

A Brief Analysis of the Protection of Women's Land Rights and Interests in China Rural Areas

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Supported by The Youth Project of Philosophy and Social Sciences in Chongqing "In Southwest Minority Area of Rural Women's Land Rights and Interests Protection Law Problem Research" (2009FX12).

Received 12 February 2014; accepted 26 June 2014
Published online 27 July 2014

Abstract

The land is the fundamental guarantee of farmers' life. There should be no gender discrimination in the protection of land rights and interests, while now in China many of these phenomena do exist. Many women's rights and interests are being destructed. Due to the great significance of maintaining their rights and interests to China's economic development and the building of a harmonious society, so there is a must that the protection on women's land rights and interests should be improved in such aspects as legislative, judicial and so on.

Key words: Rural women; Land rights and interests; Land protection

Fang, X. R., & Zhang, J. C. (2014). A Brief Analysis of the Protection of Women's Land Rights and Interests in China Rural Areas. *Higher Education of Social Science*, 7(1), 35-40. Available from: URL: <http://www.cscanada.net/index.php/hess/article/view/4965> DOI: <http://dx.doi.org/10.3968/4965>

INTRODUCTION

In China's modernization, issues concerning agriculture, countryside and farmers are increasingly concerned by the state and society. Agriculture is the basis of China. The issue of farmers is always the most important to China's development. And the fundamental problem of farmers

is the land. Since the 1970s, the disputes and conflicts that have happened on issues concerning agriculture, countryside and farmers are mostly on the destruction of farmers' land rights and interests. There should be no gender discrimination in the protection of land rights and interests and women in rural areas should enjoy equal land rights and interests as men, but in fact the opposite incidents happen very often. According to the survey by department of women and children's rights and interests of All-China Women's Federation, since the first round of land allocation in the 1980's, the problems such as despise and discrimination against women, infringement of land contracting rights of married women, divorced women, and their children have appeared in many parts of China¹, thus making rural women the disadvantaged more vulnerable, so we must strengthen the protection of their land rights and interests, to ensure their basic life they rely on, and realize the real equality between men and women on the protection of the land rights and interests.

1. THE DESTRUCTION OF CHINESE RURAL WOMEN'S LAND RIGHTS AND INTERESTS

Compared with male farmers in the countryside, rural women have stronger dependence on land. Land tends to be the only source they rely on, so violations of the rural women's land rights and interests will make them face the dilemma of life. According to research of Women's Studies Institute of China, All-China Women's Federation, the four most easily destructed aspects are land investment share out bonus, contracting responsibility farmland,

¹*The all-china women's federation of children and women's team: Land contract and the rights and interests of women and children - the investigation of the situation of violations of women's rights in the second round of the rural land contracting* (2000, March). Chinese Women's Movement.

compensation for land requisition, land allocation.² This article will divide the ways of destruction of rural women's land rights and interests into two kinds according to the nature of the right of rural land use, respectively violations of agricultural land-use rights and violations of land-use rights. These two kinds of destruction mainly include the following three situations.

1.1 Violated by Marriage Relationship

Rural women's land rights and interests are often abused by women's marital status, which can be roughly divided into the following several aspects:

A. Destruction of land rights and interests of the unmarried women. Firstly, violation of the right to the contracted management of rural women's land. Some of China's local regulations say unmarried women and men can't get the same share of the land contracted land. For instance, in Henan Province some local regulations say unmarried women can only get 50% - 70% share that of the male villagers. Some villages have such regulations as the contracted land of all women will be taken back if they did not get married at a certain age. For example, according to the tradition of a village in Qinghai Province, every time the land is redistributed, the land of the owners will be reclaimed and redistributed to others if she has not married over the age of 18.³ Some local regulations say that the new-born girls can't share the contracted land and homestead. For instance, in Yunnan Province, a village regulates that all boys can enjoy all the land rights and interests of the village, but the girl cannot enjoy the right to the contracted management of land.

Secondly, violation of the rural women's land compensation claims. Some local regulations say unmarried women don't enjoy land requisition compensation claim. For example, a village in Dengzhou Henan Province makes such regulations as young women receive state of land compensation with the showing of the "marriage certificate".⁴ These rules greatly infringe the land rights and interests of unmarried women.

