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**An Institutional Analysis on Land Rights of Migrant Women  
In China from a Gender Perspective**  
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by

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**Abstract:** Using data and information from a social survey conducted by Beijing Cultural Development Center for Rural Women (BCDCRW)<sup>3</sup>, this paper presents the current situation and problems related to migrant women's land rights in China, with the purpose of providing new insights into how their land rights and interests can be more effectively protected. Adopting a gender perspective, it uses both quantitative and qualitative analysis methods, looking through the phenomena of violation of their land rights and interests, and then argues that the current status of migrant women's land rights results from a comprehensive set of laws and regulations, principles and policies, as well as village regulations and folk conventions.

In recent years, along with the reform and opening up and socio-economic transition, the People's Republic of China (PRC) is undergoing the largest-scale migration flow in its history and its urban population has now exceeded the rural population for the first time. As a result, China's *liudong renkou* (floating population) has become a very unique social group, within which the migrant women play a rather important part. Moreover, women's land rights and interests have also increasingly emerged as a prominent issue that cannot be ignored during the process of industrialization and urbanization. Based on a social survey conducted by BCDCRW, this paper will discuss the current status of migrant

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<sup>3</sup> Beijing Nongjianv Wenhua Fazhan Zhongxin is a non-governmental organization aimed at promoting rural women's development which was established in Beijing in August 2001.

women's land rights in China, exploring from a gender perspective the institutional factors that brought about the current situations.

## 1. Introduction

### 1.1 China's Migrant Women

Since the establishment of PRC, urban and rural women have experienced six large-scale population movements<sup>4</sup>. In the last decade, migrant women have not only been growing sharply and rapidly, but have also enlarged the proportion of the floating population year by year. As the data provided by the National Bureau of Statistics show, by the end of 2011, China's total mainland population was 1,347.35 million, including 690.79 million urban residents, who account for 51.3% of the total population, while the floating population has reached 230 million<sup>5</sup>. It is also estimated that, at the beginning of October 2010, there were 221 million floating population altogether, including about 111 million men and 110 million women<sup>6</sup>. Taking Beijing as an example, the sex ratios of floating population was 173 in 1994, 195 in 1997, 128 in 2000, with a drop of 123 in 2006; the total population of Beijing in 2007 was 17 million, of which 5.1 million were floating population, with migrant women representing nearly a half<sup>7</sup>.

In general, the main directions of migrant women were from the interior areas to the coastal areas, from the less developed regions to the developed regions, and from the countryside to the cities and towns. Although they are living and working in the cities most of the time, the land is still a very important pillar for their livelihoods or health care and pension security. Since the rural women's land rights are originally at a disadvantage in the dominant structures of rural resources and power, and some of them have left their hometown for a long time floating in precarious conditions, which makes their legal rights and interests on land even more vulnerable to be violated, the phenomenon of landless migrant women is still common in China today. Over recent decades, the Communist Party of China (CPC) and the State have made great efforts to adopt a series of measures to improve the rural land systems and strengthen the public management of the floating population, and the protection of women's land rights has achieved particularly remarkable performance. In 2008, the "Decision of the CPC Central Committee concerning Some Major Issues about Advancing Rural Reform and Development" (*zhonggongzhongyang guanyu tuijin nongcun gaige fazhan ruogan zhongda wenti*

<sup>4</sup> Wen Xianliang and Yan Xiaoqin, *Funv Liudong dui Nongcun Shehui Jiegou de Yingxiang yu Duice* (The Measures to and Impacts on Rural Social Structure of Women's Migration), in *Zhonggong Sichuan Shengwei Jiguan Dangxiao Xuebao* (Journal of the Provincial Level Party School of CPC Sichuan Province Committee), 1996 (4), p. 46.

<sup>5</sup> [http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20120222\\_402786440.htm](http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20120222_402786440.htm)

<sup>6</sup> Department of Services and Management of Migrant Population of National Population and Family Planning Commission, *Zhongguo Liudong Renkou Fazhan Baogao 2011* (Report on China's Migrant Population Development 2011), Zhongguo Renkou Chubanshe, Beijing 2011, p. 235.

<sup>7</sup> Zhai Zhenwu, Duan Chengrong, and Bi Qiuling, *Diaocha: Beijing Hendo Liudong Renkou yi Cheng Shishishang de "Beijingren"* (Investigation: Many Rural Migrants in Beijing have become actual "Beijingers"), in *Beijing Ribao* (*Beijing Daily*), 8 September 2008.

*de jue ding*) was reviewed and approved by the Seventeen of the Third Plenary Session of the CPC, which indicates that another round of rural land reform has been started, generating new opportunities to embody and protect the land rights of migrant women.

## 1.2 Literature Review

Recently, the discussion on the issue of migrant women's land rights are mostly covered by or embedded in the researches on the protection of the rights and interests of such social groups as women, rural women, floating population or migrant workers. On one hand, many studies focus on the issue of rural women's land rights in China. A study of the Department of Rights and Interests of All China Women's Federation suggests that, there are four aspects of rural women's legitimate land rights which are most likely to have been violated, including the allocation and adjustment of contracting responsibility cropland, land shares dividends, land acquisition compensations, and residential land lots allocation; unmarried rural women of marriagable age, *nongjiafei* (agricultural married to non-agricultural), divorced, and widowed women in such different marital status tend to be the very vulnerable group whose rights are most liable to be invaded<sup>8</sup>. Some scholars also pointed out that women's land rights are most likely to be lost due to marriages and funerals, and in the processes of land acquisition<sup>9</sup>; it is a very common phenomenon that many women cannot immediately get access to land because of the occurrence of marriage, so most of the newly-married women have to wait to obtain until the next round of land adjustments<sup>10</sup>. In addition, Zhao Ling argued that job aspirations between landless women and men have no significant differences, but the former's job-seeking process is usually more difficult, because their average education level is lower than that of men. Thus, landless women's employment problems are often more severe than those of men; however, women's dependence to land is higher than that of men, because there is relatively a lack of non-agricultural employment opportunities for them<sup>11</sup>.

