

Recommendation for  
new legislation on assessment of the  
actual state of land use

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Advisory Panel  
on assessment of the actual state of land use

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## **1. Introduction**

### **(1) Background**

In the "Basic Policy on Economic and Fiscal Management and Reform 2020" (Cabinet decision on July 17, 2020), the Government decided to, "from national security viewpoint, make efforts to study the situation of land ownership through collection of information by relevant ministries and agencies, review issues related to the use and management of such land, and take necessary measures."

Security concerns have long been raised regarding the ownership and use of remote islands near national borders and areas in the vicinity of defense facilities. Acquisition of large tracts of land by foreign capital, for which it is difficult to find economic rationality, has caused anxiety and concern among local residents and the public in general. For example, the land in the vicinity of Japan Maritime Self-Defense Force Coastal Defense group Tsushima (Nagasaki Prefecture) and that of Japan Air Self-Defense Force Chitose Air Base (Hokkaido) were acquired by foreign capital. This raised anxiety and concern among local residents and the issue has been discussed in their city councils.

Public anxiety and concern can be assumed to arise from the "asymmetry of information" where only concerned parties know who acquired the land and for what purpose. Furthermore, the diversification of foreign capital having been invested in Japan and the development of technologies that could be detrimental to national security may amplify public anxiety and concern.

Under these circumstances, the Government announced in its "National Security Strategy" (Cabinet decision on December 17, 2013) that "from a national security viewpoint [\[1\]](#), Japan will study the situation of land ownership in areas such as remote islands near national borders and areas surrounding defense facilities, and

review issues related to the use of such land". In the "Basic Plan on Ocean Policy" (Cabinet decision on May 15, 2018) the same policy was stated for remote islands near national borders. Based on these, the Ministry of Defense has conducted surveys of land adjacent to some 650 defense facilities since 2013, and National Ocean Policy Secretariat Cabinet Office has conducted surveys of littoral zone of remote islands near national borders since 2017. While these surveys made certain progress in collecting information, it was pointed out that the actual state of use in detail could not always be fully assessed, for the surveys were not statutory.

Even when inappropriate use of land is identified, the Government has no effective means of dealing with it, and some point out that the absence of such institutional framework has added to the public's anxiety and concern.

As geopolitical tensions escalate, awareness of the issues regarding the ownership and use of land grows in several countries, and foreign investment screening is being strengthened from a national security point of view. For instance, in the US, the Committee on Foreign Investment in the US (CFIUS) authorization to review certain transactions involving foreign investment in the US was reinforced, and the committee's jurisdiction was expanded in February 2020 to include certain real estate transactions by foreign persons.

"The basic policy on Economic and Fiscal Management and Reform 2020", referred to at the beginning of this report should be decided being mindful of these movements at home and abroad. Following this cabinet decision, the Government set up an advisory panel under the Minister in charge of Territorial Issues, Hachiro Okonogi, in October 2020.

National security is the basis for the safety and security of the people and for a liberal economy. It is too late to tackle the problem after it has already happened. The Government should decide on and implement a policy to deal with the challenges with regards to land as soon as possible. In this context, the members of

the Advisory Panel have discussed what the basic policy concept and its scheme should be and made recommendations for a new legislation in this report.

## **(2) Current situation, challenges and direction of policy response**

In order to properly respond to security risks, the Government needs to first be able to confidently assess the status of the ownership and use of sensitive land [\[2\]](#).

At this stage, as information regarding the ownership and use of land, real property registration and property tax ledger are available to national and local Governments. However, these registers are maintained for individual administrative purposes and do not cover such information necessary from the perspective of national security [\[3\]](#). In addition, the information is managed in a decentralized manner by each department in charge, and the national Government seems to have had no intension to consolidate and analyze that information in a centralized manner. The surveys conducted by the Ministry of Defense and National Ocean Policy Secretariat Cabinet Office were based on publicly available information, and while they were significant as initial ones, they had certain limitations.

Even if the survey reveals that the land is being used inappropriately from a national security point of view, the Government can only make an offer to the owner to purchase the land in question with no legal force, besides correcting the way that land is used in accordance with existing individual laws and regulations.

In light of this situation, it is necessary for the Government to first develop a system within which information collected by relevant ministries and agencies can be centrally managed and accurately analyzed, and then to constantly strengthen the system so that more advanced analysis can be done. In case where an inappropriate use of land is identified, or where such a risk can be materialized with

high probability, an effective framework should be put in place to correct or prevent the inappropriate use of land.

