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Analysis on Farmers' Land Right Protection

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Abstract Land is the fundamental income sources of farmers. However, farmers stay at disadvantaged stage in the political, economic and social aspects. Their land is exploited and occupied, which facilitates the rapid development of economy, as well as brings the gap between the poor and the rich and the inharmonious disputes. The necessity for protecting the land right of farmers under the new situation is expounded, covering the necessity of carrying out the relevant agricultural policies; the necessity of improving rural economic status and narrowing the gap between urban and rural areas; the necessity of reducing land disputes and constructing harmonious society. The violation of farmers' land rights is analyzed from two aspects. The first one is the violation of farmers' land right in land tenure section, which includes the lack of ecological compensation system the lack of contract operation right; the second one is the violation of farmers' land right in land transfer section, including the absence of land requisition system, substandard land contract and land transfer and the limitation of house stead circulation; the third one is the vacant of land development right affects farmers' share of enjoying the added value of land. The countermeasures for protecting farmers' land rights are put forward. The first one is clarify land property; the second one is normalize and perfect land requisition system; the third one is appropriately loosen rural land transfer policies; the fourth one is establish ecological compensation and land development right compensation system.

Key words Innovation, Land system, Land rights and interests, Land right violation, China

The core of rural problems is the land right of farmers. In recent years, although the central government has formulated relevant laws and adopted many measures to protect farmers' land rights and interests, the problems of land violation uni exist universally in land tenure section, land transfer section and land development section. So the government should innovate its laws and regulations, as well as strengthen the supervision in the processes of carrying out the laws and regulations.

1 The necessity of protecting farmers' land rights under new situation

1.1 The necessity of carrying out relevant rural polices

Accelerating new village construction and improving farmers' production and living condition; dealing with economic crisis, enlarging domestic market and opening rural market; accelerating the process of urbanization and industrialization and coordinating the development of rural and urban areas; holding the red line of 1.8 billion mu farmland and ensuring national farmland security and establishing harmonious society and implementing a series of policies of constructing a well-off society in an all round way are all directly and indirectly related to farmers' land, especially directly related to the land rights and interest of farmers. Implementing the effective use of land or taking the land from farmers for other use are all related to the land rights and interests of farmers. If the farmers can really get respect and benefits from the policies, they will advocate and assent the implementation of the policies. Otherwise, the policies will be hard to be carried out and the social stability and economic development will be even affected.

1.2 Improving farmers' economic situation and narrowing the gap between urban and rural areas LI Shi, director of Income Distribution and Poverty Research Centre of Beijing

Normal University, points out that one of the forms of the widening of income gap is further widening of urban and rural income gap. In 1997, the ratio of income of urban and rural residents is 2.6:1, and in 2010, the ratio has reached 3.33:1. The range of gap is not only higher than that in developed countries, but also higher than that in Brazil and Argentina, the developing countries. The premier WEN Jia-bao has said that the imbalanced development of urban and rural areas and the imbalanced development of society and economy is just like a person with a long leg and a short leg, who will inevitably fall down.

There are more than 0.8 or 0.9 billion farmers in China. Though part of the surplus rural farmers go to big cities to work, they are still "farmer" workers. The large community of farmers with shabby social position is poor for a day, and then the aim of constructing a well-off society in an all around set by our government can not be genuinely achieved. Land is the fundamental property of farmers and their chances of getting rich can not exist without land. Therefore, protecting farmers' land rights and interests rather than fighting over benefits with them plays a positive role in improving farmers' economic status, narrowing the income gap between urban and rural residents and maintaining social stability.

1.3 Reducing disputes on land and establishing harmonious villages The land disputes in rural areas mainly include disputes over land property, land revenue distribution, land contract, land requisition, land transfer, land consolidation and so on. Currently, the disputes over land shows the expanded, complicated, diversified and group developmental tendency^[1]. In addition, land disputes often happen in economically developed areas, for in poor and backward areas, the commercial value of land is not high and there are no profits to fight for. The disputes often happen between farmers and governments, so various vicious affairs happen, which indicates that the viola-

tion of farmers' rights has surpassed the bottom-line of farmers' tolerance, as well as that farmers' right protection awareness has waken gradually^[2].

