

Land Rights & Membership – A Comparative Study of Land Rights Issues in China

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**Abstract**

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This study compares two disputes over land takings compensation in a single village in rural China. One dispute involves a married-out woman excluded from full compensation for a land taking in her natal village; this type of dispute is well addressed in the existing literature. The other dispute involves a man who migrated into the village in the 1990s. The comparison highlights the multiple bases of exclusion from full benefits of village membership. This phenomenon appears most prominently in land claim disputes, where it is typically in the interest of party leaders to exclude individuals in order to maximize gains for local elites and village insiders. An individual's hukou, gender, and land contracting status can all become bases for exclusion. This study examines the factors, including ambiguous laws, government incentives, and local interests that facilitate these dynamics. The study has policy implications for the voting rights in village elections of rural-to-rural migrants in contemporary China and suggests an agenda for future research.

## *Introduction*

This study examines exclusionary actions that impact an individual's membership in the village via their hukou, gender, and status as a land contractor. These issues result not only from ambiguities of the law, but also from norms of patriarchy and localism. I have developed this argument based on land claims disputes within rural China to display exclusionary actions. By focusing on how an individual's hukou, gender, or contracting status can be used to preclude full membership from a village, I hope to gain a better understanding of how actions within villages promote exclusivity. This research contributes to literature by expanding on issues of village membership that occur in rural China.

This study addresses exclusionary actions and issues of membership through an analysis of two cases that occur within the same rural village from Hunan province. For the purposes of this study, the village will be referred to as XX village. The first case involves a male Land Contractor who is in a dispute with the Local Official over compensation for a land-taking action. The second case involves a married-out woman from the same location who was unable to properly represent her dispute. These two cases will be used as a comparison to show how an individual's hukou, gender, and land contracting status might all be utilized to exclude them from enjoying full membership rights within a village. While all three points will be discussed, this study will focus predominantly on how an individual can be excluded due to their gender.

Through utilizing an institutional methodology, an examination of these factors will determine the nature of the problems that persist with land rights, which are influencing the individual membership status for rural men and women. This study will be divided into three

major sections followed by the conclusion. The first section will discuss both the land rights dispute case study and the representation dispute case study. The second section will introduce relevant laws such as the Rural Land Contracting Law (RLCL) which provide a framework for ensuring the rights of individuals contracting land. The third section will assess exclusionary actions via discrimination against a person's hukou, gender, or contract status to prevent them from enjoying full community membership rights through an institutional framework.

### *Case Studies from XX Village in Hunan Province*

This section of the paper will examine two disputes in XX village of Hunan province that resulted from local documents that the village committee enacted in 2006. The first case discusses a dispute raised by a farmer who found himself excluded from receiving full compensation after a land taking. The second case involves a married-out woman who was denied her rights to file a dispute. The discussion over these two cases will be followed by an analysis of a local action that led to the dispute in question, and how this action affected individuals in the community. The final section will analyze how hukou, gender, and land contracting status factor in to these cases.

#### **Land Rights Dispute Case**

The case under study occurred in 2006 in XX village located within Hunan Province. The case involved a dispute between a male farmer with a local official. A new action enacted the same year required residents to have had access to arable land since 1991 in order to receive benefits. This criterion created problems for non-native residents, such as the Land Contractor in this case, who found themselves receiving little to no benefits.

#### **The Land Contractor's Perspective**

The Land Contractor's situation is concerned primarily with four main points: 1) he is a rural to rural migrant to the village, 2) the questionable nature of his hukou status, 3) an issue with his status as a valid land contractor, and 4) his demands.

The dispute originated from a disagreement about land compensation because of the Land Contractor's questionable claims to use land. The Land Contractor was originally not from this village, and had moved there with his wife. The Land Contractor claimed that a verbal agreement to contract the land witnessed by the leading party member of the village, in addition to consent by the village committee, qualified him to be considered a full standing resident of the community deserving of the rights granted to residents. It is unclear from the case itself whether the Land Contractor's hukou is registered with the village he resides in, which adds further complications to his position. He further claimed that the timing for when his contract of the land began, in addition to the work he has done for the community, further aided his claims to being considered a full member of the community.

He made three demands to the village committee: 1) to observe, learn, and understand fully the nature of the local land action reform carried out in 2006, 2) investigate the contract made by the Land Contractor, and 3) quickly conclude the issue or else be faced with a collective petition.<sup>1</sup> Before continuing on to the response made by the Local Official, the local party official who also serves as the village leader, it is necessary to analyze in depth the Land Contractor and his position. Conducting the contract in a verbal manner is a mistake that many

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<sup>1</sup> 集体上访 is the term used in China which means collective appealing. While it is not explicitly stated within the case itself, I have reason to believe the Land Contractor was bluffing with his threat of a collective petition. If anything, the information provided by the Land Contractor and the defendant leans in favor of the idea that a greater part of the village supported the defendant in this case.

rural men and women make when contracting land.<sup>2</sup> The Rural Land Contracting Law states that contracts must be written in order to be considered valid, thus marking this issue one where the contract, and the agreements made by the Land Contractor with the original land user, cannot be verified or validated. Without a written contract, his claim to land compensation is far more tenuous.

### **The Local Official's Perspective**

The Local Official refuted the claims made by the Land Contractor, believing them to be unrealistic, and gives various explanations that portray the Land Contractor's claims as groundless in nature. A large portion of his argument focused on how the Land Contractor did not have a formal written contract, which by itself invalidates the Land Contractor's claims. Additionally, the Local Official referenced how numerous contradictions exist in statements the Land Contractor claimed were in his contract.

Furthermore, there are discrepancies in the name of the village leader who presided over the contract signing, which the Local Official claimed is another reason to doubt the Land Contractor. The Local Official also questioned the validity of the signatures from village committee members who approved of the Land Contractor's contract regarding usage of the land in question. The Local Official believed that two-thirds of the village committee members did not sign off on the contract, and thus the Land Contractor did not acquire enough signatures to approve his contract. The Local Official reinforced this claim by stating that some villagers

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<sup>2</sup> Duncan, Jennifer., and Li, Ping. *Women and Land Tenure in China : A Study of Women's Land Rights in Dongfang County, Hainan Province*. RDI Reports on Foreign Aid and Development ; #110. Seattle, Wash.: Rural Development Institute, 2001. 2.



mentioned they did not give their consent in the first place, suggesting the possibility of forged signatures.

The Local Official also claimed that the Land Contractor moved to the village after the 1991 cutoff date stipulated in the 2006 land action.<sup>3</sup> The Local Official stated that the land in use at the time of the dispute was from a readjustment that occurred in 1995, and was based on the arable land residents were using prior to 1995.<sup>4</sup> He claimed that the land could not have been properly adjusted for the Land Contractor, and that a scarcity of land to distribute in the area itself makes it questionable as to how the Land Contractor was able to acquire the additional land. The Local Official at this point also stated that these factors raise doubts about whether or not the land used by the Land Contractor is part of the communal land.

The Local Official also believed that the Land Contractor might have forced the peasant who originally had claims to the land to create a contract. The Rural Land Contracting Law states that individuals cannot be forced in to contracting land against their will, which the Local Official proposes is further evidence to disparage the Land Contractor. A written interview shows that the contracting peasant holds a similar point of view on the matter, believing himself to have been duped in to contracting the land out. The Local Official capitalized on this statement to invalidate the Land Contractor's dispute.

The Local Official also claimed that the Land Contractor wife used her position of authority within the village to acquire the land from the contractor for personal use. The Local

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<sup>3</sup> Worth noting that the cutoff date was enacted in 2006, far after the Land Contractor had move in to the village in 1991. The arbitrary nature of this retroactive action implementation is suspiciously exclusionary in nature.

<sup>4</sup> In 1995, the village engaged in the second round of contracting land to households. This was preceded by the end/expiration of the first round of land contracts issued to households as part of the household responsibility system and extended the contracts for an additional 15 years. The village conducted a reallocation of land among households in the context of issuing contracts in the second round.

Official claims this land was used to benefit a sister of the Land Contractor's wife, which is a matter that the Local Official believes further raised the questionability of the Land Contractor and his stance.

There is an issue in the statements made by the Local Official that should be adequately addressed. He raised the question of law when discussing whether or not the Land Contractor's land from the contract is a part of the communal land. He raises the law in this way to state that the land in use by the Land Contractor was not contracted with full understanding by both the Land Contractor and the peasant contracting out the land. His reference to the law in this matter is incoherent, as it is unrelated to the actual events since the land's status as part of the communal land for the township has nothing to do with the mutual understanding of the Land Contractor and the individual contracting the land to the Land Contractor. The number of inconsistencies that exist within the Local Official's claims cast doubt on his argument.

