

多语种土地词汇手册

Multilingual thesaurus
On land tenure

Thésaurus multilingue
du foncier

中文版
Chinese version
Version chinoise



全国农业普查图标

几内亚比绍的稻田、森林、河流及海湾

摄影：摘自杂志《生机勃勃的世界》

多语种土地词汇手册中文版是根据中国农业普查项目(GCP/CPR/020/ITA),在意大利信托基金的资助下编辑出版的。

La version chinoise du Thésaurus multilingue du foncier a pu être mise au point et publiée **grâce à l'appui** financier de la coopération italienne, dans le cadre du projet de recensement agricole chinois GCP/ CPR/020/ITA.

The Chinese version **of the Multilingual Thesaurus on land tenure has been elaborated** and published with the financial support of the Italian Cooperation through project GCP/CPR/020/ITA "Chinese Agricultural Census".

序 言

1996年11月，世界各国的国家元首和政府首脑会聚罗马，举行世界粮食首脑会议。为了保障粮食安全，减少乡村贫困，他们做出承诺，要为每一个人创造条件，使他们都能公平地获得土地、水、森林、牧场等资源。

1997年4月，为了加强首脑会议的后续工作，粮农组织负责制定农业计划的委员会召开会议。会上，[几个国家的代表指出](#)，当今世界上许多国家都非常关注土地改革，关注配置自然资源的各种模式，粮农组织应该抓住这样的好形势开展工作。

为了满足代表们的愿望，让人们在讨论土地问题时能够明确清晰地表述意见，更加卓有成效地开展实地工作，粮农组织乡村发展司（SDA）[决定编辑一本词义清晰准确的土地专业词汇表](#)。

[为此](#)，乡村发展司土地制度处（SDAA）编写了一本“土地词汇手册（[法文版](#)）”。这本词汇手册涵盖了法律、机构、历史等各个层面，并对空间、传统或[成文](#)的土地法规、测量、土地整治以及土地信息技术等各个领域作了描述。[这本词汇手册](#)既可供总部的各业务司参考，也可供专家们在执行有关土地问题的实地项目时使用。同时，[它对](#)教学部门讲授如何获取并开发自然资源的有关知识，以及对研究部门从事乡村发展的研究也不无裨益。

在土地词汇手册法文版出版后，乡村发展司又结合英语地区和西班牙语地区的社会经济环境、机构、体制和历史背景，又[先后出版](#)了英文版和西班牙文版。这样，土地词汇手册就涵盖了粮农组织和联合国系统各机构的三种工作语言。

现在，乡村发展司又向读者推出这个词汇手册的中文版本。在这个版本中，我们所做的工作是对法文版本做一些适应性的改动，而不是翻译。

这是因为，一般说来，逐字逐句地翻译出来的土地词汇，不能体现人们在其他语言背景中所理解和所经历的全部现实。

从一种语言区变换到另一种语言区，实际上就离开了原语言的社会经济环境，离开了原有的土地背景，从而进入到新语言的社会经济环境与土地背景之中。而在新的社会经济环境和土地背景之中，历史、机构、体制和法律的变革对土地词汇的含义、表达方式以及土地观念赋予了新的色彩。我们所追求的是，把土地的词汇含义、表达方式和土地观念恰如其分地嫁接到其所处的文化及语言环境中。

浏览用各种语言编写的土地词汇手册，有助于领悟各个语言载体中体现出来的土地现状及其变革，理解各种语言环境中土地词汇的色彩和词义的差异。

土地状况正经历着不断的变革，虽然乍看起来，这种变革显得非常缓慢，并不深刻。同样，我们编写土地词汇手册，也只意味着我们的工作刚刚开始。我们希望土地问题的专家、研究人员和实地工作者就土地问题与粮农组织的有关技术部门加强联系，以便使土地词汇手册的内容日臻完善，让它更好地反映当今土地问题的现实。

土地制度处处长 保罗·孟罗-富尔

Paul Munro-Faure

(Chief, Land Tenure Service)

致 谢

中文版多语种土地词汇手册的编写是一部三部曲。

首先，粮农组织几个技术部门中参与编写土地问题参考书籍的专家们进行合作，编制了一份词汇表。在按照专题内容编排法文版各个章节时，这份词汇表的大部分词汇均被采用。

然后，鲁汶天主教大学发展研究所（IED）的一个研究小组，在社会经济学家保罗·马蒂厄（Paul Mathieu）的主持下，由农艺师艾蒂安·韦哈根（Etienne Verhaegen）负责学术协调，继续工作，对法文版的词汇进行了增补。

最后，在唐正平先生和张红宇先生的主持下，中国农业部、中国国土资源部、中国国家发展与改革委员会、中国人民大学、中国农业大学的研究人员，以土地词汇手册的法文版为基础，根据中国土地问题的特色，完成了适应性改写工作，形成了中文版。

我们愿借此机会感谢粮农组织的同事们，没有他们的支持，本手册的原始文本法文版就不可能得以问世。

我们要特别感谢张慎睦（Pansy Tsang）女士。她不仅为本手册的编写和出版做了大量的指导工作，也在中方与 FAO 专家的沟通过程中发挥了文化和语言的特长，而使双方的合作非常愉快和顺利。

我们也特别感谢蓝宝林先生。在他的领导下，中国土地制度概括性描述和词汇索引的法译和英译工作有条不紊地进行并且完成得非常出色，为大家更好地阅读和理解这个手册提供了许多方便。

没有各个科研单位土地专家的大力协助，本手册也不可能与读者见面。我们在这里谨向他们一并表示感谢。

在这本手册的编撰阶段，我们参阅了大量的文献。选择的资料既有一般性资料，比如通用字典、专业字典、综合性参考书籍和教材，也有具体

的案例。我们这里向这些文献的作者表示深切的谢意。

鉴于编者的水平有限，这本手册的不足及缺陷之处在所难免。恳请读者提出宝贵意见和建议，以便在再版时予以修正和补充。如有意见和建议请洽：

粮农组织乡村发展司（SDA）土地制度处（SDAA）处长。

地址为：Viale delle Terme di Caracalla, 00100 Rome, Italie。

编写说明

1979年世界农村改革和乡村发展大会之际，联合国粮农组织曾编撰过五种文字的土地专题词汇表。现在的土地词汇手册中文版，就是在这个词汇表的基础上深入加工之后产生的。

本手册的编写，首先是从选择词汇开始的。土地问题是个非常广阔的领域，涉及的学科很多，既有地理学、农学等自然学科的内容，又有法律、社会学、经济学等人文学科的知识。另外，土地学科本身也在不断发生变化，无论是理论、观念，还是思考问题、解决问题的手段和政策，都处在迅速的变革之中。例如：遥感和地理信息系统这样的手段，既从点和线的角度又从面的角度进行操作，无疑是方法和观念上的突破；人们对私有制的崇拜已经逐渐淡化，越来越多的发展中国家开始以本国的实际情况为基础建立起相对有效的土地制度。鉴于这种原因，本手册不可能穷尽所有土地方面的词汇，必须突出某一个或者几个方面内容。为了提出和选定词汇，我们广泛地吸取了土地问题专家的知识，包括粮农组织有关部门、中国的大学和研究机构以及其他国家和国际组织的土地问题专家，集中了他们的经验。为了突出重点，在本手册中，我们主要选择了当代中国土地资源和土地制度方面的词汇，很少涉及其他时期和其他方面的词汇。其他国家的土地政策和法律、所有制形式和利用方式等，同样也不涉及。书中收录了部分历史性的词目，例如井田制、永佃制、天朝田亩制度、井冈山土地法、减租减息、土地改革等，目的是保持中国土地制度变化的完整性和连续性，对读者从社会和文化的角度了解中国的土地制度变革提供部分背景。尽管我们一再缩小选择范围，但收录到本手册的词汇仍然是非常浩繁的。