In essence, the land disputes are triggered by the unfair distribution of land revenues. Although interests involved in these disputes are not so huge, the disputes show the lack of fairness, openness and justice. The disputes have certain effect on farmers' life and production. If the land disputes can not be appropriately handled, the harmonious human relations in rural areas and the stability of rural social relations will be gravely affected, and the contradictions may be aggravated.

2 The violation of farmers' land rights and interests and its reasons

2.1 Farmers' land rights are violated in the land tenure section

Although farmers have the right to use and operate land, for one thing, as resources, the use of land is limited, for example, if the agricultural land can only be used for agricultural use, the maximum economic interests of land can not be fully displayed and the social benefits and ecological benefits can not be compensated; for another thing, as assets, the capital of land can not be presented, for example, the non-agricultural land can not be mortgaged, leased and purchased and sold. This kind of situation leads to the limited revenue from land, the difficulty of collecting and resource wasting for farmers in land.

2.1.1 The absence of ecological compensation system leads to the violation of farmers' land rights. People over emphasize that farmers are obligated to protect farmland, for the protection of farmland is to secure the food safety and national security, but people should also consider the maximum benefits of farmers. For one thing, agriculture itself is a ecological system and it plays a crucial role in maintaining soil, purifying environment and adjusting ecological environment. For another thing, under the restriction of law, farmers have to use the land as agricultural production even though the output is low and is affected greatly by natural conditions, so farmers lose many equal right to development and then the imbalanced economic interest appears, and then the social inequality is formed. Therefore, the ecological compensation policies should compensate the absence of development rights^[3]. In addition, with the progress of urbanization and industrialization, more and more villages, rural suburbs in particular, inflicted ecological threats to some degree. The air is not so clean as before and the water, especially the water for irrigating is polluted seriously, and in the end, the water will soak into the soil. Eventually, the quantity of agricultural products will be reduced and the quality of them will not achieve the standard of food sanitary. At some villages, the underground water is polluted as well, which threatens the drinking water safety of man and livestock. In some villages, which are gravely polluted, the plants are withered. The serious pollution will inevitably lead to the reduction of agricultural output value and the increase of the costs of ecological protection and construction, so in theory, the farmers there should be compensated.

2.1.2 The violation of right caused by the limitation of land

contract right and homestead mortgage right. Only when the farmers get the long-term and stable land contract right, they are willing to engage in long-term investment, and then the agricultural land transfer can get more space to development. However, some places ignore the policies of "elongating the period of land contract period to another 30 years" and arbitrarily adjust the consolation of land, which intensified speculation of land^[4] and damaged the interests of farmers. At the same time, farmers have the rights to determine whether they have the right to operate or transfer their land, but they do not have the right to mortgage their land. The reason why the government does not allow farmers to mortgage farmland is out of the consideration of farmers' living guarantee, farmers' abuse of mortgage land and banks may hoard the land for other uses. However, the consideration is minor in comparing with the benefits bought by land mortgage. The land mortgage allows more land to enter the financial market and facilitates farmers' investment in land. Land mortgage can kill two birds with one stone, for it can guarantee farmers' life as well as encourage farmers to make use of the sleeping land capital^[5]. In addition, the *China Property Law* stipulates that houses can be used as mortgage, but in another article, the homestead property can not be mortgaged. In countryside, houses are the biggest property of farmers, but in reality, the house and homestead property are inseparable. So if the house is mortgaged, the homestead property must be involved. Thus, in China, the law, which does not permit the mortgage of houses hurts farmers' right to punish their houses. The property of farmers can not be realized, farmers' problems of lack of money and effective mortgage in the processing of constructing houses and developing economy can not be achieved and they can not rely on the financial method to shake off poverty.

2.2 The violation of farmers' land right in land transfer circle

The current land transfer has two forms in China, covering the transfer of land property right and the transfer of land use right. The transfer of land property is single-directed, for it can only be transferred from farmers to the state, that is land requisition. The land use transfer of collective land includes the transfer of land contract right and the transfer of rural collective construction land.

2.2.1 The deficiency of land requisition system damages farmers' land right. In all the processes of land transfer, the suppliers are rural collectives and the demander is the state. The over imbalanced market position and negotiation ability of the two parties directly leads to the violation of farmers' land right.