Such a framework cannot be jumpstarted without new legislative measures. To set out the Government's response clearly with legislation would also help to ensure the safety and security of the public.

## **2. Basic approach of the policy responses**

### **(1) Basic human rights and public welfare**

The Constitution, in paragraph 1 of Article 29, states that "The right to own or to hold property is inviolable." The right to own land and to use it freely on the basis of that right is guaranteed as a property right.

Sustainable growth of the economy is one of the priorities of the Government. In order to achieve this, it is necessary to maintain an environment where individuals and enterprises can freely engage in economic activities. Such economic activities enable people to realize self-fulfillment and enrich their lives.

When considering how land use and management should be, on the basis of the importance of property rights and other rights of people, it is necessary to give due consideration to the balance between such rights and public welfare. The Constitution states in Article 12 : "The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare."; in Article 13: "Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs."; in Article 29, paragraph 2: "Property rights shall be defined

by law, in conformity with the public welfare.” It goes without saying that the importance of guaranteeing property rights is important. Meanwhile, securing national security is essential in order to ensure the safety of life and prosperity of its nationals, and contribute to the realization of its citizen’s ability to live a peaceful life. Thus, it is acceptable to restrict property rights to a certain extent as a restriction based on public welfare [\[4\]](#).

Assessing the actual state of land ownership and use, and managing it appropriately where necessary, could contribute to public welfare through ensuring the safety and security of the public.

The prosperity of people’s lives and the sustainable growth of the economy cannot be achieved without ensuring national security. In this context, ensuring sustainable growth of our economy and its security should be two objectives that should be achieved at the same time.

## **(2) Conformity with international rule**

When it comes to security concerns over land, many point out the acquisition and use of land by foreign capital. However, foreign direct investment in the global economy should be welcomed as it brings about technologies and know-how that generate innovation and creates employment, and thus contributes to the sustainable growth of Japan’s economy.

The purpose of this policy response is to correct or prevent the inappropriate use of land from a national security point of view, and it is not appropriate [\[5\]](#) to discriminate solely on the basis of the nationality of the landowner. In addition, if a system which only covers foreign capital transaction is established, it conflicts with the rules of the General Agreement on Trade in Services (GATS), which

stipulates national treatment. In this context, new legislation should be based on the principle of non-discrimination between domestic and foreign parties.

### **3. The Basic framework for the new legislative measures**

#### **(1) The principles**

In order to dispel the anxiety and concern of the people as much as possible, it is important to maintain the facilities and areas that play an important function from the perspective of national security to be able to fulfill those functions, being mindful of the aforementioned basic rights of people and international rules.

Therefore, it is necessary to establish an effective institutional framework within which the Government can assess in as much detail as possible the actual owner of those areas and how those lands are used, and is able to take proper action when the land in question is being used inappropriately from a security perspective.

In doing so, the system should be designed in a restrained manner in line with its objectives to avoid excessive restrictions on private rights and irreverent collection of personal information. At the same time, a neutral and professional third party should be involved in the implementation of the system to ensure its proper operation.

It can be assumed from the examples of other countries that there will be very few cases where the Government should take such measures. However, the existence of such a system itself will have the effect of deterring inappropriate use of land and will serve as a safety net that will reduce public anxiety and concern.



## **(2) Framework**

### **① Implementation structure within the Government**

The jurisdiction of facilities and areas with important security functions and roles is spread over several ministries. Likewise, the jurisdiction of information on the ownership and use of land spans to multiple organizations, some of which are administered by local authorities.

When pursuing the mission of ensuring national security, which is the basis of the nation's existence, any negative effects of vertically divided administrative functions should be eliminated. There is also a limit if local authorities are to take charge of such a mission. Therefore, when implementing the new framework, the Government needs to first establish an organization to supervise the entire system and then to elaborate a unified and clear "basic policy" for its operation. It is necessary to set up an institutional system which can assess and manage information on the ownership and use of land in an integrated manner, as well as to build a network in order to cooperate with the local branches of the relevant ministries and agencies for implementation throughout Japan.

### **② Utilization of the expertise of external experts**

In order to ensure the proper operation of the system as a whole, it is required for the Government to develop a "basic policy" as described above so that those concerned will be able to be aware of it.

In addition, when determining specific covered areas and whether or not to implement regulatory measures, it is necessary to pay close attention so as not to

restrict private rights excessively. Furthermore, in order to avoid confusion on land transactions in the field when the system is put into operation, the standards and requirements for the regulation of use should be set as clearly as possible.

On the other hand, in the midst of the rapid changes of international circumstances, the cases of land use that pose a security risk may vary and there are certain limitations in clarifying in advance the details of such cases in an exhaustive and foreseeable manner.