On the other hand, the studies on the issues of migrant women often refer to characteristics of migrant women's groups, factors related to rural women's

<sup>8</sup> Women's Rights and Interests Department of All China Women's Federation, *Tudi Chengbao yu Funv Quanyi – Guanyu Nongcun Dierlun Tudi Chengbao Gongzuo zhong Funv Quanyi bei Qin Hai Qingkuang de Diaocha* (Land Contract and Women's Rights and Interests – A Survey on Violation of Women's Rights and Interests During the Second Round of Rural Land Contracting), in *Zhongguo Fuyun* (Chinese Women's Movement), 2000 (3), pp. 30-33.

<sup>9</sup> Wang Jingxin, *Zhongguo Nongcun Funv Tudi Quanli – Yiyi, Xianzhuang, Qushi* (Land Rights of Chinese Rural Women: the Implications, Current Situation and Trends), in *Zhongguo Nongcun Jingji* (Chinese Rural Economy), 2003 (6), pp. 29-30.

<sup>10</sup> Zhang Linxiu and Liu Chengfang, *Cong Xingbie Shijiao Kan Zhongguo Nongcun Tudi Tiaozheng zhong de Gongping Wenti* (View on the Justice of China's Rural Land Adjusting from the Sex Angle), in *Xiandai Jingji Tanta* (Modern Economic Research), 2005 (10), p. 20.

<sup>11</sup> Zhao Ling, *Nongcun Funv Tudi Chengbaoquan Wenti de Zhidu Fenxi* (The Institutional Analysis on the Issue of Rural Women's Land Contract Rights), in *Zhongguo Fuyun* (Chinese Women's Movement), 2002 (7), p. 29.

migration, gender differences within population movements, living conditions of migrant women, impacts of migration on the lives and views of rural women, as well as conspicuous social problems faced by migrant women<sup>12</sup>. Due to the restrictions of the identity system (*shenfen zhidu*) and the household registration system – two of the most fundamental ones – the migrant rural women are disadvantageous not only in the urban-rural pattern, but also in the gender relations, namely they are experiencing the dual discrimination of identity and gender<sup>13</sup>, so the living conditions of the rural women who migrate to the cities are becoming marginalized<sup>14</sup>. As to the protection of migrant women's rights, it is suggested that due to the influences of the overall levels of women's rights protection, the traditional models of social division of labor, the household registration system (*hujizhidu*), and the lower levels of education of women themselves, their personal rights, labor rights, survival and development rights are all likely to be in greater infringement<sup>15</sup>.

### 1.3 Research Methods

Based on the above background and on human care for migrant women, BCDCRW conducted the Investigation on Land Rights of Migrant Women in China during April 2009 and October 2010. Taking the migrant women in Beijing as a target group, this research project aims at exploring the problems of their land rights and interests and the underlying reasons, evaluating the situation of their rights' protection, promoting policy advocacy and enhancing their empowerment. Therefore, the significance of this research is to raise the attention of the whole society on the issue of migrant women's land rights as a common concern, and to improve the protection of their legal rights. Furthermore, it also contributes to deal with the *There Rural Issues* (concerning agriculture, farmers and rural areas), to push forward the united and harmonious development of urban and rural areas, as well as to promote gender equality and accelerate gender mainstreaming.

In the survey, the target group was specifically defined as follows: females aged from 16 to 60, married or unmarried, migrating across different counties (municipalities or autonomous regions) without registered permanent residence in

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<sup>12</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha (An Investigation on Land Rights of Migrant Women in China)*, Shehui Kexue Wenxian Chubanshe (Social Sciences Academic Press), Beijing 2010, pp. 14-18.

<sup>13</sup> Jiang Xiuhua, *Shehui Zhuanxingqi Nongcun Liudong Funv de Fazhan yu Xianzhi (Rural Migrant Women's Development and Restrictions in the Period of Social Transition)*, in *Lilun Xuekan (Theory Journal)*, 2003 (3), pp. 121-122.

<sup>14</sup> Lu Fuxing and Liu Ning, *Bianyuanhua Shengcun: Nongcun Nvxing Rongru Chengshi Mianlin de Kunjing (Marginalized Surviving: The Difficulties encountered by Rural Women in Integrating into the Cities)*, in *Zhonggong Shanxi Shengwei Dangxiao Xuebao (Academic Journal of Shanxi Provincial Committee Party School of CPC)*, 2007 (4), pp. 49-51.

<sup>15</sup> Zhang Jing, Ran Ye and Wang Meihong, *Lun Nongcun Liudong Funv de Quanli Baohu (Discussion on Protecting the Rights of Migrating Women from Rural Area)*, in *Zhongguo Sifa (Justice of China)*, 2003 (2), pp. 88-89.

Beijing, not belonging to the family of *danbianhu* (unilateral households)<sup>16</sup>; who have relatively fixed dwelling places (including collective living quarters) and live in the receiving place for over three months, no matter which *hukou* (registered permanent residence) they keep – rural or urban. The main contents of this survey include: the situation of migrant women's land ownership, land requisition and land transfer, their awareness of land policies and conditions of land rights protection, as well as village regulations and folk conventions about rural women's land rights and interests, etc.

The research methods comprised quantitative analysis and qualitative analysis, specifically including questionnaire survey and in-depth interviews. On the one hand, a questionnaire survey was conducted by BCDCRW as an empirical study on the land right issue of migrant women in Beijing. Because it is difficult to standardize sampling due to the characteristics of the migrant women themselves, some communities inhabited by large amount of migrants have been firstly located and then subdivided into several smaller pieces as zonal samples; secondly, the eligible migrant women living in the sampled zones have been randomly selected as respondents. The total number of verified effective samples is 1,044. All the data collected from questionnaires are entered via Epidata software, and analyzed by the professional statistical software of Stata and SPSS.

On the other hand, qualitative research methods, such as in-depth interviews, are adopted to explore more deeply the migrant women's practical conditions and consciousness of subjectivity, especially of those women who have gone through divorce or are bereft of spouses. By the end of the investigation, 43 migrant women were interviewed, and large amounts of first-hand information were also collected. Meanwhile, many other text documents related to migrant women's land rights were collected, including laws, policies, regulations village regulations and folk conventions, as well as civil suit cases.

