

# **A COMPARATIVE ANALYSIS OF LEGAL SYSTEM OF RIGHT EXCHANGE FOR URBAN DEVELOPMENT PROJECTS -LAND READJUSTMENT SYSTEM IN DEVELOPING COUNTRIES IN ASIA AND SOUTH AMERICA-**

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The aim of this study is to indicate some basic points regarding legal system of Land Readjustment (LR) through comparative analysis of Japan and some developing countries in South America and Asia. Especially, there is a big difference between countries such as Japan where it is based on the public law system and countries such as Brazil where it is based on the private law system. Land ownership in some developing countries is controlled for social purpose, for example in Brazil, squatters' occupancy is approved in public and private land for resettlement policy. Thinking from an international view point, the LR system in Japan stands on a unique land and administrative system. Therefore for the technology transfer, the Japanese system must be modified to account for such countries' system. This paper proposes some important points for technology and system transfer of LR.

*Keywords: Land Readjustment, Right Exchange, Urban Development, Legal System, Comparative Analysis*

## **INTRODUCTION**

### **Land readjustment system in Japan**

Normally all the land within a development area is bought up to carry out development. On the other hand, there is also a development method in which the form of all the asset rights is changed in accordance with the land use plan prior to development, without purchasing the land. The latter is referred to as the rights conversion method, in contrast to the former land purchasing method. The rights conversion method is normally referred to as land readjustment (hereafter, LR).

More than 1/3 of the urban land of Japan is developed by LR, and the large scale earthquake restoration projects in 1995 and 2011 also used LR<sup>1)</sup>. From 1980 the Japanese Government promoted the transfer of the LR method and techniques to developing countries of South-east Asia<sup>2),3),4)</sup> and South America<sup>5)</sup>, etc., and in 2004 a Land Readjustment Act was adopted in Thailand<sup>6)</sup>.

### **Position of this research**

The basis of the LR method is conversion of land rights based on administrative disposition<sup>1)</sup>, and is referred to as Replotting Disposition. German law was introduced into administrative law within the Japanese legal system, which is similar to Umlegungsverfahren in German law. However, in countries with legal systems where there is no concept of public law and it is assumed that titles are exchanged by private law, as in

British and American law, sufficient legal study is necessary in order to transfer the system of LR, but research into the systems has not been sufficient compared with research into the transfer.

The objective of this research was to carry out a comparative analysis of the systems in the countries that have introduced the system and technique of Japanese LR, to obtain knowledge for transfer of systems and techniques in the future.

The documents analyzed included reports by Japan International Cooperation Agency (JICA) on Technical cooperation projects currently being implemented in Brazil and Colombia<sup>7)</sup> and other open literature papers, etc.

## **COMPARATIVE ANALYSIS OF LR SYSTEMS**

### **Features of LR**

The origin of LR was in the consolidation of farm land in order to improve productivity. Referred to as land consolidation (hereafter, LC), there are examples of it all over the world. In 1899 Japan introduced LC into the legal system, with reference to the German system<sup>8)</sup>. In 1919 legal measures were adopted to enable LC to be used as a tool for urban planning, and as a result LR was born<sup>9)</sup>. Thereafter it was used for housing development in the outskirts of cities, and earthquake and war restoration projects, and in 1954 the independent Land Readjustment Act was adopted as the culmination of the system to date.

LR is a means to realize land use plans within urban planning, but it is a method that enables the title relationships prior to development to be maintained after development, in other words, it enables communities to be maintained.

Normally, real estate development produces a large development profit for the landowners, and with LR the development profit and cost burden can be fairly and transparently allocated. The mechanism is to objectively evaluate the land before and after development, and to proportionally allocate the development profit to the individual owners<sup>10)</sup>. These features promote consensus formation of residents for development. In addition it includes a self-contained mechanism for converting a part of the development profit for sale, and appropriation of the sale profit to costs<sup>11)</sup>. This beneficiary liability mechanism enables infrastructure development with a small financial burden.

From the above, it was recognized that LR is effective as a measure for slum improvement or suburban sprawls in developing countries, and designs and techniques of land evaluation with the above features were introduced. One issue is a system to avoid disputes associated with title exchange. In other words, a mechanism is constructed to incorporate rights compartments in accordance with a plan against a minority that does not agree with title conversion.

### **Comparison of the title exchange method and the registration method**

#### *Mechanism in Japan*

Explained in legal terms, LR in Japan defines new rights by the *ōtentative validity (kouteiryoku)ō* of administrative disposition. In addition, there is a mechanism that enables registration of new rights by *ōcommissioned registrationō* by the developer instead of the right holder.