### **Summary of Points**

The Land Contractor's main concern is that he was not made eligible under the stipulations in 2006 for land allocation. The action enacted in 2006 determined that any individuals who did not have arable land for use by 1991 did not qualify, which was the point of dispute for the Land Contractor since he moved to the village in 1992. The Land Contractor made three demands to address this dispute, with the two primary demands focusing on examining the 2006 action, and the status of his contract. However, the verbal nature of his contract weakened his claims. The doubts surrounding the legitimacy of his standing as a contract holder, as well as the claim that his wife gave land to her sister are also problematic for his argument.

The Local Official's main argument against the Land Contractor concerned the state and nature of the contract. The verbal nature of the contract raised questions of legitimacy for the claims to land made by the Land Contractor. The Local Official also claimed that the Land Contractor might have forced the original contract holder to contract the land to him, which the original contract holder supported. Without a written contract, it is difficult to ascertain what terms either party agreed to. The Local Official also raised concerns about whether or not the signatures made in 1992 were authentic. However, the Local Official had inconsistencies with his argument which often were due to his questionable use of law to defend his points.

The arguments presented by both the Land Contractor and Local Official are useful for examining problems present in many land disputes. Without a formal written contract the Land Contractor was vulnerable to the 2006 land taking action and its stipulations concerning land distribution and compensation, an issue which is supported in research provided by Susan Whiting.<sup>5</sup> The Local Official's comments are also in line with research from other studies in the tendencies of local officials to manipulate the law to serve their own interests.

### **Representation Dispute**

In her research concerning a similar dispute, Susan Whiting shows that gender bias is a contributing factor to the ability of individuals to have their case heard, and thus negatively impact their membership status.<sup>6</sup> The dispute raised in this case also related to the 2006

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<sup>5</sup> Whiting, Susan. "What's Law Got to Do With It? Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes." *EAI Fellows Program Working Paper Series No. 25*, July 2010, 1-22. Accessed December 21, 2015. Also - Whiting, Susan. "Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-urban China." *Urban Studies* 48, no. 3 (2011): 569-87.

<sup>6</sup> Whiting, Susan H., and Hua Shao. "Courts and Political Stability: Mediating Rural Land Disputes." February 17, 2014, 223-48.

action that was implemented by the village committee. The case concerns a land taking in the same village where the dispute did not follow proper legal procedures.

A select group of villagers made various attempts to file suits challenging the land taking, yet eventually allowed for the matter to drop. One villager in particular was a woman who had married outside the village but maintained a local hukou. She received monetary compensation but not land compensation and she sought to sue the village committee over this issue. The courts refused to hear her case and insisted that she seek out government mediation on the matter, despite the government role as the culprit. There are a number of important factors to consider in this comparison.

The first is that while both the married-out woman in this case and the Land Contractor in the land rights dispute case disputed the legality of the matters facing them, the married-out woman was not granted the same level of ability to address this dispute as the Land Contractor. Both individuals are from the same village and yet are treated in a remarkably different manner when filing a dispute.

The second is the inability of the law to protect victims' rights in the face of injustice done toward them due to largely ineffective courts. The Land Contractor dealt directly with the Local Official in the case study, while the married-out woman was advised to mediate her dispute outside the court with the local government. This shows the unwillingness of the courts to act in a meaningful fashion regarding these cases, displaying the ability of local officials to manipulate the courts, and ability to use the law to defend their position.

Local party officials are the ultimate authority within their localities, and often instruct the courts on what type of cases they should accept or refuse. Local officials often instruct courts

to refuse land disputes, such as the ones filed in both cases, and to advise individuals filing the dispute to seek mediation through the local government outside of court instead. Since the local government is often the perpetrator of these disputes, the courts are essentially telling individuals to seek mediation with the party who will most likely benefit from the problem.

There is also the fear that local village autonomy can supersede state laws such as the RLCL. This can lead to a limitation of rights by both men and women in the face of disputes.<sup>7</sup> This conflict of interest appears prominently from the articles within the local 2006 land taking action in the village where both cases originate, in which differences are stipulated between how men and women can benefit from the land taking and receive full compensation. The RLCL takes steps to guarantee equal treatment under the law for men and women, yet the village in this case managed to implement an exclusionary act. The implementation of such actions by village committees reflects local norms regarding the status of men and women traditionally within society, and diminishes the status and authority of state action within villages.

Comparisons between these two cases show that similarities exist in the form of authorities in many ways existing above the law, and also show how hukou, gender, and contract status can be used to exclude individuals. Officials can manipulate the rules to serve their own needs and promote certain principles that benefit them the most. The first study shows the official hiding behind arbitrary references to the law, and the collective belief that the land contractor had committed wrongdoing to support his stance. The representation dispute case shows how the local government utilized its power advantage in this matter to further support its position by using its status as a mediator to then defend its actions as the perpetrator in the

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<sup>7</sup> Ibid.

dispute.<sup>8</sup> Ultimately, the inability of the law to adequately defend the rights of individuals creates further challenges. The Land Contractor in the land rights dispute case faced legal issues from the lack of a formal written contract to back his claims, which made it difficult to defend his stance. The married-out woman in the representation dispute case was in a far more advantageous position since she had a contract and formal paperwork that backed her claims, however she was unable to argue and defend her rights since the authorities created an unfavorable situation for her to file a suit.

### **Analysis of the 2006 Land Taking Action**

This section will analyze important points contained within the case study's 2006 land taking relevant to this study. Examples from this act, as well as data concerning whether or not it was carried out faithfully in accordance to state law, will be utilized to assess and support the argument determining how norms influence of individual membership at different institutional levels. This action utilized a points system to create an equation that the village could use to determine how much land a household qualified for.

The stipulations made within the 2006 action provide examples of how the language of these acts can be utilized to exclude individuals from membership. Out of the thirteen stipulations contained within the action, six of them are important to this study.<sup>9</sup>

Criteria 4 and 5 are directly concerned with provisions for women and what conditions must be met for a woman to be considered qualified for compensation. The amount of

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<sup>8</sup> Ibid.

<sup>9</sup> It is worth mentioning that Article 13 makes known that the government will adjust land every three years, even if it is not necessary. The inclusion of this Article, while not as relevant to the land rights dispute case as the other five Articles, is important in that it grants the collective the ability to arbitrarily shake things up every three years in ways that might additionally benefit an insider group.

compensation each household could receive was determined through a points system that was dependent on the status of members within a household. Criteria 4 states that if a woman married out to a different location prior to 2006, she was qualified to receive 8 points. However, her husband and children would contribute 0 points to their household. Criteria 5 states that if she moved but her hukou still belonged to her natal village she would qualify for .3 mu instead, but that the land would belong to her parents and brother. These two sections of the document are indicative of exclusionary tactics utilized by the village, especially toward women. These stipulations limit the ability of women to benefit from compensation in this action, and additionally they back up the claims made by Deninger and Jin concerning how women's claims to land have a tendency to be given to other relatives instead.

While the previous two stipulations were concerned exclusively with compensating women, Criteria 6 is concerned with requirements for non-native men. Criteria 6 dictates that in the event of a male who relocated to the village prior to 1991, he would qualify to be compensated a sum of 1000 yuan. It is worth noting that the articles in this action stipulate granting monetary compensation to men, yet similar levels of compensation are not present for women. The importance of these three articles stems from the fact that distinctions were made between compensating men and women, depending on circumstance. This fact shows us that 1) the committee was actively exclusionary in the formation of this action, and 2) while by law men and women are supposed to be treated equally, the local community in this instance opted to implement an act which was overtly gender exclusionary.

Criteria 11, and 12 are stipulations which seem to be focused exclusively on justifying the exclusion of certain individuals from compensation, and determining the points that would be

allocated to others. Criteria 1, and 3 are concerned with how a full 10 points can be redeemed by individuals, whereas Criteria 4, 11, and 12 specify how certain individuals could qualify for less.

Criteria 11 focuses on one individual who moved into the village before 1991, thus qualifying the individual for an allocation of 8 points per person in their household. The village committee included this provision to justify its decision in selecting 1991 as the cutoff date for receiving full compensation. By displaying how other non-native residents were still able to benefit, the village was able to justify that their action was not inherently designed to exclude individuals who moved in to the village.

Criteria 12 uses the previous criteria to buoy its stance, and states that since not all of the community agrees that the Land Contractor should be granted full benefits because he moved after 1991, he should be granted only 1.2 mu instead. The justification for exclusion shows that the committee was aware of potential disputes that might arise from the action, and thus set in elements that were designed to address them.

