

Alternative Reply on Climate Change, Agriculture, Land Expropriation and Public Participation Issues

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1. Introduction

Climate change and environment issues have an unquestionably close link to human rights. As Taiwan is located in a region especially sensitive to climatic change, directly addressing the relationship between climate change, environmental issues, and human rights is all the more pressing. This alternative reply is a joint submission from Wild at Heart Legal Defense Association, Taiwan, an environmental law group with a focus on environmental and social sustainability, and Taiwan Rural Front (TRF), an organization which works on issues of land justice, ecological sustainability, agricultural development, and conditions for farmers. We believe that both the Taiwanese government's Initial Report to the ICCPR and ICRSCR show insufficient concern for climate change issues and are furthermore ambiguous with regard to environmental and land conflicts in recent years, which in fact have seriously violated the rights of Taiwanese citizens to life, an adequate standard of living, health, and property, as well as their legal rights to due process and public participation. In our submission, we specify three major areas of neglect: national land-use programs, land expropriation policy, and a lack of transparency obstructing public participation in decision-making process. Through the examination process, we hope that the Taiwanese government will be urged to address these issues with concrete reforms.

2. At present: Taiwan faces serious climate change and grain security issues

a. Sensitivity to Climate Change

Taiwan is an island of about 36,000 square kilometers, situated on the volcanically active "Ring of Fire" region of the Pacific Rim. Earthquakes are frequent throughout the year, and summer and fall bring typhoons and torrential rains. Government policies have over-prioritized economic development, causing overuse of land, the amplification of the effects of natural disasters due to human activity, and loss of life and property. However, the Taiwanese government's present institutions responsible for land use have not only failed to take into account the effects of climate change, but have instead possibly further exacerbated them.

b. Grain Security Issues

According to the Executive Yuan's Council of Agriculture, in 2011 Taiwan's degree of grain self-sufficiency by calorie was 33.486%. Safeguarding conditions

for Taiwan's cereal production, which is based on a clean and accessible water supply, is therefore an urgent issue. Page 110, section 210 of the Initial Report to ICESCR briefly touches on the 2011 National Conference on Grain Security and reports that the degree of grain self-sufficiency would rise to 40% by 2020. However, Taiwan's major policies on development, national land, and water usage in recent years run counter to this goal.

3. Recent national land usage at odds with sustainable development

Page 110, section 210 of Taiwan's ICESCR initial report mentions that "agricultural land and water resources will be put to the most effective use. However, in recent years, the government has allowed various kinds of highly polluting, energy and water intensive industries to be established in Taiwan's most important regions for agricultural production, excessive expropriation on agricultural land for industrial zone usage, and diverted irrigation from agricultural to industrial usage. The government has yet to propose effective measures to deal with the numerous illegal factories in agricultural zones, which has led to serious pollution issues.

a. Regional and National Plans are not respected by the Government:

At present, Taiwan does not yet have legislation on programs for national land usage. This is clearly a shirking of administrative and legislative responsibility, but more alarming is the government's present disregard of the extant Regional Planning Act. For example, the Taiwanese government's "First Comprehensive Examination of Taiwan's Central Region Planning" clearly demarcates the southern region of Changhua County as an "important agricultural production zone," "a golden agricultural belt," and indeed, Changhua County is Taiwan's most important region for grain production. The majority of the land in Changhua's Erlin Township, besides being designated as either special or ordinary agricultural zone, is also the center of Changhua County's most serious land subsidence issues and therefore a land subsidence zone according to a joint study in 2005 conducted by the Ministry of the Interior, the Ministry of Economic Affairs, and the Council of Agriculture on the "Changhua and Yunlin Region Land Subsidence Prevention Plan." Even so, the national government has chosen to disregard this reality and establish the Fourth Stage Central Taiwan Science Park ("CTSP") in Erlin Township, classifying the CTSP as a Major National Construction Plan. The plan included the development of 631 hectares to attract highly polluting and water-intensive photovoltaic manufacturing plants.

This project nonetheless passed the scrutiny of the Ministry of the Interior's Regional Planning Committee and the Environmental Protection Administration's Environmental Impact Assessment Committee. The Taipei High Administrative Court revoked the development permit approved and issued by the Ministry of the Interior due to the chosen area's designations as an important agricultural production zone and a major land subsidence zone. During the course of a

separate legal action, the area's resident farmers argued that the Environmental Impact Assessment was approved with a willful disregard for the rights to water as detailed in Articles 11 and General Comment No. 15 of ICESCR. The Taipei High Administrative Court judge responsible for the decision determined that the ICESCR safeguards with regard to water rights applied only to undeveloped countries and as such were inapplicable to a developed country such as Taiwan.

