

## Articles

# Do the “Haves” Come Out Ahead in Chinese Grassroots Courts? Rural Land Disputes Between Married-Out Women and Village Collectives

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*This Article tests Galanter’s party capability theory in China’s grassroots courts by empirically examining 858 sampled judgments of rural land dispute lawsuits between married-out women (the “have-nots,” or the less resourceful party) and village collectives (the “haves,” or the more resourceful party) throughout China from 2009 to 2017. An analysis of this study’s results yields a groundbreaking discovery, the “have-nots” came out ahead in China’s courts by a substantial margin. This finding contradicts Galanter’s theory—under which the “haves” should prevail—and the established view that the “haves” should come out ahead in China (a leading study on Shanghai courts found the “haves” prevailing by large margins). This discovery is significant because the Chinese judicial system, like its counterparts in other authoritarian states, is commonly seen as a system that favors the “haves” in a disproportionate manner due to the lack of judicial independence, which enhances the likelihood of courts being swayed by powerful external influence in favor of the stronger party. This Article argues that Galanter’s theory is inapplicable, as the data shows, when courts favor the “have-nots” over the “haves.” It is believed that the courts’ favor for the “have-nots” neutralized the party-capability advantages enjoyed by the “haves” and propelled the “have-nots” to victory.*

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## INTRODUCTION

Since the groundbreaking work of Marc Galanter,<sup>1</sup> the party capability theory has generated extensive scholarship. The theory suggests that the disparity of parties' status and resources (or relative party capability)<sup>2</sup> is the determining factor of litigation success. It is believed that the "haves," usually referring to the repeat player (RP) with more experience, greater resources, and superior status, will "come out ahead" in court.<sup>3</sup> The "have-nots," who are usually one-shotters (OS), are less resourceful and in disadvantaged positions.<sup>4</sup> Galanter's theory, which focused on the U.S. judicial system, has been tested (with varying conclusions) in later studies on other jurisdictions, such as Canada,<sup>5</sup> Australia,<sup>6</sup> Israel,<sup>7</sup> Russia,<sup>8</sup> the Philippines,<sup>9</sup> and England.<sup>10</sup> The varying conclusions could be the result of differences in legal culture, the role and authority of the judiciary, and the political underpinnings of the justice system. The party capability theory was also tested in China (emphasizing courts in Shanghai) by He and Su, where it was revealed that the "haves" came out ahead by substantial margins ("He and Su's Study").<sup>11</sup>

The present study tests Galanter's theory by examining rural land dispute lawsuits in Chinese grassroots courts between married-out women (MOW)<sup>12</sup> as plaintiffs, and village collectives as defendants<sup>13</sup> ("MOW lawsuits"). MOW are rural women married to outsiders—either based in cities or in other villages—who chose to retain their household registration (*hukou*) in their

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1. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *LAW & SOC'Y REV.* 95 (1974).

2. Xin He & Yang Su, *Do the "Haves" Come Out Ahead in Shanghai Courts?*, 10 *J. EMPIRICAL LEGAL STUD.* 120, 121–22 (2013).

3. Galanter, *supra* note 1, at 97–104.

4. *Id.*

5. See Peter McCormick, *Party Capability Theory and Appellate Success in the Supreme Court of Canada, 1949–1992*, 26 *CANADIAN J. POL. SCI.* 523, 524–25 (1993).

6. See Reginald S. Sheehan & Kirk A. Randazzo, *Explaining Litigant Success in the High Court of Australia*, 47 *AUSTRALIAN J. POL. SCI.* 239, 239–40 (2012).

7. See Yoav Dotan, *Do the "Haves" Still Come Out Ahead? Resource Inequalities in Ideological Courts: The Case of the Israeli High Court of Justice*, 33 *LAW & SOC'Y. REV.* 1059, 1059–61 (1999).

8. See Kathryn Hendley et al., *Do Repeat Players Behave Differently in Russia? Contractual and Litigation Behavior of Russian Enterprises*, 33 *LAW & SOC'Y REV.* 833, 833–34 (1999).

9. See Stacia L. Haynie, *Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court*, 56 *J. POL.* 752, 752–53 (1994) [hereinafter Haynie, *Resource Inequalities and Litigation Outcomes*]; see also Stacia L. Haynie, *Resource Inequalities and Regional Variation in Litigation Outcomes in the Philippine Supreme Court, 1961–1986*, 48 *POL. RES. Q.* 371, 371 (1995) [hereinafter Haynie, *Resource Inequalities and Regional Variation*].

10. See Burton M. Atkins, *Party Capability Theory as an Explanation for Intervention Behavior in the English Court of Appeal*, 35 *AM. J. POL. SCI.* 881, 882 (1991).

11. He & Su, *supra* note 2, at 131–32.

12. In Chinese, *waijia nü* (外嫁女).

13. Also known as "Rural Collective Economic Organizations." In Chinese, *nongcun jiti jingji zuzhi* (农村集体经济组织).

natal village, instead of transferring their registration to their husbands' village.<sup>14</sup> MOW lawsuits are commenced by MOW litigants to challenge the compensation allocation decisions of their natal village collectives.<sup>15</sup> When the government expropriates rural land for development, the village collective will receive monetary compensation from the state.<sup>16</sup> Under law, the village collective must distribute this monetary compensation to its members.<sup>17</sup> However, many village collectives refuse to distribute to MOW on the basis that the MOW lost village collective membership the moment they married out of the village. A number of national laws protect women's rural land rights provided they are members of the village collective.<sup>18</sup> However, the law also protects "village autonomy" under which the villagers' committees (or village assemblies) are given wide discretion in deciding internal matters relating to

14. MOW are very likely to retain their household registrations in their natal village, because if they transferred the registrations to their husbands' villages, it is likely that the MOW would not be entitled to any land rights in their husbands' village due to China's land policy. See Ellen R. Judd, *No Change for Thirty Years: The Renewed Question of Women's Land Rights in Rural China*, 38 DEV. & CHANGE 689, 694 (2007); see also Nongcun Tudi Chengbao Fa (农村土地承包法) [Law on Land Contract in Rural Areas] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 2002, effective Mar. 1, 2003) [http://www.npc.gov.cn/wxzl/gongbao/2002-08/30/content\\_5299419.htm](http://www.npc.gov.cn/wxzl/gongbao/2002-08/30/content_5299419.htm), art. 20 (China); Tudi Guanli Fa (土地管理法) [Land Management Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 25, 1986, effective Jan. 1, 1987) [http://www.npc.gov.cn/wxzl/gongbao/2004-10/21/content\\_5334569.htm](http://www.npc.gov.cn/wxzl/gongbao/2004-10/21/content_5334569.htm), art. 14 (China).

15. Galanter, *supra* note 1, at 110. MOW lawsuits, in which the OS sues the RP, are considered under Galanter's theory as non-routine cases that:

"usually represent[] the attempt of some OS to invoke outside help to create leverage on an organization with which he has been having dealings but is now at the point of divorce ..... The OS claimant generally has little interest in the state of the law; the RP defendant, however, is greatly interested."

*Id.*

16. In Chinese, *tudi zhengshou buchang feiyong* (土地征收补偿费用). See *Wuquan Fa* (物权法) [Property Law] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) [http://www.npc.gov.cn/wxzl/wxzl/2007-03/16/content\\_366956.htm](http://www.npc.gov.cn/wxzl/wxzl/2007-03/16/content_366956.htm) art. 132 (China).

17. See *Guanyu Shenli Sheji Nongcun Tudi Chengbao Jiufen Anjian Shiyong Falü Wenti de Jieshi* (关于审理涉及农村土地承包纠纷案件适用法律问题的解释) [Interpretations of the Supreme People's Court on Issues Concerning Application of Laws for Trial of Rural Land Contracting Dispute Cases] (promulgated by Sup. People's Ct., July 29, 2005, effective Sept. 1, 2005) art. 24, (China) ("Rural collective economic organization, or village committee, or villagers' group, conforming to the democratic procedure provided by laws, can allocate the compensation of land expropriation inside the collective. Courts should uphold the claim for equal rights of allocation of the individuals, who had owned the membership before the allocation agreement for compensation for the land expropriation was set down.").

18. See, e.g., *Funü Quanyi Baozhang Fa* (妇女权益保障法) [Law on the Protection of Women's Rights and Interests] (promulgated by the Nat'l People's Cong., Apr. 3, 1992, effective Oct. 1, 1992) [http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content\\_5004563.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/05/content_5004563.htm), art. 30–33 (China); see also *Cunmin Weiyuanhui Zuzhi Fa* (村民委员会组织法) [Organic Law of the Villagers' Committees] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2010, effective Oct. 28, 2010) [http://www.gov.cn/flfg/2010-10/28/content\\_1732986.htm](http://www.gov.cn/flfg/2010-10/28/content_1732986.htm), art. 27 (China); *Hunyin Fa* (婚姻法) [Marriage Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Jan. 1, 1981) <http://unstats.un.org/unsd/vitalstatkb/Attachment421.aspx?AttachmentType=1>, art. 39(2) (China); Law on Land Contract in Rural Areas, art. 6, 30.

the rural community.<sup>19</sup> In practice, the line of this autonomy is unclear.<sup>20</sup> *The Supreme People's Court's ("SPC") Explanation on Rural Land Contract*,<sup>21</sup> which is frequently referred to by courts when dealing with MOW lawsuits, made clear that courts should uphold equal rights in the allocation of compensation regarding women who hold the village collective membership prior to the conclusion of the allocation process.<sup>22</sup> Despite having gender equality statutes,<sup>23</sup> the law fails to provide a nationwide test for village collective membership. In practice, the village collective applies its own test to determine membership, which in its view, is within its "autonomy."<sup>24</sup> Many village collectives took advantage of this lacuna in the law to deny the MOW's entitlement to compensation, arguing that the MOW ceased to be members of the collective the moment they were married.<sup>25</sup> From the village collective's perspective, the problem is not about the MOW getting married, but rather, marrying out of the village. Chinese customs consider that once she marries out, a woman becomes part of her husband's village and no longer qualifies as a member of her natal village.<sup>26</sup>

19. See, e.g., Organic Law of Villagers' Committees art. 24 ("The following matters that involve the interests of the villagers shall be dealt with only upon the villagers' assembly's decision through discussion . . . . Proposals on the use and distribution of land-use compensation fees . . . . Other matters involving villagers' interests which the villagers' assembly believes should be decided by it through discussion."); see also *id.* art. 1–3, 5, 8; XIANFA art. 17, 111 (1982) (China).

20. The SPC has invited the Standing Committee of the National People's Congress (NPCSC) to issue an interpretation to provide for a nationwide test for "village collective membership status." See Gaofa Chutai Shenli Nongcun Tudi Chengbao Jiufen Anjian de Jieshi (Dawen) (高法出台审理农村土地承包纠纷案件的解释 (答 问)) [Q&A of the Supreme People's Court Regarding the Promulgation of the Interpretations of the Supreme People's Court on Issues Concerning Application of Laws for Trial of Rural Land Contracting Dispute Cases], Zhōngguó fǎyuàn wǎng (中国法院网) [CHINA COURT NETWORK] <http://sientechina.china.com.cn/chinese/2005/Jul/927977.htm> (China). No interpretation has been provided by the NPCSC to date.

21. Interpretations of the Supreme People's Court on Issues Concerning Application of Laws for Trial of Rural Land Contracting Dispute Cases, art. 24.

22. *Id.*

23. But see Xin He, *Why Did They Not Take on the Disputes? Law, Power and Politics in the Decision-Making of Chinese Courts*, 3 INT'L J.L. CONTEXT 203, 209 (2007) ("[T]here are no clear regulations on this issue, or relevant regulations are contradictory.").

24. Some guidance can be found in provincial rules, but it is ultimately a question to be decided by the village collective. See Guangdong Sheng Nongcun Jiti Jingji Zuzhi Guanli Guiding (广东省农村集体经济组织管理规定) [Organic Regulations of the Guangdong Province Village Economic Cooperation Associations] (promulgated by the Guangdong Province Government, May 31, 2013, effective June 20, 2013), [zwgk.gd.gov.cn/006939748/201306/t20130620\\_378332.html](http://zwgk.gd.gov.cn/006939748/201306/t20130620_378332.html) (China); Zhejiang Sheng Cun Jingji Hezuoshe Zuzhi Tiaoli (浙江省村经济合作社组织条例) [Organic Regulations of the Zhejiang Province Village Economic Cooperation Associations] (promulgated by the Standing Comm. People's Cong. Zhejiang Province, Sept. 28, 2007, effective Jan. 1, 2008), <https://www.pkulaw.com/lar/897cb583f2d7451f50c4e0a43e60e8d1bdfb.html?keyword=%E6%B5%99%E6%B1%9F%E7%9C%81%E7%BB%8F%E6%B5%8E%E5%90%88%E4%BD%9C%E7%A4%BE%E7%BB%84%E7%BB%87> (China).

25. He mentioned that "a more direct reason for such a decision [to exclude MOW] is that additional persons to share a given lump sum of benefits will inevitably reduce the value of each share." See He, *supra* note 23, at 207.

26. Judd, *supra* note 14, at 690.

MOW lawsuits fit well into the dichotomy of “haves” and “have-nots,” given the clear “asymmetric relationship” between the village collectives and the MOW.<sup>27</sup> With fewer resources (as an individual OS-litigant) and an inferior social status (being the subject of discrimination), MOW litigants fall squarely into the category of the “have-nots.” The village collective, on the other hand, fits neatly into the category of “haves” as a quasi-administrative rural institution with government backing (and also as an RP-litigant). This is the first time Galanter’s theory has been tested on a single-issue litigation in Chinese courts that impacts gender equality.<sup>28</sup> This study finds, contrary to Galanter’s theory and He and Su’s Study, the “have-nots” (the MOW) in fact came out ahead. This finding provides a breakthrough in the understanding of how resource inequality of parties affects litigation outcomes in a developing authoritarian state.

Part I begins with a discussion of the debate on the party capability theory and testing the theory on Chinese courts. Part II provides an overview of the issue of MOW’s land rights in China. Part III outlines the data, methodology, and variables, and Part IV presents the empirical findings. The main discovery is the “have-nots” (the MOW) came out ahead by a substantial margin, contradicting Galanter’s theory and the findings in He and Su’s Study. In addition, an analysis is conducted to identify the variations of the MOW’s success rate by a number of relevant independent variables. Although it does not reveal the causal relations between the independent variables and the MOW litigant’s success rate, it enriches the literature in this area.<sup>29</sup> This Article ends with an explanation of why the “have-nots” (the MOW) came out ahead and other observations from the data in Part IV, and the implications of the findings in Part V.

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27. See Atkins, *supra* note 10, at 884–85.

28. He and Su’s Study was on multiple types of litigations involving different kinds of parties. He & Su, *supra* note 2, at 127.

29. See KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA (2017); He, *supra* note 23; He & Su, *supra* note 2. Also see the body of literature debating Galanter’s party capability theory. See, e.g., Donald R. Songer, et al., *Do the “Haves” Come Out Ahead over Time? Applying Galanter’s Framework to Decisions of the U.S. Courts of Appeals, 1925-1988*, 33 LAW & SOC’Y REV. 811 (1999).



I. TESTING GALANTER'S PARTY CAPABILITY THEORY ON CHINESE COURTS:  
LEGAL BATTLES BETWEEN MARRIED-OUT WOMEN ("HAVE-NOTS") AND  
VILLAGE COLLECTIVES ("HAVES")

A. DEBATING GALANTER'S THEORY

Due to the disparity of status, litigation experience, and resources, Galanter "expect[ed] an RP to play the litigation game differently from an OS."<sup>30</sup> The strategic advantages of the RP are seen in its rich experience in litigating the issue (i.e. understanding how the game is played), superior expertise (for example, quality legal representation and experts), its influence over the institutional decision-makers, its ability to push for "rule-development" that works in its favor, and the resources to pursue either or both the short-term and long-term goals in litigation.<sup>31</sup>

This is contrasted with the position of the OS, who is inexperienced, has limited resources, lacks the institutional advantages that the RP has, and is only able to pursue short-term goals in litigation.<sup>32</sup> The stakes in the individual case are much higher for the OS than the RP, which allows the RP to "play the odds."<sup>33</sup> In other words, the RP can afford to risk losing an individual case if doing so can bring about long-term benefits. The OS does not have this luxury, as too much is at stake in the individual case.

Galanter's theory suggests, even in systems that place a high premium on procedural fairness and impartiality, the strategic advantages of the RP are unaffected.<sup>34</sup> One reason to explain this is the RP is able to outspend the OS in litigation and make procedural maneuvers that only someone with the RP's resources can afford. A typical tactic is to delay the litigation as much as possible so that the OS is drained of all of its funds. The institutional advantages available to the RP, including its ability to push for rule development, ensure that the "rules of the game" are tilted in the RP's favor.<sup>35</sup>

Many studies have confirmed Galanter's theory,<sup>36</sup> with some confirming it in principle but providing revisions and qualifications to the theory.<sup>37</sup> Some

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30. Galanter, *supra* note 1, at 98.

31. *Id.* at 99–103.

32. *Id.* at 98.

33. *Id.* at 99–100.

34. He & Su, *supra* note 2, at 122.

35. Galanter, *supra* note 1, at 102–03.

36. See Atkins, *supra* note 10, at 882 (testing and confirming Galanter's theory in the English Court of Appeal); see also Donald J. Farole Jr., *Reexamining Litigant Success in State Supreme Courts*, 33 LAW & SOC'Y REV. 1043, 1054 (1999) (generally confirming Galanter's theory by analyzing data from five state supreme courts of the United States); McCormick, *supra* note 5, at 523–25 (affirming the party capability theory in the Canadian Supreme Court); Songer et al., *supra* note 29, at 830 (finding the "haves" came out ahead in the federal courts of appeals in the United States over a sixty-four-year period).

37. See Beth Harris, *Representing Homeless Families: Repeat Player Implementation Strategies*, 33 LAW & SOC'Y REV. 911, 911–12 (1999) (arguing that "by skillfully combining adversarial legal tactics with

studies have directly questioned whether the “haves” always come out ahead. For instance, a study conducted on the Israeli High Court of Justice found that the “have-nots,” when represented, came out ahead.<sup>38</sup> Another study suggested that the participation of amicus curiae in aid of the OS could neutralize the advantages enjoyed by the RP.<sup>39</sup> An important study on the U.S. Supreme Court contradicted Galanter’s theory by finding that the “ideological composition” of the Court was the determining factor for litigation success.<sup>40</sup>

The most forceful rebuttal of Galanter’s theory comes from Stacia Haynie,<sup>41</sup> who argued that while Galanter’s theory is proven to be generally accurate in industrialized societies, it may not be applicable to developing “non-industrialized” states.<sup>42</sup> Using the Philippine Supreme Court as a test case, Haynie argued that courts in developing states do not enjoy the same kind of legitimacy as enjoyed by their counterparts in industrialized nations.<sup>43</sup> This legitimacy is crucial for stability and development.<sup>44</sup> In the developed world, the public views the courts as generally impartial and fair.<sup>45</sup> This is not so in developing states, where the courts are considered to be partial (favoring the privileged) and even corrupt.<sup>46</sup> The presumption of judicial bias towards the “haves” creates instability, something that greatly concerns the courts of developing countries, especially when under authoritarian rule (in Haynie’s test case, the Marcos era).<sup>47</sup> In an attempt to establish their legitimacy, courts in developing countries will purposefully side with the “have-nots,” using “their policy-making function to redistribute resources, at least within some

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collaboration, poverty lawyers can transform judicial decisions into ‘symbolic resources’ to leverage the implementation of redistributive remedies”); see also Joel B. Grossman et al., *Do the “Haves” Still Come Out Ahead?*, 33 LAW & SOC’Y REV. 803, 810 (1999) (arguing that “the relative advantages between and among litigants is more nuanced and dynamic than the terms *one shotter* and *repeat player* suggest”); Sheehan & Randazzo, *supra* note 6, at 253–54 (arguing “that party capability theory needs to expand beyond the Galanter hypothesis, and define more broadly party capability as determined by litigant characteristics, legal structures and legal cultures”); Stanton Wheeler et al., *Do the “Haves” Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970*, 21 LAW & SOC’Y REV. 403, 443 (1987) (finding the “haves” came out ahead in U.S. state supreme courts, but only by a thin margin); Donald R. Songer & Reginald S. Sheehan, *Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals*, 36 AM. J. POL. SCI. 235, 254 (1992) (finding the “haves” came out ahead in U.S. Courts of Appeals).

38. Dotan, *supra* note 7, at 1071–72.

39. Donald Songer et al., *Why the Haves Don’t Always Come Out Ahead: Repeat Players Meet Amici Curiae for the Disadvantaged*, 53 POL. RES. Q. 537, 547–48 (2000).

40. Reginald S. Sheehan et al., *Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court*, 86 AM. POL. SCI. REV. 464, 470 (1992).

41. See generally Haynie, *Resource Inequalities and Litigation Outcomes*, *supra* note 9 (discovering that the “have-nots” came out ahead in the Philippine Supreme Court).

42. *Id.* at 753.

43. *Id.*

44. *Id.* at 754.

45. *Id.* at 753.

46. *Id.*

47. *Id.* at 764.

components of their docket, thus potentially increasing their own legitimacy and stability within the political system.”<sup>48</sup>

#### B. TESTING GALANTER’S THEORY ON CHINESE COURTS

He and Su’s Study confirmed the party capability theory, but argued that factors other than resource inequality also contributed to the “haves” success.<sup>49</sup> A major factor is that Chinese courts are particularly prone to outside influences, especially influence from the government.<sup>50</sup> It is argued that the lack of judicial independence has augmented the power imbalance between the “haves” and the “have-nots.”<sup>51</sup> He and Su’s Study covered a wide range of disputes involving litigants of different natures: businesses, farmers, non-farmer individuals, and government agencies or government-related companies.<sup>52</sup> Government agencies or government-related companies, who were RPs, turned out to be the most successful litigants, while farmers, who were OSs, were the most unsuccessful.<sup>53</sup> In other words, the central finding of He and Su’s Study is that under the Chinese judicial system, the “have-nots,” who are individual OS-litigants from an underprivileged group, *lose the most* to the “haves,” who are institutional RP-litigants with governmental backing.<sup>54</sup> This finding was confirmed in another study on the media’s success rate in defamation litigation in China.<sup>55</sup> It was revealed that “the media’s odds of success would be reduced by 76 per cent if they were sued by the government and officials, comparing with the odds when they were sued by non-government officials or non-government organizations.”<sup>56</sup> Another study has found that Chinese courts favored “politically connected” corporate litigants.<sup>57</sup>

48. *Id.* at 753.

49. He & Su, *supra* note 2, at 139 (“Given our data, one could continue to argue that resources still make a difference. That is to say, the party capability thesis remains intact, if not sufficient, to explain away the winning gap between the haves and the have-nots.”).

50. *Id.* at 140–41 (“The existing empirical studies suggest that resource difference is one of the foremost reasons why the haves come out ahead, but when the courts are susceptible to external influences, this could overshadow any other reasons, including litigation capacity.” (citation omitted)).

51. *Id.* at 141.

52. *Id.* at 132 tbl.2.

53. *See id.* at 131–32.

54. *Id.*

55. Xin He & Fen Lin, *The Losing Media? An Empirical Study of Defamation Litigation in China*, 230 CHINA Q. 371, 385–86 (2017).

56. *Id.*

57. Haitian Lu et al., *Political Connectedness and Court Outcomes: Evidence from Chinese Corporate Lawsuits*, 58 J.L. & ECON. 829, 857 (2015) (finding “robust empirical evidence that firms’ political connectedness, in the form of state ownership or management’s personal political ties in private firms, is associated with better court outcomes. This likely reflects the fact that the state uses its nonindependent judiciary to redistribute wealth from parties that are not politically favored to those that are.”). *But see* Wei Cui, *Does Judicial Independence Matter? A Study of the Determinants of Administrative Litigation in an Authoritarian Regime*, 38 U. PA. J. INT’L L. 941, 950 (2017) (stating that plaintiffs (OS) are losing to the tax authorities (RP) in administrative litigations, but arguing that it is the result of “information asymmetry” and adverse legal rules, rather than the courts favoring the tax authorities).