在本手册的开头，我们从中国历史、社会文化、机构和语言学的角度，具体地介绍了中国土地制度的框架，并翻译成英文和法文供读者参考。

本手册的内容分为七章。第一章的题目是“人口、资源和权利”，其中列举了大家在研究土地问题时经常遇到的基本概念、观念以及最为常用的法律术语。第二章是与“空间”相关的词汇。“空间”是土地问题中的一个关键概念。这一章从中国的地形地貌以及计量手段和计量方法方面，介绍了土地空间的广泛知识。第三章对中国有关土地问题的法律、法规进行了罗列，同时对土地政策及其演变的过程，特别是中国特色的土地管理制度，例如土地用途管制制度、耕地占补平衡制度、基本农田保护制度、农村土地家庭承包经营制度等，作了比较详细的说明。由于当代中国并不存在土地的私有制，我们对法文版的编辑体例做了适当的调整，本手册不设“土地非国家调节模式”（法文版第六章），而是把土地的基础信息等内容单列出来，形成第四章“土地、土地性质及其变化”；把地籍管理的相关内容，包括管理信息等，作为第五章“土地信息系统：地籍管理部门和管理手段”的基本内容。第六章主要整理了与土地经济和土地税收有关的词汇，第七章是农、林、牧、渔业中的土地问题。当然，正如其它著作的章节划分一样，由于一部分词汇同属几个不同的专题，有些词汇的位置排列并不是非常恰当的。

本手册不是一份简单的词汇表。编者除了给出每一个词汇的简要定义之外，也适当地作了一些引申和拓展，还说明了词汇在不同环境背景下的特定含义。对从事土地专业工作的读者，本手册的作用，一是使他们了解词汇的多种含义，二是使他们在分析土地问题时应用词汇更加严谨。对不从事土地专业工作的读者，本手册可作为启蒙读物，为他们打开认识土地问题的大门。

本手册的每一章之中，词目都按照内容的相关性进行排列。为了方便读者查阅，我们在每个词目之前还添加了序号。本手册最后还有中文、英文和法文索引。中文索引、英文索引和法文索引按照章节、序号排列。

本手册是在粮农组织乡村发展司土地制度处热拉尔·希巴里斯先生的

主持下，由中国农业部张红宇先生组织中国农业部、中国国土资源部、中国国家发展与改革委员会、中国人民大学、中国农业大学的有关决策者和研究人员共同编写的。

主要合作者：

总 编：热拉尔·希巴里斯

(General Editor :Gérard Ciparisse, SDAA)

副总编：唐正平 张红宇

协调人：张慎睦 陈良彪 唐盛尧

编写者：唐正平 张红宇 韩 俊 马晓河 蓝宝林

丁骥千 黄小虎 陈良彪 唐盛尧 杨宜新

孙雪东 李尚兰 胡素全 丁国文 高义生

余 佶 李彦敏 汪征辉 郭冬泉 陈群辉

王 晖 王 莉 周旭英 陶 陶

翻译者：蓝宝林 丁骥千 柯克尔 罗嘉美 诸葛仓麟

王 平 于世强 孙丽萍 王大美 袁汉平

钱 钰 叶挺刻 宋宣仪 袁 芳

目 录

序言
致谢
编写说明
图表目录
中国土地制度变迁概述
第一章 人口、资源和权利
第二章 空间描述
第三章 土地政策、程序和手段
第四章 土地、土地性质及其变化
第五章 土地信息系统：地籍管理部门 和管理手段
第六章 土地税收和经济
第七章 农、林、牧、渔业中的土地问题
参考书目
词汇索引

图表目录

- 图 1: 中国政区
- 图 2: 中国地形
- 图 3: 中国水系
- 图 4: 中国土地利用
- 图 5: 长江西陵峡 (湖北)
- 图 6: 大连海涂 (辽宁)
- 图 7: 荒漠草原 (青海柴达木盆地)
- 图 8: 天然草原 (新疆维吾尔自治区)
- 图 9: 张家界风光 (湖南)
- 图 10: 九寨沟自然保护区 (四川省)
- 图 11: 融合遥感影像提高影像解译能力
- 图 12: 土地利用规划 (浙江省)
- 图 13: 垛田 (江苏省)
- 图 14: 梯田 (贵州省)
- 图 15: 中国土地利用现状 (2000 年)
- 图 16: 珠穆朗玛峰冰川 (西藏自治区)
- 图 17: 今日北大荒 (黑龙江省)
- 图 18: 改土造田 (山西省)
- 图 19: 黄河滩养鱼基地 (陕西省)

图 2. 中国地形 La topographie de la Chine

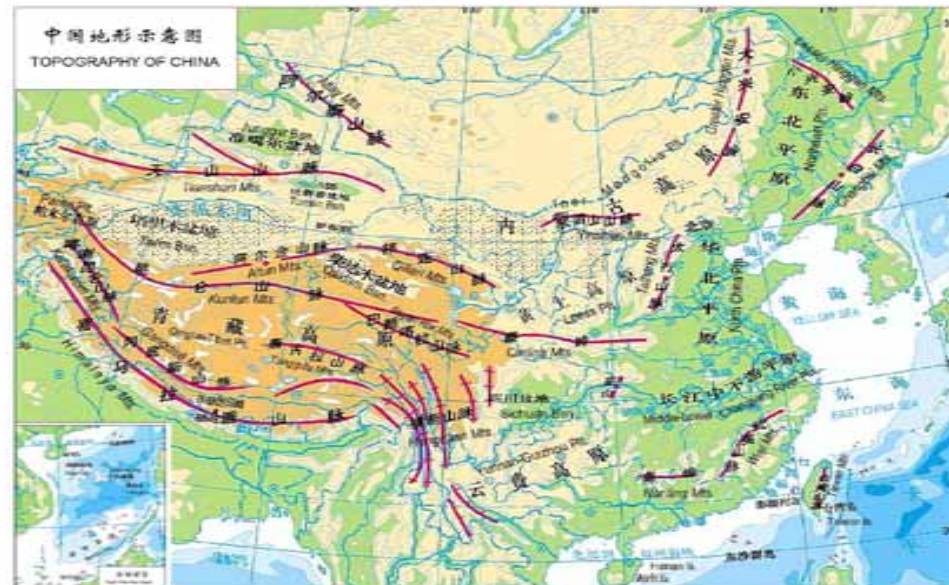


图 3. 中国水系 Le système fluvial de la Chine



图 4. 中国土地利用 Utilisation des terres en



Chine

中国土地制度变迁概述

中国是个具有五千多年农耕文明的农业大国，土地制度及其变迁，在很大程度上决定了经济社会发展变化的基本方向。中国的土地制度，经历了原始公社的氏族共有制、奴隶制时期的“井田制”、封建社会地主私有制与小农私有制并存、社会主义社会公有制等不同形态。

一、旧中国的土地制度是地主土地私有制占主导地位、农民个体私有制处于从属地位的封建土地制度

地主土地私有制占主导地位、农民个体私有制处于从属地位的封建土地制度，曾长期占据中国的历史舞台，是中国封建社会时期最基本的社会制度。在这种土地制度下，在地权分配上长期起作用的，是土地自由买卖和财产多子均分制。

