

Legal Research on Agricultural Cultural Heritage

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Abstract: With the rapid development of agricultural modernization, the loss of agricultural cultural heritage has attracted extensive attention from the international community. Globally Important Agricultural Heritage Systems (GIAHS), initiated by Food and Agriculture Organization of the United Nations, United Nation Development Program and Global Environment Facility, raised the concept of the term “Globally Important Agricultural Heritage Systems” in the international society in 2002. In the global declaration system of agricultural cultural heritage, only a few can be protected. Based on the regional and grassroots nature of agricultural cultural heritage, it is more necessary for sovereign states to play a leading role in the protection and inheritance of agricultural cultural heritage. Starting from the current situation of agricultural cultural heritage legislation in China, this study aims to improve the current central legislation and put forward improvement measures for the legal protection of agricultural cultural heritage.

1. Overview of Agricultural Cultural Heritage

1.1 The Emergence and Development of Concepts.

The concept of agricultural cultural heritage was put forward under the situation of loss of traditional agriculture in the period of drastic scientific and technological revolution and transformation of agricultural farming methods. With the development of industrialization and agricultural modernization and the popularization of scientific and technological means, traditional farming methods were replaced by new agricultural technological means, induced by the economic benefits of high yield per unit area. As an agricultural country with a history of 5,000 years, China has formed a unique and diverse farming civilization on the vast land, which is the common spiritual wealth of the Chinese nation. Regulating the management of government departments, clarifying the boundaries of private rights, and protecting the common cultural wealth of the whole nation require the normative and guiding functions of laws. The legislation system of agricultural cultural heritage protection has come into the perspective of scholars.

1.2 Characteristics of Agricultural Cultural Heritage.

On the one hand, agricultural cultural heritage is an important part of cultural heritage, with the general attributes of cultural heritage - vulnerability, nationality, inheritance. Once the agricultural cultural heritage is eliminated by the current of modern agricultural technology, it is difficult to recover or restore its value. From the perspective of the world, agricultural cultural heritage is the product of different agricultural cultures of different ethnic groups, and a significant cultural symbol in the historical development of a nation. From the perspective of historical development, agricultural cultural heritage is the product of historical development. In order to ensure the continuous pulse and vitality of agricultural cultural heritage in the future, we should pay attention to its inheritance in legislation. On the other side, agricultural cultural heritage has a compound nature, including both material and intangible cultural heritage. Some have specific carriers; Some do not have the carrier, which has the nonmaterial cultural heritage the locality, the activity.

1.3 Legislation Necessity on Agricultural Cultural Heritage.

Excavating agricultural cultural heritage is the requirement of establishing national cultural confidence. The spiritual pillar of a nation comes from the common cultural belief of the nation. To protect the agricultural cultural heritage, to protect the historical and cultural foundation of China from the perspective of agricultural history, and to find the cultural root of China from the context of time, is the inevitable requirement for China to establish cultural confidence.

Protection of agricultural cultural heritage is the rural revitalization strategy. Development without people or culture is soulless. Using the essence of traditional farming technology to develop modern agriculture and ecological agriculture can develop the countryside and solve the problems of agriculture, rural areas and farmers.

Legislation on agricultural cultural heritage complies with the trend of international protection of agricultural cultural heritage. As the GIAHS application system in practice and improvement of global agricultural cultural heritage projects not only needs the protection of the international community, need more rooted in agricultural cultural heritage protection of land by local governments and the public, this is not involved in the international field, as a sovereign state comply with international demands as needed. It is necessary to maintain China's cultural sovereignty and better integrate into the development of the international community to construct the legislation system of agricultural cultural heritage, maintain the historical foundation of China's agricultural culture and the lifeblood of its development, and provide legal support for exploring, inheriting and innovating the connotation of agricultural cultural heritage.

Perfecting the legislation of agricultural cultural heritage is the requirement of protecting the basic rights of the relevant right holders. Under the current agricultural cultural heritage law in China, native people, as the origin group of cultural heritage, are often victims of cultural development, and it is difficult to get legal help in disputes. In order to clarify the rights and obligations of the subjects of agricultural cultural heritage, the legislation of agricultural cultural heritage needs to be improved.