Similar to the farmers in He and Su's Study, the MOW are individual OS-litigants from an underprivileged group that is under constant discrimination. Rural land policies are often "invisibly 'gendered'"<sup>58</sup> or perpetuate "traditional and new forms of gender discrimination."<sup>59</sup> By marrying outsiders, MOW are considered "outsiders" by their natal villages.<sup>60</sup> An MOW's rights to receive government compensation are taken away from them on the basis that they are no longer "members" of the village collective. MOW are usually underrepresented in rural governance,<sup>61</sup> giving them close to no say in the compensation allocation process.

Similar to the government agencies or government-related companies in He and Su's Study, village collectives are government-backed rural administrative institutions. The government adopts a policy of "village autonomy," giving village collectives extensive administrative powers over internal rural matters.<sup>62</sup> The village collective has to deal with numerous MOW lawsuits each year, making it an obvious RP. As a rural collective institution, it has at its disposal far greater resources than the MOW litigants (individuals), which are not limited to money, but extend to connections with the government, local courts, and other institutions that could provide help in litigations of this nature. The stakes are inevitably much higher for the MOW than the village collective. This allows the village collective, in the words of Galanter, to "play the odds."<sup>63</sup>

If one follows the findings from He and Su's Study, the village collective, as the government-backed and "politically connected" institutional RP, should unquestionably prevail over the MOW, the underprivileged individual OS-litigants. Is this really the case? As this study will show, contrary to the party capability theory, MOW litigants (the "have-nots") are winning these lawsuits by a substantial margin.<sup>64</sup>

58. Laurel Bossen, *Reproduction and Real Property in Rural China: Three Decades of Development and Discrimination*, in WOMEN, GENDER AND RURAL DEVELOPMENT IN CHINA 97, 98 (Tamara Jacka & Sally Sargeson eds., 2011).

59. Junjie Chen & Gale Summerfield, *Gender and Rural Reforms in China: A Case Study of Population Control and Land Rights Policies in Northern Liaoning*, 13 FEMINIST ECON. 63, 83 (2007).

60. Noky Tak-ching Cheung, *A Religious Menopausal Ritual: Changing Body, Identity, and Values*, in GENDERING CHINESE RELIGION: SUBJECT, IDENTITY, AND BODY 225, 239 (Jinhua Jia et al. eds., 1st ed. 2014).

61. BAOGANG HE, RURAL DEMOCRACY IN CHINA: THE ROLE OF VILLAGE ELECTIONS 126–28 (2007).

62. See Organic Law of Villagers' Committees art. 24.

63. Galanter, *supra* note 1, at 99–100.

64. Out of the 858 sampled cases, the MOW litigants won 93.90% of the time (combining "complete win" (76.50%) and "partial win" (17.4%)). See *infra* Table 4. The MOW litigant only lost 6.20% of the time. See *infra* Table 4.

C. DO THE “HAVES” COME OUT AHEAD IN MARRIED-OUT WOMEN  
LAWSUITS?—TWO PROPOSITIONS

1. *Proposition 1: Why the “Haves” (Village Collectives) Should Come Out Ahead in China*

Previous studies show that civil remedies were rarely available to MOW litigants,<sup>65</sup> as courts were unwilling to extend their civil jurisdiction to cover MOW cases.<sup>66</sup> Even when courts accept their cases, courts tend to favor the village collectives given their status as quasi-governing institutions in the rural regions. The courts are more concerned about maintaining stability and ensuring that the rural collectives’ interests are not jeopardized by challenges from the MOW litigants. This view is consistent with the policy of “village autonomy,” that rural matters should be handled by representatives of the village.<sup>67</sup>

The lack of judicial independence means Chinese courts are susceptible to external interference. In the rural political context, the village collective wields far greater power than the individual MOW litigants (who lack social and political connections). Thus, the village collective is far more capable of influencing the courts. Courts may also be concerned that if the MOW litigants get what they wanted, it would open a floodgate of litigation against the village collectives, resulting in the deterioration of local stability. Galanter’s theory should apply given the clear resource asymmetry between the parties. In this case, the judicial politics in China would augment the advantages enjoyed by the “haves” (village collectives).

2. *Proposition 2: Why the “Have-Nots” (Married-Out Women) Should Come Out Ahead in China*

It is possible that the courts side with the MOW to uphold gender equality, or even out of sympathy for the MOW litigants. Despite policy constraints and bureaucratic red-tape, Chinese courts, as any courts in the world, inherently seek to do justice whenever possible. Most of the legislative

65. Xiaoli Wang (王晓莉) & Huiying Li (李慧英), *Woguo Nongcun Tudi Zhengce yu Shijian Fenxi* (我国农村土地政策与实践分析—聚焦农村妇女土地权益问题) [*Land Policies and Practice in Rural China: Focusing on Rural Women’s Land Rights and Interests*], *Kēxué Shèhuì Zhǔyì* (科学社会主义) [SCI. SOCIALISM] 116, 118 (2014) (China).

66. See He, *supra* note 23, at 210.

67. The power relationship between grassroots courts and the rural administration (township government and rural collectives) is deep-seated and complex. While grassroots courts are not answerable to the rural administration, the informal powers wielded by the rural administration sometimes make it impossible for courts not to take into account their vested interests. In some regions, courts take the view that issues relating to MOW are within the ambit of village autonomy and refuse to “interfere.” Even when courts are bold in defending MOW’s land rights, resistance from the rural collective could delay or block enforcement.

provisions favor the MOW.<sup>68</sup> It would be difficult for the court not to enforce pro-MOW rules, unless there were overriding policy concerns.<sup>69</sup> The risk of instability arising from MOW disputes is low. It would be a relatively “safe” domain for the courts to simply apply the laws that protect the MOW.<sup>70</sup>

Echoing Haynie’s theory, it can also be argued that the courts in China need to establish their legitimacy through adopting a redistributive policy when adjudicating MOW lawsuits, which might result in the “have-nots” prevailing.<sup>71</sup> The institutional disadvantages of the Chinese judiciary can be reversed through establishing a public image that the courts are protectors of the “have-nots.” This legitimacy-building exercise benefits not just the court system, but also individual judges who now post their judgments online.

## II. THE ISSUE OF MARRIED-OUT WOMEN’S LAND RIGHTS IN CHINA: AN OVERVIEW

### A. BACKGROUND

Rural women around the world, especially in developing countries, continue to suffer from the rural gender gap. Some argue the primary cause of the rural gender gap was the deprivation or suppression of rural women’s rights to access and own land.<sup>72</sup> The negative impact on rural women is augmented by trends in some communities, such as in Vietnam and India, where more rural men are now engaging in non-agricultural activities, leaving the rural women to farm the land that is usually owned by male members of the

68. See *supra* text accompanying note 18.

69. For example, if the losing village collective threatens to destabilize the rural community.

70. While village collective membership is legally undefined, courts may be willing to fill this gap by finding in favor of the MOW as long as they can show some connection with their natal villages. Connection with the MOW’s natal village will be discussed in detail and empirically tested below.

71. Haynie, *Resource Inequalities and Litigation Outcomes*, *supra* note 9, at 769; Haynie, *Resource Inequalities and Regional Variation*, *supra* note 9, at 378.

72. See, e.g., Bina Agarwal, *Gender and Command over Property: A Critical Gap in Economic Analysis and Policy in South Asia*, 22 *WORLD DEV.* 1455, 1467 (1994); see also Nuria Pena et al., *Using Rights-Based and Gender-Analysis Arguments for Land Rights for Women: Some Initial Reflections from Nicaragua*, 16 *GENDER & DEV.* 55, 67–68 (2008) (emphasizing the need for a dialogue among the multiple approaches to the “issue of gender and land” given the complexity of the issue and that titling cannot once and for all provide rural women full access to land if it is not accompanied by “a process that makes such rights socially legitimate and enforceable”). But see, e.g., Cecile Jackson, *Gender Analysis of Land: Beyond Land Rights for Women?*, 3 *J. AGRARIAN CHANGE* 453, 457 (2003) (arguing that there are multiple reasons that contribute to the rural gender gap, and suggesting that increasing access to land for rural women, unlike rural men, does not necessarily elevate women’s socio-economic status, given that there are so many other factors, such as “social relations of productions,” that contribute to the inferior position of rural women vis-à-vis rural men); K.C. Roy & C.A. Tisdell, *Property Rights in Women’s Empowerment in Rural India: A Review*, 29 *INT’L J. SOC. ECON.* 315, 332 (2002) (arguing that, in the context of rural India, “ownership rights to property are important, but customary rights to access the property are more important for women’s empowerment”).

family.<sup>73</sup> As land ownership contributes to rural women's empowerment,<sup>74</sup> the lack of land ownership weakens rural women. This weakness caused by landlessness is certainly felt in rural China. In China, the problem of gender inequality is particularly acute in rural regions where traditional Chinese customs favor men over women.<sup>75</sup> Rural women, including MOW, have fewer opportunities to be educated when compared to rural men, who usually occupy leadership roles within the rural community. According to an investigation, rural women without land are usually less educated than those with land entitlements in China.<sup>76</sup> The MOW issue in China is particularly complicated for the following reasons.

First, the national statutes have not provided a test to determine "membership status" of the village collective.<sup>77</sup> While many call for a unified national standard, some argue that it is unrealistic to do so,<sup>78</sup> partly due to the difficulty in defining in concrete terms the concepts of "(rural) land property rights" and "membership."<sup>79</sup> The diverse rules in different regions also make it

73. See Bina Agarwal, *Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market*, 3 J. AGRARIAN CHANGE 184, 192 (2003); see also Mary H. Nguyen, *Rural Women's Property Rights in Vietnam: Weakened by Macroeconomic Reforms*, 13 NEW ENG. J. INT'L & COMP. L. 105, 109 (2006).

74. See Khushbu Mishra & Abdoul G. Sam, *Does Women's Land Ownership Promote Their Empowerment? Empirical Evidence from Nepal*, 78 WORLD DEV. 360, 368 (2016) ("By employing several econometric techniques and robustness checks, we find that women's land ownership in Nepal significantly increases their empowerment, defined by household decision-making in areas of own healthcare, major household purchases, and visits to family or relatives.").

75. Yang Li & Xi Yin-Sheng, *Married Women's Rights to Land in China's Traditional Farming Areas*, 15 J. CONTEMP. CHINA 621, 629 (2006).

76. Ying Luo (罗颖), Yifang Zheng (郑逸芳) & Senwei Huang (黄森慰), *Nongcun Waijianü Tudi Quanyi Baohu Qingkuang Fenxi: Jiyu Fujian Sheng 108 Fen Wenjuan Diaocha Shuju* (农村外嫁女土地权益保护情况分析——基于福建省 108 份问卷调查数据) [An Analysis on the Protection of Land Rights of Rural Married-Out-Women: Based on 108 Pieces of Questionnaires in Fujian Province], 19 NÈIMÈNGGŪ NÓNGYÈ DÀXUÉ XUÉBÀO (Shèhuì Kēxué Bǎn) (内蒙古农业大学学报 (社会科学版)) [J. INNER MONG. AGRIC. U. (SOC. SCI. EDITION)] 16, 20 tbl3 (2017) (China).

77. See Gaofa Chutai Shenli Nongcun Tudi Chengbao Jiufen Anjian de Jieshi (Dawen) (高法出台审理农村土地承包纠纷案件的解释(答问)) [Q&A of the Supreme People's Court Regarding the Promulgation of the Interpretations of the Supreme People's Court on Issues Concerning Application of Laws for Trial of Rural Land Contracting Dispute Cases] (promulgated by Sup. People's Ct., July 29, 2005) <http://sientechina.china.com.cn/chinese/2005/Jul/927977.htm> (China); Wang & Li, *supra* note 65, at 118.

78. Hao Tang (唐浩), *Cungui Minyue Shijiao Xia de Nongdi Zhidu: Wenben Jiedu* (村规民约视角下的农地制度: 文本解读) [Rural Land in the Perspective of Village Charter: Textual Analysis], 28 ZHONGGUÓ NÓNGYÈ DÀXUÉ XUÉBÀO (Shèhuì Kēxué Bǎn) (中国农业大学学报(社会科学版)) [CHINA AGRIC. U. J. (SOC. SCI. EDITION)] 106 (2011) (China).

79. See Jing Shen (申静) & Hansheng Wang (王汉生), *Jiti Chanquan Zai Zhongguo Xiangcun Shenghuo zhong de Shijian Luoji—Shehuixue Shijiao xia de Chanquan Goujian Guocheng* (集体产权在中国乡村生活中的实践逻辑——社会学视角下的产权构建过程) [The Practical Logic of Property Rights in Rural China Life: The Process of Contracting Property Rights from the Sociological Perspective], 115 SHÈHUÌ XUÉ YANJIŪ (社会学研究) [SOC. RES.] 113, 142 (2005); see also Jing Li (李菁) & Danli Yan (颜丹丽), *Jiti Chengyuanquan he Tudi Chengbao Shouyiquan de Chongtu yu Xietiao: Wending Diqian yu Buwending Diqian de Duibi—Yi Xishui Cun Di Ba Cunmin Xiaozu Liangci Zhengdi Buchangfei Fenpei Weili* (集体成员权和土地承包收益权的冲突与协调: 稳定地权与不稳定地权的对比——以西水村第八村民小组两次征地补偿费分配为例) [Tension and Conciliation Between Collective Member Rights and Contractual Land Rights: A Contrast Between Stable Land Rights and Unstable Land Rights] ZHONGGUÓ NÓNGCŪN GUĀNCHÁ (

very difficult to standardize such a practice.<sup>80</sup> The lack of a unified legal standard leaves room for controversy.

Second, rural governance in China is based on the principle of “village autonomy.”<sup>81</sup> The power to allocate and distribute rural collective income and interests deriving from land is vested in the village collectives. As the minority, the MOW frequently find themselves being outvoted by other villagers on the matter of allocation of land expropriation compensation.<sup>82</sup> Village leaders, even if they had the vision and resolve to protect gender equality, have to yield to majority pressure if the majority holds a strong view of not distributing to the MOW.<sup>83</sup>

Third, discrimination against women in China is imbued in its traditional culture. The Chinese phrase “giving men greater weight over women,”<sup>84</sup> applies at least in terms of social status and legal entitlement.<sup>85</sup> This problem is

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中国农村观察] [CHINA RURAL SURV.] 26, 26–27 (2011); Tiejun Wen (温铁军), Ping Wang (王平) & Yan Shi (石嫣), *Nongcun Gaige Zhong de Caichan Zhidu Bianqian: 30 Nian 3 Ge Cunzhuang de Anli Jieshao* (农村改革中的财产制度变迁——30 年 3 个村莊的案例介绍) [Property Institution Evolution in Rural Reform: Introducing Three Countryside Cases] ZHONGGUO NONGCUN JINGJI (中国农村经济) [CHINESE RURAL ECON.] 4, 5 (2008).

80. Some scholars term this as “legal federalism.” See Jinhua Cheng (程金华) & Zhenxing Ke (柯振兴), *Zhongguo Falü Quanli de Lianbangzhi Shijian: Yi Laodong Hetongfa Lingyu Wei Li* (中国法律权力的联邦制实践——以劳动合同法领域为例) [The Practice of Federalism in Chinese Legal System: An Empirical Study on Labor Contract Law], FAXUÉ JIÀ (法学家) [JURIST], 2–3 (2018).

81. Bin Wang (王彬), *Xiangcun Shanzhi de Falü Huayuchang* (乡村善治的法律话语场) [Legal Discourse of Good Governance in Rural Areas] SHANDONG JINGCHÁ XUÉYUÁN XUÉBÀO (山东警察学院学报) (2008) [J. SHANDONG POLICE C.] 73 [hereinafter Wang, *Legal Discourse of Good Governance*]; see also Meng Hou (侯猛), *Cungui Minyue de Sifa Shiyong* (村规民约的司法适用) [The Application of Law on Village Charters] FÁLÜ SHIYONG (法律适用) [J.L. APPL.] 52, 52 (2010); Dongdong Huang (黄东东) & Ziyi Wang (王子毅), *Tudi Buchangfei Nonghu Jian de Fenpei: Zhixu yu Fazhi* (土地补偿费农户间的分配：秩序与法治) [Distribution of Land Compensation among Farmers: Order and Rule of Law], 35 JISHOU DÀXUÉ XUÉBÀO (SHEHUI KEXUÉ BÀN) (吉首大学学报(社会科学版)) [J. JISHOU U. (SOC. SCI. EDITION)] 78, 79 (2014); Zhuqing Wang (王竹青), *Lun Nongcun Funü Tudi Quanyi Falü Baozhang de Tixihua Goujian* (论农村妇女土地权益法律保障的体系化构建) [Establishing Systems of Legal Protection of Rural Women's Land Rights and Interests] FÜNÜ YANJIU LÜN CÓN (妇女研究论丛) [J. CHINESE WOMEN'S STUD.] 49 (2017) [hereinafter Wang, *Establishing Systems of Legal Protection*].

82. See Qiong Zou (邹琼), *Cunzhuang Zhong de Xingbie Quanli: Zhusanjiao Nancun de Shizheng Yanjiu* (村庄中的性别权力——珠三角南村的实证研究) [Gender Power in Villages: An Empirical Study on Nancun Village in Pearl River Delta], 32 GUANGXI MÍN ZÚ DÀXUÉ XUÉBÀO (ZHÉXUÉ SHEHUI KEXUÉ BÀN) (广西民族大学学报(哲学社会科学版)) [J. GUANGXI U. FOR NATIONALITIES (PHIL. & SOC. SCI. EDITION)] 82 (2010); see also Jinmei Xia (夏金梅), *Guanyu Nongcun Chujianü de Jiti Jingji Quanyi Baozhang: Jiyu Guangdong Sheng S Cun de Diaocha* (关于农村出嫁女的集体经济权益保障——基于广东省 S 村的调查) [Research on the Protection of Collective Economic Rights of Rural Married-Out-Women: Based on Investigations in S Village, Guangdong Province] LILÜN TÀNSUO (理论探索) [THEORETICAL EXPLORATION] 85, 85 (2011).

83. In China, rural land expropriation is the collective decision of the village collective, as rural land is collectively owned by the village collective. See XIANFA art. 10 (1982) (China). In other words, the government approaches the village collective, not the individual villager, to negotiate and execute the expropriation. Individual rural women may only indirectly participate in that decision through their representatives in the villagers' assembly. With such rural land ownership structure, rural women in China are placed in a disadvantaged position when compared with jurisdictions where rural property rights can directly vest in individuals.

84. In Chinese: *zhongnan qingnü* (重男轻女).

85. Hou, *supra* note 81.



particularly serious in rural China, where men are seen as the main contributor of agricultural power and women are considered subordinate to their fathers before marriage, and husbands after marriage.<sup>86</sup> Village collectives contract rural land to families as the “household units” to manage the land. The right-holder of the land is usually the adult male in the family.<sup>87</sup> As MOW will usually move to live with their husbands after getting married (patrilocal residence),<sup>88</sup> their family of origin will usually consider that the MOW is no longer a member of their natal family.<sup>89</sup> Sometimes the MOW’s families of origin actively undermine the MOW’s land rights and other interests in the village.<sup>90</sup> Obviously, there will be no unfair treatment if the MOW are given land in their husbands’ villages as new members.<sup>91</sup> However, due to the national land policy of “no change for thirty years,”<sup>92</sup> which aims to stabilize and secure investment in rural land, it is very difficult for the MOW to obtain any land entitlement at their husbands’ villages.<sup>93</sup>

Courts are frequently criticized for their reluctance to provide civil remedies to MOW litigants.<sup>94</sup> Although the PRC Constitution provides for gender equality,<sup>95</sup> studies have shown that courts played only a limited role in protecting MOW’s land rights,<sup>96</sup> as well as in enforcing gender equality

86. See generally H. Ray Liaw, *Women’s Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights*, 17 PAC. RIM L. & POL’Y J. 237 (2008) (describing gender discrimination in rural China, exemplified primarily by an inequitable distribution of land).

87. See Guanyu Kaizhan Nongcun Tudi Chengbao Jingying Quan Dengji Shidian Gongzuo de Yijian (关于开展农村土地承包经营权登记试点工作的意见) [Opinions on Promoting the Pilot Program of Rural Land Contracting Registration] (promulgated by the Ministry of Agric., Feb. 5, 2011, effective Feb. 5, 2011) (Westlaw China) (clarifying that farmers have the right to own the land); Nongcun Tudi Chengbao Jingying Quan Dengji Shidian Gongzuo Guicheng (Shixing) (农村土地承包经营权登记试点工作规程 (试行)) [Guidelines on the Pilot Program of Rural Land Contracting Registration (for Trial Implementation)] (promulgated by the Ministry of Agric., June 27, 2012, effective June 27, 2012) (Westlaw China). MOW are underrepresented under the Household Registration System. See Liaw, *supra* note 86, at 24–41, 250–51; see also Guoshen Chen (陈国申) & Qian Gao (高倩), *Tudi Quequan Beijing Xia de Nongcun Funü Tudi Quanyi Wenti Yanjiu* (土地确权背景下的农村妇女土地权益问题研究) [Infringement Problems of Rural Women’s Land Rights and Interests and Countermeasures Under the Background of Land Approval] LINGDAO KEXUE LUNTAN (领导科学论坛) [SCI. LEADERSHIP F.] 51, 53; Zou, *supra* note 82, at 82 (2007).

88. Li & Yin-Sheng, *supra* note 75, at 623; see also Liaw, *supra* note 86, at 239.

89. As an old Chinese saying puts it: “A daughter who marries is like spilled water that cannot be recovered.” Li & Yin-Sheng, *supra* note 75, at 629. In Chinese: jia chuqu de nüer po chuqu de shui (嫁出去的女儿发出去的水).

90. Baoping Liu (刘保平) & Lanru Wan (万兰茹), *Hebei Sheng Nongcun Funü Tudi Quanyi Baohu Zhuangkuang Yanjiu* (河北省农村妇女土地权益保护状况研究) [Research on Protection of Women’s Rights to Land in Rural Hebei] FÜNÜ YÁNIJÜ LÜN CÖNG (妇女研究论丛) [COLLECTION WOMEN’S STUD.] 11 (2007).

91. Liaw, *supra* note 86, at 242 (describing it as “a cycle of loss and gain of land upon marriage”).

92. Judd, *supra* note 14, at 689.

93. Liaw, *supra* note 86, at 242–43.

94. See, e.g., He, *supra* note 23, at 208.

95. XIANFA art. 48 (1982).

96. Hua Gui (桂华), *Lun Fazhi Shengyu de Xingzheng Xina: Guanyu “Waijianü” Shangfang de Tizhi Jieshi* (论法治剩余的行政吸纳—关于“外嫁女”上访的体制解释) [On Administrative Absorption of Legal Residues: Institutional Interpretation of the Petition of “Out-Married Women” to Higher Authorities] KÁIFANG SHÍDÀI (开放时代) [OPEN TIMES] 164, 165 (2017).

legislation.<sup>97</sup> Due to these factors, it is believed that courts are not always able to make decisions solely on the basis of law when adjudicating these types of disputes.<sup>98</sup> Courts find it difficult to come up with a logical ruling when there are gaps in the law.<sup>99</sup> They find it equally difficult to reconcile the inconsistencies between village internal rules and national laws,<sup>100</sup> and to enforce judgments against a defiant village collective.<sup>101</sup> Some courts choose

97. See Hong Luo (罗虹) & Hongwu Zhong (钟宏武), *Zhiyue Woguo Nongcun Funü Tudi Quanyi Baohu de Faxue Fenxi* (制约我国农村妇女土地权益保护的法学分析) [Regulating the Protection of Women's Rights and Interests in China] GĀNSŪ SHÈHUÌ KÈXUÉ (甘肃社会科学) [GANSU SOC. SCI.] 162, 162 (2006). See generally Li & Yin-Sheng, *supra* note 75 (explaining that policy and law do not do enough to close the gender gap women suffer in traditional farming areas); Liaw, *supra* note 86 (arguing that, despite the proper framework to guarantee women rights in land, courts are not properly enforcing the law to actually strengthen these rights).