### **Hukou, Gender, and Land Contracting Status**

The accounts from each case bring up the topic of the role hukou, gender, and land contracting status play in ensuring membership rights. Factors from both cases, as well as other examples from other scholarly research, will be examined in the following segments.

### **The Hukou Factor of Land Rights and Membership**

Within this study we are presented with two different examples of an individual's hukou status. The first is through the Land Contractor where his hukou status within the confines of this research is unknown. The second is through the married-out woman who maintained her hukou status within her natal village. The hukou system itself, as well as the implications of each



individual's hukou status raises the question concerning what degree possessing a hukou can influence an individual's membership status.

The Hukou system is a household registration system required by law in China that determines where citizens can live.<sup>10</sup> Lei Kuang and Li Liu in their research discrimination against holders of a rural hukou by holders of an urban hukou. Their research discusses how this discrimination creates a dual-classification system that presents rural vs. urban, and also a perception of socio-economic eligibility as an individual depending on the person's hukou status.<sup>11</sup>

Possession of a hukou as a determinant for membership status can also be seen through the benefits that an individual can gain through their hukou association. Research by Shuming Bao, Örn Bodvarsson, Jal Hou and Yaohui Zou discuss how the possession of a hukou is essentially a marker for an individual's membership status. The possession of a hukou allows individuals access to certain features such as access to health services, low cost housing, and certain occupations.

Discrimination, as well as access to certain features based on an individual's hukou can be applied similarly in the case of an individual moving from one rural village to another, which is a prominent point in both cases within this study. Individuals traveling between counties must contact the local police station to request the hukou change and then have the village committee approve their request.<sup>12</sup> However, villages have an incentive to protect the interests of the insider

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<sup>10</sup> Cui, Rong, and Jeffrey Cohen. "Reform and the HuKou System in China." *Migration Letters* 12, no. 3 (2015)

<sup>11</sup> Kuang, Lei, Li Liu, and Tom Denson. "Discrimination against Rural-to-Urban Migrants: The Role of the Hukou System in China (Discrimination against Rural-to-Urban Migrants)." 7, no. 11 (2012): E46932.

<sup>12</sup> These police stations are called 派出所. Further information on the processes involved in changing an individual's hukou status from one rural locatio to another can be found at:

group native to the village and exclude others. In the case of the Land Contractor, the fact that his hukou status is unknown contributes two possible results from this situation.

The first is that individuals such as the Land Contractor experience great difficulties changing their hukou, and that this contributed to the Land Contractor's dilemma in his dispute. The second is that individuals are able to change their hukou status, but are still risk their hukou status being marginalized in the face of future actions such as the 2006 land taking policy. In the event of the former option, it would seem that hukou plays a traditionally accepted role as a determinant of an individual's residence status and thus contribute to their membership status. However, if the event of the latter we could call into question the exact role an individual's hukou plays in securing membership status and the rights afforded to a member.

The married-out woman's status as a hukou holder of XX village lends an analysis of the latter option to be the natural choice for this study. She was a native member of XX village and maintained her hukou within her natal home despite marrying out to another village, yet found her rights as a member largely ignored during her effort to file a dispute. Furthermore, even though we do not know the Land Contractor's hukou status, we do know he was a migrant to the village yet he was still allowed to participate in the proper channels for filing a dispute. This fact leads to the belief that hukou itself is not sufficient for inclusion in a village as a member.

### **The Land Contracting Status Factor for Land Rights and Membership**

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- 1) "如何转户口, 转户口需要什么证件和手续流程." 房天下. July 19, 2013. Accessed December 16, 2016. <http://news.qd.fang.com/2013-07-19/10567034.htm>.
  - 2) "户口迁移登记." 户口迁移登记 - 村级办事 - 端头村 - 端头村综合信息服务平台! . September 30, 2013. Accessed December 16, 2016. <http://zhous.zj.com/villages/show/id/936748>.

Land contracting originated as a state policy during the Deng Xiaoping era which promoted household output. Originally established through a fifteen year contract, these contracts were extended for an additional thirty years in 1998.<sup>13</sup> However, various problems emerged due to this system. These problems stem either from issues within the formation of law determining how land contracting and associated actions would operate, or through improper education and execution.

First among these problems are the related issues is land taking. The cases examined within this study provides an account for how land taking remains a persistent issue in the affairs of village governance. Dilemmas over compensation, and the parameters for land taking all can lead to disputes such as those seen in this study. While land takings are supposed to be conducted in a transparent manner, the impetus for a land taking itself might be rooted in desires to benefit a select group of insiders within the village. While there are factors in place to protect and uphold the legitimacy of land use contracts, it is difficult to uphold these values in villages when figures of authority have the ability to exclude an individual's claims. This is most prominently displayed in the example of the married-out woman from the representation dispute case. Despite her legally documented accounts as a natal member of the village who had retained her hukou and claims to land, she still found herself facing exclusion from fully enjoying compensation because of the land taking.

Second is the lack of education over how contracting operates, and how one goes about contracting land. While it is the village committees responsibility to educate villagers about state laws and regulations, many examples persist where villagers are largely unaware, or

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<sup>13</sup> Deninger, Klaus, and Songwin Jin. "Securing Property Rights in Transition: Lessons from Implementation of China's Rural Land Contracting Law." *Action Research Working Papers*, 2008.

unconcerned with utilizing the proper series of steps in place for establishing a land use contract. Such an example can be seen in the situation with the Land Contractor within the land rights dispute case. He willingly entered a verbal contract to obtain land use rights. However, without the formal contract, his claims and actions to dispute perceived injustices are difficult to support. A lack of proper education and commitment to ensuring the faithful enforcement of village committee responsibilities in maintaining official written contracts is a factor that most easily serves to exclude individuals from enjoying in full membership rights.

### **The Gender Factor for Land Rights and Membership**

The differences between the ability of the Land Contractor relative to the married-out woman in filing for a dispute is striking in a number of ways. The married-out woman was denied the right to file her dispute, despite numerous attempts. Conversely the Land Contractor experienced few difficulties in the process of filing the dispute itself, although he had problems in other capacities. Under a purely technical perspective founded within the law, the Land Contractor's success filing his dispute relative to the married-out woman's lack of success should be considered surprising. However, a large number of scholars have contributed to a greater understanding regarding the problems plaguing proper recognition of rights for individuals in rural China based off their gender.

In her study on the differences between rural men and women's relationships to land, Cecile Jackson argues that rural men are directly associated with their land, and landlessness is usually a direct source of poverty.<sup>14</sup> The relationship of rural women to land, in contrast, is

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<sup>14</sup> "Gender Analysis of Land: Beyond Land Rights for Women?" – Jackson. Accessed May 12, 2016. <http://onlinelibrary.wiley.com/doi/10.1111/1471-0366.00062/abstract>.

mediated through male kin, and for women poverty follows more from “marital breakdown”.<sup>15</sup> This difference in relationship would lead to the assumption that social norms act alongside law in determining the status of rural men and women in their relationship with land. While supposedly held to the same standards in government policies, men and women are in practice treated differently. Traditional norms treat men as inheritors to family land, a situation more closely aligned to state policies. These same norms see women as entities that will eventually leave the family, and thus a detriment if the family invested time and resources and education on their upbringing.<sup>16</sup>

Men’s problems with land rights are typically of a different nature than those of women. Their problems relate to contract disputes, age or health concerns for those individuals.<sup>17</sup> Essentially, this situation shows that land rights for women within China have been subject to a standard apart from formal document at state and local levels. The land rights laws that govern both land rights and village membership within rural China are not necessarily founded through unfaithful law enforcement and negligence by authorities. Norms within society contribute to a layered system of standards which govern individuals. Legal stipulations that should apply equally to either sex are predominantly afforded to rural men, while women find themselves

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<sup>15</sup> Judd, Ellen R. "No Change for Thirty Years: The Renewed Question of Women's Land Rights in Rural China." *Development and Change* 38, no. 4 (2007): p. 706. I quote Ellen Judd’s use of Jackson’s

<sup>16</sup> Duncan, Jennifer., and Li, Ping. *Women and Land Tenure in China : A Study of Women's Land Rights in Dongfang County, Hainan Province*. RDI Reports on Foreign Aid and Development ; #110. Seattle, Wash.: Rural Development Institute, 2001. 7.