#### 1.4 Overview of the Respondents<sup>17</sup>

All the respondents are from 30 provinces (municipalities or autonomous regions) of China, and the migrant women from Hebei, Henan, Shandong, and Gansu provinces accounted for a bigger proportion; 95.9% of them possess agricultural registered permanent residence, while the non-agricultural ones accounted for 3.4%. They are mainly between 20 and 49 years old, with the average age of 32.6. Most of them have attended junior high school, accounting for 47.9%; while those with primary school and senior high school grades make up 19.2% and 16.1% respectively. 24.3% of the migrant women are unmarried, 71.7% are in their first marriage, and the rest of 4.0% are in other kinds of marital status.

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<sup>16</sup> *Danbianhu* refers to the women whose husband possesses the registered permanent residence of Beijing.

<sup>17</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, pp. 20-23.

Most of the migrant women moved into cities to work after 2000. Before working outside, 45% of them were engaged in agriculture in their domiciles. Followed by that, another proportion of 31.5% went to school. This certainly has something to do with their age. For instance, the proportion of those who attended school before working outside is higher among the migrant women who are younger than 35 years old. As for their current careers, a larger ratio of them are engaged in commercial wholesale and retailing, domestic work, nursing, as well as servicing in restaurants, travelling and entertainment venues. As shown by the questionnaire survey, the main reason for most migrant women working outside is that the labor incomes are more than the land revenue. Using the “Push-pull Theory”, lower land revenue could be regarded as the pushing force, while higher labor income by working outside as the pulling force.

## 2. Main Findings

### 2.1 General Situations<sup>18</sup>

In the survey, 18.8% of all the migrant women said they had no land in rural areas, 13.5% said they had never been distributed any land in either their parents' families or their husbands' families; while among those landless migrant women, 49.6% indicated they lost their land when they got married, 31.8% confessed that marital change had made them lose their land, 9.1% said that their lands had been expropriated, while 3.0% indicated their land was seized by others. Thus, it is very obvious that one of the main reasons for the migrant women to lose land is change in marital status.

Among the unmarried migrant women, 67.3% said they had land in their villages, and 20.0% indicated they did not, while another 12.7% said they were not sure. The migrant women who owned land, mostly under their fathers' name, accounted for 73.1%, and 6.9% under their mother's name, while only 15.4% held land under their own name.

Among the unmarried migrant women, 81.8% said that their land was equally distributed between men and women. While among married women, in their parents' villages, the proportion was 88.0%, and the ones who thought it was unequal and unclear accounted for 2.1% and 9.9% respectively; in their husbands' villages, the proportion was 89.1%, and the ones who thought it was unequal and unclear accounted for 1.7% and 9.2% respectively.

By contrast, the situation of residential land lots also presents a similar trend. 44.8% of the unmarried migrant women said they had residential land lots in their domiciles, but mainly under their fathers' name (a ratio of 80.8%).

While among the married women, 51.2% said they had land in their husbands' villages (except when their parent's families and husband's families were in the same village), 43.1% indicated that they did not, and another 5.7% were not sure.

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<sup>18</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, pp. 23-25.

Among the migrant women who owned land, 36.3% said that the land was under their own name, lower than the proportion of 43.4% that of who indicated that it belonged to their spouses.

Among the married women, 65.8% said that they had residential land lots in their husband's families, while 28.4% indicated they did not, and another 5.9% said they were not sure. As for its ownership, 54.8% of married women said the residential land lots was under their spouses' name, while 26.0% indicated that it was under their father-in-laws' name, compared to just 12.6% under their own name.

## 2.2 Recognition on the Importance of Land

As the results of survey shown, although most of the migrant women temporarily left their land to work outside, this does not mean that land is not important to them. The proportion of those who thought that land was important or very important to them is 62.3%.

**Table1 Migrant Women's Views on the Importance of Land<sup>19</sup>**

Views	Frequency	Proportion (%)	Accumulation (%)
Very unimportant	4	0.39	0.39
Unimportant	156	15.13	15.52
Does not matter	229	22.21	37.73
Important	495	48.01	85.74
Very important	147	14.26	100.00
<b>Total</b>	1,031	100.00	

## 2.3 Awareness of the Land Policies

In spite of the fact that most migrant women had recognized the great importance of land, they still had very little awareness of the national land policies. For example, only a few migrant women knew the second round of land contracting. Among the unmarried migrant women, only 6.3% said they were

<sup>19</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, p. 33.

aware of this. When asked about the most recent land adjustment time in their villages, 67.6% answered that they were unclear.

Among the married migrant women, 19.7% knew the second round of land contracting. To the question of whether their land had been adjusted in their husbands' villages after marriage, 56.7% said they were not sure, and 21.6% indicated it had been adjusted, while the other 21.7% had not. In their parents' villages, to the question of the last time of land adjustments, 60.0% said they were unclear, and 19.6% indicated it had been adjusted, while the other 20.4% said it had not.

#### **2.4 Attitudes to the Disposition of Land in Hometown**

Although most of the migrant women believed that the land was very important, there were 32.8% migrant women willing to transfer their land out, because they could not only increase their income, but also could get rid of worries; and another 40.7% of migrant women not willing to transfer their land out, while 26.5% had hesitations. For example, to the question "if you are required to give up the right to contract land, and completely break off relations with the land", 59.2% expressed anxiety about that, while only 17.8% said that they could abandon the land if the conditions are eligible.

#### **2.5 Participation on the Transfer of Family's Land**

In the survey, due to working outside, lack of labor in family and other reasons, 69.6% of the migrant women had disposed their land of their domiciles in various forms, including: 49.7% of contract farming, 28.2% of rental, 9.4% of subcontracting. However, 54.4% of the migrant women actually did not participate in their family land transfer decision-making (if we exclude unmarried women, the proportion is 52.6%).