4. Arbitrary and Unreasonable Expropriation of Land

Page 79 of the Initial Report to the International Covenant on Civil and Political Rights (the "ICCPR Report") touches on the amendment of the Land Expropriation Act, the most recent revision of which was promulgated in Taiwan on January 4, 2012. It mentions in Point 179 that "in order to avoid controversial and excessive land disputes, land expropriation is subject to evaluation with public participation, as to their public welfare and necessity public input prior to being levied; the composition and operations of the group deciding eminent domain matters are transparent..." However, we have observed government actions run completely counter to these claims over the last year.

a. New Laws do not Ensure the Integrity of Special Agricultural Zones

While the new Land Expropriation Act was still under discussion, the first principle in the public draft of the Act promoted by the Taiwan Rural Front emphasized that the "Special Agricultural Zones cannot be subject to expropriation." However, new revisions to the Statute now provide in Article 3-1 that: "Arable and pastoral lands in a special agricultural zone are not subject to expropriation unless it is an interspersed odd piece of land that is difficult to circumvent. However the preceding provision does not apply to such land that is necessary for use by a national defense, communication or transportation, or water conservancy undertaking, or a public utility enterprise for erecting power transmission lines, or for use in an infrastructure project already approved by the Executive Yuan."

The exceptions designated by these provisos render the protections for the Special Agricultural Zones essentially ineffective because most of the controversial large-scale expropriation cases of the past few years have been "major construction projects approved by the Executive Yuan."

b. Expropriation cases often result in homelessness and destitution due to the lack of a comprehensive compensation scheme

Page 79, Section 179 of Taiwan's ICCPR Report states that "After being amended [in January 2012], land condemnation procedures are more rigorous; compensation is determined according to market value and plans made for resettlement." However, Taiwan Rural Front and other NGOs have repeatedly emphasized that forced takings under expropriation process do not solely

represent a loss in real estate holdings. For those who rely on farming for their livelihoods, loss of land is furthermore a loss of the means by which they earn a living, and calculation of compensation for land takings must take comprehensive account of these real losses. The government compensation in expropriation cases should restore those whose property is being taken to their original condition to the furthest extent possible, allowing them to rebuild their lives as they were prior to the taking. Such a compensation scheme is of essential importance for the economically and socially disadvantaged.

For example, in the “Airport Rapid-Transit Lin-Kou A-7 Station Area Development Case” (“the A7 expropriation case”), the affected residents of the Leshan Village (part of Taoyuan County, Gueishan Township) were legally entitled to land in compensation with the equivalent area of at least 40% of the expropriated land. However, National Taipei University’s Department of Real Estate and Built-Environment Assistant Professor Liao Pen-chuan has explained that the area of the land required for public facilities was excluded from the calculation of the land the residents were entitled to, and second, the higher, post-development value of the land was used to calculate the buy-back price, thus making it impossible for the former residents to receive 40% of their original land area in compensation as required by law. Meanwhile, due to the dramatic rise in land values after development, the original residents were unable to continue their lives as before in the area.

c. Management of Past Expropriations Cases Continues to Neglect Consideration of Public Welfare and Necessity

Although Page 77, Section 177 of the ICCPR Initial Report admits that the CTSPs in the Erlin Township and Miaoli Dabu areas have been criticized by the public, the government has nonetheless failed to follow up on its concern with remedial measures. For example, the CTSP in the Erlin Township area, originally for the planned manufacturing of photovoltaic products, is an area poorly suited for manufacturing given that the location is designated by the Regional Planning Act as part of a “Golden Agricultural Belt”; furthermore, the Chang-Hua and Yun-Lin Region where it is located has long been plagued by water shortages and land subsidence issues (as mentioned previously).

Due to a variety of factors, including the decline of the photovoltaics industry and confirmation of the lack of long-term water sources, in August of 2012 the project was declared anew as a precision-machinery manufacturing park. Even with the original cause for taking no longer extant, the government still refused to cancel the land expropriations as required by the Land Expropriation Statute.