98. See Chunrong Shang (商春荣) & Yueheng Zhang (张岳恒), *Dangqian Woguo Nongcun Funü Tudi Quanli Baozhang Jizhi Yanjiu* (当前我国农村妇女土地权利保障机制研究) [An Analysis on the Current Mechanisms of Protecting Rural Women's Land Rights in China] HUÁZHONG NÓNGYÈ DÀXUÉ XUÉBĀO (SHÈHUÌ KÈXUÉ BĀN) (华中农业大学学报(社会科学版)) [J. HUAZHONG AGRIC. U. (SOC. SCI. EDITION)] 95, 96 (2010); see also Hou, *supra* note 81, at 54; Changjian Li (李长健) & Qiaoyun Zhang (张巧云), *Woguo Nongcun Funü Tudi Quanyi Baohu Zhidu de Wanshan* (我国农村妇女土地权益保护制度的完善) [Recommendations for Perfecting the Protection of China's Rural Women's Land Rights and Interests] HUÁZHONG NÓNGYÈ DÀXUÉ XUÉBĀO (SHÈHUÌ KÈXUÉ BĀN) (华中农业大学学报(社会科学版)) [J. HUAZHONG AGRIC. U. (SOC. SCI. EDITION)] 77, 80 (2013); Fuzhong Yang (杨福荣), *Falü zai Nongcun bei Bianyuan hua Wenti Yanjiu: Yi Waijia nü Quanyi Jiufen Wei Qierudian de Chubu Kaocha* (法律在农村被边缘化问题研究——以外嫁女权益纠纷为切入点的初步考察) [Research About Problems of Legal Marginalization in China Rural Areas – A Preliminary Study on the Disputes Involving the Rights of Married-Out Women] FǎXUÉ ZǎZHì (法学杂志) [LAW SCI. MAG.] 82, 82 (2010).

99. Liu & Wan, *supra* note 90; see also Yi Chen (陈屹) & Xiang Gao (高翔), *Nongye Chengbao Hetong Anjian Shenli Qingkuang ji Falü Shiyong Yanjiu: Dui Chongqing Shi Bufen Nongye Chengbao Hetong Anjian de Fenxi* (农业承包合同案件审理情况及法律适用研究：对重庆市部分农业承包合同案件的调查分析) [Adjudication and the Application of Law in Agricultural Contract Cases: Investigations into Agricultural Contract Cases], FǎLÜ SHÌYÒNG (法律适用) [J.L. APPL.] [Erlinglingliu Nian Shiyue] (Oct. 2006), at 48; Fei Gao (高飞), *Nongcun Funü Tudi Quanyi Baohu de Kunjing yu Duice Tanxi* (农村妇女土地权益保护的困境与对策探析) [Discussion on the Difficulties on Protecting the Rights and Interests of Rural Women in Terms of Land and Countermeasures], 23 ZHONGGUÓ TŪDÌ KÈXUÉ (中国土地科学) [CHINA LAND SCI.] 47, 50 (2009); Li & Yan, *supra* note 79, at 27; Hailong Sun (孙海龙) et al., *Chengshihua Beijing Xia Nongcun Waijia nü Quanyi Jiufen jiqi Jiejue Jizhi de Sikao* (城市化背景下农村“外嫁女”权益纠纷及其解决机制的思考) [Thoughts of Married-Out-Women's Rights Disputes and Resolution in Rural Area in the Context of Urbanization] FǎLÜ SHÌYÒNG (法律适用) [LAW APPL.] 26, 30 (2004).

100. Chen & Gao, *supra* note 99, at 49; see also Lanzhi Bo (柏兰芝), *Jiti de Chonggou: Zhujiang Sanjiaozhou Diqu Nongcun Chanquan Zhidu de Yanbian: Yi “Waijia nü” Zhengyi wei Li* (集体的重构：珠江三角洲地区农村产权制度的演变——以“外嫁女”争议为例) [Reconstruction of the Collective: The Evolution of Property in Rural Area of Pearl River Delta—A Case Study on Married-Out-Women Disputes] KĀIFĀNG SHÍDÀI (开放时代) [OPEN TIMES] 109, 121 (2013); Jialiang Huang (黄家亮) & Liufen Wu (吴柳芬), *Duoyuan Zhengyi Xia de Xingdong Luoji yu Jiufen Jiejue: Zhujiang Sanjiaozhou “Waijia nü” Jiufen Shizheng Yanjiu* (多元正义下的行动逻辑与纠纷解决——珠江三角洲“外嫁女”纠纷实证研究) [Action Logic and Dispute Resolution Under the Pluralist Justice—An Empirical Research on the Dispute of “Married Daughters” in the Countryside of Pearl River Delta], 37 GUǎNGXÍ MÍNZÚ DÀXUÉ XUÉBĀO (ZHÉXUÉ SHÈHUÌ KÈXUÉ BĀN) (广西民族大学学报(哲学社会科学版)) [J. GUANGXI U. NATIONALITIES (PHIL. SOC. SCI. EDITION)] 10, 11 (2015).

101. Xiaoyun Mo (莫小云), *Guangzhou Shi Baiyun Qu Nongcun Waijia nü Jingji Quanyi Baohu de Sikao* (广州市白云区农村外嫁女经济权益保护的思考) [Thoughts of Protection of Rural Married-Out-Women in Baiyun District, Guangzhou City] NĀNFĀNG JINGJÌ (南方经济) [SOUTH CHINA ECON.] 30, 31 (2003); see also Sun et al., *supra* note 99, at 30; Xia, *supra* note 82, at 88.

to reject the disputes before they can be docketed.<sup>102</sup> In some regions, such as in Guangdong Province, courts began to accept MOW cases, but required the MOW to first seek administrative remedies.<sup>103</sup> If the MOW were dissatisfied with the administrative decision, they could then take the matter to court as an administrative case.<sup>104</sup>

#### B. EXISTING LITERATURE GAP ON THE MARRIED-OUT WOMEN ISSUE

Previous qualitative research focused on the following aspects of the MOW issue: (1) the ramifications of the lack of civil remedies for MOW and various ways to protect MOW land rights when civil remedies were unavailable (for example, by introducing shareholding cooperatives);<sup>105</sup> (2) the suppression of rural women's rights in traditional Chinese culture;<sup>106</sup> (3) MOW's weak position under China's rural land policy and land ownership

102. Wanyou Mo (莫万友), *Nongcun Waijianü Quanyi Baohu Wenti Tanxi: Zhushan jiao Z Shi de Shizheng* (农村外嫁女权益保护问题探析——珠三角 Z 市的实证) [On Protection of Rights and Interests of Rural Married-Out-Women: An Empirical Study on Z City in Pearl River Delta] *NONGCUN JINGJI* (农村经济) [RURAL ECON.] 94, 97 (2013).

103. Mingyong Yu (余明永) et al., *Waijianü de Quanyi Baohu: Yi Guangzhou Shi Fayuan Feisu Zhixing Anjian de Shencha yu Zhixing wei Shijiao* (外嫁女的权益保护——以广州市法院非诉执行案件的审查与执行为视角) [Protection of Rights and Interests of Married-Out-Women: From the Perspective of Adjudication and Execution of Non-Litigation Execution Cases in Courts in Guangzhou] *FÁZHÌ LÜNTÁN* (法论坛) [F. RULE L.] 21, 22–23 (2014).

104. Sun et al., *supra* note 99.

105. See generally Meishan Jiang (姜美善) & Chunrong Shang (商春荣), *Nongcun Gufen Hezuozhi Fazhan zhong de Funü Tudi Quanyi* (农村股份合作制发展中的妇女土地权益) [Women's Land Rights and Interests in the Development of Rural Shareholding System] *NONGCUN JINGJI* (农村经济) [RURAL ECON.] 23 (2009) (discussing the trajectory of the development of shareholding cooperatives in rural China); Li & Zhang, *supra* note 98 (calling for pro-MOW legislative reform and legal aid for rural women); Luo & Zhong, *supra* note 97 (pointing out that the underlying factors contributing to the MOW problem are the lack of gender consideration in China's land policy, the conflict between the policy to stabilize land ownership/use and the mobility of MOW, the tensions between village autonomy and national law, and the absence of civil remedies); Chunrong Shang (商春荣), *Dui Nongcun Funü Tudi Quanli Wenti de Jieji* (对农村妇女土地权利问题的解析) [An Investigation of the Issue of Rural Women's Right of Land], 24 *SHANTOU DAXUE XUEBAO* (RÉNWÉN SHÈHUÌ KÈXUÉ BÀN) (汕头大学学报(人文社会科学版)) [J. SHANTOU U. (HUMAN. & SOC. SCI. EDITION)] 56 (2008) (calling for the transformation of land rights into "shares" (股份化), the promotion of gender equality in rural governance, and the regulation of villagers' charters); Shang & Zhang, *supra* note 98 (suggesting greater government intervention in MOW disputes, clarifying the land rights of the MOW by legislation, reconciling the villagers' charters and national law, and improving education for rural women); Wang & Li, *supra* note 64 (discussing the legislative (unclear rights-subjects), executive (lack of supervision over village organizations), and judicial (refusing to take on the disputes) dimensions of the MOW issue, suggesting that civil remedies, which were lacking, were crucial to resolving the problem).

106. See generally Hou, *supra* note 81 (arguing that the villager's charter was not only a set of written rules, but also the manifestation of the traditional community structure, and further opining that the more united a village was, the more powerful the villagers' charter would be, which in turn meant increased difficulty for MOW to assert equal land rights); Jinwen Xia (夏锦文) & Xiaojie Chen (陈小洁), *Qiyu Fazhi Wenhua: Yiyi Chanshi, Yunxing Jili yu Fazhan Lujing* (区域法治文化: 意义阐释、运行机理与发展路径) (Area Culture of Rule of Law: Meaning, Mechanism and Development) *FÁLÜ KÈXUÉ (XIBÉI ZHÈNGFÀ DÀXUÉ XUEBÀO)* (法律科学(西北政法大学学报)) (SCI. L. (J. NORTHWEST U. POL. SCI. L.)) 3 (2015) (explaining that it was "area legal culture" that shaped the local rural governance framework that either protected or discriminated against MOW, suggesting that mediation is the best tool to reconcile the tension between the national law and local customs).

system;<sup>107</sup> (4) the conflict between national law and rural regulations/norms;<sup>108</sup> and (5) the function of the petition system (*xinfang*) in resolving MOW land disputes.<sup>109</sup>

Previous quantitative research focused on: (1) gender inequality in the distribution of rural land;<sup>110</sup> (2) the *status quo* of MOW's rural land rights in China;<sup>111</sup> (3) the relationship between the land policy that prohibits adjustment

107. See generally Duanhong Chen (陈端洪), *Paitaxing yu Tazhehua: Zhongguo Nongcun "Waijianü" Anjian de Caichanquan Fenxi* (排他性与他者化: 中国农村“外嫁女”案件的财产权分析) (*Exclusivity and Alienation: Analysis on property rights in rural Married-Out-Women cases*), 5 BÈIDÀ FÁLǚ PÍNLǚN (北大法律评论) [PEKING U. L. REV.] 321 (2003) (proposing a two-tier-comprehension of the “collective land right” and inverting “usufruct of land” (收益权) into “shares” (股份化) to resolve the problem); Chen and Gao, *supra* note 87 (explaining how individual women were ignored as rights-subjects in the process of “land approval” (土地确权), a national policy intending to provide stability in land management and delegating land rights to “households” (户), instead of individuals); Tiejun Wen (温铁军), *Nongmin Shehui Baozhang yu Tudi Zhidu Gaige* (农民社会保障与土地制度改革) (*Farmers' Social Security and Land System Reform*) XUÉXÍ YUÉKĀN (学习月刊) (STUD. MONTHLY) 20 (2006) (emphasizing that the fundamental function of rural land in China was to offer peasants with basic income and a decent livelihood).

108. See generally Huang and Wang, *supra* note 81 (arguing that the government and courts should refrain from intervening in the affairs of the village collective and only interfere when there is procedural impropriety in the allocation of compensation); Tang, *supra* note 78 (suggesting reconciling national law with local rural customs, rather than rigidly executing the national law); Wang, *Legal Discourse of Good Governance*, *supra* note 81 (discussing the nature, function, and status of villagers' charters from a historical perspective and emphasizing the tradition of village autonomy in Chinese history); Wang, *Establishing Systems of Legal Protection*, *supra* note 81 (arguing that MOW disputes were the result of traditional culture that discriminated against women, the lack of government supervision over the village collective, the lack of a clear mechanism to confirm rural collective membership, and the absence of civil remedies); Yang, *supra* note 98 (discussing the marginalization of law in rural areas in China and the weakness of the regime in governing rural areas, as well as emphasizing the need to strengthen the regime's programme to improve farmers' livelihood, reduce their dependence on the village collective, and narrow the developmental gap between villages).

109. Gui, *supra* note 96 (observing that courts are not accepting MOW disputes as civil cases and arguing that the administrative authorities, under the petition system, are in a better position to handle MOW disputes because they have abundant resources and are usually more flexible in dealing with these kinds of matters).

110. Ling Zhu (朱玲), *Nongdi Fenpei Zhong de Xingbie Pingdeng Wenti* (农地分配中的性别平等问题) (*Gender Inequality in China's Land Tenure System*) JINGJÌ YANJIŪ (经济研究) (ECON. RES. J.) 34 (2000) (discovering, through extensive fieldwork, that marriage was the most common reason that causes rural women to lose land, that rural women's entitlement to land is determined primarily by the village collective, and that the richer the village, the higher the likelihood that rural women will be allocated land rights).

111. See generally Jianyong Li (李建勇) & Liyuan Cao (曹力元), *Jingji Shehui Bianqian Shiyu zhong de Tudi Chengbao Jingyingquan Zhidu de Wanshan* (经济社会变迁视阈中的土地承包经营权制度的完善) [*Improvement of the System for the Right of Land Contractual Operation in Changes of Economy and Society*], 26 SHĀNXÌ GĀODÉNG XUÉXIÀO SHÈHUÌ KÈXUÉ XUÉBÀO (山西高等学校社会科学学报) (SOC. SCI. J. U. SHANXI) 57 (2014) (arguing that the infringement of land rights was most severe when MOW married to distant villages); Luo, Zheng, and Huang, *supra* note 76 (arguing that traditional culture, the lack of rights consciousness and the failure of courts to enforce national laws were the main causes of rural women landlessness in Fujian Province); Wenrong Qian (钱文荣) & Yingchun Mao (毛迎春), *Zhongguo Nongcun Funü Tudi Quanli Wenti de Shizheng Yanjiu* (中国农村妇女土地权利问题的实证研究) (*An Empirical Study of Land Rights of Rural Women in China*), 35 ZHÈJIĀNG DÀXUÉ XUÉBÀO (RÉNWÉN SHÈ KÉ BĀN) (浙江大学学报(人文社科版)) (J. ZHEJIANG U. (HUMAN. & SOC. SCI.)) 21 (2005) (arguing that rural women would easily lose their land rights as a result of migration and marriage); Jingxin Wang (王景新), *Zhongguo Nongcun Funü Tudi Quanli: Yiyi, Xianzhuang, Qushi* (中国农村妇女土地权利: 意义、现状、趋势) (*Land Rights of Chinese Rural Women: Significance, Status and Trends*) ZHŌNGGUÓ NÓNGCŪN JINGJÌ (中国农村经济) (CHINESE RURAL ECON.) 25 (2003) (arguing that traditional culture and the lack of women's participation in social and political affairs in the rural community are the main causes of women's disadvantageous position in

to rural land entitlements and landlessness of rural women;<sup>112</sup> and (4) the impact of villagers' charters on rural women's land rights.<sup>113</sup>

To date, no quantitative research has been conducted on MOW civil lawsuits, a gap that this Article intends to fill.

### C. CHINA'S CEDAW OBLIGATIONS ON MARRIED-OUT WOMEN

China is under an obligation to protect the land rights of MOW (who are considered "rural women") under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>114</sup> China's formal dialogue with the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), which arises out of China's reporting obligation under CEDAW, did not produce any conclusive evidence that MOW are being treated fairly and equally in the distribution of government compensation following rural land expropriations. China presented its Combined Seventh and Eighth Periodic Report to the CEDAW Committee (7/8 Reports) at the 59th Session of the CEDAW Committee in Geneva in 2014.<sup>115</sup> The 7/8 Reports are the latest reports submitted by China to the United Nations.<sup>116</sup> China reported that efforts have been made to properly

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rural land ownership; also observing that while rural women were aware of their rights being infringed, they rarely resort to legal remedies); Yawei Zhang (张雅维) et al., *Shandong Sheng Nongcun Funü Tudi Quanyi Diaocha Fenxi* (山东省农村妇女土地权益调查分析) (*An Investigation Analysis of Rural Women's Land Rights in Shandong*) SHĀNDŒNG NŪZĪ DAXUÉ XUÉBĀO (山东女子大学学报) [J. SHANDONG WOMEN'S U.] 18 (2011) (arguing that most rural women would not take their land disputes to court, as most courts do not accept these types of cases anyway).

112. See generally Chuanhao Tian (田传浩) & Jia Chen (陈佳), *Jingzhi Tudi Tiaozheng yu Funü Tudi Quanli Baozhang: Jiyu Zhejiang he Shaanxi de Jingyan* (禁止土地调整与妇女土地权利保障——基于浙江和陕西的经验) [*The Prohibition of Rural Land Readjustment and the Protection of Women's Land Rights: Evidence from Zhejiang and Shaanxi Province*], 12 JINGJÌ XUE (经济学) (CHINA ECON. Q.) 719 (2013) (discussing how rural women lose land as a result of changing their residence, typically when they marry and move to live with their husbands).

113. Senwei Huang (黄森慰) et al., *Nongcun Funü Tudi Quanyi, Jiating Shouru yu Tudi Zhengce: Jiyu Fujian Sheng Diaocha Shuju* (农村妇女土地权益、家庭收入与土地政策——基于福建省调查数据) (*Land Rights of Rural Women, Incomes of Families and Land Policies: Based on Investigations into Fujian Province*), 22 ZHÖNGGUÓ NÖNGYÈ DAXUÉ XUÉBĀO (中国农业大学学报) (J. CHINA AGRIC. U.) 213, 216 (2017) (arguing that discrimination was not overwhelming—with 77.57% of respondents answering that there was "[n]o such discriminating charter"—the villagers' charters undermine the families' economic status by decreasing the area of farmland of those affected families).

114. G.A. Res. 34/180, at 15–16 (Dec. 18, 1979). See, in particular, Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 32 on the Rights of Rural Women, Arts. 14 and 15(2), CEDAW/C/GC/34 (Mar. 4, 2016) [hereinafter General Recommendation No. 32]. Under the General Recommendation on the Rights of Rural Women of the CEDAW Committee, which state parties must follow, the following was highlighted: "[s]tates parties should ensure that legislation guarantees rural women's rights to land, water and other natural resources, on an equal basis with men, irrespective of their civil and marital status or a male guardian/guarantor, and that they have full legal capacity." General Recommendation No. 32, at 17.

115. The session was held between October 20 and November 7, 2014.

116. China was due to submit its Ninth Report to the CEDAW Committee on November 1, 2018, but to date no report has been submitted. See *UN Treaty Body Database*, UNITED NATIONS HUMAN RIGHTS OFFICE

resolve the issue of land contract disputes involving rural women.<sup>117</sup> China pointed to a number of key statutes that provided protection to the rights of women in rural land contracting and ensured that there is court access if such rights are infringed.<sup>118</sup> It was reported that various state organs carried out special programs to ensure that the relevant statutory provisions that provide protection to the rights of women in rural land contracting were enforced.<sup>119</sup> Regarding the persistent problem of rural women being deprived of compensation in rural land expropriation, the 7/8 Reports explained that special efforts had been made to strengthen the regulation of the distribution and use of the land acquisition compensation fees.<sup>120</sup> In its Concluding Observations, the CEDAW Committee was still concerned that “a high proportion of women in rural areas are still left without contracted land,”<sup>121</sup> and called upon China to “eliminate all barriers which restrict women’s access to land, particularly in rural areas, and ensure that the mediation and settlement of such disputes afford women effective remedies.”<sup>122</sup> China is due to report on measures that it has taken to implement the above recommendations in the upcoming reporting cycle.<sup>123</sup>

### III. DATA, METHODOLOGY, AND VARIABLES

#### A. DATA AND METHODOLOGY

In an effort to make the Chinese judiciary more transparent, many courts in China now make their “documents of adjudication decisions”<sup>124</sup> (DADs) available to the public, and they are searchable online.<sup>125</sup> This opens up an invaluable research resource for empirical work on Chinese courts through coding and analyzing the DADs.<sup>126</sup> Using the China Judgments Online search system, a search was conducted on March 21, 2018 for the purpose of the

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OF THE COMM’R, [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CHN&Lang=EN) (last visited Nov. 6, 2019).

117. Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of State Parties: State Parties: China, CEDAW/C/CHN/CO/7-8 (Nov. 7, 2014) [hereinafter 7/8 Reports].

118. *Id.* at 3, 9 (referencing specifically the Law on the Protection of Women’s Rights and Interests and Property Law).

119. *Id.* at 2.

120. *Id.* at 9.

121. *Id.*

122. *Id.*

123. The next session of the Committee is the 75th Session (Feb. 10, 2020–Feb. 28, 2020, but China is not on the agenda).

124. In Chinese: *caipan wenshu* (裁判文书).

125. This Article uses the China Judgments Online (<http://wenshu.court.gov.cn/>) search engine, which holds one of the most comprehensive repositories of DADs online.

126. For previous empirical studies of DADs in China, *see, e.g.*, He & Su, *supra* note 2; *see also* He and Lin, *supra* note 55. While there is no system of *stare decisis* in China, DADs will slowly gain some normative influence over subsequent cases as parties are now in a position to check whether their judge is deviating from previous decisions.

present study. In the search, the search terms “married-out women” (外嫁女) and “Collective Economic Organization” (集体经济组织成员权益) were used in a whole document search, and the search was limited to “judgments” (判决) of “first-instance” (一审) in “civil cases” (民事) at “grassroots courts,” also known as “basic-level courts” (基层法院). The search results contained 3579 DADs, which covers the time period between 2009 and 2017.<sup>127</sup> Eighty-one DADs were dropped for being duplicates. The resulting dataset contains 3498 DADs. To ensure the sample presents the same temporal and regional structure of the population, the 3498 cases were assigned into different groups in accordance with the year of the decision and the province where the court belongs. The identified DADs were then randomly sampled. A sample of 1166 cases was selected, which is one-third of the population. After examining the DADs, a codebook was created with a list of variables. Then, the information from the DADs was hand-coded into a computer. Forty-four DADs were dropped as they were unrelated to MOW’s land rights. A further 257 DADs were dropped because the cases involved only the MOW’s spouses or children, while the MOW themselves were not the claimants. An additional seven DADs were dropped, of which two were duplicates, three contained no information on the outcome of the case, and two were retrial cases, which were not within the scope of this study because this study focuses only on first instance cases. The final number for the DADs analysis was 858.<sup>128</sup>

The DADs analysis is supplemented by semi-structured interviews with four informants who are judges and a legal practitioner with experience in handling MOW disputes.<sup>129</sup> The informants come from Jiangxi, Guangdong, Shaanxi and Beijing. The selection provides diversity in regional variation and professional experience.