During the land transfer process, most of the transfer did not take place via formal procedures; 83.4% of the land was transferred by a verbal agreement or neither verbal agreement nor written agreements, because 95.5% migrant women did not know how to handle the procedures of land transfer. As for the incomes before or after the land transfer, 39.8% of the migrant women indicated that it had not been changed, while the incomes that had been reduced and increased accounted for 33.5% and 11.9% respectively. As to the frequency of land transfer, 17.9% of migrant women's families had experienced land transfer, including 93.1% for once, and less than 7.0% for twice or above.

#### **2.6 Main Problems of Land Rights and Interests**

The investigation shows that the land problems encountered by migrant women are mainly about never owned land, never being distributed with residential land lots, land acquisition with free or low land-use compensation fees, land

adjustments within the contract period. The proportions were 33.2%, 36.2%, 17.8% and 13.35% respectively.

**Table 2 Migrant women's self-identified Land Rights and Interests<sup>20</sup>**

Self-identification	Frequency	Proportion (%) (No. of responses)	Proportion (%) (No. of samples)
Never owned land	112	24.89	33.23
Allocated less in land adjustments	36	8.00	10.68
Land adjustments within the contract period	45	10.00	13.35
Forced to transfer land or transfer being impeded	11	2.44	3.26
Land transfer incomes being intercepted or withheld unauthorized	11	2.44	3.26
Production and management autonomy being interfered	13	2.89	3.86
Never being allocated with residential land lots	122	27.11	36.20
Residential land lots being withdrawn	6	1.33	1.78
Land occupation with free or low land-use compensation fees	33	7.33	9.79
Land acquisition with free or low land-use compensation fees	60	13.33	17.80
Others	1	0.22	0.30
<b>Total</b>	450	100.00	133.51

### 2.7 Awareness and Effects on the Vindication of Land Rights

In the survey, most migrant women chose to remain tolerant in the above-mentioned land infringements. For instance, to the option of “never owned land”, 87.3% chose “let matters slide”, 6.7% requested the mediation of village committees, 3.7% sought resolutions from competent government authorities, and less than 1.0% turned to legal aid.

Among the migrant women who had taken certain actions to safeguard their rights, 96.5% thought those actions were not effective. This not only manifested their poor awareness of preserving rights, but also reflected the difficult conditions for them to defend their own rights to some extent.

<sup>20</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, p. 40.

**Table 3 Migrant women's Land Rights Protection**<sup>21</sup>

<b>Land rights protection</b>	<b>Frequency</b>	<b>Proportion (%)</b> (No. of responses)	<b>Proportion (%)</b> (No. of samples)
Let matters slide	117	86.67	87.31
Require bilateral negotiation	1	0.74	0.75
Request the mediation of village committees	9	6.67	6.72
Seek for resolutions from administrative departments	5	3.70	3.73
Apply for arbitration	0	0.00	0.00
Administrative reconsideration	0	0.00	0.00
Submit a lawsuit to court	1	0.74	0.75
Petition	0	0.00	0.00
Look for connections or pass through the "back door"	1	0.74	0.75
Turn to legal aids	1	0.74	0.75
Others	0	0.00	0.00
<b>Total</b>	135	100.00	100.76

### 2.8 Plans for the Future

When being asked about plans for the future, 33.4% of migrant women intended to take live and work in Beijing long-term, and 22.3% did not want to remain in Beijing, while 44.4% had not make any future plans. However, 60.0% of the migrant women indicated that they were willing to return home and engage in farming for a living, if they could not find ideal jobs in the cities. In addition, 56% said that if there were preferential policies on choosing occupations or entrepreneurial incentives for the migrants who return to their home town, they would consider taking advantage of these policies.

### 3. Institutional Factors

<sup>21</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, p. 40.

Some scholars believed that the abuse of women's land rights was mainly due to the defects of the State's legislation, contradictions and conflicts between national laws and village regulations and folk conventions, and the lack of effective administrative and judicial remedies as well<sup>22</sup>. While Wang Jingxin pointed out that the essence of the issue of women's land is legally equal but actually unequal, fair on starting point but unfair in process<sup>23</sup>. This paper argues that the current status of migrant women's land rights is a comprehensive consequence of laws and regulations, principles and policies, as well as village regulations and folk conventions, and that some of the institutions lack gender sensitivity is the hidden cultural roots of such status.

### 3.1 Laws and Regulations

Since its founding, the PRC has enacted and promulgated many laws and regulations related to the issue of rural land, such as land-contracting, management, acquisition, transfer, etc., which have protected the land rights of many farmers and women to a large extent. For example, the *Constitution* has repeatedly and clearly stipulated that "All citizens of the People's Republic of China are equal before the law" establishing the fundamental basis of legal protection on migrant women's land rights and interests. In addition, many articles and provisions have also referred to women's land rights, such as the *Marriage Law*, the *Land Administration Law*, the *Law on the Protection of Rights and Interests of Women*, the *Rural Land Contract Law*, the *Property Law* and the *Land Contract Disputes Mediation and Arbitration Law*, etc. However, the rural land is assigned to the village collective in the current legal framework of public ownership, which actually causes a decline in the protection of individual rights in the collective economic organizations. When coupled with no specialized norms for land rights and interests of migrant women and under the circumstance that the right and interest protection of women originally lagged behind, this results in the weakening of the legal protection on migrant women's land rights.

Firstly, despite the existing *Land Administration Law* and *Property Law* both specify the collective land ownership is "farmers' collective", exercised by the "villagers' committees" or "collective economic organizations" on behalf of it, the latter's rights have often been transgressed or replaced by the former, namely the legal arrangements of collective land ownership have resulted in the "ownership blur", whereas making the villagers (including migrant women) as a part of owners who have lost their voices on the matters related to land.

Secondly, although the *Rural Land Contract Law* guaranteed to a large extent the household land contract and management rights, it neither protects the

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<sup>22</sup> Dong Jiangai and Chen Xiaoyan, *Weihu Nongcun Funv Tudi Quanyi de Falv Sikao* (Reflections on the Law to Protect Women's Rights to Land), in *Funv Yanjiu Luncong (zengkan)* [Collection of Women's Studies (supplementary issue)], 2006 (12), pp. 47-50; p. 67.

