<sup>141</sup> One interviewee qualified her response by stating that a woman regains the right to land in her maiden village only if the husband is the one who demanded the divorce. Even women interviewees whose maiden villages had seldom, if ever, conducted readjustments said that a divorced woman had no right to land in her maiden village. They said the divorced woman's family would likely provide for her basic needs.

<sup>142</sup> One woman answered that the household's property, including land, is separated and divided between husband and wife upon divorce. Another woman said that the situation of the divorce affects rights to land: if the husband has left the wife for another woman he is "keeping" in the city, and if the wife and husband had owned a house in the husband's village, the wife generally keeps the house and the land. The strong majority of women answered that it would socially be very difficult for a divorced woman to stay in her husband's village. One of the three who answered this question in the positive said that although a divorced woman has the right to the land in the husband's stay there, and the land is redistributed among the husband's relatives when she leaves. See note village, she wouldn't 126, *supra*, discussing the possibility that social factors, rather than (or in addition to) village land readjustment and allocation policies, may determine whether women have land rights in either their husband's village or their maiden village upon divorce.

Independent research appears to support these findings. According to a survey conducted in rural Shanxi Province in 1996, more than 45% of the interviewed women reported that a woman could not keep her land tenure upon divorce. Zhu Ling & Jiang Zhongyi, *Effects of Labor Migration on Women's Land Rights in the Economic Transition of Rural China* (abstract) (August 23, 1999) (on file with the Rural Development Institute, Seattle, Washington).

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The dilemma that a divorced woman may face with respect to her land rights may be attributed to many factors, but the absence of an enforceable substantive rule is a threshold issue. Such legal deficiency can be seen in at least three aspects. First, as indicated above in Section IV.B.4, rural land rights have never been legally defined in an explicit manner as individually owned property or jointly owned household property. Second, although rural land rights are distributed under the HRS on a per-capita basis, the existing legal provisions on rural land rights do not specify whether land rights held in a household are partitionable among household members. Third, although Chinese laws espouse the principle of equality between men and women in distributing and disposing of household property, such principle has yet to be reduced to practical and enforceable legal rules governing property settlement in the case of divorce.

Benefits to women will be minimal unless and until a woman's right to land in her maiden household is made more complete. This will require legal mechanisms (which could begin with clarification that household land rights are held in share joint ownership under the General Principles of Civil Law) to render her share identifiable and partitionable. The Land Management Law may offer some potential for increasing women's legal security to land upon divorce, by establishing a system where a woman's land entitlement is not readjustable, but remains with her maiden family. This, when considered along with the other changes mentioned in this paragraph, could benefit divorced women by rendering them less dependent on their husband's household.

Clarifying provisions in property and family law related to ownership of household land rights could remove a major impediment to divorced women's land rights security. The first step may be to apply to household land rights the legal concept of share joint ownership as defined in the GPCL, and to adopt this concept in the forthcoming Marriage Law and the Rural Land Contracting Law. Under share joint ownership, land rights jointly held by the household are partitionable and transferable upon marriage and divorce. Another important action will be to explicitly define rural land rights as property jointly owned by all household members in the forthcoming Marriage Law and Rural Land Contracting Law, and clarify that such property shall be subject to equitable property settlement in divorce proceedings.

Divorced women who were married prior to the 1998 Land Management Law will be in a different situation than divorced women who married after 1998. In the first case, a woman will only have the right to household land in her husband's village (assuming a readjustment has taken place in her maiden village since her marriage). Here, the most important change will be to establish a woman's right to an equitable, partitionable share of the land rights held by her and her husband. In the second case, a woman will have the right to land in her maiden village, but no new entitlement in her husband's village (assuming no readjustment has occurred since the marriage). In this case, the most important changes will be to: (1) establish a woman's right to an equitable, partitionable share of land in her maiden household; and (2) establish that both entitlements of the husband and wife become jointly-owned property upon marriage, and subject to equitable division upon divorce. This way, a woman retains the possibility of electing the portion of household land located in the husband's village, if she deems this best.

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Continued implementation of the Land Management Law could also strengthen divorced women's land rights, if accompanied by careful monitoring of gender-specific effects. Monitoring could include, for example, research into whether and where (e.g., husband's village or maiden village) divorced women actually receive their land entitlements.

