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Текущая ситуация и управление неработающими сельскими поместьями в Китае (на основе исследования в провинции Цзянси)

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Аннотация: Китай находится на стадии развивающейся урбанизации. У этой проблемы есть оборотная сторона: пустующие хозяйства в деревнях, которые становятся настоящим обременением для сельских районов Китая. Их можно разделить на два типа согласно двум элементам (население и территория): первый – когда одна семья владеет несколькими домами и пытается наладить хозяйство; второй – когда люди живут на селе, но работают в городе, когда наблюдается так называемая маятниковая миграция. В результате проведенного анкетирования и анализа оказалось, что фермеры стараются сохранить традиционный вид землевладения. Идет строительство домов преимущественно вдоль дорог, но есть и многоэтажная застройка. Приемы традиционного сельскохозяйственного производства стали серьезным препятствием для системы управления подворьями. Авторы считают, что система управления пустующими хозяйствами должна быть разделена на три этапа (на основе самоуправления сельских жителей). Первый этап заключается в улучшении системы добровольного отказа от пустующих хозяйств их владельцами; второй этап должен предусматривать передачу сельскохозяйственных участков с использованием соответствующих сертификатов; третьим этапом является классификация способов использования пустующих хозяйств.
Ключевые слова: пустующие сельскохозяйственные участки, одно хозяйство с несколькими домами, миграция населения, сельскохозяйственные участки с использованием сертификатов, управление подворьями

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THE CURRENT SITUATION AND MANAGEMENT OF IDLE RURAL HOMESTEADS IN CHINA – BASED ON A SURVEY IN JIANGXI PROVINCE

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Abstract: Generally, China is still in the middle accelerating stage of urbanization. Rural idle homesteads are the main problems of rural areas in China, according to two elements (the population and land) can be divided into two types: the first is one household with houses, and the second is the population migration. Through the research questionnaire and interview analysis, the authors know that the traditional land concept is still deeply rooted among farmers. The phenomena of building houses only along the roads and the multi-story ostentation are prominent. The needs of traditional agricultural production have become a major obstacle to the management system of idle homesteads. The authors suggest that the management system of idle homesteads should be divided into three steps based on villager autonomy: the first step is to promote the voluntary withdraw system of idle homesteads, the second step is to issue homesteads use right certificates, the third step is the classification of the ways of idle homesteads use.
Keywords: Idle rural homesteads; one household with several homesteads; population migration; homesteads use right certificates; management of homesteads

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Introduction

The land is the material basis for human survival and development. It is also the eternal subject of society. Historically, the land problem is more reflected in the ancient Chinese proverb: "To the people, food is Heaven". And to produce food, arable cultivated land is always necessary. Nowadays, to solve the problem of food and clothing means to build a well-off society in an all-round way in China.

"Rural homesteads" have become the focus of social attention. The problem of rural homesteads is unique to China and varies by forms of different stages of urbanization. According to the theory of S-shaped curve in the urbanization course[1], the urbanization rate in Beijing and Shanghai has exceeded 80%, these cities have entered the late stage of urbanization, and the urban share of the total population is expanding rapidly. Under the aggravation of contradiction of supply and demand for urban construction land, rural homesteads have become very popular in recent years, creating the problem of "small property right house". The urbanization rate in China is still 58.52%, achieved by the end of 2017; in Jiangxi, the urbanization rate is 54.6 %, which is below the average. China is currently in the latter part of the accelerated stage of its urban transition; there are still high levels of rural-to-urban migration in the country. Growth in farm household income means that farm families can afford to spend more on housing. In addition, China's homestead management system is guaranteed and constrained by law, but the problems of rural homesteads inevitably occur.

Under contemporary tensions and contradictions in reality of China, big cities have begun to restrict the number of permanent residents because of the pressure of living in the region, while there is a large number of idle homesteads in the countryside, this means a waste of land resources. Waste is not only a luxury, but also a major reason why governments don't allow people to waste land resources. The composition of idle homesteads reveals that land lying idle is not just a simple static process, the idle land is caused by poor regulation in the past, government policy such as new farmer households are built while the old ones are not cleared away, deliberate encroachment on farmlands, endangering the 1.8 billion mu of arable land red line. The chaos and disorder that has accompanied increases in idle farmland also affected the living environment and development of the countryside, became an impediment for the country's vigorous construction of beautiful countryside and the implementation of the strategy of rural revitalization.

There's no official definition of what idle homesteads are. According to "Suggestions on the Implementation of Idle Homesteads Management and Sustainable Utilization" adopted by Land and Resources Department of Guangxi Zhuang Autonomous Region, the document uses a listing method to define idle homesteads as "farmer houses that have been abandoned or as land that has been designated for construction of new buildings, but on which the old ones are not demolished". But we also note that this document does not define this concept.

"Idle" is "a function that has not been used for a certain period of times", the meanings of the word represent the unused function and idle period. According to the definition of "the homestead use right" at "National Standard Land Basic Terms of the People's Republic of China"[2], in reference to Article 2, Article 31[3] of the amended version of the Measures for Disposal of Idle Land (New Measures) on June 1, 2012, issued by the Ministry of Land and Resources the People's Republic of China (PRC), the function of the idle homestead is limited to the construction of residential and auxiliary facilities, then a large number of vacant homesteads cannot be considered idle simply because houses had already been built, thus losing the sense of regulation. The purpose of the establishment of the homestead use right is to ensure that land has been designated predominantly for living purposes, not construction ones. The function of homesteads should be defined as the living residence after rural houses are built. Rural households have free access to homesteads Free access, nonetheless, is paired with size limits. Under Paragraph 1, Article 62 of the Land Management Act, size limits should be enforced.