The 2010 Miaoli Dabu Case has received extreme censure from the public, particularly after the suicide of a female farmer. After farmers, NGOs, and the government entered into discussions, the Executive Yuan in August 2010 issued an official policy directive dealing with the issue titled: “The Dabu Self-Help

Association Members' Building Foundations Should Remain in their Original Locations." On December 28 of the same year, in the face of a resolution by the Urban Planning Committee at its 746th Assembly that the self-help association members' "original structures would be preserved," The Chairperson of the meeting, despite no change in the facts on the ground, overturned the 746th Assembly's decision, determining that the self-help association members' homes would be demolished and the original land would no longer be preserved. This decision was furthermore made in direct contravention of the Executive Yuan's aforementioned policy directive.

In Dabu, the local residence of Ms. Peng Xiu-chun has already been expropriated twice for the widening of an adjacent road, presently only 20 square meters of her original property remain. The Ministry of the Interior and the Miaoli county government have prevailed in demolishing Ms. Peng's residence on the basis of its "effect on traffic safety," overturning the Executive Yuan's agreement to leave the land to its original owners. However, even with the heavy increase in traffic in recent years from large construction vehicles and a succession of factories established at the nearby Science Park, Ms. Peng's residence has not yet been the cause of any traffic incidents. In another instance, the Ministry of the Interior reneged on its original agreement made at the 746th Assembly to allocate Mr. Huang Fu-Ji a section of rice fields concentrated on the south-west side of his current residence, and Mr. Huang was instead assigned land at a considerable distance from his home. For the elderly Mr. Huang, the commute this imposed an extremely hardship.

d. Construction companies permitted to 'pre-sell' private land prior to expropriation approval

In the above-mentioned A7 Land Taking Case, a 'pre-sale' method was used in order to carry out the development of a 'special industrial zone,' seriously violating the affected people's right to residence and to not be forcibly evicted without due process accorded them by the Land Expropriation Act. In July of 2011, the constructing company auctioned off the area planned for the "special industrial zone" and "suitable residences" without having completed the expropriation procedures and also prior to the completion of any substantial planning. Taiwan's Control Yuan issued a Corrective Measure to the Executive Yuan on July 6, 2012, stating that the Ministry of the Interior had not complied with the Executive Yuan's policy directive in the A7 Land Taking Case. The Control Yuan found that the directive was the origin of the provision to conduct land expropriation procedures via 'pre-sale.' The Control Yuan further acknowledged that although the Executive Yuan had specific policy goals under consideration as well as the resolution of capital requirement issues for expropriation in the area, among other issues, it nonetheless should have followed the expropriation process and safeguarded property rights by arranging for sale of land only after the landowners' land rights had already been transferred.

e. Conflict of Interest in the Selection and Composition of the Land Expropriation Examination Committee; Committee Operations Lack Transparency and Public Participation

At present, the rules governing the membership of the Land Expropriation Examination Committee are provided by the “Essential Guidelines for the Set-Up of the Ministry of the Interior’s Land Expropriation Examination Committee.” There are three serious shortcomings to the design and operation of these committees.

- i. Point 3 of these committee rules provides that the committees should be composed of seventeen members, with eight members representing the government and the remaining nine drawn from scholars and organizations outside the government. However, the scholars and organizational representatives are chosen by the Ministry of the Interior without any outside input, with the result being that the Ministry of the Interior has de facto control of the composition of the Land Expropriation Examination Committee. Furthermore, during the course of any given land expropriation case, the interests of the applicants for expropriation are safeguarded by the same government bodies responsible for examining and approving land expropriations, undermining the committee’s objectivity in weighing public interest and necessity in expropriation cases.
- ii. The process has furthermore heavily criticized for consistently excluding public input from the land expropriation evaluation process. Point 9 of the committee rules provides that: “When a committee meeting is convened, the applicants or other individuals or parties relevant to the expropriation process, may be present to give statements, after which they must withdraw from the meeting.” In short, the committee has absolute discretion over whether a member of the public has the right to participate in the examination process, the right to voice his or her opinions, effectively giving the executive government agencies control over the public’s procedural rights.
- iii. The committee rules as they stand now make no provision for standards by which land expropriation decisions must be made; in present practice, neither expropriation approvals nor denials are supplemented by explanations. There is therefore no possibility of the public obtaining any justification for the expropriation of their land, and they are furthermore unable to evaluate for themselves the necessity for expropriation, the degree to which expropriation contributes to the public welfare, or other critical factors that are used in the balance of interests required during the expropriation examination process.

