



The Regulation System of Land Acquisition and its Compensation in Japan

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ABSTRACT

The purpose of this research is to find out the success of Japanese government in land acquisition process over its citizens through the mechanism, regulations and laws applicable in Japan, to determine the cooperation process among organization and public agencies in land acquisition for public purpose and its compensation. Japan is a unitary state with three levels of government, the national level, 47 prefectures and 1741 municipalities. The result of this research indicated that there are four criteria in assessing the business applied: (1) specified type of business; (2) businessman is someone who has sufficient intentions and qualifications in running its business, such as a business license, budget, staffing, so on; (3) the public purpose generated from the project must outweigh the lost natural interests, such as people, environment, nature, landscapes, so on; and (4) urgency and mature preparation in running public purpose projects is an obligation for the company. However, there are some of primary constraints from landowner as following: (1) environmental sustainability and community life; (2) business liability; (3) dissatisfaction with compensation; (4) succession dispute; and (5) territorial boundary disputes of MLIT (Ministry of Land, Infrastructure, Transport and Tourism).

Keywords: *Landgrabbing, Land Structure, Prefectures*

INTRODUCTION

The acquisition is an action makes businessman to conduct its business for the public purpose by obtaining, eliminating or limiting ownership of certain things regardless of the person's intention on behalf of the public interest. According to the land acquisition law, compensation for the victims must be fulfilled in full, which means the victim's property value does not change before and after the acquisition process, and the nominal amount must be appropriate with the agreement till the victim gets alternative land that's on par with the land taken (Marissa L.L. Lum, 2007).

The land acquisition was regulated in Law/1951 Article 29 Paragraph 3 as a law of land's compulsory acquisition for public purpose (Marissa L.L. Lum, 2007). The land acquisition system became effective before Meiji era in 1868. In ancient times, people lived during the reign of feudalism and had no concept of personal ownership and land acquisition system. Then during Meiji era in 1869, the land acquisition system was established along with the establishment of land ownership. The system was announced along with the issue of the Japan Imperial Constitution. After World War II, the land acquisition system was changed to the current system under the Japanese Constitution which is characterized by property rights. However for private property may be taken for public purpose with fair compensation (Tsuyoshi Kotaka, 2017).

Land acquisition process must provide the land owner with concrete processes and details. There are 3 principles that must be implemented in every acquisition of private property for the public purpose, such as: (1) personal ownership land to be acquired must be public; (2) permitted compensation must be made for private property acquisition; (3) full compensation. The purpose of land acquisition is adding such public facilities and establish coordination with land owners (Yamashita Yasuhiro, 2015). Basically, before implementing the land acquisition system, business operators establish a trade treaty with land owners in trading land acquisition. If land owners do not agree to sell their land, business operators make the decision to conduct land acquisition system.

The types of business permitted by law are public and private businesses. There are several kinds of public businesses, such as river roads, dams, airports, and so on. Meanwhile, private businesses are mostly meant for public purpose, such as railway services, power plants, and so on. There are several properties whose rights have been taken over and managed by the government, such as land ownership rights, land mortgage rights, land lease rights, mining rights; equipment rights on land such as buildings and trees; and water use rights, such as fishing rights, land, sand and gravel. There are three kinds of administrative structures in Japan, namely (1) national government such as ministers; (2) prefectural governments such as governors; and (3) municipal government with a total of about 1,700 mayors.

RESEARCH METHODOLOGY

The Procedures of Land Acquisition

Preparations in acquiring land are prioritizing benefits for the public purpose, ensuring the maturity of plans by the minister or governor concerned with the project, applications used to assist of the project running, notification of the project's implementation to the public, determining the amount of compensation based on decisions in each prefecture, supervise the process of land acquisition, and establish an agreement on the right of compensation with the land owner (Yamashita Yasuhiro, 2015).

Table 1. Authority in Approving of Land Acquisition

Legislation	Authority
Minister of MLIT (Ministry of Land, Infrastructure, Transport and Tourism) such as Tokyo President, Head of Government	- National government enterprise, - Private enterprise including MLIT regional office boundary.
Minister of MLIT includes of 8 regional offices	- Prefectural enterprise, - Private enterprise including the beyond of prefecture border.
Prefectural Governor	- Municipal enterprise, - Private enterprise within one prefecture.

