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# Path Choice of Rural Land Transfer in China

Yumin DING<sup>1,2\*</sup>, Ye LING<sup>1,3</sup>, Yang WU<sup>1</sup>

1. Tongling University, Tongling 244061, China; 2. School of Economics, Anhui University, Hefei 230601, China; 3. Kenneth Wang School of Law, Soochow University, Suzhou 215006, China

**Abstract** Establishing rural land collective property right system with clear ownership, complete powers and functions, smooth transfer, and strict protection is the basic guarantee to the equal exchange of land elements. In this study, the reform of relevant legal systems to China's rural land transfer was introduced firstly, and then the guiding ideology of China's rural land transfer was proposed. Finally, the ways of practicing rural land transfer in China were discussed. Based on the premise of insisting on and improving the strictest land preservation system, farmers should have the right to occupy, use, and transfer their contracted land, and they can transfer their land contracting and management right in ways of exchange, subcontracting, renting, stock cooperation, and trust. Exploring the ways of equal exchange of land elements according to local conditions is an important political and economic issue concerning the livelihood and development of farmers in China, so it should be conducted under the guidance of the correct ideas to integrate scattered land in China's rural areas, develop moderate-scale management, shorten the income gap between urban and rural areas, and realize balancing development of urban and rural areas in China.

**Key words** Agricultural land transfer, Transformation of homesteads, Rural land collective property right system

## 1 Introduction

At present, China's rural basic land system is collective land ownership based on household contract responsibility system. Rural collective land can be divided into rural production land and rural construction land. Among them, rural production land is mainly used for agricultural production, and rural construction land mainly refers to farmers' homesteads. Relevant laws to China's rural basic land system have different legislative time and backgrounds, so their legislative intent is different, and law enforcement behaviors are also various in different departments, which often leads to mutual conflict frequently. On the whole, China's rural basic land system values protection of public interest but ignores protection of individual rights. Therefore, the relevant laws should be reformed firstly to set up correct guiding ideology, then explore ways of putting China's rural land transfer into practice, develop moderate-scale management, shorten the income gap between urban and rural areas, and realize balancing development of urban and rural areas in China.

## 2 Reform of relevant legal systems to China's rural land transfer

**2.1 Giving relevant powers and functions to rural collective land ownership** Different from common ownership, the collective members of China's rural collective land ownership have the ownership of property but no potential share, and they exercise powers and functions such as management, disposition, use and profiting

according to certain rules. In addition, the *Decisions on Several Major Issues of Comprehensively Deepening Reform* made by the *Central Committee of the Communist Party of China* adopted at the Third Plenary Session of the 18<sup>th</sup> Central Committee of the Communist Party of China (CCCPC), and the *Comprehensive Implementation Plan for Deepening Rural Reform* issued by the General Office of the CCCPC and the General Office of the State Council in November in 2015 stipulate the reform direction of exercise of powers and functions such as land holding, use, profiting, conversion, mortgage, and guarantee by farmers. To promote equal exchange of urban and rural elements and equilibrium configuration of public resources, the establishment of land circulation system in China should be based on the *Property Law of the People's Republic of China*, and the content of the *Law on Rural Land Contract of the People's Republic of China* should be brought into the *Property Law of the People's Republic of China*, while the content of land system in the *Agricultural Law of the People's Republic of China* and the *Forestry Law of the People's Republic of China* should be brought into the *Land Management Law of the People's Republic of China*. Issues of private rights are stipulated by the *Property Law of the People's Republic of China*, and issues of public management such as rural collective economic organization and land use control are stipulated by the *Land Management Law of the People's Republic of China*, so as to systematize land systems<sup>[1]</sup>.

### 2.2 guaranteeing farmers' subjective right in land collective ownership

**2.2.1** Strengthening information publicity system to ensure the right to know of members of collective economic organizations. In order to ensure the right to know of members of collective economic organizations, the public events and ways of land transfer should be stipulated clearly in legislation. For instance, the establishment of land planning, partition of contracted land, land expropriation and compensation scheme should be public to the members of

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\* Corresponding author. E-mail: yumin\_ding@126.com

collective economic organizations. In relevant legislation, the subject, range and way of information publicity should be clear, and interested party should have the right to appeal to the government against secret behaviors for relief.