5. Obstruction of Freedom of Information and Public Participation in Taiwan

- a. The design of the Environmental Impact Assessment (EIA) system is based on the precautionary principle; it is meant to assess whether a project will have an

adverse effect on the environment prior to development. However, in recent years Taiwan's EIA investigations have been ineffective, violating Taiwanese legal procedures as well as the Taiwanese people's rights to life, health, property. For example, on December 21, 2012, the Taipei government convened its 123rd EIA committee meeting to deliberate on a cable car development proposal for Beitou District in Taipei City. The proposal was met with numerous questions from committee members and the public, some of whom expressed doubts about the geographic suitability of the proposal. The developer did not respond to any requests for survey information regarding wind direction and speed that should have been provided for a cable car situated in a mountainous area; nor did they respond to questions regarding how increased tourist traffic would affect the already severely congested traffic problems experienced by local residents. Even under these ambiguous circumstances, the EIA concluded that the developers met with approval that they had met the EIA conditions.

On December 22, 2012, the Taitung county government began conducting an EIA for the Miramar Resort Build-Operate-Transfer (BOT) project proposal at Dulan Bay. This project had previously been rejected by the High Administrative Court for failing to meet various environmental standards; in fact, in its rejection, the court had revoked permission for all construction on the project. Yet the Taitung county government refused to order construction to cease and simultaneously began the EIA process anew in obvious violation of the EIA system's precautionary principle. The affected area also borders coastline located on aboriginal tribal lands, but the EIA committee has no specialists in aboriginal or cultural heritage, nor does it have any specialists in the field of ecology. Besides issuing approval for the project, the final EIA approval was left blank, listing no conditions or reasons for allowing the project to go forward.

- b. At present, Taiwan's system of national land administration divides land into three types: urban land, non-urban land, and national parks. Planning, renewal, and other projects for urban land must accord with the Urban Planning Act in undergoing review by the Urban Planning Committee. The appraisal and modification of urban projects inevitably affects people's residential and property rights, and their lives as a whole. Urban Planning Committees at the Ministry of the Interior or within the local government are responsible for reviewing and approval or rejection of all government urban plans, and therefore have enormous influence over citizens' rights and interests. Even so, "The Rules for Composition of Urban Planning Committees for all Administrative Levels" stipulates in its Article 10 that: "The public or other group representatives may attend urban planning committee meetings in order to make statements, after which they must withdraw from the meeting." The right of the public to participate in these proceedings is therefore entirely subject to the committee's discretion, severely delimiting the right of those directly concerned and public groups to participate in these proceedings.

Public participation is even more restricted in the review of development proposals for non-urban land; the “The Rules for Composition of Regional Planning Committees for all Administrative Levels” contain no rules regarding public participation in the committee proceedings, in effect reducing the public’s right to attend regional planning committee meetings and make their perspective known to by-case determinations from the committee. During the review of plans for development of National Park lands, public participation is also at the discretion of the committee, as the rules governing the composition of the Ministry of the Interior’s National Park Planning Committee provide in Article 7 that “When a committee meeting is convened, the committee should invite the relevant parties to express their opinions,”

6. Suggested Inquiries

We recommend the committee raise the following questions:

- a.* Has the Taiwanese government promulgated legislation specifically to cope with climate change? Can the government provide a timetable?
- b.* To what purpose are the specific policies and statutory measures for raising Taiwan’s level of grain self-sufficiency? Can the government provide a specific timetable and projections?
- c.* From the EIA process for the Beitou District cable car proposal, the Miramar Resort, among others, it is evident that the way in which the Taiwanese government conducts EIA has blatantly disregarded its own precautionary principle. And commonly violates legal procedures or determinations without sufficient information. What measures does the government plan to take to improve this situation?
- d.* How does the government plan to address the numerous violations of the Regional Land Plan by major development projects with the construction of manufacturing zones or science parks in important agricultural zones?
- e.* The government should propose amendments to improve the current regulations governing expropriation, which are lacking in sufficient protections for agricultural zones, comprehensive compensation schemes, as well as guarantees for public participation. What is the timetable for such an amendment?
- f.* The government should give reasonable explanations for the arbitrary changes to the agreement over expropriations negotiated with local farmers in Maioli Dabu and for its blatant refusal to cancel land expropriations in Chung-Hua Erlin despite the cancelation of the fourth-stage CTSP and hence the elimination of the original justification for the expropriation.

- g.* The government should pledge to never again allow the circumstances leading up to the A7 land expropriation to occur again, especially the pre-sale of land without undergoing the legally mandated expropriation procedures or other formal planning.

- h.* The government should propose concrete measures to legally institutionalize public participation in the Urban Planning Committee, the Regional Planning Committee, and the National Parks Planning Committee, and a produce a timetable for their implementation.