Now, rural homesteads also are deemed idle if construction on this piece of land has not been completed after application or construction has been completed, but nobody is living thereon, or households occupy homesteads but exceed size limits. The identification of the durations of idle periods is a major difficulty, if idle periods are too short, for example, some temporarily uninhabited houses or even empty properties on the day of the census taker visited were designated as idle, according to the Bureau of Popu-

1 In 1979, the American geographer Northam conceptualized the urbanization course with the S-shaped curve in various countries. The urbanization rate of less than 30% is the initial stage, 30%-70% is the latter part of the accelerated stage, and more than 70% is the terminal stage of urbanization.

2 According to law, the right to use the land for collective land construction, which is allocated by the rural collective economic organizations to its members, for an unlimited period for construction of residences and other auxiliary facilities.

3 Article 2: Idle land is now defined as state-owned land that has been designated for construction use, but on which construction and development have not been commenced by the land user for more than one year after the construction commencement date, as agreed to or specified in the land-use contract or written decision for land allocation. Under the New Measures, state-owned land designated for construction use will also be deemed idle land if construction thereon has been suspended for more than one year and either the area of land on which construction has been completed in less than one-third of the total area of the land on which construction should have been completed or the amount of investment by the land user is less than 25 percent of the approved total investment amount with respect to the project.

Article 31: Process of investigation, identification and disposal of the idle collective-owned construction land will be carried out in accordance with the relevant provisions of these Measures.

lation within the Beijing Municipal Public Security Bureau, which conducted the real population-based survey. The survey found that 3.812 million homes stand vacant; China's rural industry was expressing curiosity and skepticism about this data [Wang, 2012]. Regulatory effects cannot be achieved if idle periods are too long.

According to Article 52 of the Regulations on the Ownership and Use of Land, issued by the State Bureau of Land Management in 1995, "if idle homesteads or homesteads after demolition or collapse have not been restored for more than two years can be claimed as a land of undetermined use right. If the use of a right has been determined, and according to the collective report, approved by the people's government at the county level, land registration will be canceled, the land will be withdrawn from owners by collectivities". The idle period of the homesteads is determined as two years; this has been recognized by the academic circle [Qi, 2015; Liu, Wang, 2017; Zhang, Duan, 2017]. Otherwise, migrant workers move to the cities where they have to rent apartments and become year-round employees. Many are from the countryside and lack an urban hukou – the household registration that provides access to social services such as subsidized health care and state schools and the right to buy a home. Only because they have not lived for two years in the countryside, their only residence is deemed to be withdrawn. Or if a member of a collective economic organization acquires the city household registration after building a house, one needs to return to their farms and villages for two days each year, and their homes won't be claimed as idle. It is not appropriate. In this case, it seems more reasonable to replace the "idle time period" with "possible future use". In other words, in the study of idle homesteads, we cannot avoid this problem: under the premise of basic housing, how to protect the rural vulnerable groups, maximize the use of the value of land resources.

1. Survey of idle rural homesteads

1.1. Type structure of idle rural homesteads

The rural idle homestead is a special phenomenon under the action of two factors: population and homestead. If rural homesteads start to expand rapidly, while the speed of population growth remains unchanged, this will lead to the phenomenon of "one household with several houses" in China. If population declines, while the number of rural homesteads remains largely unchanged, this will cause domestic migration of the population. These two factors determine the significant types of idle homesteads in rural areas. As a result of the joint action between population and homesteads, there is the possibility of cross-convergence between the two types, and the two-circle intersecting structure is the basic structure of rural idle homesteads.

Migration of population includes the permanent migration when farmers change the registration type of their formal household registration and the seasonal migration of rural workers into China's cities. Based on the need to protect idle homesteads from withdrawal, the extent of the "possible future use" approach refers to two cases. The first one is when a rural collective organization member who owns the rural homesteads for various reasons moves into a city, his rural residence registration of the collective economic organization is changed to non-rural residence registration by permanent residence (so-called permanent relocation). The second one is when rural migrants don't change the household registration, obtain property ownership in a city or town, frequently change residence and rarely return to the countryside.

Paragraph 1, Article 62 of China's Land Management Law for the acquisition of rural homesteads determines the principle "one household, one house", but does not specify the term "hu (household)". According to Article 5 of the Hukou (Household) Registration Ordinance, the identification of "hu (household)" is based on the standard of "hukou (household) register", there are three categories: joint living households, single-living households, and collective households. But such criteria are contrary to the purpose of structure principles, inconsistent with the reality of Chinese rural areas. The purpose of the principle "one household, one house" is to ensure the living safety of rural families, at the same time not to let the land lies idle. According to the practice in the countryside, "hu (household)" here is equivalent to the traditional meaning of "family". For example, the authors' research in Gao'an and Fengcheng towns of Jiangxi province reveals that the identification of "hu" is according to the traditional Chinese habits: splitting households means merging new households after marriage, when rural males are considered marriageable[4] (households which have only female members need a male household member) to obtain the right of splitting household, apply to the village collectivities for a new homestead.