### **3. Security of women's rights and access to land upon death of spouse**

#### **a. Findings**

When a woman's husband died in Dongfang, she usually stayed in her husband's village, stepped into the role of the head of the household, and assumed greater control over household land.<sup>143</sup> A woman's name sometimes replaced her deceased husband's name on the land use contract, where one existed. (Despite reports of this practice, we did not observe any contracts containing women's names.) A widow's rights to and control over land in this situation, however, depended on whether or not she had a son and whether she re-married. If she had an adult son (at least 16-17 years old) at the time her husband died, the son typically assumed the legal role of head of household as it relates to land rights.<sup>144</sup> If she had a son who was not yet adult, she stepped into the role of the head of the household only until her son reached the age of adulthood, then turned over this role, and the land rights that accompanied it, to him. The son, as head of the household, was expected to take care of his mother. A woman whose husband died normally tried to remarry, often to someone within her husband's village. It was not clear whether a woman whose husband died would be entitled to land in her maiden village if she returned; most interviewees responded that the widow usually stayed in her husband's village.

#### **b. Analysis and recommendations**

The current practices in Dongfang regarding a woman's land rights upon death of her spouse offer several protections. They provide that she may step into the role of head of household and assume the household land rights, or that the land rights go to her adult son who is then expected to take care of her. These protections do not always suffice, however. In some instances, the household land rights may go not to the surviving wife but to her husband's father or brother,<sup>145</sup> diminishing her tenure security and ability to manage production on the land or control any income from it. In addition, current practices in Dongfang render a widow's rights to land dependent on her marital status, in contradiction to the spirit of the 1992 Law Protecting Women (establishing a widow's right to dispose of her property whether or not she remarries) and the 1985 Inheritance Law (establishing that a widow's right to property does not depend on whether or not she re-marries).

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<sup>143</sup> In one case, a woman qualified her answer, saying a wife becomes the holder of the land rights but in doing so assumes responsibility to care for her parents-in-law. A small minority of women responded that, upon death of the husband, his land rights would go to either his father or brother, but not to his wife.

<sup>144</sup> A minority of interviewees responded that a widow with an adult son became the head of the household and received household land rights until she remarried. One woman expected that she and her adult son would share the rights upon death of the husband.

<sup>145</sup> See note 143, *supra*.

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The legal framework for addressing women's rights to inherit land could be improved in several ways. First, new inheritance law provisions could be written to conform with Articles 30 and 31 of 1992 Law Protecting Women's Rights (establishing women's equal rights to agricultural land and protecting these rights upon widowhood or divorce, regardless of whether or not she remarries). Second, Article 31 of the 1992 Law on Protecting Women's Rights, establishing the right of widows to dispose of "property," could be clearly applied to disposal of land rights. (This could occur either through amendments to the Law on Protecting Women's Rights, or through clarifying regulations.) Third, further research could be conducted to determine the effects of enforcing provisions in the intestacy law that require property passing through intestacy to be distributed equally among heirs on the same "tier" (e.g., spouse, parents, and children). This research could focus on the opinions of, and the effects on, rural women. (For a related discussion, see Section V.F.2, below.)

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## **F. Right of female household members to inherit land**

### **1. Findings**

Nearly all interviewees reported that household members in Dongfang are allowed to inherit household land use rights within the term of these rights. The majority of farmers interviewed (both males and females) said their families would bequeath land rights to sons only.<sup>146</sup> Some said they would bequeath to daughters for as long as the daughters remained in the village, but when a daughter married outside the village her rights would automatically transfer to her brothers or parents, or would be subject to takings by the village during the next readjustment.<sup>147</sup> Others clarified that they would bequeath to sons only, whether or not the daughters remained in the village. One male farmer expressed his rationale for bequeathing to sons by explaining, "In this era, once daughters are married and leave the village, they are basically considered worthless." When we asked at one crowded interview who was most likely to inherit land rights, even the youngest boys chimed in that "of course" land would go to the sons, as the daughters would be "married off." Another man, a state official visiting his home village, said that all land goes to sons, who then have the right to decide whether to give their sisters a part of their share. Not all men present shared this view, however. One young man in the crowd responded that whether his sons or daughters received his land depended on how he drafted his will. Another older male farmer answered that all children could be heirs.

### **2. Analysis and recommendations**

Customary inheritance patterns for land in Dongfang appear to be at odds with written law. Although the current Inheritance Law does not explicitly cover household land rights, it does address women's rights to inheritance through intestacy provisions (see Articles 10 and 13). According to these provisions, males and females take equal shares of the estate within their priority-level. For example, sons and daughters fall within the first priority-level; therefore any surviving sons or daughters are entitled to share the estate in equal parts. Furthermore, Article 31 of the 1992 Law Protecting Women states that women "shall not be discriminated against in the proper order of legal inheritance." Provisions in both laws clearly intend to establish equal

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<sup>146</sup> Out of 28 women, 12 reported that they would bequeath land right to sons only. Nine reported that they would bequeath land rights to both sons and daughters, but that rights to daughters would be limited, and would automatically transfer to sons when the daughters married. Seven women said they would bequeath land rights to sons and daughters equally.