B. Destruction of land rights and interests of the married women. "Marrying" is a traditional Chinese thinking for several thousand years, reflecting strong patriarchal ideology. When the woman marry the man, her land use rights before marriage and other land rights and interests will be lost. For the land rights violations of married woman, the author divides them into the following several aspects: first, get married within the village. It means a rural woman from a rich village isn't

willing to move her registered permanent residence to the man's village when marrying a man from a poor village. But the village committee of the woman will ask her to move her registered permanent residence away and force their contracted land. Second, out-married women. As the saying goes, "married daughter is like poured-out water". For some parts of China implement the land policy of "people increase while land doesn't increase, people decrease while land doesn't decrease", many rural women can't enjoy the land contract right after marrying to outside the village. For example, the traditions of a village in Huaihua City, Hunan Province ask the woman who married outside the village to move her registered permanent residence away and force their contracted land even without the moving of registered permanent residence.⁵ Third, rural women marry not-rural men. It means that although women marry into urban her registered permanent residence cannot move into the city. Due to the effect of traditional household registration system, the village committee of some places will cancel the permanent residence and contracted land of the rural woman if she marries to a not-rural man. For example, a village in Yunnan Province say if women from their own village marry to non-agricultural men, women must move out the registered permanent residence. The man has no conditions to settle down the woman in the town, the woman's village will cancel her residence or register her as "empty".⁶

C. Violation of land rights and interests of divorced women. In the vast rural areas violations of land rights of divorced women's often happen. After divorce rural women's land are forcibly deprived by their husband or called back forcefully by the village collective. After divorce the village committee of the men will move women's registered permanent residence back and force back their land. But the woman's former residence village committee refused to recover the land contract right, making divorced women completely lose the contracted land. Or a women's ex-husband remarry after divorce and the village rules either the ex-wife or his wife shall enjoy the right to the contracted management of land. But in most cases the ex-wife will not gain land.

D. Violation of land rights and interests to "Zhao Xu Xu". "Zhao Xu Xu" means when the daughter of the rural family without a son get married, move men's registered permanent residence into women's instead of moving women's. The so-called door-to-door son-in-law in the village seems to violate the Chinese traditional custom of "live following husband", so the allocation of the rights and interests of female in the land has also been unfair. However, according to China's relevant laws and

²Wang, J. X., & Zhi, X. J. (2000, March). *Rural women's land rights on the overall "issues concerning agriculture, countryside and farmers" development* (p.10). China's Reform, Rural Version.

³ Lin, Z. B. (2001, June). *Their rights and interests should not be ignored* (p.19).

⁴A "single certificate" will be asked when unmarried female youth get land compensation. (2012, March). Retrieved from http://news.xinhuanet.com/legal/2008-06/11/content_8346587.htm

⁵Guo, J.M., & Li, Y. (2007, June). About the exploration and practice of public interest litigation of protection of the rights and interests of women's land (p.327).

⁶Guo, J. M., & Li, Y. (2007, June). About the exploration and practice of public interest litigation of protection of the rights and interests of women's land (p.328).

regulations, both men and women get married, the man can settle his registered permanent residence to the woman and shall enjoy the right of the contracted management of land.

In some parts of China, village regulations stipulate that only one of the daughters can recruit the son-in-law and men can settle in and enjoy the right to the contracted management of land, but have to cancel the other daughter's right to the contracted management of land. According to some parts of the village regulations and rules, if farmers recruit son-in-law, only one of the daughters and her one child shall enjoy the same treatment as other villagers. But the door son-in-law and other children cannot enjoy the treatment of villagers. In some places although the door son-in-law and his wife can enjoy the right to the contracted management of land, but they can only enjoy a small amount of the contracted land, or gets some poor land (Dong, 2006). In this case, in order to recruit male labor and at the same time in order to meet the need of caring them when they're old, they are forced to agree with this harsh conditions.

1.2 For Widowed Land Rights Infringements

According to some village regulations, widowed women, can only retain their children's responsibility farmland and residence in the village, and cancel the widowed women's residence and the right to the contracted management of land. This makes the widowed women face the pain of losing mate and the pain of facing survival crisis. According to the statistics from 2002 to 2003 made by the Women's Federation Hunan Province, among all the petition cases about the land rights and interests of women, the cases which are caused by women losing mate total 310, accounting 28%,⁷ which shows that in China there are a lot of cases like this.