2. Problems Existing in the Current Legislation of Agricultural Cultural Heritage in China

2.1 The Current Law on the Protection of cultural Heritage is not well Targeted and is not Enough to Protect Agricultural Cultural Heritage.

There are few special laws on the protection of agricultural cultural heritage, and only a few scattered provisions in other low-level norms, basically reflecting the spirit of protection without specific measures, including some regulations and documents. China's laws on the protection of agricultural cultural heritage are mainly People's Republic Cultural Relics Protection Law and People's Republic Non-Material Cultural Heritage Protection Law passed by the standing committee of the National People's Congress. Cultural Relics Protection Law may protect the material carriers on which agricultural cultural heritage depend, and Non-Material Cultural Heritage Protection Law may protect those parts that are not supported by material carriers. However, due to the compound of agricultural cultural heritage, as a unified whole, agricultural cultural heritage should not be separated. When practical disputes occur, they often involve both material and immaterial, and the same legal object will have disputes about which law is applicable. The existing legal basis is not so specific to the protection of agricultural cultural heritage and cannot meet the practical needs of the protection and development of agricultural cultural heritage.

2.2 The Administrative Department of Agricultural Cultural Heritage under the State Council has a Low Level of Legislation and a Low Level of Actual Protection.

In the field of agricultural cultural heritage, only the measures for the administration of important agricultural cultural heritage promulgated by the agricultural department of the state council in 2015 is the only targeted legislation in China. First of all, from the perspective of legal effectiveness, this regulation is issued by the agricultural sector with low authority. Second, the

rules are crude. Article 8 stipulates: "important agricultural cultural heritages that cross two or more county, city (prefecture) administrative regions shall be jointly declared by the people's governments of the relevant administrative regions upon consensus through consultation. "This clause addresses the issue of grassroots cross-regional declarations, but ignores cross-provincial ones. In the article "protection and management", governments at all levels are required to include the funds for protection and development planning into their own fiscal budgets, but how to include them into the budget is considered qualified, and how to supervise the implementation of local governments with insufficient budgets are not mentioned. The protection of agricultural cultural heritage itself is a long-term project that is likely to give way to short-term economic development interests. If the government budget cannot be strictly balanced, it is easy for the agricultural cultural heritage protection planning to fall into an empty promise and go through the formalities. Article 11, paragraph 3: "to encourage governments at all levels to take other necessary protective measures", is intended to encourage them to take the initiative of local protection according to local conditions, but has never explicitly included local legislation in the incentives. It is easy to see the problems. First, it only encourages local governments to take protective measures, but does not explicitly encourage legislation, failing to make local governments aware of the necessity of legislation. Second, even if the encouragement of legislation, it only stop in the "encouragement" attitude, can not make the local government to take the initiative to protect the agricultural cultural heritage of the task. Finally, power without sunshine creates opportunities for corruption. In the chapter of "supervision and inspection", it is stipulated: "if the important agricultural cultural heritage of China is seriously damaged and irreversible consequences occur, the ministry of agriculture shall revoke the recognition of the important agricultural cultural heritage of China." As for the legal consequences of destroying agricultural cultural heritage, it is only to revoke the identification of important agricultural cultural heritage of China in this region, but there is no provision on the legal responsibility of government agencies, which cannot allow the local government to ignore the legal consequences of their own responsibilities, and is not conducive to the active performance of local government.

2.3 There are Few Local Legislation on Agricultural Cultural Heritage Projects, and the Existing Level of Local Legislation is Uneven.

Since GIAHS proposed and implemented the directory declaration system, countries have imitated the global declaration model and formed the protection model of self-declaration to the central project. From international legislation to national legislation and then to local legislation, the protection mode of agricultural cultural heritage takes project declaration as the core. Only a small number of projects can be selected as important global agricultural cultural heritage under the declaration system. By 2019, of the more than 60 projects selected as important global agricultural cultural heritage, 15 are shortlisted by China. Although there are certain advantages in the proportion, but as a large agricultural country, China has more than 15 excellent agricultural culture system. The Measures for the Administration of Important Agricultural Cultural Heritage promulgated by the agricultural department of the state council in 2015 determines the identification of China's important agricultural cultural heritage Under this declaration system, 91 projects have been included in the list of important agricultural cultural heritage protection in China. The agricultural cultural heritage system with such a large number and growing with the declaration has different regional colors and particularity, so it is not feasible for the state council department to take unified protection measures. The successful application of agricultural cultural heritage system in addition to the attention of the public, protection measures can not be implemented one by one.