**2.2.2 Improving the decision-making participation mechanism and benefit expression mechanism of members of collective economic organizations.** During the process of making land circulation decision by collective economic organizations, the members' right to vote should be respected fully, and the members' suggestions are collected together to form a collective resolution. During the process of signing a contract for land transfer, farmers contracting land are the main body of the contract. During the process of land transfer not involving collective interests, the system of contracts for land transfer should be established according to the *Contract Law of the People's Republic of China*, and a contract for land transfer must be signed by the transferor and the transferee voluntarily, which are both farmers. As for land transfer involving collective interests, the *Land Management Law of the People's Republic of China* stipulates that if land collectively owned by peasants is contracted by other units or persons who are not the members of the collective economic organization, it must be subject to the approval of above 2/3 villagers or more than 2/3 members at villagers' meeting and must be approved by township (town) people's governments.

**2.2.3 Setting up and perfecting supervision system of land transfer.** To prevent the decisions of collective economic organizations from encroaching on members' interests of the collective economic organizations, it is needed to guarantee their right to supervise land transfer affairs. At present, the legal basis of the supervision is the stipulation in the fifth chapter of the Organic Law on the Villagers' Committee. However, the supervision of rural collective economic organizations is not put into practice. On the one hand, farmers have no professional knowledge and have weak supervision capability; on the other hand, villagers have no effective means of limiting villager's committee. To solve the issue, it is needed to set up a special organization to supervise collective economic organizations to improve the efficacy of the supervision.

**2.2.4 Introducing the third party to supervise and audit collective economic stock companies.** Collective economic stock companies are founded according to modern enterprise system, and farmers get profit according to their share in collective economy. Meanwhile, the third party should be introduced to supervise and audit collective economic stock companies. The companies should make all affairs public and make the standard line of compensation and funds public to all members of collective economy in time. Moreover, the supervision of use of land expropriation fees should be strengthened<sup>[2]</sup>.

**2.3 Setting up fair income distribution system of land circulation** At present, disputes caused during the process of rural land transfer mainly result from too low portion of farmers' earnings in land transfer. During the process of land expropriation led by the government, it monopolizes the primary market of land transaction

and has the absolute right to control land price and compensation distribution. The local government relies on land finance, so that it mainly considers its own interest when establishing land expropriation plans. In respect of compensation for land expropriation, the investigation results of the Development Research Center of the State Council show that farmers' compensation for land expropriation accounts for 5% – 10% of land value-added revenue presently<sup>[3]</sup>. As the main body of collective land ownership, farmers should obtain some profits of circulation of right to use collective land. Assigning some profits to the collective members to make them become the beneficiaries of land appreciation is an effective means and an important measure to increase farmers' property rights. The can realize land value-added benefits appearing in the conversion of use right of rural collective construction land by imposing a tax on collective land value-added income.

Besides, compensation ways should be diversified in practice, such as providing real object, land rent, and services for farmers. If monetary compensation can not solve the subsequent survival problem of farmers, the government should conduct on-the-job training of farmers losing land, give them social security, or provide adequate jobs for them to give them reasonable compensation for land expropriation.

**2.4 Improving relevant legal relief systems to land transfer** To set up relevant remedy systems to rural land transfer, it is needed to find the relief ways of various disputes over land transfer, and the setting up of various relief systems is involved. Disputes over rural land transfer can be divided into three types. The dispute between the government and farmers (or collective economic organizations) mainly involves the government's action on land expropriation; the dispute between farmers and collective economic organizations mainly involves the distribution of compensation for land expropriation and collective resolutions during the conversion of land contracted management right, especially the disposition of land management right by collective economic organizations after farmers become a shareholder by land management right; the dispute between parties of a contract for rural land transfer mainly involves the concluding and performance of the contract. As for the first dispute, the interests of those farmers whose land is levied involved in the government's action on land expropriation are mainly realized by examination and approval of land expropriation and compensation and resettlement plans for land expropriation, and the right to institute administrative proceedings should be given to farmers whose land is levied through legislation. As for the other two disputes, the fact that disputes over farmland contracts belongs to civil and commercial disputes should be definite through legislation, and the transferor of a contract for rural land transfer farmers and the transferee are given the subject qualification of civil action.