In the first place, the flaws of the current policies lead to the violation of farmers land rights. It is reflected mainly on three aspects: firstly, the definition of operational land and public land is unclear. In operation, the land is expropriated as the standard of public land, which leads to the over large amount of expropriated land, sharp decrease of farmland and threats to farmers' life and food safety of the state. Secondly, the standard of land expropriation compensation is low, farmers' loss of land right can not be compensated. The land price is out of line

with land expropriation fee. The State, the local government and the land use sectors have become the main body of interest to deprive the collective land property. Thirdly, the standard of land expropriation compensation is unreasonable. For example, farmers strongly ask the compensation on the occupied areas of ditches, channels and roads. In the process of land expropriation, the compensation on green crops and relocation should be provided. In addition, the compensation on the occupation of homestead and industrial and enterprise land is absent, which is unreasonable, for they occupy the living and working space of farmers without giving any compensation. The behavior is a kind of violation to farmers' land right.

In the second place, the current regulations are not carried out properly. Governments at various levels and strong-power groups fight for interests with farmers, which has gravely damaged farmers' interests. According to the statistics from relevant departments, the land price in the recent three years has accumulated to more than 910 billion yuan. The land prices in some cities, counties and regions have achieved over 60% of the total financial income. The distribution pattern of land expropriation fee is like that: the local governments take 60% – 70%, groups at village level take 25% – 30%, farmers take only 5% – 10%^[4]. And farmers do not know the funds have fallen into where. In addition, the arrangement of reemployment for farmers is improper, which formed the unemployment farmers without jobs, farmland and social security. Farmers choose sit-down strike, parade and appeal to fight for their rights, which lead to serious social consequence.

2.2.2 The violation of farmers' land rights caused by the substandard transfer of contract and operation right. The transfer of farmers' land contract and operation rights mainly happens among rural households, or organizations in and out of the villages, and most of the transactions are conducted secretly. In the process of transferring land use rights, objectively, due to the inadequate information, small volume of land transaction and imperfect market rule, the equilibrium price which reflects the supply-demand relations of farmland can not be formed. However, the rural collective organizations are not qualified to represent the economic interests of all rural households like a economic organization, so they can not affect the farmland transfer market by their decisions, and then the violation of farmers' rights can not be protected. Subjectively, in reality, the villages' committees often push farmers to transfer their land out of the pressure from the upper authority, private benefits, political performance or inadequate understanding, which leads to the low land transfer fee and even the introduce of enterprises with substandard environmental protection, and then hurt farmers' rights. After the land transfer, as a result of leaky contract and poor supervision, the phenomena of damaging farmers' rights happen frequently. For example, the overdue land transfer fee, predatory operation of land and extraction of value-added benefits after the land has changed their usage. In addition, the elasticity of carrying out the land policy is easy to violate farmers' land rights, and as a disadvantaged group, farmers' rights are always victims in the fight.

2.2.3 The violation of farmers' land right caused by limitation of homestead right transfer. In Chinese rural areas, as long as one is the member of rural collective, he can get the homestead and has the right to use is permanently. But the transaction of rural homestead right can only be conducted among villagers from the same collective, for the ownership of homestead right belongs to rural collective and farmers do not have the ultimate authority to dispose the land. However, in rural areas, the ownership of houses belong to farmers, from the perspective of law, they have the compete right to dispose their houses, but the transaction or rent of houses is limited by the restriction of homestead property, let alone free transaction. And then, the ownership of rural homestead and rural houses belong to different people, which cause the damage of farmers' rights. The violation is reflected on the following three aspects:

In the first place, farmers can not sell or rent their own house and homestead, which weaken their ability to purchasing houses in cities and invest. Supposing that there are 0.1 billion vacant rural houses and each house worth 30 000 yuan, and then the total value is 3 000 billion yuan. If the asserts can be cashed timely, for one thing, the source of house in the market can be provided, for another thing, farmers can free from the village and avoid the waste of making money in cities and constructing house in village without living.

In the second place, the hidden rural house transaction market enlarges the costs of transaction and damages farmers' rights. In fact, it is common that urban residents purchase houses in rural areas in many places. But without the legal market for the transaction of rural houses, the genuine purchase and sell of rural houses are restricted and the transaction prices of houses are low, which brings the direct losses of farmers.