Yet, as one of the measures to ensure the adequacy of the operation of the system, the Government should consider the establishment of a platform where external experts are properly involved from a fair and neutral standpoint. For example, by providing professional or technical advice in each of the above-mentioned phases, including the formulation of the “Basic Policy”.

### **(3) Coverage**

#### **① Categories of land to be covered**

On top of the facilities of Self Defense Forces (SDF) and U.S. Forces in Japan, which protect the nation and its territory in times of crisis, as a maritime state, it is of utmost importance for Japan to ensure the safety and function of remote islands near its borders. For this reason, land in the vicinity of defense facilities and remote border islands should first and foremost be subject to this framework.

It is also appropriate to consider the land to be included around critical infrastructure whose functioning, if interfered with, would have a significant impact on people’s lives.

As for critical infrastructure facilities, “Life related facilities” defined in “Bill on the protection of lives and assets (Civil Protection Act)”, can be referred to. Nuclear power plants, which are responsible for the stable supply of electricity and the appropriate protection of nuclear materials, landing station for international submarine cables, and “joint use airport” etc. were among the covered facilities of security concern that the advisory panel pointed out. The Government is expected to continue to examine which critical infrastructure facilities should actually be covered, taking into account the actual public’s concerns and anxieties, and restrictions under individual laws and regulations, without being overly broad.

In determining such covered land, in order to be able to respond quickly to a rapid change of the international security environment and dual-use technologies, it is appropriate to set top priorities, such as defense facilities and remote islands near border as statutory target, while preserving a mechanism for the flexible addition of other types.

## ② Geographical extent of the land to be covered

With regard to the question of the extent to which areas in the vicinity of defense facilities and other above-mentioned facilities should be covered, it is appropriate, in principle, to determine a certain distance from the boundary of a relevant facility in order to ensure predictability and prevent excessive burden.

Yet, it is not always appropriate to draw such a distance uniformly throughout the country. The flexibility should be maintained so that it can be tailored on a case-by-case basis, comprehensively taking into account the nature of the facility and the geographical characteristics of the area.

In determining specific areas, the Government is expected to make efforts to announce and inform the public in an easy-to-understand manner and to provide

careful explanations so that residents of covered areas will not be anxious due to a misunderstanding that the Government will forcibly expropriate their land.

Likewise, the strategic importance and geographical characteristics and other factors should be taken into account when determining covered remote islands near borders. As for the geographical extent, looking at the function of those islands, the coastline and areas around sensitive infrastructure can be covered, but there could be cases where a whole island should be covered.

### ③ Buildings

As for activities that would deteriorate the functioning of defense facilities, for example, a room of a high building can be a base for surveillance. Therefore, it is necessary to include buildings in addition to land in the framework.

### ④ Covered rights

From the perspective of national security, inappropriate use of land and buildings (hereinafter “land” refers to “land and buildings”) can be found not only in cases where land and related facilities is owned but also when leased. Therefore, it is necessary to include right of use, such as leasehold rights, in addition to ownership rights to be covered.

Meanwhile, when it comes to the case where there are many rented apartment in the vicinity of defense facilities and other facilities, transactions are more frequent than in the case where land is owned, and many lessees will be burdened. In considering restrictions on transactions, it is necessary to comprehensively take into account the perspective of ensuring the effectiveness of responses to security risks and not overburdening the parties involved in such transactions.

## **⑤ Other points to note**

Anxiety and concern related to areas such as forests (water sources) and agricultural land have been expressed as well.

The current Forest Act and Cropland Act provide a framework for notification at the time of land acquisition and permission for sale and purchase. In some areas, these lands are managed by ordinance. In combination with the centralized information management described below, inappropriate use could be prevented.

Hence, the inclusion of these lands to the new framework should be carefully examined from the perspective of national security and after evaluating the operation and effectiveness of the existing scheme.

## **(4) Survey / analysis**

### **① Contents of the survey**

The information on who owns or occupies the land, for what purpose, and how they are using or are going to use it should be collected. As for the owner, the name, address, and nationality should be clarified. As for the state of use, not only the classification of use shown, for instance in the real property registration, but also the actual state and purpose should be known.

### **② Survey methodology**

In order to ascertain the above details, field surveys, collection of public registers, or the requirement of submitting information may be carried out.

In the field survey, maps and aerial photographs may be used to determine the shape and area of the land and the actual state of its use. When more detailed information is needed to assess the actual situation, it is possible to visit the site and investigate the actual conditions of the site, the shape of the building, etc. as far as it is visible from the outside.