#### B. HOW DOES ONE DETERMINE WINNING AND LOSING?

The following metrics are adopted to determine whether the plaintiff (MOW litigant) is winning through a complete win or partial win, or losing.

127. DADs from 2018 were dropped because the complete set of DADs for 2018 was unavailable at the time of the search (March 21, 2018). The DADs prior to 2009 were also dropped because only two cases were available online.

128. In some of the crosstabs analyses below, the chi-square test is not applicable due to the lack of sufficient number of cases in each cell.

129. The informant from Jiangxi Province is a forty-one-year-old male judge who works at a basic-level court in Jiangxi Province. The Author got in touch with this informant through a personal contact at the Higher People’s Court of Jiangxi Province. This informant has experience in handling MOW lawsuits. The informant from Guangdong Province is a thirty to forty-year-old female judge who works at a basic-level court in Guangdong Province. She is a personal contact of the author, and she has some experience in handling MOW disputes. The informant from Shaanxi Province is a female judge, approximately fifty years old, who works at a basic-level court in Shaanxi Province. She is a personal contact of the author, and she has extensive experience in handling MOW disputes. The informant from Beijing is a practicing thirty-eight-year-old male lawyer. He runs a small firm in Beijing, which is well known in China for assisting MOW litigants. He is a personal contact of the author.

For monetary claims, a “complete win” means the plaintiff is awarded the full amount claimed and the court confirms her status as member of the village collective. Any of the following situations would be regarded as a “partial win.” (1) plaintiff recovered the full amount of the monetary claim, but the court does not confirm the plaintiff’s membership status; (2) plaintiff recovered a partial amount of the monetary claim and the court confirms plaintiff’s membership status; (3) plaintiff recovered a partial amount of the monetary claim and the court does not confirm plaintiff’s membership status; or (4) plaintiff is not awarded any monetary amount, but the court confirms the plaintiff’s membership status. For monetary claims, only when the plaintiff is not awarded any monetary amount and the court does not confirm the plaintiff’s membership status would it be considered a “loss” for the plaintiff.

Non-monetary claims are actions requesting the court only to confirm the plaintiff’s status as member of the village collective, without any claim for monetary compensation relating to the land expropriation. If the court confirms the plaintiff’s membership status, in which case the plaintiff’s Share of Litigation Fees (SLF) is 0 percent, it is considered a “complete win.” If the court did not confirm the plaintiff’s membership status, in which case the plaintiff’s SLF is 100 percent, it is considered a “loss.” There will be no “partial win” for non-monetary claims.

#### C. INTRODUCTION TO THE VARIABLES

An analysis will be conducted to identify the variations of the MOW’s success rates by a number of relevant independent variables: (1) party capacity; (2) MOW’s connections with the villages; (3) legal representation; (4) law and regulations of the state; (5) village internal rules; (6) previous dispute resolution; and (7) procedural variables.

Party capacity encompasses variables such as the age, occupation, and place of residence (either rural or urban) of the plaintiff, as well as the institutional structure of the defendant and the number of defendants (single or multiple). The role of lawyers in the variation of the outcome will be examined.<sup>130</sup> For a MOW to acquire membership status of the rural collective, she must demonstrate connection with the village.<sup>131</sup> Given the divergent standards adopted by courts in determining “connection,” it would be interesting to see how different types of “connections” play out in the adjudication of MOW cases.<sup>132</sup> While no national statute provided the test to

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130. See, e.g., John Szmer et al., *Does the Lawyer Matter: Influencing Outcomes on the Supreme Court of Canada*, 41 LAW & SOC. REV. 279, 298 (2007) (“Litigation team experience and size affect the Court’s decisionmaking, even after controlling for several factors, including ideology and party capability.”).

131. Wen, *supra* note 107, at 20.

132. These connections that MOW litigants have with the natal village were selected because they appeared repeatedly in the sampled DADs. These connections are likely to be considered relevant in the court’s determination of membership status of the MOW.



determine village collective membership,<sup>133</sup> a plethora of national laws either directly or indirectly protect the land rights of the MOW.<sup>134</sup> Provincial judicial rules that favor MOW rights were believed to be an important factor in shaping the attitude of lower courts.<sup>135</sup> It is also valuable to understand how courts interpret village internal rules (villagers' charters) and the resulting variation of the outcome.<sup>136</sup> Furthermore, the data will also allow one to determine whether previous court decisions, administrative rulings, and citizens' petitions are significant in the variation of the outcome. Procedural variables—like trial in absentia and burden of proof—will also be applied.

#### IV. FINDINGS AND ANALYSIS: THE “HAVE-NOTS” CAME OUT AHEAD

##### A. OVERVIEW

###### 1. Temporal Variations

Temporal variations are explored as part of the overview of the data.<sup>137</sup> In terms of the MOW's success rates by the year of the court decision, 2015 had the highest rate of frequency, and 2009 had the lowest rate of frequency. Using the losing rate as the benchmark, it appears that an upward trend can be identified during the period between 2012 and 2016.<sup>138</sup> Looking at the rate of frequency, there was an explosion of lawsuits from 2014 to 2016.<sup>139</sup> The high losing rate coincided with the explosion of lawsuits between 2014 and 2016.<sup>140</sup>

133. See *supra* text accompanying notes 22–26.

134. See *supra* text accompanying note 18.

135. Guanyu Shenli Nongcun Jiti Jingji Zuzhi Shouyi Fenpei Jiufen Anjian de Huiyi Jiyao (关于审理农村集体经济组织收益分配纠纷案件的会议纪要) (Minutes of a Meeting about Adjudicating Cases of Disputes on Allocation of Rural Economic Collective Incomes) (promulgated by the High Ct. Chongqing Municipality, May 31, 2009, effective May 31, 2009) (Westlaw China).

136. The villagers' charter is the “internal constitution” of the village community and is usually unpublished. Villagers' charters in many rural communities violate state law. A common criticism of villagers' charters is that they are being used as a tool to control villagers, instead of being used to instill the core values of the village community and protect the rights of its members. In many cases, the villagers' charter was used as a ground to defeat MOW's claims in court. How courts interpret these laws and villagers' charters—and whether the outcome is significantly varied by the interpretation—are important information that helps an individual better read the MOW issue.

137. See *infra* Table 1.

138. The MOW litigants' losing rate first increased in 2013 (from 0% in 2012 to 3.03% in 2013). The losing rate continued to spike in 2014 (6.50%), came down slightly in 2015 (6.33%), and then shot up again in 2016 (10.80%). The interesting phenomenon is that the losing rate came down drastically in 2017 (1.23%).

139. In 2013, there were only thirty-three cases nationwide (3.85%). In 2014, the frequency skyrocketed to 200 cases (23.31%). It stayed at this elevated level during 2015 (221 cases, 25.76%) and 2016 (213 cases, 24.83%), until it dropped to 162 cases (18.88%) in 2017.

140. The explosion in the number of lawsuits suggests that the volume of MOW disputes skyrocketed during this period. One possible explanation is that, when more people sued, it encouraged others with less meritorious claims to bring lawsuits as well.

TABLE 1: MOW'S SUCCESS RATES BY THE YEAR OF COURT DECISION

Year of decisions	Frequency	Complete win	Partial win	Loss
2017	18.88%	85.80%	12.96%	1.23%
2016	24.83%	75.59%	13.62%	10.80%
2015	25.76%	76.47%	17.19%	6.33%
2014	23.31%	70.00%	23.50%	6.50%
2013	3.85%	75.76%	21.21%	3.03%
2012	1.75%	80.00%	20.00%	0.00%
2011	0.82%	85.71%	14.29%	0.00%
2010	0.70%	66.67%	33.33%	0.00%
2009	0.12%	0.00%	100.00%	0.00%

## 2. Regional Variations

Mapping MOW litigants' success rates across provinces may reveal interesting patterns. Courts in each province may adopt different approaches to MOW cases due to policy or case management reasons. Local rules and the policies of provincial high courts on MOW disputes may also differ.<sup>141</sup> The divergence in economic development may also affect how courts in different provinces treat MOW cases.

Hunan had the highest rate of frequency during the period of 2009–2017, while Hebei, Jiangsu, Jiangxi and Liaoning had the lowest rate of frequency.<sup>142</sup> The provinces with the lowest losing rates were Chongqing, Gansu, Inner Mongolia, Hebei, Jiangsu and Liaoning.<sup>143</sup> The province with the highest losing rate was Shanxi.<sup>144</sup>

141. For instance, a policy document issued by the Shaanxi Provincial High Court made it clear that the MOW would lose their membership status in their natal village collective if: (1) the litigant's actual residence was not in the village; (2) the litigant's primary source of income was not from the village; or (3) the litigant failed to make contributions to the village. See Guanyu Shenli Nongcun Jiti Jingji Zuzhi Shouyi Fenpei Jiufen Anjian Taolunhui Jiyao (关于审理农村集体经济组织收益分配纠纷案件讨论会纪要) (Minutes of a Session about Adjudicating Cases of Disputes on Allocation of Rural Economic Collective Incomes) (promulgated by the High Ct. Shaanxi Province, Jan. 6, 2006, effective Feb. 1, 2006) (Westlaw China). These disqualification provisions are not found in the policy document issued by the Anhui Provincial High Court. See Guanyu Chuli Nongcun Tudi Jiufen Anjian De Zhidao Yijian (关于处理农村土地纠纷案件的指导意见) (Guideline about Handling Disputes on Rural Land) (promulgated by the High Ct. Anhui Province, Dec. 27, 2004, effective Jan. 1, 2005) (Westlaw China).

142. See *infra* Table 2.

143. Hebei, Jiangsu, and Liaoning also have the lowest rate of frequency (0.12%). See *infra* Table 2.

144. But note that Shanxi has the second lowest rate of frequency (0.23%). See *infra* Table 2.

TABLE 2: MOW'S SUCCESS RATES ACROSS PROVINCES (N=858)

Province	Frequency	Complete win	Partial win	Loss
GDP/Capita (unit: RMB)				
<b>Jiangsu</b> (96887)	0.12%	100.00%	0.00%	0.00%
<b>Zhejiang</b> (84916)	7.11%	57.38%	32.79%	9.84%
<b>Fujian</b> (74707)	12.59%	70.37%	17.59%	12.04%
<b>Guangdong</b> (74016)	15.62%	72.39%	25.37%	2.24%
<b>Inner Mongolian</b> (72064)	0.35%	66.67%	33.33%	0.00%
<b>Chongqing</b> (58502)	1.17%	70.00%	30.00%	0.00%
<b>Shaanxi</b> (51015)	5.48%	65.96%	19.15%	14.89%
<b>Liaoning</b> (50791)	0.12%	100.00%	0.00%	0.00%
<b>Hunan</b> (46382)	35.08%	81.40%	16.28%	2.33%
<b>Hainan</b> (44347)	15.97%	89.78%	6.57%	3.65%
<b>Hebei</b> (43062)	0.12%	100.00%	0.00%	0.00%
<b>Henan</b> (42575)	0.58%	40.00%	40.00%	20.00%
<b>Jiangxi</b> (40400)	0.12%	0.00%	100.00%	0.00%
<b>Sichuan</b> (40003)	0.47%	50.00%	0.00%	50.00%
<b>Anhui</b> (39561)	1.40%	66.67%	0.00%	33.33%
<b>Guangxi</b> (38027)	3.26%	85.71%	3.57%	10.71%
<b>Shanxi</b> (35532)	0.23%	0.00%	0.00%	100.00%
<b>Gansu</b> (27643)	0.23%	50.00%	50.00%	0.00%

### 3. *Economic Factors: MOW's Success Rates Across Four GDP Per Capita Clusters*

To measure the variation across provinces of similar economic strength in terms of GDP per capita,<sup>145</sup> the provinces are assigned into four different "GDP Per Capita Clusters."<sup>146</sup>

145. The latest official GDP per capita data of provinces available in China run up to 2016. See National Data, NAT'L BUREAU OF STATISTICS OF CHINA (last visited Nov. 6, 2019) <http://data.stats.gov.cn/easyquery.htm?cn=E0103>.

146. The four clusters are: (a) not less than RMB20000, but less than RMB40000 per capita; (b) not less than RMB40000, but less than RMB60000 per capita; (c) not less than RMB60000, but less than RMB80000 per capita; and (d) not less than RMB80000, but less than RMB100000 per capita.

TABLE 3: MOW'S SUCCESS RATES BY GDP CLUSTERS  
(N=858)

GDP per capita*	Frequency	Complete win	Partial win	Loss
(Unit: RMB1000)				
[80, 100)	7.23%	58.06%	32.26%	9.68%
[60, 80)	28.55%	71.43%	22.04%	6.53%
[40, 60)	58.86%	81.39%	14.26%	4.36%
[20, 40)	5.36%	73.91%	6.52%	19.57%

\*NOTE: CHI-SQUARE=39.460, \*P=0.000(<0.01).

From the data,<sup>147</sup> it can be concluded that the region with the weakest economic development (GDP Per Capita Cluster (RMB20000–40000)) is least favorable to MOW litigants because it has the highest losing rate.<sup>148</sup>

While one may expect that the more economically developed the region is, the lower the losing rate would be,<sup>149</sup> we find that the cluster with the highest GDP per capita value (GDP Per Capita Cluster (RMB80000–100000)) is second least favorable to MOW litigants (with the second highest losing rate). A possible explanation from an economic perspective is that economically developed regions provide more non-agricultural work opportunities and, as such, the value of the rural land (and/or its derivative interests) was comparatively less significant in sustaining the MOW's livelihood. On this basis, the court may find less connection between the MOW and their natal village.<sup>150</sup>

The MOW litigant's success rates varied significantly across the different GDP Per Capita Clusters (chi-square=39.460, P=0.000).

## B. THE "HAVE-NOTS" CAME OUT AHEAD

### 1. MOW Litigants ("Have-Nots") Are Winning By a Substantial Margin

The findings show that MOW litigants are winning by a substantial margin.<sup>151</sup> Out of the 858 sampled cases, the MOW litigants won 93.90% of the time, combining "complete win" (76.50%) and "partial win" (17.40%). The MOW litigant only lost 6.20% of the time.

147. See *supra* Table 3.

148. A possible explanation for this phenomenon is that, in poorer regions, there is less awareness for protecting women's rights, and women are generally less educated and usually occupy a weaker position in society vis-à-vis their counterparts in more developed regions. For these reasons, courts in poorer regions may see less of an obligation to enforce MOW property rights.

149. The proposition would be that MOW litigants in economically advanced regions tend to be more educated, resourceful, and rights conscious.

150. Zhu, *supra* note 110, at 38.

151. See *infra* Table 4.

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TABLE 4: GENERAL INFORMATION ON OUTCOME FOR THE MOW

Outcome	Frequency	Percent	Cumulative Percent	Rate of Recovery of Monetary Claim	Frequency	Percent
<b>Complete win</b>	656	76.50%	76.50%	<b>100%</b>	656	77.63%
<b>Partial win</b>	149	17.40%	93.90%	<b>(75%, 100%)</b>	62	7.34%
<b>Loss</b>	53	6.20%	100%	<b>(50%, 75%]</b>	28	3.31%
<b>Total</b>	858	100%		<b>(25%, 50%]</b>	23	2.72%
				<b>(0%, 25%]</b>	10	1.18%
				<b>0%</b>	66	7.81%
				<b>Total</b>	845	100%

## 2. *Monetary Claims: Recovery Rate, Average Claim, and Average Award*

The rate of recovery by the MOW litigants in monetary claims, excluding non-monetary claims, (n=845) are on the high side, with 77.63% of the MOW litigants recovering the full amount (recovered 100%) of their claims.<sup>152</sup>

The data shows (n=845) that the mean and median values of the average monetary claim are RMB55509.09 and RMB22745.95, respectively, with standard deviation at RMB110682.73.<sup>153</sup> The data shows the mean and median values of the average monetary award are RMB48643.65 and RMB17500.00, respectively, with standard deviation at RMB108310.58. The data shows the mean and median values of the recovery rates of monetary claims are 0.8784 and 1, respectively, with standard deviation at 0.2946.

152. See *supra* Table 4.

153. See *infra* Table 5.

TABLE 5: STATISTICS ON MONETARY CLAIMS  
(N=845)

	Mean	Median	SD
<b>Average monetary claim</b>	55509.09	22745.95	110682.73
<b>Average monetary award</b>	48643.65	17500.00	108310.58
<b>Recover rate</b>	0.8784	1	0.2946

### 3. *Judicial Confirmation of the MOW's Village Collective Membership Status*

From the data (n=849), the court confirmed the MOW's membership status 92.46% of the time. In 3.77% of the cases, the court denied the MOW's membership status.<sup>154</sup> For cases that confirmed the MOW's membership status, 83.31% were complete wins, and 16.69% were partial wins. By definition, no MOW litigant had lost under this situation. This is contrasted with the substantially lower success rate in cases where the court denied the MOW's membership status: 0% (complete win), 6.25% (partial win), and 93.75% (loss).

For cases where the court deferred the decision of membership status to the village collective, the MOW partially won 60% of the time and lost 40% of the time. This seems paradoxical at first glance, as confirming membership status seems to be a consistent basis for courts awarding compensation. The high partial win rate means that the court awarded monetary compensation to the MOW litigants despite deferring the question of membership status to the village collective. From reviewing the reasoning in the DADs in this category, the court had in fact impliedly accepted the MOW's membership status, but it was not prepared to formally confirm the MOW's membership status, stating that such power was vested in the village collective.<sup>155</sup>

154. *See infra* Table 6.

155. For a particular case that illustrates this, see Yuangao Zhang Lihui Su Beigao Changsha Shi Yuhua Qu Tiaoma Zhen Xiyu Cun Zhangjiawan Cunmin Xiaozu Yi Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen (原告张利辉诉被告长沙市雨花区跳马镇喜雨村张家湾村民小组以侵害集体经济组织成员权益纠纷) [Zhang Lihui v. Zhangjiawan Grp., Xiyu Village, Tiaoma Town, Yuhua Dist., Changsha City on Infringing Rights and Interests of Members of Econ. Collective] (Changsha Yuhua Dist. People's Ct. June 13, 2016) (China).

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TABLE 6: MOW'S SUCCESS RATES BY THE COURT'S DECISION ON MOW'S MEMBERSHIP STATUS (N=849)

Decision on MOW's Membership Status	Frequency	Complete win	Partial win	Loss
Confirmed membership status	92.46%	83.31%	16.69%	0.00%
Denied membership status	3.77%	0.00%	6.25%	93.75%
Deferred to the village collective	2.36%	0.00%	60.00%	40.00%
Remained silent on the issue	1.06%	0.00%	0.00%	100.00%
Declined to make any decision	0.35%	0.00%	100.00%	0.00%

#### 4. Whether "Village Autonomy" Was Mentioned in the Court Decision

In adjudicating MOW lawsuits, the court may need to balance the interests of the MOW and the village collective.<sup>156</sup> Courts that are inclined to respect "village autonomy" are usually more reluctant to apply national laws that favor the MOW and overturn decisions already made by the village collective.<sup>157</sup> This hypothesis will be tested with the data.

156. Telephone Interview with Anonymous Female, Judge, Shaanxi Province Basic-Level Court (Jan. 9, 2019) [hereinafter Interview with Anonymous Female Judge in Shaanxi Province]. Courts in China frequently find themselves in a position of needing to consider the social impact of their decisions, especially for cases that could potentially upset the stability of the local community. *Id.* Court mediation is used by Chinese courts as a way to pacify the parties and alleviate the harshness of the zero-sum nature of litigation. *Id.* See generally PETER C.H. CHAN, *MEDIATION IN CONTEMPORARY CHINESE CIVIL JUSTICE: A PROCEDURALIST DIACHRONIC PERSPECTIVE* (2017) (analyzing the social agenda in Chinese civil adjudication).

157. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156; see also *supra* note 129. For a case example of courts that have an inclination of respecting "village autonomy" that are usually more reluctant to apply national laws that favor the MOW, see Zheng Shaolu Yu Jinhua Shi Jindong Qu Xiaoshun Zhen Shitatou Cun Cunmin Weiyuanhui Qinhai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen Yishen Minshi Panjueshu (郑少路与金华市金东区孝顺镇石塔头村村民委员会侵害集体经济组织成员权益纠纷一案民事判决书) [Zheng Shaolu v. Villager Comm. of Shitatou Village, Xiaoshun Town, Jindong Dist.,

From the data (n=858), 90.68% of the cases did not mention “village autonomy” at all. Only 9.32% of the cases referred to “village autonomy.”<sup>158</sup> The MOW’s losing rate was much higher when the court mentioned “village autonomy.” Whether “village autonomy” was mentioned in the court decision significantly affected the variation of the outcome (chi-square=38.019, p=0.000).<sup>159</sup>

TABLE 7: MOW’S SUCCESS RATES BY (1) WHETHER “VILLAGE AUTONOMY” WAS MENTIONED IN THE COURT DECISION; AND (2) WHETHER THE MOW HAD PREVIOUSLY AGREED TO THE COMPENSATION DISTRIBUTION ARRANGEMENT UNDER THE VILLAGERS’ CHARTER OR ALLOCATION AGREEMENT

<b>Village autonomy (n=858) *</b>	<b>Frequency</b>	<b>Complete win</b>	<b>Partial win</b>	<b>Loss</b>
No	90.68%	79.05%	16.07%	4.88%
Yes	9.32%	51.25%	30.00%	18.75%
<b>Whether the MOW agreed to the distribution arrangement under Villagers’ Charter or Allocation Agreement (n=28)</b>				
No	35.71%	70.00%	10.00%	20.00%
Yes	64.29%	38.89%	16.67%	44.44%

\*NOTE: CHI-SQUARE=38.019, P=0.000 (<0.01).

## C. CAPACITY OF THE PLAINTIFF (MOW LITIGANT)

### 1. Age Groups

Four hundred and twenty-eight cases contained valid information on the age groups of the MOW.<sup>160</sup> The age group from fifty to fifty-nine-years-old has the highest losing rate (8%), while the age group from sixty to sixty-nine-years-old and age group from seventy to seventy-nine-years-old have the lowest losing rates (0%). From the available data, it can be observed that the

Jinhua City on Infringing Rights and Interests of Members of Econ. Collective] (Jinhua Jindong Dist. People’s Ct. Dec. 12, 2014) (China).

158. See *infra* Table 7. Out of those cases that mentioned “village autonomy”, the MOW litigants’ success rates were: 51.25% (complete win), 30% (partial win) and 18.75% (loss). Out of those cases that did not mention “village autonomy,” the MOW litigants’ success rates were: 79.05% (complete win), 16.07% (partial win), and 4.88% (loss).

159. See *infra* Table 7.

160. See *infra* Table 8a. For cases where there are multiple plaintiffs, the first plaintiff’s age is recorded.



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plaintiffs are predominantly from the younger generation (thirty to thirty-nine-years-old age group, with the rate of frequency of 65.89%). Very rarely would the plaintiff come from an older generation.<sup>161</sup>

TABLE 8A: MOW'S SUCCESS RATES BY THE AGE GROUPS OF MOW  
(N=428)

Age of MOW	Frequency	Complete win	Partial win	Loss
<b>30-39</b>	65.89%	77.30%	16.31%	6.38%
<b>40-49</b>	27.10%	72.41%	20.69%	6.90%
<b>50-59</b>	5.84%	76.00%	16.00%	8.00%
<b>60-69</b>	0.93%	100.00%	0.00%	0.00%
<b>70-79</b>	0.24%	100.00%	0.00%	0.00%

## 2. Number of Plaintiffs in the Case

TABLE 8B: MOW'S SUCCESS RATES BY SINGLE OR MULTIPLE PLAINTIFF(S)  
(MOW) (N=858)

Single or multiple*	Total	Complete win	Partial win	Loss
Single	71.33%	77.45%	15.69%	6.86%
Multiple	28.67%	73.98%	21.54%	4.47%

\*NOTE: CHI-SQUARE=5.368, P=0.068.