中华人民共和国建立前夕的土地制度，是地主占有、佃农经营，辅以自耕经营的封建土地制度。1952年8月，刚刚成立的国家统计局根据各地区的统计资料，对1949年农村各阶级占有耕地的情况进行了分析。结果显示：占乡村人口总数4.75%的地主，占有38.26%的耕地；占乡村人口总数4.66%的富农，占有13.66%的耕地。而占乡村人口总数52.37%的贫雇农，仅占有14.28%的耕地，处于无地和少地状态。在这种土地制度下，土地的使用分为两种情况。一是小农自耕制，一是租佃耕种制。对于某一块土地，所有者和耕种者可以是同一个

人，也可以是不同的人。

由于各地经济发展水平和传统习惯存在显著的差异，旧中国的土地租佃制度复杂多样。

根据土地同农业劳动者结合方式的不同，可分为租种制、伙种制和帮工佃种制三种形式。租种制是地主只出租土地，收取地租，其他生产资料由佃户自备。伙种制是地主除出租土地之外，还提供一部分生产用的耕畜、种子、肥料、农具等资料，土地正产物在地主与佃农之间按事先规定的比例分配。伙种制在旧中国的华北地区和陕北地区比较常见。在伙种制下，因为加上了其他生产资料的租赁利息，地主对土地正产物的分成比例往往高于租种制下的分成比例。帮工佃种制有两个主要特点：一是帮工，佃户要为地主承担各种无偿劳役，无偿劳役包括饲养牲畜、赶车运货、做饭洗衣、看护孩子以及纺线织布等。二是地主除出租土地以外，还提供大部分生产资料，有些还提供佃户本人及其家属的口粮和燃料，以至住房和用具。土地正产物，主佃双方按事先议定的分成比例分配，同时佃户从其所得中，将借用的口粮、种子和饲料归还地主。帮工佃种制下，地主对土地生产物的分成比例很高，一般是“二八分租”（地主八成），有的是“一九分租”（地主九成）。旧中国，帮工佃种制约占全部租佃关系的 2%。

根据租佃期不同，又可分为论年租佃制、定期租佃制、不定期租佃制和永佃制。论年租佃制多盛行于分租制和伙种制流行的区域，约占旧中国租佃关系总数的 25%。在论年制下，地主每年都有撤佃、夺佃的权利和机会，佃户每年都要受到撤佃的威胁。定期租佃制一般在租佃契约上载明租佃期限，地主和佃户都受此期限的约束。根据租佃期限的长短，定期租佃制又

分为短期租佃和长期租佃两种。短期租佃指3年至10年以下者。据调查，短期租佃关系约占旧中国租佃关系总数的24%。长期租佃指10年至20年者，约占旧中国租佃关系总数的8%。不定期租佃制不具体规定租佃年限。这是一种便于地主支配佃户的租佃形式，地主可随时收回租地。这种租佃形式，流行最广，约占旧中国租佃关系总数的30%。永佃制是佃户依约缴租、享有永久使用权的租佃制度，约占旧中国租佃关系总数的11%。在永佃制情况下，土地所有权与使用权是相互分离的。佃户拥有的使用权叫田面权，可以继承，也可以转佃他人，地主不得干涉。所以，田面所有者与实际耕作者可能是同一个人，也可能是不同的人。地主的土地所有权叫田底权。地主可以买卖抵押田底权，不影响农民的使用权，叫“换东不换佃”。永佃制在福建最盛行，浙江、安徽、江苏、江西也较多，北方地区较少。产生永佃制的原因，主要有五个方面：（1）佃农开垦公有或地主所有的荒地，获得永佃权；（2）佃农投资改良租地付出了较多的工本，享有永佃权；（3）佃农交纳了高额押租金获得永久耕种权；（4）江南商品经济发达地区，地主到城市居住（称为“不在地主”），把地永佃给农民；（5）破产农民在出卖耕地时，与买主约定保留永久耕种权（田面权）。永佃制一方面防止了地主夺佃、稍稍降低了地租率，保证了佃户的利益，佃户有长期投资改良土壤的兴趣，有利于促进农业的发展。另一方面，由于田底、田面可以分别典当、买卖，出现了二地主、三地主，加重了土地实际使用者的地租负担（大租和小租）。

旧中国的土地租约大多数是书面的，只有极少数是口头协议。书面的租约一般是由租佃双方和中人（证人或者担保人）三者签字画押。地租形式有分成地租、固定地租和工资地租三种。分成地租又称“活租制”、“分成制”，是一种只规定土地

正产物在地主与佃户之间分配比例的租佃形式。地租量随年成的丰歉、收获的多寡而年年变动。在中国封建社会的历史上，它曾经是实物地租中占主导地位的租佃形式。中国到了近代，分租制已逐渐减少。但到 20 世纪 30 年代，分租地租仍占中国租佃关系的 28% 左右。在分租制下，土地正产物的产量直接决定地租量，地主为保证其地租收入，往往对佃农的生产活动进行干预。分成地租多流行于旧中国北方地区，因为这里的土地受气候因素的影响较大，产量较低，年际间也不稳定。固定地租是按租佃土地的面积预先规定交租数额的一种租佃制度。地租一经确定，“丰年不加、歉年不减”，在一些地方又称“死租”、“铁租”等。也有遇荒年可以减租的，但一般都以政府减免了田赋为前提。产量较高且比较稳定的南方水稻产区，多采取固定地租。由于旧中国的资本主义很不发达，工资地租并不是普遍存在的形式。在土地租佃制下，佃农实际负担的地租率，一般要占到土地正产物的 40-50% 以上。

旧中国地主私有、租佃经营的土地制度，严重束缚了农业生产的发展，是中国农村长期贫困落后的根源。消灭封建地主土地私有制，推翻封建社会，是中国新民主主义革命的主要内容，也是中国广大农民的强烈愿望。

二、新中国的土地制度是集体所有和国家所有并存的社会主义土地公有制

中华人民共和国成立以后，为了废除封建地主的土地私有制度，实行农民的土地所有制，解放农村生产力，恢复和发展农业生产，为新中国的工业化开辟道路，中央政府于 1950 年 6 月颁布了《中华人民共和国土地改革法》，决定没收地主土地，并无偿分配给无地或少地的农民。通过土地改革，到 1953

年，中国废除了封建地主土地私有制度，完全消灭了租佃制，实现了“耕者有其田”。3亿多无地和少地的农民获得了7亿多亩耕地，被免除了350亿公斤粮食的地租，而且对拥有的土地“有权自由经营，买卖和出租”。

实行土地改革，废除了封建地主土地所有制，广大农民成为自耕农，但并没有废除土地私有制。农业经济体制是农民小块土地的私有制和自由市场调节下的家庭经营。为了发展生产，使农民富裕起来，并防止两极分化，中国政府发出了开展互助合作的号召，引导农民组织互助组和初级农业生产合作社。