<sup>147</sup> One woman answered that if a daughter inherits land, the rights to it will "go to her husband" if she marries within the village, but if she marries out of the village the rights would be lost through readjustment. Another male interviewee said that under the new system of 30-year rights with no readjustments, sons and daughters will inherit equally. After 30 years, however, the village would equalize the holdings again through a readjustment (so daughters who received land through inheritance and subsequently left the village to marry would lose their land in the maiden village).

An older male farmer told us it made no difference whether one bequeathed land to a son or a daughter, as long as the daughter remained in her parents' village. When she left the village, however, her land would go to her brothers (even under the new system of 30-year use rights, and no readjustments). If the daughter divorced, she would have to negotiate with her brothers for her inherited rights.

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inheritance rights for female and male heirs. The principles in both laws arguably extend to gender equality in inheritance of land rights, given the absence of any specific legal provisions to the contrary.

One important provision in the 1985 Inheritance Law affecting women's rights to inherit land is contained in Article 13. This article carves out an exception to the rule that heirs inherit equally within their priority-level by stating that an heir who has provided for or lived with the legator is entitled to a greater share of the estate upon death of the legator. Because sons are more likely than daughters to have assumed the caretaking role for their parents, they are most likely to benefit from this provision. Despite the gender-bias inherent in this rule, however, it should be altered carefully, if at all.<sup>148</sup> Current practices in Dongfang of inheriting land rights to sons appear closely connected with patrilocal marriage customs, under which sons are expected to stay in their maiden village to care for their parents as they grow old. By awarding the household land rights to the son through inheritance, the parents (household) both rewards him for assuming the caretaking burden and also better ensures that the household land remains in one consolidated parcel.

Changes to legislation and policy related to inheritance of land rights should take into careful consideration current customs, and opinions of rural women. A sound first step will be to study the effects of strictly applying gender-neutral distribution of land rights among heirs on the same "tier" (e.g., spouse, children, parents) through intestacy. Research could include the ways in which women of all ages are affected by current customs of passing land to sons, as well as the ways in which the current customs to more equally distribute the estate would affect the elderly. It will probably be wise to retain the current provision in the Inheritance Law that gives a caretaker heir the right to a greater share of the estate through intestacy. If this provision is retained and applied, it may allow for a more gender-equitable application of the intestacy provisions of the Inheritance Law, without jeopardizing care for the elderly. It may also serve as a hedge against future fragmentation.

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<sup>148</sup> Brazil provides one case where legislation aiming to make inheritance more equitable for women incurred mixed results. The law in Brazil mandates that, at the death of the parents, land must be divided equally among sons and daughters. A will providing otherwise without the written consent of the heirs is invalid. This provision has proven problematic because land has been divided into plots too small for subsistence farming in Southern Brazil. Ineke van Halsema, *HOUSEWIVES IN THE FIELD: POWER, CULTURE AND GENDER IN A SOUTH-BRAZILIAN VILLAGE* 100, 128 (Center for Latin America Research and Documentation (CEDLA), 1991). Another problem with this Brazilian provision for equal division between sons and daughters arose from the fact that, under customary law, only one child is responsible for his parents. If, because of the equal division rule, this child loses a future right to a reasonable share of the land owned by the parents, he is less likely to be able to care for his parents and more likely to need to go to the city to find adequate work for his family. Frans Pappa, *Contesting the Household Estate: Southern Brazilian Peasants and Modern Agriculture* 26 (CEDLA, 1992).

It bears noting that the Chinese and Brazilian laws on gender in inheritance are similar but not identical. Chinese law differs in at least two ways: (1) it gives female and male heirs equal rights to property received in intestacy, but allows people to freely distribute property through wills; and (2) it contains the provision discussed above, allowing the caretaker heir to inherit a greater share of the estate in intestacy.

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## **VI. SUMMARY OF RECOMMENDATIONS**

### **Women's Knowledge of Land Rights**

- Conduct field research on the methods of communicating changes to laws and policies regarding land rights that would most effectively include women.
- Include these methods as a primary component of implementing current and future land reform legislation.

### **Allocation of Land Rights**

- Consider prioritizing allocation of village “flexible land” to women who lose their entitlement to land during the transition to 30-year use rights with no readjustments. See Table 1 (Line 5) in Section V.D.1.b, *supra*).
- Conduct further research and monitoring on potential effects of the Land Management Law on women, including maximum input from women farmers. Include a gender component in all monitoring efforts of implementation of the 1998 Law.
- Use findings from research and monitoring to encourage townships and villages to adopt provisions in their Land Management Law implementation regulations that support women’s rights. Draft model township and village implementing regulations with provisions protecting women’s rights, circulate widely and encourage adoption subject to input from village women.