Cases with a single plaintiff have a higher frequency than multiple plaintiffs,<sup>162</sup> which appears to confirm the reluctance of Chinese courts to entertain multi-plaintiff litigations.<sup>163</sup>

161. MOW litigants, age thirty to age thirty-nine, have the highest frequency (65.89%). There are two possible reasons for this: first, MOW disputes arise from the rural women marrying out of the village and, second, as compared to older age groups, age thirty to age thirty-nine are more likely to get married (although, interestingly, the sample did not have any plaintiff younger than thirty).

162. See *supra* Table 8b.

163. Robin Hui Huang, *Private Enforcement of Securities Law in China: A Ten-Year Retrospective and Empirical Assessment*, 61 AM. J. COMP.L. 757, 793 (2013).

### 3. *Plaintiff's Place of Residence at the Time of the Lawsuit*

Eight hundred fifty-eight cases contained valid information on the plaintiff's place of residence at the time of the lawsuit,<sup>164</sup> such as whether the MOW litigant resides in a rural or urban neighborhood.<sup>165</sup>

In the data, plaintiffs residing in a rural neighborhood have a higher "losing rate" (7.85%) than plaintiffs residing in an urban neighborhood (6.25%). The data shows the plaintiff's place of residence presented no significance in the variations of the outcome (chi-square=3.288, p=0.193).

TABLE 8C: MOW'S SUCCESS RATES BY PLAINTIFF'S PLACE OF RESIDENCE (AT THE TIME OF THE LAWSUIT) AND OCCUPATION

		Frequency	Complete win	Partial win	Loss
<b>Current residency* (n=857)</b>	Rural	90.67%	76.58%	16.86%	6.56%
	Urban	9.33%	75.00%	22.50%	2.50%
<b>Occupation (n=65)</b>	Peasant	72.31%	72.34%	21.28%	6.38%
	Migrant worker	3.08%	50.00%	50.00%	0.00%
	Private business	15.38%	100.00%	0.00%	0.00%
	Unemployed	9.23%	83.33%	16.67%	0.00%

\*NOTE: CHI-SQUARE=3.288, (P=0.193).

### 4. *Categories of the Plaintiff*

In sixty-five cases,<sup>166</sup> there contained valid information on the plaintiff's categories.<sup>167</sup> Peasants have the highest losing rate (6.38%),<sup>168</sup> while the other three categories—migrant workers,<sup>169</sup> private business owners, and unemployed—are tied with the lowest losing rates (each at 0%).

164. See *infra* Table 8c.

165. Jize Jiang & Kai Kuang, *Hukou Status and Sentencing in the Wake of Internal Migration: The Penalty Effect of Being Rural-to-Urban Migrants in China*, 40 LAW & POL'Y 196, 197 (2018).

166. See *supra* Table 8c.

167. For cases with multiple plaintiffs, the first plaintiff's occupation is recorded.

168. In He and Su's study, farmers also had the highest losing rate when matched against the government. He & Su, *supra* note 2, at 131. But one must look at this within the statistical context. In He and Su's study, farmers lost 100% of all cases; here, the "peasants" only lost 6.38%. *Id.*; see *supra* Table 8c.

169. See Jiang & Kuang, *supra* note 165 (explaining the disparate legal treatment experienced by migrants in China).

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The overwhelming majority of plaintiffs resided in a rural neighborhood at the time of the lawsuit (90.67%), which suggests that the MOW issue is a deeply rural issue, with most MOW marrying into other villages as opposed to moving into the cities. It is interesting to note that plaintiffs who were non-peasants did not lose a single case.

#### D. CAPACITY OF THE DEFENDANT (VILLAGE COLLECTIVE)

##### 1. *Single or Multiple Defendant(s)*

Most cases had single defendants (82.87%), with only 17.13% of cases having multiple defendants.<sup>170</sup> The success rates of the MOW litigants are close in both situations. The data shows there are no significant variations of the outcome across the number of defendants in the case (chi-square=0.339, p=0.844).

TABLE 9A: MOW'S SUCCESS RATES BY SINGLE OR MULTIPLE DEFENDANT(S)  
(N=858)

Number of the defendant(s)*	Total	Complete win	Partial win	Loss
Single	82.87%	76.09%	17.58%	6.33%
Multiple	17.13%	78.23%	16.33%	5.44%

\*NOTE: CHI-SQUARE=0.339, P=0.844.

170. See *infra* Table 9a.

## 2. *Institutional Nature of the Defendant*

TABLE 9B: MOW'S SUCCESS RATES BY THE PRINCIPAL DEFENDANT  
(N=857)

The principal defendant*	Frequency	Complete win	Partial win	Loss
<b>Villagers' Committee</b>	11.55%	68.69%	18.18%	13.13%
<b>Villagers' Group</b>	70.48 %	77.98%	15.89%	6.13%
<b>Shareholding Economic Cooperative of the Village</b> (股份经济合作社)	7.58%	78.46%	20.00%	1.54%
<b>Neighborhood Community</b> (居委会)	1.40%	91.67%	0.00%	8.33%
<b>Residents' Group</b> (居民小组)	8.05%	72.46%	26.09%	1.45%
<b>Villagers' Economic Union</b> (经济联合社)	0.23%	0.00%	100.00%	0.00%
<b>Farm Production Team</b> (农场生产队)	0.35%	100.00%	0.00%	0.00%
<b>Others</b>	0.35%	66.67%	33.33%	0.00%

The MOW litigants lose more when they are up against the villagers' committees (13.13%),<sup>171</sup> when compared to the villagers' groups (6.13%).<sup>172</sup>

171. *See supra* Table 9b.

172. The villagers' committee will only be named the principal defendant when it is in charge of the compensation allocation, which would only occur when the village group is unable to handle the allocation (for example, if it is unable to elect a leader to supervise the allocation process). Compared to the village group, the villagers' committee is usually less connected to the immediate interests behind the allocation. It follows that the villagers' committee is more impartial than the village group, which explains why it is harder to challenge the villagers' committee's decision in court.

## E. MOW'S CONNECTION WITH THE NATAL VILLAGE

From the data compiled in Table 10, with the exception of two “connection variables” (growing up in the village and possession of share certificate),<sup>173</sup> all other connections with the natal villages helped MOW's cases.<sup>174</sup> For example, the data reinforces the view that household registration (*hukou*)<sup>175</sup> is critical in the determination of membership status of the MOW.<sup>176</sup> The same goes for social and medical insurance of the village collectives, which generally only cover individuals who are members of the collective.<sup>177</sup> Some courts also consider the birthplace of the MOW as a relevant factor in determining membership statuses.<sup>178</sup> According to common practice,<sup>179</sup> if the MOW were born in the village and one of their parents was a member, they would have acquired membership automatically at birth.<sup>180</sup> The data shows that the MOW litigant's success rate varied significantly by the MOW contracting land in the village (chi-square=27.186, p=0.000).<sup>181</sup> The higher success rate for MOW litigants who had contracted land suggests that the productive use of village land by the MOW is a key factor that courts take into account.<sup>182</sup>

For MOW litigants with existing land rights in the village, the court considers it a relevant factor if the MOW litigants rely on such rights as their primary source of income, whether they exercise such rights by way of engaging in agricultural activities, or receiving rental income if the land is rented out. Here, it seems the court makes an effort to protect MOW who are

173. For village collectives that maintain “shareholding cooperatives,” the possession of a share certificate is considered a negative factor for the court in determining membership.

174. See *infra* Table 10.

175. Almost all provincial regulations require MOW's household registration to be at the natal village as a prerequisite for attaining membership status.

176. The enormous jump in the losing rate when MOW's household registrations were not in the villages suggests that household registration tends to be a key factor that could sway the court's decision. This is understandable, as the legal basis of MOW's property rights stem from their status as members of the village collective, which can be (at least partly) reflected by their household registrations being in the villages. Only in very rare cases would the court award compensation to MOW who had moved their household registrations elsewhere.

177. From the court's perspective, confirmation that MOW are covered under the collectives' social and medical insurance helps establish the membership status of MOW.

178. Liu Mou Su Wangcheng Mou Shequ Qinfan Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen An (刘某诉望城某社区侵犯集体经济组织成员权益纠纷案) [Liu X v. X Cmty., Wangcheng Dist. on Infringing Rights and Interests of Members of Econ. Collective] (Wangcheng Dist. People's Ct. Feb. 2, 2010) (China).

179. See, e.g., Lü Meifang Su Nanning Shi Wuming Qu Chengxiang Zhen Datong Cun Di'er Cunmin Xiaozu Qinhai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen An (吕梅芳诉南宁市武鸣区城厢镇大同村第二村民小组侵害集体经济组织成员权益纠纷案) [Lü Meifang v. Second Grp., Datong Village, Chengxiang Town, Wuming Dist., Nanning City on Infringing Rights and Interests of Members of Econ. Collective] (Nanning Wuming Dist. People's Ct. Aug. 29, 2017) (China).

180. In Chinese, *yuanshi qude* (原始取得).

181. See *infra* Table 10.

182. See, e.g., Peng Lili Su Yongxing Xian Chengguan Zhen Tongjiaowan Cun Pengjia Cunmin Xiaozu Qinfan Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen An (彭丽丽诉永兴县城关镇铜角湾村彭家村民小组侵犯集体经济组织成员权益纠纷案) [Peng Lili v. Peng's Villager Grp., Tongjiaowan Village, Chengguan Town, Yongxing Cty. on Infringing Rights and Interests of Members of Econ. Collective] (Yongxing Cty. People's Ct. Jan. 12, 2010) (China).

financially dependent on their land rights in the village,<sup>183</sup> which is borne out in the data.

Courts sometimes consider making contributions to the village as a sign of close connectedness with the village.<sup>184</sup> MOW would sometimes volunteer to patrol the village and to help repair ancestral worship sites.

MOW's actual residences in their natal villages is sometimes used by the court to establish connectedness to the village. In some provinces, actual residency is even considered a prerequisite to obtaining membership status.<sup>185</sup>

If the MOW are already enjoying land rights in their husbands' village collective, the court has a tendency to invalidate the MOW's membership in their natal village to avoid double-vesting of land entitlement. This view is borne out in the data.<sup>186</sup>

TABLE 10: MOW'S SUCCESS RATES BY HER CONNECTION(S) WITH THE VILLAGE

Connections		Frequency	Complete win	Partial win	Loss
<b>Household registration (n=770)</b>	Yes	98.70%	77.76%	16.32%	5.92%
	No	1.30%	20.0%	10.0%	70.0%
<b>Born in the village (n=562)</b>	Yes	98.22%	78.26%	16.85%	4.89%
	No	1.78%	80.00%	10.00%	10.00%
<b>Growing up in the village (n=104)</b>	Yes	97.12%	87.13%	10.89%	1.98%
	No	2.88%	66.67%	33.33%	0.00%
<b>Actual residence (n=252)</b>	Yes	74.60%	81.91%	17.02%	1.06%
	No	25.40%	35.94%	20.31%	43.75%
<b>Social or medical insurance (n=246)</b>	Yes	94.31%	79.31%	13.36%	7.33%
	No	5.69%	28.57%	7.14%	64.29%

183. *Id.*

184. *Id.*

185. *See* He, *supra* note 23, at 210 (explaining that actual residence was a "precondition to enjoying the dividends and other benefits").

186. *See infra* Table 10.

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<b>Primary source of income (n=312)</b>	Yes	96.15%	88.33%	11.33%	0.33%
	No	3.85%	0.00%	25.00%	75.00%
<b>Contracted land (n=316) *</b>	Yes	91.14%	83.33%	13.89%	2.78%
	No	8.86%	50.00%	28.57%	21.43%
<b>Obligations or contributions (n=42)</b>	Yes	76.19%	75.00%	25.00%	0.00%
	No	23.81%	20.00%	10.00%	70.00%
<b>Share certificates and others (n=60)</b>	Yes	96.67%	65.52%	32.76%	1.72%
	No	3.33%	50.00%	50.00%	0.00%
<b>Enjoy land rights in husband's village (n=286)</b>	Yes	1.06%	33.33%	0.00%	66.67%
	Not	98.95%	81.63%	12.72%	5.65%

\*NOTE: CHI-SQUARE=27.186, P=0.000 (&lt;0.01).

## F. LEGAL REPRESENTATION OF THE PARTIES

1. *Legal Representation of the Plaintiff*

Seven hundred eighty cases contained valid information on whether the plaintiff had legal representation.<sup>187</sup> The data shows that MOW litigants' success rates varied significantly by legal representation of the plaintiff (chi-square=5.658, p=0.059). Interestingly, MOW litigants without legal representation had a higher success rate.

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187. See *infra* Table 11a.

TABLE 11A: MOW'S SUCCESS RATES BY LEGAL REPRESENTATION OF EACH PARTY

Legal Rep.		Frequency	Complete win	Partial win	Loss	Chi-square
<b>Plaintiff (MOW) (n=780)</b>	Yes	77.69%	76.90%	16.01%	7.10%	5.658* P=0.059
	No	22.31%	76.44%	20.69%	2.87%	
<b>Defendant (VC) (n=761)</b>	Yes	30.49%	65.95%	21.98%	12.07%	33.206*** P=0.000
	No	69.51%	83.36%	13.04%	3.59%	

\*NOTE: \*p<0.1, \*\*p<0.05, \*\*\*p<0.01

### 2. *Legal Representation of the Defendant*

Seven hundred sixty-one cases contained valid information on whether the defendant, village collective (VC), had legal representation.<sup>188</sup>

The data show that MOW litigants had a higher rate of success when the defendant had no legal representation, meaning a represented defendant has a higher success rate. The data shows that MOW litigants' success rate varied significantly by the legal representation of the defendant (chi-square=33.206, p=0.000).

### 3. *Legal Representation of Both Parties (in Four Different Configurations)*

The data shows (n=719) that 4.31% were cases where the defendant had legal representation, but the plaintiff had no legal representation.<sup>189</sup> The MOW litigants' success rates were: 74.19% (complete win); 22.58% (partial win); and 3.23% (loss). In 16.41% of the cases, neither party had legal representation. The MOW litigant success rates were: 83.05% (complete win); 14.41% (partial win); and 2.54% (loss).

In 52.71% of the cases, the plaintiff had legal representation, but the defendant had no legal representation. The MOW litigants' success rates were: 82.85% (complete win); 12.93% (partial win); and 4.22% (loss). In 26.56% of the cases, both parties had legal representation. The MOW litigants' success rates were: 65.45% (complete win); 20.42% (partial win); and 14.14% (loss). The data shows that, when the plaintiff had legal representation, whether or not the defendant had legal representation was significant for the MOW litigants' success rates (chi-square=26.158, P=0.000).

188. See *infra* Table 11a.

189. See *infra* Table 11b.



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TABLE 11B: LEGAL REPRESENTATION (LR): LR OF PLAINTIFF (MOW) VS. LR OF DEFENDANT (VC) (N=719)

Plaintiff's LR		Total	Complete win	Partial win	Loss
No	Defendant's LR Yes	4.31%	74.19%	22.58%	3.23%
	No	16.41%	83.05%	14.41%	2.54%
	Total	20.72%	81.21%	16.11%	2.68%
Yes*	Defendant's LR Yes	26.56%	65.45%	20.42%	14.14%
	No	52.71%	82.85%	12.93%	4.22%
	Total	79.28%	77.02%	15.44%	7.54%

\*NOTE: CHI-SQUARE=26.158, P=0.000 (TWO-SIDED).

#### 4. Type of Legal Representation

When the plaintiff was represented by a professional attorney from a law firm,<sup>190</sup> the MOW litigants' success rate—combining complete and partial winning rates—varied with the different types of representation for the defendant: 95.86% (defendant has no legal representation); 85.72% (defendant represented by a professional attorney); and 100% (defendant represented by basic-level legal service).

The data reveals that when the plaintiff retained basic-level legal service,<sup>191</sup> the MOW litigants' success rate—combining complete and partial winning rates—varies with the different types of representation for the defendant: 95.06% (defendant has no legal representation); 71.11% (defendant represented by professional attorney); 100% (defendant represented by basic-level legal service).

The two sets of data above show, collectively, that whenever the defendant is represented by a professional attorney, MOW litigants' success rates drops.

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190. See *infra* Table 11a.

191. See *infra* Table 11a.

TABLE 11C: LEGAL REPRESENTATION (LR): LR OF PLAINTIFF VS. LR OF DEFENDANT (VC) BY THE TYPE OF THE LEGAL REPRESENTATION(N=719)

LR of Plaintiff			Frequency	Complete win	Partial win	Loss
No LR	LR of Defendant	No legal representative	16.41%	83.05%	14.41%	2.54%
		Professional attorney	3.34%	75.00%	20.83%	4.17%
		Basic-level legal service	0.97%	71.43%	28.57%	0.00%
	Total		20.72%	81.21%	16.11%	2.68%
Staff from legal organization <sup>a</sup>	LR of Defendant	Professional attorney	0.42%	100.00%	— <sup>b</sup>	— <sup>b</sup>
		Total	0.42%	100.00%	— <sup>b</sup>	— <sup>b</sup>
Professional attorney from law firm	LR of Defendant	No legal representative	40.33%	83.79%	12.07%	4.14%
		Professional attorney	13.63%	64.29%	21.43%	14.29%
		Basic-level legal service	4.31%	77.42%	22.58%	0.00%
	Total		58.72%	78.76%	15.04%	6.21%
Professional government attorney <sup>a</sup>	LR of Defendant	No legal representative	1.25%	100.00%	— <sup>b</sup>	— <sup>b</sup>
		Total	1.25%	100.00%	— <sup>b</sup>	— <sup>b</sup>
Basic-level legal service	LR of Defendant	No legal representative	11.27%	76.54%	18.52%	4.94%
		Professional attorney	6.26%	53.33%	17.78%	28.89%

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		Basic-level legal service	1.67%	83.33%	16.67%	0.00%
	<b>Total</b>		19.20%	69.57%	18.12%	12.32%
<b>Multiple legal support</b> <sup>a</sup>	<b>LR of the Defendant</b>	Professional attorney	0.14%	100.00%	— <sup>b</sup>	— <sup>b</sup>
	<b>Total</b>		0.14%	100.00%	— <sup>b</sup>	— <sup>b</sup>

\*NOTE: <sup>a</sup>STATISTICS WERE NOT COMPUTED BECAUSE LEGAL REPRESENTATION OF THE VILLAGE AND THE OUTCOMES OF CASES ARE CONSTANTS. <sup>b</sup>CANNOT BE OBTAINED DUE TO INSUFFICIENT NUMBER OF CASES IN THE CELL.

### 5. *Legal Representation of the Parties, MOW's Connection with the Village, and MOW Litigants' Success Rates: A Three-Way Crosstabs Analysis*

In the bivariate analysis above,<sup>192</sup> which shows that MOW litigants' success rates varied significantly by legal representation of the plaintiff (chi-square=5.658, p=0.059), it was found that MOW litigants without legal representation had a higher rates of success.<sup>193</sup> However, the bivariate analysis may not give a complete picture since some of the explanatory variables are correlated. For example, is it possible that the plaintiffs who won without legal representation had stronger connection with the village? In order to test this, it is necessary to include a "connection with village" variable (connection variable) to control and perform a three-way crosstabs analysis.<sup>194</sup>

From this analysis, when MOW's household registrations were in the villages, legal representation of the MOW is significant in the variation of the outcome (chi-square=5.349, P=0.069).<sup>195</sup> When MOW's household registrations were in the village, MOW without legal representation have a lower losing rate (3.45%) than those with legal representation (6.56%).

When MOW were covered by the villages' social or medical insurance, legal representation of the MOW is significant in the variation of MOW litigants' success rates (chi-square=5.149, P=0.076).<sup>196</sup> When MOW were

192. See *supra* Table 11a.

193. The losing rate of the plaintiff was higher when she had legal representation (7.10%). The losing rate of the plaintiff was 2.87% when she had no legal representation.

194. A three-way cross-tabulation analysis compares the results of three variables and presents their interrelations. See STUART MACDONALD & NICOLA HEADLAM, RESEARCH METHODS HANDBOOK: INTRODUCTORY GUIDE TO RESEARCH METHODS FOR SOCIAL RESEARCH 28 (2008). In the MOW context, while the bivariate analysis shows that MOW litigants without legal representation have a higher success rate, it may not give a complete picture since some of the explanatory variables are correlated. It is possible that the winning cases without legal representation have a stronger (or closer) connection with the village. By introducing a third variable (the connection variable) as control (such as by performing the three-way cross-tabulation analysis), a more complete picture can be presented.

195. See *infra* Table 12a.

196. See *infra* Table 12e.

covered by the villages' social or medical insurance, MOW without legal representation have a higher losing rate (11.11%) than those with legal representation (6.01%). For all other connection variables, legal representation of MOW is insignificant in the variation of the outcome.<sup>197</sup>

The above three-way cross-tabs analysis offers a more complicated exposition of the role of the plaintiff's lawyers.<sup>198</sup> In most situations (connection variables as the control), the three-way cross-tab analysis confirms the trend identified in the bivariate analysis in Table 11a: the MOW litigant without legal representation has a higher rate of success.<sup>199</sup>

TABLE 12A: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S HOUSEHOLD REGISTRATION (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=703)

Household Registration		Frequency	Complete win	Partial win	Loss
Yes*	LR of MOW No	20.63%	80.69%	15.86%	3.45%
	Yes	78.09%	77.78%	15.66%	6.56%
	Total	98.72%	78.39%	15.71%	5.91%
No	LR of MOW Yes	1.28%	22.22%	11.11%	66.67%
	Total	1.28%	22.22%	11.11%	66.67%

\*NOTE: CHI-SQUARE=5.349, P=0.069.

197. Note that in some of the tables' rows in this three-way cross-tabs analysis, the chi-square test is not applicable due to an insufficient number of cases in each cell.

198. See *infra* Tables 12a–12j.

199. With the exception of two situations—see *infra* Tables 12e and 12g—the three-way cross-tabs analysis presents a similar trend as identified in the bivariate analysis in Table 11a.

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TABLE 12B: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S PLACE OF BIRTH (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=526)

Born in the village			Frequency	Complete win	Partial win	Loss
Yes*	LR of	No	19.58%	75.73%	20.39%	3.88%
	MOW	Yes	78.71%	79.23%	15.94%	4.83%
	Total		98.29%	78.53%	16.83%	4.64%
No	LR of	No	0.57%	100.00%	0.00%	0.00%
	MOW	Yes	1.14%	83.33%	0.00%	16.67%
	Total		1.71%	88.89%	0.00%	11.11%

\*NOTE: CHI-SQUARE=1.257, P=0.533.

TABLE 12C: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S ACTUAL RESIDENCE (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=236)

Actual residence			Frequency	Complete win	Partial win	Loss
Yes	LR of MOW	No	16.10%	81.58%	18.42%	0.00%
		Yes	58.05%	82.48%	16.06%	1.46%
	Total		74.15%	82.29%	16.57%	1.14%
No	LR of MOW	No	2.97%	28.57%	28.57%	42.86%
		Yes	22.88%	38.89%	18.52%	42.59%
	Total		25.85%	37.70%	19.67%	42.62%

TABLE 12D: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW GROWING UP IN THE VILLAGE, AND MOW'S SUCCESS RATES (N=97)

Growing up in the village		Frequency	Complete win	Partial Loss win
Yes	LR of MOW	No 15.46%	93.33%	6.67% 0.00%
		Yes 82.47%	85.00%	12.50% 2.50%
	Total	97.94%	86.32%	11.58% 2.11%
No	LR of MOW	Yes 2.06%	2.06%	0.00% 0.00%
	Total	2.00%	100%	0.00% 0.00%

TABLE 12E: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S SOCIAL AND MEDICAL INSURANCE COVERAGE, AND MOW'S SUCCESS RATES (N=233)

Social or medical insurance*			Frequency	Complete win	Partial Loss win
Yes	LR of MOW	No	15.45%	66.67%	22.22% 11.11%
		Yes	78.54%	83.06%	10.93% 6.01%
	Total		93.99%	80.37%	12.79% 6.85%
No	LR of MOW	Yes	6.01%	28.57%	7.14% 64.29%
	Total		6.01%	28.57%	7.14% 64.29%

\*NOTE: CHI-SQUARE=5.149, P=0.076 (<0.1).