Candidates for public registers to be collected include real property registers, residential basic books, family registers, commercial registers, property tax ledger, reports pursuant to the Foreign Exchange and Foreign Trade Act, notification pursuant to the Forest Act, or notifications based on the National Land Use Planning Act, for example. Meanwhile, it is difficult to comprehensively ascertain the names, addresses, nationalities, actual state of use from such individual information alone. A database to collect and centrally manage the public registers held by relevant ministries, agencies and local governments should be set out. This requires a legal basis for the appropriate collection and use of personal data contained in each public register in light of the objective of ensuring security.

There may be cases in which the actual status of ownership and use of land cannot be fully ascertained even after conducting field surveys of land and collecting public records. In order to respond to security requirements, a mechanism [\[6\]](#) to require reports from owners of land should be established.

As for the methods of investigation, an on-site investigation is also possible, but if buildings are added to the subject of the investigation, it is appropriate to limit the method to the one described above, since it would impose a heavy burden on the persons subject to the investigation. Therefore, the adoption of the method should be reconsidered after examining the effectiveness of the above-mentioned methods in practice and taking into account the latest international security environment.

### **③ Analysis and utilization of information**

Unitary collected and managed information should be accurately analyzed by the department in charge of the overall system, with due attention to the handling of personal information, and if necessary, with the cooperation of relevant ministries, agencies, and local Governments with jurisdiction over the facilities and regions in question, as well as the ministries and agencies with knowledge of security. These elements should be utilized appropriately in order to determine whether or not to impose the restrictions on use of land described below.

### **④ Other points to note**

The collection of information on the ownership and use of land throughout Japan is expected to involve an enormous amount of work, such as the collection of official registers. Therefore, this framework should be designed in cooperation with the ongoing digitization of the administrations conducted by the Government.

## **(5) Assessing and managing the transaction**

### **① Limitation of updating information via survey**

The operation of the above survey is assumed to collect the information on a regular basis so that the Government can update and manage the information in a timely manner and identify any change in the ownership due to the sale and purchase of land.

Theoretically, if such follow-up survey and information management is conducted as frequently as possible, security concerns in a transaction can be dealt with through timely restriction of use of land. However, there are certain limits on increasing the frequency of such surveys, given the administrative cost.

In this regard, as for land that is of high sensitivity from a security perspective, such as being located in the vicinity of a defense facility with command functions, in order to avoid missing opportunities to correct inappropriate use due to delays in updating information, prior notification of transactions [7] should be considered.

In setting the scope of prior notification, careful consideration should be given to the balance between ensuring the effectiveness of the system and avoiding excessive burdens.

## ② Information collected through the prior notification system

The information to be collected through the prior notification system may include the name, address, nationality, the purpose of acquisition of land, etc. in the same way as with the initial survey. That information should be specified in advance and the form of notification should be set out in subordinate laws and regulations.

## ③ Measures related to the suspension of inappropriate transactions

After a prior notification is submitted, an additional survey will be conducted. If there is a possibility that the land in question will be used inappropriately, measures such as recommendation of suspension of transactions or an enforceable order may be taken in order to prevent such inappropriate use.

On the other hand, if the acquisition of land is restricted as a precautionary measure at a time when inappropriate use of land is not yet actually taking place, the measures above will be determined based on the attributes of the person who



intends to acquire the land. However, in actual practice, it would be difficult to clearly define the criteria and requirements in advance. In view of the fact that most of the transaction of land are, even if they are particularly sensitive for security reasons, those in which innocent persons with small security risks are parties, if the criteria and requirements for orders and so on are not set in a foreseeable manner, even ordinal economic activities may be impeded. For this reason, for the time being, the Government should continue to carefully study how regulations on acquisition should be, giving priority to responses through additional surveys based on prior notification and regulations on use as described as follows.

## **(6) Restrictions on use of land**

### **① Measures based on behavioral regulations based on other laws and regulations**

When inappropriate use of land from perspective of national security [\[8\]](#) is detected as a result of the survey, it should be promptly rectified. In cases where such acts of use can be dealt with through regulations pursuant to existing laws and regulations, the Government should take accurate measures as soon as possible through immediate cooperation with relevant ministries and agencies.

### **② Measures to suspend the inappropriate use of land**

From a national security point of view, various types of inappropriate use of land can be envisaged. In preparation for the cases where current laws and regulations cannot intervene, measures such as recommendation and orders to correct such inappropriate use should be adopted.