Historically, the principle "one household, one house" has not been well followed because of its lack of supervision and vagueness. Actually, the principle itself only involves the acquisition of the homestead use right. For example, there are exceptions when the use of the right of more than two homesteads has been lawfully obtained by inheritance. The phenomenon of "one household with several houses" is not uncommon. In practice, it can be classified into two types:

Construction of new homesteads without destroying the old ones. According to our research data, 68% of the idle homesteads are the result of preserving old buildings while constructing the new ones. The internal cause of this phenomenon is the great-leap-forward growth of rural household income; old original homesteads were small with dilapidated houses in remote areas with poor living conditions, under the collective organizations' plan or on the initiative of farmers to move out of the old homesteads, to begin reconstruction over the site of the original residence. In whole villages near Gao'an town and Fengcheng townhouses are built along the roads. This common feature of rural China is also a result of the construction of new homesteads without destroying the old ones. Due to the

4 In Shageng village of Fengcheng town the minimum age at which a person is allowed by law to split households is 20 years (also marriageable age in China).

lack of specific measures for demolition and reconstruction in the past, land examination and approval system of China was flawed with gaps and deficiencies, the government provides legal property rights both for the old and new homesteads.

Property inheritance. The ownership of rural homesteads in China belongs to collective organizations and is not inheritable. Future generations inherit the house of the homestead. According to the "integration of premises" principle in China, now younger generations are able to inherit the right to use the whole homestead. At this time, if the descendants are still living in the countryside, they have already been living in the new homestead of their application; if the descendants have moved into the city and in a short period of time will not return to settle in the countryside, these homesteads will inevitably become idle.

1.2. The current situation of idle rural homesteads

At present, there is no official and direct statistical data on the current situation of rural idle homesteads in China. The report on China's rural development (2017), organized by the Institute of rural development of the Chinese Academy of Social Sciences, points out that rural residential land increased by 30.45 million mu while China's rural population decreased by 133 million from 2000 to 2011. In one aspect of one household with several houses, at the end of 2016, it's 200.3 million farmer households with one house, accounting for 87.0%; it's 26.77 million farmer households with two houses, accounting for 11.6%, 5.2% higher than that in 2006; it's 1.96 million farmer households with three or more houses, accounting for 0.9%, 0.4% higher than that in 2006[5]. In the other aspect of population migration, at the end of 2017, the total population in China was 1.39008 billion, including the population of 813.47 million for urban residents, accounting for 58.52% (urbanization rate of permanent residents) of the total population. And compared with 2015, the urbanization rate of the registered population increased by up to 42.35% by 2.45%, with a difference of 16.17%[6]. That means at least 33 million rural residents have changed their household registration in the past two years. Thus, more than 200 million rural residents often live in cities in China.

Due to different investigated regions, the idle homestead rates[7] reflect different idle homestead situations. Li Haidan obtained the following data through household-by-household investigation and calculation of the utilization for 1529 rural household homesteads in southern, central and northern Jiangsu province. The idle rates of farmers' homestead for two cities in southern Jiangsu, two cities in central Jiangsu and three cities in northern Jiangsu are 4.7%, 8.38%, and 14.5% respectively [Li, 2016].

Based on the field survey of three representative agricultural areas in Neijiang town, Anyue county of Ziyang town and Jingyan county of Leshan town, Guo Xiaodan and others found that the idle homestead rate was as high as 14.7% [Guo, Yu, 2016]. After the investigation of Weixian County, Hebei province, Liu Junfang and others concluded that the idle rate of rural homestead in this area was 5.85% [Liu, Wang, 2017]. When the authors carried on this survey in more than 20 villages in Gao'an and Fengcheng towns of Jiangxi province, Fengcheng town has completed the rectification work of idle homesteads, with the idle rate of rural homestead ranging from 6.3% to 15.2%; Gao'an city has just issued the homestead management regulations.

However, as the implementation has not yet begun, the idle homestead still presents the original appearance. Its idle homestead rate is between 12.5% and 25%, and that of some village is as high as 40%. During the research, the authors interviewed the village, town and county cadres. In the form of questionnaire, this paper discusses the influencing factors of the formation of the idle homestead, the degree of farmers' cognition of the homestead policy, and the obstacles of the homestead withdrawal. Therefore, the following results are presented:

The traditional "land concept" has deep roots. As early as 1963, Notice of the Central Committee of CPC on making some supplementary provisions on the issue of rural homestead stipulated that the ownership of rural residential land belonged to the collective. In more than 50 years, we have carried out propaganda and education many times, but the concept of land private ownership which has been spread for thousands of years still affects modern farmers. In the survey, authors found that, although some villages painted "homestead is not ancestral property but collective assets" on the propaganda wall of entering the villages with white paint, the results show that 12% of farmers still believe that the homesteads are owned by themselves and enjoy the right to dispose of it. Many members of collective economic organizations, who have moved to cities to buy houses and have settled down, still hold the

5 National Bureau of Statistics. Communiqué on Major Data of the Third National Agricultural Census (No. 4) [EB/OL]. http://www.stats.gov.cn/tjsj/tjgb/nypcgb/qgnypcgb/201712/t20171215_1563634.html. December 16, 2017.

Communiqué on Major Data of the Second National Agricultural Census (No. 4) [EB/OL]. http://www.stats.gov.cn/tjsj/tjgb/nypcgb/qgnypcgb/200802/t20080226_30464.htm. February 26, 2008.

