

Land Expropriation in Taiwan – The Dapu Incident

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Since the Miaoli County Government requisitioned land in Dapu at a price far below the market price, the farmers refused to hand over their land. Then the county government forcibly cleared away objects on the land and even destroyed the rice crops that had already grown on the fields. When news of this incident was spread via the Internet, Internet users arranged to meet in front of the Presidential Office on June 23 to stage a protest in support of the Dapu farmers and to lodge a complaint with the Control Yuan. But on the following day Miaoli County Magistrate Liu Cheng-hung, nonetheless, sent in excavators which destroyed the fields for three days in a row. On June 28 more police was brought in with more than 100 officers surrounding the fields and the entire rice crop which was not yet mature enough for harvesting was eradicated, triggering a public outcry.

The Dapu neighborhood borders on the Jhunan Science Park. In March 2008 Innolux Display Corp. suggested that the special enterprise zone be expanded. Within the short span of one month the Miaoli County Government increased the surface area to be requisitioned from the original 23 hectares

to 28 hectares, including a large number of private homes and farmland in the zone. But the county government requisitioned the land based on the current assessed land value (about 40% of market value), which is not only far below (transaction prices in) neighboring areas (40 to 60 percent above the current assessed land value), but also deceived local residents into believing that they could get building land in return at a ratio of 46%. However, the land that the residents could obtain in exchange for the requisitioned land had an average surface area of just 20% of the original land. On top of that the plots were not located in the same area, which is against legal principles, but in newly delineated residential zones and were allocated by lottery. But these new residential zones were in remote locations, some on steep slopes, some next to a transformer station, on gravesites or near planned factories. These locations were not only worse than that of the original land, but also not suitable for building homes.

Actually numerous similar cases – unreasonable forced land acquisition and unfair compensation - crop up again and again every year. Its major shortcoming can be observed from several angles:

The first is national land planning. The concept behind national land planning is employing a strategy that defines resource use in a way that guarantees the sustainable and efficient use of a country's innate natural resources. But government organs (and local county and city governments in particular) often abuse their power to apply both the Land Expropriation Act and the Urban Planning Act to convert agricultural land into building land upon requisition, driving up land prices many times. They use land speculation to replenish local government coffers and at the same time further the business interests of certain business groups and political factions, severely undermining national land planning.

Second comes food security. Taiwan's rural villages have suffered longtime destruction. Since the 1940s Taiwan has followed a lop-sided policy of favoring industry over agriculture. As the rural villages faced collapse, farmers were forced to move away from their land. As the most severe consequence of this development Taiwan's food security has come under threat. Presently 260,000 hectares of arable land is fallow, while just 260,000 hectares are under cultivation. The farmland that was forcibly acquisitioned recently was all cultivated land. Taiwan's food self sufficiency ratio is already below United Nations standards. If we allow

even more farmland to disappear, national security will face a terrible threat.

Third come guarantees for private property rights. Article 1, Paragraph 1, of the Land Expropriation Act stipulates that "this Act is enacted for the purpose of implementing land requisition, encouraging land use, furthering the public interest, and guaranteeing private property." Rife with vague legal concepts, the Act contributes only very little toward concretizing the criteria for deciding whether or not land should be expropriated. Article 3 of the Act though stipulates that the state, where certain public undertakings so require, may expropriate private land to the extent necessitated by these public undertakings. But by including "other enterprises that may expropriate land under the law" the article's Paragraph 10 leaves the back door wide open so that industrial and urban development could all be carried out under this law.

Furthermore, this amounts to defying the Judicial Yuan Interpretation No. 409 which states that expropriation can only be used as last resort where public necessity does not leave any alternative, and that expropriation must not be used as long as other means can be employed. The courts and government institutions completely ignore the binding nature of the Judicial Yuan interpretation. The

latter ones randomly expropriate land, the prior ones legitimize these forced acquisitions.

Regarding the amount of monetary compensation Taiwan currently adopts so-called “appropriate compensation.” But this further divides into three types of compensation: These are negotiated compensation, compensation based on the assessed land value plus a certain amount, or compensation at market price. The so-called market price refers to “a price based on general transaction prices for local land with a similar nature of land use as the expropriated land's original use.” It is considered a form of “full compensation” that best guarantees people’s property rights. In fact in Article 30, Paragraph 2 the Land Expropriation Act provides for this form of compensation. The so-called “average normal transaction price” means the average market transaction price. In Interpretation No. 579 the Judicial Yuan states “The state may, however, expropriate in accordance with law a private property... To the holder of the right to the property so expropriated, the state must give reasonable compensation and the amount of such compensation must be commensurate with the special sacrifice thus made.” This implies that the compensation amount shall be close to the property’s real price. Yet so far government agencies and courts have not heeded this

interpretation, which strengthens guarantees for private property rights.

To solve this problem once and for all the Land Expropriation Act should be amended to state “expropriation must be a means of last resort after all other avenues have been exhausted. Monetary compensation for expropriated property shall uniformly be calculated based on market value.” Another way to proceed would be to ask the Council of Grand Justices to render another interpretation that further concretizes the view expressed in Interpretation No. 579 and also declares that compensation at the assessed land value plus a certain amount under the Land Expropriation Act is unconstitutional in order to reduce the government’s abuse of land expropriation and protect people’s property rights. **BT**