### **Security of Women's Rights to Household Land**

- Strengthen household land rights security through continued implementation of the Land Management Law, including further disbursement of household land use rights contracts which include a description of the land, a detailed list of the rights and obligations of both parties, and, importantly, the length of the use right term. (See recommendations above, addressing ways to mitigate the impact on women of implementing a limited readjustment policy, as well as research questions that remain to be addressed.)
- Adopt new laws and/or regulations specifying that the contractor to HRS land rights is the household, rather than an individual within the household. Explicitly require that land contracts be signed by both husband and wife, if any, not just by the head of the household.
- Require the formal approval (e.g., written signature) of both spouses for transfer of household land rights.



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## **Security of Women's Land Rights upon Divorce**

- Apply to household land rights the legal concept of share joint ownership as defined in the GPCL and explicitly define rural land rights as property rights jointly held by all household members. Under share joint ownership, land rights jointly held by the household are partitionable and transferable upon marriage and divorce. Make it clear that such property shall be subject to property settlement in divorce proceedings.
- Continue implementation of the Land Management Law. Monitor implementation, including gender-specific aspects and impacts of the implementation. For example, monitor whether divorced women actually receive their land entitlement upon remaining in their husbands' village or return to their maiden village.

## **Security of Women's Land Rights upon Death of Spouse:**

- Ensure conformity of new inheritance law provisions with Articles 30 and 31 of 1992 Law Protecting Women's Rights (establishing women's equal rights to agricultural land and protecting these rights upon widowhood or divorce, regardless of whether or not she remarries).
- Apply Article 31 of the 1992 Law on Protecting Women's Rights, establishing the right of widows to dispose of "property," to disposal of land rights.

## **Rights of Female Household Members to Inherit Land:**

- Study effects of strictly applying gender-neutral distribution of land rights among heirs on the same "tier" (e.g., spouse, children, parents) through intestacy. Research should include how women are affected by current customs of passing land to sons, as well as how changing the current customs to more equally distribute the estate would affect the elderly.
- Do not change provision in the Inheritance Law giving a caretaker heir the right to a greater share of the estate through intestacy. If this provision is retained and applied, it may allow for a more gender-equitable application of the intestacy provisions of the Inheritance Law, without jeopardizing care for the elderly. It may also serve as a hedge against fragmentation.

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## VII. CONCLUSION

Women in Dongfang hold less secure land rights to men, although they often shoulder equally the labor involved in household farming. Residents of Dongfang have developed customary practices that have succeeded in many instances to protect women's welfare within the traditional household structure, without endowing women with their own rights to land. Protection offered by these practices becomes tenuous, however, outside the traditional household structure. Land rights of divorced women, widows, and women with absentee husbands may be particularly vulnerable under customary practices. Customary practices may also fail to protect women's land rights within the household, in light of new legal authority and increasing economic pressure to transfer household land rights, and the failure of legislation to either: (1) identify both husband and wife as parties to a household land rights contract; or (2) require approval by both husband and wife for any such transfer of household land rights.

One of the primary purposes of the 1998 Land Management Law was to provide incentives and structure for making long-term investment in land, thereby increasing production and household food security in rural China. Realizing these effects, however, necessitates a close study of how the new law will affect rural women, and a commitment to measures that will improve women's land tenure security during implementation. In addition, a comprehensive review of legislation, including the General Principles of Civil Law, the marriage law, the inheritance law, and relevant regulations, will be necessary to ensure that the legal framework adequately supports and protects women's land rights. Future land reform laws and policies that take into account well-researched documentation on their potential effects on women will likely achieve sounder results in alleviating rural poverty than those that do not.

A brief history of women's land rights in China demonstrates that legal change is only effective when accompanied by social recognition of new rights, and adequate enforcement of these rights by external authorities. Women's intra-household land rights may be particularly vulnerable to contrary social norms, and lack of access to enforcement mechanisms. This is not to say that improving the legislative framework for women's land rights is not important. In fact, it is a threshold step. Without solid legal recognition for new rights, social recognition of these rights is improbable, and rights enforcement is a non-issue. To be effective, however, improved legal rights to land for rural women must be accompanied by changes in policy at the village-level, which include measures to better understand and strengthen women's access to information about their land rights, and women's access to rights enforcement institutions. Perhaps the most important component to developing land reform strategies that meet women's needs will be to involve more women in conceptualizing, drafting, and implementing land law and policy, at central, provincial, and local levels.



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