6 National Bureau of Statistics. Statistical Communiqué of the People's Republic of China on the 2017 National Economic and Social Development [EB/OL]. http://www.stats.gov.cn/tjsj/zxfb/201802/t20180228_1585631.html. February 28, 2018.

Statistical Communiqué of the People's Republic of China on the 2016 National Economic and Social Development [EB/OL]. http://www.stats.gov.cn/tjsj/zxfb/201702/t20170228_1467424.html. February 28, 2017.

Statistical Monitoring Report on the Process of Building a Well-off Society in an All-round Way in China in 2007 [EB/OL]. http://www.stats.gov.cn/tjsj/zxfb/200812/t20081218_12533.html. December 18, 2008.

7 Idle rate of homestead = total area of idle homestead / total area of a homestead. The total area of an idle homestead is only based on the actual utilization of homestead, without considering the idle time factor.

idea of returning to their roots when they are old. Up to now, they still keep the idle homesteads in the countryside and regard it as the foothold where they have the opportunity to return to the village in the future. In the survey, 12% of farmers hold the idea that the ancestral property can't be abandoned, regard the ancestral house and the old house as a symbol of their thoughts and feelings, and prefer to leave them idle. Another 4% of farmers prefer to hold the ancestral house and the old house for the reason of good geomancy.

The phenomena of building houses only along the roads and the multi-story ostentation are prominent. After the living standards of farmers have risen, their willingness to build houses has become very strong. And then there are two "bad" trends. One is to abandon the original village homestead and build new houses along both sides of the roads in common. Taking Ganjia village of Gao'an town in Shuangxi province as an example, the old village is only 300 meters away from the road, but the villagers still follow the trend to choose house-building sites on both sides of the roads. This causes not only a waste of land resources but also damages the safety of traffic. The other one is to show off the height of the new house. The farmer regards the height of the house as a symbol of family richness and strength. If the height is small, it will be looked down upon by others. According to the survey data of Dongtou village of Gao'an town, 85% of new homesteads have story heights of two and a half or more stories, and 66% have story heights of three or more. However, the actual utilization area is at most two stories, and the excess part is mostly in the blank state. Many four or five-story houses in Fengcheng town are actually built by the children working in cities, with their parents occupying only the first floor.

The need for agricultural production has become a major obstacle to the rectification work of the homestead. For these two investigated regions, Gao'an town is a model county for "China's good grain and oil" action, and Fengcheng town has been awarded "China's super grain-producing county" for five consecutive years. Agricultural production is still the main economic pillar for local farmers. In Chinese traditions, due to the agricultural production requirement of intensive farming with one family as the unit, the homestead is not only used to build houses but also used to build attached houses for agricultural production. In consideration of the living environment, for new houses built by modern farmers, the probability of building the attached houses for agricultural production besides the living houses has reduced to 16%. The old house on the idle homestead takes this responsibility instead. In the process of research, authors found that 68% of the multi-house farmers used the idle homesteads for agricultural production (including poultry feeding, grain storage, agricultural equipment storage, etc.). The need of agricultural production also directly affects their willingness to withdraw from the idle homestead. Up to 81% of farmers are reluctant to withdraw from the idle homesteads because it will be inconvenient for agricultural production.

2. The root of the problem of rural idle homesteads

2.1. The inevitable result of social-economic development and free flow of population

Throughout the history of development of the rural homestead problem in these two locations, the concept of the homestead was first put forward since the work regulations of the rural people's commune issued in 1962. From then on until 1978, when the reform and opening-up policy was implemented, the first priority in rural areas was to develop agricultural production and solve the problem of food and clothing. But the problem of the homestead and its residence is not prominent. Most of the houses that the farmers lived in were the houses that they got from the rich peasants and landlords after the land reform in 1952. Due to the limited quantity, it can't meet the standard of one house per household in the future. Thus, several households are usually packed into one house. If one family has childbirth or is forced out by the needs of daily life and agricultural production, under the material and economic conditions at that time, what the farmers can do is to build simple adobe houses made of loess mixed with straw alongside the main house.

Based on the interview records between the authors and the rural grassroots staff in two locations, the development of rural idle homestead can be divided into several stages according to one household with several houses and population migration. It first appeared in the mid-1980s. At that time, the material level of the whole society had made great progress after the reform and opening up, and the rural economy had made progress after the implementation of the "household land-contracted responsibility system". With a certain economic strength, farmers had built new houses with Jiangxi-province style, which were mainly made of grey bricks accompanying traditional brick-wood structural model. In the 1990s, for rural areas, there were two trends: creating a business as an entrepreneur and finding a job as a worker in the city. During this period, a great number of farmers abandoned the original homestead and houses and left the collective economic organization to enter into various urban areas to seek new development. At the beginning of the 21st century, the rural economy developed further. With the proposal of a new-village policy and the construction of the road along with the villages, the whole village had been relocated to both sides of the roads with newly-built houses on a large scale. At this time, the houses were based on practicality. And the styles of the houses included the modern-style and the traditional buildings. Most of them were brick and concrete structures, and their outside surfaces were gray or black due to the cement coating.