1.3 Violation of Land Rights and Interests Due to the Right of Succession

Due to the influence of the traditional feudal thought, in the vast rural areas, often the men inherit their parents' all the property rights, ignoring the protection of women's inheritance. According to China's *Inheritance Law*, land expropriation compensation belongs to the inherited. But influenced by traditional ideas women often cannot inherit their parents and their spouses of land expropriation compensation (Zhao, 2005,p.3).

2. THE PROBLEMS ON THE PROTECTION OF RURAL WOMEN'S LAND RIGHTS IN CHINA

From the above discussion we can see that men and women are equal in law, but in reality a lot of infringement

has existed. The author thinks that the problems lie in such aspects as social ideology, legislation, judicial administration and so on.

2.1 Legal Problems

(a) The legislation is not perfect. According to *Rural Land Contracting Law* article 15, in the household contract the contractor is the farmers of collective economic organizations. The provisions specify the "farmers" as the main body of right to the contracted management of land, and to exclude individual family members outside the body. This makes the women's individual farmers enjoy nothing of the right to the contracted management of land (Zhao, 2005, p.5).

(b) Some laws lack of operability. For the protection of rural women's land rights and interests Chinese laws are too general, without considering the reality. For example, according to Rural Land Contract Law article 6, ...in the contracted management of land the legal rights and interests of women shall be protected and any organization or individual shall not deprive infringing upon women of the right to the contracted management of land. And according to the *National Law* article 33, no organization or individual can take marriage, divorce, death of a spouse as excuses to infringing upon women's rights and interests in the rural collective economic organization. Because the original contract for land in rural is 30 years, and in many places there are no adjustable land. So when the Chinese rural women's marital relationship has changed, due to the comparison of law principle, operability is poor and difficult to use⁸.

(c) The laws and regulations lack of gender perspective. According to Rural Land Contract Law, land contracting solutions as well as within the time limit in the contracted management of land, to adjust land between individual land contractors, must pass a villagers assembly two-thirds or more members or the consent of the 2/3 of the villagers' representatives. According to Villagers Organic Law, the villagers' meeting shall be more than 18 village more than half of the villagers to participate in, or a village with the participation of the representatives of more than two-thirds of the household decisions should be well over half of the present. From the reality, China's most of the villagers meeting participants are farmers male representative, and relating to the major issues tend to be men in the village head of the household. This actually gives the right of land allocation and distribution to the men in the village, ignoring the protection of women's rights. So some of the village committees and other organizations at the grass-roots level essentially violates women's rights and land rights and interests in the division of land, although based on related laws (Yuan & Han, 2007).

⁷Guo, J. M., & Li, Y. (2007, June). *About the exploration and practice of public interest litigation of protection of the rights and interests of women's land* (p.342).

⁸Zhang, Z. H. (2011, May). *Protection on Chinese rural women's land rights and interests* (p.11). Master's Thesis. Henan University Legal Major.

2.2 The Traditional Thought Influence Rural Women's Legal Rights and Interests in Land

Thousands of years of Chinese feudal thought have always advocated "roles", "male master female servants" thoughts, which still affect the fate of the Chinese rural women till today. The center of the patriarchal social structure model has lasted for a long time and is the root that rural women's land rights and interests can not get effective guarantee (Liang, 2007).

The rural China is influenced by the traditional feudal thought that women's position is very low ever since she's born and after getting married, influenced by "Congfu house" ideas they become the males' "accessories". They do not have the right of speech. Although the constitution and laws in China make the relevant regulations for men and women's equal status and protection of rights and interests of women, now in the countryside "male master female servants" feudal thoughts still stand firmly in people's mind, which makes the rural women's land rights and interests still not guaranteed.