从家庭单干，到互助组，再到初级农业生产合作社，虽然土地仍然属于农户私有，但农业生产的组织形式和劳动成果的分配方式，都发生了很大的变化。在互助组阶段，农民只是在具体的生产过程中打破了家庭界限，在主要生产环节上实行互助，而属于各个家庭的土地所有权并没有合并到一起，各个家庭拥有的土地上收获的农产品，还是归各个家庭所有，只是加入互助组的农户必须根据各自的地亩数来分摊生产中的某些费用。这是一种不改变土地所有权、劳动者通过互助协作，来解决生产过程中一些困难的经营形式。这种形式对于农户特别是一些缺乏劳动力和耕畜的农户发展生产，起到了积极的作用。初级农业生产合作社的情况与互助组则大不相同。尽管土地属于农户的私有性质没有改变，但加入合作社，农户的土地必须以入股的形式，交给合作社统一经营；劳动成果也由合作社统一分配，只是保留了入股土地的分红，以体现土地所有者的权利。这种情况下，每一块土地上的产出，与其所有者已经没有直接的联系，所有农户的收益，都由合作社整体的经营状

况来决定。对习惯于家庭经营的中国农民来说,这个变化是深刻的。

在发展初级农业生产合作社的同时, 1956 年, 中国掀起了一场办高级农业生产合作社的热潮。高级农业生产合作社是在合并初级农业合作社或者互助组的基础上组织起来的社区集体经济组织。它实行土地、耕畜和大型农具作价入社, 集体所有, 统一经营, 但仍允许农业合作社留下总耕地的 5% 作为自留地, 由农户分散经营, 种植蔬菜或其他园艺作物。这些自留地归集体所有, 不征公粮, 不交集体提留, 经营者不得私自出卖、出租和非法转让。

1958 年, 中国农村又掀起了大规模的人民公社化运动。人民公社与互助组、初级社和高级社最基本的区别是, 公社成了全部财产的主人。在农村人民公社时期, 农户与生产队、生产队与生产大队、生产大队与公社之间的经济利益差别被抹杀, 等价交换原则被否认, 农民不再是独立的经济单元, 实行的是集体所有和集体经营。但三级所有本身就是极其模糊的产权制度, 农户与生产队之间、生产队与生产大队之间、生产大队与公社之间的产权界限都不清楚, 缺乏资源配置效率和劳动激励机制。从整个中国看, 人民公社制度一直持续到 20 世纪 80 年代初期。

针对农村人民公社土地制度的弊端, 1978 年, 中国政府决心推行改革开放政策, 支持和鼓励农民对农村人民公社进行的各种改革行动。1982 年以前, 政府并没有明确表示可以把土地承包到农户, 而只是强调划小作业组和搞小段包工, 允许通过定额包干、联产到组(户)等形式, 提高农业劳动的效率。

定额包干指社员只承包集体劳动过程中的某个生产环节，根据完成承包任务的情况，集体记给承包人相应的工分，承包人凭工分参加集体统一分配。联产到组（户）是指集体把土地发包给几个或几十个社员自愿组成的生产小组或农户，根据生产小组或农户完成承包任务的情况，记给相应的工分，再由生产小组将工分分给社员（承包农户则直接取得工分），社员凭工分参加集体统一分配。直到 1982 年，政府才明确规定可以将土地直接承包到户，因此，全国范围看，实行家庭承包经营（包干到户）主要是在 1982-1983 年期间完成的。1980 年，实行家庭承包经营的村占全部村队的比重仅为 0.4%，1981 年 6 月底上升到 11.2%，1982 年大约是 67%，1983 年达到 97.8%，1984 年达到 98.9%。这时，中国农村的人民公社土地制度就基本上被家庭承包经营取代了。

农村土地家庭承包经营，是中国农民经过反复比较、鉴别和筛选而逐步发展起来的。在这种土地使用制度中，土地归集体所有仍然是一个基本原则。集体根据当地的资源条件，按照国家有关法规，把公有的土地，通过签订承包合同的方式，交给农户经营。耕地一般是按人口平均分配给农户，也有一部分按人口、一部分按劳动力分配的，承包期一般 30 年。非耕地，如林地、果园、草地、草坡、水面、滩涂等，由于具有生态作用、生产周期长、投资大，在承包制度上同耕地有所区别。除一部分按人口平均承包之外，一般都采取招标的办法选择承包者，承包期也比耕地长，一般 30-50 年，甚至有 100 年的。农户取得了土地的经营权，成为一个相对独立的经济主体，按照合同规定，独立自主地进行生产操作，决定劳动和物质投入的种类、数量和方式，决定土地正产物的分配。在承包期内，农

户承包的土地可以由子女继承，可以有偿或无偿转交他人经营；合同到期以后，原承包户愿意继续承包时，可以优先续订承包合同。除了按合同完成承包的生产任务外，农户还可以自购生产资料，发展承包以外的私营经济，经营二、三产业。集体经济组织作为集体土地所有权和农村社区的代表，承担必要的统一经营职能，主要是对社员履行承包合同的情况进行检查监督，对公共设施（如水利设施、电力设施）的使用统一安排和调度。承包农户在生产经营中需要但单家独户办不好的事业，也由集体经济组织兴办。比如在很多地方，集体经济组织无偿或低偿向承包农户统一提供机耕、机播、灌溉、治虫、收获等生产服务。一些未开发的土地资源，也要由集体统一组织开发经营。

20世纪90年代以来，中国农村土地制度在长期稳定土地承包关系、赋予农民长期而有保障的土地使用权的基础上，又产生了两田制、规模经营、四荒地使用权拍卖、股份合作制等多种土地使用形态。“两田制”是把农户承包的土地分为口粮田和责任田，口粮田按人平均分配，主要解决农户生活保障问题。责任田按人口、按劳动力分配或招标确定承包者，主要解决农户收入和就业问题。口粮田与责任田承担的义务不同，口粮田只负担农业税，责任田除负担农业税外，还要以承包费形式负担村提留、乡统筹费。实行两田制，主要是想在稳定土地承包关系的基础上解决农户之间人地比例关系发生变化的问题，使集体成员在获得土地资源方面达到最大限度的公平。农村土地规模经营，有三种不同的类型。一是建立在集体农场基础之上的统一经营。这以北京郊区为代表。二是建立在家庭农场基础之上的统一种植、分散管理。这以江苏苏南和广东南海等地为代表。三是发生在东部沿海发达地区的“反租倒包”。

由于发展的约束条件较多，规模经营经历了一个从发展到萎缩的过程。“四荒”使用权拍卖。改革开放初期，“四荒”地承包方式与耕地基本相同，唯一的区别是承包期限更长一些。“四荒”使用权拍卖，就是“四荒”的所有权不变，拍卖其使用权，谁购买、谁治理、谁受益，使用期限一般长达 50-100 年，同时，使用权可转让、入股、出租、抵押。股份合作制是把土地折股分配给农民个体拥有，社区实行土地的统一规划和统一开发利用。先是把土地作价折股，然后以某个时点的社区内的全部人口为基数，将土地股（有些地方包括集体其他资产）分配到个人。土地经营所得的收入，则按农民个人拥有的股份进行分配。

当代中国，除了农村土地集体所有制以外，还有土地国有制存在。国有土地包括六类：（1）城市市区的土地；（2）农村和城市郊区中已被依法没收、征收、征购为所有的土地；（3）国家依法征用的土地；（4）依法不属于集体所有的林地、草地、荒地、滩涂及其他土地；（5）农村集体经济组织全部成员转为城镇居民的，原属于其成员集体所有的土地；（6）因国家组织移民、自然灾害等原因，农民成建制地集体迁移后不再使用的原属于迁移农民集体所有的土地。目前，从耕地范围看只有 5% 属于国家所有，从整个土地资源看，国有土地占 90% 以上。