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TABLE 12F: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S PRIMARY SOURCE OF INCOME, AND MOW'S SUCCESS RATES (N=294)

Primary source of income			Frequency	Complete win	Partial win	Loss
Yes	LR of MOW	No	17.01%	88.00%	12.00%	0.00%
		Yes	78.91%	88.36%	11.21%	0.43%
	Total		95.92%	88.30%	11.35%	0.35%
No	LR of MOW	No	1.36%	0.00%	75.00%	25.00%
		Yes	2.72%	0.00%	0.00%	100.00%
	Total		4.08%	0.00%	25.00%	75.00%

TABLE 12G: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW CONTRACTING LAND IN THE VILLAGE, AND MOW'S SUCCESS RATES (N=287)

Contracted land			Frequency	Complete win	Partial win	Loss
Yes	LR of No MOW		15.33%	75.00%	20.45%	4.55%
		Yes	75.96%	85.78%	11.47%	2.75%
	Total		91.29%	83.97%	12.98%	3.05%
No	LR of No MOW		1.74%	40.00%	40.00%	20.00%
		Yes	6.97%	55.00%	25.00%	20.00%
	Total		8.71%	52.00%	28.00%	20.00%

TABLE 12H: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW MAKING CONTRIBUTIONS TO THE VILLAGE, AND MOW'S SUCCESS RATES (N=41)

Obligations or contributions		Frequency	Complete win	Partial win	Loss
Yes	LR of No MOW	29.27%	83.33%	16.67%	0.00%
	Yes	48.78%	70.00%	30.00%	0.00%
	Total	78.05%	75.00%	25.00%	0.00%
No	LR of No MOW	2.44%	0.00%	0.00%	100.00%
	Yes	19.51%	25.00%	12.50%	62.50%
	Total	21.95%	22.22%	11.11%	66.67%

TABLE 12I: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW POSSESSING A SHARE CERTIFICATE OF THE VILLAGE COLLECTIVE, AND MOW'S SUCCESS RATES (N=50)

Share certificate and others		Frequency	Complete win	Partial win	Loss
Yes	LR of No MOW	44.00%	54.55%	45.45%	0.00%
	Yes	52.00%	69.23%	26.92%	3.85%
	Total	96.00%	62.50%	35.42%	2.08%
No	LR of No MOW	2.00%	100.00%	0.00%	0.00%
	Yes	2.00%	0.00%	100.00%	0.00%
	Total	4.00%	50.00%	50.00%	0.00%



TABLE 12J: THREE-WAY CROSTAB OF LEGAL REPRESENTATION OF MOW (PLAINTIFF), MOW'S ENJOYMENT OF LAND RIGHTS AS MEMBER OF HUSBAND'S VILLAGE, AND MOW'S SUCCESS RATES (N=263)

Land rights in husband's village			Frequency	Complete win	Partial win	Loss
Yes	LR of MOW	No	0.38%	0.00%	0.00%	100.00%
		Yes	0.76%	50.00%	0.00%	50.00%
	Total		1.14%	33.33%	0.00%	66.67%
No	LR of MOW	No	17.49%	82.61%	15.22%	2.17%
		Yes	81.37%	82.24%	11.21%	6.54%
	Total		98.86%	82.31%	11.92%	5.77%

In the bivariate analysis above,<sup>200</sup> which shows that MOW litigants' success rate varied significantly by legal representation of the defendant (chi-square=33.206,  $p=0.000$ ), it was found that the defendant with legal representation had a higher rate of success.<sup>201</sup> As mentioned above, the bivariate analysis may not give a complete picture since some of the explanatory variables are correlated (a connection variable). It is therefore necessary to perform a three-way cross-tabs analysis with a connection variable as control.

This analysis demonstrates that when MOW's household registrations were in the village, legal representation of the defendant was significant in the variation of the outcome (chi-square=27.698,  $P=0.000$ ).<sup>202</sup> When MOW's household registrations were in the village and the defendant had legal representation, MOW litigants' losing rate was 10.96%, as compared to 3.55% when the defendant had no legal representation.

When MOW were born in the natal village, legal representation of the defendant is significant in the variation of MOW litigants' success rates (chi-square=15.274,  $P=0.000$ ).<sup>203</sup> When MOW were born in the village and the defendant had legal representation, the MOW litigants' losing rate was 7.78%,

200. See *supra* Table 11a.

201. The losing rate of the MOW litigants was much higher (12.07%) when the defendant had legal representation. The losing rate of the MOW litigant was 3.59% when the defendant had no legal representation.

202. See *infra* Table 13a.

203. See *infra* Table 13b.

as compared to a losing rate of 2.79% when the defendant had no legal representation.

When MOW did not enjoy land rights in their husbands' village, legal representation of the defendant is significant in the variation of the outcome (chi-square=18.113,  $P=0.000$ ).<sup>204</sup> When MOW did not enjoy land rights in their husbands' village and the defendant had legal representation, MOW litigants' losing rate was 12.47%, as compared to a losing rate of 1.78% when the defendant had no legal representation.

For all other connection variables, legal representation of the defendant is insignificant in the variation of the MOW litigants' success rate.<sup>205</sup>

The above three-way cross-tabs analysis confirms the trend identified in the bivariate analysis in Table 11a: the defendant with legal representation had a higher rate of success.<sup>206</sup>

TABLE 13A: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW'S HOUSEHOLD REGISTRATION (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=678)

Household Registration			Frequency	Complete win	Partial win	Loss
Yes*	LR of the VC	Yes	32.30%	67.58%	21.46%	10.96%
		No	66.52%	84.48%	11.97%	3.55%
	Total		98.82%	78.96%	15.07%	5.97%
No	LR of the VC	Yes	0.74%	20.00%	0.00%	80.00%
		No	0.44%	33.33%	0.00%	66.67%
	Total		1.18%	25.00%	0.00%	75.00%

\*NOTE: CHI-SQUARE=27.698,  $P=0.000$  ( $<0.01$ ).

204. See *infra* Table 13j.

205. Note that, in some rows of the tables in this three-way cross-tabs analysis, the chi-square test is not applicable due to insufficient number of cases in each cell.

206. See *infra* Tables 13a–13b, and 13j.

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TABLE 13B: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW'S PLACE OF BIRTH (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=512)

Born in the village			Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	Yes	35.16%	70.00%	22.22%	7.78%
		No	63.09%	84.21%	13.00%	2.79%
	Total		98.24%	79.13%	16.30%	4.57%
No	LR of the VC	Yes	0.39%	50.00%	0.00%	50.00%
		No	1.37%	100.00%	0.00%	0.00%
	Total		1.76%	88.89%	0.00%	11.11%

\*NOTE: CHI-SQUARE=15.274, P=0.000 (<0.01).

TABLE 13C: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW'S PLACE OF BIRTH (IN OR OUTSIDE OF THE VILLAGE), AND MOW'S SUCCESS RATES (N=233)

Actual residence			Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	Yes	16.31%	68.42%	31.58%	0.00%
		No	59.23%	88.41%	10.14%	1.45%
	Total		75.54%	84.09%	14.77%	1.14%
No*	LR of the VC	Yes	15.45%	33.33%	16.67%	50.00%
		No	9.01%	42.86%	23.81%	33.33%
	Total		24.46%	36.84%	19.30%	43.86%

\*NOTE: CHI-SQUARE=1.517, P=0.468.

TABLE 13D: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW GROWING UP IN THE VILLAGE, AND MOW'S SUCCESS RATES (N=100)

Growing up in the village			Frequency	Complete win	Partial win	Loss
Yes	LR of Yes		39.00%	82.05%	12.82%	5.13%
	the VC No		59.00%	91.53%	8.47%	0.00%
	Total		98.00%	87.76%	10.20%	2.04%
No	LR of No		2.00%	100%	0.00%	0.00%
	the VC Total		2.00%	100.00%	0.00%	0.00%

TABLE 13E: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW'S SOCIAL AND MEDICAL INSURANCE COVERAGE, AND MOW'S SUCCESS RATES (N=235)

Social or medical insurance			Frequency	Complete win	Partial win	Loss
Yes*	LR of the VC	Yes	37.87%	79.78%	11.24%	8.99%
		No	56.17%	80.30%	15.15%	4.55%
	Total		94.04%	80.09%	13.57%	6.33%
No	LR of the VC	Yes	5.53%	30.77%	0.00%	69.23%
		No	0.43%	0.00%	100.00%	0.00%
	Total		5.96%	28.57%	7.14%	64.29%

\*NOTE: CHI-SQUARE=2.259, P=0.323.

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TABLE 13F: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC)(DEFENDANT), MOW'S PRIMARY SOURCE OF INCOME, AND MOW'S SUCCESS RATES (N=295)

Primary source of income		Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	34.58%	85.29%	14.71%	0.00%
	No	61.69%	91.21%	8.24%	0.55%
	Total	96.27%	89.08%	10.56%	0.35%
No	LR of the VC	3.39%	0.00%	20.00%	80.00%
	No	0.34%	0.00%	100.00%	0.00%
	Total	3.73%	0.00%	27.27%	72.73%

TABLE 13G: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW CONTRACTING LAND IN THE VILLAGE, AND MOW'S SUCCESS RATES (N=288)

Contracted land		Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	37.85%	86.24%	11.93%	1.83%
	No	53.82%	83.23%	13.55%	3.23%
	Total	91.67%	84.47%	12.88%	2.65%
No	LR of the VC	3.82%	45.45%	45.45%	9.09%
	No	4.51%	53.85%	15.38%	30.77%
	Total	8.33%	50.00%	29.17%	20.83%

TABLE 13H: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW MAKING CONTRIBUTIONS TO THE VILLAGE, AND MOW'S SUCCESS RATES (N=38)

Obligations or contributions			Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	Yes	39.47%	73.33%	26.67%	0.00%
		No	42.11%	81.25%	18.75%	0.00%
	Total		81.58%	77.42%	22.58%	0.00%
No	LR of the VC	Yes	2.63%	100.00%	0.00%	0.00%
		No	15.79%	0.00%	16.67%	83.33%
	Total		18.42%	14.29%	14.29%	71.43%

TABLE 13I: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW POSSESSING A SHARE CERTIFICATE OF THE VILLAGE COLLECTIVE, AND MOW'S SUCCESS RATES (N=50)

Share certificates and others			Frequency	Complete win	Partial win	Loss
Yes	LR of the VC	Yes	40.00%	70.00%	30.00%	0.00%
		No	58.00%	75.86%	20.69%	3.45%
	Total		98.00%	73.47%	24.49%	2.04%
No	LR of the VC		2.00%	0.00%	100.00%	0.00%
	Total		2.00%	0.00%	100.00%	0.00%

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TABLE 13J: THREE-WAY CROSSTAB OF LEGAL REPRESENTATION OF THE VILLAGE COLLECTIVE (VC) (DEFENDANT), MOW'S ENJOYMENT OF LAND RIGHTS AS MEMBER OF HUSBAND'S VILLAGE, AND MOW'S SUCCESS RATES (N=269)

Enjoy land rights in husband's village		Frequency	Complete win	Partial Loss win
Yes	LR of No the VC	1.12%	33.33%	0.00% 66.67%
	Total	1.12%	33.33%	0.00% 66.67%
No*	LR of Yes the VC	36.06%	70.10%	17.53% 12.37%
	No	62.83%	88.76%	9.47% 1.78%
	Total	98.88%	81.95%	12.41% 5.64%

\*NOTE: CHI-SQUARE=18.113, P=0.000 (<0.01).

## G. LAW AND REGULATIONS OF THE STATE

### 1. National Statutes Applied in the Case

Among the various national statutes applied, the data shows (n=858) that only the General Principles of Civil Law (GPCL)<sup>207</sup> (chi-square=27.742, P=0.000) had significance in the variation of the outcome.<sup>208</sup> MOW's success rates are higher when GPCL is applied. The same is true for the Law on the Protection of Women's Rights and Interests.

The data also shows the variations of the outcome by applying other relevant national statutes: Organic Law of Villagers' Committees, Property Law, Rural Land Contract Law, Land Management Law, and Law on Population and Family Planning,<sup>209</sup> and Tort Liability Law.<sup>210</sup>

207. Minfa Tongze (民法通则) [General Principles of Civil Law] (promulgated by the Nat'l People's Cong., Apr. 12, 1986, effective Jan. 1, 1987), [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4470.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm) (China).

208. See *infra* Table 14a.

209. Renkou yu Jihua Shengyu Fa (人口与计划生育法) [Population and Family Planning Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2001, effective Sept. 1, 2002), [http://www.gov.cn/english/laws/2005-10/11/content\\_75954.htm](http://www.gov.cn/english/laws/2005-10/11/content_75954.htm) (China).

210. Qinquan Zeren Fa (侵权责任法) [Tort Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 2009, effective July 1, 2010), [http://english.www.gov.cn/archive/laws\\_regulations/2014/08/23/content\\_281474983043584.htm](http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983043584.htm) (China).

TABLE 14A: MOW'S SUCCESS RATES BY NATIONAL STATUTES (N=858)

		Frequency	Complete win	Partial Loss win		Chi-square
<b>General Principles of Civil Law</b>	Yes	54.78%	77.02%	20.43%	2.55%	27.743 (0.000)
	No	45.22%	75.77%	13.66%	10.57%	
<b>Organic Law of Villagers' Committees</b>	Yes	42.77%	73.84%	20.16%	5.99%	3.498 (0.174)
	No	57.23%	78.41%	15.27%	6.31%	
<b>Law on the Protection of Women's Rights and Interests</b>	Yes	42.19%	83.70%	16.30%	0.00%	
	No	57.81%	71.17%	18.15%	10.69%	
<b>Property Law</b>	Yes	25.29%	81.57%	13.36%	5.07%	4.248 (0.12)
	No	74.71%	74.73%	18.72%	6.55%	
<b>Rural Land Contract Law</b>	Yes	6.53%	85.71%	12.50%	1.79%	
	No	93.47%	75.81%	17.71%	6.48%	
<b>Land Management Law</b>	Yes	6.06%	69.23%	25.00%	5.77%	
	No	93.94%	76.92%	16.87%	6.20%	
<b>Marriage Law</b>	Yes	2.10%	88.89%	5.56%	5.56%	
	No	97.90%	76.19%	17.62%	6.19%	
<b>Law on Population and Family Planning</b>	Yes	1.28%	72.73%	27.27%	0.00%	
	No	98.72%	76.51%	17.24%	6.26%	
<b>Tort Liability Law</b>	Yes	0.93%	100.00%	0.00%	0.00%	
	No	99.07%	76.24%	17.53%	6.24%	

## 2. National Judicial and Administrative Rules Applied in the Case

Among the various national level judicial and administrative rules applied—including the Implementation Rules for Land Management Law,<sup>211</sup>

211. Tudi Guanli Shishi Tiaoli (土地管理实施条例) [Land Administration Law of the People's Republic of China] (promulgated by the St. Council, Dec. 27, 1998, effective Jan. 1, 1999); [http://www.gov.cn/gongbao/content/2016/content\\_5139471.htm](http://www.gov.cn/gongbao/content/2016/content_5139471.htm).



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SPC's Reply on Disputes of Allocating Rural Collective Economic Benefits,<sup>212</sup> and Central Government's Rule on Protecting Rural Women's Land Rights<sup>213</sup> —the data shows (n=858) that only section 24 of the SPC's Explanation on Rural Land Contract Disputes (RLCD) (chi-square=14.692, P=0.001) had significance in the variations in the outcome.<sup>214</sup> The data shows that the losing rate is higher (2.42% difference) when RLCD is not applied in the case.

TABLE 14B: MOW'S SUCCESS RATES BY NATIONAL JUDICIAL AND ADMINISTRATIVE RULES (N=858)

		Frequency	Complete win	Partial win	Loss
<b>SPC's Explanation on Rural Land Contract Disputes*</b>	Yes	73.66%	79.75%	14.72%	5.54%
	No	26.34%	67.26%	24.78%	7.96%
<b>Implementation Rules for Land Management Law</b>	Yes	3.61%	70.97%	16.13%	12.90%
	No	96.39%	76.66%	17.41%	5.93%
<b>SPC's Reply on Disputes of Allocating Rural Collective Economic Benefits</b>	Yes	1.86%	43.75%	56.25%	0.00%
	No	98.14%	77.08%	16.63%	6.29%
<b>Central Government's Rule on Protecting Rural Women's Land Rights</b>	Yes	0.35%	66.67%	33.33%	0.00%
	No	99.65%	76.49%	17.31%	6.20%

\*NOTE: CHI-SQUARE=14.692, P=0.001 (<0.01).

212. Guanyu Renmin Fayuan Dui Nongcun Jiti Jingji Suode Shouyi Fenpei Jiufen Shifou Shouli Wenti de Dafu (关于人民法院对农村集体经济所得收益分配纠纷是否受理问题的答复) [Reply of the Supreme People's Court on Disputes of Allocating Rural Collective Econ. Benefits] (promulgated by Sup. People's Ct., July 9, 2001), [http://pkulaw.cn/\(S\(21ctss45i13hxxjvmt44tjw\)\)/fulltext\\_form.aspx?Db=alftwotitle&Gid=61542d7bfe1bf1b3bdfb](http://pkulaw.cn/(S(21ctss45i13hxxjvmt44tjw))/fulltext_form.aspx?Db=alftwotitle&Gid=61542d7bfe1bf1b3bdfb) (China).

213. Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Qieshi Weihu Nongcun Funü Tudi Chengbao Quanyi de Tongzhi (中共中央办公厅、国务院办公厅关于切实维护农村妇女土地承包权益的通知) [Notice of the General Office of the CPC Central Committee and the General Office of the State Council on Protecting Rural Women's Land Rights] (promulgated by the Gen. Office, CPC Cen. Comm. and the Gen. Office of the St. Council, May. 8, 2001, effective May. 8, 2001), <http://fgcx.bjcourt.gov.cn:4601/law?fn=chl508s518.txt> (China).

214. See *infra* Table 14b.

### 3. *Provincial Statutes, Administrative Rules, and Judicial Rules Applied in the Case*

The data shows that when courts applied provincial statutes that protected women's rights (n=858),<sup>215</sup> the MOW litigants' success rate was 100%.<sup>216</sup>

The data also shows the MOW litigants' success rates when the following were applied:<sup>217</sup> (1) provincial statutes/administrative rules that regulate population and family planning, the rural collective economy, and land contracts;<sup>218</sup> and (2) pro-MOW provincial judicial rules.<sup>219</sup>

215. See *supra* Table 14b; see also, e.g., Fujiansheng Shishi Zhonghua Renmin Gongheguo Funü Quanyi Baozhang Fa Banfa (福建省实施《中华人民共和国妇女权益保障法》办法) [Implementation Measures of Fujian Province on Law on the Protection of Women's Rights and Interests] (promulgated by the Standing Comm. People's Cong. Fujian Province, Nov. 12, 1993, rev'd Sept. 28, 2008, effective Dec. 1, 2008), [http://www.fujian.gov.cn/zc/flfg/dfxfg/200902/t20090224\\_1200100.htm](http://www.fujian.gov.cn/zc/flfg/dfxfg/200902/t20090224_1200100.htm) (China); Guangdongsheng Shishi Zhonghua Renmin Gongheguo Funü Quanyi Baozhang Fa Banfa (广东省实施《中华人民共和国妇女权益保障法》办法) [Implementation Measures of Guangdong Province on Law on the Protection of Women's Rights and Interests] (promulgated by the Standing Comm. People's Cong. Guangdong Province, May. 31, 2007, effective Oct. 1, 2007), CLI.10.173469 (China).

216. See *infra* Table 14c.

217. See *infra* Table 14c.

218. See, e.g., Guangdongsheng Nongcun Jiti Jingji Zuzhi Guanli Guiding (广东省农村集体经济组织管理规定) [Provisions of Guangdong Province for the Administration on Rural Econ. Collective] (promulgated by the Guangdong Province Government, Aug. 9, 2006, effective Oct. 1, 2006), <http://www.gdagri.gov.cn/ywzx/ncjjzzglc/201507/t20150723486299.html> (China).

219. See, e.g., Guanyu Shenli Nongcun Jiti Jingji Zuzhi Tudi Buchangfei Fenpei Jiufen Anjian Ruogan Wenti de Yijian (关于审理农村集体经济组织土地补偿费分配纠纷案件若干问题的意见) [Opinions on Adjudicating Cases of Disputes on Allocation of Land Indemnity of Rural Econ. Collective (For Trial Implementation)] (promulgated by the High Ct. Hainan Province, June 8, 2012, effective June 8, 2012) (Westlaw China).

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TABLE 14C: MOW'S SUCCESS RATES BY PROVINCIAL STATUTES,  
ADMINISTRATIVE/ JUDICIAL RULES (N=858)

		Frequency	Complete win	Partial win	Loss
<b>Provincial statutes protecting women's rights</b>	Yes	6.53%	92.86%	7.14%	0.00%
	No	93.47%	75.31%	18.08%	6.61%
<b>Provincial statutes on population and family planning</b>	Yes, but not directly relevant	1.52%	76.92%	23.08%	0.00%
	No	98.48%	76.45%	17.28%	6.27%
<b>Provincial administrative provisions on rural collective economy</b>	Yes, but not directly relevant	0.47%	75.00%	25.00%	0.00%
	No	99.53%	76.46%	17.33%	6.21%
<b>Provincial statutes on land contract</b>	Yes, but not directly relevant	0.35%	100.00%	0.00%	0.00%
	No	99.65%	76.37%	17.43%	6.20%
<b>Provincial judicial rules (pro-MOW)</b>	Yes	1.06%	88.89%	11.11%	0.00%
	No	98.95%	76.33%	17.43%	6.24%
<b>Human rights</b>	Yes	1.05%	77.78%	22.22%	0.00%
	No	98.95%	76.44%	17.31%	6.24%

#### 4. Court's Reference to "Human Rights" in Its Judgment

An interesting observation can be drawn from the nine cases (frequency rate of 1.05%)<sup>220</sup> that mentioned "human rights."<sup>221</sup> All cases were from the

220. See *supra* Table 14c.

Hunan Province, handed down by four different judges from three courts, and decided in 2017.<sup>222</sup> It appears that whether the court uses the term “human rights” is very judge-specific. The location and the judicial atmosphere of the court may also play a role.

### 5. *Court Applying Substantive Law, Procedural Law, or Both*

The data shows (n=858) the outcome varied significantly by the court applying substantive law, procedural law,<sup>223</sup> or both (chi-square=18.554, P=0.001).<sup>224</sup>

TABLE 15: MOW’S SUCCESS RATES BY APPLICATION OF SUBSTANTIVE LAW, PROCEDURAL LAW, OR BOTH (N=858)

		Frequency	Complete win	Partial win	Loss	Chi-square
<b>Civil Procedure Law</b>	Yes	54.90%	77.49%	17.20%	5.31%	1.442 (0.486)
	No	45.10%	75.19%	17.57%	7.24%	
<b>Legal basis substantive or procedural</b>	Substantive law	41.49%	79.78%	14.33%	5.90%	18.554 (0.001)
	Procedural law	2.91%	56.00%	20.00%	24.00%	
	Both	55.59%	75.05%	19.50%	5.45%	

221. The courts are not allowed to directly apply the PRC Constitution. The phrase “human rights” is highly sensitive and seldom referred to in court decisions.

