

**Shadow Report on Gender Equality and Environmental Justice:
A Response to the Taiwanese Government's Second National Report on the
Convention on the Elimination of All Forms of Discrimination against Women
(CEDAW)**

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Introduction

This shadow report 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 **firmly believe that Taiwan's current environmental predicaments are closely linked to discrimination. Taiwan's environmental problems have been caused by unsuitable development policies—policies shot through with discrimination based on social class, ethnicity, ideology, urban-rural disparity, and gender. Misguided development policies have also worsened the plights of vulnerable groups including women and children.**

Taiwan is a climate-sensitive island nation, with a long history of natural disasters of various kinds. Its food self-sufficiency ratio in 2013 was a mere 32.7 percent. There is a pressing need for Taiwan to review and redress the discrimination that has resulted from inappropriate economic policies. Yet the Taiwanese government's 2014 Second National Report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) makes no mention of topics such as the food self-sufficiency ratio, assessment of the gender impact of major policies, or the large-scale expropriation of farmland. As organizations sharing a longstanding concern for economic sustainability, we jointly submit this Shadow Report. This Report will present specific actual cases to illustrate facts that the government Report fails to address.

¹ This Shadow Report was written by Lu, Shih-Wei, Attorney at Law, of Wild at Heart Legal Defense Association. Thank you to Professor Tsai, Pei-Hu, Professor Hsu, Shih-Jung, Attorney Thomas Chan, Director Lin, Tzu-Ling of Taiwan Rural Front, Secretary General Lin, Shiou-Yi and Director of Policy Chyu, Yu-Rung of Awakening Foundation, and Vice Director Tseng, Chao-Yuan of Legislator Yu, Mei-Nu's Office for their assistance and input. The report is translated by Paul Cox, Head of Translation at Winkler Partners Attorneys at Law of Taiwan and Foreign and Legal Affairs, with assistance from Sophie Jin.

Taiwan's Food Security and Food Sovereignty is in Serious Jeopardy

Food Sovereignty as defined by the Declaration of Nyéléni, Forum for Food Sovereignty, 2007, is "the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture system."

The Taiwanese government report does not mention the issue of Taiwan's low food self-sufficiency ratio, or that food price is the category with the highest inflation rate in Taiwan's consumer price index. Taiwan's food self-sufficiency ratio, whether calculated on a calorie or price basis, has been in continual linear decrease for the past two decades. The Taiwan government's Initial Report to the International Covenant on Economic, Social and Cultural Rights (ICESCR) briefly touches on the 2011 National Conference on Food Security and indicates that Taiwan will raise its food self-sufficiency to 40 percent by 2020. But last year (2013), Taiwan's overall food self-sufficiency fell by 1 percentage point to 32.7 percent calculated on a calorie basis, and was also only 68 percent calculated on a price basis. And in the 2012 consumer price index, food price was the category with the highest inflation rate, at 4.16 percent, reflecting severe volatility in the prices of basic consumer goods. The failure of the government report on CEDAW to address these issues is conspicuous given that Taiwan is an island nation regularly afflicted with natural disasters of all kinds. The threat to food sovereignty poses a serious risk to Taiwan's people, and especially to vulnerable groups. Protecting Taiwan's food producing environment is a matter of the greatest urgency, yet in recent years Taiwan's government has done much that runs directly counter to this goal.

Misguided Policies Have Resulted in Serious Loss and Pollution of Farmland

Taiwan's food security is already in imminent jeopardy, yet the government has adopted unfitting development policies that exacerbate the loss of farmland. These policies have damaged the environmental conditions for agricultural production, and have caused the forced eviction of rural populations. Taiwan's government report does not address any of these facts, much less examine the threats they pose to women or other vulnerable groups.

According to a research report entitled *A Study of Utilization and Change in Agricultural Land in Taiwan* (我國農地運用與變遷之研究) prepared in 2013 to

2014 by the Directorate General of Budget, Accounting and Statistics of the Executive Yuan, the area of registered arable land available for agricultural uses including "crops production," "agricultural tourism and visitor crop picking (including civic agriculture)," and "afforestation of farmland and arid land" at the end of 2010 was only 507,280 hectares, representing a decrease of 19.5 percent from 1990. Much farmland has been continually left fallow, and much other farmland has been lost through legal or illegal diversion to non-agricultural uses (including conversion of farmland to land for industrial or other kinds of development by means of compulsory expropriation). In 2000, the government amended the Agricultural Development Act to deregulate the sale of farmland and to permit the building of tax-free farmhouse dwellings. The amendment also reduced the minimum saleable unit of farmland from 5 hectares to 0.25 hectares. This series of ill-advised amendments has caused a rash of luxury dwellings and villas to spring up all across the country's agricultural fields, and triggered the fragmentation of farmland.