三、中国妇女的土地权益经历了由不平等到平等的变化

在中国，妇女的土地权益并没有被完全忽视，但经历了由不平等到平等的变迁。母系氏族制从来只是个别、边缘地区的案例，根本不构成社会经济的主体形态。

在长达几千年的封建社会时期，中国妇女虽然有获得土地的权利，但这个权利是以不平等和从属于男性的方式实现的。公元 280 年，西晋颁布占田令，在全国范围内平均分配国有土地，规定 16-60 岁的男子占田 70 亩，国家对其中的 50 亩征收田租；女子占田 30 亩，不及男子占田的一半，国家对其中的 20 亩征收田租。公元 485 年，北魏颁布均田令，向农民分配荒地，规定男子受田 40 亩，妇女受田 20 亩，受田不准买卖，死后归还官府；第一次受田的男子，另给桑田 20 亩，作为永业田终身不还。唐朝于公元 624-719 年期间，多次颁布均田令，内容基本与西晋以来的各朝相同，规定 18-60 岁的男子每人受口分田 80 亩、永业田 20 亩，未出嫁成年女子受田 20 亩，超过 60 岁的男子受口分田 40 亩，寡妇给口分田 30 亩。妇女不单独受田，从数量上看已经合并到男子受田之中。农户家庭私有的土地，一般由儿子平均分配或继承，女子则以陪嫁的形式得到一定数量的土地，但一般只限于拥有土地较多的地主或富农。

从土地改革开始，中国妇女的土地权益已经独立存在，并且完全消除了与男子的差别。土地改革分配土地时，妇女与男子分得数量相同的土地。实行家庭承包经营时，集体分配承包地也是根据人口或者劳动力的数量进行平均分配，而没有考虑性别的因素。

家庭承包经营在实现农业快速增长的同时，也改善了农业结构，农业开始从单纯追求粮食生产增长转向发展经济作物、畜牧业、林业等。另外，随着农村工业化和城镇化发展，大量农村劳动力流向非农部门。这使从事农业生产特别是种植业和

畜牧业部门的劳动力，逐步变成以女性为主。第一次全国农业普查结果显示，在 1996 年，种植业和畜牧业中女性从业人员所占的比例已经达到 52.46%。

四、当代中国的土地管理制度是保护耕地、占用审批制、有偿使用和禁止买卖

中国人多地少。土地管理的基本方针是“十分珍惜每一寸土地”。在这个方针下，《中华人民共和国土地管理法》以保护耕地作为主线，确立了以土地用途管制为核心的土地管理制度。

土地权属。《中华人民共和国宪法》规定，中国实行土地的社会主义公有制，即全民所有制和劳动群众集体所有制。农村和城市郊区的土地，除由法律规定属于国家所有的以外，属于农民集体所有，宅基地和自留地、自留山也属于农民集体所有。单位和个人依法使用的国有土地以及农民集体所有的土地，由县级人民政府登记造册，确认所有权，但林地、草原和水面、滩涂的权属确认依照其他有关法律规定办理，使用国有土地的具体登记发证机关由国务院确定；依法改变土地权属和用途的，应当办理土地变更登记手续。任何单位和个人不得擅自、买卖或者以其他形式非法转让土地所有权，但土地的使用权可以依法转让。国家为公共利益需要，可以依法对集体所有的土地实行征用。

土地用途管制。由国家编制土地利用总体规划，规定土地用途，将土地分为农用地、建设用地和未利用地。严格限制农用地转为建设用地，控制用地总量，对耕地实行特殊保护。各级人民政府根据国民经济和社会发展规划、国土整治和环境保

护的要求、土地供给能力以及各项建设对土地的需求，组织编制土地利用总体规划。土地利用总体规划的规划期限由国务院确定；下级土地利用总体规划依据上一级土地利用总体规划编制；土地利用总体规划实行分级审批，经批准的土地利用总体规划的修改须经原批准机关批准。为更好地监测土地利用状况，国家建立土地调查制度、土地统计制度和全国土地管理信息系统。

耕地保护。严格控制耕地转为非耕地，实行占用耕地补偿制度。非农业建设经批准占用耕地的，占用耕地的单位必须按照“占多少，垦多少”的原则，开垦与所占耕地的数量和质量相当的耕地，没有条件开垦或开垦的耕地不符合要求的，必须依照有关规定缴纳垦地费。省、自治区、直辖市人民政府必须确保本行政区域内耕地总量不减少。实行基本农田保护制度。禁止任何单位和个人闲置、荒芜土地；鼓励不破坏生态环境的土地开发利用和土地整理。

建设用地审批和征用。任何单位和个人进行建设，需要使用土地的，必须依法申请使用国有土地，但是，兴办乡镇企业和村民建设住宅经依法批准使用本集体经济组织农民集体所有的土地的，或者乡（镇）村公共设施和公益事业建设经依法批准使用农民集体所有的土地除外。建设占用土地，涉及农用地转为建设用地的，需要办理农用地转用审批手续。征用土地，必须依法办理农用地转用审批，并报请批准；必须按照被征用土地的原用途给予补偿，包括土地补偿费、安置补助费，征用耕地还包括地上附着物和青苗的补偿费。1987年以前，中国对建设用地实行“行政划拨、禁止使用者转让、无偿无限期使用”的管理制度。1987年起，开始逐步将土地使用权从土地所有权

中分离出来，国家以土地所有者的身份，把土地使用权在一定的年限内出让给土地使用者，由土地使用者向国家支付土地使用权出让金。土地使用者取得的土地使用权是一种物权，可以依法转让、出租和抵押。当前，除法律规定的特殊用地，如军事用地，基础设施用地和其他公益事业用地经批准可以通过划拨方式取得土地使用权外，其他用途的用地一律通过有偿的方式取得土地使用权。有偿的方式包括出让、租赁、作价出资、入股等。

SHORT INTRODUCTION TO THE EVOLUTION OF LAND TENURE SYSTEMS IN CHINA

China is a large agricultural country with a more than 5,000-year long farming tradition. The land tenure systems and their evolution have played an important role in China's social and economic development. They have evolved in stages, from public ownership by clans in a primitive society, the "nine-square land distribution system" in a society based on slavery, to the co-existence of private ownership by landlords and smallholders in a feudal system and finally to socialist public ownership.

I . THE FEUDAL LAND TENURE SYSTEM IN OLD CHINA: PREDOMINANCE OF PRIVATE OWNERSHIP BY LANDLORDS, WITH SECONDARY ROLE PLAYED BY INDIVIDUAL FARMERS

For a long time, China was dominated by a feudal land tenure system. It consisted in private ownership by landlords, with a subordinate system of private farmers, which was the most fundamental social system in feudal China. Under this land tenure system, land was traded freely and land as property was divided equally among sons.

Before the People's Republic of China was founded in 1949, China practiced a feudal land tenure system under which the land was mainly owned by the landlords and farmed by tenants,

with independent farming only as a secondary system. In August 1952, the newly established State Statistical Bureau analyzed the state of land ownership by different groups in rural China in 1949, based on statistical data collected in the provinces. The result showed that the landlords, who made up 4.75% of the total rural population, owned 38.26% of all farmland and rich farmers, who made up 4.66% of total rural population owned 13.66% of all farmland. On the other hand, poor farmers, who made up 52.37% of the total rural population, owned merely 14.28% of the farmland. This meant that they either had very little or no land at all.

Under such a land tenure system, the land was used in two ways: it was either cultivated by the smallholders themselves or by tenants. Thus, for a particular land area, the owner and the farmer might or might not be the same person.