Source: Processed Data by Researcher

Table 2. Facts of the Total Facilities Approved by the MLIT Minister

*FISCAL YEAR	Road	River	Rail	Power	Others	TOTAL
2014	45	12	0	2	4	63
2015	52	14	0	1	8	75
2016	32	8	0	0	9	49
2017	24	8	1	0	5	38
2018	24	5	1	2	4	36
2019	23	3	1	1	1	29
2020	22	6	1	1	0	30

Source: Processed Data by Researcher

It is predicated that around 70-80% of the facilities approved by the MLIT Minister are road projects. The necessary procedure before processing a project is to have discussions with local residents to ask for their opinion (optional) and the

opinion of a third-party (optional).

There are four criteria in assessing the business applied: (1) specified type of business; (2) businessman is someone who has sufficient intentions and qualifications in running its business, such as a business license, budget, staffing, so on; (3) the public purpose generated from the project must outweigh the lost natural interests, such as people, environment, nature, landscapes, so on; and (4) urgency and mature preparation in running public purpose projects is an obligation for the company (Naoyuki, Yoshino; Matthias & Abidhadjaev, 2018).

After holding a public notification regarding the procurement of an approved project, the next step is for the stakeholder to make a public notification of the project activities, such as surveying the land condition and buildings on it. They do this to make land and property records to acquire the land, then it can be determined the appropriate nominal for compensation. The acquisition committee is an administrative council formed in each prefecture consisting of seven experts (law, administration and economics) and its mission is assessing the amount of compensation total caused of approved project implementation, such as value, moving cost, loss income, and property of land, house, tree (Yamashita Yasuhiro, 2015).

Application for Determination

In the application form, there are several businessmen who can apply for land acquisition decisions within 1 year from the day of general notification from the approved project party and the acquisition committee where the land is located. Land owners and stakeholders can submit their written opinions regarding its application.

The purpose of the acquisition committee assessing compensation is to emphasize the fact that businessmen and land owners acknowledge their opinion in submitting data. The survey is conducted by property appraisers. While the committee conducted direct surveys.

The land acquisition committee consists of 47 prefectures and 7 members committee appointed by the Prefectural Governor and the committee will exercise its authority independently. The legal consequence for businessman is the obligation to fulfill compensation according to the specified date, if it is not paid on that date, the decision will be annulled. As for land owners, they must leave the land and move their property at the time of handing over the land.

Land owners who refuse to hand over land or move their property even before the deadline for submission, business actors can sue the prefectural governor to settle the case through their proxy. The prefectural governor will issue a formal warning and administrative warrant as the final decision to enforce the right to deport property from the area.

However, there are some of primary constraints from landowner as following: (1) environmental sustainability and community life; (2) business

liability, (3) dissatisfaction with compensation, (4) succession dispute, and (5) territorial boundary disputes of MLIT (Ministry of Land, Infrastructure, Transport and Tourism).

Land owners have the right to conduct an administrative appeal court against the approval of the acquisition determination and lawsuit in canceling the agreement of compensation.

RESULT AND DISCUSSION

Learning from The Actual Case of The Land Acquisition

1. The Case of Metropolitan Inter-City Expressway (Tokyo Gaikan Expressway)

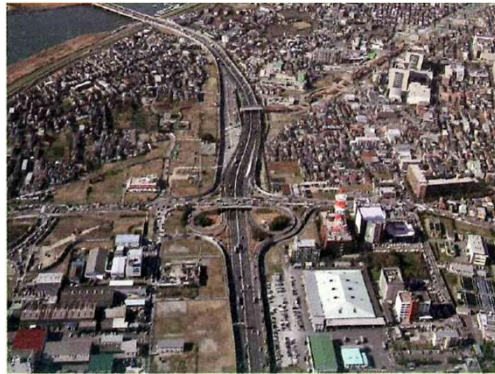
The name of *Gaikan* refers to the status of route as an outer ring road (beltway) in Tokyo. *Gaikan* is the name of an expressway. *Gaikan* expressway is the second of the three largest expressways ring routes in Tokyo. the innermost is the Central Circular Route, then the Gaikan, and the outermost is the Ken-Ō Expressway.