Another serious problem that has long plagued Taiwan's food production environment is a failure to segregate irrigation and wastewater systems. It is common for industrial wastewater to be diverted into irrigation channels, polluting agricultural land. Taiwan currently has 67,000 unregistered factories, most of them located on farmland. But only some 400 farmland wastewater emission licenses have been applied for. Under these circumstances, it is impossible to accurately measure the area of polluted farmland. Although Taiwan's government has announced its intention to comprehensively ban the emission of industrial wastewater into irrigation channels in 2017, it has yet to publish even basic information on the distribution of polluted areas, wastewater emission points, and illegal factories. Nor has it specified any planned legislation or legislative timetable for how it intends to comprehensively prohibit wastewater emissions on farmland.

Arbitrary and Unreasonable Expropriation of Land Destroying the Agricultural Environment and Causing Forced Eviction

The greatest threat to Taiwan's agricultural production environment comes from development of all kinds. The Taiwanese government has a longstanding habit of using compulsory expropriation as a means to obtain land for development projects. Indiscriminate expropriation of land has caused many forced evictions of rural populations, and has severely injured the human rights of vulnerable groups. Taiwan's land expropriation system is afflicted by three major problems discussed below.²

² For more detailed information, see Thomas Chan and Lee, Ming-Chih, "Analysis of the Reasons

1. Current Laws do not Ensure the Integrity of Special Agricultural Zones

The new amendments to the Land Expropriation Act 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 “infrastructure projects approved by the Executive Yuan.”

2. Expropriation Cases Often Result in Homelessness and Destitution Due to the Lack of a Comprehensive Compensation Scheme

Amendments to the Land Expropriation Act in January 2012 have made land expropriation procedures more rigorous, requiring compensation to be determined according to market value and plans to be made for resettlement. However, Taiwan Rural Front and other NGOs have repeatedly emphasized that forced expropriation of land does 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 expropriated land 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 expropriation. Such a compensation scheme is of essential importance for the economically and socially vulnerable.

Behind Arbitrary Land Expropriation in Taiwan" (台灣土地徵收浮濫的原因探討)at: http://www.justuslaw.com.tw/news_detail.php?class=138 (last visited: 2014/05/15).

3. 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.

- (1) 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.
- (2) The process has furthermore been 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.
- (3) 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.

Misguided Land Expropriation Tragedy (1): the Miaoli Dapu Case

The 2010 Miaoli Dapu Case has received extreme censure from the public, particularly after the suicide of an 83 year-old 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 Dapu 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 Dapu, the local residence of Ms. Peng Hsiu-chun had already been expropriated twice for the widening of an adjacent road, and only 20 square meters of her original property remained. According to the Executive Yuan Policy Direction and to the 746th Assembly’s decision, Ms. Peng’s property was one of those permitted to be preserved. However, the Ministry of the Interior and the Miaoli County government 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. But 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 had never caused any traffic incidents. And two large vehicles sent by the Miaoli County government to conduct testing at the local intersection by Ms. Peng’s residence had also failed to find any traffic problem.

On 18 July 2013, while Ms. Peng and her husband Chang Sen-wen were away in Taipei petitioning to save their home, Miaoli County Magistrate Liu Cheng-hung took advantage of their absence to order the demolition of Ms. Peng’s house. All of the family’s property in the house, including their family photo album and official documents promising to preserve the house, were buried under the rubble. Chang Sen-wen had to be admitted to a hospital due to severe emotional stress from having

his home and pharmacy demolished. In September 2013, Chang's body was discovered drowned in a water channel near their home. It could not be determined with certainty whether he ended up in the water as a result of suicide or an accident. But there is little doubt that his death was directly related to the government's broken promises and the forced demolition of their home and pharmacy, which have shattered the lives of Ms. Peng and her family.