<sup>23</sup> Wang Jingxin, *Zhongguo Nongcun Funv Tudi Quanli – Yiyi, Xianzhuang*, Qushi (Land Rights of Chinese Rural Women: the Implications, Current Situation and Trends), in *Zhongguo Nongcun Jingji* (Chinese Rural Economy), 2003 (6), p. 27.

individual's rights of land disposition nor pays attention to the differences based on gender interest relations<sup>24</sup>. Moreover, it ignores the increase in population within the contract period, especially the large number of migrant women due to marriage and career shift or other reasons. In a situation characterized by women's rights to contract land often immersed in the male-centered families, the vast majority of families still take men as their rightful heads of household<sup>25</sup>. As a result, the land contract and management rights and interests of families are continually enhancing, while the individual's rights, especially women's rights are gradually weakening, and therefore it cannot play an effectively protective role for land contract and management rights of migrant women.

Thirdly, although the *Rural Land Contract Law* provides that only the "members of the rural collective economic organizations" have the right to contract the rural land by the collective economic organizations, and the *General Principles of Civil Law* has also made similar provisions on the qualification of ownership for farmers' household to contract and manage land, migrant women have no legal credentials yet for access to land rights according to the household registration, often causing the loss of their land due to household registration shift linked with marital change.

Fourthly, the *Organic Law of Villagers' Committees* stipulates: "A villagers' assembly shall be convened with the participation of at least half of the villagers at or above the age of 18 or at least 2/3 of households in the village, and every decision made by the villagers' assembly shall be adopted by a majority vote of the villagers present". However, when the villagers' assembly discusses and decides the public affairs related to land rights in the village, the migrant women who are generally in a relatively small number usually cannot get back to the communities of their domiciles to participate in the discussion, so that their land rights are often ignored or rejected by most of the villagers.

And finally, there are certain protective provisions for the land rights of women in the laws such as the *Law on the Protection of Rights and Interests of Women* and the *Land Administration Law*, but these provisions still do not take into account specific protective measures. For example, when the migrant women submit a lawsuit to court against the village committee for the violations on their land rights, since "the village committee and its members do not have equal qualifications of civil subject or the village committee has no qualifications of administrative subject", the lawsuit of villagers against the village committee is generally inadmissible, because it does not apply to administrative or civil proceedings in the

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<sup>24</sup> Yuan Minshu and Han Zhicai, *Nongcun Funv Tudi Quanyi Xianzhuang Yanjiu* (Research of Current Situation of Village Women Land Rights), in *Anhui Nongye Daxue Xuebao (Shehuikexueban)* [Journal of Anhui Agricultural University (Social Science Edition)], 2007 (4), p.14.

<sup>25</sup> Guo Jiangping, *Lun Hunjia Funv Tudi Chengbaoquan Liushi de Yuanyin ji Falv Baohu* (Discussion of the Reasons and Legal Protection of Married Women's Loss of Land Contract Right), edited by Jiang Xiuhua, in *Shehui Xingbie Pingdeng yu Falv: Yanjiu he Duice* (Gender Equality and Law: Research and Solutions), Shehui Kexue Wenxian Chubanshe, Beijing 2007, p. 144.

administrative adjudication procedures of the primary court<sup>26</sup>. This results in the lack of effective judicial or administrative remedies for the protection of migrant women's land rights and interests.

### 3.2 Principles and Policies

Since the establishment of the PRC, the principles and policies on rural land of the CPC and the State have experienced four transitions: the Land Reform in the early years after liberation (1949-1953), the Socialist Transformation of Agriculture (1953-1956), the People's Commune System (1958-1984), and the Household Contracted Management Responsibility System (1978 till today)<sup>27</sup>. Taking 1978 as a turning point, China's rural land system has been gradually changed from "collective owned, unified management" into a "two-level management system characterized by the combination of centralized operation with decentralized operation on the basis of household contract management", which not only guarantees the production and management autonomy of the farmers on the premise of maintaining rural land collective ownership, but also creates the institutional conditions for rural-urban women's migration and non-agricultural industry movements. In the "Notice on Rural Work in 1984" (*guanyu yi jiu ba si nian nongcun gongzuo de tongzhi*), the CPC Central Committee stipulated that land contracts "would last 15 years" and formulated the principle "big stability, small adjustments" (*da wending, xiao tiaozheng*) on which the contract system should be based. In the 1993 document "Some Policy Measures on the Current Agriculture and Rural Economic Development" (*guanyu dangqian nongye he nongcun jingji fazhan de ruogan zhengce cuoshi*), the CPC Central Committee and State Council further extended the land contract period to another 30 years, and promoted the implementation of the method "not increasing land with population growth, not decreasing land with population reduction" (*zeng ren bu zeng di, jian ren bu jian di*) within the contract period. Lastly, in 2008 the CPC Central Committee further pointed out in the "Decision of the CPC Central Committee on Some Major Issues about Advancing Rural Reform and Development" (*zhonggongzhongyang guanyu tuijin nongcun gaige fazhan ruogan zhongda wenti de jue ding*) the need to give farmers more fully secure land contracts and management rights, and to maintain the existing land contract relationships stable and "unchanged for a long time" (*changjiu bu bian*). These principles and policies have played a very important role in stabilizing the land contract relations in the first and second round of land contract periods, and in motivating the farming enthusiasm of farmers, but at the same time they have ignored the rights and interests of individuals in the family and the movements and changes (increase or decrease) of its members, resulting in

<sup>26</sup> Dong Jiangai and Chen Xiaoyan, *Weihu Nongcun Funv Tudi Quanyi de Falv Sikao* (Reflections on the Law to Protect Women's Rights to Land), in *Funv Yanjiu Luncong (zengkan)* [Collection of Women's Studies (supplementary issue)], 2006 (12), p. 50.