222. See, e.g., Yuan Xingu, Yuan Ruijie Yu Zhuzhou Shi Lusong Qu Baiguan Zhen Chengjiaba Cun Hehua Zu Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen Yishen Minshi Panjueshu, at 1 (袁新谷、袁睿婕与株洲市芦淞区白关镇城家坝村荷花组侵害集体经济组织成员权益纠纷一案一审民事判决书) [Civil Judgement for Court of First Instance of Yuan Xingu & Yuan Ruijie v. Hehua Grp., Chengjiaba Village, Baiguan Town, Lusong District, Zhuzhou City on Infringing Rights and Interests of Members of Econ. Collective] (Zhuzhou Lusong Dist. People’s Ct. Apr. 17, 2017) (China); Zhang Qingrong Yu Zhuzhou Shi Lusong Qu Baiguan Zhen Chengjiaba Cun Hehua Zu Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen Yishen Minshi Panjueshu, at 1 (张清荣与株洲市芦淞区白关镇城家坝村荷花组侵害集体经济组织成员权益纠纷一案一审民事判决书) [Civil Judgement for Court of First Instance of Zhang Qingrong v. Hehua Grp., Chengjiaba Village, Baiguan Town, Lusong District, Zhuzhou City on Infringing Rights and Interests of Members of Econ. Collective] (Zhuzhou Lusong Dist. People’s Ct. May 1, 2017) (China).

223. Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by the Nat’l People’s Cong., Apr. 9, 1991, effective Apr. 9, 1991) (China).

224. See *supra* Table 15.

## H. VILLAGE INTERNAL RULES

The data shows (see Table 16a) that the outcome varied significantly by the appearance of “villagers’ charter” in the judgment (chi-square=12.472,  $P=0.002$ ) in the court decision.<sup>225</sup> Whenever “villagers’ charter” appeared in the court decision, MOW litigants had a lower losing rate—2%—as compared to a losing rate of 6.66% when “villagers’ charter” did not appear. The lower losing rate shows that the court probably conducted a substantive review of the villagers’ charter,<sup>226</sup> and it ruled in favor of the MOW after concluding that the charter discriminated against the MOW.<sup>227</sup>

The data shows ( $n=20$ )<sup>228</sup> that MOW had the highest losing rate when the court confirmed the villagers’ charter regarding the determination of membership status (100%), and the lowest losing rate when the court either rejected the villagers’ charter (regarding determination of membership status) or refused to decide on the issue (both at 0%). The losing rate was at 40% when the court remained silent on the issue.<sup>229</sup>

The data shows ( $n=97$ )<sup>230</sup> that MOW had the lowest losing rate when the court rejected the villagers’ charter regarding the allocation arrangement (0%), and the highest losing rate when the court deferred the issue to the village (42.86%). The losing rate was at 33.33% when the court confirmed the villagers’ charter regarding the allocation arrangement.<sup>231</sup>

225. See *infra* Table 16a.

226. The phrase “villagers’ charter” would only appear in the court decision if the villagers’ charter denied MOW’s right to compensation.

227. In other words, the court in this situation did not simply adopt the villagers’ charter in the name of village autonomy. It shows that, while the political process in China delegated power to the village organization to decide matters within the village’s *de facto* autonomy, judicial power sometimes penetrated this autonomy and reversed some local norms and regulations. For a case example, see He X Su Chenzhou Shi Suxian Qu Bailutang Zhen Yashi Cun Disi Cunmin Xiaozu Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen An, at 1 (何 X 诉郴州市苏仙区白露塘镇雅市村第四村民小组侵害集体经济组织成员权益纠纷案) [He X v. No. 4 Villager Grp., Yashi Village, Bailutang Town, Suxian Dist., Chenzhou City on Infringing Rights and Interests of Members of Econ. Collective] (Suzhou Dist. People’s Ct. Feb. 13, 2012) (China).

228. See *infra* Table 16a. The “treatment” of MOW’s membership status by the villagers’ charter must be negative (for example, perhaps rejection), otherwise the issue would not have gone to court.

229. See *supra* Table 16a.

230. See *supra* Table 16a. The “treatment” of MOW’s membership status by the villagers’ charter must be negative (for example, perhaps rejection), otherwise the issue would not have gone to court.

231. See *supra* Table 16a.

TABLE 16A: MOW'S SUCCESS RATES BY VARIABLES RELATING TO VILLAGERS' CHARTER

		Frequency	Complete win	Partial win	Loss
<b>Appearance in Court decision* (n=851)</b>	Yes	11.75%	69%	29%	2.00%
	No	88.25%	77.50%	15.85%	6.66%
	Confirm charter	10%	0.00%	0.00%	100%
	Reject charter	50%	50%	50.00%	0.00%
	Silent	25%	60%	0.00%	40%
<b>Court decision on charter (membership status) (n=20)</b>	Decline to make decision	15%	0.00%	100%	0.00%
	Confirm charter	3.09%	33.33%	33.33%	33.33%
	Reject charter	89.69%	72.41%	27.59%	0.00%
<b>Court Decision on charter (allocation arrangement) (n=97)</b>	Defer to VC	7.22%	28.57%	28.57%	42.86%

\*NOTE: CHI-SQUARE=12.472, P=0.002 (2-SIDED).

Interestingly, whenever “allocation agreement” appeared in the court decision,<sup>232</sup> MOW litigants had a higher losing rate (8.11%), as compared to a losing rate of 2.98% when “allocation agreement” did not appear. This is inconsistent with the above finding on the appearance of “villagers’ charters” in court decisions, an inconsistency that cannot be explained.<sup>233</sup> The data shows that the outcome varied significantly by the appearance of “allocation agreement” (chi-square=10.457, P=0.005) in the court decision.

The data shows (n=33)<sup>234</sup> that MOW had the highest losing rate when the court confirmed the allocation agreement regarding the determination of

232. See *infra* Table 16b.

233. Nonetheless, this may be attributed to the fact that the allocation agreement—a more technical document—is more subtle than the villagers’ charter when it comes to denying MOW’s rights. The court, even having conducted a substantive review of the allocation agreement, is less likely to be able to pinpoint any specific discriminatory provisions in the allocation agreement (unlike the villagers’ charter) to help MOW.

234. See *infra* Table 16b. The “treatment” of MOW’s membership status by the allocation agreement must be negative (for example, perhaps rejection), otherwise the issue would not have gone to court.

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membership status (100%), and the lowest losing rate when the court rejected the allocation agreement regarding membership status (0%). The losing rate was at 75% percent when the court deferred the issue to the village.<sup>235</sup>

The data shows (n=372)<sup>236</sup> that MOW had the lowest losing rate when the court altered or rejected the allocation agreement on compensation allocation (both at 0%), and the highest losing rate when the court remained silent on this issue (both at 100%). The losing rate was 58.33% when the court confirmed the allocation agreement, and then 87.50% when the court deferred the issue to the village.<sup>237</sup>

TABLE 16B: MOW'S SUCCESS RATES BY VARIABLES RELATING TO THE ALLOCATION AGREEMENT

		Frequency	Complete win	Partial Loss win	
Appearance in the court decision* (n=854)	Yes	60.66%	73.75%	18.15%	8.11%
	No	39.34%	80.65%	16.37%	2.98%
Procedural defects in allocation agreement (n=496)	Yes	2.02%	80%	20%	0.00%
	No	97.98%	73.87%	17.7%	8.44%
Decision on allocation agreement (membership status)	Confirm allocation agreement	3.03%	0.00%	0.00%	100%
	Reject allocation agreement	(n=33) 84.85%	75%	25.00%	0.00%
	Defer to VC	12.12%	25%	0.00%	75%
Court decision on allocation agreement (allocation arrangement) (n=372)	Confirm	6.45%	25%	16.67%	58.33%
	Alter	1.34%	20%	80%	0.00%
	Reject	88.71%	83.33%	16.67%	0.00%
	Silent	1.34%	0.00%	0.00%	100%
	Defer to VC	2.15%	0.00%	12.50%	87.5%

\*NOTE: CHI-SQUARE=10.457, P=0.005 (2-SIDED).

235. See *infra* Table 16b.

236. See *infra* Table 16b. The "treatment" of compensation allocation by the allocation agreement must be negative (for example, perhaps rejection), otherwise the issue would not have gone to court.

237. See *infra* Table 16b.

## I. PREVIOUS DISPUTE RESOLUTION

1. *Previous Judicial Proceedings*

In some cases, the plaintiff (MOW) and/or the defendant (VC) in the current litigation had previously litigated on the allocation of compensation for MOW (Previous Judicial Proceedings).<sup>238</sup>

From the data (n=802), 13.47% of the cases involved Previous Judicial Proceedings where the same MOW litigant sued the same defendant village organization and had her membership confirmed. Of these cases, 0.25% involved Previous Judicial Proceedings where the same MOW litigant sued the same defendant village organization and had her membership denied. Of these cases, 0.12% involved Previous Judicial Proceedings where the same MOW litigant sued the same defendant village organization, and the court refused to make a decision on the matter.

TABLE 17: MOW'S SUCCESS RATE BY PREVIOUS DISPUTE RESOLUTION

		Frequency	Complete win	Partial win	Loss
<b>Judicial Decision (n=802)</b>	No	83.92%	76.37%	16.34%	7.28%
	Yes, and confirmed membership	13.47%	79.63%	20.37%	0.00%
	Yes, and denied membership	0.25%	50.00%	0.00%	50.00%
	Yes, and rejected previous Allocation Agt. (w/ another MOW)	1.25%	70.00%	0.00%	30.00%
	Yes, and refused to decide on membership	0.12%	0.00%	100.00%	0.00%
	Yes, no outcome recorded	1.00%	62.50%	37.50%	0.00%
<b>Admin. Complaints</b>	No	81.97%	77.13%	16.79%	6.08%

238. See *infra* Table 17.



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<b>(n=843)</b>	Yes, favored MOW	14.83%	76.80%	23.20%	0.00%
	Yes, against MOW	0.12%	0.00%	0.00%	100.00%
	Yes, no resolution	2.97%	68.00%	8.00%	24.00%
	Yes, no outcome recorded	0.12%	100.00%	0.00%	0.00%
<b>Mediation (n=853)</b>	No	90.15%	75.42%	18.21%	6.37%
	Yes, with settlement	a 0.35%	66.67%	33.33%	0.00%
	Yes, without settlement	a 7.62%	87.69%	10.77%	1.54%
	The same VC vs. another MOW	1.88%	100.00%	0.00%	0.00%
<b>Citizens' Petition (Xinfang) (n=852)</b>	No	97.89%	77.46%	16.43%	6.12%
	Yes, favored MOW	0.82%	28.57%	71.43%	0.00%
	Yes, against MOW	0.23%	100.00%	0.00%	0.00%
	Yes, no outcome recorded	1.06%	44.44%	44.44%	11.11%

One percent of the cases involved Previous Judicial Proceedings where the same MOW litigant sued the same defendant village organization, but the outcome of the cases was not provided.

It is interesting that defendants in 13.47% of the cases continued with a distribution policy knowing that it contradicted the decision of the court in the Previous Judicial Proceedings.<sup>239</sup> This is contrasted with only 0.25% of the cases where the plaintiff sued again knowing that the court had already ruled against her in the Previous Judicial Proceedings.

In 1.25% of the cases, there were Previous Judicial Proceedings where *another* MOW litigant had sued the same village organization and won.

239. See Zhang Lihong Deng Su Changsha Shi Yuhua Qu Dongjing Zhen Tianhua Cun Cunmin Weiyuanhui Jiti Jingji Zuzhi Shouyi Fenpei Jiufen An (张利红等诉长沙市雨花区洞井镇天华村村民委员会集体经济组织收益分配纠纷案) [Zhang Lihong et al. v. Villager Comm., Tianhua Village, Dongjing Town, Yuhua District, Changsha City on Dispute of Income Distribution of Members of Econ. Collective] (Changsha Yuhua Dist. People's Ct. Apr. 28, 2009) (China).

## 2. *Previous Administrative Complaints*

In some cases,<sup>240</sup> the plaintiff had lodged an administrative complaint with the relevant township government authority against the defendant prior to the commencement of the judicial proceedings (Previous Administrative Complaint).<sup>241</sup>

From the data (n=843), 14.83% of the cases involved a Previous Administrative Complaint in which the relevant township government authority had ruled in favor of the MOW. The data shows that a favorable decision for the MOW in the Previous Administrative Complaint guarantees victory for the MOW in the ensuing judicial proceedings.

In 0.12% of the cases there was a Previous Administrative Complaint in which the relevant authority had ruled against MOW. The data shows that an unfavorable decision for the MOW in the Previous Administrative Complaint guarantees defeat for the MOW in the ensuing judicial proceedings.

In 2.97% of the cases there was a Previous Administrative Complaint with no outcome. In this situation, the MOW's losing rate was 24%, substantially higher than the losing rate when there was no Previous Administrative Complaint at all (6.08%). A possible explanation is that the court views a non-decision by the administrative authority as an indication of the lack of merit in the MOW's case, thereby placing MOW in a less advantageous position in the ensuing judicial proceedings.

In 0.12% of the cases there was a Previous Administrative Complaint, but no further information was provided regarding the decision of the relevant authority.

## 3. *Previous Citizens' Petition*

In some cases,<sup>242</sup> the plaintiff had lodged a citizens' petition (letters and visits, or *xinfang*) with the relevant authority against the defendant (VC) prior to the commencement of the judicial proceedings (Previous Citizens' Petition).<sup>243</sup>

From the data (n=852), 0.82% of the cases involved a Previous Citizens' Petition in which the relevant authority had ruled in favor of the MOW. In 0.23% of the cases, there was a Previous Citizens' Petition in which the relevant authority had ruled against the MOW. In 1.06 % of the cases, there was a Previous Citizens' Petition, but no outcome of the petition was provided.<sup>244</sup>

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240. See *supra* Table 17.

241. See He, *supra* note 23.

242. See *supra* Table 17.

243. For an explanation of the role of *xinfang* in China's judicial politics, see NG & HE, *supra* note 29, at 126-28.

244. See *supra* Table 17.

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## J. PROCEDURAL VARIABLES

In Table 18a, the data shows (n=858) that, in 36.83% of the cases, the defendant in single-defendant cases, or all defendants in multiple-defendant cases, was or were absent at trial (complete trial in absentia). In 60.49% of the cases, the defendant or all defendants was or were present at trial. It is quite clear from the data that a complete trial in absentia substantially lowers the losing rate of the MOW litigant.

From the data, 2.68% were cases with multiple defendants where at least one co-defendant was present and at least one co-defendant was absent (partial trial in absentia). It appears that MOW litigants fared better in partial trial in absentia cases when compared to cases where the defendant (in single-defendant cases, or all defendants in multiple-defendant cases) was present at trial. However, the MOW is worse off in partial trial in absentia cases when compared to complete trial in absentia cases.

TABLE 18A: MOW'S SUCCESS RATES BY ATTENDANCE OF THE DEFENDANT  
(N=858)

<b>Trial in Absentia*</b>	<b>Frequency</b>	<b>Complete win</b>	<b>Partial Win</b>	<b>Loss</b>
<b>Yes</b>	36.83%	85.44%	11.71%	2.85%
<b>Partially</b>	2.68%	78.26%	17.39%	4.35%
<b>No</b>	60.49%	70.91%	20.81%	8.29%

\*NOTE: CHI-SQUARE=24.334, P=0.000 (<0.01).

Another procedural variable in Table 18b is the burden of proof in determining whether the village land or its derivative interests constitutes the primary source of income of MOW litigants which is, in itself, a connection variable.<sup>245</sup> From the data (n=189), 43.92% were cases where the court imposed the burden of proof on the plaintiff (MOW). In this situation, the complete winning rate of MOW litigants was 67.47%, the partial winning rate was 10.84% and the losing rate was 21.69%. This is contrasted with cases where the court imposed the burden of proof on the defendant (VC) (a rate of frequency of 56.08%), in which the complete winning rate of the MOW litigants was 90.57%, the partial winning rate was 9.43% and the losing rate was 0%.<sup>246</sup>

245. This variable relates to the burden of proof only. It does not reveal the actual number of cases in which the village land or its derivative interests constitutes the primary source of income of the MOW litigant.

246. See *infra* Table 18b. For MOW litigants with existing land rights in the village, the court considers it a relevant factor if the MOW litigant relies on such rights as her primary source of income, and whether she exercises the such rights by way of engaging in agricultural activities or by receiving rental income (if the land is rented out).

TABLE 18B: MOW'S SUCCESS RATES BY BURDEN OF PROOF FOR PRIMARY SOURCE OF INCOME (N=189)

Burden of Proof for Primary Source of Income	Frequency	Complete win	Partial Win	Loss
The MOW	43.92%	67.47%	10.84%	21.69%
The Village Collective	56.08%	90.57%	9.43%	0.00%

## VI. DISCUSSION

## A. THE HAVE-NOTS CAME OUT AHEAD

As shown above in Table 4, the MOW litigant (the plaintiff/ the “have-not”) prevailed over the village collective (the defendant/ the “have”) with a “complete winning rate” of 76.50%. The MOW litigant only lost 6.20% of the time.

The results of this study clearly contradict Galanter’s party capability theory. In He and Su’s Study, across all types of parties and disputes, the OS (as plaintiff) only completely won 19.49% of the time when matched against the RP (as defendant).<sup>247</sup> If one focuses on the type of dispute and nature of the parties that bears the closest resemblance to MOW lawsuits—the farmer (“have-nots”) suing the government agency or government-related company (“haves”)—the data in He and Su’s Study shows that the farmer loses 100% of the time. The stark difference in outcome between this study and He and Su’s Study suggests that some factors other than party capability had reversed the power balance between the parties.

## B. WHY DID THE “HAVE-NOTS” PREVAIL?—THE COURTS FAVORED THE “HAVE-NOTS”

This study shows the individual OS litigant from an underprivileged group (MOW) prevailed over the institutional government-backed RP (village collectives). This discovery is particularly significant because the Chinese judicial system, similar to its counterparts in other authoritarian states, is commonly seen as a system that favors the “haves” in a disproportionate manner due to the lack of judicial independence (which enhances the likelihood of courts being swayed by powerful external influence in favor of the stronger party).<sup>248</sup> The data, however, shows the courts favored the “have-nots” over the “haves.” It is believed that the judicial favor for MOW has

247. He and Su, *supra* note 2, at 130 tbl.1.

248. He and Su, *supra* note 2, at 123; Xifen Lin & Wei Shen, *Do the “Haves” Come Out Ahead in China’s Prisons?—An Empirical Study of China’s Commutation Procedures*, INT. J. L., CRIME & JUST., Mar. 2017, at 1, 2 (2017).

neutralized the party-capability advantages enjoyed by the village collectives (the “haves”) and propelled the MOW (the “have-nots”) to victory.<sup>249</sup> One informant confirmed that courts generally favored MOW—recognizing that they have basic rights in their natal village—<sup>250</sup> and legislations were interpreted in a way that helps MOW.<sup>251</sup> The data supports the view that courts favored MOW.

First, courts have consistently applied statutory provisions favorable to MOW (see Tables 14a and 14b), and avoided dealing with the legislative loopholes and inconsistencies that help the village collective.<sup>252</sup> For example, the courts applied the Law on the Protection of Women’s Rights and Interests 42.19% of the time,<sup>253</sup> with provisions highly favorable to the MOW litigant (such as Articles 32 and 33).<sup>254</sup> Similarly, courts have consistently applied the Organic Law of the Villagers’ Committees (such as Article 27).<sup>255</sup>

Second, Article 24 of the SPC’s Explanation on Rural Land Contract Disputes can be interpreted both ways—either favorable or unfavorable to the MOW. Although Article 24 clearly stated that courts should uphold equal

249. Another reason that explains the have-nots coming out ahead, albeit slightly remote, is the international scrutiny exercised by the CEDAW Committee on China. With its latest report to the CEDAW Committee due (China was due to submit its latest report to the CEDAW Committee by 1 November 2018), China desperately needs to show to the international community the progress that it has made on the MOW issue. There is some speculation that ongoing international pressure in the past years has translated into domestic policies that favored MOW litigants. One example of these policies is the latest notice issued by the SPC on the enforcement of law in rural China. The MOW issue was specifically mentioned (in art. 37): “[rural] married-out women must be protected according to the law and regulations”. See Guanyu Wei Shishi Xiangcun Zhenxing Zhanlie Tigong Sifa Fuwu he Baozhang De Yijian (关于为实施乡村振兴战略提供司法服务和保障的意见) [Opinions of the Supreme People’s Court on Providing Judicial Services and Safeguards for Implementation of Village Revitalization Strategy] (promulgated by Sup. People’s Ct., Oct. 23, 2018, effective Oct. 23, 2018) (China).

250. Telephone Interview with Anonymous Male, Judge, Jiangxi Province Basic-Level Court (Apr. 2, 2018) [hereinafter Interview with Anonymous Male Judge in Jiangxi Province]. This view is confirmed by a practicing lawyer who handled numerous MOW lawsuits. See Telephone Interview with Anonymous Male Lawyer, Beijing (Jan. 29, 2018) [hereinafter Interview with Anonymous Male Attorney].

251. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156.

252. See *supra* note 19 accompanying text.

253. When Law on the Protection of Women’s Rights and Interests is applied the losing rate of the MOW litigant is lower (0%) than when it is not applied (10.69%).

254. Courts in these cases emphasized that MOW should be treated equally, and marriage should not be an excuse to deprive her of her rights. See, e.g., Chen Li yu Wenchang Shi Wencheng Zhen Liaoyuan Cunmin Weiyuanhui Houlangchen Cunmin Xiaozu Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen (陈丽与文昌市文城镇燎原村民委员会后崮陈村民小组侵害集体经济组织成员权益纠纷) [In re Dispute on Infringing Rights and Interests of Members of Econ. Collective between Chen Li & Houlangchen Village Comm., Wencheng Town, Wenchang City] (Wenchang City People’s Ct. Apr. 15, 2014) (China).

255. Organic Law of Villagers’ Committees was applied 42.77% of the time. See *supra* Table 14a. In cases where the court applied the Organic Law of the Villagers’ Committees, the court emphasized the need of circumventing the authority of the villagers committee to ensure the legality of its action. See *supra* note 19. See, e.g., Zhang Moumou Deng Su Lanzhou Shi Xigu Qu Hekou Xiang Datun Cunmin Weiyuanhui Deng Qin Hai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen (张某某等诉兰州市西固区河口乡大滩村民委员会等侵害集体经济组织成员权益纠纷案) [Zhang Moumou v. Datun Village Comm., Hekou Township, Xigu Dist., Lanzhou City on Infringing Rights and Interests of Members of Econ. Collective] (Lanzhou Xigu Dist. People’s Ct. Aug. 4, 2015) (China).

rights of village collective members in the allocation of compensation, the test for “membership” is not provided. The court is at liberty to say Article 24 is inapplicable as the MOW has not been confirmed a member.<sup>256</sup> Yet the data shows that whenever Article 24 was applied,<sup>257</sup> the MOW litigant loses less often, at 5.54%, as compared to 7.96% when Article 24 is not applied (chi-square=14.692,  $p=0.001$ ). Thus, when the court had discretion to interpret a rule one way or another, it chose to interpret it in a way that favors MOW.