### 3 Guiding ideology of China's rural land transfer

#### 3.1 Combing government guidance with market mechanism

The government should play roles of guidance, service and man-

agement in the process of land transfer<sup>[4]</sup>. Firstly, the government should guide the transferor and the transferee to price agricultural land transfer reasonably, make rules of agricultural land transfer, strengthen the support for insurance, finance, allowance and projects, and promote moderate-scale management of agricultural land. Secondly, possible problems such as changing use of arable land, conflict of law, uncertain risk, aggression upon farmers' profit, and financing difficulty should be solved by a series of policy measures to serve the innovation of rural land transfer modes. At last, village cadres and local governments who levy and transfer farmers' contracted land, deprive farmers' right to know and participate, and carry out forced land transfer should be severely punished and managed. Canceling production organizational form of small farmer families can not make farmers entering market, and certain cooperative economic organization forms can realize farmers' market, strengthen the farmers' ability to resist the risk of market economy, and improve their speaking right in the process of land element transfer<sup>[5]</sup>. Improvement of agricultural land transfer system should be specified by the government.

**3.2 Balancing public interest and the farmers' rights and interests** In the present market of agricultural land transfer, most people are common farmers, and some farmers with demand for farmland transfer give up agricultural production to work in a city based on household contract management system. A small quantity of farmer seeking to expand scale of operation have agricultural business mind, are sensitive to policy, and hope to obtain the support and preferential policies from the government through expanding scale of operation. Local leading agricultural enterprises who take part in rural marketization most early have business mind and hope to prolong rural industrial chain with the aid of new agricultural policies, and they may be cooperatives or land joint-stock enterprises integrating production, supply and marketing. The fourth kind the members of village collective organizations often control more land resources and obtain land policy bonuses and scale economies effect. The outsider from industry and commerce had no direct contact with agriculture. However, facing the pressure of adjusting structure of macro economy, some enterprises occupy land in the name of investing in agriculture to obtain profit. As a result, it is difficult to guarantee rights and interests of common farmers. Under the background of an equal exchange of land elements, to shorten the gap between urban and rural areas, it is necessary to change current distribution system of land profits, improve the portion of farmers' earnings during the exchange process of land elements, and realize the balance between the public interest and farmers' rights and interests.

### 3.3 Conducting top design according to local conditions

Reform of rural land system is reform of economic system and an important political issue concerning the livelihood and development of farmers. The *Decisions on Several Major Issues of Comprehensively Deepening Reform* made by the Central Committee of the Communist Party of China adopted at the Third Plenary Session of the 18<sup>th</sup> Central Committee of the Communist Party of China

(CCCCP), and the *Comprehensive Implementation Plan for Deepening Rural Reform* issued by the General Office of the CCCCPC and the General Office of the State Council in November in 2015 unify ideas of designers and participators of the reform in each region to coordinate their action. In China with a vast territory, land area per capita, scale and level of economic development, degree of urban and rural integration, social security and other supporting measures as well as consciousness of the masses can affect the practice of land transfer system, and the implementation of unified system in various regions may obtain different effects. To shorten the gap between urban and rural areas through the transfer of land elements, it is necessary to accord with the overall arrangement of the Central Committee, and adjust measures to local conditions to give full play to the initiative of local governments.