<sup>27</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, pp. 111-113.

the daughters-in-law (or sons-in-law), divorced or widowed, and *nongjiafei* women, as well as new-born children, losing their contract land and management rights as well as losing the relative economic interests after land acquisition under the “stable” and “changeless” provisions<sup>28</sup>. Yet migrant women are only one part of them. In addition, the land rights of migrant women are also affected by the undeveloped rural land transfer market, shortcomings in compensation and resettlement after rural land expropriation or requisition, the lack of regulated and ordered administration on the land use right of rural construction land and residential land lots<sup>29</sup>, and the damages to the continuity of rural women's land contract rights because of the inconstancy and inconformity of land policies.

However, the land rights of migrant women are not only related to the above-mentioned transition of rural land system, but also constrained by China's urban-rural dual social security system and provision of basic public services in China. For a long time, the land and family mode of social security has prevailed in China's rural areas. Although the new rural cooperative healthcare system, the rural pension insurance and social assistance and other new social security systems cover the vast majority of the rural population, the investigation shows that only about 10% of the migrant women who work in Beijing enjoy some kind of social insurance<sup>30</sup>. This indicates that even today land is still an important source of income and social security for migrant women who have been working outside for many years. In recent years, the central and local governments have attached great importance to the basic public services for the floating population, and have adopted a series of policies and regulations to help migrant workers solve problems related to employment, healthcare, children's education and social security, etc. However, due to the features of urban-rural “dualization” and regional “fragmentation” of the public service system, there are still notable regional, hierarchical and occupational segregations and differences in the public service provision and access between urban and rural residents<sup>31</sup>. The consequence is that many migrant women are unable to obtain the same opportunities and treatments regarding social security that urban residents enjoy, and are excluded from the

<sup>28</sup> Women's Rights and Interests Department of All China Women's Federation, *Shidi Funv Tudi Quanyi ji Shenghuo Zhuangkuang Baogao* (The Lost Land: Women's Land Rights and Their Life Status), edited by Han Xiangjing, in *2009-2010 Nian: Zhongguo Nvxing Shenghuo Zhuangkuang Baogao* [Annual Report on Chinese Women's State of Life No. 4 (2009-2010)], Shehui Kexue Wenxian Chubanshe, Beijing 2010, p. 108.

<sup>29</sup> Qian Wenrong and Mao Yingchun, *Zhongguo Nongcun Funv Tudi Quanyi Wenti de Shizheng Yanjiu* (An Empirical Study of Land Rights of Rural Women in China), in *Zhejiang Daxue Xuebao (renwen shehuikexueban)* [Journal of Zhejiang University (Humanities and Social Sciences)], 2005 (9), pp. 23-24.

<sup>30</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), Shehui Kexue Wenxian Chubanshe, Beijing 2010, p. 42.

<sup>31</sup> China Institute for Reform and Development (Hainan), *Jiben Gonggong Fuwu yu Zhongguo Renlei Fazhan* (Basic Public Services and Human Development in China), Zhongguo Jingji Chubanshe, Beijing: 2008, p. 250; Research Group of Development Research Center of the State Council, *Nongmingong Shiminhua: Zhidu Chuangxin yu Dingceng Sheji* (Civilianizing the Rural Migrants), Zhongguo Fazhan Chubanshe, Beijing 2011, p. 49.

urban public service system, which in turn is another institutional factor that makes the migrant women lose their land.

In fact, the deeper reason that affects migrant women's land rights is the dual urban-rural socio-economic structure, which is generated by the special urban-rural dually split "household registration system" that has lasted since the era of planned economy. This system registers China's urban and rural residents in accordance with two categories of registration – "agriculture household" and "non-agricultural household", and determines access to social security, public services and welfare systems and so on. Some scholars have pointed out that such a system embodies the identity discrimination of civil rights in politics, and hinders the rights of citizen's free settlement and migration<sup>32</sup>. The main part of the existing household registration system is the management of household transfer for rural-urban migration, with a very complex transfer procedure. Since the reform and opening up, China's household registration system has gone through many reforms, but it has not yet made a fundamental breakthrough. Indeed, not only is the household registration system of large and medium-sized cities not yet really open, but also the cross-provincial household registration reform is still in severe difficulties<sup>33</sup>. This means that, due to entry restrictions such as economic and educational barriers, most of the migrant women and their family members find it very difficult to gain citizenship and settle permanently in the cities. Thus they are often vulnerable to discriminatory treatment when it comes to employment, social security system and public services, etc. While the issue of their land rights and interests is usually immersed and marginalized under the constraints of identity system and household registration system.

### 3.3 Village Regulations and Folk Conventions

Village regulations and folk conventions are the rules and regulations formulated by the villagers in accordance with the practical conditions of the village according to the laws, regulations, principles and policies of the CPC and the State in the initial stage of villagers' autonomy. They aim to maintain the village's social order, social and public morality, the folk of the village's atmosphere, and the construction of spiritual civilization by constraining villagers' behaviors. It is also an important basis of villagers' autonomy developed by villagers' assemblies based on the *Organic Law of Villagers' Committees*. Some of the existing studies argue that the source of the violation of women's land rights is represented by village regulations and folk conventions as well as the traditional marriage culture that still play an important role in the rural communities, rather

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<sup>32</sup> This point of view is drawn from a paper written by Wei Wanqing. *Huji Zhidu Gaige dui Liudong Renkou Shouru de Yingxiang Yanjiu* (A Study on the Income Effects of Hukou Reform on the Floating Population), in *Shehuixue Yanjiu* (Sociological Studies), 2012 (1), pp. 152-153., but the original ideas are from Solinger, Dorothy J.; Alexander, Peter & Anita Chan; Wang Xiaozhang.

<sup>33</sup> Li Qiang, *Zhongguo Shehui Bianqian 30 Nian:1978-2008* (Social Changes in China), 1978-2008, Shehui Kexue Wenxian Chubanshe, Beijing 2008, p.130.

than the legal system and policies of China<sup>34</sup>. The long-standing patriarchal social structure imposed on women's dependent gender roles and the *congfuju* (patrilocal residence) marriage customs still weaken the functions of the statutory institutions<sup>35</sup>, while the village regulations and folk conventions that are contrary to the relevant laws often cause deprivation of rural women's land rights mainly through the different definitions of "member of rural collective economic organizations"<sup>36</sup>.