In the third place, the potential interest after rural house transaction can not be reflected which brings indirect loss to farmers. After purchasing rural residents' houses, the urban residents will decorate their house. The consumption may improve rural infrastructure and open rural market. Besides, the government can get huge sum of revenues from it. The revenues can be used as special funds for rural construction to improve rural production condition and enrich rural areas.

2.3 The vacancy of land development right affects farmers' share of enjoying added value of land China's rapid development has attracted worldwide attention, but the development in rural areas is backward. Governments at various level make fortune by selling land at the expenses of the production and living space of farmers. The urban land expands to rural areas gradually. After the agricultural land changing into urban land and with the increase of fiscal input, the added value of land is inevitable. But the added value of land has nothing to do with farmers, for the current land policy has clearly stipulated that rural collective land can not enter the secondary market. The land can only be expropriated by the government and then assign the land to land developers and enterprises, so the relevant enterprises and governments can get the profits from land, rather than farmers. Besides, the governments do not input the added local finance to rural areas as proportion, but use them to construct towns and cities and develop industries. The land use

condition in rural areas can not be improved; rural infrastructure is far worse than that in urban areas and the capability of rural areas in resisting natural disasters is decreasing. The great drought in southwest China is a sound evidence for it. At the same time, the drought has small effect on production and life of urban areas, but in rural areas, the draught causes no harvest of agricultural production, tension of using water and in some areas, people's survival is threatened. The reason, is that the long-term neglected water conservancy and irrigation engineering. Meanwhile, the backward rural transportation causes the increase of farmers' production and living costs. The nation input so less to rural public good that farmers can not enjoy the fruits bought by scientific and economic development. In essence, it is a kind of neglect of farmers' land rights.

3 Countermeasures and suggestions on protecting farmers' land rights

3.1 Clarifying land property right China stipulates that: the rural land property right belongs to rural collective, and farmers only have the land use right, land usufruct and land disposition right. Therefore, farmers are not complete land property subjects. So the township collective, village collective and village group and some other organizations have the rights to occupy farmers' land but in a unreasonable way. When the relevant subjects carry out their land property rights, they often ignore farmers' land contract right and land operation right. Farmers' land contract right and land operation right resemble leasehold right which is unsecure and can be withdrawn at any time.

Therefore, clarifying land property right includes land property right of farmers' collective and land use right of farmers. To be specific, it includes clarifying the land property right of rural collective, farmers' land contract right and land operation right. The relevant departments should perfect rural land registration system; motivate the masses to participate in the land boundary line clarification, cadastral inventory and boundary staking; register the land with clear source and without disputes and register the disputable land and then handle it one by one. In addition, the relevant department should provide farmers the certificates of land use right of collective construction land, house property right, rural land contract and operation. In some places, there are certificate of forest property and the first-class collective economic organization should have the certificate of collective land property right. Farmers with the certificates can obtain various kinds of interests through land transfer (such as subcontract, rent, mortgage, land exchange, land transfer or joint stock partnership). Thus the land property right, duties and responsibilities of land can be clarified, which are good for land protection and smoothing land transfer.

3.2 Normalizing and perfecting land expropriation system

The reasonable and practicable compensation standard for land expropriation should be stipulated. In China, the compensation standard of land expropriation relies on method of multiplicity from *Land Management Law*, that is the land compensation fee is the six to ten times of the average output of the land at the previous three years before land expropriation and the land settlement allowances are four to six times of the average output value of the land before land expropriation. This method does

not take the other value of land into consideration, for example, the ecological value, social value and continuous utilization value of land. So the compensation standard should be improved. In addition, the relevant compensation items of collective land, such as reservoirs, channels, roads and other land use should be added.

In order to strengthen supervision on land expropriation, market-oriented path should be taken to solve the problem of same land with different prices. When expropriating land, farmers and collective should be regarded as the main body of negotiation. In the whole process, the government should strengthen the supervision and strive for interests for farmers in disadvantaged situation. The interests include whether the economic compensation has been given in full and in due time; whether the employment arrangement is reasonable; whether the environmental protection achieves the standard and whether it can facilitate local economic development and so on.