Due to different levels of economic development and different traditions depending on the locality, Old China (before 1949) had a complicated system of land lease and tenancy practices.

In terms of labour, the system could be divided into three major categories, namely, pure land lease, sharecropping, and land lease in exchange for services and a fee.

Under the pure land lease system, the landlord only leased the land and collected rent while the tenants had to provide all other necessary farm inputs.

Under the sharecropping arrangement, the landlord, apart from the land, also provided part of the necessary inputs, such as draught animals, seeds, fertilizers and farm tools. The harvested crop was then shared between the landlord and the

tenants according to a pre-determined ratio. Sharecropping was common in northern China and the northern part of Shaanxi Province. Under this arrangement, the landlord would take a larger share of the final yield than under the pure land lease system, to cover the cost of the farm inputs he provided.

Land lease in exchange for services and a fee had two particular characteristics: (i) the tenants had to provide various services to the landlord free of charge, including raising farm animals, transportation, cooking, laundering, babysitting, as well as spinning and weaving; (ii) The landlord leased not only the land but also most farm inputs and, in some cases, also provided food, fuel, shelter and tools for the tenants and their dependents. Yields would be shared between the landlord and the tenants according to a pre-determined ratio and the tenants would return to the landlord what they had borrowed as food, seeds and feed. Under such full tenancy, the landlord would take an extremely high share of the final crop, usually as much as 8:2 or 9:1 (ratio between landlord and tenant). In Old China, this type of tenancy arrangement accounted for approximately 2% of all tenancy arrangements.

The contract time could be either annual tenancy, fixed-term tenancy, continuous tenancy or permanent tenancy.

Annual tenancy that represented 25% of all tenancy arrangements was more common where different kinds of sharecropping prevailed. Under annual tenancy, the landlord reserved the right to cancel the land lease contract or evict the farmer each year.

Fixed-term tenancy contracts usually specified the duration of the lease, which was binding for both the landlord and tenant.

Fixed-term tenancy included both short-term contracts of 3-10 years and long-term contracts. Statistics show that before 1949 about 24% of all land lease contracts were short-term, while long-term contracts, usually valid for 10-20 years, accounted for about 8%.

Tenancy arrangements for undetermined periods gave the landlords more freedom to manipulate their tenants. By not specifying the timeframe of the contract, the landlord could take back his land at any moment, if he so wished. In fact, this was the most common arrangement in China before 1949 and about 30% of all land lease arrangements fell in this category.

Permanent tenancy arrangements gave the tenants the right to use the land for an unlimited period of time as long as they paid their rent according to the contract; this arrangement accounted for 11% of all land tenure arrangements before 1949. Under this permanent tenancy, land ownership was separated from land use right. The tenant had land use right, known as "surface right", which could be inherited and transferred, without any control on the part of the landlord. As a result, the owner of the land area and the person who had usufruct right might or might not be the same person. The landlord thus had "right to the subsoil", which could be traded and mortgaged without affecting the usufruct right. This was described as "a change of landowner, but not of tenant". Permanent tenancy was most common in Fujian Province and, to a lesser degree, in Zhejiang, Anhui, Jiangsu and Jiangxi Provinces. It was rarely seen in the north.

Permanent tenancy was mainly obtained in one of the following ways:

- by reclaiming public wasteland or wasteland owned by a landlord, a tenant acquired permanent tenancy rights;
- if a tenant invested a lot of labour in improving his rented land area, he obtained permanent tenancy rights;
- by paying a large amount of deposit, a tenant could get permanent tenancy rights;
- a landlord in economically developed South China who chose to live in the city (known as “absentee landowner”) could give the tenant permanent tenancy rights;
- if a farmer went bankrupt and sold his land, he could agree with the buyer to retain permanent rights to till the land (to retain surface right).

Permanent tenancy arrangements diminished the risk of eviction by the landlord as well as the amount of the rent, thus protecting the tenants’ interests. Thus, the tenants were motivated to make long-term investments to improve the soil and promote agricultural development. On the other hand, as the land surface and subsoil were subject to mortgage or separate trade, there could be a second or even a third landlord, which meant an additional burden on the tenant (main rent plus secondary rent).

Most contracts were in written form with oral agreements being rare. Written contracts were normally signed by both parties and a middleman (a witness or a guarantor).

There were three forms of land lease, i.e. sharecropping, fixed-term lease or tenant farming with payment in cash.

The sharecropping arrangement determined the percentage

shares that would go to the landlord and tenant when the crops were harvested. As these shares varied from year to year according to the harvest, the system was also known as “flexible rent” or “proportional rent”. Sharecropping was historically the dominant land tenure arrangement in feudal China. In modern times, sharecropping has become less frequent, but it still represented 28% of all tenancy relations in the 1930s. Under the sharecropping system, the landlords would intervene in the farming activities of the tenants to ensure their income, that was directly based on the yield. Sharecropping was more common in the northern parts of Old China, because here the land was more likely to be affected by climatic factors, with modest yields that could change from year to year.

Fixed-term lease required advanced payment depending on the rented land area. Once the rent was fixed, it would remain unchanged regardless of whether the harvest was good or bad. It was also known as “dead rent” or “iron rent”. Sometimes, in lean years when the government reduced or remitted land taxes, the amount of the fixed lease might also be reduced. Fixed-term lease was mostly practiced in the rice-producing regions of south China where yields were high and stable.

Since capitalism was not yet developed in Old China, tenant farming with payment in cash was not common.

Under the old land tenure system, the rent would amount to 40-50% of the total harvest.

In Old China, the land tenure system under which the tenants tilled the land owned by the landlords, proved to be a big constraint to agricultural development, constituting the root

cause for the secular poverty and backwardness in rural China. It became the main purpose of China's new democratic revolution, as well as the strong aspiration of the masses of Chinese farmers, to eradicate the feudal system and put an end to private land ownership by the landlords.

II. SOCIALIST PUBLIC LAND OWNERSHIP IN NEW CHINA: PUBLIC LAND OWNERSHIP WITH COEXISTING COLLECTIVE AND STATE PROPERTY

Following the foundation of the People's Republic of China in 1949, the Central Government promulgated the *Agrarian Reform Law of the People's Republic of China* in June 1950 in an effort to replace feudal private land ownership with a new system that gave ownership to the farmers. This was an attempt to free the productive forces in the rural areas, rehabilitate and develop agricultural production and pave the way for New China's industrialization. According to the Law, land was confiscated from the landlords and distributed freely to landless farmers or farmers with very little land. By 1953, the land reform in China had succeeded to abolish private land ownership by feudal landlords, putting an end to the old land tenure system and thus realizing the dream of giving the "land to the tiller". Over 300 million farmers with no or little land were given more than 700 million *mu* (15 *mu* = 1 hectare) of farmland and exempted from paying 35 million tons of grain as rent. In addition, the farmers were entitled to "freely using, selling or leasing their land".

Thanks to the land reform which abolished private land ownership by feudal landlords, the farmers became landowners themselves, but private landownership continued. The rural economy was at that point based on family farms subject to the

market forces of private land ownership by smallholders, who only owned small plots.

To boost production and help the farmers improve their living conditions as quickly as possible, while avoiding a polarization, the Chinese Government called on the farmers to organize in groups of mutual aid and primary agricultural cooperatives.