<sup>17</sup> Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 75, 76, 77.

subject to societal tradition. Standards at the household level are rooted in societal tradition, and promotion by family members consequently affects how village committees enact actions.<sup>18</sup>

Legal reform, and support by the authorities for that reform, has been and will continue to be plagued by this discrepancy in equal membership standards within local communities if they are not addressed appropriately. This point, in conjunction with further exploration of both Hukou and Land Contract Status will be explored in later sections.

### *Rural Land Rights*

The importance of both cases is the way they represent how the different institutions within a system can exclude individuals. Institutions such as local officials and the village committee make judgments on the formulation of documents and actions thereafter based on their personal interests, and beliefs.

Understanding the problems of a system requires a focus on the institutions and their actions. This is necessary to understand which state policies (at least in name) protect land rights and membership claims of individuals. The major state policies that this paper will investigate are the 1986 Land Administration Law of the PRC (amended 1998), and the 2002 Rural Land Contracting Law. These laws are important when discussing the role of state law in relation to land rights and membership status of individuals within a village, and they will be discussed further in the section analyzing institutions.

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<sup>18</sup> An example of the different standards for either gender is apparent when comparing both cases in this study. The Land Contractor's position is far more tenuous than that of the married-out woman, yet he is able to file a dispute and takes steps to seek action. Conversely the married-out woman is largely barred from filing a dispute, even though her claims are supported with documentation. It is possible that there is an element of gender bias present.

## Land Administration Law

The Land Administration Law was designed to strengthen land administration and to protect and develop land resources in accordance with the Constitution of the PRC.<sup>19</sup> The main part of the law focuses on the use of land and its allocation, such as the acquiring and assigning of land. Officials are allowed to expropriate land from individuals as well as peasant collectives under the Constitution. Expropriation of the land requires the government to provide compensation for the land, resettlement subsidies, and compensation for young crops on the requisitioned land. Each of the three types of compensation depends on certain factors, with some forms of compensation (such as the compensation for land) containing an upper limit of fees totaling fifteen times the annual output value per hectare over a three-year period.<sup>20</sup> This law also protects the rights of entities seeking out a court in the event of a dispute. Relevant articles within this law are listed in the table below.

Article	Description
<i>Article 6</i>	All entities must observe laws and regulations governing land administration, and have the right to report violations of these laws or regulations
<i>Article 9</i>	State-owned land and land owned by peasant collectives may be lawfully determines to be used by units or individuals.
<i>Article 12</i>	Any changes to the land ownership or rights to land use must be registered.
<i>Article 13</i>	The lawfully registered ownership of land and right to use of land shall be protected by law and may not be infringed upon.

<sup>19</sup> "Land Administration Law of the People's Republic of China." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content\\_21917380.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content_21917380.htm). Article 1.

<sup>20</sup> "Land Administration Law of the People's Republic of China." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content\\_21917380.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content_21917380.htm). Article 47.

<i>Article 16</i>	Disputes over ownership of land or the right to the use of land shall be solved through consultation between the parties. If such consultation fails, the disputes shall be handled by the people's government.
<i>Article 46</i>	State authorized land expropriation must be legally approved, then announced by the government at or above the county level.
<i>Article 47</i>	Land expropriated shall be compensated for on the basis of its original purpose of use.
<i>Article 77</i>	Villagers illegally occupying land without approval or by fraudulent means shall be ordered to return the land and demolish the houses built on the land within a time limit.

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The Law includes a requirement for written land use contracts, as well as a reduction in the frequency of land readjustments. Article 14 is of particular importance to the limitations on land readjustments because it states that readjustments should be restricted to “isolated” cases and only under the condition that two-thirds of the village member council agree to it.<sup>22</sup> A last point to focus on with this law is the emphasis it places on the collective rather than on the individual. Under this law, readjustment of land, and adjustment of contracts for land require two-thirds of the village member assembly to agree in addition to approval by the local government.<sup>23</sup> This specific attention to the collective, as well as the other various points that mention the collective throughout the description of this law, is unsurprising considering the fact

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<sup>21</sup> Ibid. These are condensed versions of the statements made in each article, the full statements for each article can be found in the link above.

<sup>22</sup> "Land Administration Law of the People's Republic of China." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content\\_21917380.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content_21917380.htm). Article 14.

<sup>23</sup> "Land Administration Law of the People's Republic of China." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content\\_21917380.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/14/content_21917380.htm). Articles 14, and 15.



that rural land in China is still collectively owned farmland. However, this leaves individuals at a disadvantage since their rights are essentially subject to decisions made by the collective.

Women are particularly susceptible to potential abuse from the wording of this law, as it allows for cultural and societal norms to potentially dictate how the collective carries out such an action. An example of this can be seen in Chen and Summerfield's research, where under this law women marrying in to a village were no longer allowed access to land through readjustments.<sup>24</sup> The lack of reference to gender equality, and the ability for local leaders to violate laws with impunity under this law, created a problem in the implementation of this action that the central government would attempt to rectify in their next large land reformation project, the 2002 Rural Land Contract Law (RLCL).<sup>25</sup>

### **The Rural Land Contract Law**

The Rural Land Contract Law was established in 2002 to improve upon the provisions of the Land Administration Law.<sup>26</sup> The primary part of the RLCL focuses on the drawing of contracts, and the rights of individuals to land under these contracts. The RLCL took steps to serve the needs of a more densely populated China, account for the increase in economic growth the country was facing, and take into consideration legal constraints on the acquisition of land for non-agricultural purposes.<sup>27</sup> The RLCL also took steps to increase the security of property rights for individuals against land taking by the state. It did this by defining land use rights more

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<sup>24</sup> Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 67-68.

<sup>25</sup> Ibid.

<sup>26</sup> "Law of the People's Republic of China on Land Contract in Rural Areas." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content\\_21907969.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content_21907969.htm). Article 1.

<sup>27</sup> Deininger, Klaus, and Songqing Jin. "Securing Property Rights In Transition: Lessons From Implementation Of China's Rural Land Contracting Law." *Action Research Working Papers*, 2008.

clearly, clarifying that the collective cannot take land away from the individual without compensation, and prohibiting big land reallocations. However, it did allow for small reallocations to continue so long as the local government approved of the reallocation.<sup>28</sup>

Statistics provided by Klaus and Deninger in their work show that the number of reallocations since the ratification of the RLCL has decreased as a result of this action, however they have not been eliminated entirely. Klaus and Deninger believe that the continued presence of land reallocations shows elements of illegal redistributions are still occurring.<sup>29</sup> . Relevant articles within this law for the purposes of this study are listed in the table below.

<b>Article</b>	<b>Description</b>
<i>Article 6</i>	Women shall enjoy equal rights with men. These rights are protected in contract, and these rights may not be infringed upon.
<i>Article 13</i>	The party giving out the contracts shall enjoy certain rights. <sup>30</sup>
<i>Article 14</i>	The party giving out the contract has certain obligations. <sup>31</sup>

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<sup>28</sup> Deininger, Klaus, and Songqing Jin. "Securing Property Rights In Transition: Lessons From Implementation Of China's Rural Land Contracting Law." *Action Research Working Papers*, 2008.

<sup>29</sup> Despite actions taken to reduce the incidence of such activities, they still occur. This continued occurrence is a contributing factor to the issue of land compensation that will be examined later in the case studies.

<sup>30</sup> (1) Giving out contracts for the rural land owned by the collective to which the party belongs or owned by the State but is used by the said collective according to law; (2) Exercising supervision over the rational use and protection of the land by the contractor in keeping with the purpose of use agreed upon in the contract; (3) Stopping the contractor from damaging the contracted land and agricultural resources; and(4) Other rights provided for by laws and administrative rules and regulations.

<sup>31</sup> (1) Maintaining the right of the contractor to land contractual management, and refraining from illegally modifying and revoking the contract. (2) Respecting the contractor's right to make its own decision on production and operation, and refraining from interfering with the normal production and operation conducted by the contractor according to law; (3) Providing the contractor services in respect of production, technology, information, etc. as agreed upon in the contract; (4) Carrying out the overall plan for land use worked out by the people's government of the county or township (town) and making arrangements for the construction of agricultural infrastructure within its own collective economic organization; and (5) Other obligations provided for in laws and administrative rules and regulations.