Since the person who has received the order may not be able to use the land for the purpose originally planned, compensatory measures that would allow the person to request the Government to purchase the land, for example, should be taken into consideration [\[9\]](#).

### ③ Purchase of land by the Government

In order to prevent the inappropriate use of land, even when the urgency to immediately give the above-mentioned recommendation or order with compulsory force does not exist, from the viewpoint of national security, there could be a scenario in which the Government is required to take measures in advance in order to mitigate risks of high probability. With reference to the provision in The Act of Preservation of Areas of Remote, Inhabited Island Establishing Territorial Seas and Maintenance of Local Societies on Areas of Specified Remote, Inhabited Islands Establishing Territorial Seas, “the Government shall endeavor to purchase land”, the Government should consider establishing a measure to offer to purchase land from the owner, when necessary.

In addition, the land expropriation system exists as a way to allow the compulsory expropriation of private property for embodied public interests, such as the implementation of a public project. Such a measure which imposes a greater degree of restriction on private rights should be carefully considered after evaluating the implementation and effectiveness of a new framework, international security environment, and the practices of other countries.

#### **4. Conclusion**

For many years, there has been a widespread awareness of the need for the Government to address the issue of ownership and use of land in sensitive areas from the perspective of national security, such as land around defense facilities and remote islands near borders. However, no significant policy has been taken to deal with it. The main reason for this is assumed that the Government has been unable to find an “optimal solution” to seemingly conflicting issues of freedom of economic activity and national security, while finding difficulty in recognizing the imminent crisis as a reality.

Therefore, the Advisory Panel, going back to the starting point that national security is a prerequisite for sustainable economic growth, has been trying to find an “equilibrium point” in the direction of intervening only in cases where the risk is extremely high, after first conducting a survey on the actual state of ownership and use of land. And this, taking into account the progress of related governmental initiatives, such as dealing with the problem of land with unknown owners.

The international security environment is becoming increasingly severe. The Government would not be able to protect the safety and security of its citizens and the sovereignty of its territories by responding to problems only after they occurred. Looking at some countries making their efforts ahead of us, we cannot ignore the challenges just because the risks have not yet become apparent. We must be imaginative about the various risks and earnestly pursue necessary policy measures. Preparing a mechanism to ensure national security may foster public confidence and trust, and increase understanding of the security policies that the government will develop in the future.

The Advisory panel urges the Government to promptly formulate and enact new legislative measures that will provide solutions to this long-standing problem, taking into account the recommendation made by this report. Since a considerable amount of workload should be involved in the operation of the new framework, beginning with the assessment of the actual state of land throughout Japan, the panel also requests that the necessary personnel and budget be prepared, and that the

system be implemented as soon as possible. Needless to say, timely follow-up, evaluation and verification of the implementation, as well as constant review of the system are essential.

#### Notes :

[1] "National Security Strategy" states that national interest of Japan includes "to maintain its sovereignty and independence; to defend its territorial integrity; to ensure the safety of life, person, and properties of its nationals, and to ensure its survival."

[2] In some countries, the mainstream approach is assumed to collect the necessary information first, and then to manage the land appropriately.

[3] For example, the nationality of the owner, the actual state of use can be considered.

[4] Article 2 of the Basic Act for Land (Law No. 84 of 1989) states that " Considering that land has the characteristics of being related to public interest, such as the fact that it is a finite, precious resource for citizens both at present and in the future, that it is an indispensable basis for citizens' activities, that the use of a certain piece of land is closely linked with that of other pieces of land, and that the value of land fluctuates mainly based on the trends of population and industry, those of land use, the state of development of social infrastructure, and other social and economic conditions, public welfare shall take precedence with regard to land." The law was amended in March 2020 to specify the need for proper management of land, and came into force on March 31, 2020.

[5] In some cases, even if an enterprise is established under the laws of Japan, the real stakeholders are not Japanese.

[6] Penalty may be used to ensure the effectiveness of the new legislation. For example, Article 37 of the National Land Survey Act stipulates that a person who fails to submit a report or submit a report containing a false statement shall be punished by a fine not exceeding 300,000 yen.

[7] Penalties may be used to ensure effectiveness of the new legislation. For example, Article 47 of National Land Use Planning Act stipulates that a person who has concluded a contract for land transaction without filing notification, or a person who has filed a false notification in a sensitive area stipulated in the Act, , shall be punished by imprisonment for not more than six months or a fine not exceeding one million yen.

[8] For example, it can be used as a base for bugging, jamming, etc.

[9] Excluding those who, from the outset, have the intention of inappropriate use, which would constitute a security risk.

(Attachment)

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