The revised law Legislative Law in 2015 expands the legislative power of local administrative bodies to a total of 284 cities with districts, and limits the scope of municipal local legislative power to urban and rural construction and management, environmental protection and historical and cultural protection. The decision provides a legal basis for municipal and local governments to legislate on agricultural cultural heritage, and aims to encourage local governments (provincial and municipal) to maintain regional cultural heritage and give full play to the initiative and initiative of

local governments. From the perspective of the legislation of local laws and regulations on agricultural cultural heritage, of the 15 items listed in the list of global important agricultural cultural heritage, only the Shaoxing association of Yunnan province has formulated local regulations at present, and few of them are seeking legislative opinions. At present, the local legislation protection in our country is in a state of uneven distribution and technology.

3. Legislative Proposal on the Protection of Agricultural Cultural Heritage

3.1 Raise the Level of Legislation.

The declaration of China's important agricultural cultural heritage is the important source of the world's important agricultural cultural heritage, and it is also the only way for the region where the agricultural cultural heritage is located to declare the world's important agricultural cultural heritage. To improve China's current declaration system for important agricultural cultural heritage requires the central government to play a leading role and local governments to play a primary role. The author advocates that the state council should promulgate administrative regulations on the protection of important agricultural cultural heritage, and the relevant departments such as the ministry of agriculture and village, the ministry of culture and tourism under the state council should jointly formulate such regulations. On the one hand, the corresponding functions of the state council departments can be brought into play to improve the legislative technology; On the other hand, administrative laws and regulations are more effective, which can supervise the implementation of local governments and stipulate the legal responsibility of governments for violating administrative laws and regulations, so that the legislation of agricultural cultural heritage is no longer a dead letter.

3.2 Improving Central Legislation.

It is suggested that, while improving the level of legislation, we should take the vertical declaration system of measures for the administration of important agricultural cultural heritage promulgated by the ministry of agriculture as the basis to improve its deficiencies. As for the cross-province declaration, the author believes that it can be negotiated by the relevant provincial governments and directly reported to the relevant departments of the state council. The protection and management of the local governments of agricultural cultural heritage shall be strictly supervised, and local legislation shall be made for each important agricultural cultural heritage system. As for the fiscal budgets included by governments at all levels, the author suggests that, according to the fiscal revenue status of the government and the level and quantity of important agricultural cultural heritage, the percentage of the fiscal input should be specified. It is supposed to stipulate how to correct local governments that have insufficient budget and actual input. For those local governments that are not responsible for protection and lead to irreversible consequences, it is suggested that the administrative responsibilities of those directly responsible should be punished more severely, instead of merely revoking the designation of important agricultural cultural heritage in China.

3.3 Strengthening the Protection of local Legislation.

The current situation of local legislation in China shows that the legislation lags behind due to the low awareness of the protection of agricultural heritage and the lack of active legislation. In order to improve this situation, the author suggests that it can be improved by administrative regulations of the state council. For instants: Provincial-level and district-level municipal governments with legislative authority in the localities where important agricultural cultural heritages of China are recognized shall formulate relevant laws and regulations for the protection of the project. Important agricultural cultural heritage that spans provinces and cities divided into districts shall be jointly formulated and protected by local governments with legislative power. On this basis, the local government studies the particularity of the protection of agricultural cultural heritage in this region through grassroots research, and makes specific legislation for the protection

of this project. In order to promote the implementation of laws and regulations at the grass-roots level, local governments also need to strengthen the publicity of the legal system, investigate, collect and file the situation of agricultural cultural heritage, so as to provide a premise for promoting the implementation of the law.

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