<i>Article 15</i>	The contractor of a household contract shall be the peasant household of the collective economic organization concerned.
<i>Article 16</i>	The contractor shall enjoy certain rights. <sup>32</sup>
<i>Article 17</i>	The contractos shall have certain obligations. <sup>33</sup>
<i>Article 18</i>	Certain principles shall be abided by in the contracting of land. <sup>34</sup>
<i>Article 21</i>	The party giving the contract shall sign a written contract with the contractor.
<i>Article 32</i>	The right to land contractual managements can be subcontracted, leased, exchanged, and transferred.
<i>Article 37</i>	Where the right to land contractual management is circulated by means of subcontract, lease, exchange, transfer or by other means, the two parties shall conclude a written contract. Where transfer is adopted for circulation, the matter shall be subject to consent by the party giving out the contract; and where subcontract, lease, exchange or other means is adopted for circulation, the matter shall be reported to the party giving out the contract for the record.
<i>Article 54</i>	Where the party giving out the contract commits one of the following acts, it shall bear such civil responsibilities as desisting from the infringement, returning the original

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<sup>32</sup> (1) Enjoying in accordance with law the rights to use the land contracted, to reap the yields and to circulate the right to land contractual management, and the right to make its own decision regarding the arrangements for production and operation as well as the disposition of the products; (2) Enjoying in accordance with lawful right to obtain appropriate compensation for the contracted land that is requisitioned or occupied according to law; and (3) Other rights provided for in laws and administrative rules and regulations.

<sup>33</sup> (1) Keeping or using the land for agricultural purposes, and refraining from using it for non-agricultural development; (2) Protecting and rationally using the land in accordance with law, and refraining from causing permanent damage to the land; and (3) Other obligations provided for in laws and administrative rules and regulations.

<sup>34</sup> (1) When arrangements are made for undertaking contracts in accordance with relevant provisions, members of the same collective economic organization shall, according to law and on an equal footing, exercise the right to contract land, and they may, of their own free will, give up such right; (2) Democratic consultation, fairness and equitableness; (3) In accordance with the provisions of Article 12 of this Law, the contracting plan shall, according to law, be subject to consent by not less than two-thirds of the members of the villagers assembly of the collective economic organization concerned or of the villagers' representatives; and (4) The contract procedures conform to the provisions of law.

	articles, restoring the original state, forestalling damages, eliminating dangers and compensating losses.
<i>Article 61</i>	Where a state organ or its staff member, taking advantage of its/his positions and powers, infringes upon the right to land contractual management shall pay compensation.

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An important change made to clarify land action and the equality of both genders within China is the inclusion of explicit statements made in Articles 6 and 54 concerning the equal rights of women under the law.<sup>36</sup> Article 6 explicitly states the inviolable rights of women to land and equal treatment under the law.

However, for all the steps that the RLCL has taken to address land rights issues for women, certain discrepancies have persisted. The first concerns elements of corruption within the system. The second is the fact that while the law stipulates equality, the essence of the law still remains rather vague. Lack of education about what extent the law applies to individuals also remains an issue.

While the RLCL states that women should retain rights to their natal family’s land upon marriage until she receives a share from her husband’s family, patrilineal customs have prevailed

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<sup>35</sup> "Law of the People's Republic of China on Land Contract in Rural Areas." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content\\_21907969.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content_21907969.htm). These are condensed statements from each article, the full statements can be found at the above link.

<sup>36</sup>第六条 【保护妇女土地承包权】农村土地承包，妇女与男子享有平等的权利。承包中应当保护妇女的合法权益，任何组织和个人不得剥夺、侵害妇女应当享有的土地承包经营权。Also, 第五十四条 【发包方的侵权责任】发包方有下列行为之一的，应当承担停止侵害、返还原物、恢复原状、排除妨害、消除危险、赔偿损失等民事责任：（一）干涉承包方依法享有的生产经营自主权；（二）违反本法规定收回、调整承包地；（三）强迫或者阻碍承包方进行土地承包经营权流转；（四）假借少数服从多数强迫承包方放弃或者变更土地承包经营权而进行土地承包经营权流转；（五）以划分“口粮田”和“责任田”等为由收回承包地搞招标承包；（六）将承包地收回抵顶欠款；（七）剥夺、侵害妇女依法享有的土地承包经营权；（八）其他侵害土地承包经营权的行為。

in the sense that women have difficulty retaining their rights to land if they marry outside the village.<sup>37</sup> It is believed that if a woman marries someone outside the village, she will move to the husband's village thus making her unavailable to tend the land that would have been given to her. The land rights given to women are determined by the point at which they married in to the village and as such are awarded land based on the procedures in place at the time when they initially relocated to their new village.<sup>38</sup> Yet, this belief also puts women in a highly disadvantageous position relative to men. The law states that the husband's family is responsible for providing land equal to what his wife would have received from her natal family, yet many families are either unable or unwilling to faithfully abide by this stipulation. Additionally, there is the possibility that the natal family will not provide the land that should have been allocated, which might be compounded with resistance by the husband's family to provide land. Another complication appears in cases of divorce. While the RLCL explicitly mentions that land cannot be taken from women in the event of a divorce, it does not guarantee that the family will return land to the woman because of her divorce.<sup>39</sup> Hare, Li, and Englander believe that the common factor in this instance, marriage, is a leading factor to landlessness for women as a result of poor enforcement of the RLCL for women.<sup>40</sup>

The majority of problems which continue to influence society can be found in long lasting trends in the form of societal norms, as well as in household arrangements that favor the direct inheritors from the natal family over an individual marrying in to the family. These two

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> "Law of the People's Republic of China on Land Contract in Rural Areas." - China.org.cn. Accessed April 20, 2016. [http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content\\_21907969.htm](http://www.china.org.cn/china/DocumentsForm2001-2010/2011-02/12/content_21907969.htm). Article 30. "

<sup>40</sup> Hare, Denise, Li Yang, and Daniel Englander. "Land Management in Rural China and Its Gender Implications." *Feminist Economics* 13, no. 3-4 (2007): 35-61.

norms within society manifest themselves differently, with the first acting on a macroscopic scale in its ability to influence society while the latter acts on a far smaller scale in which only the household and the individuals of the household are affected.

There is also a persistent problem of vague language often employed by officials when referring to the law. An example of this can be seen through the arbitrary references to the law made by the Local Official when he was attempting to justify his statements. However, vague language can also occur in the wording of the law itself. Jessica Duncan and Li Ping in their research address the issue of vague language in their research.<sup>41</sup> Their explanation for this vague language comes through questioning the meaning of “transactions” within the context of the law. “Land rights” as a term under the law is defined as “property”, and while it should be treated equally between women and men, disputes of household land rights ownership persists due to a lack of clear and distinct language defining it.<sup>42</sup> Tamara Jacka discusses the problem stemming from a lack of education concerning the law and how it applies to individuals, particularly women, and how this contributes to the perpetuation of issues.<sup>43</sup>

This connection between the law, pressure from expectations derived from society and the family, and the relationship between the sexes and that relationship to the law is important in assessing the factors affecting village membership of rural men and women.

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<sup>41</sup> Duncan, Jennifer., and Li, Ping. *Women and Land Tenure in China : A Study of Women's Land Rights in Dongfang County, Hainan Province*. RDI Reports on Foreign Aid and Development ; #110. Seattle, Wash.: Rural Development Institute, 2001.

<sup>42</sup> Ibid.

<sup>43</sup> Jacka, Tamara, and Sally Sargeson. *Women, Gender and Rural Development in China*.

## *Analysis of Institutions*

Scholars tend to acknowledge that including legal action itself, there are four forces at work: state law, local officials, the village collective, and individual households.<sup>44</sup> These institutions tend to compete in exercising authority. This problem is one of a principle – agent nature where a larger institution may impose interests that go counter to those of institutions beneath it, which results in acts that conflict with the interests of the larger institution. This situation is best seen when local officials and village committees compromise state law provisions.

Within the confines of the main dispute used in this study, the primary institutions involved are the local official and the village committee. The relationship these two institutions within the study have to state law and the formation of the 2006 document, as well as how it affects individuals such as the Land Contractor through exclusionary actions will be explored.

Additionally, the role of hukou, gender, and contract status in excluding individuals will be explored at different institutional levels. Each of these three factors is expressed differently depending on the institution.