Misguided Land Expropriation Tragedy (2): the Taoyuan Aerotropolis

The Taoyuan Aerotropolis project now being promoted by the Taiwanese government is a prime example of large-scale land expropriation motivated by the pursuit of economic development and land speculation. The site for the Aerotropolis project is in Taoyuan County, the location of Taoyuan International Airport. The planned project area is 6,150 hectares, of which more than 3,000 hectares are intended to be obtained by land expropriation. The area spans seven villages, including large tracts of farmland. Additionally, 8 secondary and elementary schools face decommissioning or relocation, and 15,000 households face expropriation under the plan, affecting the lives of 46,000 people. Government officials have claimed that expropriating such a large area of land is necessary for the financial balance of the expropriation project. Specifically, they claim it is necessary to expropriate a sufficient area of land to fully finance the self-redeeming development fund for the project. This method of expropriating land from the public to finance a self-redeeming development fund is tantamount to selling off land belonging to members of the public to raise revenue for the government, and has generated extreme controversy.

The Taoyuan Aerotropolis expropriation project is an enormous blow to the people whose property is being expropriated. As one example, all of the land owned by one extended family of over 200 people surnamed Lyu is being expropriated. This drove one family member, an 83 year-old male farmer, to commit suicide by drinking pesticide out of his despair at losing his home and land, in a case reminiscent of the female farmer who committed suicide by drinking pesticide after her house and all her land were expropriated in the Miaoli Dapu case described above. Another woman surnamed Xu, a resident of Taoyuan's Haikou Village, has already lost land to expropriation twice, and the Taoyuan Aerotropolis project will cause her to lose all of her remaining land. Many people are facing similar predicaments because of the Taoyuan Aerotropolis land expropriation.

We believe that the Taoyuan Aerotropolis land expropriation plan is neither necessary

nor in the public interest, and has failed to provide adequate mechanisms for citizen participation. When choosing among competing plans in 2011, instead of opting for the expropriation plan with the least impact on residents in the area, the government chose the current plan, which has the greatest impact and some twice the expropriation area of the other plan. This violates the spirit of the Land Expropriation Act and the Administrative Procedure Act, which require that the government act in ways with the least impact on the people.

Further, the review of the zoning plans for the Aerotropolis project violated the government's Directions for Applying to Formulate or Expand Urban Planning on Non-Urban Land. According to Construction and Planning Administration statistics, the existing urban planning zones in Taoyuan's Dayuan and Luzho townships have a development rate of only 67 percent, but in April of this year the application for a regional planning review inflated the rate to 94 percent by counting in a phantom population of 80,000 people in order to pass the review. When the Urban Planning Commission reviewed the Aerotropolis case, it was clearly aware that the case has a critical bearing on the people's rights to life, property, and adequate housing. Yet the Commission strictly limited public participation in the procedure, limiting to three the number of people who could enter the meeting room to speak at any one time, allowing each speaker only three minutes, and forbidding auditors.

The Government Has Failed to Realistically Implement Gender Impact Assessments

Section 3.5.5 of the government report says that Taiwan's government has established indicators for assessing the gender impact of major policies. Additionally, under the Directions for Gender Impact Assessment Formulation and Review by Government Agencies of the Executive Yuan, beginning from 2009, gender impact assessment must in principle be carried out individually for all of Taiwan's major mid-term and long-term project plans and proposed legislative bills. But in practice, such gender impact assessment has not been fully implemented. The quality of assessments often depends on the attitude of those conducting them. If the ministry in charge does not take the assessment seriously, it is performed in a perfunctory manner. One cause may be that the Directions for Gender Impact Assessment Formulation and Review by Government Agencies of the Executive Yuan are merely administrative directions. They do not have the same degree of authority as statutory regulations, and are not sufficiently binding on government agencies.