Although the land remained privately owned by the farmers, the evolution from individual family production to mutual-aid groups and elementary agricultural cooperatives helped bring about tremendous changes in the organizational form and distribution pattern of agricultural production. In the mutual-aid system, the farmers never left their homesteads if not to provide mutual assistance in the main phases of agricultural operations. Since ownership rights remained individual, each household could keep the produce harvested on its plot. The only difference was that the farmers had to share certain production costs depending on the size of their land. This arrangement was a form of land administration intended to overcome production difficulties thanks to collaborative efforts, while respecting the *status quo* of landownership. The mutual aid groups had a positive impact in the countryside, because they made it possible for those households that lacked manpower or draught animals to develop their production.

Primary agricultural producers' cooperatives were quite different from the mutual aid groups. Although the land remained privately owned, in order to join a cooperative, farmers had to turn their individual plots over to the cooperative for centralized management. Remuneration was also distributed by the cooperative, with the exception of the land provided by the farmers, which was considered as part of their

share in the cooperative and taken into account when the harvests were distributed. The production on each plot had thus no longer any direct relationship to the owner. The benefits that the households could expect depended on the overall performance of the cooperative, which represented a profound change for the Chinese farmers who were used to family farming.

In parallel with the development of primary agricultural cooperatives, advanced agricultural cooperatives, the collective economic organization based on the merge of primary agricultural cooperatives or mutual-aid groups, were started in 1956. In the advanced agricultural cooperatives, the cost of land, draught animals and machinery was evaluated and these assets turned over to the cooperative. However, 5% of the total land area of the cooperative was reserved for individual use by the farmers as private plots on which to grow vegetables or other horticultural crops. The individual plots were owned by the collective, but the farmers did not have to pay agricultural tax in grain nor were any fees demanded by the collective for their private plots. On the other hand, farmers were not allowed to sell, lease or transfer freely their individual plots.

In 1958, a vast movement was launched in rural China to organize general people's communes. People's communes differed from the mutual-aid groups and primary agricultural cooperatives in that they became the owners of all property.

In the period of the people's communes, any differences in economic benefits between farmers and production teams, production teams and production brigades, production brigades and commune were suppressed and, in fact, the principle of exchange for equal value was abolished. As a consequence,

farm households were no longer independent economic entities because, in the people's communes, collective management was practiced in a regime of collective property.

It should be noted that this three-level ownership system (people's commune, production brigades and production teams) was extremely vague as there was no clear distinction between the properties of farmers and production team, production teams and production brigade, and production brigades and commune. The result was inefficient resource allocation and insufficient incentive mechanisms. The people's commune system continued in China until the early 1980s.

Due to the shortcomings of the people's communes, in 1978, the Chinese Government decided to introduce a policy reform and opening, in an effort to support and encourage farmers' initiatives to reform the people's commune system.

Before 1982, there was no definite indication from the government that land could be contracted to individual farmers. However, it encouraged a reduction of the size of the labour teams and sub-contracting certain operations. The setting of production quota, as well as contracts with the production team (or household) were allowed in order to improve productivity. Once a contract with fixed quota was signed, the contractor became responsible for a particular job within the collective production chain and was given work-points based on his performance. His work-points would determine how much he got paid in the end out of the total production of his collective. Once contracts were signed with a group of farmers who voluntarily organized themselves or a farm household, the groups were given work-points based on their performance. The total work points were distributed among the members of

the team (or farm household) who would thus benefit from the work-points accumulated by the whole collective.

Only in 1982 did the government explicitly agree to contract the land directly to the farm household. Direct contracting of land to the farm households in rural China was carried out between 1982 and 1983. In 1980, only 0.4% of all villages or production teams had entered into this type of household contracts. In June 1981, the percentage rose to 11.2%, increasing to 67% in 1982, 97.8% in 1983 and 98.9% in 1984. By then the land tenure system based on people's communes had by and large been replaced by the farm household contract system.

The adoption by the Chinese farmers of the farm household land contract system is the result of extensive research and many assessments. Under this land use system, collective land ownership remains a fundamental principle. Taking into consideration local natural resources and their conditions, the collective gave the farm households access to land through contracts.

Land is usually distributed equally among the households based on the number of household members. In certain villages, part of the land was distributed in this way and the rest according to the number of active household members. In general, the duration of the contract is for a period of 30 years. It should be noted that there is a difference between the rules for contracting arable land and those for contracting non-arable land, such as forest areas, orchards, grassland, grassy hills, watersheds and floodplains. In fact, the latter play an important ecological role; in addition, big investments are required to develop these areas, the results of which can only be seen in the long term. While some lands is contracted equally to all

people in the village, most land is contracted through bidding, with the contract extending for a period of 30-50 years, or even 100 years.

Once a farmer gets the right to farm the land, he becomes an independent economic entity. He may thus, depending on the contract, make independent decisions regarding production, i.e. what, how much and how to plant, and investments. He also decides how to distribute the final produce obtained from the land. In addition, during the contract period, his contracted land can be inherited by his descendants or transferred to others, either free of charge or against a fee. When the contract expires, he has the prerogative to renew it if he so wishes. After having fulfilled their production contract, the farm households may also operate in the secondary and tertiary industry and develop private business using their own means.

The collective economic organization, as the collective landowner and the representative of rural communities, is responsible for centralized management, including supervising that the farm households fulfill their part of the contract, as well as the overall coordination of the use of public facilities or infrastructures (such as irrigation networks and power plants). The collective economic organization also helps the contractors with agricultural productive activities that cannot be undertaken individually. For instance, in many places the collective economic organization provides the contractors, free of charge or at low cost, such services as mechanized tilling and sowing, irrigation, pest control, harvesting, etc. It may also develop uncultivated or unused land resources in a centralized manner.

Since 1990, new patterns of land use have emerged while the basic land contract system gives the Chinese farmers

long-term, secured use of land. These new land use patterns, based on dual rights, include large-scale operations, auctioning of land use rights over uncultivated areas (in the mountains, ravines, hills or floodplains), as well as the cooperative shareholding system.

Under the dual system, the land contracted by the farm households is divided into two categories, i.e. for subsistence and to meet the production target of the collective. Subsistence plots are distributed equally among all the inhabitants to ensure a means of subsistence for the family. On the other hand, land assigned to collective production can either be distributed based on the number of inhabitants, active persons, or through bidding: it is necessary to ensure employment and family income for the farmers. The farmers derive different obligations from these two categories of land: on subsistence plots only agricultural tax is levied, while on collective production fields, the household is required to pay, in addition to agricultural tax, a rent in kind to the village and township. The purpose of introducing this dual (two-field) system is to arrive at an equal distribution of land per person following a change in the number of family members of a farm household.

There are three types of large-scale agricultural production systems. The first system consists in centralized land management by collective farms, typical in the suburbs of Beijing. The second system consists in centralized cultivation with decentralized management and is typical in southern Jiangsu Province and Nanhai of Guangdong Province. The third type is known as "reversed contracting" (i.e. the contractors contract the land back to the collective) and is found mainly in the developed coastal regions in the east. Due

to many constraints, large-scale agriculture is receding.

Marginalized uncultivated land in mountainous areas, ravines, coastal areas and floodplains, was distributed in the same way as farmland in the early days of the agrarian reform, with the only difference that the contract period for the former was longer. Auctioning of the land use right over these marginalized areas does not change its ownership right. The buyer of the land use right can develop the land and keep the profit, with a contract normally extending for a period of 50-100 years. In addition, the land use right can be transferred, leased, mortgaged or used as investment by a shareholder.