The toll for a regular passenger car is currently 500 yen regardless of the distance travelled. Electronic Toll Collection (ETC) is accepted. The Tokyo Gaikan Expressway is a national expressway in Japan. It is owned and operated by East Nippon Expressway Company. Constructed: 1992 Length: 33.7 km, Highway system: National highways of Japan, National Expressway

Explanatory meeting for local residents	2008.9.
Applying to the Authority	2009.2.
Public hearing (if requested)	2009.4.
Opinions from a third-party council (if necessary).	2010.9
Approval of the undertaking	2010.12.

Figure 1.1



Figure 1.2

2. The Case of Ken-Ō Expressway (Metropolitan Inter-City Expressway)

One of the toll roads whose implementation uses a ticket system that has been implemented in some parts of Japan. This toll road is controlled and operated by the Central Nippon Expressway Company and the East Nippon Expressway Company. This toll road was built in 1996 with a track length of 300 km. This expressway is known as Japan's national highway.

Figure 2.1**Figure 2.2**

Figure 2.3



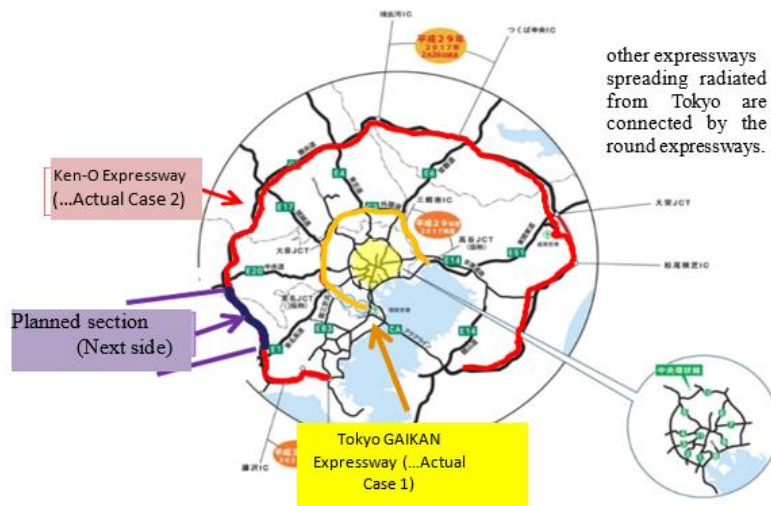
There are Four Criteria of judging the applied undertaking (Land Expropriation Act) as following below:

1. The undertaking is any of those set forth inside the items of Article 3.
2. The business operator is a person who has sufficient intention and capacity to implement the relevant undertaking (business license, budget, staffing, etc)
3. Public interests brought by the project shall exceed the lost interests (community, environment, nature, scene, etc).
4. There shall be the urgency and necessity to enforce the project plan.

Public Interests brought by the undertaking

Purpose of the whole route of Metropolitan Inter-City Expressway

1. Connecting cities located within 40 to 60 km from Tokyo circularly, as well as connecting with other expressways spreading radiated from Tokyo.
 - To lessen heavy traffic passing Tokyo area
 - To promote development around Tokyo
 - To construct distributed network between them



2. Constructing network of expressways, contributing to the vitalization of industries and economy derived from the speeding up and punctuality in wider areas
 - Connecting Daiichi Tokai Expressway and Chuo Expressway
 - Along with Ken-O Expressway route already in service
 - The Network within and without Kanagawa prefecture
3. Lessening heavy traffic on the current regional route.
 - Dividing regional traffic and through traffic
 - The Congestion degree of current traffic
 - National Route 16: 1.29 (Kitano, Hachioji)
 - National Route 246: 1.26 (Tsumada, Atsugi)
 - Lessening traffic accidents
4. Matters to be considered along with public interests Air quality, noise, etc.
 - Environmental Assessment done by the Prefectural governors and the business operator.

Result – Air quality, etc: satisfy environmental standard Noise: partly satisfy the standard
 (Otherwise satisfy by constructing sound insulation walls).