In the past two years, the process of rural and urban integration has accelerated. The newly built houses in the two rural locations are mostly villas, built by migrant workers in their hometowns. The houses have either a brick and concrete structure or a frame structure. They are decorated with tiles, gorgeous and beautiful. For the rural areas with high idle rate, people walk from both sides of the village road to the depth of the village, where

one can see the bright color of ceramic tiles, the dark color of cement, the light color of grey bricks and the warm color of adobe bricks in turn. The adobe-brick houses have no person to live inside. Most of the people living in the grey-brick houses are poor and old people. The cement houses and villas belong to the young farmers and the youths who have made some achievements in cities. The age group of young people seems to have disappeared from the countryside.

The problem reflected in the development stage of rural idle homesteads is essentially a purely economic and sociological problem. When the era of freedom and open came, the level of material and economic income in the whole society has been greatly improved, and the gap of economic development between urban and rural regions has widened. In order to pursue higher economic benefits, farmers seek their way into the city and abandon the original homestead. Or they decide to build new houses to pursue better living conditions after having some savings. This is the inevitable law of social development.

2.2. Current law system failing to regulate reasonably

China's current system of the right to use rural homestead (residential land) is a system to solve the problem of rural residential land, which is derived from the collective ownership of rural land after the founding of new China. In the era of a highly planned economy, dual division of urban and rural areas, and strict control of population flow, the contradiction between people and land has not been alerted, and the exchange value of goods has been greatly limited. According to the principle of distribution based on demand, the system of the right to use rural homestead meets the basic living needs of rural residents, which is in line with the national conditions at that time. Even if nowadays the housing pressure is always high, rural residents will not face the situation of wandering and homelessness as long as they keep the homestead in hometowns.

In current China, with the implementation of the reform and opening-up policy and the deepening of the socialist market economy with Chinese characteristics, the control of urban and rural population flow has been gradually lifted. A large number of farmers have gone out of the countryside and entered various urban areas to seek new developments. The free flow of the population has become normal in China's social development. China has changed from the urban-rural dual division in the past with focusing on static social development, to such a society gradually moving towards urban-rural integration and highly dynamic [Han, 2015. P. 60]. However, the regulations on homesteads are still in the last century. They can restrict the right to use homesteads. The right to the use of homesteads lacks the general provisions on the acquisition, exercise, transfer, and elimination of the right.

China's current laws concerning rural homesteads mainly include the Property Law, Land Management Law and Urban, and Rural Planning Law. The Property Law belongs to the basic legal category stipulated by the constitution, which consists of six parts and nineteen chapters. Among them, the right to use the homestead is listed in Chapter 13, with only 4 articles, which is the least in each chapter. These four articles only reflect the protection of the residency right. They detail the right to use the homestead only for possession and use. And this right is self-closed, which needs to be used by farmers themselves and can't be transferred freely. Thereby it doesn't reflect the content of property rights and the use of rights. From the perspective of the content of articles, most of them are the declarative ones. They lack the general design of homestead use right from acquisition to elimination. To explore the reasons with historical interpretation method, Article 162 from the draft of the Property Law (second deliberation draft) stipulates that: with the consent of the collective, the owner of the right to use the homestead can transfer the constructed house to the farmers in the collective who meet the distribution conditions of the right to use the homestead; when the house is transferred, the right to use the homestead is transferred at the same time. It is forbidden for urban residents to purchase homesteads in rural areas. But when it was finally issued, it was deleted.

Only in Article 153 is there the following provision: the acquisition, exercise, and transfer of the right to the use of homestead shall be governed by laws such as the land management law and relevant provisions of the state. Therefore, the legislators are cautious about the legal loopholes of the specific content of the right to use the homestead in the Property Law. Legislators adopt the method of authorization analogy, waiting for other state organs or local governments to find appropriate and mature methods in practice. In a word, this is a kind of expedient measure made by the legislator based on the land system amendment, limited to the complex situation reflected by the rural homestead problem in different social stages, achieving a balance between ensuring the living safety of the farmer and promoting the best use of everything.

Recently, the draft of the Civil Code issued by the People's Congress of China still copied the four articles of Property Law with regard to settings of the right to use the homestead. This raises doubt about whether legislators have been waiting too long. Some scholars have pointed out that Property Law should not take the legislative attitude of evasion, ambiguity or bewilderment. It should make general provisions with unified and clear operability on the basic contents of the right to use the homestead, the basic conditions, and procedures for the acquisition, exercise, transfer, and elimination of the right to use the homestead. It should also abolish the original provisions dealing with homesteads according to the "relevant provisions of the state" and should not authorize local authorities to make detailed provisions according to the so-called "actual local situation" [Chen, 2010. P.33].

From the perspective of managing the idle homesteads, the deficiency and delay in the homestead use right system are mainly manifested by the lack of a reasonable homestead withdraw mechanism. The homestead withdraw system requires households to withdraw from their vacant homesteads or to give up their occupied homesteads and

houses voluntarily and move into high-rise buildings with compensation. Under Article 65 of the Land Management Law, in one of the following cases, the rural collective economic organizations may recover the land use right with the approval of the people's government that gives the approval for the use of land:

Land is needed to build public facilities and public welfare undertakings of townships (towns) and villages.

Land is not used according to the purposes approved.

Land is not used anymore due to cancellation or removal of the original units.