### **State Law**

State law is characterized by acts like the LML and the RLCL as described earlier during the analysis of rural land rights. State law sets state principles for land actions including land

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<sup>44</sup> A few examples discussing the institutions at play include the following: Chen Junjie and Gale Summerfield mention both State Law and Households in their research “Gender and Rural Reform in China.” Tamara Jacka and Sally Sargeson discuss the operations of village committees in their research “Representing Women in Chinese Village Self-Government.” The role of local officials can be found in Susan Whiting’s research “What’s Law Go to Do With It?”

takings, land use, and land compensation standards which in turn can affect village membership.<sup>45</sup> Statutory measures in place to prevent differential treatment of men and women are mentioned throughout these laws, with explicit mention in the RLCL stating that women, under the law, cannot be treated differently from men because of their gender. However, the issue with this type of action is its vague approach to discussing how to deal with actions that infringe on stipulated rights and that result in excluding individuals from full membership.<sup>46</sup>

The lack of references regarding the rights of individuals, other than the fact that individuals cannot infringe on rights protected by law, is itself an issue that contributes to the vague nature of action and the ability to enforce it.<sup>47</sup> At this level, should the actual letter of the law be followed faithfully, it would appear that men and women face the same potential problems. Disputes stemming from formal policies tend to concern compensation, and contracts, which are present for men and women utilizing land within the limits of what the policies allow.<sup>48</sup>

State law, however, is by far the farthest from the governing norm within China, as sources of authority often conflict in the execution of acts influenced by societal norms. This discrepancy can be seen in the distribution of compensation, as well as the way in which contracts protect the rights of individuals. The Land Contractor in the XX village case exemplifies this point, as the lack of a formal written contract to verify his claims to the land hinder his cause in the dispute. Compensation is affected in full by the collective since

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<sup>45</sup> Whiting, Susan. "What's Law Got to Do With It? Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes." *EAI Fellows Program Working Paper Series No. 25*, July 2010, 1-22. Accessed December 21, 2015.

<sup>46</sup> Pils, Eva. "Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan." *Columbia Journal of Asian Law* 19, no. 1 (2005): 235-92.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*



participation by members of the collective is needed to “negotiate agreements...in such administrative processes”.<sup>49</sup> While the requirement for compensation is explicitly mentioned in the law, the administrative way in which it is handled by the collective, as well as by local officials puts the individual at a disadvantage because there is no guarantee or set standard on which compensation is based.<sup>50</sup> Elements of unequal compensation between individuals in the XX village, as well as unequal compensation between men and women in the community, present in the 2006 document exemplify this point.

Unequal compensation can also result from the poorly worded, and often vague language used. This is typically seen in the wording for households, where more often than not they fail to mention if the signing party is an individual or a household. Issues in this arise from the fact that if the party is a household, the rights and interests of women are more adequately protected which is because a household represents the rights of all individuals within it.<sup>51</sup> However, if it is an individual or an appointed household representative signing, there is a greater chance that women will face an increase in risks to their security.

Additionally, males tend to be viewed as the heads of households, and thus are often the primary account holders for contracts.<sup>52</sup> This seems to also be true for the Land Contractor in the XX village case. Context clues within the study suggest that the Land Contractor is not native to the village, and that his wife holds a high position in the village which carries some degree of authority. Yet, even though his wife’s position in the village is higher than the Land

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<sup>49</sup> Ibid.

<sup>50</sup> Due to a lack of clarity in the law describing a bare minimal amount of required compensation, the collective is at full liberty to decide on appropriate compensation, pending approval by local officials who are likely to approve lower compensation if it increases revenue.

<sup>51</sup> Duncan, Jennifer., and Li, Ping. *Women and Land Tenure in China : A Study of Women's Land Rights in Dongfang County, Hainan Province*. RDI Reports on Foreign Aid and Development ; #110. Seattle, Wash.: Rural Development Institute, 2001. 2.

<sup>52</sup> Ibid.

Contractor's, his name is the one listed in documents concerning land and compensation. Most contracts fail to include the name of the female head of a household, instead opting to list a male relative. This makes women highly dependent on their male kin. As such, men tend to experience greater levels of security in regard to contracts, which is based exclusively on the fact that execution of action is skewed in their favor by norms persisting within society which promote the role of males over females in a household. All of this is dependent on the presence of an actual contract. In numerous cases, the contracts are only verbally affirmed, with only a party member present to confirm the creation of the contract, such as with the Land Contractor in the XX village dispute. The lack of official documentation for land use, and the lack of compensation standards which are set by the law and routinely followed is an issue that men face in concert with women.<sup>53</sup>

### **Local Officials**

Community members accept the role of local officials in implementation of land laws as a necessity, yet their actions may not be within the interests of the community as a whole.<sup>54</sup> Their involvement with disputes and action making is a result of both pressure to adequately handle disputes so as to prevent social instability, as well as fiscal concerns that are squarely within their realm of responsibility for their jurisdiction. The first portion is due to significant pressure from guidelines imposed on local officials by higher ranking officials to prevent disputes from escalating. This pressure to meet expectations and show an appropriate capacity for performing in their roles is twofold in origin. Revenue for the locality is dependent on this performance, as is

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<sup>53</sup> Whiting, Susan. "What's Law Got to Do With It? Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes." *EAI Fellows Program Working Paper Series No. 25*, July 2010, 1-22. Accessed December 21, 2015. Also - Whiting, Susan. "Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-urban China." *Urban Studies* 48, no. 3 (2011): 569-87.

<sup>54</sup> Ibid.

the livelihood to some degree of the officials themselves. Increasing revenue for the locality is of the utmost importance to local officials in most cases, which is the leading cause for corruption that leads to land takings and other similar kinds of actions.

Corruption occurs in many forms, but particularly through land takings, control over the courts, and the effective power of court rulings. The issue of the married-out woman to make her case in the comparison study provides an example of the inability for courts to make rulings. Knowing that a satisfactory ruling could not be found in the case, the courts relegated the dispute to the local government instead, who had an interest as the perpetrators in the matter to defend their stance. Since the local government acts as a superior law making body to the courts, they essentially sit above the law and have free reign to determine the progression of policies and disputes.<sup>55</sup> Eva Pils makes note of examples within her study where the courts are effectively rendered useless due to interference from local officials. One case even made it to the Supreme People's Court in Beijing, only to find that the ruling given by that court was ultimately ignored when given to the official in charge of the area.<sup>56</sup> The control local officials have over matters within their authority can thus be seen as formidable.

Even if courts were to rule in favor of an individual, there is no guarantee that local officials will enforce it. This uncertainty creates an atmosphere where even though the society is encouraged to utilize the law, the law itself is in the hands of officials who use it as a threatening and deceitful tool to be utilized against individuals who might challenge them through it.<sup>57</sup>

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<sup>55</sup> Whiting, Susan H., and Hua Shao. "Courts and Political Stability: Mediating Rural Land Disputes." February 17, 2014, 223-48.

<sup>56</sup> Pils, Eva. "Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan." *Columbia Journal of Asian Law* 19, no. 1 (2005): 235-92. The official was noted as stating that the paper the ruling was being delivered to him on wasn't worth "cleaning his ass" with.

<sup>57</sup> Ibid.

Land takings are a major source of disputes for both men and women, especially in comparison to land reallocations which might be made by the village collective. Since current laws do not allow for new land to be allotted through negotiations by private parties for non-agricultural purposes, local government officials essentially have a monopoly over this area of development.<sup>58</sup> Contributing to this, local leaders can essentially acquire new land through arbitrary methods such as land takings, with the only requirement stipulating that they state the land will be used to benefit the public.<sup>59</sup> The Local Official from the case study in XX village acted similarly, in that his major support for the argument against the Land Contractor was that the community supported actions which benefited a select few, while excluding others. However, his argument dressed his stance on that matter by suggesting that support for the action, and opposition to the complaints made by the Land Contractor were in line with the public will.

Local leaders also exert influence on, and in turn, experience influence exerted back on them from village collectives. As government representatives of their respective areas, they have an obligation to prevent societal unrest, which comes in the form of accepting local customs. Most local customs are patrilineal in nature, and thus tend to be exclusionary toward women.

Tamara Jacka and Sally Sargeson in their work noted examples where compensation claims made by women were not given equal treatment to those of men.<sup>60</sup> Local leaders allow for these conflicts to persist despite the contradiction this creates with their expectations to provide

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<sup>58</sup> Deininger, Klaus, and Songqing Jin. "Securing Property Rights In Transition: Lessons From Implementation Of China's Rural Land Contracting Law." *Action Research Working Papers*, 2008. Also - Whiting, Susan. "Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-urban China." *Urban Studies* 48, no. 3 (2011): 569-87.

<sup>59</sup> Ibid.