Lost Interests by the Undertaking

Lost interests within the planned section (Hachioji, 2011)

A. Buried cultural properties

11 sites for buried cultural properties

Excavated 7 sites: no properties found to be preserved in the areas

As for the other 4 sites, the business operator will take proper measures if needed according to the consultation with the prefectural Board of Education

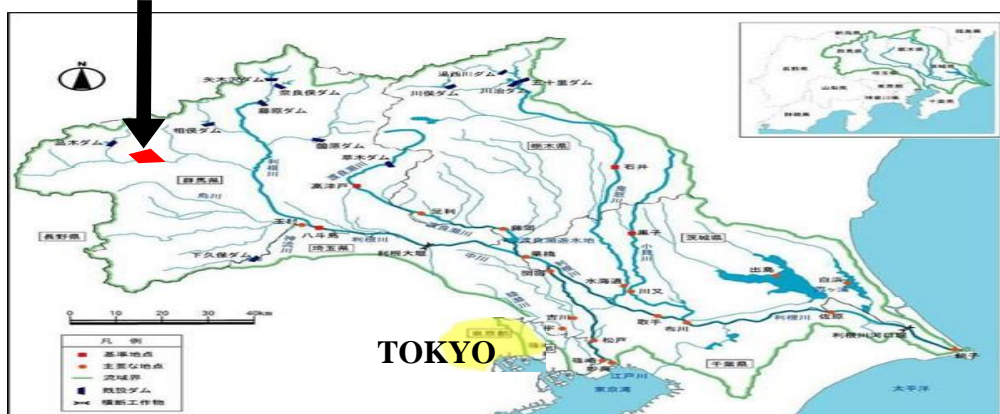


Yamba Dam Case 3

Multipurpose dam constructed in the Agatsuma Valley of the Agatsuma River (tributary of the Tone River).

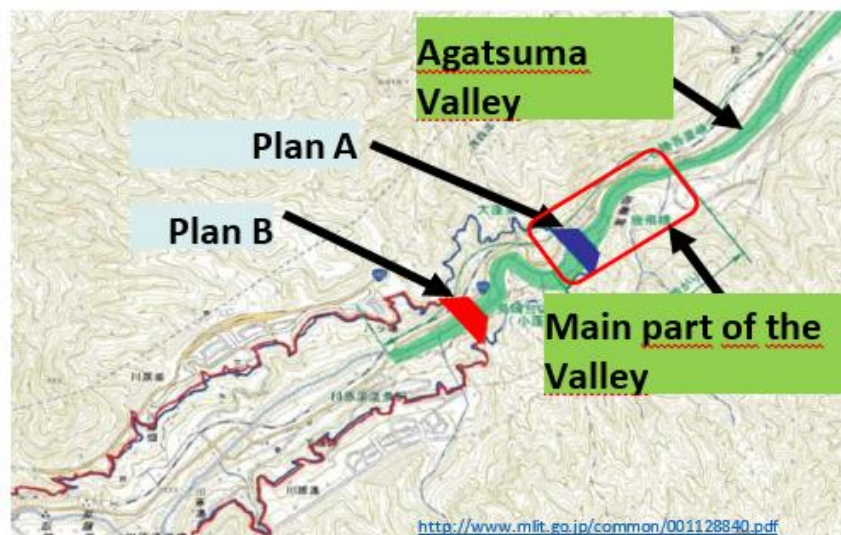


Yamba Dam



Rationality of plans of the undertaking

Impact on the Agatsuma Valley (Places of Scenic Beauty)



Plan A: Main part of the valley will be submerged

- Loss of intrinsic value of the valley.

Plan B: Only upstream part of the valley will be submerged

- Little loss of intrinsic value of the valley.

CONCLUSION

Japan has successfully carried out the land Expropriation process in three cases: Metropolitan Inter-City Expressway (Tokyo GAIKAN Expressway), Metropolitan Inter-City Expressway (Ken-O Expressway) and Yamba Dam, which took quite a long time and a lot of money. In practice, the central government (national level) carries out the land undertaking process based on the laws in force in Japan and the active role of prefectures, municipalities levels in socializing and execution in the field of the land Expropriation process. Land Expropriation is a useful way to build infrastructure like roads, rivers, airports, and others. It should be permitted under the strict process and just compensation and property should not be infringed. There are four criteria that needed to satisfy, including; a). Establishing a business in the public interest, b). Business actors have sufficient intention and ability to carry out business (business license, budget, etc.) Make an appropriate and reasonable contribution to land use, and d). Expropriation or the use of land have to be necessary for the public interest.

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