Proper compensation shall be given to land users in the case of recovering the land owned by peasant collectives provided for in case 1. Situations described in cases 2 and 3 of are not subject to compensation, that has also increased the resistance to withdrawal of idle homesteads. In reality, there is no real urgency in withdrawal of the homesteads, as the contradiction between population and land is not so sharp in the traditional rural areas which belong to a traditional society of acquaintances, the farmers meet regularly and frequently, cannot get away from each other, don't want to offend anyone, in addition, the procedure is relatively cumbersome, so the rural collective economic organizations generally will not take the initiative to withdraw the land use right.

2.3. The misplaced management model highlights paternalism

The right to use rural homesteads is derived from the collective ownership of rural land, and its legal relationship only occurs between the rural collective economic organizations and the farmers. The responsibility and obligations of the government are to clarify the boundaries of these private individual rights without damage to the national and public interests. However, the overall setting of China's current rural homestead use right system overemphasizes the importance of land administration and paternalism prevalent throughout China. For example the right of approval for homestead application, at the beginning of the establishment of the right to use rural homesteads in 1963, according to the Notice of the CPC Central Committee of the Communist Party of China on some supplementary provisions on the issue of homesteads for members, the homestead application only needs to be approved by the rural collective economic organizations. In the case of occupying agricultural land, the approval procedure of the county people's governments is required.

Under Article 38 of the Land Management Law of 1986, the development of new homesteads needs permission from township governments, and new homesteads can never occupy farmland unless approved by county governments. Paragraph 3 of Article 62 and Article 44 of the current Land Management Law of 1998 clearly stipulates that the application and approval of rural homesteads should be examined in three levels procedures: by the village people's governments, by the township (town) people's governments, and approved by the county people's governments. Whereas the occupation of agricultural land is involved in the examination and approval procedure by the province people's governments is required.

A set of regulations was implemented. It happened mainly because the roots of chaos that occurred between 1986 and 1998 were attributed to the low level of approval authority. In fact, the crux of this problem was not that the village committee approved the homesteads without due examination, but was that the Land Management Law basically lifted a ban on the homesteads' use rights acquisition, opened the door for urban residents with non-agricultural hukou registration to legally obtain the right to use the homesteads. The examination and approval power was turned over to the higher authorities. Therefore, the Government should play both the role of the rights holder and the regulator, but as a result, it loses its due supervisory role. As the main subject of land ownership, the rural collective economic organizations should be the real authorized subject of the right to use the homesteads. And exercising this right by the collective economic organizations involves the restriction of the conditions for acquiring the right to use the homesteads and the soundness of the volitional organ of the collective economic organizations.

Friedrich August von Hayek in The Constitution of Liberty wrote: "The enthusiasm of the executive organizations for achieving what they consider to be urgent purposes, as a result, they can't see clearly their functions, and they will also lead them to believe that constitutional restrictions on them and the guarantee of individual rights should be made to give way to their passionate efforts to achieve what they consider to be the most important governmental objectives"[8]. In the management process of idle homesteads, government-led governance programs often seek administrative efficiency, regardless of local realities and the wishes of farmers.

In June 2008 the former Ministry of Land and Resources issued the Measures to link the increase and decrease of the land for construction use in both urban and rural areas. In China, the homestead withdraw system requires households to withdraw from their vacant homesteads or to give up their occupied homesteads and houses voluntarily and move into high-rise buildings with compensation. The original intention of the document is to learn from Southern Jiangsu how to solve the rural homestead idle beneficial attempt to achieve the protection of farmland red line, optimize the layout of urban and rural construction land.

But it didn't adjust to the local situation after promotion in China, some local governments in order to complete the administrative tasks, according to the will of the central government instead of the will of farmers, were about to use any administrative means to force farmers to move into high-rise buildings. They didn't consider too much about farmers' way of living, production methods, and other issues, so it was very difficult for the farmers after being forced move into high-rise buildings to get used to it. After

8 The Constitution of Liberty (the last of two or three volumes). Translated into Chinese by Deng Zhenglai. Beijing: Joint Publishing Company, 2003. P.14.

the demolition of agricultural houses, farmers got demolition compensation less than the real amount of housing needs. Farmers were forced to pay the rest of insufficient costs by themselves, the families that have savings could afford it, and the poor ones couldn't or the whole family had to bear debt costs. Thus, the formation of economic plunder of farmers resulted in tragedy [Xu, 2015].

3. Countermeasures for management of idle rural homesteads

3.1. Eliminate the stock and carry out the work of rectification of idle homesteads

At present, the homestead rectification has been carrying out in the two places on the experience of Yugan County in Jiangxi province, one of the 13 pilot counties and towns of homestead reform in China, and on the basis of urban and rural unified planning, for the purpose of the withdrawal from idle homesteads in rural areas, the related land management measures have been implemented, such as charges for use of over-standard homesteads, the compensation for the use and the bid. A relatively perfect and effective system has been created, which includes:

Charges for use of over-standard homesteads. The high vacancy rate of rural homesteads, in fact, is accompanied by violation of homestead size limits. For a part of category "one household, one house" exceeding size limits and for "one household with several houses" (the cumulative calculation is applied both for the following situations: if one of the houses exceeds size limits, for oversized area of houses and several houses), annual ladder-growing fees force farmers to give up their occupied homesteads.