## 4 Ways of practicing rural land transfer in China

### 4.1 Establishing and improving confirmation, registration and certification system of land contracting and management right

Confirmation of right is the premise of market transactions, and it should contact with confirmation of land or stock in practice. For farmers, confirmation of land means confirming land contracting and management right, so it is effective to protect the right of farmers contracting land. Therefore, the primary task is to fully confirming land contracting and management right, release a large quantity of homesteads, private plots and other land resources to make them become farmers' real property and original capital of farmers entering a city, and increase the proportion of income from property in their total income. Confirmation of farmers' stock is conducive to the transfer of arable land and management of agriculture on a large scale. To confirm land contracting and management right, it is needed to fully implement the registration and certification system of land contracting and management right managed by the national land management department. The expenditure on the right confirmation, registration and certification of land contracting and management right should be brought into local financial budget, and the central financial should give them subsidy. Based on steady expansion of experimental units, the right confirmation, registration and certification of land contracting and management right will be finished in China in about five years to make the area of land contracted by farmers accurate.

**4.2 Setting up rural land exchanges** According to the *Suggestions about the Healthy Development of Trading Market of Rural Property Right Transfer* ([2014]71) issued by the General Office of the State Council, the trading market of rural property right transfer can provide a platform for the transaction of rural property right transfer, including the Service Center for Rural Land Contracting and Management Right Transfer, Management and Trading Center for Rural Collective Assets, the Service Center for Forest Right Management, Forestry Property Right Exchange, and other forms of trading market of rural property right transfer. Building rural land exchanges and land transfer information platforms is a

sign of marketization of rural land transfer. Rural land exchanges is the visible market of rural land transfer and can provide services such as policy advice, price guidance, and dispute coordination to promote marketization and normal operation of land transfer. A land transfer information platform is mainly used to collect and release supply and demand information about farmland transfer<sup>[6]</sup>.

### 4.3 Exploring ways of equal exchange of land elements

**4.3.1** Transforming of rural homesteads into urban construction land. Rural homesteads mainly include major buildings, annexes (toilet, kitchen, thatched cottage, *etc.*), and land where surrounding walls are built, and they are owned by rural collectives. With the acceleration of urbanization, a large number of farmers enter and obtain employment in cities, so large quantities of rural homesteads are laid aside. At present, the transformation of rural homesteads into urban construction land has been finished with the aid of the government. Rural homesteads are transforming into urban construction land in two situations. Firstly, scattered natural villages are merged to guide villagers to reside intensively, so as to transforming scattered homesteads into new buildings. Secondly, farmers volunteer to exchange their homesteads for a dwelling in a small town according to the exchange standard stipulated by the government<sup>[7]</sup>. Construction land in previous villages are plowed, and the saved land is integrated and sold by auction to make up funding gap of town construction. Rural homesteads and saved land by village integration should be transformed into farmland at first, and land being changed into construction land must accord with land use plan, and it should be brought into annual construction land plan and meet the demand of collective construction land.

**4.3.2** Exchange of land in rural collective organizations. Members of rural collective organizations exchange land with each other to realize scale management. The main business subject is still farmers, and it can not change the property of farmland. It aims to integrate scattered land, improve land utilization, and then realize moderate-scale management.

**4.3.3** Subcontracting of rural land management right to someone else. Subcontracting of rural land means all or some rural land contracting and management right of inner contractors in a collective economic organization are subcontracted to other farmers in the same collective economic organization. Subcontracting of rural land can not change previous rural land contracting relation, that is, obligations of the previous contract should be fulfilled, and the contractors enjoy corresponding rights. Subcontracting of rural land is a kind of land transfer with the largest area and highest proportion, and it can be realized by three ways. The first way is the subcontracting of rural land in the collective economic organization of a village; the second way is subcontracting rural land to a large farmer; the third way is provide services in socialization model.

**4.3.4** Renting of rural land contracting and management right. Renting rural land means all or some land contracted by farmers are rented out to a big household of agricultural production, lead-

ing enterprises of agriculture industrialization or cooperatives through a lease contract. It can not change previous rural land contracting relation, that is, according to the previous contract farmers contracting the land fulfill obligations of the previous contract and enjoy corresponding rights. This kind of land transfer is easy to operate and accounts a large proportion in current land transfer. Scattered farmers rent out their contracted farmland to big households, cooperatives or agricultural enterprises, and then the latter can obtain the management right in certain years.