<sup>60</sup> Jacka, Tamara, and Sally Sargeson. *Women, Gender and Rural Development in China*. Their book covers a variety of locations across China, but the information used in this example is from assorted data they collected in Yunnan and Fujian.

equal treatment under the law by formal government action. This situation can be contrasted with the issue in the XX village case where the Land Contractor was granted the right to present his dispute. While the argument can be made that this also depends on local customs for each village, the fact that the Land Contractor's complaints in the XX village case were heard, while the women in the Jacka and Sargeson case were not supports the argument that gender plays a role in excluding individuals from their rights as a community member to file a dispute.<sup>61</sup>

Summarizing what was stated above, local officials essentially act in their own interest due to fiscal pressures in the form of generating revenue, as well as from pressure by higher ranking officials to maintain order. Their presence within society is highly invasive and often times interventionist in that it skews the faithful enforcement of law and action. While both genders are susceptible to this corruption, women tend to experience a more pronounced form of it in that local norms are the root cause with officials merely supporting it. As such, it can be stated that local officials play a role in excluding individuals from membership for political purposes.<sup>62</sup>

### **Village Committees**

While local officials tend to involve themselves in the affairs of village committees, the committees themselves are powerful action making organs which exert some of the highest levels of influence on the operations of society.<sup>63</sup> When approaching the influence exerted by village committees on the community, it is important to remember that these

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<sup>61</sup> Can be further contrasted with the way the female Land Contractor in the second case from the XX village case study village was similarly disregarded when she filed her dispute.

<sup>62</sup> Ibid.

<sup>63</sup> Su, Fubing, Ran Tao, and Hui Wang. "State Fragmentation and Rights Contestation: Rural Land Development Rights in China." *China & World Economy* 21, no. 4 (2013): 36-55.

committees act largely as a representation of the village and its values.<sup>64</sup> As a committee of local residents, their law given power is specifically designed to deal with the affairs of the community which can range from land, to finances through compensation and residency of individuals. However, these concerns lead to the interests of the village collective oriented toward benefitting those who are seen as members of the group (inclusive), and opposed to the interests of those seeking membership (exclusive). The XX village case provides an example of this orientation in the way that a certain group of individuals benefitted over others. There are stipulations given within the action itself which discuss how an individual whose primary occupation is not agricultural in nature would receive compensation in the land taking, these stipulations are smaller in scope than those concerning other village members who engage primarily in agricultural work. Yet, there is evidence that this action was not carried out faithfully, with certain individuals in non-agricultural positions within the community receiving larger amounts of land than they should have under stated provisions. Regarding finances and compensation, the village is tied to the local officials as the collective is required to seek approval from local officials before passing an action.<sup>65</sup> However, this relationship is also affected by the needs of the village committee and of local officials to generate regional revenue, which in turn creates the impetus for both institutions to influence the region to its own interests. Local officials can manipulate votes to support their agendas through incentives that will result from support for their action. Alternatively, it is also possible that coercion to skew the number of signature names might occur, as made evident in the case study from XX village.

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<sup>64</sup> As mentioned in the previous section discussing the role of local officials within their jurisdiction, sometimes the committee can be influenced by officials and their goals. Additionally, committee heads have the ability to shape action making by the committee to fit their own agendas.

<sup>65</sup> Deininger, Klaus, and Songqing Jin. "Securing Property Rights In Transition: Lessons From Implementation Of China's Rural Land Contracting Law." *Action Research Working Papers*, 2008. The relationship goes both ways, local officials require 2/3 of members to vote in favor of a action in order to pass it.

The village committee has an interest to limit individual eligibility for monetary compensation for requisitioned land and to limit eligibility for the reallocation of remaining village land to a select group of insiders defined by village tradition so as to increase the amount of compensation a select group would be eligible to receive.<sup>66</sup> This is accomplished through the perpetuation of traditional societal norms relating to gender and directly affects community membership and thus the distribution of local compensation and the reallocation of village land.<sup>67</sup> The 2006 action within the village from both case studies provides an example of gender exclusion in the way that women experienced distinct differences in the manner they were compensated relative to men.

Another prominent example of gender discrimination can be seen in the case study conducted by Junjie Chen and Gale Summerfield in the village of River Crossing in Liaoning province, where the women of the village were denied land for a variety of reasons. The statutes provided within the RLCL went largely ignored, and women found it difficult to retain rights to land that should have been granted to them due to the common belief that women would marry out of the village and thus be unable to properly maintain the land.<sup>68</sup> Additionally, women who returned to their natal village due to divorce found their families reluctant to return land claims to them due to long standing perceptions of marriage and divorce. Chen and Summerfield's research also sheds light on the role disability plays for males and their land rights security.

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<sup>66</sup> Whiting, Susan. "What's Law Got to Do With It? Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes." *EAI Fellows Program Working Paper Series No. 25*, July 2010, 1-22. Accessed December 21, 2015. There is also a "married-in" men phenomenon in this village because of its highly coveted location.

<sup>67</sup> Ibid. Also - Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 63-92.

<sup>68</sup> Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 63-92.

While the example they used displayed the acceptance of unequal treatment of men and women in society, it is also useful to examine how certain societal norms which are upheld by the village committee can be used to negatively impact the land rights security of men.<sup>69</sup>

The family of one male villager with a disability in Ellen Judd's study shows how an individual with a disability can be denied claims because village committee members decided that his condition would prevent him from marrying, thus making land allocations unnecessary from their perspective.<sup>70</sup> Similar to women, disabled individuals are technically guaranteed rights by the Constitution to equal and fair treatment as citizens of the PRC. However, societal norms trump the provisions made within formal actions as the primary authority. As the committee interest is primarily concerned with managing the dispersion of compensation to a select group, reducing the number of eligible people for community membership is the primary consideration taken in to account. With regard to the XX village case, disqualifying the Land Contractor and calling in to question his claims to his land was a way for the community to potentially free up land that could be further distributed to other members.

Evidence from the XX village case suggests that married-in men might also face similar issues to women in regard to difficulties securing land claims with the village. Married-in men are by nature outsiders to the community, rural to rural migrants who have claims to land only through the land a woman's family provided for her. As rural to rural migrants to a community, women and men are both susceptible to exclusionary acts the committee might utilize to reduce land claims. Should the household list the married-in man as the household head, the committee

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<sup>69</sup> Ibid.

<sup>70</sup> Judd, Ellen R. "No Change for Thirty Years: The Renewed Question of Women's Land Rights in Rural China." *Development and Change* 38, no. 4 (2007): 689-710.



might be better able to enact unfavorable documentation against the household, which is what happened to the Land Contractor in the XX village case.

## **Households**

The previous three sections dealt with the role of action making at mostly impersonal levels. The village committees are the closest tier to the household, but even then the committee is not a place most individuals view as a platform for expressing their opinions. Sargeson notes in her research that even though the villagers in attendance at the committee meetings for her study were predominantly women, a clear majority of those who spoke during the meeting were male household heads.<sup>71</sup> At the household level, discrepancies in treatment based on gender are far more prevalent than what is seen in the other institutions. It is also at this level that gender based exclusion, where men receive more favorable treatment than women, becomes far more apparent. This difference in treatment can affect the membership status of individuals within the community at larger institutional levels, which can negatively impact the individual's claims to equal treatment with compensation claims.

There are two prominent examples of how men can be disadvantaged by societal norms via the household. The first is through excluding individuals with disabilities, which is in line with what we have seen at the village committee level. The second is a result of how traditional patriarchal elements of society relate to the individuals within a household. Norms regarding individuals with disabilities are similarly used by the village committee to achieve certain goals

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<sup>71</sup> Jacka, Tamara, and Sally Sargeson. "Representing Women in Chinese Village Self-Government: A ..." Accessed May 12, 2016. <http://www.tandfonline.com/doi/pdf/10.1080/14672715.2015.1079990>. Interestingly enough, there is evidence from previously made references that state the majority of committee members in village committees are males. I believe the way this should be taken, although not clearly stated, is that while actual committee members are males (the designated household head for many rural villages), that all members of the households are allowed to go to meetings.

when they deem it beneficial; however, the role patriarchal societal norms play regarding inheritance, and therefore security, is important. Young men face disempowerment from patrilineal norms that emphasize a certain order where fathers oversee their sons.<sup>72</sup> This is facilitated by factors that influence the structure of land-lease provisions, as they are typically interpreted to accommodate the standards set by these norms. However, despite these concerns of land security, men tend to be less vocal about this issue since they have access to different forms of livelihood.<sup>73</sup>

Evidence from research performed by Ellen Judd shows that growing numbers of men are finding work in other occupations, whereas women maintain a presence at home managing the land. Figures from Judd's research showing that while 10 out of every 13 men would find work in non-agriculture related occupations, only 1 out of every 12 women are likely to be involved in non-agricultural work.<sup>74</sup> Further research supports these findings through evidence that women tend to be more prevalent and settled in within the villages than men who tend to be in other locations.<sup>75</sup> As such, Cecile Jackson's claims that men's connection to land seems to be inherently different from the connection women have would appear to be validated. Men have far more options providing for themselves outside of land, so land management is a connection to their status and poverty and thus they have a direct, albeit less rigid connection to the land. Women, however, tend to be connected to land through their male kin, and are thus more likely

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<sup>72</sup> Jacka, Tamara, and Sally Sargeson. *Women, Gender and Rural Development in China*.