3.3 The land transfer policies should be relaxed appropriately

Reform is to breakthrough the current regulations and laws. In countryside, the sticking point of all problems is land system. Land is the income source of farmers' survival, at the same time; land is also a priceless capital. For example, if the value of land can be transformed into cash and the mortgage of contract operation right, the mortgage of homestead use right, land rent and land purchase and sell can be permitted, farmers can get one more funding channel and more financial income, and then they can enrich themselves. From another perspective, the efficiency of farmers' former contract land and the use of homestead land is low. The transferred land can be used to realize scale operation and the non-agricultural land can be included into united urban and rural area to be relocated effectively. It is also conducive to smoothing the tension of land in urban areas and solving the problem of waste land in rural areas. But the government should ensure that the interests of transferring land are not less than the interests before being transferred.

Making the policies more flexible does not mean let the policies without normalization. For example, the rent, mortgage and purchase and buy rural homestead rights can mirror the policies on urban house deal. In addition, the country should formulate rural house property registration system and grant the certificate of house ownership and land use right based on the clarifying of house ownership. The relevant appraisal, mortgage and transference mechanism should be set up and perfected. Urban residents can only have the ownership of the house rather than the homestead right, for the homestead right belongs to rural collective. Besides, the law should stipulate the number and area of rural house. The transaction of rural homestead should correspond to the land use plan set by the government. Only the land which is in accordance with the plan can be used to trade. The illegal behavior of changing farmland into homestead and then sell it will be rooted out. The overall scale of rural construction land should be reduced through village consolidation, amalgamation and removal. The taxes on the homestead transfer should be imposed, so as to use the revenue income to rebuild the village and open new

capital source for the village construction.

3.4 Establishing the compensation system for ecological and developmental right and interest of land

3.4.1 Establishing ecological compensation system. As a social economic policy, the final purpose of ecological compensation is to improve and maintain the ecological service function of ecological system. The ecological compensation includes the compensation provided by the beneficiary to protector and the compensation provided by destroyer to sufferer.

Food safety and ecological service function provided by agriculture are enjoyed by all the people. But the central government represents the beneficiaries, so the central government should be the main body to provide ecological compensation and farmers and local governments who provide food safety and ecological service function should be the beneficiaries. In the process of providing products and services, besides the farmers who bear the risk of loss and extra cost input, the local governments also take the risk of losing certain opportunity cost due to the limitation of development.

As for the problem of compensation caused by the process of urbanization and industrialization to rural areas, the relevant enterprises have the responsibility of reducing their pollution emission to the national demand. If the relevant enterprises do not take their responsibility, they should make up for the farmers whose interests have been violated. The main body to provide the compensation should be the enterprises which produce the pollution and the rural collective and farmers should accepted the compensation for suffering from the pollution.

3.4.2 Paying attention to the compensation of land development right and interests. In the overall plan of land use, land is divided into agricultural land use, construction land use and unused land. If the land is used as construction land, the value of it will increase. But if it is used as agricultural land, the development right of it will be limited and the output efficiency of it is low. So only by subsidizing the benefits from construction land

to agricultural land, and then the social justice of land benefits distribution can be reflected. In Chengdu City, the farmland protection fund is set up, which aims at the establishment of farmland protection mechanism and trying to realize "win-win" in terms of protecting farmland and increasing farmers' income^[6]. The fund has bought positive social effect and economic effect and worth to be promoted to other places. For one thing, it has greatly reduced the illegal action of using land, so as to protect farmland. In addition, stimulating by the subsidies, farmers' enthusiasm on protecting farmland can be improved. For another thing, the establishment of the fund is conducive to increasing farmers' income, innovating rural social security mode and promoting the coordinating and harmonious development between urban and rural areas. At the same time, the fund has solved the long-term life problem of farmers and it has displayed a significant role in narrowing the gap between rural and urban area, reducing social conflicts and coordinating rural and urban development. Therefore, the model is worth to be promoted to other places of the country.

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(From page 133)

themselves, and the reconstruction of social network. To improve the urban-living ability of land-losing farmers, government, society and land-losing farmer should work together. To be specific, government should provide land-losing farmers with system security, create a strong social support network for land-losing farmers, and help them to integrate into the heterogeneous life in cities. At the same time, land-losing farmers should receive more training and education in employment and urban life, improve their own qualities, realize the real transformation to urban residents, and achieve citizenization in the real sense.

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