#### *Mechanisms in Asian countries*

The mechanism for determining new rights areas is a procedure<sup>12)</sup> referred to as land pooling (hereafter, LP), that is the basis of LR in Thailand<sup>13)</sup>, Nepal<sup>14)</sup>, Bhutan<sup>15)</sup>, etc. With LP all the land of owners that agree to a project is pooled, and subsequently divided in accordance with a land use plan. However the land of those opposed is excluded. This exclusion has the possibility of obstructing the realization of a rational land use plan in urban planning.

A new use plan is determined through discussions between the developer and the owners, but ultimately it is possible to avoid a breakdown of consensus formation as a result of the land of a

small number of opponents being the target of expropriation. It is said that in practice choices not involving expropriation can be taken through tough negotiations.

In Thai law, a special measure for examination of registration of deeds is provided in law for new land by LR, and a new certificate of title is issued upon application by the developer<sup>13)</sup>.

#### *Mechanisms in South America*

A title exchange method that differs from Japanese or Asian type LP has been developed in Colombia, and at present legislation is in progress in Curitiba City in the Federative Republic of Brazil. The mechanism in Colombia is an exchange of title by a private law contract. Colombia's Urban Act, which uses the provisions of the existing private law such as civil law, commercial law, trust law, etc., does not have provisions for title exchange for land. Also title exchange is not limited to land, but also applies to floor space of buildings. The procedure is the landowner transfers the land owned in trust to a trustee organization such as a local government, a trust bank, a developer, etc., and after completion of the project the trustee returns it to the original owner.

The validity of the title exchange is guaranteed by the power of the contract based on civil law or trust law, etc., and ultimately the Land Expropriation Act could be applied in accordance with the strength of the public nature of the project.

Application for registration is carried out by the right holder<sup>16),17),18)</sup>.

In Brazil the *ōTransferencia do Potencial Construtivo: TPCō* of the City Statute §35 corresponds to the transferable Development Right in the USA or the *ōrental building design systemō* or *ōarea of special application of floor area ratioō* in the Building Standard Act of Japan. Curitiba City has much experience in development by TPC, and the system has been designed with reference to the method in Colombia<sup>19),20),21)</sup>.

### **Relationship between urban planning and LR**

#### *The case of Japan and other Asian countries*

LR projects in Japan and various countries in Asia are realized by positioning wide area facilities in urban planning, and district facilities in the project plan.

#### *The case of South America*

The urban planning system in Colombia has a 3-layer structure: the *ōPlan de Ordenamiento Territorial: POTō* which corresponds to a master plan in urban planning, a *ōPlan Parcial: PPō* which

Table 1 Comparison of title exchange methods in LR development projects

	Japan	Thailand	Columbia
Relationship to urban planning	District facilities are determined by a project plan	District facilities are determined by a project plan	Part plans positioned in <i>Plan Parcial</i>
Title exchange Procedure	Administrative disposition	Land pooling Special provision for	Private law contract Right holder
Relationship to registration system	Commissioned registration	examination and application by the right holder	application
Mechanism for avoiding disputes	Administrative disposition	Expropriation law	Expropriation law

is a local detailed plan, and a *Unidades de Actuación Urbanística: UAU* which is an implementation plan positioned in the PP. It is a requirement for implementation of LR to be positioned in the PP. Besides the UAU, the PP includes a public spaces development plan, and measures to realize fair benefits and liabilities among the land rights owners. With UAU the unit of implementation of urban development projects is the block, and 3 types of project are included: *Reajuste de Terrenos*, *Integración Inmobiliaria*, and *Cooperación entre participantes*<sup>22)</sup>.

Curitiba City has designed a system that is close to that of Colombia.

The above outline is summarized in Table 1.

#### SUMMARY OF THE RESEARCH: CHARACTERISTIC CONCEPTS OF JAPANESE LR

For a long period of time Japan has transferred the techniques of LR using its characteristic concepts and terminology such as replot, contribution, and reserve land. This research has compared the Japanese LR system which is behind these techniques with the systems in Asia and South America. It is considered that this research will facilitate the understanding and introduction of LR among people of various other countries based on the infrastructure of systems in their own countries.

Note that the Japanese category 1 urban redevelopment project has the mechanism of right exchange from original lots and houses to new building flowers. It superficially resembles the South American LR system, but their bases are completely different in that the mechanisms of right exchange are public law.

Category 2 urban redevelopment does not come within the scope of right exchange. The

mechanism is to purchase original property from many owners who agree to the redevelopment project. After the project, they are distributed property right of new building flowers. Some land owners who didn't agree to the project, withdraw from the project with compensation money. This mechanism is based on expropriation law.

Notes)

(1) Administrative disposition is recognized as having *interim validity* as a *special validity* that is not normally seen in legal actions. Administrative disposition is considered as valid until established by lawsuit<sup>23)</sup>.

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