**4.3.5** Transferring of land stock cooperation. Land stock cooperation is the institutional arrangements of property right, that is, based on the distribution of land contracting and management right according to population, land contracting and use right is transferred in the form of land stock cooperation system. In practice, it means that contractors of village collective economic organizations become shareholders based on land contracting and management right to form joint-stock enterprises or agricultural production cooperatives, so as to improve agricultural production benefit and realize agricultural cooperative production and industrial management. Firstly, farmers become shareholders of farmer professional cooperatives based on land contracting and management right, which has been implemented in Zhejiang Province, Suzhou, Chengdu, and Shanghai. Secondly, joint-stock enterprises are founded based on foreign capital, and farmers become shareholders based on land contracting and management right to obtain stock dividend and minimum income. If they provide labor cooperation, they can obtain wages. The system innovation can not only ensure farmers' right to share the benefit of land contracted, but also give farmers great income from land increment through dividend distribution, thereby realizing the transition of land from natural state to capital state.

**4.3.6** Modes of land transfer trust. Land transfer trust means rural land use rights legally owned by rural collective economic organizations or farmers as trust assets are entrusted to trust companies, and they can obtain trust benefit. Through land transfer trust, the contracting and management right of collective land is changed into securitized assets, and its benefit is composed of basic land rent and floating profit, so farmers can obtain benefit from land increment and achievements in land marketization<sup>[8]</sup>. In practice, land transfer trust means that after the confirmation, registration and certification system of farmer's land contracting and management right, farmers entrust the right to local government firstly, and then the local government and a trust company sign an agreement on land transfer trust. Afterwards, the rural collective land is entrusted to the trust company, and the trust company rents the land to agriculture-related enterprises. Land transfer trust is still in the exploration stage presently, and the government should coordinate farmer households, trust companies, agriculture-related enterprises, family farmers, and agricultural demonstration zones through the guidance of macro policies, so as to solve problems such as unclear profit model, long term of trust, and uncontrollable agricultural risk faced by land transfer trust.

## 5 Conclusions

Setting up rural land collective property right system with clear ownership, complete powers and functions, smooth transfer, and strict protection is the basic guarantee to the equal exchange of land elements. In this study, the reform of relevant legal systems to China's rural land transfer was introduced firstly, and then the guiding ideology of China's rural land transfer was proposed. Finally, the ways of practicing rural land transfer in China were discussed. Exploring the ways of equal exchange of land elements according to local conditions is an important political and economic issue concerning the livelihood and development of farmers in China, so it should be conducted under the guidance of the correct ideas to integrate scattered land in China's rural areas, develop moderate-scale management, shorten the income gap between urban and rural areas, and realize balancing development of urban and rural areas in China.

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after consolidation; the area of agricultural land which is promoted to Grade 30 is 37.25 hm<sup>2</sup>, which accounts for 6.14% of total agricultural land after consolidation; the area of agricultural land which is promoted to Grade 32 is 181.61 hm<sup>2</sup>, which accounts for 29.91% of total agricultural land after consolidation.

In summary, via land consolidation project, a piece of swamp and messy ridge are remedied into farmland, which increases effective farmland area. By implementing land leveling project, farmland water conservancy project, field road project and farmland protection project, and reasonably deploying distribution structure of field, water, road and forest in the project region, infrastructure supporting construction is realized, and basic condition of agricultural production in the project region is improved radically, which lays the foundation for electrification, mechanization and large-scale production. It makes that the cultivation conditions of the original cultivated land have been improved, and quality of the newly added farmland reaches the equivalent cultivated land's level, and farmland quality level is

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improved by one grade than before. It has an important significance for improving integrated production ability of farmland and laying a solid foundation for stabilizing grain production.

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