This survey shows that some village regulations and folk conventions, coupled with the traditional Chinese *congfuju* marriage customs, have caused to a certain degree damages to migrant women's land rights. For instance, the provisions of Village M. in Huangzhong County, Qinghai Province stipulates that the land of unmarried women who are at least 18 years old will be withdrawn in every land adjustments; the Village S. in Suizhou City of Hubei Province regulates that, no matter how long the married women have been living in the village, the compensation for land requisition can only be allocated according to the standards of *banqianhu* (relocated households). In addition, there are village regulations requiring a married woman to transfer her *hukou* out of the village after marriage; even if they have been married into the same village, their *hukou* will be maintained in the village only as *konggua* (empty link), and they cannot enjoy the corresponding treatments of the villagers. In particular, other provisions stipulate that the original home villages will withdraw the *nongjiafei* women's land, regardless of whether their *hukou* are relocated<sup>37</sup>. Such village regulations and folk conventions not only have exacerbated the inherent contradictions between the marital changes of migrant women and the fixed land, ignoring the legitimate rights and interests of migrant women, but have also emphasized the rights of the male villagers, and some villages even take the village regulations and folk conventions as a means against women, brazenly depriving them of their land rights and interests of the older unmarried, married, *nongjiafei* and divorced women. If the provisions conflicting with laws and policies are incessantly implemented and replicated, the traditional concept of "son preference" in the urban and rural communities will be further enhanced, and even migrant women's position in the collective economy of their sending villages will be reduced.

<sup>34</sup> Guo Zhenglin, *Nongcun Funv de Tudi Quanli yu Zhidu Baozhang* (Land Rights and Institutional Security of Rural Women), in *Zhonggong Ningbo Dangxiao Xuebao* (Journal of the Party School of CPC Ningbo Municipal Committee), 2004 (1), pp. 64-65.

<sup>35</sup> Wang Jingxin, *Zhongguo Nongcun Funv Tudi Quanli – Yiyi, Xianzhuang, Qushi* (Land Rights of Chinese Rural Women: the Implications, Current Situation and Trends), in *Zhongguo Nongcun Jingji* (Chinese Rural Economy), 2003 (6), pp. 26-27.

<sup>36</sup> Wang Zhuqing, *Shehuixingbie Shijiao xia de Nongcun Funv Tudi Quanyi Baohu* (The Protection of Rural Women's Land Rights under a Gender Perspective), in *Nongcun Jingji* (Rural Economy), 2007 (3), p. 37; Shi Guoqing and Wu Xiaofang, *Shehuixingbie Shijiao xia de Nongcun Funv Tudi Baozhang Zhuangkuang* (The Situation of Rural Women's Land Security from a Gender Perspective), in *Zhejiang Xuekan* (Zhejiang Academic Journal), 2008 (6), p. 205.

<sup>37</sup> Wu Zhiping, *Zhongguo Liudong Funv Tudi Quanyi Zhuangkuang Diaocha* (An Investigation on Land Rights of Migrant Women in China), *Shehui Kexue Wenxian Chubanshe*, Beijing 2010, p. 25; p. 27; pp. 30-31.

However, it is fortunate that such conflicts might be alleviated following the enactment and implementation of the newly-amended *Organic Law of Villagers' Committees* in 2010. It stipulates that “The villagers' charter of self-government, village regulations, folk conventions and decisions made by the villagers' assembly or the villagers' representatives assembly may not conflict with the Constitution, laws, regulations and state policies and may not contain any information infringing upon the personal rights, democratic rights and lawful property rights of villagers”; “If the villagers' charter of self-government, a village regulation or folk convention, or a decision made by the villagers' assembly or the villagers' representatives' assembly violates the preceding provision, the people's government of the township, ethnic township or town shall order it to be corrected”; and “Where a villagers' committee or any member thereof makes a decision infringing upon the legitimate rights and interests of any villager, the villager may apply to the people's court to rescind the decision and subject the liable person to legal responsibility”. It not only reaffirms the relationship between the “civil laws” (*minjianfa*) and the “national laws” (*guojiafa*), specifies the legitimacy of the ethnic township or town to review the village regulations and folk conventions, but also provides the legal remedies for the aggrieved villagers, so it is more beneficial in terms of protection of migrant women's land right and interests.

### 3.4 Gender Analysis

Gender theory emphasizes gender equality between men and women, enabling them to equally participate in, contribute to the benefits of social development<sup>38</sup>. Gender mainstreaming has recognized the actual differences between sexes, but it not only falls back on helping women adapt to the social status quo, “but trying to change the social system and social structure according to the gender differences between men and women”<sup>39</sup>. Seen from a gender perspective, due to the limitations of social identity and the household registration system, migrant women are in a disadvantageous position in both the urban-rural differential pattern and gender power relations. They also experience double discrimination on identity and gender in the process of marital changes and spatial migration. As for their land rights, the following institutional factors are worthy of reflection.

On the one hand, some existing laws and regulations, principles and policies, as well as village regulations and folk conventions of China lack gender sensitivity. Although the vast majority of current institutional texts are gender-neutral and fair on the surface (namely equality between men and women or even the right protection for women is far higher than that of men), in practice they do not take into account the reality of gender relations and gender culture, whereas gender bias

<sup>38</sup> Wang Zhuqing, *Shehuixingbie Shijiao xia de Nongcun Funv Tudi Quanyi Baohu* (The Protection of Rural Women's Land Rights under a Gender Perspective), in *Nongcun Jingji* (Rural Economy), 2007 (3), p. 37.

<sup>39</sup> T. Rees, *Pingdeng Jihui Moxing: Xiubuxing Zhengce, Shiyixing Zhengce ji Gaizaixing Zhengce* (Model of Equal Opportunities: Reparative Policy, Adaptive Policy and Reformative Policy), in *Funv Yanjiu Luncong* (Collection of Women's Studies), 2000 (2), p. 4.

or discrimination implied in the institutional texts often result in damages to migrant women's land rights and interests during the implementation process. For example, both the rural land system regarding the household as a contract and management unit and the above-mentioned measure "not increasing land with population growth, not decreasing land with population reduction" have apparent gender-blind spots, because they have ignored the "patriarchal" family patterns and the *congfuju* marriage customs. As a result, they have given the land rights of distribution and redistribution to the men, and then bring the disadvantageous consequences to migrant women in the implementation processes.