Third, the data also shows that most courts are not concerned with the policy of “village autonomy,” or rural self-governance, key principles underscoring the village collective’s case. The data in Table 7 shows that the overwhelming majority of courts did not mention “village autonomy” in their judgment (90.68%). This shows that the principle of village autonomy has become less important for courts in adjudicating MOW lawsuits.<sup>258</sup>

Fourth, courts generally do not believe the village collective has the discretion to determine the membership issue when the lawsuit is already in progress.<sup>259</sup> The data in Table 6 shows that the courts in 92.46% of the cases had directly confirmed the membership statuses of MOW without giving any discretion to the village collectives. In all these cases, MOW litigants had either completely won or partially won (no losses at all).

Fifth, the data in Table 10 shows courts generally side with MOW whenever a connection is established between MOW and their natal villages (see Table 10).<sup>260</sup> With the exception of “growing up in the village” and

256. See generally Liu Yu Yu Langxi Xian Jianping Zhen Wenchang Shequ Jumin Weiyuanhui Liuwan Cunminzu Qinhai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen Yishen Minshi Panjueshu (刘玉与郎溪县建平镇文昌社区居民委员会刘湾村民组侵害集体经济组织成员权益纠纷一案民事判决书) [Civil Judgement of Liu Yu v. Liuwan Villager Grp., Wenchang Cmty. Residents Comm., Jianping Town, Langxi Cty. on Infringing Rights and Interests of Members of Econ. Collective] (Lanxi Cty. People’s Ct. Aug. 3, 2016) (China) (exemplifying a decision where the court exercised its discretion to interpret Article 24 of the SPC’s Explanation on Rural Land Contract Disputes in a way that was unfavorable to MOW). But see Peng Qiumi Su Xiamen Shi Xiang’an Qu Xindian Zhen Shamei Shequ Diwu Jumin Xiaozu Qinfan Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen An (彭秋密诉厦门市翔安区新店镇沙美社区第五居民小组侵犯集体经济组织成员权益纠纷案) [Peng Qiumi v. No. 5 Resident Grp., Shamei Cmty., Xindian Town, Xiang’an Dist., Xiamen City on Infringing Rights and Interests of Members of Econ. Collective] (Xiamen Xiang’an Dist. People’s Ct. Dec. 17, 2010) (China) (exemplifying a decision where the court exercised its discretion to interpret Article 24 of the SPC’s Explanation on Rural Land Contract Disputes in a way that was favorable to the MOW).

257. See, e.g., Yuangao Qing Lan, Guo Mou Su Beigao Kulun Zhen Shangyang Xumu Gacha Weiyuanhui Qinhai Jiti Jingji Zuzhi Chengyuan Quanyi Jiufen (原告青兰、郭某诉被告库伦镇上养畜牧嘎查委员会侵害集体经济组织成员权益纠纷) [Qing Lan & Guo Mou v. Shangyang Xumu Gacha Comm., Kulun Town on Infringing Rights and Interests of Members of Econ. Collective] (Kulun Cty. People’s Ct. Nov. 27, 2014) (China).

258. While one may argue that courts may have considered or applied the principle despite not having referred to it explicitly in the decision, the very low losing rate (4.88%) suggests that only a small fraction of cases would be in that category. Even when the court expressly referred to the principle (9.32% of the cases), the combined winning rate was still much higher than the losing rate. This shows that the principle is no longer an overriding consideration, albeit still a relevant consideration for some courts, in adjudicating these cases.

259. See *supra* Table 5. In only 2.36% of cases, the court left it to the village collective to decide on the issue of membership.

260. While the study cannot provide any causal observation between the connection variable and the outcome, it reveals that courts in China do find the various connection variables relevant in adjudicating MOW

“possessing a share certificate,” the presence of all other connections tends to help MOW’s cases.<sup>261</sup>

Sixth, the data in Table 4 shows that 77.63% of the monetary claims had a recovery rate of 100%. This is a very high recovery rate by any standard, which shows that courts favor MOW litigants.<sup>262</sup>

Seventh, the data shows the plaintiffs without legal representation had a higher success rate than plaintiffs with representation.<sup>263</sup> This outcome is possibly the result of the court favoring the weakest of the weak (the unrepresented “have-nots” being even weaker than the represented “have-nots”).<sup>264</sup> If this is true, and using the same logic, it reinforces the view that the courts favored the weaker party (MOW) in these cases.

Finally, when deciding who bears the burden of proof in relation to MOW’s primary source of income, Table 18b shows that the court imposed the burden on the defendant 56.08% of the time and on the plaintiff only 43.92% of the time. This is interesting as the plaintiff is the one who is trying to show connection with her natal village. It shows the court’s favor towards the plaintiff, even in the allocation of evidential responsibility.

### C. WHY DID THE COURTS FAVOR THE “HAVE-NOTS”?

#### 1. *Courts Generally Sympathized with the MOW and Believed They Were Being Treated Unfairly in the Compensation Allocation Process*

MOW litigants in China find themselves in a precarious position. On the one hand, because MOW are “married-out,” their natal villages excluded them in all rural land compensation distributions.<sup>265</sup> On the other hand, MOW are not guaranteed land ownership in their husbands’ villages due to policy reasons.<sup>266</sup> In fact, most of the time, due to the “no change for thirty years”

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cases. As noted earlier, the law is silent on what criteria qualify an individual for village collective membership. The court, if it follows the principle of “village autonomy”, should either completely defer to the village collective or confirm the collective’s decision, no matter what that decision is.

261. See *supra* Table 10.

262. But in certain regions, courts tend to find a midway solution by “discounting” the compensation that the plaintiff would get, even if the plaintiff successfully established her case. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156.

263. See *supra* Table 11a. The three-way cross-tab analysis that shows a similar trend.

264. See *supra* Table 11a. One possible explanation for unrepresented MOW’s higher success rate is that the court sympathizes with them and adopts a more relaxed approach (both procedurally and in deciding the substantive case) as compared to MOW who are represented.

265. Historically, only men get to inherit property. Women play a subservient role to their husband within the family. Many of the cultural biases against women have continued in modern-day rural China.

266. Judd, *supra* note 14, at 690; Charles J. Ogletree, Jr. & Rangita de Silva de Alwis, *The Recently Revised Marriage Law of China: The Promise and the Reality*, 13 TEX. J. WOMEN & L. 251, 267 (2004) (“[W]omen must rely more heavily on adjustment in landholdings to obtain land. With growing official discouragement and legal limitation of readjustments, women increasingly have difficulty obtaining land in their husbands’ villages or retaining land in their parents’ villages.”).

land policy in China, the MOW receive no land interests in their husbands' villages.<sup>267</sup> The discrimination against MOW within Chinese rural communities has been institutionalized.<sup>268</sup> It is observed that courts generally sympathized with MOW litigants and believed they were treated unfairly in the compensation allocation process. One informant confirms that most courts recognize the difficult situation MOW litigants are in and believe they have been unfairly treated by their natal village collectives.<sup>269</sup> In those courts' view, such unfair treatment is a violation of gender equality laws.<sup>270</sup> Perhaps the courts understand that, if they were to treat MOW lawsuits as "arms-length" lawsuits, MOW litigants will very likely fail, an outcome that they find unjust and an infringement of the principle of gender equality.<sup>271</sup>

## 2. Courts Sided with the "Have-Nots" to Establish Their Own Legitimacy

The Chinese courts fit well into Haynie's theoretical framework under which courts in developing countries deliberately favor the "have-nots" to establish their own legitimacy, which in turn secures stability and development.<sup>272</sup> Courts in China are institutionally weak, especially when compared to their counterparts in developed countries. They inherit a tainted public image from the previous period in which courts operated very much like mediation centers, rather than arbiters of justice.<sup>273</sup> Courts need to be strategic to improve their position among "superior authorities."<sup>274</sup> By establishing a reputation for defending the weak, the judiciary is able to wield informal power within the Chinese political structure, which in turn elevates the status of judges.<sup>275</sup> These concerns may have motivated courts to adopt a

267. Judd, *supra* note 14. The "no change for 30 years" policy does not in itself discriminate against MOW. Under this policy, MOW may keep the land that they owns in their natal village. The discrimination comes from MOW being denied compensation by the village collective following rural land expropriation.

268. Bo, *supra* note 100 (explaining that Chinese culture regarding land use is one reason women's rights are diminished in rural societies).

269. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156.

270. *Id.*

271. *Id.*

272. See Haynie, *Resource Inequalities and Litigation Outcomes*, *supra* note 9, at 753.

273. CHAN, *supra* note 156. See generally Peter C.H. Chan, *An Uphill Battle: How China's Obsession with Social Stability is Blocking Judicial Reform*, 100 JUDICATURE 14 (2016) (offering a critical appraisal of China's contemporary judicial reform); Peter C.H. Chan, *Civil Mediation in Imperial, Republican and Modern-Day China: Historical and Cultural Norms under the Traditional Chinese Legal Order*, 85 TVR [LEG. HIST. REV.] 577 (2017) (documenting a historical account of China's mediation system); Peter C.H. Chan, *Opciones de Mediación para Resolver Disputas Comerciales en China* [Mediation Options for Resolving Commercial Disputes in China], 41 REV. CHILEAN DER. 153 (2014) (giving an overview of China's contemporary commercial mediation system); Peter C.H. Chan, *The Enigma of Civil Justice in Imperial China: A Legal Historical Enquiry*, 19 MAASTRICH. J. EUR. & COMP. L. 317 (2012) (exploring a legal historical overview of China's civil justice system).

274. He, *supra* note 23, at 329.

275. Recent judicial reform clearly aimed to enhance the image of Chinese courts as a way to "regain the public's trust and confidence in the system." See CHAN, *supra* note 156, at 241. Previously, the Chinese court



redistributive approach when adjudicating MOW disputes.<sup>276</sup> MOW litigation has become less sensitive than before.<sup>277</sup> One informant said the village collective is unlikely to “stir things up” if the court ruled in favor of MOW.<sup>278</sup> By leveling the playing field for the “have-nots” (MOW), the Chinese courts can establish their public image as vanguards of gender equality, but bear minimal political risk.<sup>279</sup> Since DADs are required to be uploaded online by the SPC, courts understand the negative public relations implications if their decisions are found to be inconsistent or biased in favor of the privileged.<sup>280</sup> Since DADs are made public, ruling in favor of the weak promotes the courts’ public image like no other campaign could.

#### D. LAWYER CAPABILITY

The role of lawyers in shaping litigation outcomes has been widely discussed.<sup>281</sup> From the data, the impact of legal representation on the plaintiff’s (MOW) success is mainly negative with two exceptional situations. The bivariate analysis in Table 11a shows plaintiffs without legal representation had a higher success rate. With the exception of two situations, shown in Table 12e & Table 12g, the three-way cross-tabs analysis presents a similar trend identified in the bivariate analysis in Table 11a (for example, the plaintiff without legal representation had a higher rate of success). This is an atypical situation since under the party capability theory, lawyers should play a positive role in shaping the outcome.<sup>282</sup> For example, a study found that experienced

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was criticized for its over-reliance on judicial mediation and abdication from the role of the rule-enforcer. See Carl F. Minzner, *China’s Turn Against Law*, 59 AM. J. COMP. L. 935, 939 (2011).

276. The main objective of China’s most recent judicial reform is to establish a system where “the people feel that justice is done in every single court case.” CHAN, *supra* note 157; see also Guanyu Quanmian Shenhua Renmin Fayuan Gaige De Yijian, Renmin Fayuan Disi Ge Wunian Guihua Gangyao (关于全面深化人民法院改革的意见—人民法院第四个五年改革纲要 (2014–2018)) [Opinions of the Supreme People’s Court on Comprehensive Deepening of Reform of People’s Courts—The 4th Five-Year Outline of the Program for Reform of People’s Courts (2014–2018)] (promulgated by Sup. People’s Ct., Feb. 4, 2015, effective Feb. 4, 2015), <https://www.chinacourt.org/law/detail/2015/02/id/148096.shtml> (China).

277. But see Randall Peerenboom, *Economic and Social Rights: The Role of Courts in China*, 12 SAN DIEGO INT’L LAW J. 303 (2011).

278. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156 (explaining that unsuccessful village collectives seldom appeal and almost never petition against the court decision) (*xinfang*) see also Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250 (noting that enforcement of MOW-favoring judgments, which used to be difficult in the past due to resistance from some villages, is no longer a problem today).

279. Interview with Anonymous Female Judge in Shaanxi Province, *supra* note 156. The informant is of the view that the MOW litigant can place more political pressure on the courts (through *xinfang*), than village collectives. *Id.*

280. Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250.

281. See, e.g., John Szmer et al., *supra* note 130130, at 298 (“Litigation team experience and size affect the Court’s decisionmaking, even after controlling for several factors, including ideology and party capability.”).

282. See Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250. An informant holds the contrary view that lawyers help the MOW’s case by offering useful strategies, such as inquiring about the

lawyers are like RPs who can reverse the disadvantageous position of OS-litigants.<sup>283</sup> Another study found that represented “have-nots” came out ahead in the Israeli High Courts of Justice, the same court in which the unrepresented “have-nots” were losing.<sup>284</sup> One possible explanation for unrepresented plaintiff’s (MOW) higher success is that the Chinese court sympathizes with them and adopts a more relaxed approach, both procedurally and in deciding the substantive case, as compared to plaintiffs who had representation.<sup>285</sup>

The data in Table 11b shows that whenever the defendant had legal representation, MOW litigants lost more often, independent of whether or not the plaintiff had legal representation.<sup>286</sup> This is consistent with the party capability theory of lawyers.

The data in Table 11a shows that most plaintiffs had legal representation (77.69%). The proportion of plaintiffs having legal representation is higher than that of defendants. The plaintiffs’ legal representatives are attorneys from professional law firms, not “street lawyers” or paralegals (Table 11c). This contradicts the view that “have-nots” are less likely to be able to find quality representation.<sup>287</sup>

#### E. OTHER OBSERVATIONS

It appears the court takes procedural irregularity of the allocation process seriously. As shown in Table 16b, MOW is 100% successful when the court finds procedural defect in the allocation agreement.<sup>288</sup>

Some studies have suggested that petitions by MOW (*xinfang*) have exerted pressure on local courts.<sup>289</sup> The data does not offer a conclusive answer. As shown in Table 17, while MOW did not lose a single case when the petition result was provided in the DAD,<sup>290</sup> in cases where no outcome of the petition was provided, the losing rate of MOW is higher than that when no Previous Citizens’ Petition was lodged.<sup>291</sup>

It is still true that in certain regions—such as various regions in Guangdong Province—courts would only accept MOW cases when an

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attitudes of the courts before commencing litigation or bringing a “test case” to test the waters before other MOW commence proceedings. *Id.* Galanter, *supra* note 1, at 114–19.

283. Kevin T. McGuire, *Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success*, 57 J. POLITICS 187, 190–91 (1995).

284. Dotan, *supra* note 7, at 1077.

285. CHAN, *supra* note 156.

286. The above three-way cross-tabs analysis in Table 14a, Table 14b and Table 14j confirms the trend identified in the bivariate analysis in Table 11a. For example, the defendant with legal representation had a higher rate of success.

287. Galanter, *supra* note 1, at 114–119.

288. 80% complete win, 20% partial win. But the rate of frequency of allocation agreements having procedural defects is rather low (2.02%) (n=496). See Table 16b.

289. Chen & Gao, *supra* note 99; see also Gui, *supra* note 96, at 168.

290. This covers whether or not the Previous Citizens’ Petition was favorable to the MOW.

291. In cases where no outcome of the petition was provided, the MOW’s losing rate was 11.11%. In cases where no Previous Citizens’ Petition was lodged, the MOW’s losing rate was 6.12%.

administrative ruling on the village collective membership issue had been issued.<sup>292</sup> From the data in Table 17, it appears that the MOW never lost a court case with a favorable prior administrative ruling and never won a court case with an unfavorable prior administrative ruling. Thus, courts place a high premium on prior administrative decisions regarding MOW disputes.

Another observation from Table 17 is that, when MOW have litigated the issue before,<sup>293</sup> and subsequently won,<sup>294</sup> their success rate in the subsequent court proceedings is 100%.<sup>295</sup> This confirms the view that an OS-litigant, with some prior and relevant litigation experience, can emerge as a party with certain RP attributes because of the previous experience and enjoy advantages of the RP in the subsequent lawsuit.<sup>296</sup>

It appears the reverse logic is true about “have-nots” winning due to the court favoring the MOW. When the court is determined to uphold “village autonomy,” the MOW litigant has a much greater chance of losing the case. From the data (Tables 16a and 16b), MOW have not won a single case when the court has approved the decision of the village collective on the MOW’s membership status, whether on the basis of the villagers’ charter or allocation agreement.

Studies have shown that provincial legislation that protects individual rights is very important in the judicial enforcement of such rights.<sup>297</sup> This is borne out in the data in Table 14c, where whenever any provincial statute that protect women’s rights was applied in the case, MOW prevailed 100% of the time. The same is true when the court applied pro-MOW provincial judicial rules.

The data shows that most MOW have either moved to their husbands’ villages or stayed in the natal villages after marriage (with a frequency rate of 90.67%). As seen in Table 8c, only a small fraction have moved to the cities (with a frequency rate of 9.33%). This reinforces the view that the MOW issue in China is, by nature, mainly a *rural* issue.

292. Telephone Interview with Anonymous Female, Judge, Guangdong Province Basic-Level Court (Apr. 13, 2018) [hereinafter Interview with Anonymous Female Judge in Guangdong Province].

293. These previous lawsuits mostly concern the same MOW litigant suing the same village collective for government compensation in prior land expropriations.

294. There are quite a number of these cases: the rate of frequency is 13.47% (n=802). See *supra* Table 17.

295. Complete win being 79.63% and partial win being 20.37%. See *supra* Table 17. An alternative explanation for the MOW litigant’s greater success is that she had already received judicial confirmation of her membership in the previous lawsuit.

296. In fact, more MOW litigants are now organizing themselves in groups to campaign for their cause and exert pressure on the government. See, e.g., Bo, *supra* note 100, at 117 (the “one person one letter to the People’s Congress” (一人一信到人大) campaign in Guangdong Province); see also XUANCHENG FUNV WANG [WOMEN’S NETWORK OF XUANCHENG CITY], <http://www.ahxcwomen.gov.cn/plus/view.php?aid=225> (last updated Apr. 26, 2018) (listing updates on collective actions of MOW); Susan D. Franck & Linsey E. Wylie, *Predicting Outcomes in Investment Treaty Arbitration*, 65 DUKE L.J. 459, 501 (2015).

297. See, e.g., Cheng and Ke, *supra* note 80 (explaining the impact of provincial and local labor rules on labor dispute adjudication).

## F. LIMITATIONS OF THIS STUDY

Despite its novel discoveries, this study has a number of limitations. First, the number of “losing” cases for the MOW is relatively small. As such, the significance of *some* variables in the variation of the outcome is unknown, as chi-square tests cannot be performed when the samples are too small. If the overall sample is increased to more than 858 sampled DADs, it is believed that chi-square tests can be performed on all variables. Second, the study does not shed light on the causal relations between the variables and the outcome of the case, which requires more delicate statistical modeling. Third, the study does not provide an exposition on the situation on a national level of married-out women being denied access to court, a problem that has persisted for many years.<sup>298</sup> An informant confirms,<sup>299</sup> however, that few courts today would reject cases filed by MOW in one particular province,<sup>300</sup> and another informant noted that the problem has significantly improved in another province,<sup>301</sup> but only after the implementation of the SPC Case-Filing Registration Rules.<sup>302</sup> The data shows that there is an explosion in the number of MOW lawsuits since 2014, which seems to suggest that access to court has improved.<sup>303</sup> Nevertheless, these are piecemeal evidence only, and a more thorough empirical study is necessary to gauge the actual reality of the problem. Overall, this study focuses on the litigation aspect of the MOW issue and not on the out-of-court dispute resolution process. Fourth, this study does not touch upon cases withdrawn by the plaintiffs or settled by the parties, information that may shed light on the RP’s long-term litigation strategies.<sup>304</sup> But these types of cases are publicly unavailable and would require extensive field investigation to collect. Finally, the study sampled DADs that are available online. It is expected that courts will not disclose all DADs, as some of them may be politically sensitive. The sample, therefore, cannot be completely representative using publicly available sources.<sup>305</sup> However, given that MOW lawsuits have become a type of run-of-the-mill case,<sup>306</sup> it is expected that the proportion of undisclosed DADs is very small.<sup>307</sup>

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298. He, *supra* note 23, at 204.

299. Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250.

300. Jiangxi Province.

301. Hubei Province.

302. Interview with Anonymous Male Attorney, *supra* note 250.

303. *See supra* Table 1.

304. Galanter, *supra* note 1, at 125 fig.3.

305. He and Su, *supra* note 2, at 128.

306. Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250.

307. *See supra* Table 4.

## CONCLUSION AND IMPLICATIONS

The main contribution of this Article is the empirical discovery that the “have-nots” (the MOW litigants) came out ahead in China’s courts by a *substantial margin*. This finding contradicts Galanter’s party capability theory (under which the “haves” should prevail) and the established view that the “haves” should come out ahead in China (a leading study on Shanghai courts found the “haves” prevailing by large margins). This Article shows that Galanter’s party capability theory is inapplicable when the courts favor the weaker party and are determined to level the playing field between the “haves” and the “have-nots.” The data shows that the Chinese courts in MOW lawsuits favored the MOW litigant. The courts sided with MOW litigants out of sympathy for MOW, whom, in the courts’ view, were being unfairly treated by the village collectives. The courts may have also sided with the MOW litigants as a strategic consideration to establish the courts’ own legitimacy through protecting the weak. It is believed that the courts’ favor for the “have-nots” (MOW) neutralized the party-capability advantages enjoyed by the “haves” (village collectives) and ultimately propelled the “have-nots” to victory.

This Article also shows that the lack of judicial independence in China, which enhances the likelihood of courts being swayed by powerful external influence in favor of the stronger party, does not necessarily guarantee victory for the “haves.”<sup>308</sup> The Chinese judiciary, like any judicial institution in the developing world where the legitimacy of the court is not a pre-existing feature of the political system, would strive to establish a public image of the rights-protector and resource redistributor, at least in “some components of their docket.”<sup>309</sup> MOW lawsuits happen to fall within this category of cases. Chinese courts, after evaluating the political risks involved, sided with the “have-nots” (MOW) as part of an exercise to build up the courts’ legitimacy.

Aside from its theoretical contribution to the party capability theory, this study offers insight into the role of the judiciary in Chinese society, the protection of rural women’s land rights in China, and other issues with potential policy implications. First, the study contributes to the debate on whether China has judicial independence. Previously, China’s grassroots courts were seen as partial and relatively weak, and even corrupt institutions that were susceptible to external interference, such as the local government and rural organizations. It follows that the privileged and the powerful are likely to have an advantage in litigation, given their connections and superior resources. This study shows that the Chinese grassroots court, to a certain degree and in specific situations, is capable of withstanding external pressure to bring about just outcomes.

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308. Interview with Anonymous Male Judge in Jiangxi Province, *supra* note 250.

309. Haynie, *Resource Inequalities and Litigation Outcomes*, *supra* note 9, at 753.

Second, the study shows that grassroots courts can be effective rights-enforcers—in this case, by tackling gender inequality—when the opportunity presents itself and when the political risks of enforcing such rights are manageable.

Third, the study shows that China is moving in the right direction (in line with international norms) by protecting rural women's land rights in civil cases. The findings will help the CEDAW Committee and China understand the MOW issue in more concrete terms and better focus their dialogue going forward.

Fourth, this research shows that, even in an authoritarian state, government-connected institutions—the village collective—do not always win in lawsuits brought by the individual “commoner.” The outcome of the case does not depend entirely upon the litigant's political connections and institutional strength. Finally, despite the central government's policy of respecting rural self-governance, this study suggests that grassroots courts are capable, given the right circumstances, of penetrating local customs and practices, as well as providing direct remedies to rights-seeking claimants.

Hopefully, future research can build on this study and add to the debate on Galanter's theory, rural women's rights protection in China, and the role of the judiciary in the Chinese society.