Further, Taiwan currently still lacks any law or regulation requiring the country to conduct a gender impact assessment when entering into treaties or agreements with other nations. For example, the process of Taiwan's negotiations with China for the signing of a Cross-Strait Service Trade Agreement (CSSTA) was marred by many legal violations and defects, giving rise to a large-scale social protest movement that saw citizens occupy Taiwan's national Legislature in March 2014. Many gender rights advocacy groups and environmental advocacy groups took part in the protests, out of concern about the impact that the CSSTA may have on vulnerable gender groups and the environment. The government failed to conduct relevant impact assessments before proceeding with the negotiation and signing of the CSSTA, and also failed to submit the draft CSSTA to adequate public discussion.³

For example, neither the Executive Yuan's Gender Equality Committee nor its Department of Gender Equality expressed any opinion during the CSSTA negotiation and signing process, nor were they consulted on it. However, in many of the service industries covered by the CSSTA, such as the hairdressing and beauty industry, and social welfare enterprises (such as institutions providing welfare services for the aged and disabled), women make up the great majority of employees. Yet not a single assessment was made of the impact that the CSSTA's signing would have on women. Many of the service sectors covered by the CSSTA, including sewage disposal, solid waste disposal, environment testing, and services related to highways and bridges, dams, mining, and geology will have a heavy impact on Taiwan's environmental protection, food production, and even national security, yet no strategic environmental assessment of the impact of entering into the CSSTA was conducted before its signing.

We believe it is incumbent on the government to adopt a statutory law that specifically requires that all legislative bills, proposed projects, government policies, and international treaties and agreements be submitted in advance to a comprehensive assessment of impact on human rights and the environment, including impact on gender equality, the disabled, and climate change policy (related, for example, to food production and carbon emissions). The law should also specify impact assessment procedures, methods, citizen participation mechanisms, and legal effects.

The Government Has Failed to Conduct Health Screening in the Indigenous

³ For further information, see former President Chen, Chao-Ju of Awakening Foundation, "CSSTA: Gender-Blind, Democracy-Blind" (雙盲的服貿協議：性別盲、民主盲！) http://www.awakening.org.tw/chhtml/epaper_view.asp?id=143 (last visited: 2014/05/15).

Region Where Nuclear Waste is Stored

Orchid Island is a small 48 square kilometer island to the southeast of Taiwan Island with a total population of 4,700, the majority of whom are members of the Tao group of indigenous people, whose main livelihood is fishing and agriculture. Without consent from the indigenous people, Taiwan's government began in 1982 to ship low-level nuclear waste from three nuclear power plants to Orchid Island for storage. Some local residents remember that certain government officials deceived local residents at the time by saying the storage facility was only a "canning factory."

In 2005, Taiwan passed the Indigenous Peoples Basic Act. Article 21 of the Act provides:

The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic research in indigenous people's regions.

and Article 31 of the Act provides:

The government may not store toxic materials in indigenous peoples' regions in contrary to the will of indigenous peoples.

Yet despite the passage of the Act, and despite many years of protests by the indigenous people of Orchid Island, the government to date has not yet removed the nuclear waste from Orchid Island. Nor has the government provided island-wide comprehensive health screening to clarify exactly what impact the storage of the nuclear waste has had on the residents (especially women and children) of Orchid Island.

Suggested Inquiries

We recommend the committee raise the following questions:

1. The government has pronounced that it will raise the food self-sufficiency ratio to 40 percent by 2020. Can the government specify the measures it plans to take and the projected results? What measures will the government take to safeguard the land area of agricultural production, and to prevent the loss of agricultural

land to non-agricultural use?

2. What is the total area of all land expropriated by the government in the last 5 years? What percentage of that land was agricultural land? If raising the food self-sufficiency rate is an important policy of the government, why does the government continue to force the expropriation of agricultural land for industrial or other non-agricultural use?
3. When does the government plan to publish data on factories and wastewater emission points located on farmland? What is its schedule for legislation to support its plan to prohibit the emission of industrial wastewater into agricultural irrigation systems?
4. The current land expropriation system has inadequate mechanisms for citizen participation, and fails to effectively monitor whether land expropriation is necessary and in the public interest. How does the government intend to strengthen mechanisms for citizen participation in and monitoring of the land expropriation system? Urban planning and regional planning reviews are critically related to land expropriation measures. Do any rules and mechanisms exist to ensure citizen participation during these reviews?
5. If there is a failure to conduct gender impact assessment before the adoption of legislative bills, proposed projects, and policy plans, what are the legal consequences? When the government signs international agreements or treaties, are there any mechanisms for assessing the impact on gender equality, human rights, and the environment? What are the specific mechanisms?
6. Does the government plan to conduct island-wide health screening for the residents of Orchid Island? If so, what agency will set aside the budget for this? What agency will conduct the health screening? What will the screening specifically include? Can the government describe the intended scope and method for the health screening and mechanisms for citizen participation in it?