<sup>73</sup> Judd, Ellen R. "No Change for Thirty Years: The Renewed Question of Women's Land Rights in Rural China." *Development and Change* 38, no. 4 (2007): 689-710.

<sup>74</sup> Judd, Ellen R. "Family Strategies: Fluidities of Gender, Community and Mobility in Rural West China." *The China Quarterly*. Accessed May 12, 2016.  
<http://journals.cambridge.org/production/action/cjoGetFulltext?fulltextid=7931744>.

<sup>75</sup> *Ibid.*

to be vulnerable than men in regard to land security, since it is dependent on individuals other than themselves.

Sally Sargeson's work provides evidence from locations within several northern and western Chinese provinces that with respect to land contracts, women are far less likely than men to be acknowledged as the head of household.<sup>76</sup> While part of this situation might tie in to the fact that the village committees operate to reduce the number of approved residents for compensation purposes, another factor which plays in to it is the accepted norm that males are the heads of households.<sup>77</sup> Traditional norms stipulate males as the inheritors of land, which, when compounded with land scarcity, gives further incentives to limit land allocated to women. Since these factors make it more likely that women will have access to land through their male relatives, marriage becomes the single most important factor concerning women and landlessness.<sup>78</sup> Additionally, while land distribution to women is protected by law to be provided by the natal family until the family she marries in to can provide land for her, this requirement is often ignored with the stated reason saying women are unable to care for the land after they marry out.<sup>79</sup> However, the evidence provided by Judd in her work shows that even when women marry out of their homes, they are likely to return to visit their natal families frequently to care

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<sup>76</sup> Jacka, Tamara, and Sally Sargeson. "Representing Women in Chinese Village Self-Government: A ..." Accessed May 12, 2016. <http://www.tandfonline.com/doi/pdf/10.1080/14672715.2015.1079990>.

<sup>77</sup> Judd, Ellen R.. 1989. "Niangjia: Chinese Women and Their Natal Families". *The Journal of Asian Studies* 48 (3). [Cambridge University Press, Association for Asian Studies]: 525–44. doi:10.2307/2058638.

<sup>78</sup> Judd, Ellen R. "No Change for Thirty Years: The Renewed Question of Women's Land Rights in Rural China." *Development and Change* 38, no. 4 (2007): 689-710.

<sup>79</sup> Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 63-92.

for their parents.<sup>80</sup> There is also evidence that unmarried women of all ages are likely to receive much smaller land allocations compared to men.<sup>81</sup> The apparent cause for this attitude toward women is norm based, with preferential treatment for men further reinforcing the preference for males within a household.<sup>82</sup>

We can thus determine that households are far more norm based in their approach to land distribution and the security of membership, leaning in favor of supporting norms over formal state law. Problems at the household level for men and women concern land claims that might be denied to them by the household. Women find themselves bound to more restrictive societal norms than men do, with greater liberty given to men to distance themselves from land. Women increasingly depend more on land than men do, which is made even more prominent by the fact that women's land security depends on the male relations of both their natal family as well as their new family for land claims.

## *Conclusion*

Examining the different processes that can exclude an individual from village membership is important for assessing: 1) factors that contribute to the proliferation of social discrimination in rural China 2) what contributes to the formation of these factors and 3) how being included or excluded shows who can participate politically, go to school, and engage in other activities. While the land rights dispute case utilized in this study did not contain the

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<sup>80</sup> Judd, Ellen R.. 1989. "Niangjia: Chinese Women and Their Natal Families". *The Journal of Asian Studies* 48 (3). [Cambridge University Press, Association for Asian Studies]: 525–44. doi:10.2307/2058638.

<sup>81</sup> Chen, Junjie, and Gale Summerfield. "Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning." *Feminist Economics* 13, no. 3-4 (2007): 63-92.

<sup>82</sup> Ibid.

outcome of the case, the result is not as important as the elements of exclusion present within the case itself.

The research in this study was designed to address how issues in land disputes originate from norms within the institutions executing action, which negatively impacts membership status for individuals. These norms are societal in nature, and vary in their ranges. However, the one constant is that at their core, the decision-making process is being influenced at various levels to exclude individuals from compensation the distribution process. Narrowing down the number of people who can receive compensation increases the gains for the select group who will receive compensation. Thus, exclusionary acts are used to prevent perceived outsiders from receiving compensation and to determine qualification for compensation.

These exclusionary methods are present in the formulation of documents and in settling disputes as seen with both the land rights dispute case and the representation dispute case used in this study. Such tactics were used by two institutions, the local officials and the village committee, against the Land Contractor in the land rights dispute case. The village committee enacted decisions designed to exclude individuals through listing out compensation standards that would be allocated to an individual depending on their status prior to 1992. The local official in the village approved of the exclusionary measures taken and actively argued against the Land Contractor's dispute.

Members of the committee favored the local official's position as well, which was in their collective best interest since they would receive potentially large gains from doing so. Thus, these two institutions, were both able to effectively exclude an individual.

The representation dispute case demonstrated an exclusionary process that was gender-related in that while there were a number of similarities between the married-out woman in this case with the Land Contractor in the land rights dispute case, her inability to file a suit and seek appropriate legal action suggests that gender was a factor limiting her ability to file a suit. Further evidence conducted in other studies supports the idea that women tend to face more difficulties in securing equal treatment when filing for legal suits, and that this norm has become internalized for society leading people to expect a difference in treatment.

Elements from hukou, gender, and status as a land contractor all appear to be incapable of properly establishing membership status for an individual. Of the three choices, hukou and status as a land contractor should technically be the most likely way of ensuring membership rights. The presence of official documentation should provide significant coverage in ensuring an individual's status. However, the cases in this highlight the ways in which both claims can be either refuted, or ignored.

This question of what is a sufficient determinant for membership brings up an interesting question concerning the voting rights of rural to rural migrants changing their hukou status. This study has determined that the actions of the village committee and documents enacted by these committees are structured around benefitting insiders and excluding other individuals. This would suggest that measures could be implemented to limit the ability of rural to rural migrants in a new village from participating in village elections, and other similar features allotted to members. Rural to rural migrants hoping to change their hukou status must first apply at a local police station, and then wait for approval from the village committee. From an insider perspective, it would serve the interests of the village committee to exclude anyone who was not originally an insider for two reasons. The first would be to ensure maximum gains for a select

group. The second would be to minimize potential opposition. Thus exclusionary actions might also serve to disenfranchise individuals from one of the only forms of political expression allowed within rural villages. Further research would be required to delve further into this topic, and it would need to consider the varied nature of village charters in rural China. However, examples from the two cases listed here, as well as other examples discussed in this study, would lend to the idea that exclusionary actions are present in the formation of village charters and all actions thereafter to protect and support the interests of the original group.

The role of gender is even more tenuous in ensuring membership status for individuals. Men can be excluded for any numbers of reasons from questionable claims to health issues. Women face difficulties in enjoying equal rights to men at various institutional levels, and often have difficulties enforcing provisions from state law that are supposed to guarantee these rights. Thus the issue of how individual membership rights can be secured becomes difficult to identify.

The inability, and to a degree unwillingness of local officials and village committees to confer equal treatment to men and women under the law reveals that there is a large difference in what the letter of the law says, and how other institutions will enact such stipulations. Institutions work together and yet simultaneously against each other in exerting influence on a locality. Two institutions in particular, local officials and village committees, take precedence in determining how this situation occurs and, as Susan Whiting asserts in her research, actively seek dominance over the institution of state action in the local document process. Thus while state law provides for rights to both men and women, the ability of the local officials to selectively recognize the rights of one over the other, and of village committees to enact exclusionary acts through document formation and manipulation allows for these institutions to bypass state law provisions.

The contention for influence over a jurisdiction by these institutions causes for disputes to develop among individuals over land rights. These institutions exclude women and perceived outsiders to accomplish the goal to benefit a select few, thus using their rights of local autonomy to ignore preventative stipulations in state law such as the RLCL . The manner in which state actions currently operate in villages can be rectified in a number of ways such as through better oversight from higher levels of central government, which would help to ensure faithful enforcement. Until state action can serve as the uncontested form of influence in providing a framework for how local action making should develop in ensuring equal treatment, disputes that stem from the desire to exclude individuals for the benefit of a select group will continue to plague issues of security over land rights and membership.

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