The compensation for use. The purpose of homestead use right system is to provide the living security for the families of the collective economic organizations. In this sense, the implementation of free acquisition and retention of members of the collective economic organizations has effectively reduced the burden of farmers. It is the proper meaning of the rural land collective ownership system. However, for those who are not members of the collective economic organizations, who have obtained a homestead through inheritance and have had the right to occupy and use it or have left the collective economic organizations after getting free access to homesteads, its gratuitousness has lost the value of protection. At this point, regardless of whether the housing area is within the standard area or not, it should be fully charged in a ladder-growing type calculation.

The combination of paid (compensation) and unpaid way (nonpayment) to guide the voluntary withdrawal from idle homesteads. It is the final landing point of the whole rectification work, and also the best way to eliminate the idle homesteads. For buildings that are not utilized and affect rural planning, such as collapsed houses, outdoor toilets, abandoned livestock and poultry houses, the method of compulsory unpaid withdrawal is taken. As for the withdrawal from the part of "one household with several houses" or the withdrawal from homesteads for population migration, certain compensation may be given according to the age and structure of the building and the structure. Most of the owners of the idle homesteads are pressured to pay the charges for homestead use right, they face serious tradeoffs, have to weigh the advantages against the risks, and finally choose to withdraw from the idle homestead with compensation.

The bid for allocation of the homesteads. The bid is a kind of funds of the village collective economic organization for infrastructure construction and compensated withdrawal and a representation of the collective ownership of the homesteads. The collective economic organization will publish the list of reserved homesteads; encourage members of the collective economic organization to use the method of the bid to obtain the excellent homesteads of preference level, which is more reasonable compared with a one-size-fits-all method of acquisition with compensation. According to all costs needed for the village infrastructure construction and paid withdrawal compensation, according to local conditions, determine the floor price of the plot.

3.2. Speeding up the progress of issuing homesteads use right certificates based on the survey

In the modern market economy society, land value reflects its relative scarcity, according to the range of functions which land itself has performed, the clear land registration system is of great significance in safeguarding the national land taxes, safeguarding the public welfare use of land, ensuring land rights, preventing land disputes and strengthening land management.

In the process of rural homestead management, certificates on the right to use the homesteads play an important role, serve as a connecting link, on the one hand, they consolidate the results and follow through the idle homestead management on an earlier stage, to test out through public notification, on the other hand, provide a basis for the future use and transfer of homesteads, clarify the source and scope of rights, ensure the safety of land transactions.

On August 1, 2014, the Notice on Further Speeding Up the Registration and Certification of the Right to Use Of Homesteads and Collective Construction Land was jointly issued by the four ministries, which required all localities to take registration and issuance as the mainline, according to local conditions, adopt practical investigation methods. The buildings and structures on the construction land of collective construction such as agricultural housing should be included in the scope of work, and the registration and certification of the rights to use the land for collective construction in rural areas of China, which were integrated with the premises, should be completed as soon as possible.

However, in practice, because of some "one household with several houses", over-standard homesteads, a large time span, incomplete information the source of the information, and thus affected the overall progress of real estate registration work. By the end of the research period, in Gao'an and Fengcheng towns of Jiangxi province, the confirmation and registration of rights were still underway. The problem to be discussed is whether the confirmation of rights should be given for homesteads of the category "one

household with several houses" and for the homesteads that exceed size limits of the category "one household, one house".

The authors think that there should be a difference between the two aforementioned situations, for "one household with several houses" there is no the possibility of future use, and there is no need to guarantee the homestead, this is easier to withdraw compared to the homesteads that exceed size limits, that shouldn't be given the confirmation of rights. In 1982, the use of the homesteads that exceed size limits was determined, that year the State Council promulgated the "Housing land management regulations in villages and townships" for the first time defined size limits of the housing area of the homesteads, because the law is not retroactive, before the over-standard homesteads had not been determined, now an action for affirming rights for the whole area of the homesteads shall be legally effective, in case of exceeding size limits the rights for such homesteads should be affirmed according to the year of construction or the current standard of size limits.

3.3. The classification of the ways of idle homesteads use according to local conditions

The management of idle homesteads is like flood management, at an earlier stage it is similar to trying fix the leaking dam. The idle homesteads will be returned to the rural collective economic organizations, paying back its debts to the history, but it doesn't resolve the problems of use of the homesteads. In other words, homestead rectification is the temporary policy intervention with the urbanization processes spreading across the depth, in the future new idle homesteads will inevitably continue to appear in the rural areas. At this point, if no reasonable methods for flood discharge were found, the dam would probably still be leaking.

After China's 40th anniversary of reform and opening-up, the changing face of rural development may also vary. On September 26, 2018, the Central Committee of the Communist Party of China issued a rural revitalization plan on the National Strategic Plan for Rural Revitalization (2018-2022). In accordance with the law of village development and the trend of evolution, according to the development status of different villages, location conditions, resource endowment, according to the idea of agglomeration and promotion, integration into the town, characteristic protection, relocation, and merger, the rural revitalization should be classified into four categories: gathering and upgrading villages, suburban fusion villages, integrated suburbs, protection villages, relocated and merged villages.