2.3 The Lack of the Supervision of the Village Regulations

Village regulations are made by the discussion of the villagers, combined with the actual situation of the village according to the provisions of the laws, regulations and policies and ask all the villagers to abide by the code of conduct (Chen, 2009, p.5). Village regulations have the nature of democracy, and from a certain extent, it reflects the will of the vast majority of the villagers, therefore it has the characteristics of the social contract, binding on all the villagers. The influence of village rules in rural areas is expected to be very big. Some village regulations, however, already can not adapt to the needs of the development of era, and to some extent, it has become one of the reasons for the violations of the rural women's land rights and interests. Such as in Huizhou city Guangdong Province, the village committee organization held a meeting, and decided to take back these married women land income distribution.⁹

When allocation scheme or principles of interests about the villagers in the village are inconsistent with China's relevant laws and regulations and requirements, there is no specific provision in the law on how to deal and what legal responsibility should one bear, so that the infringement of village land rights and interests of rural women can not get the timely and effective correction. Therefore, the land rights and interests of rural women's rights are abused, largely due to the obstacles.

2.4 The Judicial Relief Is Not Smooth

Because of the weak consciousness of the Chinese rural

women, few of them will take legal weapon to protect their own rights and interests when their rights are harmed. Although the *Protection of Women's Rights* article 55 specify when the women's rights and land rights and interests are violated, the township government can help them in accordance with the mediation. They also can be made by the victim to the rural land contracting arbitration institution for arbitration, and can also apply to the court proceedings. But in the practical life due to the fact that the village committee has the power to manage the villagers in the internal affairs, so the issue of land use rights generally is difficult to litigation. Because for this kind of case both as an administrative litigation and civil litigation, the court met due to the main body qualifications will not be accepted. In the case of not litigation, rural women whose land rights and interests are violated can only turn to the government for help. However, the government because of the limitations of their power and cannot correct the behavior of the villagers' autonomous organization, making the rural women in land rights and interests infringed upon can not find a suitable relief channels.

2.5 Social Factors Hinder the Protection of Women's Land Rights and Interests

China has a large population, limited land resources, and less arable land per capita. The relevant departments of the investigation show that China's cultivated land declines year by year. This is mainly due to China's growing population need to constantly increase the construction of infrastructure so as to occupy the cultivated land.

The amount of land in a village basically remains the same, and perhaps decrease because of the national land. But in a village of the population is increasing year by year, in the face of this situation, in order to maintain the interests of the dominant male villagers in the village, the village committee often seek through various means and methods to some rural women's land rights and interests and satisfy the interests of men.

3. SUGGESTIONS ON PROTECTION OF STRENGTHENING THE RURAL WOMEN'S LAND RIGHTS AND INTERESTS

Whether rural women's land rights and interests are guaranteed embodies to a certain extent, the Chinese equality between men and women on the implementation of laws and regulations, and reflect the status of rural women in Chinese society, so we must strengthen the protection of rural women's land rights and interests. For the protection of rural women's land rights instead of starting from on the one hand, we must start from many aspects and angles and puts forward methods and ways of protection of rural women's land.

⁹Chen, H. W. (2012). *Rural land requisition highlight women's rights*. Retrieved from <http://www.mingong123.com/news/rdxw/2007-7-15/1446279513.html>

3.1 Strengthen Education and Eliminates the Traditional and Backward Concept and System

On the one hand, China's rural traditional patriarchal clan system, the institution of marriage, inheritance, and name system is all for maintaining the patriarchal system. Although China has experienced the modernization movement, male chauvinism has already entrenched, which caused the inequality between men and women. (Guo, 2004, p.65)

Currently we must eliminate the backward thinking, actively protect the equality of land rights between men and women. Government must play its roles in strictly exercising administrative power in accordance with the relevant laws and regulations, strengthening the responsibility consciousness, strengthening the thought of rural education, enhancing the publicity of equality between men and women land rights, carrying out the protection of rural women's land rights and interests of the lecture, correctly guiding the rural masses to set up the correct ideas, eliminating the idea of "roles", so as to reduce the resistance of the protection of the rural women's land rights and interests.

On the other hand, China's rural widely applies a system of "Ding mouth system". In the current rural land contractors are generally male adults, and all members in a family contracted land registration in his name. Generally it's rare that the contract will use two people of husband and wife as the contractor. The village committee usually assign the land according to land contract. So to protect the land rights and interests of rural women, the Ding mouth system must be reformed. The law should clearly say that the contractor should be the couple. In this way, the rural women's land rights and interests can be ensured and to a certain extent, the phenomenon of violations of the rural women's land rights and interests can be avoided.