Under the shareholding cooperative system, land is placed under centralized operation and management by the collective, while the individual farmers hold shares of the land. In this case, the first thing to do is to assess the value of the land and then convert this value in monetary terms. The land shares are then distributed to individual farmers based on the total population of the community at a particular time. In certain places, other public assets are also converted into shares and divided among the farmers. The income from the land is then distributed to the farmers according to the number of shares they hold.

In contemporary China, state ownership of land also exists in addition to collective land ownership. There are six categories of state-owned land:

- land in urban areas;

- land situated in rural and suburban areas that has been confiscated, expropriated or repurchased by the State in accordance with law;
- land requisitioned by the State in accordance with law;
- forests, grassland, wasteland, floodplains and other land no longer belonging to the collective;
- land formerly owned by a collective, the members of which have moved to urban areas;
- land formerly owned by a farmers' collective, the members of which have resettled elsewhere as result of a decision by the State or natural disaster.

Presently, only 5% of the arable land in China is owned by the State, but over 90% of all land resources are owned by the State.

III. A PROCESS TOWARD GENDER EQUALITY: TODAY, CHINESE WOMEN, WHO USED TO BE DISADVANTAGED, ENJOY EQUAL RIGHTS AND INTERESTS WITH MEN OVER LAND RESOURCES

In China, though women's land rights have never been completely overlooked and, although unequal due to gender differences, they have changed to become more equal with men's rights. Matriarchy, that is present only in certain remote and backward areas, does not represent mainstream social and economic development in China's agricultural and rural areas.

For several thousands of years, in feudal China, women enjoyed certain access rights to land that, however, were

unequal and subordinate to men's rights.

In 280 AD, the West Jin Dynasty issued an order to distribute land according to a system of quota. The order provided for the distribution of land nationwide: 70 *mu* to each man between 16-60 year of age, of which 50 *mu* in the form of lease; 30 *mu* (less than half of man's share) for each woman, of which 20 *mu* in the form of lease.

In 485 AD, the North Wei Dynasty issued an order to distribute wasteland to farmers. The order provided that each man get 40 *mu* and each woman 20 *mu*. The land was not tradable and had to be returned to the authorities once the user died. In addition, the order also gave first-time male land users the right to an additional 20 *mu* of mulberry land on a permanent basis.

The Tang Dynasty issued several land distribution orders from 624 to 719 AD with similar stipulations as the West Jin Dynasty, allocating 80 *mu* of farmland and 20 *mu* of permanent land to each man 18-60 of age, 20 *mu* of land to each unmarried adult woman, 40 *mu* of farmland to each man over 60, and 30 *mu* of farmland to each widow. Married women did not get their own land, but their shares were included in the land given to the men.

Private land owned by farm families was normally equally shared or inherited by the sons. The daughters had the right to some land in the form of dowry. This arrangement was usually applied only in the case of daughters of landlords or rich farmers who owned a lot of land.

Starting with the agrarian reform, Chinese women have acquired fully independent and equal land rights as men. Any

inequality based on gender has been completely eliminated. During the agrarian reform, both men and women received the same amount of land. When the family-based land contract system was adopted in rural China, land was distributed equally based on the number of family members or active family members, without gender discrimination.

While contributing to a rapid acceleration of agricultural production, the family-based land contract system has also helped to improve the agricultural structure. In the past, Chinese agriculture was mainly focused on increasing grain production, but today attention is also given to the development of other activities, such as cash crops, animal production and forestry.

With industrialization and urbanization, many workers in the countryside have taken up non-agricultural activities, making women the backbone and majority workers in agriculture, particularly in crop and animal production. The first national agricultural census showed that, in 1996, women constituted 52.46% of all workers engaged in crop and animal production.

IV. PRESENT LAND MANAGEMENT SYSTEM IN CHINA: PROTECT CULTIVATED LAND, EXAMINE AND APPROVE LAND OCCUPATION, PROMOTE ECONOMIC LAND USE AND FORBID SALE OR PURCHASE

China has a large population, but proportionately limited land resources. The main principle in land management is therefore “to greatly value every square inch of land”. Guided by this policy, the *Land Management Law of the People’s Republic of*

China gives priority to farmland protection and exercises strict control over land use.

Land rights. The *Constitution of the People's Republic of China* stipulates that China has adopted a socialist public land ownership system, i.e. ownership by the people as a whole and collective ownership by the masses of workers.

Rural and suburban land is owned by the farmers' collectives, except for land owned by the State in accordance with law. Land assigned for the construction of houses, and private plots and hill areas that are used privately are also owned by the farmers' collectives.

The use of all State and collectively owned land by organizations or individuals must, according to law, be registered with the county government in order to verify property rights. However, the land rights on forestland, grassland, watersheds and floodplains are regulated by other laws. The authorities responsible for the registration and certification of state-owned land use are designated by the State Council and any lawful alteration of land rights or land utilization must be formally registered in the cadastre.

No organization or individual may illegally transfer land ownership rights by acquisition or transaction or any other means. However, the land use right can be transferred according to law.

According to law, the State may requisition collectively owned land in public interest.

Controlling land use allotment. The master plan elaborated by the State for land use allotment, recognizes three categories

of land: agricultural land, land for construction and unused land.

There are severe restrictions on turning farmland into land for construction, in order to limit the total size of land used for this purpose. This offers special protection for the farmland.

People's Governments at all levels work out their own land use plans based on the national economic and social development plan and taking into account the requirements for area management, environmental protection and land availability in view of the many different construction requests.

These plans cover a time period specified by the State Council. A corresponding land use plan is prepared by the respective administrative level. These plans are subject to approval at the different levels of competence and once approved, any alteration is subject to re-approval at the same level.

To better monitor land use, the State has established a cadastre system, a land statistical system and a national land management information system.

Farmland protection. The use of farmland for other purposes than agricultural production is strictly controlled, while any occupation of cultivated land for other purposes must be compensated.

Anybody who has been authorized to build on cultivated land for other than agricultural purposes, must clear new farmland of the same size and quality as the occupied land, according to a principle of equality. In case it is not possible to clear land or the reclaimed land does not meet the set standards, the user must pay reclamation fees according to the rules.

People's governments in all provinces, autonomous regions and municipalities directly under the central government ensure that the total farmland within their respective administrative regions remains constant.

A basic farmland protection system has been adopted. No organization or individual is allowed to leave land idle. Land development and management are encouraged, as long as the ecosystem is not negatively affected.

Examination, approval and requisition of land for construction purposes. In case of a construction project, state-owned land can be legally applied for. Exceptions are township enterprises, houses for villagers and rural public facilities or infrastructures for which authorization has been obtained to use collectively owned land.

When farmland is used for construction purposes, the user must obtain approval. This authorization is indispensable in the case of land requisition and must be applied for according to law. The level of compensation depends on the original use the land was under. The fee comprises compensation for the land itself, a resettlement allowance for the farmers and, if farmland is used, compensation for lost crops and facilities derived from other land use rights.

Prior to 1987, the Chinese land management system allocated land for construction through administrative decree for use *sine die* and free of charge. It was not possible for the user to transfer his usufruct right.

As of 1987, the usufruct right has been progressively separated from the ownership right. The State, as the owner of the land,

assigns the usufruct right for a certain number of years to the concessionary, who pays a fee to the State. This usufruct right, which is a kind of property right, may be legally transferred, leased or mortgaged.

Presently, except for land assigned for military purposes, public infrastructure and other public welfare activities through administrative allocation, the right to use land for other purposes can only be obtained against payment of a fee. Usufruct rights can change in the following manner: through transfer, mortgage, investment or the assignment of land, after an assessment of its value.