Most of the villages in the towns of Gao'an and Fengcheng belong to the category of gathering and upgrading villages. The existing large-scale central villages and other general villages that will continue to exist, accounting for the majority of rural types, are the main types of Chinese villages, the focus of rural revitalization. For villages located in areas with harsh living conditions, fragile ecological environment and frequent natural disasters, villages that need to be relocated due to major projects and villages with particularly serious population loss, village relocation and consolidation can be carried out by means of poverty alleviation, ecological livable relocation and rural agglomeration and development relocation. There are problems of village livelihood, ecological protection, etc. Protection villages are the ones with rich natural historical and cultural resources, such as famous historical and cultural villages, traditional villages, villages with ethnic minority characteristics, and famous tourist villages with the characteristic landscape, which are important carriers for highlighting and inheriting Chinese excellent traditional culture. Suburban fusion villages (the suburbs of the city and the villages) where the town of Chengguan is located in the county have the advantages of being the backyard of the city and the conditions of transformation to the city. The land utilization rate is high, the main result is a small property right housing problem caused by private purchasing, selling. The authors primarily discuss the use of idle homesteads of the first three categories of villages, on the basis of the supporting planning. There are the following ways to choose from:

Restore the cultivation or planting greenery. The demand for relocation and removal of the idle homesteads in gathering and upgrading villages from the original site is very small, economic value is not great; the function of living is not strong. For this part of the idle homesteads, on the basis of the evaluation of the potential of restoration and cultivation, cultivation or planting greenery can be implemented. This method effectively guarantees the red line of cultivated land and frees out the construction land index for urban development.

Construction of rural industries or public facilities. Gathering and upgrading villages as a type of main villages in China, the goal of the future development is to enhance the cultural literacy, living environment and economic income of the residents, and finally build a beautiful countryside with favorable living and working environment. Taking Shageng village of Fengcheng town as an example, on the basis of the rural unified planning, Shageng village has integrated a construction of the Wetland Park, accumulating points (banks) of garbage and recycling, public flushing toilets with ecological protection has built the villager's cultural center, a small sandstone industrial park, using the idle homesteads that have been withdrawn in Shageng village. In addition, based on the aforementioned traditional rural demand for agricultural production, villages that provide good conditions can establish a collective agricultural warehouse on the farmers' applications. Each household has a warehouse separate storage room for their own agricultural production equipment, fertilizers, grains, and other items. Farmers pay fewer costs for rent than for renting homesteads that exceed size limits each year.

Explore the right to use the homestead transfer mechanism. The transfer of the right to use rural homesteads is the requirement of the property value of the homestead, and its existence is premised on the market demand. If in the past we discussed whether the right to use the homestead should be transferred, then the central government in recent years has issued a series of homesteads' transfer reform documents, now we are more concerned about the extent to

which the right to use the homestead should be transferred[9]. On January 1, 2018, the Opinions of the State Council of the CPC Central Committee on the Implementation of the Strategy for Rural Revitalization put forward "three-power separation": the ownership, qualification rights and the right to use the homesteads, which brought about a fundamental improvement into the governance of idle homesteads. In the past, there were protected villages, which received protection because of their recognized natural or cultural values. In the process of management of idle homesteads, the government paid attention to protect the integrity of the village, which affected the use of idle homesteads. After the introduction of the three-power separation policy, in Chengdian village of Rui'an town of Zhejiang province the right to use more than 100 idle farmhouses has been transferred to the tour company to develop residential tourism, farmers holding the homestead qualification certificate regularly get rental income from the companies, the companies holding the homestead use right certificates are also able to operate successfully in accordance with a win-win cooperation principle [Yuè, 2018].

3.4. Relying on farmers' autonomy and public participation

The management of idle homesteads in rural areas should be combined with the actual situation in various places, respect the basic wishes of the population, and on the basis of extensive public participation, prepare and revise village-level land-use planning, village layout planning, land regulating planning and homesteads' regulating plan. In this process, it should be clearly led by the rural collective economic organizations; the role of government is the assistance and supervision. Take the area of the homestead plots which exceeds size limits as an example, in Fengcheng town, according to the measures for the control of homestead standard area is between 100 square meters to 200 square meters, the exact limit size is determined by the villages according to the actual situation. On the basis of holding more than 500 people's mass meetings, the village committee of Shageng village has worked out the measures for the control of homestead standard area, among which, in view of the sharp contradictions between population and land in the village, has set size limits of 110 square meters as the allowable standard. In the process of rectification, Shageng village also pays attention to the leading role of advanced intellectuals, there are "five well-known scholars" elected among the villagers with well-known people outside the village for the formation of the People's Civil Affairs Council to carry out publicity. Village cadres, members of the People's Civil Affairs Council and other Party members take the lead in conforming to the rules and promoting the implementation of the control measures.

9 The Decision on Major Issues Concerning Comprehensively Deepening Reforms (the "Decision") was adopted at the closure of the Third Plenary Session of the 18th CPC Central Committee on November 12, 2013. It clearly proposed to "reform and improve the rural homestead system, establish a rural property rights transfer transactions market, and promote the open, fair and standardized operation of rural property rights transfer transactions." On August 10, 2015, the State Council issued the Guidance on the Implementation of the "Guidance on Carrying out Pilot Operation Rights of Rural Contracted Land and Pilot Mortgage Loans for Farmers Housing Property Rights". The Guidance explicitly confers the function of "two-right mortgage loan" that refers to the management right mortgage loan of rural contracted land and the mortgage loan of farmer's housing property right, safeguards farmers' land rights and interests. In March 2016, six various ministries and commissions of the State Council jointly issued Interim Measures for Pilot Mortgage Loans for Contracted Land in Rural Areas.

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