3.2 The Improvement of the Legislation

A. The introduction of social gender perspective in the law. In general, laws and policies on Chinese rural women's land rights and interests protection are to reflect the equality between men and women, but in the process of law enforcement, law enforcement will in effect cause harm to women's land rights (Chen, 2010, p.65). The purpose of social gender theory is to make both the male and the female in a state of equal status, both men and women be able to fully their rights and perform their respective obligations, both men and women participate in the construction of the state and society, and be able to get the corresponding benefit (Chen, 2009, p.23).

Although the relevant laws and regulations about the protection the land rights and interests has explicitly stipulated in China, the lag of law and the hysteresis characteristics of the complex social relations make them fail to reflect the change of the marriage and thus cause different results when protecting women's land rights and interests. So full consideration should be given

to the inequalities of social reality in the legislation. In the process of the implementation of the law, full consideration to the application of the law and the implementation of the different influence on different gender must be given.

So the gender perspective must be considered in the legislation of "*rural land contract law*" and "*women's rights and interests protection la*". On the one hand, the law should endow the same land rights to unmarried, married, divorced, widowed rural women as men. On the other hand, productive labor, but its settlement with the registered permanent residence of the rural villagers residence of men and women should enjoy the same land rights (Shi & Wu, 2008, p.207). This regulation can not only guarantee under the condition of rural women in Hushai separation can still as the residence of the villagers' land rights, and can avoid the rural women as a result of marriage change before has not obtained the land, and in the original registered permanent residence is located or where can't enjoy the interests of the land problem.

B. Clarify the body of the rural women contract qualification. Because of China's household contract responsibility system is based on family unit to introduce and implement, so in the contract in the countryside, as the main body of the contract the contractor is not laborer individual but the whole family, individual villager is not share the rights and obligations and the contract. In terms of right to the contracted management of land, the right subject for his family rather than in the name of the individual. This makes the actual villagers individuals not directly engaged in production for land rights (Kuang, 2006, p.92).

The author thinks that must be specified in the legal main body of the contract in the name of the individual, while at the same time as the contractor in the contract for both sides of husband and wife. Thus to establish the rural women in court that the main body of land rights and interests the legal status, is more advantageous to claim their land rights and interests of rural women.

3.3 Strengthen the Supervision of Village Regulations

According to China's constitution and law, the villagers committee have full autonomy in the village affairs. But the law does not make specific provisions on how to exercise its autonomy and the relevant supervision system. According to China's constitution, all laws, administrative regulations and local rules and regulations may contravene the constitution, and no organization or individual has privilege to be beyond the constitution or the law. Village on the one hand, in order to ensure that is in strict accordance with the procedures prescribed by law, and is within the scope of the law and allow, according to China's relevant laws and regulations, the township people's government shall set up the process of village

regulations necessary guidance and supervision of all levels of the government's response to the village of monitoring procedures within areas under their jurisdiction, the legitimacy of the village should regularly review content at the same time. Village if the formulation of the establishment procedure of violation of the law, shall be deemed as invalid and instruct the village committee to be carried out in accordance with the "villagers organic law" the regulation again. Village on the other hand must resist infringes upon the lawful land rights and interests of rural women in the relevant provisions of the terms and infringes upon the lawful rights and interests of women, in a timely manner to correct discrimination against rural women's behavior.

3.4 Strengthen the Multiple Relief Channels

A. To strengthen the government's relief. The Chinese government must play its own function, strengthen the legal education of rural women. On the one hand, to strengthen government departments of mutual cooperation, the formation of government departments should jointly maintain the situation of rural women's rights and land rights and interests. Village on the other hand the government should strengthen the supervision and guidance, the village in a timely manner to correct the violation the terms of the rural women's rights and land rights and interests, and eliminate infringes upon the lawful rights and interests of rural women.

B. The function of the judicial relief. The judicial relief right is the last line of defense of the people's relief. The author think for the protection of rural women's land rights we should build up the idea of judicial relief, to exert the function of the court, the court of cases involving rural women's land rights and interests are violated to strict censorship, firmly set up to protect rural women's land rights and interests of the service concept, keep clear of the judicial relief channels, to ensure timely and effective solution to this kind of case.

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