On the other hand, the existing institutions related to the migrant women's land rights system appear from abstract to specific, followed by the orientation from the central to the grassroots level. While their localization and operability shows an increasing trend, their legally binding and legitimacy takes a decreasing trend. At the same time, there are still many contradictions and conflicts among the laws, regulations, principles, policies, village regulations and folk conventions, making it difficult to reconcile with and support each other in practice, and likely causing distortion and deformation of the policies and regulations during implementation. For instance, there is a lack of inherently consonant relations between the *Law on the Protection of Rights and Interests of Women* and the "not increase land with population growth, not decrease land with population reduction" policy<sup>40</sup>, and there are also conflicts between the *Organic Law of Villagers' Committees* and many village regulations and folk conventions. However, the much deeper reason why it is difficult to get effective protection of migrant women's land rights is often not represented by inadequate or partially implemented policies and regulations, but by the inherently or even gradually enhanced traditional concept of gender in the rural society. Once the unequal concept of gender is normalized or institutionalized, the migrant women's land rights are likely to face greater risks.

#### 4. Suggestions

According to the above discussed status and issues of migrant women in China, this paper proposes the following recommendations to further safeguard and defend their land rights.

##### **4.1 Formulate and improve the related policies and regulations, uphold and safeguard the long-term stability of rural land system of the CPC and the State**

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<sup>40</sup> Zhu Ling, *Nongdi Fenpei zhong de Xingbie Pingdeng Wenti* (Gender Inequality in China's Land Tenure System), in *Jingji Yanjiu* (Economic Research Journal), 2000 (9), p. 35; Dong Jiangai, *Nongcun Funv Tudi Quanyi ji qi Baozhang* (The Study Of The Law/policy Performance Condition About Guarantee Village Women's Land Rights), in *Huazhong Shifan Daxue Xuebao (renwen shehuikexueban)* [Journal of Huazhong Normal University (Humanities and Social Sciences)], 2006 (1), pp. 8-15.

At the present stage, the crucial point for adhering to the basic rural management system is to give farmers more fully secure land contract and management rights, and to maintain the existing land contract relations stable and unchanged for a long time. First, the subject qualification for members of “collective economic organizations” should be legally defined, and the relevant rights and interests in land contracted management of the members should be clearly entitled. Second, the right to registration of certification of rural land should be well organized, and the administration on land contract enhanced through policies. Third, the transfer of land use rights should occur on a compensated, voluntary basis and be conducted in accordance with the law. Finally, the relevant laws and policies should be revised and improved to widen the channels to legal and administrative remedies on migrant women's land rights.

#### **4.2 Gradually deepen the reform of household registration system, accelerate the establishment of urban and rural integrated social security and public service system**

First, take the reform of household registration system as the entry point to break the division of the urban-rural dual system as soon as possible; relax the settled-in conditions and lower the thresholds into the cities; implement the residence permit system steadily and establish a sound unified urban and rural population registration and administration system; guide the ordered population migration and movements; and phase out all the other additional functions attached to the existing household registration system. Second, explore the establishment of the social security system connected with both urban and rural areas; continue to improve various measures for the migrants to participate in the social insurance programmes; expand the coverage and promote the overall planning level of social security, paying particular attention to meeting the special security needs of migrant women and landless farmers. Third, incorporate the floating population into the urban social development plans, improve the public service system with coverage of the floating population, help migrant women enjoy the same benefits such as employment, health care, housing, children's education, family planning equally to the urban residents, and make great efforts to realize the equalization of basic public services.

#### **4.3 Standardize the formulation and implementation of village regulations and folk conventions by law, and strive to build the mechanisms of interest expression and realization for migrant women**

On the one hand, conduct the legal clean-up of the villagers' charter of self-government, the provisions relating to land contract management, village regulations, folk conventions, decisions made by the villagers' assembly or the villagers' representatives assembly, village regulations and folk conventions in accordance with the law, revoke the village regulations and folk conventions conflicting with state laws and policies, and abolish the contents implying gender discrimination against migrant women or damaging their legitimate rights and

interests. Meanwhile, establish the correction mechanism or judicial review mechanism of the decisions made by the villagers' assembly as soon as possible. On the other hand, promote migrant women's participation in the public affairs of both the sending and receiving places, and enhance the convenience services for migrant women to preserve their rights in urban and rural communities, so as to ensure that their legitimate interests can be effectively embodied and expressed.

#### **4.4 Incorporate a gender perspective into laws and policies, and actively promote the process of gender mainstreaming**

On the one hand, all the legislative and administrative activities should stick to the basic state policy of "gender equality", and the gender perspective should be introduced into the whole process of formulation and implementation of laws and policies. In particular, pay more attention to enhance the gender sensitivity of institutional texts related to migrant women's land rights, so that they can equally participate in socio-economic development and share the achievements by reform and opening up. On the other hand, men and women's experiences, knowledge and interests should be applied to the development agenda, avoid the gender-based standardized and institutionalized discrimination as far as possible, eliminate the negative impacts on migrant women's land rights gradually resulted from the concepts and culture of "patriarchy" and "patrilocal", and push forward the process of gender mainstreaming steadily all over China.

### **5. Conclusions**

Migrant women are an important component of China's large floating population, and the current status of their land rights and interests is only a miniature of the whole rural women's land issues. In China's specific institutional arrangements and unique social structure, they have temporarily left their rural land, but cannot be fully integrated into the city life; they are eager to take roots in the cities, but cannot get rid of dependence on the land. They have been trapped in a long-term wandering state, mainly because their land rights and interests are embedded in the dominant patriarchal power structures. Therefore, this paper hopes that the migrant women's land issues can attract wider attention, so that their legitimate rights and interests can be more effectively protected. This is not only the objective requirements to further promote the process of China's industrialization and urbanization, but also an important prerequisite to ensure social harmony and stability.